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(2026) 7 ILRA 11
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 5426 of 2020

Vijay Singh **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Permissibility of claiming the salary for unauthorized absence on the ground that there is no provision of leave without pay under the Rule 73 of Fundamental Rules.
(2) Application of the Rule 73 of Fundamental Rules.
(3) Application of doctrine of approbate and reprobate.

Headnotes

(A) Service law – Salary – Unauthorized absent – Leave without pay – Alongwith leave without pay, the benefit of voluntary retirement was also granted – Sanction of leave without payment was challenged claiming the salary for the period of absent on the ground that there is no provision of leave without pay under Rule 73 – Permissibility – No disciplinary proceeding was initiated for unauthorized absent – Effect – Claim was rejected – Application of Rule 73 felt into consideration – Application of doctrine of approbate and reprobate also felt into consideration .

Held : Fundamental Rule 73 is attracted in cases where a Government servant remains absent after the end of his leave. However, in the present case, we find that the petitioner was not on leave prior to his absence for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016. Thus, Fundamental Rule 73 would not apply in the case of the petitioner and the leave has been sanctioned to him for the purpose of regularizing his services so as to entitle him to voluntary retirement as sought by him by his letter dated 16.02.2015. [Para 13]

Further held : The conduct of the petitioner amounts to availing the benefit of voluntary retirement arising out of the same set of facts, while simultaneously challenging the denial of salary for the period of absence. Such conduct cannot be appreciated and is hit by the doctrine of approbate and reprobate **–** The petitioner cannot be allowed to claim the benefit of voluntary retirement on one hand and on the other hand challenge the denial of salary for the period of his unauthorized absence from duty as it would not have been possible to grant him voluntary retirement without regularization of his unauthorized absence from duty by sanctioning of leave. [Para 20 and 21] (E-1)

Case Law Cited

Union of India and others vs. N. Murugesan and others, (2022) 2 SCC 25 **– referred to.**

List of Acts

Financial Handbook, Fundamental Rule – Rule 56, 73 81-B and 85 – U.P. Civil Services Regulations Regulation – 420 .

List of Keywords

Legal impediment, Voluntary retirement, Claim petition, Leave without pay, Denial of salary, Disciplinary proceeding, Unauthorized absent, Absent from duty, Sanctioned leave, Unauthorized leave, Grant of service benefit, Extraordinary leave, Forfeiture, Benefit of voluntary retirement, Doctrine of approbate and reprobate, Regularization.

Case Arising From

Judgment and order dated 07.03.2019 passed by U.P. State Public Service Tribunal, Lucknow in Claim Petition No. 299 of 2016.

Appearances for Parties

Advs. for the Petitioner : Petitioner (In Person), Amit Kumar Srivastava, Ashish Srivastava, Ishan Khanna, Shambhoo Sharan Lal Srivastava, Vaishnavi Srivastava.
Advs. for the Respondents : Akhilesh Srivastava, S.C.

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

1. Heard Shri Vijay Singh, petitioner appearing in person and Shri Akhilesh Srivastava, learned Standing Counsel representing the State respondents.

2. The instant writ petition has been filed seeking quashing of the judgment and order dated 07.03.2019 passed by learned U.P. State Public Service Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as Tribunal) in Claim Petition No.299 of 2016 (Vijay Singh vs. State of U.P. and others) as well as for quashing of the orders dated 29.01.2016 passed by Executive Engineer, Irrigation, Construction Division, Firozabad, Headquarter Shikohabad, to the extent whereby the petitioner has been sanctioned leave without pay for the period 01.02.2015 to 28.02.2015 and for the period 01.04.2015 to 29.01.2016. Further relief has been sought for issuance of a direction to the respondents to pay him salary for the aforesaid period.

3. The brief facts of the case as canvassed by the petitioner are that he was initially appointed on the post of Gaze Reader on 28.08.1989 in work-charged establishment and was posted in the Investigation and Planning (Water Resources) Division, Lucknow. Subsequently, he was appointed as Seenchpal and was posted at Bhoganipur Division, Lower Ganga Canal, Etawah vide office memo dated 24.04.1999 issued by the Superintendent Engineer, Irrigation Works Circle, Etawah. The State Government vide order dated 14.10.2014 merged the Sub-Division Shikohabad under Bhoganipur Division, Lower Ganga Canal, Etawah with Irrigation Construction Division, Firozabad at Shikohabad and a consequential order to that extent was also passed by the Engineer-in-Chief, Irrigation, U.P., Lucknow on 31.10.2014. As a result of the aforesaid merger, the petitioner was required to work at Shikohabad and was liable to be transferred thereto. Owing to some physical problem, he was unable to discharge duties on the post of Seenchpal and, therefore, submitted an application dated 16.02.2015 seeking for alternative work and, in case of any legal impediment, requested that he be granted voluntary retirement under Rule 56(c) of the Fundamental Rules contained in Financial Handbook Volume 2, Part II to IV. The petitioner, thereafter submitting a reminder letter dated 16.05.2015 and subsequently filed Claim Petition No.2067 of 2015 before the U.P. State Public Services Tribunal against the inaction of the department in not considering his representation. The said claim petition was disposed of by the Tribunal vide judgment and order dated 04.12.2015 directing the authorities to decide the representation dated 16.02.2015 of the petitioner.

4. In compliance of the order dated 04.12.2015 passed by the Tribunal, the Executive Engineer, Irrigation, Construction Division, Firozabad, Headquarter Shikohabad issued Office Memo No.01/2016 vide letter No.100/सिं०नि०ख०फि०सु०शि०/dated 29.01.2016, whereby his absence from duty for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 was sanctioned as leave without pay under Fundamental Rule 73 contained in Financial Handbook Volume 2, Parts II to IV. By another O.M. No.2/2016 dated 29.01.2016, petitioner was granted voluntary retirement under Rule 56(c) of U.P. Fundamental Rule with effect from 29.01.2016. The date of voluntary retirement was further modified vide another Office Memo No.151 dated 09.02.2016 providing that the voluntary retirement of the petitioner would take effect from the afternoon of 31.01.2016 instead of 29.01.2016. The petitioner, being aggrieved by the sanction of leave without pay for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 filed Claim Petition No.299 of 2016 (Vijay Singh vs. State of U.P. and others), which was dismissed by the learned Tribunal vide judgment and order dated 07.03.2019, which is under challenge in the present writ petition.

5. The petitioner has challenged part of the orders dated 29.01.2016 to the extent of denial of salary for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 and has alleged violation of Fundamental Rules 56 as well as Rule 73, submitting that Fundamental Rules 56 and 73 do not provide for leave without pay and that, in case the authorities were of the view that the petitioner was illegally absenting from duty, disciplinary proceedings ought to have been initiated against the petitioner for such unauthorized absence. It is further submitted that since no such disciplinary proceedings were initiated against the petitioner, it was not open for the departmental authorities to deny the petitioner salary for the aforesaid period while sanctioning leave.

6. The Fundamental Rule 56 reads as hereunder :

"56. (a) Except as otherwise provided in other clauses of this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He may be retained in service after the date of retirement on superannuation, with the sanction of the Government, on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(b) A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special circumstances and with sanction of the Government.

(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years.

(d) The period of such notice shall be three months:

Provided that-

(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or, as the case may be, for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before his retirement;

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice:

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted:

Provided also that the notice once given by a Government servant under clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

(e) A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule.

Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less;

Explanations - (1) The decision of the appointing authority under clause (c) to require the Government servant to retire as specified therein shall be taken if it appears to the said authority to be in the public interest, but nothing herein contained shall be construed to require any recital, in the order of such decision having been taken in the public interest.

(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration-

(a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad-hoc basis; or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.

(2-A) Every such decision shall be deemed to have been taken in the public interest.

(3) The expression "appointing authority" means the authority which for the time being has the power to make substantive appointments to the post or service from which the Government servant is required or wants to retire; and the expression "qualifying service" shall have the same meaning as in the relevant rules relating to retiring pension.

(4) Every order of the appointing authority requiring a Government servant to retire forthwith under the first proviso to clause (d) of this rule shall have effect from the forenoon of the date of its issue, provided that, if after the date of its issue, the Government servant concerned, bona fide and in ignorance of that order, performs the duties of his office, his acts shall be deemed to be valid notwithstanding the fact of his having earlier retired.

Note- (1) (Deleted)

Note- (2) The grant, under rule 86, of leave extending beyond the date on which a government servant must compulsorily retire, or beyond the date upto which a government servant has been permitted to remain in service, shall not be treated as sanctioning an extension of service, and the government servant shall not be permitted to retain a lien on his permanent post or any other post during the period of such leave.

(This shall come into force with effect from April 1, 1965).

Note- (3) A government servant whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty-eight or sixty years, as the case may be."

7. Section 56(c) of the U.P. Fundamental Rules provides for voluntary retirement after attaining the age of 45 years and completing 20 years of qualifying service, for which the period of notice is three months as provided under sub-rule (d). The first proviso to sub-rule (d)(ii) provides that in case disciplinary proceedings are pending or contemplated, the voluntary retirement shall be effective only if it is accepted by the appointing authority, and in case of contemplated disciplinary proceedings, the concerned government servants shall be informed before the expiry of the notice period that his request for voluntary retirement has not been accepted. Thus, for acceptance of an

application for voluntary retirement, it is mandated that no disciplinary proceedings are pending or contemplated against the government servant, except with the approval of the appointing authority.

8. The Fundamental Rule 73 reads as hereunder :

"73. A Government servant who remains absent after the end of his leave is entitled to no leave-salary for the period of such absence, and that period will be debited against his leave account as though it were leave on half average pay, unless his leave is extended by the Government. Wilful absence from duty after the expiry of leave may be treated as misbehaviour for the purpose of Rule 15.

Note - In the case of a Government servant governed by leave rules laid down in Fundamental Rule 81-B and Subsidiary Rule 157-A, who remains absent after the end of his leave, the period of such overstayal of leave should, unless the leave is extended by the competent authority, be treated as follows:

(a) If the Government servant is in superior service and holds a lien on a permanent post-

(i) as leave on private affairs to the extent such leave is due, unless the overstayal is supported by a medical certificate,

(ii) as leave on medical certificate to the extent such leave is due, if the overstayal is supported by a medical certificate,

(iii) as extraordinary leave to the extent the period of leave on private affairs and/or on medical certificate falls short of the period of overstayal:

(b) If the Government servant is in superior service without a lien on a permanent post or in inferior service, as in (a) (ii) and (iii) above mutatis mutandis.

The period of overstayal of leave will be debited as leave taken but no leave salary will be paid for such period unless it is covered by an extension of leave granted by the competent authority."

9. A bare perusal of Fundamental Rule 73 reveals that it is applies to cases where a Government servant remains absent after the end of his leave and provides that he is not entitled to leave salary for such period, which is to be debited against his leave account, unless his leave is extended by the competent authority. The petitioner has not disclosed whether his absence from duty for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 was preceded by sanctioned leave. The records available with the writ petition also do not disclose whether the petitioner was on leave prior to his absence for the aforesaid periods.

10. The Regulation 420 of the U.P. Civil Services Regulations provides that an interruption in the service of a Government Officer entails forfeiture of his past service, except in certain circumstances. The Regulation 420 is reproduced hereinbelow :

"420. An interruption in the service of an officer entails forfeiture of his past service, except in the following cases:

(a) authorised leave of absence.

(b) unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled the past service of the absentee is forfeited.

(c) suspension immediately followed by reinstatement which need not be to he same office.

(d) abolition of office or loss of appointment owing to reduction of establishment.

(e) transfer to non-qualifying service in an establishment under government cotrol, the transfer must be made by competent authority; and officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.

(f) Not printed.

(g) time occupied in transit from the one appointment to another provided that the officer is transferred under the orders of competent authority, or if he is a non-gazetted officer with the consent of the head of his old office. "

11. The effect of forfeiture of past service is that the services rendered prior to interruption will not be considered for the service benefits of the Government Servant, which also include pensionary benefits.

12. The petitioner's absence from duty for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 was unauthorized and was not in continuation of any authorized leave. Thus, if the departmental authorities could not have regularized the services of the petitioner by sanctioning leave for the aforesaid period, then in such circumstances, the past services of the petitioner could not have been considered for grant of service benefits, and it could also have resulted in denial of voluntary retirement of the petitioner. Thus, the departmental authorities, accepting the request of the petitioner for grant of voluntary retirement as made through his letter dated 16.02.2015, took a lenient view and regularized the service of the petitioner by sanctioning leave for the period of unauthorized absence. It appears that the departmental authorities, taking into consideration the long services of the petitioner and the facts and circumstances disclosed by him in his letter dated 16.02.2015, proceeded to grant him voluntary retirement; otherwise, the authorities could have also initiated disciplinary proceedings against the petitioner for his unauthorized absence from duty.

13. Fundamental Rule 73 is attracted in cases where a Government servant remains absent after the end of his leave. However, in the present case, we find that the petitioner was not on leave prior to his absence for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016. Thus, Fundamental Rule 73 would not apply in the case of the petitioner and the leave has been sanctioned to him for the purpose of regularizing his services so as to entitle him to voluntary retirement as sought by him by his letter dated 16.02.2015.

14. Fundamental Rule 85 provides for extraordinary leave which may be granted in special circumstances. Fundamental Rule 85 is reproduced hereinbelow :

"85. (a) Extraordinary leave may be granted in Special circumstances (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the Government servant concerned applies in

writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.

(b) The authority which has the power to sanction leave may grant extraordinary leave as in clause (a) in combination with, or in continuation of, any leave that is admissible and may commute retrospectively periods of absence without leave into extraordinary leave.

Orders of the Governor regarding Rule 85 (b)

The power of commuting retrospectively periods of absence without leave into extraordinary leave is absolute and not subject to the conditions mentioned in clause (a) of the rule; in other words, such commutation is permissible even when other leave was admissible to the Government servant concerned at the time his absence without leave commenced.

Audit instructions regarding Rule 85

1. Extraordinary leave without pay granted under the rules of the Civil Service Regulations will not also be debited against the leave account under note 2 to Rule 78.

2. "Leave not due" applied for by a Government servant with or without medical certificate is "leave admissible under rule" and in cases where "leave not due" can be granted, the grant of extraordinary leave under Fundamental Rule 85 will be irregular unless the latter kind of leave is specifically applied for in writing."

15. Sub-rule (b) of Rule 85 empowers the competent authority to sanction extraordinary leave retrospectively and to commute absence without leave into extraordinary leave.

16. The Fundamental Rule 81-B vide sub-rule (5), provides that a Government servant may be granted extraordinary leave in accordance with provisions of Fundamental Rule 85 read with Fundamental Rule 18, which could be for a maximum period of five years.

17. It is not the case of the petitioner that he had applied for leave for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016, nor is it shown that he was entitled to any other kind of leave in his leave account. It is an undisputed fact that the petitioner remained unauthorizedly absent for the aforesaid period. In order to enable him to be considered for voluntary retirement, the competent authority sanctioned leave without pay, though it has been wrongly mentioned as leave sanctioned under Fundamental Rule 73. Such leave is, in substance, referable to Fundamental Rule 85 of the U.P. Fundamental Rules as contained in Financial Handbook Volume II, Part II to IV.

18. The incorrect mention of Fundamental Rule 73 instead of extraordinary leave under Fundamental Rule 85 does not ipso facto render the Office Memo No.100 dated 29.01.2016 invalid. In fact, if it is held that the petitioner was wrongly sanctioned such leave, then the petitioner□s service for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016, during which he remained unauthorizedly absent, could not have been regularized, and in such circumstances, it would amount to interruption in service resulting in forfeiture of his past service, thereby denying him qualifying service and other service benefits, including the benefit of voluntary retirement which he sought vide his letter dated 16.02.2015.

19. It is ironic that the petitioner has challenged the Office Memo No.100 dated 29.01.2016 relating to sanctioning of leave for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 before the learned Tribunal as well as before this Court, though the same were issued to enable him to obtain

voluntary retirement by regularizing his service for his unauthorized absence. The petitioner, on the one hand, has availed the benefit of grant of voluntary retirement based on regularization of his services by sanction of leave without pay for his unauthorized absence, while on the other hand he has challenged the sanction of leave on the ground that salary could not have been denied for the said period. The petitioner has nowhere pleaded, nor does the record suggest, that he had ever applied for any leave admissible to him. In such circumstances, the authorities had no option but to regularize the period of absence by sanctioning leave, treating it as extraordinary leave under Fundamental Rule 85, though wrongly mentioned as Fundamental Rule 73.

20. If, for a moment, it is assumed that the leave was wrongly sanctioned, then the petitioner's service for the period prior to absence from duty i.e. prior to 01.02.2015 would amount to break in service and consequential forfeiture of service rendered prior to it. The conduct of the petitioner amounts to availing the benefit of voluntary retirement arising out of the same set of facts, while simultaneously challenging the denial of salary for the period of absence. Such conduct cannot be appreciated and is hit by the doctrine of approbate and reprobate. The petitioner cannot claim the benefit arising out of the Office Memo No.100/सिं०नि०ख०फि०सु०शि०/dated 29.01.2016 and Office Memo No.102/सिं०नि०ख०फि०सु०शि०/dated 29.01.2016 on the one hand and repudiate it on the other hand denying him salary for the period of absence. The Hon'ble Supreme Court in the case of **Union of India and others vs. N. Murugesan and others** reported in **(2022) 2 SCC 25**, observed in paragraph 26 as follows :

"26.These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

21. The petitioner cannot be allowed to claim the benefit of voluntary retirement on one hand and on the other hand challenge the denial of salary for the period of his unauthorized absence from duty as it would not have been possible to grant him voluntary retirement without regularization of his unauthorized absence from duty by sanctioning of leave. No one can claim the benefit of a transaction at one time claiming that he is entitled to it and later to challenge it for another advantage, as it does not suit his interest. It is a fit case where the cost ought to be imposed upon the petitioner for abusing the process of law; however, taking into consideration that the petitioner had retired way back in the year 2016, we restraint ourselves from imposing any costs.

22. The writ petition stands **dismissed.**

(2026) 7 ILRA 20
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.07.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No 9145 of 2011

Putti Lal **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of absorption in new higher cadre and entitlement to get service benefits according to new cadre.
(2) Validity of the order, denying the revised IInd and IIIrd pay scales as per new cadre on the ground that initial appointment was made in the Circle Cadre, though the employee was subsequently absorbed in the Chief Engineer Cadre.
(3) Application of doctrine of equality in public employment in respect of the implementation of earlier judgment of the High Court.

Headnotes

(A) Service law – Salary – Revised IInd and IIIrd Pay Scales – Petitioner was initially appointed in the Circle Cadre in the year 1967 and was permanently absorbed in the Chief Engineer Cadre on 24.04.1978 and further promoted as Office Superintendent – Petitioner was denied revised IInd and IIIrd pay scales on the sole ground that his initial appointment had been made in the Circle Cadre – Validity challenged .

Held : Absorption in service is not a mere administrative arrangement but results in complete integration of an employee into the new cadre. Upon such absorption, the earlier lien and incidents of the previous cadre cease to govern the service conditions of the employee. Consequently, all rights, obligations, promotional avenues and financial benefits become regulated by the service rules applicable to the cadre in which the employee stands absorbed. Therefore, the very basis adopted by the respondents in the impugned order, namely the petitioner's initial appointment in the Circle Cadre, is legally untenable and contrary to settled principles governing absorption in service jurisprudence. [Para 28]

(B) Service law – Constitution of India – Article 14 – Public employment – Doctrine of equality – Application – Implementation of earlier judgment of the High Court – Respondent adopted 'pick and choose policy' against the petitioner – Permissibility .

Held : The action of the respondents is hit by the doctrine of equality in public employment. Once the respondents themselves have implemented the judgment dated 23.08.2007 in favour of other employees similarly situated, they cannot discriminate against the petitioner by adopting a 'pick and choose' policy. Such arbitrary discrimination is impermissible and offends the constitutional guarantee of equal treatment under Article 14 of the Constitution. [Para 34] (E-1)

List of Acts

Constitution of India – Article 14; Electricity (Supply) Act, 1948 – S. 70; U.P. State Electricity Board (Ministerial Establishment—Offices of Chief Engineer and Other Subordinate Offices) Regulations, 1970; U.P. Electricity Board (Ministerial Establishment Chief Engineer Office and Other Subordinate Offices) (Second Amendment) Regulations, 1998 – Rules 5(1)(a), 5(1)(b) and Rule 9(2) .

List of Keywords

Pay scale, Consequential benefit, Satisfactory service, Promotion, Retirement, Retiral benefits, Pension, Absorption, Revision, Recruitment sources, Eligibility conditions, Retrospective amendments, Long-standing service structure, Arbitrary, Discriminatory, Pick and choose policy, Equality, Fairness, Administrative arrangement, Rights, Obligations, Promotional avenues, Financial benefits, Service jurisprudence, Binding judgment, Similarly situated employees, Rational nexus, Doctrine of equality.

Case Arising From

Impugned order dated 12.01.2012 passed by respondent No. 4 refusing to pay revised IInd and IIIrd pay scales.

Appearances for Parties

Advs. for the Petitioner : Savita Jain, Sabha Jeet Singh, Deep Shanker Verma.
Advs. for the Respondents : Devesh Mishra, ACSC; Manish Jauhari, Neerav Chitravanshi, S. S. Asthana, Vijay Pratap Singh Rathor, Vikrant Raghuvashi.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Ms. Savita Jain, learned counsel for the petitioner, Sri Devesh Mishra, learned Additional CSC for respondent No.1 - State and Sri Manish Jauhari, learned counsel for respondent Nos.2 to 4.

2. The present writ petition has been field for issuance of a direction in the nature of mandamus commanding the respondents to provide amended second and third time scale with all consequential benefits in pursuance to order dated 23.08.2007 withe a further prayer to quash the impugned order dated 12.01.2012 passed by respondent No.4 contained as Annexure-11 to the writ petition and to not give effect to order dated 12.01.2012 passed by respondent No.4.

3. Factual matrix of the case is that the petitioner was initially appointed as Junior Noter and Drafter (Circle Cadre) on a temporary post at Panki Thermal Power Station, Kanpur, vide appointment order dated 31.08.1967 and joined his duties accordingly. On account of his satisfactory service, the petitioner was promoted to the post of Senior Noter and Drafter (Circle Cadre) on 15.01.1971 and continued to discharge his duties at Panki Thermal Power Station.

4. Vide order dated 24.04.1978, the services of the petitioner were absorbed in the Chief Engineer Cadre of the U.P. State Electricity Board as Senior Noter and Drafter, whereupon he started working in the office of the General Manager, Panki Thermal Power Station. Subsequently, he was confirmed on the said post vide order dated 01.04.1983.

5. The petitioner was thereafter promoted to the post of Office Superintendent (Chief Cadre) and joined the promotional post. He continued to serve in the Chief Engineer Cadre and ultimately retired from service on 31.07.2001 while working as Office Superintendent in the office of the Chief Regional Engineer, U.P. Power Corporation Ltd., Kanpur.

6. After his retirement, the petitioner was extended all retiral benefits admissible to employees of the Chief Engineer Cadre and has been receiving pension from the said cadre, thereby acknowledging his status as a Chief Cadre employee. The grievance of the petitioner is that although he had been granted the first, second and third time-bound pay scales during service, he

was illegally denied the revised second and third time-bound pay scales of Rs. 1850-2930 and Rs. 2600-4000 on the sole ground that his initial appointment had been made in the Circle Cadre, despite his subsequent absorption and continuous service in the Chief Engineer Cadre.

7. The service conditions of ministerial employees of the **U.P. State Electricity Board were originally governed by the U.P. State Electricity Board (Ministerial Establishment?Offices of Chief Engineer and Other Subordinate Offices) Regulations, 1970, framed under Section 79 of the Electricity (Supply) Act, 1948** and duly published in the Official Gazette. Under the 1970 Regulations, a clear promotional hierarchy existed whereby employees appointed as Routine Grade Clerks progressed through the cadre to the posts of Office Assistant Grade-III, Office Assistant Grade-II, Office Assistant Grade-I, Office Superintendent (Special Grade) and thereafter Administrative Officer. The petitioner, after his absorption in the Chief Engineer Cadre, became part of the said promotional cadre.

8. The pay scales applicable to various posts in the Chief Engineer Cadre from 01.04.1984 and after the revision with effect from 01.01.1996 included the revised scales of Rs. 1850-2930 for Office Superintendent (Special Grade) and Rs. 2600-4000 for Administrative Officer, which formed the basis for grant of the second and third time-bound promotional benefits.

9. In the year 1998, the respondents introduced the **U.P. Electricity Board (Ministerial Establishment Chief Engineer Office and Other Subordinate Offices) (Second Amendment) Regulations, 1998,** whereby Rules 5(1)(a), 5(1)(b) and Rule 9(2) were amended retrospectively with effect from 01.04.1984, thereby altering the promotional avenues, recruitment sources and eligibility conditions applicable to ministerial employees of the Chief Engineer Cadre.

10. According to the petitioner, the retrospective amendments disturbed the long-standing service structure and deprived employees, including the petitioner, of their vested promotional and financial benefits. The amendments also adversely affected the fixation of salary and consequential retiral benefits including pension, gratuity and commutation.

11. Aggrieved by the aforesaid amendments, Vidyut Karyalaya Karmik Sangh filed Writ Petition No. 264 (S/S) of 1999 and A.G. Moinuddin and others filed Writ Petition No. 1289 (S/S) of 2003 challenging the constitutional validity of the amended Regulations on the ground that they had not been validly notified in the Official Gazette as required under Section 79 of the Electricity (Supply) Act, 1948 and that vested service rights could not be taken away retrospectively.

12. This Hon'ble Court, by a common judgment dated 23.08.2007, allowed the aforesaid writ petitions and granted relief to the affected employees, thereby restoring their entitlement to the service benefits available under the unamended Regulations. Pursuant to the aforesaid judgment, the Chairman and Managing Director of U.P. Power Corporation Ltd. issued directions on 04.11.2009 for implementation of the judgment and extension of the consequential service benefits to eligible employees.

13. Despite the aforesaid judgment and administrative directions, the respondents failed to extend the benefit of the revised second and third time-bound pay scales to the petitioner, although

he had retired from the Chief Engineer Cadre and was otherwise similarly situated to the employees who had been granted such benefits.

14. The petitioner repeatedly represented before the authorities through representations dated 17.02.2010, 28.09.2010, 10.10.2010, 12.10.2010, 18.10.2010, 02.11.2010 and 28.06.2011, requesting implementation of the judgment dated 23.08.2007 and grant of the revised pay scales, but no effective action was taken.

15. The Executive Engineer, vide letter dated 06.10.2010, informed the petitioner that appropriate action regarding payment of the revised pay scales would be taken after obtaining necessary directions. Similarly, the Chief Engineer, Dakshinanchal Vidyut Distribution Nigam Ltd., by communication dated 25.10.2010, recommended that the petitioner's claim for the revised pay scales be processed.

16. The petitioner asserts that several employees junior to him, including A.G. Moinuddin, and other similarly situated employees of the Chief Engineer Cadre have already been granted the revised second and third time-bound pay scales in compliance with the judgment dated 23.08.2007, whereas the petitioner alone has been denied the same without any rational basis.

17. It is averred that another employee, Aminuddin Ahmad, who had initially been appointed in the Operating Staff and whose initial cadre was different, was nevertheless granted the revised second and third time-bound pay scales after absorption, demonstrating that the respondents have adopted an arbitrary and discriminatory "pick and choose" policy in the petitioner's case. Ultimately, the respondents rejected the petitioner's claim vide order dated 12.01.2012, solely on the ground that his initial appointment had been made in the Circle Cadre and, therefore, he was entitled only to the time scales applicable to that cadre, completely ignoring the fact that his services had been permanently absorbed in the Chief Engineer Cadre decades earlier and that he had retired from that cadre after rendering long service therein.

18. The petitioner contends that once his services stood absorbed in the Chief Engineer Cadre, he became a member of that cadre for all service purposes and was legally entitled to the same promotional and financial benefits as all other employees of the cadre. The denial of the revised second and third time-bound pay scales solely on the basis of his initial appointment is wholly arbitrary, discriminatory and contrary to the judgment dated 23.08.2007.

19. It is, therefore, pleaded that the impugned action of the respondents, including the rejection order dated 12.01.2012, violates the guarantees of equality and fairness enshrined under Articles 14 and 21 of the Constitution of India, besides being contrary to the binding judgment of this Hon'ble Court and the applicable service regulations. Hence, the present writ petition has been preferred before this Court.

20. Submission of learned counsel for the petitioner is that once the petitioner has been absorbed in Chief Engineer Cadre, the lien on the earlier post vanished and the petitioner is entitled to get the benefits in the merged cadre. She submitted that an amendment was incorporated in the Rules, which was subject matter of challenge in Writ Petition No.264 (S/S) of 1999 and 5958 (S/S)

of 1998, wherein Division Bench of this Court after examining the entire material on record set aside the amendmetn and directed to provide all benefits in Chief Engineer Cadre. Against the said judgment S.L.P. No.2318 of 2007 was filed before Hon'ble Supreme Court of India, which was dismissed vide judgment and order dated 27.07.2009. Meaning thereby, the judgment of the Division Bench of this Court dated 23.08.2007 was affirmed. Therefore, her submission is that the petitioner is also entitled to get the similar benefit, as has been provided by the Division Bench of this Court vide judgment and order dated 23.08.2007.

21. Her next submission is that the respondents adopted discriminatory exercise of power in not providing benefits to the petitioner of second and third time scale, therefore, the order passed rejecting the claim of the petitioner dated 12.01.2012 is wholly illegal, discriminatory and arbitrary in nature.

22. She submitted that the order dated 12.01.2012 has been passed in utter disregard of the judgment of this Court allowing the writ petition by setting aside the amendment incorporated in the statute book.

23. On the other hand, learned counsel for respondent Nos.2 to 4 submitted that the petitioner was initially appointed in Circle Cadre on temporary basis and was absorbed in Chief Engineer Cadre, therefore, he is not entitled to get benefit of second and third time scale. He also invited attention of this Court on CA-1, page 9 of the counter affidavit, whereby the demarcation in regard to payment of second and third time scale was explained.

24. He next submitted that the impugned order does not suffer from any infirmity or illegality and is just and valid.

25. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

26. Upon perusal of the pleadings and material brought on record, this Court finds that the controversy involved in the present writ petition lies in a narrow compass. The only question which arises for consideration is whether, after the permanent absorption of the petitioner in the Chief Engineer Cadre and his continuous service therein till retirement, the respondents were justified in denying him the benefit of the amended second and third time-bound pay scales solely on the ground that his initial appointment had been made in the Circle Cadre.

27. It is not disputed that the petitioner was initially appointed in the Circle Cadre in the year 1967. Equally undisputed is the fact that, vide order dated 24.04.1978, his services were permanently absorbed in the Chief Engineer Cadre. Thereafter, he was confirmed in that cadre, earned further promotions therein, discharged his duties as Office Superintendent under the Chief Engineer Cadre and ultimately retired from the said cadre on 31.07.2001. The respondents have also extended to him all retiral benefits including pension treating him as an employee of the Chief Engineer Cadre. Once these foundational facts are admitted, the respondents cannot selectively rely upon the petitioner's initial appointment in the Circle Cadre for denying only the financial benefits flowing from his absorbed cadre.

28. Absorption in service is not a mere administrative arrangement but results in complete integration of an employee into the new cadre. Upon such absorption, the earlier lien and incidents of the previous cadre cease to govern the service conditions of the employee. Consequently, all rights, obligations, promotional avenues and financial benefits become regulated by the service rules applicable to the cadre in which the employee stands absorbed. Therefore, the very basis adopted by the respondents in the impugned order, namely the petitioner's initial appointment in the Circle Cadre, is legally untenable and contrary to settled principles governing absorption in service jurisprudence.

29. This Court further finds that the issue regarding the validity of the retrospective amendments introduced by the Second Amendment Regulations, 1998 no longer survives for consideration. The Division Bench of this Court, vide judgment and order dated 23.08.2007 rendered in Writ Petition No.264 (S/S) of 1999 and connected matters, declared the impugned amendments unsustainable and restored the service benefits available under the unamended Regulations. The said judgment attained finality after the Special Leave Petition preferred before the Hon'ble Supreme Court, which was dismissed on 27.07.2009. Thus, the respondents were under a legal obligation to faithfully implement the judgment in respect of every similarly situated employee.

30. The records further disclose that the Chairman and Managing Director of the U.P. Power Corporation Ltd. himself issued directions dated 04.11.2009 for implementation of the judgment dated 23.08.2007. Despite such binding judicial and administrative directions, the respondents failed to extend identical benefits to the petitioner. Such conduct is wholly impermissible in law. Administrative authorities cannot refuse to implement a binding judgment by inventing distinctions which were neither recognised nor approved by the Court while deciding the earlier batch of writ petitions.

31. The material brought on record further establishes that several similarly situated employees, including A.G. Moinuddin and others, were extended the revised second and third time-bound pay scales pursuant to the judgment dated 23.08.2007. The petitioner has also specifically pleaded that Aminuddin Ahmad, whose initial appointment was in a different cadre, was likewise granted the benefit after absorption. These pleadings have not been effectively rebutted by the respondents. The denial of identical benefits to the petitioner, while extending the same to other similarly situated employees, is manifestly arbitrary and violative of Article 14 of the Constitution of India.

32. The sole reasoning assigned in the impugned order dated 12.01.2012 is that the petitioner was initially appointed in the Circle Cadre and, therefore, would continue to be governed by the pay scales applicable to that cadre. Such reasoning completely ignores the undisputed fact of permanent absorption, confirmation, promotion and retirement from the Chief Engineer Cadre. The authority has failed to consider the effect of the binding judgment dated 23.08.2007, the dismissal of the Special Leave Petition by the Hon'ble Supreme Court and the implementation orders issued by the Corporation itself. Consequently, the impugned order suffers from complete non-application of mind and is liable to be set aside.

33. The stand taken by the respondents in the counter affidavit also cannot be accepted. Merely because the petitioner entered service through the Circle Cadre does not confer any legal authority upon the respondents to deny him benefits available to the cadre in which he permanently served for more than two decades. Acceptance of such a contention would render the very concept of permanent absorption meaningless and would create an artificial classification among employees belonging to the same cadre without any rational nexus with the object sought to be achieved.

34. This Court is further of the opinion that the action of the respondents is hit by the doctrine of equality in public employment. Once the respondents themselves have implemented the judgment dated 23.08.2007 in favour of other employees similarly situated, they cannot discriminate against the petitioner by adopting a "pick and choose" policy. Such arbitrary discrimination is impermissible and offends the constitutional guarantee of equal treatment under Article 14 of the Constitution.

35. The impugned order dated 12.01.2012 is also unsustainable for the additional reason that it completely overlooks relevant considerations while taking into account an irrelevant factor, namely the petitioner's original appointment. It is well settled that an administrative order founded upon irrelevant considerations and ignoring material facts cannot withstand judicial scrutiny under Article 226 of the Constitution of India.

36. In view of the aforesaid discussion, this Court has no hesitation in holding that the petitioner, after his permanent absorption in the Chief Engineer Cadre, became entitled to all service and financial benefits admissible to employees of that cadre, including the revised second and third time-bound pay scales made available pursuant to the judgment dated 23.08.2007. The respondents were wholly unjustified in denying the same on the basis of his initial appointment in the Circle Cadre.

37. Consequently, the impugned order dated 12.01.2012 passed by respondent No.4 cannot be sustained in law and is hereby quashed.

38. The writ petition deserves to be allowed and is hereby **allowed**.

39. A writ in the nature of mandamus is issued commanding the respondents to grant to the petitioner the amended second and third time-bound pay scales, strictly in terms of the judgment dated 23.08.2007, by treating the petitioner as a member of the Chief Engineer Cadre, together with all consequential service and retiral benefits, including revision of pay fixation, pension, gratuity, commutation, arrears and every other monetary benefit legally flowing therefrom.

40. The respondents are directed to undertake the entire exercise of re-fixation of pay and pension and to calculate and release all consequential arrears payable to the petitioner within a period of four months from the date a certified copy of this judgment is produced before the competent authority. In case the aforesaid amount is not released within the stipulated period, the petitioner shall also be entitled to interest in accordance with law from the date the amount became due till the date of actual payment.

41. There shall be no order as to costs.

(2026) 7 ILRA 27
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ A No 10843 of 2021

Smt. Meenu **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Scope of Article 300-A of the Constitution of India including the right to receive pension in it as the constitutional right of property.
(2) Entitlement to receive gratuity and other retirement benefits after voluntary retirement.
(3) Entitlement to get the interest on delayed payment of gratuity and other retirement benefits.

Headnotes

(A) Service law – Constitution of India – Article 300-A – Right to property – Scope – Right to receive the pension, how far protected as the constitutional right :

Held : After the 44th Amendment Act, 1978 w.e.f. 20.06.1979, though the right to property is not a fundamental right but, still, a constitutional right as provided under Article 300-A of the Constitution; and now since the right to receive pension was treated as a right to property, the denial of the same is also violative of a constitutional right – Pension/gratuity, is not a bounty and an employee earns the same through his longstanding service and as such is a 'property', being protected by the Constitutional mandate under Article 300-A of the Constitution of India; and as such he cannot be deprived of his property saved by authority of law. [Para 12 and 26]

(B) Service law – Financial Handbook – Fundamental Rule 56(e) – Gratuity – Voluntary retirement before the age of superannuation –Entitlement to get post-retirement benefits :

Held : In view of Fundamental Rule 56 sub-Clause (e) of the Financial Handbook, the government servant is entitled for retirement dues admissible under the Rules and also considered that the Government has issued a Government Order dated 31st July, 2001, providing that even in case of a voluntary retirement, a government servant shall be entitled to retirement dues as per Rules – Once he (employee) is permitted to retire, prior to the age of 60 years, he/she is entitled to gratuity, in view of Fundamental Rule 56(e) of the Financial Handbook, even if it is a voluntary retirement. The State Government is also bound by its Government Order dated 31.07.2001; and it cannot insist on the requirement of specifically submitting the option, for availing the gratuity, as admittedly, she was permitted to retire, prior to attaining the age of superannuation i.e. 60 years. [Para 14 and 26]

(B) Service law – Interest on delayed payment of gratuity and other retirement benefits – Entitlement – Rate of interest – Determination :

Held : The claim of the petitioner for payment of interest to delayed disbursal of the "gratuity" also is justified, as it is a valuable right in the form of a property and any culpable delay in settlement and disbursement thereof, must be visited with the penalty on payment of interest at the current market rate, till the actual payment to the employee – The petitioner shall also be entitled to payment of interest on the delayed payment of gratuity, at the rate of 8%, from the date it was due towards the petitioner – In case, the aforesaid interest is not paid within a period of 2 months from the date of service of certified copy of this

order, from the said date till the actual disbursement, 12% interest shall be applicable and the said amount shall be recovered from the disbursement authority's salary. [Para 27 and 29(ii)] (E-1)

Case Law Cited

State of Kerala vs. M. Padmanabhan Nair, (1985) 1 SCC 429; Jharkhand and others vs. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210; D.S. Nakara vs. Union of India, (1983) 1 SCC 305; Deoki Nandan Prasad vs. State of Bihar, (1971) 2 SCC 330; Smt. Asha Lata Chaubey vs. State of U.P. and others, 2024 (5) ADJ 113; Special Appeal (Defective) No. 430 of 2016, Smt. Nazma Khatoon vs. State of U.P. and others; Smt. Ranjana Kakkar W/O Late Prof. Amarnath Kakkar vs. State of U.P. and others, 2008 (10) ADJ 63 (DB); D.D. Tewari vs. Uttar Haryana Bijli Vitran Nigam Limited (2014) 8 SCC 894; Vijay L. Mehrotra vs. State of U.P., (2001) 9 SCC 687; Gorakhpur University vs. Sitla Prasad Nagendra (Dr.), (2001) 6 SCC 591); S. K. Dua vs. State of Haryana, (2008) 3 SCC 44; Dr. Poornima Advani and another vs. Government of NCT and another, (2025) 7 SCC 269; Commissioner of Income Tax vs. Sham Lal Narula, AIR 1963 Punjab 411 **– referred to.**

List of Acts

Constitution of India – Article 14, 19, 21 andd 300-A; Financial Handbook – Fundamental Rule 56 sub-Clause (e).

List of Keywords

Gratuity, Interest, General Provident Fund, Voluntary retirement, Pension, Retirement benefit, Retirement due, Valuable rights of the superannuating employees, Delay, Withheld, Faithful and unblemished service, Right to property, Fundamental right, Right to receive pension, Delayed payment of gratuity/retirement benefits, Retention of money, Delinquent employee, Compensation, Restitution, Longstanding service, Age of superannuation, Culpable delay, Settlement, Disbursement, Market rate.

Case Arising From

Non-payment of the due amount of gratuity and interest on unpaid General Provident Fund.

Appearances for Parties

Advs. for the Petitioner : Namman Raj Vanshi, Pramod Kumar Jain, Sr. Adv.
Advs. for the Respondents : C.S.C.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Shri Namman Rajvanshi, Advocate, appearing on behalf of the petitioner and learned Standing Counsel for the State respondents.

2. By way of the present writ petition, the following prayer has been made: "(I) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to release the amount gratuity legally due and payable to the petitioner along with interest @ 18% per annum from the date of accrual till the date of actual realisation; (II) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to release the amount of unpaid interest on the General provident Fund of the Petitioner from 01.09.2019 till 31.01.2020; (III) Issue and other writ, order or direction as this Hon'ble court may deem fit and proper under the facts and circumstances of the case. (IV) Award the cost of the petition to be paid to the petitioner."

3. Learned counsel for the petitioner has submitted that petitioner was appointed as a Teacher in the Institution of respondent no. 4, which is a State aided educational institution and has

been working continuously in the school, until the time she opted for Voluntary Retirement Scheme; and availed voluntary retirement with effect from 31st August, 2019.

4. Learned counsel for the petitioner further submits though the respondent no. 4, vide pension order dated 07.08.2020, had sanctioned the pension to the tune of Rs. 37,150/- per month, which is being duly paid to the petitioner; but the retirement 'gratuity' has not been paid to the petitioner.

5. Learned counsel for the petitioner further submits that Respondent no. 3 has released the GPF of the petitioner, to which she was duly entitled; but in spite of the fact that the petitioner, who was 55 years of age on the date of retirement (date of birth 26th June, 1964), yet she has been illegally denied the benefit of 'gratuity', which was otherwise legally admissible to her.

6. Learned counsel for the petitioner has also relied upon Fundamental Rule 56(e) of the Financial Handbook, wherein it has been provided that in case a government servant retires from service, he/she shall be entitled for payment of pension and other retirement benefits; and thus has submitted before this Court that once petitioner has been permitted to retire from service, she cannot be deprived of her right to receive amount of gratuity. For ready reference Rule 56(e) of the Financial Handbook, is reproduced below:

"A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule. "

[Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less];"

7. Learned counsel for the petitioner has also relied upon a Government Order dated 31.07.2001, whereby it has been clarified that if a government servant is permitted voluntary retirement from service, under Fundamental Rule 56 sub-Clause (c) of the Financial Handbook, he/she shall be entitled to pension and other retirement dues including 'gratuity' admissible under the Rules.

8. On a pointed query to the learned Standing Counsel, regarding the legal position, since the facts are admitted and undisputed, he submits that the controversy has since been settled by the judgment and order dated 07.11.2019, rendered in Writ- A No. 17399 of 2019 (Usha Rani v. State of U.P. and others), and accordingly he does not propose to file a counter affidavit and the matter may be decided at the admission stage itself, in view of the aforesaid judgment.

9. In order to determine the lis, this Court proceeds to examine the legal position which is being followed consistently till date. The Hon'ble Apex Court while reiterating the established position of law, regarding the pension and the gratuity, held in the case of State of Kerala vs. M.

Padmanabhan Nair reported in (1985) 1 SCC 429 that, the pension and gratuity are not bounty to be distributed by the Government to its employees, but have been elevated as valuable rights of the superannuating employees. Emphasizing the need for prompt payment of retiral dues to a government servant upon his retirement and assessing the reasons for the delay in payment of retiral dues, the consequential directions for payment of interest for the delay caused, was issued. The Apex Court held as follows:

"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

10. In the case of **State of Jharkhand and others vs. Jitendra Kumar Srivastava and another reported in (2013) 12 SCC 210**, the Apex Court held that an employee earns the benefits accruing in the form of gratuity and pension, by rendering long, continuous, faithful and unblemished service. In the celebrated judgment in the case of **D.S. Nakara vs. Union of India reported in (1983) 1 SCC 305,** D.A. Desai,J**,** while speaking for the Bench in his inimitable style, conceptualized the concept in the following words:

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service"

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377] ."

11. The right to receive pension has been recognized akin as a right to property, by the Constitutional Bench judgment in the case of Deoki Nandan Prasad vs. State of Bihar reported in (1971) 2 SCC 330. For ready reference, para 27 to 33 is reproduced below:

"27. The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [AIR 1962 Punj 503] . It was held that such a right constitutes ?property? and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR (1965) 2 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is ?property? within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as ?property? cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [AIR 1967 Punj 279 : ILR (1967) 1 Punj 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of M.P. v. Ranojirao Shinde [AIR 1968 SC 1053 : (1968) 3 SCR 489] had to consider the question whether a ?cash grant? is ?property? within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing ?it is obvious that a right to sum of money is property"

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

12. After the 44th Amendment Act, 1978 w.e.f. 20.06.1979, though the right to property is not a fundamental right but, still, a constitutional right as provided under Article 300-A of the Constitution; and now since the right to receive pension was treated as a right to property, the denial of the same is also violative of a constitutional right.

13. It is no longer res integra that in case petitioner has been permitted to retire prior to 60 years of age and even though if he/she has not submitted his option to retire at the age of 60 years, he/she shall be entitled to gratuity. The aforesaid view is also fortified by a decision of a co-ordinate Bench in the case of **Smt. Asha Lata Chaubey v. State of U.P. and others, reported in 2024 (5) ADJ 113,** wherein almost an identical controversy was involved and the petitioner therein, though had not submitted an option to retire at the age of 60 years, rather had submitted an application for voluntary retirement and pursuant to the said application, she had retired at the age of 59 years, 2 months, and 10 days i.e. before the date she would have completed the age of 60 years.

14. This Court held that in view of Fundamental Rule 56 sub-Clause (e) of the Financial Handbook, the government servant is entitled for retirement dues admissible under the Rules and also considered that the Government has issued a Government Order dated 31st July, 2001, providing that even in case of a voluntary retirement, a government servant shall be entitled to retirement dues as per Rules. For ready reference of this Court, paragraph nos. 19 and 20 of **Smt. Asha Lata Chaubey** *(supra)* is reproduced below:

"19. This Court finds that petitioner has not submitted option to retire at the age of 60 years rather she submitted an application on 29.6.2021 for voluntary retirement and pursuant to said application, she has retired on 31.3.2022 i.e. on completion of age of 59 years 2 months and 10 days i.e. before the date she would have completed the age of 60 years. Fundamental Rule 56(e) of the Financial Handbook provides that if a Government servant retires, he is entitled for retiral dues admissible under the rules and further State Government has also issued a Government Order dated 31.7.2001 whereby it has been provided that even in the case of voluntary retirement, Government servant shall be entitled for retiral dues as per rules. 2

20. This Court further finds that petitioner has opted for voluntary retirement and thereby retired before completion of 60 years of age therefore, in view of the provisions made in

Fundamental Rule 56(e) of the Financial Handbook read with Government Order dated 31.7.2001, she is entitled for all the retiral dues including gratuity admissible to her under the rules."

15. In view of the aforesaid, this Court is of the opinion that the petitioner is also entitled to a similar relief.

16. The second question, which deserves consideration, is as to whether what rate of interest is payable to the petitioner on the gratuity amount, which has been withheld by the respondents, without any justification.

17. The case of the petitioner is that she is entitled to gratuity for an amount of Rs. 14,34,362/- as per the gratuity rules calculated on the basis of 16 months' salary and, thereafter, from the date it is due, she is entitled to interest of 18% per annum, till the date of actual payment.

18. The petitioner has also prayed that the GPF carried an interest rate of 7.9% per annum, however the petitioner was paid interest only up to 30th August, 2019 though the GPF dues of Rs. 24,71,728/- was paid in the month of January, 2020; and accordingly she claims entitlement for the interest at the rate of 7.9% per annum on the GPF amount of Rs. 24,71,728/- from 1st September, 2019 till 31st January, 2020, which comes to Rs. 73,121/-.

19. As far as the entitlement to payment of interest on the delayed payment of gratuity/retirement benefits are concerned, a Division Bench of this Court in **Special Appeal (Defective) No. 430 of 2016, Smt. Nazma Khatoon v. State of U.P. and others**, has held that interest is a necessary corollary to the retention of money of another person. It is neither compensatory nor penal in nature; and the Division Bench in **Smt. Nazma Khatoon** *(supra)*, following another Division Bench decision in **Smt. Ranjana Kakkar W/O Late Prof. Amarnath Kakkar v. State of U.P. and others, reported in 2008 (10) ADJ 63 (DB),** went on to award 8% interest on the 'gratuity' payable.

20. The decision in the case of **M. Padmanabhan Nair** *(supra)* was also followed with approval in the case of **D.D. Tewari vs. Uttar Haryana Bijli Vitran Nigam Limited (2014) 8 SCC 894** and held as follows:

"4. The learned Single Judge has allowed the writ petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in State of Kerala V. M. Padmanabhan Nair, wherein this Court reiterated its earlier view holding that:

"1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment to the employees."

21. There is cetana of decisions in which timely payment of retiral dues was emphasized by the Apex Court (Refer: **Vijay L. Mehrotra v. State of U.P. reported in (2001) 9 SCC 687 and Gorakhpur University vs. Sitla Prasad Nagendra (Dr.) (2001) 6 SCC 591); and in the case of S.K. Dua vs. State of Haryana reported in (2008) 3 SCC 44,** the Apex Court held that interest on delayed payment of retirement dues was not contingent to the existence of Statutory Rules, Administrative Instructions and Guidelines and even in absence thereof, the delinquent employee is entitled to claim interest under Part-III of the Constitution of India; and held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of ?bounty? is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

22. The Apex Court recently in the case of **Dr. Poornima Advani and another vs. Government of NCT and another reported in (2025) 7 SCC 269**, on the issue of awarding interest on delayed payment held that when a person is deprived from using of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation. Interest is being paid for the deprivation of use of money in general terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other.

23. In the case of **Commissioner of Income Tax vs. Sham Lal Narula reported in AIR 1963 Punjab 411**, a Division Bench of the High Court of Punjab articulated the concept of interest as under:

"The words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. ?Interest? in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, "interest?"is understood to mean the amount which one has contracted to pay for use of borrowed money. ? In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable."

24. The Apex Court in the case of **Dr. Poornima Advani** *(supra)* while emphasizing on the doctrine of restitution, held that the term ?restitution? is used in 3 senses:

(i) return or restoration of some specific thing to its rightful owner or status;

(ii) the compensation for benefits derived from wrong done to another;

(iii) compensation or reparation for the loss caused to another.

25. Definition of ?Compensation? is reproduced below:-

"COMPENSATION

The word ?compensation? has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn. 2005, p. 918 as follows:

"An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased something given or obtained as an equivalent, the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value, a recompense given for a thing received, recompense for the whole injury suffered, remuneration or satisfaction for injury or damage of every description, remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly, and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

26. From the aforesaid, this Court is inclined to hold that pension/gratuity, is not a bounty and an employee earns the same through his longstanding service and as such is a ?property?, being protected by the Constitutional mandate under Article 300-A of the Constitution of India; and as such he cannot be deprived of his property saved by authority of law; and once he is permitted to retire, prior to the age of 60 years, he/she is entitled to gratuity, in view of Fundamental Rule 56(e) of the Financial Handbook, even if it is a voluntary retirement. The State Government is also bound by its Government Order dated 31.07.2001; and it cannot insist on the requirement of specifically submitting the option, for availing the gratuity, as admittedly, she was permitted to retire, prior to attaining the age of superannuation i.e. 60 years.

27. Further, the claim of the petitioner for payment of interest to delayed disbursal of the ?gratuity? also is justified, as it is a valuable right in the form of a property and any

culpable delay in settlement and disbursement thereof, must be visited with the penalty on payment of interest at the current market rate, till the actual payment to the employee.

28. Even in absence of Statutory Rules, Administrative Instructions and Guidelines, an employee can claim interest under Part-III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution of India; and it is the duty of the Court to compensate such deprivation by award of interest or compensation.

29. In view of the aforesaid, the following directions are issued to the respondent Authorities.

(i) The respondent Authorities shall calculate the 'gratuity' amount as per the Gratuity Rules and pay the sum within a period of two months from the date of service of a certified copy of this order, along with the interest payable and as directed by this Court, commensurate to the calculation indicated herein above, towards the principal amount of Rs.14,34,362/-.

(ii) The petitioner shall also be entitled to payment of interest on the delayed payment of gratuity, at the rate of 8%, from the date it was due towards the petitioner, i.e. the date on which she was granted the voluntary retirement, which is 31st August, 2019, till the actual date of payment/disbursement of the interest amount. In case, the aforesaid interest is not paid within a period of 2 months from the date of service of certified copy of this order, from the said date till the actual disbursement, 12% interest shall be applicable and the said amount shall be recovered from the disbursement authority's salary.

(iii) The petitioner is also entitled to interest at the rate of 7.9% per annum on the GPF amount of Rs. 24,71,728/- from 1st September, 2019 till 31st January, 2020, which comes to Rs.73,121/-.

30. The present writ petition is **allowed**, with a note of caution to the respondent Authorities that in cases where it is found that the delinquent employee was entitled to the payment of gratuity and still the said gratuity amount was withheld, only to be paid at a later stage, along with the interest, the State Authorities shall recover the said interest component, from the salary of the officer concerned, who is found to have wrongly rejected the claim of the petitioner; and initiate proceedings against the said employee, even if he has retired, if the applicable service Rules, permits such proceedings and as per law.

31. There shall be no order as to costs.

32. The Registrar (Compliance) is directed to send forthwith, a copy of this order to the Principal Secretary (Madhyamik Shiksha), Secretariat Building, Lucknow and the Director (Madhyamik Shiksha), 18 Park Road, Lucknow; and the said respondents shall ensure circulating a copy of this order to all the District Inspector of Schools in the State of U.P. for strict compliance.

(2026) 7 ILRA 38
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ - B No. 5744 of 1978

Mithai Lal & Ors. **...Petitioners**
Versus
D.D.C. & Ors. **...Respondents**

Issue for Consideration

(1) Permissibility to raise objection in mutation proceeding by the seller himself, who had executed the sale-deed in favour of person seeking mutation.
(2) Effect of absence of prior permission u/s 5(1)(c)(ii) to the validity of transfer the property.

Headnotes

(A) Consolidation law – UP Consolidation of Holding Act, 1953 – Ss. 5(1)(c)(ii), 11(1) and 48 – Mutation on the basis of Sale-deed was sought by the purchaser – Earlier permission was granted by SOC u/s 5(1)(c)(ii) on the application of seller – Subsequently, the seller raised objection on mutation application saying that the same was not executed within time-limit as provided in the permission letter – Permissibility – Effect of absence of prior permission u/s 5(1)(c)(ii) to the validity of transaction felt into consideration .

Held : Transfer made in absence of prior permission as provided under Section 5(1)(c)(ii) of the U.P.C.H. Act does not per se render the transaction void or legally ineffective; rather, the invalidity is curable – Respondent no. 4 himself executed the sale-deed as such, he cannot object the mutation proceedings in order to deprive the petitioners from the property which has been transferred in his favour by respondent no. 4 himself. [Para 15 and 17] (E-1)

Case Law Cited

Lalta Prasad Srivastava vs. IXth Additional District Judge,Agra, 1996 (87) RD 544; Smt. Sita Devi vs. Deputy Director of Consolidation, Jaunpur and others, 1997 (88) RD 285; Surya Narayan vs. Deputy Director of Consolidation, 2018 (138) RD 685 – **referred to.**

List of Acts

UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11(1), 48.

List of Keywords

Recorded Bhumidhar, Permission, Transfer, Legislative change, Registered agreement, Sale deed, Mutation, Objection, Fragmentation of holding, Exercise of jurisdiction, Concurrent finding, Consolidation operation, Absence of prior permission, Void, Legally ineffective, Curable, Scope for interference.

Case Arising From

Impugned orders dated 05.07.1978 passed by the Deputy Director of Consolidation, Impugned order dated 15.09.1977 passed by the Settlement Officer of Consolidation and 10.05.1977 passed by the Consolidation Officer.

Appearances for Parties

Advs. for the Petitioner : Arvind Srivastava, Yogendra Pati Tripathi.
Advs. for the Respondents : Standing Counsel.

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

1. Heard Sri Arvind Srivastava, learned counsel for the petitioners and learned Standing Counsel for the State respondents.

2. Mr. Yogendra Pati Tripathi, learned counsel, has appeared before the Court at the time of disposal of delay condonation / restoration application as well as substitution application on 01.04.2026, but on the subsequent dates, Sri Yogendra Pati Tripathi had not appeared before the Court. Accordingly, the matter was heard finally in presence of learned counsel for the petitioners as well as learned Standing Counsel for the State respondents, and judgment was reserved on 29.04.2026.

3. Brief facts of the case are that the dispute relates to Chak No. 70, situated in Village Gursardi, Tehsil and District Mirzapur. Respondent No. 4, Mathura Prasad Pandey (dead) now represented by his legal heirs, was recorded Bhumidhar of the aforementioned Chak No. 70. Respondent No. 4, Mathura Prasad Pandey applied for permission before the Settlement Officer of Consolidation under Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'the U.P. C.H. Act') to transfer the Chak No. 70 in favour of the petitioners (dead) now represented by their legal heirs. The Settlement Officer of Consolidation granted the permission on 30.06.1972 with the condition that the transfer shall be made up to 29.07.1972. Since there was a restriction on the transfer of agricultural land at the relevant point of time on account of legislative changes, accordingly, the registered agreement to sell was executed between the parties on 15.07.1972 and possession was delivered to the petitioners. As soon as the restriction of transfer of agricultural land was lifted, the registered sale deed was executed by respondent No. 4 in favour of the petitioners on 16.02.1973. In pursuance of the execution of the sale deed in favour of the petitioners on 16.02.1973, an application for mutation was filed before the Consolidation Officer. In the aforementioned proceeding, respondent No. 4 filed an objection that mutation should be refused as the sale deed was executed after 29.07.1972, which was the condition, mentioned in the order of permission granted by the Settlement Officer of Consolidation under Section 5(1)(c)(ii) of the U.P. C.H. Act. The Consolidation Officer, vide order dated 10.05.1977, rejected the application / objection of the petitioners for recording of his name on the basis of the sale deed dated 12.02.1973 and maintained the earlier entry of the chak in question. Petitioners challenged the order of the Consolidation Officer dated 10.05.1977 by way of appeal under Section 11 (1) of the U.P.C.H. Act before the Settlement Officer of Consolidation. The aforementioned appeal was heard and dismissed by the Assistant Settlement Officer of Consolidation vide order dated 15.09.1977. Petitioners challenged the order of the consolidation authorities before the Deputy Director of Consolidation under Section 48 of the U.P.C.H. Act, which was heard and dismissed by the Deputy Director of Consolidation vide order dated 05.07.1978. Hence, this writ petition on behalf of the petitioners for the following relief:

"(a). Issue account of certiorari quashing the ordrs dated 5.7.1977, 15.9.1977 and 10.5.1977 passed by respondent nos.1 to 3 respectively."

4. This Court admitted the writ petition on 20.7.1978 and stayed the dispossession of the petitioners from the land in dispute.

5. In pursuance of the order of this Court dated 20.7.1978, parties have exchanged their pleadings.

6. Learned counsel for the petitioners submitted that there was no necessity to get permission to transfer the complete chak comprising of a compact holding even then, petitioners applied for permission under Section 5 (1) (c) (ii) of the U.P.C.H.Act by way of abundant caution, accordingly, permission was granted by the Settlement Officer of Consolidation with the condition that the transfer shall be made up to 29.7.1972. He submitted that there was a restriction on transfer at the relevant point of time, accordingly, instead of execution of a sale deed, a registered agreement to sell was executed between the parties on 15.7.1972 and possession of the chak was delivered in favour of the petitioners. He submitted that as soon as the restriction on transfer was lifted, a registered sale deed was executed by respondent no. 4 himself on 16.2.1973, as such, respondent no. 4 cannot object to the mutation of the names of the vendees over the chak in dispute. He further submitted that the object of permission under Section 5 (1) (c) (ii) of the U.P.C.H.Act was to see that the transfer did not result in fragmentation of holdings, and in the instant case, there was a transfer of the complete chak no. 70 in favour of the petitioners, as such, there was no fragmentation of holdings at all. He submitted that in view of the restriction on transfer at the relevant point of time and the execution of the sale deed on 16.2.1973 as soon as restriction on transfer was lifted is sufficient grounds for the execution of the sale deed after the time period fixed by the Settlement Officer of Consolidation under Section 5 (1) (c) (ii) of the U.P.C.H.Act He placed reliance upon the following judgments of this Court in order to demonstrate that if a sale deed has been executed after the time period fixed by the Settlement Officer of Consolidation under Section 5 (1) (c) (ii) of the U.P.C.H.Act it cannot be held to be void.

1. 1996 (87) RD 544 Lalta Prasad Srivastava vs. IXth Additional District Judge,Agra.

2. 1997 (88) RD 285 Smt. Sita Devi vs. Deputy Director of Consolidation, Jaunpur and others

3. 2018 (138) RD 685 Surya Narayan vs. Deputy Director of Consolidation

7. On the other hand, learned standing counsel for the State respondents submitted that there is no illegality in the exercise of jurisdiction by consolidation authorities, as the sale deed was executed by respondent no. 4 in violation of the condition mentioned in the order of permission granted by the Settlement Officer of Consolidation under Section 5(1)(c)(ii) of the U.P.C.H. Act. He submitted that all three consolidation authorities have recorded concurrent findings; as such, there is no scope for interference against the impugned judgments passed by the consolidation authorities. He further submitted that the argument advanced by learned counsel for the petitioners

that possession was transferred to the petitioners on 15.7.1972 in pursuance of the registered agreement to sell executed by respondent no. 4 cannot be accepted, as there is no document which demonstrates that possession was transferred to the petitioners. He further submitted that the argument advanced by learned counsel for the petitioners that complete chak was transferred by respondent no. 4 in favour of the petitioners is also incorrect as such, permission was very much necessary for making transfer during consolidation operations. He further submitted that no interference is required in this matter and the writ petition is liable to be dismissed.

8. I have considered the arguments advanced by learned counsel for the petitioners, learned standing counsel for the State respondents, and perused the record.

9. There is no dispute about the fact that respondent no. 4 was the recorded owner of Chak No. 70 and respondent no. 4 had applied for permission to transfer Chak No. 70 in favour of the petitioners. There is also no dispute about the fact that the Settlement Officer of Consolidation granted permission on 30.6.1972 under Section 5(1)(c)(ii) of the U.P.C.H. Act in favour of respondent no. 4 to execute the sale deed of Chak No. 70 in favour of the petitioners up to 29.7.1972. There is also no dispute about the fact that the sale deed was actually executed on 16.2.1973 by respondent no. 4 in favour of the petitioners.There is also no dispute about the fact that an application for mutation was filed on behalf of the petitioners which has been rejected by the Consolidation Officer on the ground that the sale deed executed on 16.2.1973 is void, as the time limit for execution of the sale deed was only up to 29.7.1972. There is also no dispute about the fact that the appeal under Section 11(1) of the U.P.C.H. Act and the revision under Section 48 of the U.P.C.H. Act filed by the petitioners have also been dismissed by the Assistant Settlement Officer of Consolidation and Deputy Director of Consolidation.

10. In order to appreciate the controversy involved in the matter, perusal of Section 5(1)(c)(ii) of the U.P.C.H. Act will be relevant, which is as under:

"5.Effect of notification under Section (4) .....

(c) notwithstanding anything contained in the U.P.Zamindari Abolition and Land Reforms Act, 1950, no tenure-holder, except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall-

.....

(ii). transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area."

11. The aforesaid Section 5(1)(c)(ii) of the U.P.C.H. Act has been omitted by U.P. Act No. 30 of 1991 w.e.f. 19.2.1991. In view of the aforesaid omission of Section 5(1)(c)(ii) of the U.P.C.H. Act, there is no necessity for taking permission for making transfer during consolidation operations with effect from 19.2.1991, but in the instant matter execution of sale deed was made in the year 1973 in pursuance of the permission granted in the year 1972, as such, the instant matter

will be examined in the light of the provisions of Section 5(1)(c)(ii) of U.P.C.H. Act, which was existing in the year 1972-73.

12. In order to adjudicate the controversy involved in the matter, it will be necessary to examine the ratio of law laid down by this Court in the case of **Lalta Prasad Srivastava (supra),** in which this Court, while considering the provision contained under Section 5(1)(c)(ii) of U.P.C.H. Act, has held that the invalidity of a transfer resulting in the absence of prior permission as provided under Section 5(1)(c)(ii) of the U.P.C.H. Act does not per-se render the transaction void or legally ineffective and the invalidity is curable. Paragraphs No. 28, 29, and 30 of the judgment rendered in Lalta Prasad Srivastav (supra) will be relevant for perusal, which are as under:

"28. A Full Bench of this Court in its decision in the case of Smt. Ram Rati and others v. Gram Samai. Jehwa and others reported in A. I. R. 1974 Allahabad 106 had clarified that the ban envisaged under clause (ii) of Section 5 of U. P. Consolidation of Holdings Act was intended to prevent fragmentation of holdings and as such it was placed only on a transfer of a part of the holding. There could be no objection to the transfer of the holding as a whole because it would not involve fragmentation but would involve only a change in ownership. The Full Bench observed that the scheme under lying the Act was to consolidate agricultural holdings and to prevent their further fragmentation for which the said provision and been made. It is also observed that it was not the intention to restrict the right of an owner to deal with his property by way of sale, exchange or transfer except to the ex tent that the necessary to carry out the objects of the Act. The Full Bench further observed that the expression any holding occurring in clause (i) of S. 5 (I) (c) of the act does not include the whole holding so that it is not necessary to obtain the permission of Settlement Officer (Consolidation) for the transfer of the holding as a whole.

29. It seems to me that the invalidity of a transfer resulting in the absence of the prior permission as envisaged under Section 5(1) (c) (i) of the U. P. Consolidation of Holdings Act does not per se render the transaction void or legally ineffective. The invalidity is curable.-Considering the policy and the object behind the aforesaid provisions, this invalidity can be cured before the finalisation of the provisional consolidation scheme. It is obvious that to begin with the Settlement Officer (Consolidation) had granted the permission which was to remain effective for thirty days but considering that the sale had been executed after the period provided for in the order passed in the year 1977, the Settlement Officer (Consolidation) again granted the permission in March 1978 extending the duration of the earlier permission. The in validity if any, therefore, stood cured as it is no bodys case that the provisional consolidation scheme had attained finality by the date of permission which had been granted for the second time.

30. In the aforesaid view of the matter the transfer in question could not be held to be void or non-est being legally ineffectual or without any authority of law."

13. This Court, in the case of Smt. Sita Devi (supra), has held that a sale deed executed beyond the period fixed in the permission order cannot be held to be void. Paragraph No. 6 of the judgment rendered in **Smt. Sita Devi (supra),** for perusal, which is as under:

"6. In case the permission is granted to execute the sale deed within a specified period and it has not been executed within that period but the vendees indicate the circumstances on account of which the delay occurred and if it is not on account of their conduct, the sale deed executed after the period fixed for its execution cannot be held to be void for want of permission as provided under Section 5(1) (c) of the Act. The intention of the legislature was that the sale deed should be executed with the permission of the Settlement Officer Consolidation so that the consolidation proceedings should not be jeopardised in the carvation of chaks. In Lalji v. Joint Director of Consolidation and others, it was held that the purpose of grant of permission by the Settlement Officer Consolidation to the proposed transfer of the land under Section 5(1) (c) is that the transfer does not have adverse effect on the consolidation scheme. Respondent No.1 has found that the vendees were not in any way guilty of laches. The sale deed shall be obtained by them cannot be treated as invalid."

14. In the case of **Surya Narayan (supra),** it has been held that in case the whole land is transferred, there is no necessity for taking permission from the Settlement Officer of Consolidation. Paragraphs 21 to 26 of the judgment rendered in **Surya Narayan (supra)** will be necessary, which are as under:

"21. From the above discussion, it is quite clear that for transfer of part of the land, the permission from the Settlement Officer, Consolidation is required as per Section 5 (c) (ii) of the Act. In case whole land is transferred, then there is no necessity for taking the permission from the Settlement Officer, Consolidation. The permission has been obtained by the respondent-5 from the Settlement Officer, Consolidation in the present case on 31.1.1973 and accordingly, the registered sale-deed was executed by the respondent-5 in favour of the petitioners. Therefore, the sale-deed has been executed in accordance with the permission granted by Settlement Officer, Consolidation.

22. So far as the contention of the learned counsel for the petitioner that the registered instrument cannot be ignored in the mutation proceeding and for that purpose, suit has to be filed for cancellation of the said instrument. Here the statute provides that permission has to be obtained in respect of the transfer of any part of the holding falls within consolidation area and in absence of the said permission, the registered instrument rendered void and in such circumstances, there is no necessity for filing any suit for cancellation of sale-deed.

23. So far as the question that the present sale-deed in question has been executed by the respondent-5 in favour of the petitioners in order to evade the payment of loan alleged to have taken from the Society, it is clear from the record that the award as well as sale-deed has been executed on the same day and prior to sale-deed, 20 times land revenue has been deposited by the respondent-5, even he applied for obtaining the permission from the Settlement Officer, Consolidation and in such circumstances, it cannot be said that the sale-deed has been executed by the respondent-5 in order to evade the payment of loan and to render the award ineffective. If any award is passed against the respondent-5 under any statute that has to be executed in accordance with law even in absence of the land, which has been sold by the respondent-5.

24. All the Consolidation Authorities have committed illegality while holding that the sale-deed has been executed contrary to the permission granted by the Settlement Officer, Consolidation. The provisions of Section 5 (c) (ii) of the Act as stood prior to amendment by U.P. Act No. 34 of 1974 has totally been ignored by them.

25. The writ petition deserve to be allowed and the impugned orders dated 23.7.1979, 25.10.1975 and 15.9.1973 passed by the Deputy Director of Consolidation, Deoria, Settlement Officer, Consolidation, Deoria and Consolidation Officer, Deoria respectively are quashed. Writ petition is, accordingly, allowed.

26. The matter is remanded to the Consolidation Officer, Deoria to decide the mutation application of the petitioners afresh after hearing the parties in the light of the observations made above. Since, the matter is an old one and therefore, the same should be decided expeditiously preferably within a period of six months from the date of production of certified copy of this order. In the circumstances of the case, the parties shall bear their cost throughout."

15. Perusal of the judgment rendered in **Lalta Prasad Srivastva (supra)** fully demonstrates that transfer made in absence of prior permission as provided under Section 5(1)(c)(ii) of the U.P.C.H. Act does not per se render the transaction void or legally ineffective; rather, the invalidity is curable.

16. In the instant matter, the permission was granted, but due to ban on the transaction at the relevant point of time, the transfer could not be made; rather, a registered agreement to sell was executed and as soon as the ban was lifted, the registered agreement to sell was executed by respondent no. 4 on 16.2.1973 in favour of the petitioners, in pursuance of the permission granted by the Settlement Officer of Consolidation on 30.6.1972, as such, the mutation applied by the petitioners cannot be refused by the Consolidation Officer on the ground that the sale deed executed by respondent no. 4 is void

17. It is material to mention that respondent no. 4 himself executed the sale-deed as such, he cannot object the mutation proceedings in order to deprive the petitioners from the property which has been transferred in his favour by respondent no. 4 himself. It is also material to mention that, according to the petitioners, the entire Chak No. 70 was transferred by respondent no. 4 in favour of the petitioner but the version of the petitioners for transfer of the entire holding has been denied by private respondent no. 4.

18. Considering the ratio of law laid down by this Court in **Lalta Prasad Srivastva (supra), Smt. Sita Devi (supra), and Surya Narayan (supra),** as well as in the facts and circumstances of the case as mentioned, the orders dated 5.7.1978 passed by respondent no.1, 15.9.1977 passed by respondent no.2 and 10.5.1977 passed by respondent no.3 are liable to be set aside and the same are hereby set aside.

19. The writ petition stands allowed.

20. Respondent No. 3- Consolidation Officer, Mirzapur, is directed to restore the proceeding on its original number and record the name of the petitioners in pursuance of the sale deed executed on 16.2.1973 over Chak No. 70, within a period of three months from the date of production of a certified copy of this order.

21. No order as to costs.

(2026) 7 ILRA 45
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 212 of 1986

Subhash Singh & Ors. **...Appellants**
Versus
State **...Respondent**

Issue for Consideration

Matter pertains to whether the conviction of the appellants under S. 376 read with S. 34 IPC for facilitating the commission of rape by the principal offenders is sustainable on the basis of the testimony of the prosecutrix and other witnesses, notwithstanding alleged contradictions, absence of an overt act of penetration by the appellants, the allegation of merely standing guard, the medical evidence regarding intact hymen, the affidavit of the related witness, and whether the sentence imposed by the trial court was legally sustainable in view of the statutory punishment prescribed for the offence. (Paras 6-23)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 376/34 - Common intention - Constructive liability - Participation in commission of rape - Exact role of each accused - Held, once common intention and participation are proved, it is not necessary to determine the precise role played by each accused in causing the final result - Participation may be active or even passive, provided it is intended to facilitate or advance the common design - Mere presence without sharing common intention or participating in commission of offence is insufficient - Common intention may be formed before the occurrence or even at the spot and may be inferred from conduct, nature of assault, behaviour before, during and after incident and surrounding circumstances. (Paras 11-12)

Criminal Law - Indian Penal Code, 1860 - S. 34 - Rape - Facilitation of commission of offence - Standing guard - Absence of penetration by participant - Held, it is not necessary that an overt act of penetration be attributed to every person sought to be convicted with the aid of S. 34 - Catching hold of victim, pressing mouth and hands, overpowering victim and standing guard to warn companions of danger constitute participation intended to facilitate commission of rape and reflect a shared design - Such conduct attracts constructive liability. (Para 12)

Criminal Law - Indian Penal Code, 1860 - S. 376 - Appreciation of evidence in sexual assault cases - Testimony of prosecutrix - Corroboration - Held, testimony of a prosecutrix, if found to be trustworthy, does not require corroboration as a rule of law - Minor discrepancies arising out of rustic, illiterate background of witnesses, trauma and passage of time cannot be treated as fatal - Broader probabilities of the case are to be examined and minor contradictions or insignificant discrepancies which are not of a fatal nature are insufficient to discard an otherwise reliable prosecution case. (Paras 7-10)

Criminal Law - Indian Penal Code, 1860 - S. 375 - Medical evidence - Intact hymen - Partial penetration - Held, penetration, howsoever slight, is sufficient to constitute the sexual intercourse necessary for the offence of rape - Rupture of hymen is not a sine qua non for proving the offence - Absence of injuries or an intact hymen cannot, by itself, be a ground to discredit otherwise credible and consistent testimony of a victim of sexual assault. (Para 13)

Criminal Law - Indian Penal Code, 1860 - S. 376(2)(g) - Gang rape - Common intention - Deeming fiction - Held, for an offence committed in 1984, S. 376(2)(g) governed rape committed by more than one person acting together - Explanation 1 created a deeming fiction whereby where a woman is raped by one or more persons constituting a group acting in furtherance of their common intention, each person was deemed to have committed the offence of rape irrespective of whether he himself committed the act of penetration - Actual penetration by every accused was not necessary. (Paras 19-20)

Criminal Law - Indian Penal Code, 1860 - S. 376(2)(g) - Sentence - Minimum punishment - Fine - Adequate and special reasons - Held, the minimum punishment was ten years rigorous imprisonment unless the court recorded adequate and special reasons for awarding a lesser sentence - Failure to impose fine, though legally erroneous, could not be rectified in an appeal preferred by the convicted accused alone where such rectification would amount to enhancement of sentence and neither the State nor the victim had preferred an appeal seeking enhancement. (Para 21-22)

Criminal Law - Evidence - Related witness - FIR - Affidavit - Appreciation of testimony - Held, mere relationship of a witness with the victims cannot be a ground to discard testimony - A natural witness who responded to the alarm raised by the victims may inspire confidence and corroborate the core prosecution case - An affidavit sworn to oppose bail, by itself, does not discredit substantive testimony recorded before the Court on oath where the material particulars are broadly consistent. (Para 16)

Criminal Law - Sexual offences - Sentencing - Collective culpability - Appreciation of prosecutrix testimony - Held, sentencing must strike a judicious balance between the interests of the victim, the society and the accused - The testimony of the prosecutrix, where clear, clinching and unwavering, is sufficient to sustain conviction without insisting on corroboration in each and every particular - Circumstances involving multiple accused acting with a shared design to overpower and violate the victim aggravate the offence. (Paras 17-18)

Held: The testimony of a prosecutrix, if found to be trustworthy, does not require corroboration as a rule of law - minor discrepancies arising out of the rustic, illiterate background of the witnesses, or the trauma and passage of time, cannot be treated as fatal to the prosecution case - the consistent thread running through the statements of the witnesses, namely that the principal accused committed rape while the remaining accused persons facilitated and stood guard, was rightly accepted as the reliable core of the prosecution case - S. 34 of the Indian Penal Code embodies the principle of joint or constructive liability and is not a substantive offence but a rule of evidence and interpretation - when a criminal act is committed by several persons in furtherance of the common intention of all, each of them is liable for the entire act as if he alone had committed it - once common intention and participation are proved, it is not necessary to determine the precise role played by each accused in causing the final result - participation may be active or even passive, provided it is intended to facilitate or advance the common design - mere presence at the place of occurrence, without sharing the common intention or without participating in the commission of the offence, is not sufficient to invoke S. 34 - common intention may be formed before the occurrence or even at the spot and may be inferred from the conduct of the accused, the nature of the assault, their behaviour before, during and after the incident, and the surrounding circumstances - it is not necessary that an overt act of penetration be attributed to every person sought to be convicted with its aid - conduct consisting of catching hold of the victim, pressing her mouth and hands, assisting in overpowering the victim and standing guard to warn the other accused of any danger was not that of a passive bystander but reflected a shared, pre-arranged design to overpower the victims and facilitate their ravishment - the argument founded on intact hymen does not assist the accused as penetration, howsoever slight, is sufficient to constitute the sexual intercourse necessary for the offence of rape and rupture of the hymen is not a sine qua non for proving the offence - the absence of injuries or an intact hymen cannot, by itself, be a ground to discredit an otherwise credible and consistent testimony of a victim of sexual assault - for an offence committed in 1984, S. 376(2)(g) IPC governed rape committed by more than one person acting together and Explanation 1 created a deeming fiction that where a woman is raped by one or more persons constituting a group acting in furtherance of their common intention, each of the persons shall be deemed to have committed the offence of rape, irrespective of whether he himself committed the act of penetration - actual penetration by every accused was not necessary - the trial

court correctly appreciated the oral testimony of the witnesses of fact read with the medical and other corroborative evidence and rightly attributed distinct and specific roles to the accused in furtherance of the common intention to facilitate the commission of rape - the minimum punishment under S. 376(2)(g) was ten years rigorous imprisonment unless adequate and special reasons were recorded for awarding a lesser sentence - the trial court committed material legal error in not imposing the fine and in not recording adequate and special reasons for awarding sentence below the statutory limit - nevertheless, in an appeal preferred by the convicted accused alone, imposition of fine would amount to enhancement of sentence and could not be rectified in the present appellate proceedings - no perversity, illegality or infirmity was shown in the impugned judgment warranting interference in appeal - appeal dismissed and conviction and sentence affirmed in respect of the surviving appellants, with direction to surrender before the trial court within two weeks to serve out the remaining sentence and with benefit under S. 428 Cr.P.C. (Paras 7-27) (E-7)

Case Law Cited

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, **(1983) 3 SCC 217***; State of Punjab v. Gurmit Singh,* **(1996) 2 SCC 384***; State of H.P. v. Sanjay Kumar,* **(2017) 2 SCC 51***; Bhupinder Sharma v. State of H.P.,* **(2003) 8 SCC 551 : 2004 SCC (Cri) 31***; Raju @ Umakant Vs. State of Madhya Pradesh,* **2025 8 SCC 281***; Ashok Kumar v. State of Haryana,* **(2003) 2 SCC 143 : 2003 SCC (Cri) 446***; Ehsaan v. State (NCT of Delhi),* **2026 SCC OnLine SC 1356***; State of Karnataka v. Krishnappa,* **(2000) 4 SCC 75***; Shimbhu v. State of Haryana,* **(2014) 13 SCC 318***; Allauddin Mian v. State of Bihar,* **(1989) 3 SCC 5***; Navas v. State of Kerala,* **(2024) 14 SCC 82***; Sevaka Perumal v. State of T.N,* **(1991) 3 SCC 471***; Parsuram v. State of M.P.1,* **(2019) 8 SCC 382.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Criminal Law (Amendment) Act, 1983; Criminal Law (Amendment) Act, 2013.

List of Keywords

rape; common intention; joint or constructive liability; participation; active or passive participation; criminal act; common unlawful object; prosecutrix; corroboration; minor discrepancies; rustic, illiterate background; trauma; medical evidence; intact hymen; partial penetration; sexual assault; gang rape; deeming fiction; collective culpability; sentencing; minimum punishment; rigorous imprisonment; fine; adequate and special reasons; related witness; natural witness; affidavit; bail application; substantive testimony; appellate proceedings; enhancement of sentence; Section 428 Cr.P.C.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order dated 6.12.1985 passed by the II Additional Sessions Judge, Rampur, in Sessions Trial No.142 of 1984, whereby the accused appellants were convicted and sentenced under S. 376/34 IPC.

Appearances for Parties

Advs. for the Appellant:
Sri Ajay Kumar Pandey, learned Amicus Curiae
Advs. for the Respondents:
Sri Purushottam Maurya, learned AGA for the State

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae for the appellant nos.1,3; Sri Purushottam Maurya, learned AGA for the State and perused the material on record.

2. Three accused appellants have filed the instant appeal in the year 1986, but when the matter is taken up for hearing today, we were informed that one of them namely, Shanti has already died, hence the appeal qua him has already abated. The surviving appellants are Subhash Singh and Sher Singh.

3. The present appeal has been preferred by the appellants to set aside the judgment and order dated 6.12.1985 passed by the II Additional Sessions Judge, Rampur, in Sessions Trial No.142 of 1984 (State Vs. Subhash Singh & Ors.), under Section 376/34 IPC, Police Station Tanda, District Rampur, whereby the accused appellants have been convicted and sentenced to five years rigorous imprisonment under Section 376/34 IPC.

4. The prosecution case, briefly stated, is that on 14.3.1984 the prosecutrix Smt. Rafeeqan (P.W.2) and her brother's daughter Kumari Nayab Jahan (P.W.3) had gone to the jungle of village Badli to collect dry leaves from the grove of Vishnu Autar, where the five accused persons, who were tending their cattle nearby, are alleged to have surrounded the two girls. It is alleged that accused Preetam and Shanti caught hold of Smt. Rafeeqan and threw her into a pit, while accused Pooran and Sher Singh similarly overpowered Kumari Nayab Jahan. Accused Preetam is alleged to have cut the naara of the shalwar of Smt. Rafeeqan with a knife and committed rape upon her, appellant Subhash Singh and Shanti having pressed her mouth and hands. Accused Pooran is alleged to have committed rape upon Kumari Nayab Jahan, appellant Sher Singh having assisted in overpowering her and standing guard. The alarm raised by the victims attracted P.W.1 Amir Ahmed, brother of P.W.2 and father of P.W.3, whereupon the accused persons fled. A first information report was lodged the same day, and after investigation, charge-sheet was submitted against all five accused persons.

5. The learned trial court, upon appreciation of the ocular testimony of P.W.1 Amir Ahmed, P.W.2 Smt. Rafeeqan and P.W.3 Kumari Nayab Jahan, read with the medical evidence of P.W.5 Dr. S.C. Gupta and P.W.6 Dr. (Mrs.) Sheela Khanna, held that the prosecution had proved beyond reasonable doubt that accused Preetam committed rape upon Smt. Rafeeqan and accused Pooran committed rape upon Kumari Nayab Jahan, and that the appellants Subhash Singh and Shanti had, in furtherance of the common intention to facilitate the commission of rape upon Smt. Rafeeqan, caught her hands and pressed her mouth, while appellant Sher Singh had similarly assisted in facilitating the rape upon Kumari Nayab Jahan and stood guard to warn his companions of any danger. The trial court accordingly convicted the appellants with the aid of Section 34 IPC.

6. Learned Amicus Curiae for the appellants has assailed the impugned judgment on the following grounds: (i) that the statements of P.W.2 and P.W.3 are riddled with material contradictions regarding the specific role attributed to each accused, rendering their testimony unsafe for conviction; (ii) that no specific overt act constituting rape has been attributed to the appellants, who were, at best, alleged to have facilitated the commission of the offence by the principal accused; (iii) that no independent role has been assigned to appellant Sher Singh, who was merely alleged to be "standing guard", which cannot by itself found a conviction with the aid of Section 34 IPC; (iv) that the medical evidence, particularly the finding of an intact hymen in respect of Kumari Nayab Jahan, is inconsistent with the prosecution case of rape by five persons; and (v) that the FIR and the testimony of P.W.1, being interested witnesses, ought not to have been

relied upon, more particularly in view of the affidavit dated 30.3.1984 wherein P.W.1 had alleged that all five accused persons had committed rape upon both the prosecutrix turn by turn, a version at variance with the case set up at trial.

7. Having heard learned counsel for the parties and perused the record, we find no merit in these submissions. It is well settled that the testimony of a prosecutrix, if found to be trustworthy, does not require corroboration as a rule of law, and minor discrepancies arising out of the rustic, illiterate background of the witnesses, or the trauma and passage of time, cannot be treated as fatal to the prosecution case.

8. In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**, (1983) 3 SCC 217, Honble Supreme Court held in para 11 as under:-

"11.....We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the probabilities factor does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the probabilities factor is found to be out of tune."

9. In **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384** Honble Apex Court held in para 21 as under:-

"21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

10. Thus, in the light of principle laid down in above cases, the trial court has, in my view, correctly appreciated the ocular testimony of P.W.2 and P.W.3 by separating the core of their statements, namely, that they were forcibly waylaid, thrown into a pit, and ravished, from the embellishments and exaggerations natural to young, agitated victims giving evidence of a traumatic sexual assault before a court of law. The consistent thread running through the statements of P.W.1, P.W.2 and P.W.3, namely that accused Pooran raped Kumari Nayab Jahan and accused Preetam raped Smt. Rafeeqan while the remaining three accused persons facilitated and stood guard, has rightly been accepted by the trial court as the reliable core of the prosecution case.

11. Section 34 of the Indian Penal Code embodies the principle of joint or constructive liability. It is not a substantive offence but a rule of evidence and interpretation which provides that when a criminal act is committed by several persons in furtherance of the common intention of all, each of them is liable for the entire act as if he alone had committed it. The law proceeds on the principle that where two or more persons act together to achieve a common unlawful object, the act of one becomes the act of all. Once common intention and participation are proved, it is not necessary to determine the precise role played by each accused in causing the final result. In such a situation, the responsibility is common because the intention is common. For attracting Section 34 IPC, the prosecution must establish not only the existence of a common intention but also the participation of the accused in the commission of the crime. Such participation may be active or even passive, provided it is intended to facilitate or advance the common design. Mere presence at the place of occurrence, without sharing the common intention or without participating in the commission of the offence, is not sufficient to invoke Section 34. The common intention may be formed before the occurrence or even at the spot, and in most cases it has to be inferred from the conduct of the accused, the nature of the assault, their behaviour before, during and after the incident, and the surrounding circumstances. Thus, where the accused jointly participate in carrying out the criminal act in furtherance of a shared intention, each of them becomes equally liable for the offence committed.

12. On the question of constructive liability under Section 34 IPC, it is well settled that common intention may develop on the spot and can be inferred from the conduct of the accused, the manner of the assault, and the roles played by each participant, and that it is not necessary that an overt act of penetration be attributed to every person sought to be convicted with its aid. In the present case, the evidence establishes that appellants Subhash Singh and Shanti caught hold of Smt. Rafeeqan and pressed her mouth and hands to facilitate the rape upon her by accused Preetam, and that appellant Sher Singh actively assisted in overpowering Kumari Nayab Jahan and thereafter stood guard to warn the other accused of any danger, thereby enabling the commission of rape upon her by accused Pooran. Such conduct is not that of a passive bystander but reflects a shared, pre-arranged design to overpower the two girls and facilitate their ravishment, squarely attracting Section 34 IPC. The argument that no role can be fastened on appellant Sher Singh merely because he did not himself commit penetration is misconceived; one who keeps watch to enable his companions to commit an offence is as much a participant in the common intention as the principal offender, on the time-tested principle that "they also serve who only stand and wait□.

13. The submission founded on the medical evidence, namely that the hymen of Kumari Nayab Jahan was found intact and therefore rape could not have taken place, does not assist the

appellants. The Explanation to Section 375 IPC, as it stood at the relevant time, makes it clear that penetration, howsoever slight, is sufficient to constitute the sexual intercourse necessary for the offence of rape, and rupture of the hymen is not a sine qua non for proving the offence. The medical witness herself admitted the possibility of partial penetration without rupture of the hymen. This position has since been reiterated by the Hon'ble Supreme Court, which has repeatedly held that the absence of injuries or an intact hymen cannot, by itself, be a ground to discredit an otherwise credible and consistent testimony of a victim of sexual assault. In State of H.P. v. Sanjay Kumar, (2017) 2 SCC 51 Honble Apex Court held as under:-

"*31...By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P. [Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551 : 2004 SCC (Cri) 31])....."*

14. In **Raju @ Umakant Vs. State of Madhya Pradesh 2025 8 SCC 281**, Honble Supreme Court held in para nos.22,23 as under:-

22. Further, in Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2003) 2 SCC 143 : 2003 SCC (Cri) 446] , it was held as under: (SCC p. 146, para 8)

"8. Charge against the appellant is under Section 376(2)(g)IPC. In order to establish an offence under Section 376(2)(g)IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence.

23. In view of this, it is very clear that in a case of gang rape under Section 376(2)(g), an act by one is enough to render all in the gang for punishment as long as they have acted in furtherance of the common intention. Further, common intention is implicit in the charge of Section 376(2)(g) itself and all that is needed is evidence to show the existence of common intention."

15. Thus, in the light of principle laid down by the Supreme Court in above case laws and fact and circumstances in totality, I am of considered view that the argument of the learned amicus curiae for the appellants in this regard is very fake, hence liable to be rejected.

16. As regards the affidavit of P.W.1 dated 30.3.1984, the trial court has rightly noted that the same appears to have been sworn to oppose the bail application of the accused persons and does not, by itself, discredit the substantive testimony of P.W.1 recorded before the court on oath, which is broadly consistent with the statements of P.W.2 and P.W.3 on the material particulars. The mere relationship of P.W.1 with the victims, being the brother of one and father of the other, cannot be a ground to discard his testimony; rather, being a natural witness present at or near the spot of occurrence who responded to the alarm raised by the victims, his evidence inspires confidence and is corroborative of the core prosecution case.

17. This Court may also usefully refer to the recent pronouncement of the Hon'ble Supreme Court on the approach to be adopted while dealing with offences of gang rape and the appreciation of the collective culpability of persons acting in concert. In **Ehsaan v. State (NCT of Delhi), 2026 SCC OnLine SC 1356**, the Supreme Court held in para 6.3 and 6.4 as under:-

6.3. In State of Karnataka v. Krishnappa (2000) 4 SCC 75 three-Judge Bench of this Court observed as follows to the effect that a retributive view in cases involving the offence of rape is entirely justified:

"18. .The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. ."

The view above was referred to by a Bench of equal strength in Shimbhu v. State of Haryana (2014) 13 SCC 318.

6.4. When a sentence is imposed on an offender, it is done so with tri-fold purpose i.e. punitive, deterrent and protective. The overall objective is to rid the society of criminal proclivity.

The same is done by ensuring that the sentence imposed is proportional to the offence or in other words not overly influenced by the possibility of reformation and instead, striking a judicious balance between the interest of the victim, society and the accused, after following the due process of law. We have considered a number of other judgments also inter-alia Allauddin Mian v. State of Bihar (1989) 3 SCC 5; Navas v. State of Kerala (2024) 14 SCC 82; Sevaka Perumal v. State of T.N (1991) 3 SCC 471; and Parsuram v. State of M.P.1 (2019) 8 SCC 382. The following aspects reveal themselves when viewed from the lens of imposition of sentence. It must:

(a) Be in accordance with the nature and gravity of the crime;

(b) Adequately protect the interest of the society;

(c) Take into account the deterrent purpose of punishment;

(d) Consider the motive behind the crime, if any;

(e) Give due weight to the conduct of the accused;

(f) Examine whether the crime in question was pre-meditated or not;

(g) Keep in view the age of the accused and whether he has engaged in any similar offence in past for which he has been duly convicted;

(h) Account for the number of victims of the offence;

(i) Not consider the religion, race, caste or creed of the offender as a factor;

(j) Consider the possibility of reformation of the accused. It is the duty of the State to establish that the same does not exist; and

(k) The abuse of trust or misuse of personal relationship, if any.

The facets identified by us above are illustrative and not exhaustive. A holistic view of the entire case must be taken in the attending facts of each case. Considering all these factors among others, the foremost duty of the Court is to assess the evidence in a given case; imposing just and adequate punishment upon the accused."

18. The Supreme Court in the above judgment, while dealing with a conviction under Section 376D IPC (gang rape), reiterated that sentencing in such cases must strike a judicious balance between the interests of the victim, the society and the accused, and that the testimony of the prosecutrix, where clear, clinching and unwavering, is sufficient to sustain a conviction without insisting on corroboration in each and every particular. The Court further emphasized that circumstances such as the involvement of multiple accused acting with a shared design to overpower and violate the victim aggravate the offence, and that courts must remain alive to the trauma and helplessness of victims subjected to sexual violence by more than one person acting in

concert. Though the said decision arises under Section 376D IPC, a provision introduced by the Criminal Law (Amendment) Act, 2013 and therefore not attracted to an offence of 1984, which continues to be governed by Section 376(2)(g), the underlying principles of appreciation of victim testimony and collective culpability of persons acting in concert to facilitate a sexual offence remain equally instructive and apposite to the facts of the present case.

19. In this case at hand, the offence was committed in 1984, the applicable law was the Indian Penal Code, 1860 as it stood before the Criminal Law (Amendment) Act, 2013. The concept of □gang rape□ existed, but in a more limited form than today. The applicable provision was Section 376(2)(g) IPC, which was inserted by the Criminal Law (Amendment) Act, 1983 (Act 43 of 1983) and came into force on 25 December 1983. Thus, for an offence committed in 1984, Section 376(2)(g) IPC governed rape committed by more than one person acting together. Section 376(2)(g) Explanation 1 provided, in substance:-

"Where a woman is raped by one or more persons constituting a group acting in furtherance of their common intention, each of the persons shall be deemed to have committed the offence of rape, irrespective of whether he himself committed the act of penetration."

20. This provision created a deeming fiction. Therefore actual penetration by every accused was not necessary. If the accused acted as a group in furtherance of their common intention, every participant was legally guilty of rape. It was a statutory application of the principle similar to Section 34 IPC, specifically incorporated into the offence of gang rape.

21. The punishment under Section 376(2) IPC, including clause (g):-

"376.(2) (g)-Whoever commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may for life and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years."

22. The Court could impose a sentence of less than 10 years only for adequate and special reasons, which had to be recorded in the judgment. Thus, the minimum punishment was 10 years□ rigorous imprisonment, unless the court recorded special reasons for awarding a lesser sentence. The trial court has committed material legal error in this regard, no specific reasons have been recorded with the impugned judgment. Where the IPC provision prescribes punishment in the form:□□shall be punished with imprisonment □ and shall also be liable to fine□, or□ □with imprisonment and fine□, the trial court is expected to impose fine also. Failure to impose fine amounts to an error in sentencing. It is true that the learned trial court has committed an error in not imposing the fine though the penal provision contemplates punishment of imprisonment coupled with fine. Nevertheless, the present appeal has been preferred only by the convicted accused. Neither the State nor the victim has preferred any appeal seeking enhancement of sentence, nor has any revisional jurisdiction for enhancement been invoked after due notice. Since imposition of fine would undoubtedly amount to enhancement of the sentence already awarded, this Court, while deciding the appeal preferred by the accused alone, cannot place him in a more disadvantageous position.

The omission of the trial court, though legally erroneous, cannot therefore be rectified in the present appellate proceedings.

23. Having regard to the foregoing discussion, we find that the trial court has correctly appreciated the oral testimony of the witnesses of fact, read with the medical and other corroborative evidence on record, and has rightly attributed distinct and specific roles to each of the appellants in furtherance of the common intention to facilitate the commission of rape upon the two victims, so as to bring their case within the ambit of Section 376 read with Section 34 IPC (gang rape) The findings recorded by the trial court regarding conviction are well reasoned and proper, being in consonance with the settled principles governing appreciation of evidence in cases of sexual assault, and call for no interference by this Court, at the same time committed material legal error by not imposing mandatory fine for the offence of rape. Furthermore no adequate and special reason has been recorded in the judgment for awarding sentence below the statutory limit and excess leniency has been adopted by the Trial Court, except as discussed above, no perversity, illegality or infirmity has been shown in the impugned judgment warranting interference in appeal.

24. For the reasons aforesaid, the appeal fails and is hereby **dismissed** qua appellants Subhash Singh and Sher Singh.

25. The conviction and sentence recorded by the II Additional Sessions Judge, Rampur, vide judgment and order dated 6.12.1985 in Sessions Trial No.142 of 1984 is hereby affirmed in respect of appellants Subhash Singh and Sher Singh.

26. The appellants Subhash Singh and Sher Singh, who are on bail, shall surrender before the trial court **within a period of two weeks from today** to serve out the remaining sentence, failing which the trial court shall take coercive steps including non bailable warrant, to secure their custody in accordance with law.

27. The appellants shall be entitled to benefit under Section 428 Cr.P.C.

28. Let trial court record along with copy of this judgment be transmitted □forthwith□ to the court concerned for information and necessary compliance.

29. The trial court is directed to submit its compliance report within two months from the date of receipt of this order. Further more, the registry is also directed to place the compliance report on record.

30. The Registrar (Compliance) is also directed to serve a copy of this order **within two days** by FAX/e-mail to the trial court through District & Sessions Judge concerned for compliance.

31. Let Sri Ajay Kumar Pandey, learned Amicus Curiae, who has been appointed as Amicus Curiae in this case vide order dated 5.12.2025 be paid remuneration of Rs.25,000/-, within a period of two weeks from today.

32. Before parting with this judgment, this Court records its appreciation for the sincere assistance rendered by the Research Associates, Mr. Shivansh Pandey, Mr. Sandeep Kumar Singh and Law Intern Ms. Ishika Rai, in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(2026) 7 ILRA 56
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 241 of 2021

Alongwith

Criminal Appeal No. 217 of 2021

Sabal Singh & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Issue for consideration

The appellants challenged their conviction and sentence under section 147, 149, 302, 201 IPC for the alleged abduction of the victim from the informant's house and fatally assaulted him with lathis and dandas over personal enmity, leaving his body in front of a neighbor's house.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 147, 149, 302, 201 & Criminal Procedure Code,1973-Section 374(2)- Eye-witness testimony-Unreliable nature-Eye-witnesses claiming in chief to have seen the assault admitted in cross-examination to searching for the victim all night-Presence at the scene rendered highly doubtful-Evaluation of oral tesimony-Oral Evidence includes both examination –in-chief and cross-examination-Trial court committed grave perversity by relying exclusively on examinantion-in-chief while completely ignoring material admissions in cross-examination-First information Report-Unexplained delay of over 9 hours, coupled with night-long deliberation and search, creates grave suspicion of consultation, afterthought, and false implication-Crime scene-Lack of bloodstains-Circumstantial defect-No bloodstains or marks were found at the place where the body was lying-PW5 (Investigating officer) admitted that no blood was recovered from the site-Physical facts indicate the crime was committed elsewhere and the body was dumped at the spot subsequently contradicting the core prosecution narrative and rendering the trial court's conviction unsustainable-Appeals Allowed.(Para 18 to 40) (E-6)

Held

The court held that the Trial court committed a grave error in law by basing its conviction solely on the examination-in-chief of the prosecution witnesses while completely ignoring he material and major contradictions brought out during their cross-examination. This selective reading violates the mandate of Section 3 of the Evidence Act, which requires oral evidence to be evaluated in its totality. Hence,The appellants are acquitted of all charges.

Case law Cited

Badam Singh Vs State of M.P. (2003) 12 SCC 792 -referred to.

List of Acts

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

List of Keywords

Eye-Witness Testimony, Examination-in-Chief, Cross-Examination, Selective reading of Evidence, Afterthought, False implication, Unexplained delay, Absence of Bloodstains, Scene of Crime, Perversity of Finding.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 241 of 2021

Sabal Singh & 3 Ors Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Dhiraj Singh, Noor Muhammad, Surya Pratap Singh Parmar, Yogesh Kumar Srivastava

Adv. for Respondent(s):-

G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

Both these criminal appeals bearing Nos. 241 of 2021 and 217 of 2021 have been preferred by accused-appellants, Sabal Singh, Man Singh, Mangal Singh, Lallu Kahar and Sumer Singh, against the judgment and order of conviction and sentence dated 10.12.2020 passed by learned Sessions Judge, Chitrakoot in Session Trial No. 70 of 2012 (State of Uttar Pradesh v. Sabal Singh and others) arising out of Case Crime No. 23 of 2012, under Sections 147, 302/149, 201, 120B IPC, Police station Pahadi, District Chitrakoot.

2. By the impugned judgment and order dated 10.12.2020, the learned Trial Court sentenced the accused-appellants under Section 147 IPC to undergo two years imprisonment and fine of Rs. 2000/- each and in default of payment of fine, to undergo one month s additional imprisonment. Under Section 302 read with Section 149 IPC, the accused-appellants were sentenced for life imprisonment and fine of Rs. 20,000/- each and in default of payment of fine, they were directed to undergo additional imprisonment of six months. Under Section 201 IPC, the accused-appellants were sentenced to undergo three years imprisonment and fine of Rs. 2000/- each and in default of payment of fine, they were directed to undergo three months additional imprisonment. All the sentences were ordered to run concurrently.

3. The facts of the case as revealed from the written report, Exhibit Ka-1, which was lodged by informant Sumer Singh (PW-1) are that he has given a written report, Exhibit Ka-1, dated 08.02.2012. In this written report, informant (PW-1) has stated that he is a resident of Village Kaheta, Police Station Pahadi, District Chitrakoot. Yesterday on 07.02.2012 at 10:30 PM, Veer Singh, son of his aunt (bua), resident of Village Ranipur, Police Station Kamasin, was sitting on the door. At that time, Sabal Singh, Man Singh, Mangal Singh and Sumer Singh, all sons of Kedar Singh, and Lallu Kahar, resident of the village came to his door and took Veer Singh with them. They in front of their door brutally assaulted Veer Singh, due to which he died on the spot. The dead body of the deceased is lying in front of the door of Natthu Teli. Due to grief at night, he could not come to police station. Now he came to the police station to give information.

4. On the basis of written report, Exhibit Ka-1, as was lodged by informant PW-1 at police station Pahadi, the first information report (chik F.I.R.), Exhibit Ka-2, was registered by Head Constable Lala Bhaiya at Case Crime No. 23 of 2012, under Sections 147, 302, 201 IPC against all the named accused persons, appellants herein, and Sub Inspector Dharmendra Kumar (PW-5) took the charge of the investigation of the case.

5. Investigating Officer Dharmendra Kumar (PW-5) reached the place of occurrence, prepared the site plan, and inquired the witnesses present at the spot. He conducted the inquest proceedings (panchayatnama) of the deceased, Veer Singh, prepared the requisite police papers, and thereafter sent the dead body for post-mortem examination.

6. Dr. A.K. Mohan (PW-4) conducted the postmortem of the dead body of the deceased Veer Singh and prepared paper no. 19K/Exhibit Ka-4. According to the postmortem report, which was prepared by Dr. A.K. Mohan (PW-4), following ante mortem injuries were found on the dead body of the deceased Veer Singh :

(1) Contusion present on right side of scalp on frontal parietal region, size 10 cm x 4 cm.

(2) Abrasion present on left side of face and forehead size (1) 3 cm x 2 cm, (2) 2 cm x 2 cm, (3) 21 cm x 1 cm, (4) 1 cm x 1 cm.

(3) Contusion present on posterior aspect of right elbow size 8 cm x 6 cm, on incision, posterior dislocation of elbow present.

(4) Contusion present on left elbow posteriorly, size 7 cm x 8 cm and posterior dislocation of elbow present.

(5) Four contusion present on right thigh just above knee two transverse and two oblique size of transverse (1) 12 cm x 3 cm, (2) 11 cm x 3 cm oblique size (1) 15 cm x 3 cm, (2) 11 cm x 3 cm. No fracture of shaft of femur.

(6) Three contusion present on left thigh just above knee, two transverse on one oblique, size of transverse are (1) 10 cm x 3 cm, (2) 11 cm x 3 cm, oblique contusion size 16 cm x 3 cm. No fracture of underlying bone.

(7) Contusion present on left ankle on middle side size 5 cm x 2 cm. No fracture.

According to the postmortem report, cause of death of the deceased was asphyxia as a result of neurological shock (head injury).

7. Investigating Officer Dharmendra Kumar (PW-5) recorded the statements of the prosecution witnesses during the course of investigation. He further arrested the accused-appellants, Man Singh and Sabal Singh, on 09.02.2012 from Chaura Turning on the road and allegedly recovered one lathi and one danda, both made of bamboo, which were stated to have been used in the commission of the murder of the deceased, Veer Singh. The Investigating Officer made

a fard recovery of these objects as Exhibit Ka-4. After completing all the formalities of the investigation, Investigating Officer Dharmendra Kumar (PW-5) submitted a charge-sheet against the accused-appellants in the Court of concerned Magistrate having jurisdiction.

8. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

9. Charges were framed against the accused-appellants under Sections 147, 302/149, 201 and 120B IPC and they denied from the charges and claimed trial.

10. In order to substantiate the charges against the accused-appellants, the prosecution examined Sumer Singh (PW-1), the informant; Prabha Bai (PW-2); Lala Bhaiya (PW-3); Dr. A.K. Mohan (PW-4); Dharmendra Kumar (PW-5); Baldev Prasad (PW-6); Harivansh (PW-7); Kashi Prasad (PW-8); and Suresh Singh (PW-9). In addition to the oral testimony of these witnesses, the prosecution also relied upon documentary evidence, marked as Exhibit Ka-1 to Exhibit Ka-7.

11. In the Trial Court, the prosecution examined its witnesses and recorded their evidence. After the prosecution witnesses evidence was recorded, the accused-appellants were examined under Section 313 Cr.P.C. In their statements, the appellants denied the charges and contended that they had been falsely implicated due to village rivalry and politics. Although in their statements under Section 313 Cr.P.C., accused-appellants have stated that they shall adduce evidence in their defence, but no defence evidence was adduced by them.

12. After completion of the trial, learned Sessions Judge, Chitrakoot after hearing the arguments of both the parties, perusing the oral as well as documentary evidence, held the accused-appellants guilty under Sections 147, 302/149, 201, 120B IPC and convicted them vide order dated 10.12.2020. Aggrieved by the judgment and order of conviction and sentence dated 10.12.2020, the appellants have preferred these criminal appeals before this Court.

13. We have heard the arguments of learned Counsel for the appellants and learned A.G.A. for the respondent/State. We have gone through all oral and documentary evidences and also perused the impugned judgment and order of conviction and sentence dated 10.12.2020 passed by learned Trial Court.

14. Learned Counsel for the appellants has argued that Investigating Officer recorded the statement of prosecution witnesses but they did not attribute specific role to any of the accused as to who was the author of the fatal injury rather only general role of causing injuries was assigned to all accused persons. It is also submitted that after committal of the case, prosecution examined as many as nine witnesses, out of which, one Prabha Bai (PW-2) claimed herself to be the eye witness of the incident but she failed to describe the manner of occurrence of the event and she also failed to connect the appellants with the present case. It is further submitted that similarly, Harivansh (PW-7) also claimed himself to be the eye-witness of the said incident but he in his statement could not establish the guilt of the appellants and made material contradictory statement, which goes to show that he is not the eye-witness of the incident. In fact, there is no eyewitness to the incident; rather, the prosecution case is based on circumstantial evidence, but the chain of circumstances is

incomplete and does not unerringly point to the guilt of the appellants. He has also submitted that although Investigating Officer claimed to have recovered lathi and danda at the instance of accused but no bloodstain was found on it. During the course of investigation, Investigating Officer did not find involvement of the appellant Sumer Singh in this case, as such, he submitted final report in his favour but during trial, learned trial Court summoned him under Section 319 Cr.P.C. to face trial on the application of the prosecution. Learned counsel for the appellants has also submitted that prosecution failed to prove the motive of the occurrence rather some of the witnesses deposed that present incident occurred due to previous enmity between the parties. All accused-appellants have been implicated on the basis of suspicion, village party bandi and enmity. Prosecution has failed to prove its case beyond reasonable doubt by adducing cogent and reliable evidence.

15. On the basis of above arguments, learned Counsel for the appellants has submitted that learned Trial Court has not appreciated the prosecution evidence in right perspective. Learned Trial Court misread the evidence. Learned Trial Court only considered the examination-in-chief of all the prosecution witnesses and has not considered the cross-examination of any of the prosecution witnesses in the finding and reasoning as given by the learned Trial Court. In the light of the above arguments and submissions, learned Counsel for the accused-appellants has submitted that judgment and order of conviction and sentence as passed by learned Trial Court is totally against the evidence available on record and is also against the settled principles of law. Hence, in view of the above, criminal appeals of the accused-appellants are liable to be allowed and judgment and order of conviction and sentence passed by learned Trial Court is liable to be set aside.

16. Per contra, learned A.G.A. for the respondent/State has submitted that prosecution story has been supported by the reliable eye-witnesses in this case, who have fully supported the prosecution story. Deceased Veer Singh was brutally assaulted by the accused-appellants with lathi and danda, which caused fatal injuries on the body of the deceased, due to which deceased Veer Singh died on the spot. Learned A.G.A. for the State has also submitted that there are no material and major contradictions in the evidence of the prosecution witnesses as recorded in the trial Court. The evidence of the prosecution witnesses fully supported the prosecution case beyond reasonable doubt. Learned A.G.A. for the State lastly submitted that prosecution was fully able to prove the guilt of the accused-appellants by their evidence beyond reasonable doubt. The finding and reasoning given by the learned Trial Court to hold the accused-appellants guilty is fully based on the evidence available on record. No perversity or illegality has been committed by the learned Trial Court in convicting the accused-appellants, hence criminal appeals filed by the accused-appellants are liable to be rejected.

17. In view of the rival submissions advanced by learned Counsel for the parties, we find that all accused-appellants were named in the written report, Exhibit Ka-1, by informant Sumer Singh (PW-1) for brutally assaulting the deceased Veer Singh with lathi and danda and causing his death.

18. From perusal of the written report, Exhibit Ka-1, it is revealed that the incident took place on 07.02.2012 at 10:30 PM. However, the informant, Sumer Singh (PW-1), lodged the written report at the concerned police station on 08.02.2012 at 7:30 AM. The delay of more than nine hours in lodging the F.I.R. is stated to be due to the grief caused by the incident. Informant

Sumer Singh (PW-1), in his examination-in-chief, stated that the cause of delay was that, due to fear during the night, he did not go to the police station. However, in the written report (Exhibit Ka-1), the cause of delay in lodging the report promptly was stated by the informant as grief caused by the incident. Thus, in the written report, the reason for the delay is mentioned as grief due to the incident, whereas in his examination-in-chief, the reason for not lodging the F.I.R. during the night is stated to be fear. It is also revealed from the evidence of informant Sumer Singh (PW-1) that he has a two-wheeler motorcycle. It is further revealed that the neighbors living adjacent to his house have a four-wheeler vehicle, and there were many other two and four-wheeler vehicles in the village. From the evidence, it is also revealed that Police Station Pahadi was situated at a distance of only seven kilometers from the place of occurrence. It is also amply clear that, after the incident, the informant Sumer Singh (PW-1) and other prosecution witnesses did not take the deceased, Veer Singh, to any hospital for treatment. The above facts and conduct of the prosecution witnesses including informant Sumer Singh (PW-1) clearly indicate that prosecution has not come with real truth of the case in the Court. It is also clear that prosecution is concealing real facts of the incident. Proper and judicious explanation for delay in lodging the F.I.R. of more than nine hours has not been explained by the prosecution in a confidence creating manner.

19. The above conduct and behavior of the prosecution witnesses indicate that, after a full night of consideration, deliberation, and afterthought, the accused-appellants were implicated in this case for the alleged commission of the crime. These facts and circumstances create serious doubt about the veracity of the prosecution story. The conduct and behaviour of the prosecution witnesses make the prosecution story suspicious and doubtful.

20. The informant, Sumer Singh (PW-1), stated in his examination-in-chief that the incident took place on 07.02.2012 at about 10:30 p.m. The deceased, Veer Singh, who was the son of his aunt (Bua), was sitting in front of the door. He, his mother, and Veer Singh were sitting at the doorway, warming themselves by the fire. Sumer Singh, Mangal Singh, Man Singh, Sabal Singh, and Lallu Kahar came and, on some pretext, took Veer Singh with them to the door of Sabal Singh. The house of Sabal Singh is located at a distance of about fifty steps from his house. All five accused brutally beaten Veer Singh with lathi, and he started crying. Upon hearing his cries, he, his mother, and other villagers reached the door of Sabal Singh. They saw that all five accused were beating Veer Singh with lathi and danda. As soon as they reached there, the accused persons fled away after killing Veer Singh. They left his dead body at the door of Natthu Teli and escaped. While they were fleeing, he saw them. Due to fear during the night, he did not go to the police station. The next morning, he went to the police station to lodge the report.

21. In his cross-examination, the informant, Sumer Singh (PW-1), stated that Police Station Pahadi is located at a distance of seven kilometers from his village. There is a metalled (damar) road connecting the village to the police station. He has a two-wheeler motorcycle, and his adjacent neighbor has a four-wheeler vehicle. There are also several other two and four-wheeler vehicles in the village. He further stated that during the night, he asked his uncles, Umashankar, Shiv Shankar and Ram Kishan Singh, to accompany him to the police station to lodge the F.I.R., but they refused due to some dispute. Thereafter, he did not speak to anyone else about lodging the report. This witness also stated in his cross-examination that he had mentioned in his written report that, upon hearing the cries of the deceased, he, his mother, and other villagers ran to the spot. However, upon

going through the report, he admitted that this fact was not recorded therein and he could not tell any reason for this. He further admitted that he had not asked the accused why they were taking Veer Singh with them. He stated that his mother□s name is Smt. Prabha Bai. He and his mother searched for the deceased throughout the night. The dead body of the deceased was found lying in front of the house of Natthu Teli during the night. He did not carry the dead body to his house; it remained there. He stated that he saw the accused beating the deceased and fleeing from the spot after assaulting him, and denied that this statement was made at the instance or tutoring of others. He further stated that there were no bloodstains on the ground in front of the house of Natthu Teli, nor did he see any blood marks in any direction near the house. He also stated that at the time of the incident, accused Sumer Singh was studying at Bhadosa and residing there. The incident occurred at about 10:30 p.m., and he reached the spot approximately ten minutes later. He and his mother remained awake throughout the night, sitting in their house and talking to each other. Thus, from the testimony of informant Sumer Singh (PW-1), it emerges that all the accused-appellants came to the door of his house, where he, his mother Prabha Bai (PW-2), and the deceased Veer Singh were sitting and warming themselves by the fire. The accused called Veer Singh and took him away. According to this witness, the accused brutally assaulted Veer Singh with lathi and danda. After beating him, the accused-appellants allegedly left his dead body at the door of Natthu Teli and fled.

22. However, this witness has not gone to the police station Pahadi to lodge the written report against the accused-appellants, which is situated at a distance of seven kilometers only. According to this witness, due to fear, this witness has not gone to the police station. From the evidence of this witness, it is also revealed that this witness and his mother Prabha Bai (PW-2) were awaking full night in their home and were talking with each other. This witness has two wheeler motorcycle and there were many other two and four wheeler vehicles in the village. However, this witness could not try to take the deceased Veer Singh to any hospital for medical treatment.

23. As per the evidence of this witness in his cross-examination, he and his mother have searched Veer Singh throughout the night. This statement of the informant Sumer Singh (PW-1) clearly indicate the fact that this witness and also his mother Prabha Bai (PW-2) have not seen any occurrence or beating the deceased Veer Singh by the accused-appellants. Statement of this witness in his cross-examination also demolished his statement that all accused-appellants came to his door and took Veer Singh away with them. Statement of this witness as given by him in his cross-examination amply shows that this witness has not seen any incident with his own eyes. According to this witness, he had also not seen any bloodstains or blood mark at any direction of the house of Natthu Teli, where dead body of the deceased was lying. In his cross-examination at one place, this witness has stated that he had reached at the spot after ten minutes of the incident. This statement of this witness clearly indicate that he has not seen any happening of the incident. The evidence of informant Sumer Singh (PW-1) also clearly indicate this fact that he after hearing the news that dead body of the deceased Veer Singh is lying in front of door of house of Natthu Teli, he with his mother Prabha Bai after deliberation and

afterthought throughout the night, concocted and fabricated a false prosecution story implicating accused-appellants for commission of the crime.

24. Thus, from perusal of the whole evidence of informant Sumer Singh (PW-1), this fact clearly emerged that this witness had not seen any incident with his own eyes. This witness was not present at the spot where the accused attacked upon the deceased Veer Singh. The conduct of informant Sumer Singh (PW-1) indicate this fact that till the morning at 07:30 AM of 08.02.2012, this witness was unaware about the persons, who killed the deceased Veer Singh. After imagination, consideration and deliberation, this witness implicated accused-appellants next day on 08.02.2012 at 07:30 AM by lodging the written report, Exhibit Ka-1.

25. In view of the above contradictions and discrepancies, which are present in the evidence of this witness, are the material and major contradictions, which shake the veracity and reliability of this witness. In this way, the evidence of this witness Sumer Singh (PW-1) does not inspire any confidence. The testimony of this witness is wholly unreliable and unbelievable.

26. Prosecution adduced Prabha Bai (PW-2) as prosecution witness in the Court. She is mother of informant Sumer Singh (PW-1). In her examination-in-chief, she deposed the same facts as those stated by her son, the informant Sumer Singh (PW-1). The only new fact, which was not stated by the informant Sumer Singh during his examination-in-chief, has been stated for the first time by this witness, Prabha Bai, that there was electric light. However, in her cross-examination, this witness has stated that "I have told to the Investigating Officer that on 07.02.2012 in the night, I was at my house and was cooking food. At that time, Lallu @ Balak Kahar came to my house and asked about Veer Singh, then I asked him what is the work. Lallu had not taken Veer Singh with him by saying that Virendra Singh and Vijay Singh are cooking fish and calling Veer Singh. How the Investigating Officer had written this, I could not tell reason for this." Further, in her cross-examination, this witness has stated that "when Lallu had taken Veer Singh, it was too late at night then I suspected and told my son Sumer Singh. When I told Sumer Singh, it was 10:00 PM at that time. Then Sumer Singh went to search Veer Singh, returned and told that nothing is known about the whereabouts of Veer Singh. The dead body of the deceased was found in the front of house of Natthu Teli in the morning. At that time, there were about twenty five people of the village gathered. Harvansh Singh was not with Sumer Singh in searching the deceased Veer Singh. I do not remember the exact time in the morning when the discussion took place between my son and me regarding the murder of Veer Singh. Before this, there was no discussion. Before that, I have no knowledge about murder of Veer Singh." She has also stated that "there was no enmity with any person in the murder of Veer Singh."

27. Thus, from perusal of the testimony of the so-called eye-witness of prosecution Prabha Bai (PW-2), it is clearly revealed that although in her examination-in-chief, this witness narrated the prosecution story in the same way as was narrated by her son informant Sumer Singh (PW-1). However, in her cross-examination, this witness spoke

about name of accused Lallu Kahar and stated that Lallu came to her home and said to the deceased Veer Singh that Vijay Singh and Virendra Singh are cooking fish. They called you. After late night at about 10:00 PM, when deceased Veer Singh had not returned, then this witness suspected and told her son Sumer Singh. After that Sumer Singh (PW-1) went to search Veer Singh and returned home and told to Prabha Bai (PW-2) that whereabouts of Veer Singh are not known. In the morning, dead body of deceased was found lying in front of the house of Natthu Teli. How in the light of above statement of Prabha Bai (PW-2), this witness and informant Sumer Singh (PW-1) could see the incident and brutal beating by accused-appellants and commission of the crime. In other words, statement of this witness in her cross-examination clearly establish this fact that Prabha Bai (PW-2) and her son Sumer Singh (PW-1) had not seen any incident with their eyes and they had also not seen brutal beating of Veer Singh by the accused-appellants with lathi and danda. This fact also clearly establish this fact that so-called eye-witnesses of the prosecution PW-1 and PW-2 are not the eye-witnesses of the incident and also accused-appellants had not come to the home of informant and Prabha Bai on 07.02.2012 and had not taken the deceased Veer Singh with them. To strengthen the prosecution story with consideration and deliberation, Prabha Bai (PW-2) has stated about the light of electricity on the date of incident on 07.02.2012. From the evidence of this witness, it is clearly established that when in the morning of 08.02.2012, dead body of the deceased, Veer Singh, was found lying in front of house of Natthu Teli, then hearing about the lying of the dead body of the deceased, Veer Singh, informant Sumer Singh (PW-1) and his mother Prabha Bai (PW-2) reached at the place where the dead body of the deceased Veer Singh was lying. Since the informant Sumer Singh (PW-1) and Prabha Bai (PW-2) had not seen the incident with their eyes, they did not lodge any written report against any person promptly on the night of 07.02.2012. Only after the dead body of the deceased Veer Singh was found in front of the house of Natthu Teli in the morning of 08.02.2012, then informant Sumer Singh (PW-1) and his mother (PW-2) with afterthought, consideration and deliberation only on the ground of suspicion and conjectures named all accused persons as accused implicating them for commission of the alleged crime. Thus, in the light of discussions, we find testimony of Prabha Bai (PW-2) wholly unreliable. The deposition of Prabha Bai (PW-2) shattered the entire case of the prosecution.

28. On behalf of prosecution, Harivansh (PW-7) was adduced as eye-witness of the prosecution story. This witness in his examination-in-chief has stated that □I am resident of village Ranipur. I have relation with Sumer Singh of village Kaheta. One day prior to the incident, I came to the house of Sumer Singh at village Kaheta.□ Further, in his examination-in-chief, this witness has narrated the same story as was narrated by the informant Sumer Singh (PW-1). This witness in his examination-in-chief stated himself to be the eye-witness of the incident. However, in the evidence of informant Sumer Singh (PW-1) and Prabha Bai (PW-2), name of this witness was not stated to be present at their home on 07.02.2012 when accused-appellants had come to their home. If really this witness would have been present on 07.02.2012 at the home of informant PW-1 and PW-2 then in this condition, informant PW-1 and his mother PW-2 would have stated in their evidence that Harivansh was also present at their door when accused-appellants came to their home and carried deceased, Veer Singh, with them. This fact clearly indicate this fact

that prosecution with a view to strengthen its case and to give force to the prosecution story, later with afterthought and deliberation tried to project Harivansh (PW-7) as eye-witness of the incident. Further in his cross-examination, Harivansh (PW-7) has stated that "I have not told to the Investigating Officer that I have seen the incident with my own eyes and was present at the spot. I have told first time in the Court that I was present at the place of incident and saw the incident with my own eyes. I have not told this fact to any person before 15.04.2019. Further, in his cross-examination, this witness has stated that "I had given an affidavit to the Police Superintendent in respect of this incident. I had heard the contents of my affidavit and thereafter I had endorsed my signature. It is true that the affidavit has been given by me to Superintendent of Police. In my affidavit, this fact was not written that I have seen the incident. I was present at the place of incident."

29. Thus, from perusal of the testimony of the so-called eye-witness of the prosecution Harivansh (PW-7), it is clearly emerged that prosecution projected this witness as an eye-witness of the incident. However, in his cross examination, this witness has clearly accepted this fact that this witness was not present at the place of occurrence and also he has not seen any incident with his own eyes. During the course of cross-examination, this witness in clear words accepted this fact that he had not given affidavit to Police Superintendent, Chitrakoot stating therein that he was present at the place of occurrence and he witnessed the commission of crime. In this way, it is clearly established from the testimony of this witness that this witness Harvansh (PW-7) is not the eye-witness of the incident. This witness was not present at the place of incident. After hearing about the murder of Veer Singh, this witness came in village Kaheta on 08.02.2012 and tried to project himself as the eye-witness of the incident. In view of the above testimony and statement of this witness, we find the testimony of this witness is fully unacceptable. Prosecution finds no support from the evidence of this witness.

30. Kashi Prasad (PW-8) is a witness of panchayatnama of the dead body of the deceased Veer Singh.

31. Prosecution witness Suresh Singh (PW-9), who is father of the deceased Veer Singh, is a witness of hearsay. After hearing the news of murder of his son Veer Singh, this witness came to village Kaheta Mafi. This witness came to know about the fact of murder of his son from his nephew Harvansh Singh (PW-7), who gave information to me on 08.02.2012. Suresh Singh (PW-9) stated that Sabal Singh, Man Singh, Mangal Singh, Sumer Singh and Lallu Kahar of the village had murdered Veer Singh. On receiving this information, he reached at Village Kaheta Mafi. Whatever have been stated by this witness is based on only hearsay evidence since this witness was at his home at Village Ranipur, Police Station Kamasin, District Banda, whereas the incident occurred in Village Kaheta Mafi. Since the entire evidence and testimony of Suresh Singh (PW-9) is hearsay and is based only on the information told to him by his nephew Harivansh Singh (PW-7), we find no relevancy in the testimony of this witness.

32. From the perusal of the cross-examination of the Investigating Officer, Dharmendra Kumar (PW-5), we find that he has stated that Smt. Prabha Bai (PW-2) had

told him that she herself, along with many other persons, searched Veer Singh throughout the night. The dead body of Veer Singh was found on the platform (chabutra) of house of Natthu Teli near the house of Man Singh in the morning. The Investigating Officer has also stated in his cross-examination that this witness has also given this statement that "my son with his maternal brother Harvansh, son of Shiv Singh, resident of Ranipur, Police Station Kamasin, District Banda, has made a hectic search." This witness has also stated that "Prabha Bai has not given this statement that at the time of incident, there was electricity in the village." This witness deposed in his cross-examination that "in the site plan shown by letters □A□ and □B□, I had not found any blood in the site plan shown by letters □A□ and □B□. Even the statement of Dharmendra Kumar (PW-5) establishes the fact that the murder of Veer Singh was committed at some other place and, after murdering him, his dead body was left at the place of occurrence. Due to this reason, no mark or stain of blood was found from the place where the dead body of the deceased Veer Singh was lying. This fact also makes the prosecution story highly doubtful and suspicious. It also indicates that prosecution witnesses have narrated a concocted and artificial story against the accused-appellants and they were implicated in this case for commission of alleged crime only on the ground of suspicion. However, no prosecution witness have seen the commission of the crime with their own eyes. Thus, from the evidence of the Investigating Officer Dharmendra Kumar (PW-5), testimony and evidence of the so-called eye-witnesses of the prosecution also becomes highly doubtful and suspicious.

33. It is worthwhile to mention here the case law of Supreme Court in the case of **Badam Singh v. State of Madhya Pradesh, (2003) 12 SCC 792** wherein in para 16, it has been held that;

"The learned Sessions Judge after considering the evidence on record and accepting the evidence of the eyewitnesses found the appellant guilty of the offence under Section 302 IPC and sentenced him to imprisonment for life. The High Court by its impugned judgment dismissed the appeal preferred by the appellant. We have perused the impugned judgment of the High Court. The High Court which was the first court of appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs 5 and 6 whereas the fact is that the FIR was lodged by PW 4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eyewitnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. In our view, the High Court has not approached the evidence in the manner it should have done being the first court of appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a court to hold, that though consistent, their evidence is not acceptable for any other reason. If the court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible or that their presence at the place of occurrence as eyewitnesses is suspect, the court may reject their evidence."

34. In the light of legal principles as laid down by the Supreme Court in the case of Badam Singh (supra), when we have perused the finding and reasoning as recorded by the Trial Court in the judgment and order of conviction dated 10.12.2020, we find that learned Trial Court has only considered the evidence of the prosecution witnesses in their examination-in-chief. Trial Court only on the basis of so-called eye-witnesses of the prosecution held the accused-appellants guilty for commission of the alleged crime. Meaning thereby that Trial Court has not considered and kept in view the cross-examination of the prosecution witnesses, in which there are major and material contradictions, which shake the testimonies of all prosecution witnesses. Trial Court only on the ground of evidence as given by the prosecution witnesses in their examination-in-chief without considering and giving any finding in the light of the major and material contradictions that crept into their cross-examination delivered a finding that is against the settled principles of law of evidence.

35. The meaning of □evidence□ is defined in Section 3 of the Evidence Act as under:;

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

2. all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence."

As per Section 3 of the Evidence Act, both examination-in-chief and cross-examination are included within the definition of oral evidence.

36. It is settled principle of law that cross-examination of a witness is as relevant as his examination-in-chief. Court cannot consider and record a finding only on the basis of examination-in-chief of a witness and neglect the cross-examination of that witness. It is also a settled principle of law that evidence of any witness must be read and appreciated in totality by considering both examination-in-chief and cross-examination. By means of cross-examination, veracity of the witnesses is to be tested by the opposite party that whether witnesses are stating in Court true facts or misleading the Court and stating wrong facts. However, in the case at hand, trial Court has not considered the cross-examination of any prosecution witness. We cannot totally neglect the cross-examination of any witness and only on the ground of examination-in-chief cannot record a finding of guilty and conviction. From the appreciation of evidence of informant Sumer Singh (PW-1) and Prabha Bai (PW-2), it is clear that these two prosecution witnesses are not the eye-witnesses of the incident. In view of the statements of these witnesses, accused-appellants have not come to their home nor they have taken the deceased Veer Singh with them. From the cross-examination of these witnesses, it is apparent that informant Sumer Singh (PW-1) has a motorcycle and there are many other two and four wheeler vehicles in their neighbourhood. Informant Sumer Singh (PW-1) and Prabha Bai (PW-2) due to so-called grief and fear were sitting in their house and they have not attempted to inform the police even by a telephonic call and informant Sumer Singh (PW-1) and

Prabha Bai (PW-2) discussed and considered the matter throughout the night. This conduct of these two above prosecution witnesses makes the prosecution story highly doubtful and suspicious.

37. Apart from this, from the statement as given by prosecution witnesses informant Sumer Singh (PW-1) and Prabha Bai (PW-2), it is also revealed that whereabouts of deceased Veer Singh were not known. Due to this reason, whole night of 07.02.2012, prosecution witnesses informant Sumer Singh (PW-1) and Prabha Bai (PW-2) had made a search of deceased Veer Singh. From the evidence of these prosecution witnesses, it is also clear that when they came to know about this fact that dead body of the deceased Veer Singh was lying in front of house of Natthu Teli then these prosecution witnesses came to the place of occurrence in the morning of 08.02.2012 and with full consideration and afterthought, the informant falsely implicated the accused-appellants for commission of the alleged crime. Thus, the conduct of so-called prosecution witnesses in this respect is highly unnatural and against the human behaviour. The conduct and behaviour of the prosecution witnesses is highly suspicious due to which statement of these prosecution witnesses as given by them in their evidence are found wholly unreliable. The Trial Court has not considered the major and material contradictions, which are present in the evidence of the prosecution witnesses, that are so grave and fatal that shakes the foundation of the prosecution story itself.

38. From the evidence of Investigating Officer Dharmendra Kumar (PW-5), it is also clear that where dead body of the deceased Veer Singh was found, there was no bloodstain or blood mark on the ground. From this, it is emerged that after murder of deceased Veer Singh at another place, his dead body was thrown on the place of occurrence in front of house of Natthu Teli. This fact also makes the prosecution story doubtful.

39. From perusal of the overall prosecution evidence, it is clear that there is no eye-witness of the incident, prosecution with afterthought and consideration projected and produced all the prosecution witnesses of fact as the eye-witnesses but prosecution miserably failed in its attempt to substantiate the allegations against the accused-appellants beyond reasonable doubt. In other words, prosecution totally failed to prove its case beyond reasonable doubt against the accused-appellants.

40. Therefore, in the light of above discussions, we find that judgment and order of conviction and sentence as passed by learned trial Court dated 10.12.2020 in Session Trial No. 70 of 2012 (State of Uttar Pradesh v. Sabal Singh and others) arising out of Case Crime No. 23 of 2012, under Sections 147, 302, 149, 120B, 201 IPC, Police Station Pahadi, District Chitrakoot is not sustainable. Hence, we find that judgment and order of conviction of learned trial Court is liable to be set aside and the appeals of the accused-appellants are liable to allowed.

41. Accordingly, the criminal appeals of the accused-appellants are allowed and the judgment and order of conviction dated 10.12.2020 is set aside. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties stand discharged. However, they shall comply with the provisions of Section 437-A Cr.P.C.

42. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(2026) 7 ILRA 69
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 246 of 2013

Laloo @ Sanjay & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Issue for consideration

In the present case, the appellants were tried for the unnatural death of the deceased by kerosene burn injuries under sections 498-A, 304-B, and 302 IPC alongside Section ¾ of the Dowry Prohibition Act, premised on allegations of unquantified dowry demands and harassment by her husband and father-in-law.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 498-A, 304-B, 302 & Section ¾ of the Dowry Prohibition Act,1961-Criminal Procedure Code,1973-Section 374(2)-Indian Evidence Act,1872-Section 113-B-Dowry death-Cruelty and harassment "soon before her death"-Absence of proximity and link-Non-applicability of presumption under section 113-B-Deceased returning to matrimonial home amicably 14 days prior to incident-No demand for dowry or harassment during said period-Essential ingredient of "soon before her death" under section 304-B IPC not satisfied-Statutory persumption under section 113-B Evidence Act does not operate, nor does the onus shift to the defense-However , Consistent testimony of prosecution witnesses alleging demands for motorcycle, color TV and gold chain alongside harassment-Offence of cruelty and demand for dowry established beyond reasonable doubt-Conviction under section 498-A and section 4 DP Act upheld-Reduction of Sentence-Protracted litigation of over 15 years causing mental incarceration-Appellants spent substantial period in custody (over 1.5 years)-Maximum sentence of 3 years reduced to period already undergone.(Para 18 to 33) (E-6)

Held

The court held that merely proving unnatural death within seven years of marriage is insufficient; the prosecution must establish a proximate link between dowry harassment and death. Where the deceased lived amicably at the matrimonial home for 14 days preceding death with no fresh demand made, the "soon before death" test fails, and the presumption under section 113-B does not arise. Unproved dowry death under section 304-B IPC does not automatically exonerate the accused of cruelty under section 498-A IPC if reliable witness evidence proves persistent demands for specific valuables.

Case law Cited

Major Singh & Anr. State of Punjab: (2015) 5 SCC 201, State of Uttarkhand Vs Sanjay Ram Tamta @ Sanju @ Prem Prakash: (2025) 3 SCC 433, State of Uttarakhand Vs Sanjay Ram Tamta: (2025) 3 SCC 433, Paranagouda & Anr. Vs State of Karnataka: 2024 18 SCC 793, K. Pounammal Vs State, 2025 SCC OnLIne SC 1784, V.K. Verma Vs CBI: (2014) 3 SCC 485-referred to.

List of Acts

Indian Penal Code,1860, Dowry Prohibition Act,1961, Indian Evidence Act,1872.

List of Keywords

Dowry death, Section 304-B IPC, Cruelty and Harassment, "Soon before her Death", Section 113-B Evidence Act, Presumption as to Dowry Death, Section 498-A IPC, Section 4 Dowry Prohibition Act, Demand for Dowry, Matrimonial Offence, Suicide, Burden of Proof, Proximity Test, Mitigating Factors, Reformative Theory of Punishment, Protracted Litigation, Mental Incarceration, Modification of Sentence.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 246 of 2013

Laloo @ Sanjay & Anr. Vs. State of U.P.

From the judgment and order dated 02.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):-

B.P. Nigam

Adv. for Respondent(s):-

G.A.

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

1. Heard Shri B.P. Nigam, the learned counsel for the appellant and Shri G.D. Bhatt, the learned AGA-I for the State U.P.

2. By means of the instant appeal, the appellant had challenged the validity of the judgment and order dated 07.02.2013 passed by the learned Additional Sessions Judge, Court No. 12, Hardoi in Session Trial No. 226/2011 arising out of Case Crime No. 424/2010, under Sections 498-A, 304-B, 302 of IPC and 3/4 Dowry Prohibition Act, Police Station Manjhila, District Hardoi lodged against the appellant No.1- Laloo @ Sanjay, the appellant No.2 Hardwari and mother of the appellant No.1.

3. The complainant- Asha Ram Agnihotri gave a written complaint to the police on 27.07.2010 stating that he had got his niece married to the appellant No.1- Laloo @ Sanjay, son of Hardwari (the appellant No.2), about one year ago. The complainant's niece used to tell through mobile phone that the appellant No.2 Hardwari and his wife used to demand additional dowry. On 27.06.2010, he got a telephonic information that his niece had got burnt and upon reaching there, he found her lying dead. The complainant expressed a suspicion that his niece had been killed by setting her ablaze for demanding dowry.

4. A 3 liters' plastic container having smell of kerosene, some burnt clothes and other articles were recovered from the spot.

5. The postmortem examination report mentions burning from first to third degree burns in patches present all over the body except both soles, line of redness was present, vasicles present at places, skin peels at places, burn was about 95%. The cause of death was opined to be ante-mortem burn injuries.

6. After investigation, the Investigating Officer submitted a charge-sheet dated 03.08.2010 against the appellants and involvement of Premwati (mother of the appellant No.1 and wife of the appellant no. 2) could not be established during investigation.

7. The complainant was examined as PW-1. He stated that he had got his niece married to the appellant No.1 about two years ago. The accused persons were not satisfied with the dowry given at the time of marriage. Her husband Laloo @ Sanjay (the appellant No.1), his mother Premwati, father Hardwari, Fufa Jai Prakash, Bua Sukkho, sister Ranu etc. used to demand a motor-cycle, a color television and a gold chain as dowry. The complainant, his wife and some other family members tried to persuade the accused persons that they could not give additional dowry but the accused persons pressed their demand of dowry even in presence of the persons who had gone with the complainant. He stated his niece was killed because of his failure to give additional dowry.

8. Bhure Shukla, a maternal uncle of the deceased, was examined as PW-3. He stated that the appellant and their family members were not happy with the dowry given in the deceased's marriage and they were demanding a motor-cycle, a color television and a gold chain. He had gone to the matrimonial home of the deceased about two months after the wedding and the demand of the aforesaid articles was made in his presence. PW-3 had tried to persuade the appellant No.1 but he did not agree.

9. DW-1 Amit Kumar and DW-2 Ashok Kumar stated that the appellant did not harass his wife. Her mental balance was not normal. She had gone away from her matrimonial home on 3-4 occasions without informing any person. The appellant No.1 and his family members used to search her out and bring her back. DW-2 Ashok Kumar stated that a day before the incident, the deceased had gone away without informing any person. The appellant No.2 Hardwari had brought her back. He stated that the appellants and their family members did not harass the deceased for demanding dowry. Both the defence witnesses stated that the appellant No.2 Hardwari was not present in the village and he had gone to visit a satsang along with several other villagers, on a tractor driven by DW-1. The appellant No.1 was breaking stones for the road outside the village.

10. The trial Court held that the accused persons did not give information of death of the deceased to her family members. The deceased died within seven years of her marriage in unnatural circumstances due to burn injuries. She had been harassed soon before her death. The trial Court held that all the ingredients of Section 304-B IPC were established. The presumption under Section 113-B IPC was also attracted against the appellants. The accused persons had failed to adduce evidence to prove that the deceased committed suicide. They did not make any submission and lead any evidence to establish that before the incident also the deceased had tried to commit suicide. The aforesaid material proves the appellants guilty of the offences under Sections 304-B/34, 498-A IPC and Section 4 of the Dowry Prohibition Act. The charges under Sections 302 IPC and 306 IPC were not proved.

11. Assailing validity of the aforesaid order, the learned counsel for the appellants has submitted that there is no evidence to establish that the deceased had been harassed for demanding dowry soon before her death. He has placed reliance on the judgments of the Hon'ble Supreme

Court in the cases of **Major Singh and Anr. v. State of Punjab**: (2015) 5 SCC 201 and **State of Uttarakhand v. Sanjay Ram Tamta @ Sanju @ Prem Prakash:** (2025) 3 SCC 433.

12. Per contra, the learned AGA-I has submitted that the trial court has rightly come to the conclusion that the accused persons used to demand dowry from the family members of the deceased and that the deceased had been harassed soon before her marriage. Therefore, the trial court has rightly convicted the appellants for offences under Section 304-B, 498-A and Section 4 of the Dowry Prohibition Act.

13. Section 304-B IPC reads as follows: -

"304B. Dowry death.?

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.? For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

14. When we examine the evidence in the present case, it appears that the complainant PW-1 stated that she had got her niece married to the appellant No.1. The appellant's family members were not satisfied with the dowry given at the time of marriage. They were demanding a motorcycle, a colour TV, and a gold chain and for this reason, they killed the victim by pouring kerosene on her and setting her ablaze. During cross-examination, PW-1 stated that the pair-pujai ceremony of the deceased was performed in the house of the appellant. No dowry had been settled at the time of the marriage. The Bhawar (Saptpadi) was performed in the village of the appellants. After the deceased had stayed in the house of the appellant for eight days, her mother had gone to bring her from her matrimonial home. The mother of the deceased had told this witness that the family members of the appellant No.1 were demanding dowry. PW-1's brother Maya Prakash (father of the deceased) was alive at that time. PW-1 Maya Prakash, Suresh, Ved Prakash, Dharmendra and Bhure had gone to the house of the appellant to convince his family members, but they did not agree and demanded a motorcycle, a gold chain, and a color television. The marriage was performed in the month of Asadh and the deceased died in the month of Poos (after about 7 months). PW-1 stated that after the marriage of his niece and before the death of his brother, he had visited the matrimonial home of his niece on 6-7 occasions. He always found his niece unhappy in her matrimonial home. She was beaten up in her matrimonial home. However, she did not make any complaint to any authority in this regard. PW-1 stated that before her death, the appellants, Hari Prakash and two other persons had happily taken her to her matrimonial home 14 days prior to her death. Thereafter, he got telephonic information regarding her death.

15. After the death of his brother- Maya Prakash. PW-2 visited the matrimonial home of his niece on two occasions, along with the mother of the deceased but at that time, the deceased was not there, she was at her maika. Some altercation had taken place between PW-1 and the family members of the appellant No.1. After 8-10 days, the appellants had come to take the deceased to their home. They have taken the deceased with the consent of PW-1. PW-1 stated that the deceased was found in the house of Amarnath in village Dhighia a day prior to her death because the accused persons had beaten her up about three days ago. She was limping. She was sitting in front of the house of Ramnath in village Dhighia. Ramnath had telephonically informed and thereafter, the family members of the appellants had taken her away. The deceased had asked to save her life.

16. The deceased's mother was examined as PW-9 and she gave a similar statement. She stated that pair-pujai ceremony of her daughter was performed in the house of the appellants because she was not in a position to host a feast for the baraat. Her daughter used to visit her from her matrimonial home once a month and thereafter, she used to go back. Whenever the appellant No.1 came to take her daughter, she used to send her. She also stated that after she had sent her daughter to her matrimonial home, she never visited her father's home. PW-9 also stated that her husband and his elder brother Asha Ram (the complainant) did not have good relations. The complainant did not want the deceased to get married to the appellant No.1 but PW-9 and her husband got her married to the appellant No.1 against the wishes of the complainant. She stated that quarrels had taken place between her husband and his elder brother on 1-2 occasions and the complainant had assaulted her husband with a lathi. The PW-1 had caught hold of the lathi.

17. The doctor who conducted the post-mortem examination, was examined as PW-6. He proved the postmortem examination report and stated that the deceased had approximately 95% burns and smell of kerosene was present over the body. During the cross-examination, PW-6 stated that if a person pours kerosene and sets himself/herself ablaze, 95% burn injuries are possible.

18. From the aforesaid statements, it is established that the marriage ceremony of the deceased was performed in the house of the appellants, because her family's financial condition was poor and they were not in a position to even host a feast for the baraat. No dowry was settled and no dowry was given at the time of the marriage. The prosecution witnesses alleged that after the marriage, the accused persons started demanding a motorcycle, a color television and a gold chain as dowry. The witnesses have stated that they used to demand dowry whenever the deceased's uncle and mother visited the appellants' place. They also alleged that the deceased was harassed for demanding dowry. However, none of the prosecution witnesses have stated the date and time of the alleged demand of dowry. The prosecution witnesses have stated that the deceased was staying at the residence of the complainant for some time. 14 days prior to the incident the appellants themselves had gone to bring her back to her matrimonial home. She was sent with the appellants willingly, without there being any dispute. There is absolutely no evidence that the deceased was harassed for demanding dowry at any time soon before her death.

19. For making out the offence punishable under Section 304-B IPC, it is necessary that soon before her death, the deceased was subjected to cruelty or harassment on account of any demand for dowry in connection with any demand for dowry. In absence of evidence to establish that the deceased was subjected to cruelty or harassment by her husband or any relative or husband for or in connection with any demand for dowry, the offence under section 304-B IPC is not made out.

20. The trial Court has referred to Section 113-B of the Evidence Act, which provides as follows:

"113-B. Presumption as to dowry deathWhen the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.Explanation. - For the purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)]."

21. In **Major Singh** *(Supra),* the Hon'ble Supreme Court has held that: -

"10. If any death is caused in connection with dowry demand, Section 113-B of the Evidence Act also comes into play. Both these Sections 304-B IPC and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

***"113-B: Presumption as to dowry death**-the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation. For the purposes of this Section, 'dowry death' shall have the same meaning as in Section 304B, of the Indian Penal Code (45 of 1860)"*

It is imperative to note that both these sections set out a common point of reference for establishing guilt of the accused person under Section 304-B, which is "the woman must have been 'soon before her death' subjected to cruelty or harassment for or in connection with the demand of dowry"

22. In **State of Uttarakhand v. Sanjay Ram Tamta:** (2025) 3 SCC 433, the Hon'ble Supreme Court held that: -

"10. That the death was suicidal is very clear from the expert evidence, which however would not absolve the accused under Section 304-B IPC. This Court in Surender Kumar Singh v. State of U.P. [(2009) 17 SCC 243] considered the effect of Section 113-B of the Evidence Act on Section 304-B IPC. It was held that Section 304-B IPC presupposes several factors for its applicability, which are: (i) the death of a woman caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death having occurred within seven years from the date of the marriage; (iii) soon before her death, the woman having been subjected to cruelty or harassment by her husband or any relative of her husband; and (iv) such cruelty or harassment being in connection with the demand of dowry. It was categorically held that if one of the ingredients is absent, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution and the onus of proof would not shift to the defence."

23. Section 113-B Evidence Act would apply when it is shown that soon before her death, the woman had been subjected to cruelty or harassment for or in connection with any demand for dowry. When the prosecution has failed to establish that the deceased had been subjected to cruelty or harassment for demanding dowry, the ingredients of Section 113-B of the Evidence Act are not made out and therefore, no presumption can be drawn against the appellants under section 113-B of the Evidence Act.

24. The learned AGA-I has placed reliance upon a judgment of a Hon'ble Supreme Court in the case of **Paranagouda and Anr. v. State of Karnataka:** (2024) 18 SCC 793, wherein the Hon'ble Supreme Court held that: -

"We are aware that the word "soon" finds place in Section 304-B, but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC/Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word "deemed" was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC."

25. It is correct that the phrase "soon before her death" cannot be put in a straight jacket formula and interpreted strictly but it has to be adjudged keeping in view the entire facts and circumstances of the case. PW-9, mother of the deceased, has stated that the deceased had stayed in her parental house for 8-10 days and thereafter the appellant had gone to take her back to her matrimonial home. PW-9 had sent her back with the appellants amicably and congenially. The deceased died 14 days thereafter and no demand of dowry was made during this period. Therefore, it cannot be said that the deceased was harassed for demanding dowry soon before her death.

26. The prosecution witnesses PW-2 and PW-9 have established that no dowry was given at the time of the marriage but the appellants used to harass the deceased and this harassment of the deceased drove her to commit suicide. Therefore, the offence under Section 498-A IPC is made out and the trial Court has rightly convicted the appellant for the said offence. Further, the prosecution witnesses have categorically stated about the demand of dowry made by the appellants and therefore, the offence under Section 4 of the Dowry Prohibition Act is also established.

27. In view of the foregoing discussion, the appeal is **allowe**d in part. Conviction and sentence of the appellants for the offence under section 304-B IPC is unsustainable in law and the same is **set aside**. However, there is no error or illegality in the conviction of the appellants for the offences under Sections 498-A IPC and Section 4 of the Dowry Prohibition Act.

28. The offence under Section 498-A carries a maximum sentence of imprisonment up to 3 years and the trial court had awarded the maximum sentence.

29. The accused ? appellants had submitted before the trial Court on the point of sentence that the appellant No. 2, Hardwari is an old person and the appellant No.1- Laloo @ Sanjay, has the responsibility to look after his old parents. The trial Court discarded these mitigating circumstances without assigning any reason and awarded the maximum sentence of three years' imprisonment to the appellants.

30. In **K. Pounammal v. State,** 2025 SCC OnLine SC 1784, the Hon'ble Supreme Court referred to numerous precedents on the question of reduction of sentence and held that: -

"6. The conviction and sentence have their respective realms. While the conviction would be recorded on the basis of evidence adduced before the Court which would establish the implication of the accused in the offence, the guilty person or the convicted when to be awarded a sentence, a host of factors would operate to govern.

6.1. ***In determining the final sentence and the nature thereof, variety of factors that would operate would include the intervening time between the commission of offence and the actual award of the sentence, age of the accused, the stress which he or she might have suffered because of passage of time during each case has remained pending and undecided, the family circumstance and such other factors, without becoming exhaustive.***

7. The process of sentencing by the courts is guided by theories such as punitive, deterrent or reformative. Each school of thought has its own object and purpose to explain awarding of sentence and its utility. Amongst these theories, reformative approach has become increasingly acceptable to the modern jurisprudence. Reformation is something always considered progressive. When there are mitigating circumstances, the court would lean towards reducing of the sentence. The focus would be on the crime, and not on the criminal. The society and system would nurture the guilt with positivity, while selecting the sentence.

8. In light of the above principles guiding the sentencing process, the submission of learned advocate for the appellant could be countenanced that in the case on hand the incident had taken place on 23.09.2002. Since then, more than two decades have passed by. The appellant underwent imprisonment for 31 days. The appellant is a widow lady. It was stated that she is now 75 years of age. The appellant has been staying alone, the husband having died, stated her learned counsel. She belongs to scheduled caste and has been spending her life negotiating all hardships.

9. The prolongation of a criminal case for an unreasonable period is in itself a kind of suffering. It amounts to mental incarceration for the person facing such proceedings. For a person who is convicted and who has appealed against his or her conviction and sentence and who everyday awaits the fate of litigation, spends time in distress. In the present-day system of administration of justice, in which proceedings have often go on protracted unreasonably and therefore unbearably, the passage of long time itself makes the person suffer a mental agony." (Emphasis added)

31. In V**.K. Verma v. CBI**: (2014) 3 SCC 485, the Hon'ble Supreme Court held that: -

"7. In imposing a punishment, the concern of the court is with the nature of the act viewed as a crime or breach of the law. The maximum sentence or fine provided in law is an indicator on the gravity of the act. Having regard to the nature and mode of commission of an offence by a person and the mitigating

factors, if any, the court has to take a decision as to whether the charge established falls short of the maximum gravity indicated in the statute, and if so, to what extent.

8. ***The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence. As we have noted above, the FIR was registered by CBI in 1984. The matter came before the Sessions Court only in 1994. The Sessions Court took almost ten years to conclude the trial and pronounce the judgment. Before the High Court, it took another ten years. Thus, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount.***

9. In Ashok Kumar v. State (Delhi Admn.) [(1980) 2 SCC 282], the commission of offence of theft was committed in 1971 and the judgment of this Court was delivered in 1980. The conviction was under Section 411 IPC. This Court having regard to the purpose of punishment and "the long protracted litigation", reduced the sentence to the period already undergone by the convict.

10. In Sharvan Kumar v. State of U.P. [(1985) 3 SCC 658], the commission of offence was in 1968 and the judgment was delivered in 1985. The conviction was under Sections 467 and 471 IPC. In that case also, the long delay in the litigation process was one of the factors taken into consideration by this Court in reducing the sentence to the period already undergone.

12. ***The appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardiovascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, would it not be economically wasteful, and a liability to the State to keep the appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction."*** (Emphasis added)

32. The incident took place in the year 2010. The appellant No.1 has already spent about 1 years and 9 months 10 days in custody and the appellant No.2 has spent about 1 year and 5 months 6 days in custody. The appellant No.2 is presently aged about 68 years. Making the appellants undergo the remaining part of the sentence of three years' imprisonment will not serve any purpose of incarceration - either deterrence or reformation. Keeping in view the aforesaid facts, the sentence of three years' imprisonment imposed upon the appellants is reduced and modified to the period of custody already undergone by them. The amount of fine shall remain unaltered.

33. The appeal is **partly allowed** in terms of the aforesaid order.

34. The appellant shall furnish a personal bond and two sureties to the satisfaction of the trial Court within two weeks from today in compliance with Section 446 of the Code of Criminal Procedure. In case an appeal against this judgment/order is preferred before the Hon'ble Supreme Court and notice is issued to the appellant therein, the appellant shall appear before the Hon'ble Supreme Court in accordance with such notice.

(2026) 7 ILRA 78
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 296 of 2020

Tilluka @ Manoj **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The case involves allegations that the appellant committed murder by setting his cousin's wife a fire while she was cooking after she demanded repayment of Rs. 5000 loan.

Headnotes

Criminal law-Indian Penal Code,1860-Section 302-Indian Evidence Act,1872-Section 32(1)-Criminal Procedure Code,1973-Section 374(2)-Murder-Dying Declaration-Voluntary and truthful dying declaration recorded by Executive Magistrate-Absence of explicit endorsement certifying "fit state of mind" not fatal-Certification of consciousness along with Magistrate's subjective satisfaction sufficient-Minor discrepancy regarding inflammable substance (vegetable oil vs. Kerosene oil) immaterial due to 80% burn trauma-Conviction can be based solely on trustworthy dying declaration-Witnesses reaching scene immediately after occurrence seeing victim in flames-Victim spontaneously naming assailant-Testimonial value of res gestae witness admissible and corroborative-13 day delay in registering FIR –Explained by husband's panicked state and initial police reluctance-Delay loses significance due to prompt recording of dying declaration on date of incident itself-The prosecution established the offense of murder under section 302 IPC based on a prompt dying declaration recorded by an Executive Magistrate, supported by res gestae witness testimony-Conviction upheld-Appeal dismissed.(Para 48 to 52) (E-6)

Held

The court affirmed the conviction of the appellant under section 302 IPC, holding that a truthful and voluntary dying declaration, supported by res gestae evidence, can form the sole basis of conviction even in the absence of eyewitnesses.

Case law Cited

Tahsildar Singh Vs State of U.P.(1959) SCC OnLine SC 17, Vinod Kumar Vs State (NCT of Delhi) , (2025) 3 SCC 680, Paparambaka Rosamma Vs State of A.P. (1999) 7 SCC 695, Koli Chumilal Savji Vs State of Gujarat, (1999) 9 SCC 562, Laxman Vs State of Maharashtra, (2002) 6 SCC 710, Punneerselvam Vs State of T.N., (2008) 17 SCC 190-referred to.

List of Acts

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

List of Keywords

Murder , Dying declaration, Res gestae, 80% burn trauma, Victim, Assailant, Inflammable substance, Kerosene Oil, "Fit state of mind", Trustworthy, sole basis of conviction, Witness testimony.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 296 of 2020

Tilluka @ Manoj Vs. State of U.P.

From the judgment and order dated 02.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant:

Mohammad Haadi Zaidi Phoolbadan Yadav, Swati Agrawal Srivastava, Varsha Srivas, Zia Naz Zaidi

Adv. for Respondent:

G.A.

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

1. This Criminal Appeal is directed against a judgment and order of Mr. Vivek, the then Special Judge (D.A.A.)/Additional Session Judge-III, Agra dated 25.10.2019 in S.T. No. 543 of 2015, arising out of Case Crime No. 173 of 2015, under Section 302 I.P.C., Police Station- Shamsabad, District- Agra. By the impugned judgment and order, the learned Additional Session Judge has convicted the appellant, Tilluka @ Manoj, under Section 302 I.P.C. and sentenced him to rigorous imprisonment for life along with a fine of Rs. 25,000/-; in default of payment, one year additional rigorous imprisonment has been ordered.

2. On the basis of a written report (Ex.Ka.1) dated 06.07.2015, submitted by the informant Mahipal (PW-1), an FIR dated 13.07.2015 (Ex.Ka.2) was registered against the accused, to wit, Tilluka @ Manoj (appellant herein), Misrilal, Vinod and Smt. Hari Devi, under Sections 307, 506 I.P.C., Police Station- Shamsabad, District- Agra.

3. According to the prosecution, the informant Mahipal along with his wife Smt. Satyavati, two sons, and one daughter, reside in Village Hirner, Police Station- Shamsabad, District- Agra. The appellant, Tilluka @ Manoj S/o Misrilal, who is a cousin of the informant, is also a resident of the same village and lives in the neighbourhood. The appellant, Tilluka @ Manoj had been dismantling and renovating his house. About 7-8 days prior to the occurrence, the appellant Tilluka @ Manoj along with Misrilal, Vinod S/o Misrilal, and Smt. Hari Devi W/o Misrilal, approached the informant and requested that they may cook at his house, saying that due to the ongoing construction work, they had no place to cook food. Though the informant had limited space, his wife Smt. Satyavati, due to affinity of the family, allowed them to bring their supplies and cook food on her hearth (Chulha). It is further alleged that about one month ante-dating the incident, the appellant Tilluka @ Manoj had borrowed a sum of Rs. 5,000/- from Smt. Satyavati for the construction of his house, promising to repay the loan within a month. On 02.07.2015 at about 6:30 a.m., in the absence of the informant, all the accused came to the informant's house to cook food. At that time, when Smt. Satyavati demanded return of the borrowed money, the accused became agitated, and telling her threateningly that they would return all her outstandings right away, left the place. They returned half an hour later and all the accused with a common intention to kill,

surrounded Smt. Satyavati. Misrilal exhorted the appellant Tilluka @ Manoj to pick up the kerosene Can, douse her (Satyawvati) with it and set her afire. Upon those words falling from Misrilal, Hari Devi and Vinod caught hold of the informant□s wife, Smt. Satyavati, and the appellant Tilluka @ Manoj doused the informant□s wife, Satyavati with kerosene oil and set her afire employing a matchstick. In consequence, the informant□s wife sustained substantial burn injuries. The emanating smoke led people from the neighbourhood to reach the spot, who conveyed the informant□s wife with burn injuries to the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra, where she was undergoing treatment. The informant, who was at his workplace, received information about the incident and reached the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra at about 10:00 a.m., where his wife was undergoing treatment. Upon inquiry, Smt. Satyavati narrated the entire incident to him. The medical examination of the victim and her statement before the Magistrate was recorded on the same day, i.e., 02.07.2015. The incident is said to be within knowledge of the villagers and the nearby residents.

4. It is evident from the record of the case that, on 02.07.2015, when the victim, later deceased Satyavati, was admitted to the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra after the incident, the prosecution witness J.P. Chauhan, ACM-II, PW-7, recorded her dying declaration.

5. The incident occurred on 02.07.2015 at about 6:30 AM. The informant, Mahipal (PW-1), lodged an FIR against the accused, namely, Tilluka @ Manoj, Misrilal, Vinod and Hari Devi, under Sections 307, 506 IPC. However, during treatment at Sarojini Naidu Medical College (S.N.M.C.), Agra, the victim, Satyavati, died due to Septicemic Shock resulting from the ante-mortem burn injuries. Consequently, the case was converted from Sections 307, 506 IPC to one under Section 302 IPC.

6. After lodging of the First Information Report, the Investigating Officer (I.O.) commenced investigation, inspected the place of occurrence and prepared a site plan. The I.O. collected incriminating materials from the place of occurrence. The I.O. also recorded statements of witnesses under Section 161 Cr.P.C. After completing all the formalities of investigation, the I.O. submitted a charge-sheet against the appellant Tilluka @ Manoj alone, under Sections 302, 506 IPC. The other nominated accused in the FIR, to wit, Misrilal, Vinod, and Hari Devi, were not charge-sheeted as the I.O. did not find any evidence against them. Their implication was found to be false.

7. Since, the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Session for trial. In the Trial Court, charge was framed against the appellant Tilluka @ Manoj, only under Section 302 IPC by the Sessions Judge, Agra, on 16.12.2015. The appellant, Tilluka @ Manoj, denied the charge and claimed trial.

8. The prosecution produced as many as 10 witnesses, namely, Mahipal (PW-1), Avaran Singh (PW-2), Devi Singh (PW-3), Anand Ratan (PW-4), Dr. Pawan Paitreek (PW-5), Vinod Kumar (PW-6), J.P. Chauhan (PW-7), Indrajeet Singh (PW-8), Dr. SN Gupta (PW-9), and Bantoo (PW-10), to substantiate their case.

9. Apart from the oral evidence, the prosecution also produced and relied upon documents, such as, written report (Ex.Ka.1), chik first information report (Ex.Ka.2), carbon copy of the general diary (Ex.Ka.3), post-mortem report (Ex.Ka.4), inquest report (panchayatnama) (Ex.Ka.5), challan nash (Ex.Ka.6), photo nash (Ex.Ka.7), C.M.O. Report (Ex.Ka.8), R.I. Report (Ex.Ka.9), site plan (Ex.Ka.10), dying declaration of deceased (Ex.Ka.11), recovery memo of pieces of burnt blouse (Ex.Ka.12), charge-sheet (Ex.Ka.13) and the medico-legal report of the deceased (Ex.Ka.14). Apart from these, material evidence was also produced, such as, pieces of blouse marked Material Exhibit-1, plastic pieces marked Material Exhibit-2, and a cloth bundle marked Material Exhibit-3..

10. The Trial Court recorded the statement of the appellant, Tilluka @ Manoj, under Section 313 Cr.P.C., after hearing the prosecution evidence. In his statement, the appellant, Tilluka @ Manoj, claimed that he was falsely implicated in the case due to his relationship with Satyavati. He stated that when the deceased Satyavati was cooking, she sustained burn injuries accidentally on account of vegetable oil catching fire, and that he had committed no crime. In his defence, the appellant, Tilluka @ Manoj, has produced Meva Ram as DW-1.

11. After hearing evidence led on both sides and hearing learned Counsel for parties, the learned Trial Judge found the appellant, Tilluka @ Manoj, guilty of the offence under Section 302 IPC. He convicted the appellant accordingly and sentenced him to rigorous imprisonment for life together with a fine of Rs. 25,000/-. In default of payment, he was ordered to serve one additional year of rigorous imprisonment.

12. Aggrieved by the judgement and order dated 25.10.2019 passed by the learned Trial Judge in S.T. No. 543 of 2015, the appellant has preferred the present criminal appeal.

13. Learned Counsel for the appellant submitted that there is a delay of eleven days in lodging the FIR, and no explanation for the delay has been given by the prosecution. In her dying declaration, Satyavati stated that the appellant had doused her in vegetable oil while she was cooking and set her afire. However, the post-mortem report indicates smell of kerosene, which brings in discrepancy. Learned Counsel for the appellant next submitted that the learned Trial Judge overlooked the fact that PW-1, PW-2 and PW-3 are not eyewitnesses and they had not seen the incident. The Trial Court wrongly relied on their evidence, contrary to the hearsay rule. It is also submitted that the appellant with the help of his mother, cousin and PW-10, got the deceased admitted to the hospital, a fact which the learned Trial Judge ignored without assigning any cogent reason about this crucial point figuring in the evidence.

14. The learned Counsel for the appellant further submitted that the appellant is innocent but the Trial Court, in a very casual manner, ignored material evidence available on record and passed an illegal order, which is unsustainable in law. Based on this, the learned Counsel argues that the judgment and order of conviction dated 25.10.2019 passed by the learned Trial Judge, is against the weight of evidence and the law, which deserves to be set aside and the appeal allowed.

15. Rebutting the submissions of the learned Counsel for the appellant, the learned AGA, appearing on behalf of the State, vehemently opposed the submissions advanced by the learned

Counsel for the appellant and submitted that the learned Trial Judge, after perusing all the prosecution evidence, both oral and documentary, found appellant, Tilluka @ Manoj, guilty of the offence under Section 302 IPC. The learned Trial Judge found evidence against the appellant to be reliable and trustworthy. It was found that before her death, the deceased Satyavati had named the appellant in her dying declaration (Ex.Ka.11), which was considered fully reliable and believable. The learned Trial Judge also found that the prosecution witnesses i.e. PW-1, PW-2 and PW-3 corroborated the prosecution story and the dying declaration made by the deceased Satyavati. The learned AGA also submitted that no illegality or perversity was committed by the Trial Court in appreciating the evidence and drawing plausible conclusion therefrom, which are countenanced by the law. To sum up, the learned AGA submitted that there is no merit in the appeal, which deserves to be dismissed and the conviction affirmed.

16. Upon hearing the submissions advanced by learned Counsel for both the parties, we find that the incident occurred on 02.07.2015 at about 6:30 a.m. After the incident, the injured Satyavati was admitted to the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra, for treatment. However, during treatment at the Sarojini Naidu Medical College (S.N.M.C.), Agra, shedied due to Septicemic Shock resulting from ante-mortem burn injuries. Her dying declaration was recorded by J.P. Chauhan, ACM-II, PW-7, on 02.07.2015. The FIR, which was registered for offences punishable under Sections 307 and 506 IPC upon PW-1's information at the concerned police station on 13.07.2015 at 10:10 a.m., was converted to a case under Section 302 IPC after Satyavati□s death on 14.07.2015.

17. Upon examining the written report (Ex.Ka.1), it is evident that it was a typed-written document, comprising three pages and addressed to the S.H.O, Shamsabad, Agra. Copies of the same, were also sent to the Deputy Inspector General of Police, Agra Range, Agra and the Senior Superintendent of Police, Agra. The report bears the date 06.07.2015, with the name of the informant mentioned there as Mahipal Singh S/o Sri Charan Singh, resident of Village- Hirner, Police Station- Shamsabad, District- Agra.

18. The informant Mahipal (PW-1) supported the prosecution story in his examination-in-chief as stated in the written report (Ex.Ka.1). However, from his examination-in-chief, it is revealed that at the time of the incident he was not present on the spot (his home). At that time, he was engaged at his workplace, and reached the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra only after receiving the information. In his cross-examination, informant Mahipal (PW-1) confirmed that he had not seen the incident and after receiving the information, he reached the hospital on a motorcycle. Thus, it is clear that the informant Mahipal (PW-1) is not an eyewitness in this case as he was not present at the place of occurrence. In his cross-examination, PW-1 said:

"I reached the hospital at about 10 o'clock. At that time, I did not lodge the report because I was perturbed and did not know what to do. I went to the police station to lodge a report on the following day, but they (the police) did not register my report telling me to get that done inside. I cannot remember how many days later I went to the police station again to lodge the report. When no action was taken, I got the report written by my Advocate, S.C. Saxena. This report was got written by S.C. Saxena (Advocate), who is present in court today."

19. Therefore, upon a perusal of the evidence of the informant Mahipal (PW-1), it appears that this witness is not an eyewitness of the incident as he was not present at home when it happened. This witness was working at another place when the incident occurred. Upon a perusal of the testimony of this witness, the question why he delayed lodging the FIR is not of much significance, when the totality of circumstances are seen. An FIR, in its essence, is the earliest information that the Police receive about the commission of a cognizable offence. All subsequent statements, in whatever form rendered, may not really and substantially reckon as an FIR. Even if a much later written information is entered as a check FIR, that information may not at all be regarded as the first information. The first information is an information that the Police receive for the first time about the commission of a cognizable offence, which is a little more than scanty news. In this case, it cannot be said that the Police were not in the know of details of the entire occurrence before the FIR was lodged. The occurrence happened on 02.07.2015 at 6.30 p.m. and the victim was rushed to Ishwari Devi Memorial Hospital, Agra, immediately after sustaining the injury. The Additional City Magistrate, Agra, reached the hospital to record the victim's dying declaration on 02.07.2015 itself. The Additional City Magistrate, who recorded the dying declaration, has said in his testimony that he went to the hospital because he had received a memo from the District Magistrate's office to do so. It is impossible that the Police would not have information of the occurrence, if the District Magistrate had issued a memo to the A.C.M. to record the deceased's dying declaration.

20. There is absolutely no cavil that the dying declaration was recorded on 02.07.2015, and that was the day of the occurrence. The dying declaration itself carries whatever is said in the FIR about the assault. The delay, therefore, that occurred in lodging the FIR, for which PW-1 has given an explanation, looses much of its importance considering these circumstances, particularly the promptly recorded dying declaration of the victim. PW-1 has said that he had panicked when he reached the hospital at 10 p.m. on 02.07.2015 upon getting the news of the incident. He did go to the police station to lodge the FIR the following day, but his report was not registered and he was told to go inside and get it lodged. It was then that he took assistance of Mr. S.C. Saxena, Advocate, to draft and lodge the FIR and this no doubt took a long period of time. It is not uncommon that the Police resist and show a reluctance in registering an FIR, sometimes even in heinous offences. The reluctance shown by the Police the second day and the fact that PW-1 was the deceased's husband, who had panicked on account of the turn of events, where the deceased was still battling for her life in hospital, the delay of thirteen days in lodging the FIR cannot be said to be fatal or one that puts the prosecution under a serious cloud of suspicion. The deceased passed away on 14.07.2015. The FIR was lodged a day earlier. It is also relevant that according to the testimony of PW-9, who attended to the deceased in the Medico-legal Department of Ishwari Devi Hospital, Agra, information was sent to the Police to record the victim's dying declaration as she had freshly received burn injuries. In our opinion, the delay in lodging the FIR, in the totality of circumstances, is well explained.

21. The prosecution witness Avaran Singh (PW-2), in his examination-in-chief, has testified that the incident occurred on 02.07.2015 at about 6:30 a.m. He has testified that while he was at his home, he heard cries regarding the fire coming from the informant’s house. Upon hearing noise about the fire, he rushed to the spot and saw the victim Satyavati in flames. At that time, the appellant, Tilluka @ Manoj, besides the non-appellant, Vinod, and Misrilal, were present

there. He further testified that several villagers had also gathered at the place of occurrence upon hearing the distress calls.

22. In his cross-examination, PW-2 admitted that he did not see any one dousing the victim Satyavati in kerosene or setting her afire. He, however, stated that the victim Satyavati was crying repeatedly and saying that the appellant Tilluka @ Manoj had doused her in kerosene and set her afire. PW-2 further said in his cross-examination that he had disclosed this facts to the Investigating Officer. The witness was shown his statement under Section 161 Cr.P.C., upon reading which he said that if it has not been recorded, he could not say the reason why it has not been done. This is not a contradiction of the witness with reference to his previous statement as contemplated by the proviso to Section 162 Cr.P.C. Section 162 Cr.P.C. reads:

"162. Statements to police not to be signed: Use of statements in evidence.-(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.-An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

23. The proviso to Section 162 Cr.P.C. makes it clear that a statement of the witness reduced to writing under Section 161 Cr.P.C. by a police officer in the course of investigation, can be used to contradict such witness with reference to what he testifies in Court, if the earlier statement before the Police is duly proved in the manner provided under Section 145 of the Indian Evidence Act. Section 145 of the Evidence Act reads:

"**145. Cross-examination as to previous statements in writing**. - A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it

is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

24. The credit of a witness can be impeached in the manner provided under Section 155 of the Evidence Act. Section 155 reads:

"**155. Impeaching credit of witness.-**The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-"

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

Explanation. - A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

25. What is relevant in this case are the provisions of sub-section (3) of Section 155 read with Section 145 of the Evidence Act and the proviso to Section 162 Cr.P.C. It is these three provisions of the law that carry the complete charter how a witness is to be contradicted during cross-examination with reference to a previous statement of his reduced to writing by a police officer.

26. The law on how a witness is to be contradicted with reference to his previous statement was long ago explained by a Constitution Bench of the Supreme Court in **Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17**, where it was observed:

"13. The learned counsel's first argument is based upon the words in the manner provided by Section 145 of the Indian Evidence Act, 1872 found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is placed upon the judgment of this Court in Shyam Singh v. State of Punjab10. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819:

"Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to

these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus : If the witness is asked □did you say before the police officer that you saw a gas light?□ and he answers □yes□, then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the

learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure."

27. A fully illustrated statement of the law on the point is to be found in a very recent decision of the Supreme Court in **Vinod Kumar v. State (NCT of Delhi), (2025) 3 SCC 680**, where it was held:

"15. Before we part with the judgment, we must refer to a peculiar practice followed by the trial court. PW 1 and PW 3 were confronted in the cross-examination with their statements recorded under Section 161CrPC. In the depositions, it is mentioned that the attention of the witness was invited to a particular portion of the prior statement. After recording the answer of the witness, the portion of the prior statement used to contradict the witness has been reproduced in brackets. The law is well settled. The portion of the prior statement shown to the witness for contradicting the witness must be proved through the investigating officer. Unless the said portion of the prior statement used for contradiction is duly proved, it cannot be reproduced in the deposition of the witnesses. The correct procedure is that the trial Judge should mark the portions of the prior statements used for contradicting the witness. The said portions can be put in bracket and marked as AA, BB, etc. The marked portions cannot form a part of the deposition unless the same are proved."

28. Now, what the Trial Court did is that they did not mark the relevant part of the witness's statement under Section 161 Cr.P.C., where he had omitted to mention the fact that he heard Satyavati shout and say that it was Tilluka, who had set her afire after dousing her in kerosene oil. What was required was that after marking this portion by brackets and alphabets or whichever way it could be identified, the omission in the previous statement should have been put to the witness. If he admitted the omission, the portion of the witness's statement previously reduced to writing by the Police, would stand proved and used for the purpose of contradicting PW-2. If he denied, as he did here, the Investigating Officer, who took down the statement carrying this material omission, should have been required to prove it. If he proved it then also, the marked portion would become part of the evidence and could be used. This is not what has been done by the Trial Court. A casual confrontation of a witness in the dock by the statement taken down by the Police, where there was an omission, cannot serve the purpose of the proviso to Section 162 Cr.P.C. The witness could, therefore, not be held discredited on the basis of his statement under Section 161 Cr.P.C. regarding the fact that he said in Court that he heard Satyavati shout that Tilluka had doused her in kerosene oil and set her afire.

29. We would, therefore, hold that the testimony of PW-2 in the dock regarding the fact is absolutely admissible and also reliable.

30. It is true that this witness is not an eye-witness of the incident. He arrived there soon after the assault and when Satyavati was already in the anguish of flames. She was crying. He arrived soon after Tilluka's assault, and, in fact, saw him around the place. PW-2 is a witness of res gestae and not the fact in issue. His testimony nevertheless is valuable and weighty because soon after the occurrence, he saw Satyavati in flames, conveying in her agony the identity of her assailant, who was still about the place.

31. PW-3 is also a witness of res gestate. On 02.07.2015 at about 6.30 in the morning hours, he was returning home after answering the call of nature, when he saw some people running towards his brother Mahipal's house. He also raced towards his brother's house and found his sister-in-law Satyavati in flames. He attempted to douse the fire with the assistance of other residents of the village and arranging a car, rushed Satyavati to Ishwari Devi Hospital, Rajpur Chungi, Agra. He has said in his examination-in-chief further that at the time of occurrence, he had seen Tilluka @ Manoj at the place of occurrence. He has further said in his examination-in-chief that at the time of occurrence, he saw Tilluka's brother Vinod and father Mishri Lal running away from home. Tilluka's mother Har Devi had already escaped from the scene of occurrence. In his cross-examination, the witness has clearly said that he did not see his sister-in-law being set ablaze, but it was she who told him that Tilluka had set her afire. This witness too stated that in his statement given to the Police, he had said that Satyavati had told him that Tilluka had set her afire and he could not say the reason why the Investigating Officer had not recorded it. This statement, casually confronting him without proof of the statement carrying the omission recorded by the Investigating Officer, cannot be read to discredit this witness, as already held in the case of PW-2. What, therefore, appears is that this witness is again a witness of res gestate and arrived soon after the occurrence. He saw Tilluka around the place, but his brother and father fleeing their homes. He saw his sister-in-law up in flames, who told him that she was set afire by Tilluka. The evidence of this witness of whatever weight, he is a truthful witness.

32. Two prosecution witnesses, that is to say, Avaran Singh, PW-2, and Devi Singh, PW-3, are witnesses of res gestae as they arrived soon after the assault and saw the deceased up in flames. She was also shouting or telling the name of her assailant. It could be thought that there being no eye-witnesses, it would be utterly unsafe to convict the appellant on the basis of the testimony of these witnesses of res gestate. PW-1, of course, is not a witness of anything.

33. Now, we turn to the dying declaration (Ex.Ka.11) of the deceased Satyavati. The dying declaration of the deceased Satyavati was recorded on 02.07.2015 by J.P. Chauhan, ACM-II, PW-7, Agra, while she was undergoing treatment at Ishwari Devi Nursing Home, Agra. It is worthwhile to produce the dying declaration as recorded by PW-7, which is in question answer form:

"1. आपका नाम क्या है?

सत्यवती है।

2. आपके पति का क्या नाम है?

महीपाल है।

3. आग कैसे लगी। किसी ने लगाया तो नहीं?

मैं सब्जी बना रही थी। मेरे देवर टिलुवा ने मेरे ऊपर सब्जी का तेल डाल करके आग लगा दी। मेरा किसी से झगड़ा नहीं थी। मेरे पति से भी कोई लड़ाई नहीं थी।"

34. The deceased Satyavati's dying declaration was recorded by J.P. Chauhan, ACM-II, Agra (PW-7) at the Ishwari Devi Nursing Home, Agra on 02.07.2015. Below the last answer, PW-7 made his initials and endorsed the date as 02.07.2015. The thumb impression of the deceased's right foot was also taken on the right side of the dying declaration. There is an endorsement by a doctor of Ishwari Devi Hospital, Rajpur Chungi, Agra, certifying to the following effect:

"Pt. Satyavati Devi is conscious. She is able to give her D/D."

35. It is no doubt true that the doctor has signed the certificate without mentioning his name or appending the date or time, but that is a matter of little consequence.

36. At the end of the dying declaration, the same doctor endorsed another certificate, which reads to the following effect:

"Pt. Satyavati Devi is conscious for D/D."

37. There was much debate at the Bar if this dying declaration qualifies as valid, because the doctor has not properly certified the patient fit to give her dying declaration. We do not think that the law is any longer in a flux on the subject and the dying declaration, that is on record as Ex. Ka-11, suffers from any infirmity.

38. The prosecution have produced J.P. Chauhan, the then Additional City Magistrate-II, Agra as PW-7. He has testified that on 02.07.2015, while posted as ACM-II, he received a memo from the District Magistrate's office to record the dying declaration of injured Satyavati at Ishwari Devi Hospital. He recorded her statement in his own handwriting, asking her the three questions. He read over the statement to Satyavati and took the thumb impression of her right foot. This dying declaration, as already remarked, in our opinion, is unimpeachable.

39. There was earlier some conflict of opinion between two decisions of the Supreme Court in **Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695 and Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562**. What that conflict is about, can best be understood the way it is expressed by the Constitution Bench of their Lordships in **Laxman v. State of Maharashtra, (2002) 6 SCC 710**. In Laxman (supra), the conflict of opinion has been introduced in the following words:

"1. In this criminal appeal, the conviction of the accused-appellant is based upon the dying declaration of the deceased which was recorded by the Judicial Magistrate (PW 4). The learned Sessions Judge as well as the High Court held the dying declaration made by the deceased to be truthful, voluntary and trustworthy. The Magistrate in his evidence had stated that he had contacted the patient through the medical officer on duty and after putting some questions to the patient to find out whether she was able to make the statement; whether she was set on fire; whether she was conscious and able to make the statement and on being satisfied he recorded the statement of the deceased. There was a certificate of the doctor which indicates that the patient was conscious. The High Court on consideration of the evidence of the Magistrate as well as on the certificate of the doctor on the dying declaration recorded by the Magistrate together with other

circumstances on record came to the conclusion that the deceased Chandrakala was physically and mentally fit and as such the dying declaration can be relied upon. When the appeal against the judgment of the Aurangabad Bench of the Bombay High Court was placed before a three-Judge Bench of this Court, the counsel for the appellant relied upon the decision of this Court in the case of Paparambaka Rosamma v. State of A.P. [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] and contended that since the certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement, the dying declaration could not have been accepted by the Court to form the sole basis of conviction. On behalf of the counsel appearing for the State another three-Judge Bench decision of this Court in the case of Koli Chunilal Savji v. State of Gujarat [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] was relied upon wherein this Court has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased thus recorded cannot be ignored merely because the doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement in question. Since the two aforesaid decisions expressed by two Benches of three learned Judges was somewhat contradictory the Bench by order dated 24-7-2002 [Laxman v. State of Maharashtra, (2019) 11 SCC 512] referred the question to the Constitution Bench."

40. Setting at rest this conflict, their Lordships of the Constitution Bench held:

"4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the Court which persuaded the Bench to make the reference to the Constitution Bench. In Paparambaka Rosamma v. State of A.P. [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] the dying declaration in question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. The doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the Court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the Court had also found serious lacunae and ultimately did not accept the dying declaration recorded by the Magistrate. In the latter decision of this Court in Koli Chunilal Savji v. State of Gujarat [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The Court relied upon the earlier decision in Ravi Chander v. State of Punjab [(1998) 9 SCC 303 : 1998 SCC (Cri) 1004] wherein it had been observed that for not examining by the doctor the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise.

5. The Court also in the aforesaid case relied upon the decision of this Court in Harjit Kaur v. State of Punjab [(1999) 6 SCC 545 : 1999 SCC (Cri) 1130] wherein the Magistrate in his

evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in Paparambaka Rosamma v. State of A.P. [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] (at SCC p. 701, para 8) to the effect that

"in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in Paparambaka Rosamma v. State of A.P. [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji v. State of Gujarat [(1999) 9 SCC 562 : 2000 SCC (Cri) 432]."

41. The holding of the Constitution Bench would show that it is broadly to be gathered by the Magistrate on the questions put to the injured that he/ she is in a fit state of mind, whereafter the Magistrate could record the dying declaration. If he had medical opinion about the victim's state of mind and he testified to it that would be enough. There is no particular form of the medical certificate to be insisted upon in order to regard a dying declaration valid. All that is to be seen, therefore, is whether the dying declaration can be held to be one that is truthful and voluntary. Of course, the Magistrate or the Officer, recording the dying declaration, must find that the declarant was in a fit condition to make a statement.

42. In his cross-examination, PW-7 has testified thus:

"उनका नाम पूछता हूँ। किसी घटना में वजह का प्रश्न पूछना जरूरी है। हमने सत्यवती से यह पूछा आग कैसे लगी किसी ने आग लगाई मै सब्जी बना रही थी। मेरा देवर टिलुआ मेरे ऊपर सब्जी का तेल डालकर आग लगा दी। ब्यान देते समय कोई हिचकिचाहट घबराहट नही थी सीधा बोल रही थी। डाक्टर के रिपोर्ट के अनुसार उस समय सत्यवती होश हवाश में थी और ब्यान देने में सक्षम थी। मैंने यह प्रश्न नही किया कि तुम्हारे देवर टिल्लुका उर्फ मनोज ने तुम्हारे ऊपर सब्जी का तेल डालकर आग क्यो लगायी। मुझे नही पता ब्यानकर्ता के ऊपर किसी असम्यक असर का प्रभाव हो। मैंने यह सन्तुष्टि कर ली थी वह ब्यान बिना किसी दबाव मे दे रही है। मेरे पास कोई खबर नही आयी। ब्यान के बाद कितने दिनो बाद उनकी मृत्यु हुयी थी। हमे नही मालूम किसी का ब्यान दुबारा हो सकता हो। यह कहना गलत है ब्यान लेते समय मृतका के परिवारीजनो पति, जेठ और देवर मौजूद हो। यह कहना भी गलत है उनके कहने पर यह प्रश्न किये हो। यह कहना गलत है मैंने आज वजह जान बूझकर न पूछी हो।"

43. From the testimony of PW-7 and a reading of the dying declaration, there is not a shadow of doubt in our mind that the dying declaration was made by Satyavati in a fit state of mind and she did so voluntarily. It was not also influenced by any extraneous factor. It is entitled to all the weight that attaches to a dying declaration that passes the threshold. It is, therefore, entitled to great weight.

44. The next witness, whose testimony is of some importance on the issue, is Dr. S.N. Gupta. He is a retired doctor of the S.N. Medical College, Agra and has, after retirement, taken up employment with the Ishwari Devi Memorial Hospital, Agra, where he has been employed to look after medico-legal cases. These facts appear in his examination-in-chief. Further on in his examination-in-chief, PW-9 has testified:

"उस दिन मैने सुबह 9.30 पर सत्यवती (उम्र 28 वर्ष) w/o महीपाल निवासी हिन्नौर थाना शमशाबाद आगरा के शरीर पर आई चोटो का डाक्टरी परीक्षण किया उनको लेकर मोहन सिंह s/o चरन निवासी उपरोक्त आये थे उनके शरीर पर निम्न चोटे थी मरीज superficial से deep जला हुआ था मरीज के दोनो गाल, ढोड़ी, गर्दन, दोनो ऊपरी भुजाए सीना, पेट, पूरी पीठ दोनो जांग व दोंनो टॉग जली हुई थीं करीब 80% जली हुई थी मिट्टी के तेल की बू आ रही है कही कही फफोले, चमड़ी उधरी हुई थी मरीज होश मे था मरीज को ईश्वरी देवी हास्पिटल में भर्ती किया गया था। हालत बहुत गम्भीर थी सम्बन्धित अस्पताल को प्लास्टिक सर्जन को उपचार हेतु बुलाने की व पुलिस को मृत्यु पूर्व व्यान नोट करने के लिए सूचना दी गई मरीज ताजा जला हुआ था।"

45. PW-9, Dr. S.N. Gupta, in his cross-examination has said:

"मै घटना के समय प्राइवेट हास्पीटल मे प्राइवेट डाक्टर के रूप में काम करता था मुझे टेलीफोन से सूचना मिली उस समय मैं घर पर था पत्रावली देखकर समय बताया कि 9-00 बजे हास्पीटल (ईश्वरी देवी) में पहुंच गया था. □□□ मै हास्पीटल पहुँचा चुटैल सत्यवती इमरजेन्सी वार्ड मे थी मैने हास्पीटल प्रबंधक के कहने पर मेडीकल किया था हास्पीटल अन्य मरीज थे उनकी संख्या ध्यान नही है।

जब मैने चुटैल सत्यवती का मेडीकल किया तो उस समय पूर्ण होश में थी मैंने चोटो का इसरजेन्सी वार्ड में निरीक्षण किया चोटों का विवरण याद नहीं है। मूल मेडिकल सर्टिफिकेट तैयार किया था जो मैने 80% जला बताया है।"

46. The testimony of PW-9, who was the doctor who attended on the victim Satyavati, soon after she was admitted on 02.07.2015, has clearly stated that she was fully conscious, a stand which he has maintained in his cross-examination. PW-9, who is a doctor and attended on Satyavati, is the best person who speak about her position regarding being conscious or not. The testimony of this witness, together with the doctor's certificate endorsed on the dying declaration, which we do not know if it was by Dr. Gupta, and the testimony of PW-7, the Additional City Magistrate, who found Satyavati conscious and capable of making a statement, place the matter beyond all cavil of doubt that the dying declaration given by Satyavati was in possession of her full senses and while she was conscious and capable of making it. She has clearly attributed the assault to Tilluka. The discrepancy about the kind of of oil, that was poured on her, is logical. She has said in her dying declaration that it was vegetable oil, whereas elsewhere it has been reported as kerosene, a fact which the doctor, who examined her, also suggests. Any person in the victim's

position, who has suffered an assault by fire, sustaining 80% burn injuries, could mistake the kind of oil, that was employed in the assault. On this score, the worth of the dying declaration cannot be discounted.

47. The question, whether conviction can be solely based on a dying declaration, has often come up before Courts for consideration and the law is well settled. The principles are clearly adumbrated in **Panneerselvam v. State of T.N., (2008) 17 SCC 190. In Panneerselvam,** it was observed by the Supreme Court:

"7. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

8. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

9. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben v. State of Gujarat [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164] .)

(iii) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K.

Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

(iv) Where the dying declaration is suspicious it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505] .)

(ix) Normally, the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration looks to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)

(xi) Where there are more than one statement in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, they have to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] .)

48. The law being what it is, we have already held that the dying declaration in this case is one that inspires confidence with us and is free from the blemish of vitiating factors, like tutoring, prompting or imagination. PW-7, the Magistrate who recorded the dying declaration, has clearly said in his cross-examination that it is incorrect to say that at the time of recording it, the deceased's family, to wit, her husband or brothers-in-law were present. There was, thus, reason to infer any kind of prompting or influence that could have made the deceased speak falsehood. Her statement is very clear and in the question and answer form. She has clearly said that she was cooking vegetables, when her devar (brother-in-law), Tilluka, poured vegetable oil on her and set her afire.

She has also said that she did not have any quarrel or dispute with any one, not even her husband. This kind of a dying declaration made by a person in a fit state of mind, to which there is ample testimony, both medical and non-medical, is hard to ignore. It is also supported by the evidence of res gestage offered by PW-2 and PW-3, who reached the scene of occurrence, shortly after the assault and while the deceased was suffering the flames. She was shouting that she had been set afire by Tilluka.

49. This takes us to the testimony of the last witness of fact, PW-10. This witness goes by the name Bantoo. There is no quarrel about the fact, even from the testimony of PW-2 and PW-3, that it was his car that was used to convey the victim to the hospital. This witness has said that he took Satyavati in his car, bearing registration No. UP-80AB-0153, to the Ishwari Devi Hospital, Agra. Tilluka @ Manoj, Tilluka's mother and the son of an uncle of his, called Bhura, got Satyavati admitted to the hospital. He has also said that Bhura went away, leaving behind Tilluka @ Manoj and Tilluka's mother, besides the injured at Ishwari Devi Hospital. In his cross-examination, the witness says that he had heard about the sudden incident of accident by fire suffered by the victim and his house is one house away from the victim's. There was a big crowd there and it was Tilluka's mother, who asked him that Satyavati had to be conveyed to the hospital as she had suffered burn injuries. He has said in his cross-examination that at that time Tilluka, Avaran, Chhotu and Tilluka's mother, helped Satyavati sit in his car and it was Tilluka and his mother, who got her admitted to the hospital and paid his fare too.

50. Though, this witness has not been cross-examined by the prosecution for some inexplicable reason, but his evidence on one fact is apparently incorrect, that is, where he says that it was Tilluka and his mother, who got Satyavati admitted to the hospital. PW-9, the doctor, who attended on Satyavati on the basis of records, said that it was Mohan Singh son of Charan Singh, who had brought Satyavati for her medical examination. There is no mention of either Tilluka or his mother in the doctor's statement. This is a fact, which somewhat derogates from the reliability of this witness. This witness is otherwise an independent man and has no reason to speak falsehood. Even if it is accepted that Tilluka and his mother helped Satyavati's conveyance to the hospital, the contention of the learned Counsel for the appellant that this belies the entire prosecution case that Tilluka was involved in setting Satyavati afire, cannot be accepted in the face of clear, cogent, reliable and damning dying declaration made to the Magistrate. Tilluka's presence or that of his mother, might be odd or clever behaviour, falsehood or even half truth, but it cannot be accepted in the face of the overbearing weight of a very clear dying declaration by Satyavati against the appellant.

51. In the totality of circumstances, we are of opinion that there is no error in the judgment and order impugned passed by the learned Sessions Judge.

52. In the result, this appeal fails and is **dismissed.**

53. Let this order be communicated to the sole appellant in the Jail, where he is serving, by the Registrar (Compliance) through the Chief Judicial Magistrate, Agra.

54. The Trial Court record, along with a copy of this judgment and order, be transmitted to the Court concerned **forthwith.**

(2026) 7 ILRA 96
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Appeal No. 400 of 2005

Khalid & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal challenging the conviction and life imprisonment under section 302/34 IPC following a fatal dispute over borrowing a tractor-trolley at a farmhouse, appellant was convicted of murder.

Headnotes

Criminal law-Indian Penal Code,1860-Section 302/34-Criminal Procedure Code,1973-Section 374(2)-FIR-Evidentiary Value-Informant dead-Contents not proved-Eyewitness Testimony-Inherent implausibility-Benefit of doubt-The informant died before entering the witness-box and his death was unconnected with the occurrence, the scribe of the FIR could prove its writing and execution but not the truth of its contents-Unexplained presence and conduct of the alleged eyewitnesses at the place of occurrence created a serious doubt regarding prosecution version-The prosecution evidence, though consistent in material particulars, being inherently unreliable and untrustworthy, failed to establish the appellant's guilt beyond reasonable doubt-Appeal allowed.(Para 16 to 37) (E-6)

Held

The court held that the prosecution case suffered from material infirmities, the FIR contents having remained unproved and the ocular evidence being inherently unreliable; hence, the appellant was entitled to the benefit of doubt and acquittal.

Case law Cited

Pradeep Vs State of U.P. (2022) SCC OnLine All 1139, Lalita Vs Vishwanath & Ors (2025) SCC OnLine SC 370, Vijayee Singh Vs State of U.P., (1990) 3 SCC 190, Sunil Kundu Vs State of Jharkhand, (2013) 4 SCC 422, Anand Ramachandra Chougule Vs Sidarai Laxman Chougala, (2019) 8 SCC 50 Vasudev Vs State of M.P. (2022) 4 SCC 735 & Pawan Kumar Sharma Vs Manoj Kumar, 2026 SCC OnLine SC 934-referred to.

List of Acts

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

List of Keywords

FIR, Evidentiary Value, Informant Dead, Scribe's Evidence, Ocular Evidence, Eyewitness Testimony, Inherent Improbability, Benefit of Doubt.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 400 of 2005

Khalid and another Vs. State of U.P.
From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant:-
Bhavya Sahai, Mohd. Samiuzzaman Khan, N.I. Jafri, Noor Mohmmad. R.p Singh, S.p Singh Raghav, Sunil Kumar Yadav
Advs. for Respondent:-
G.A. Siddharth, Sunil Singh

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

1. This criminal is directed against the judgment and order of Mr. Shri Prakash, the then Additional District and Sessions Judge, Fast Track Court No.2, Ghaziabad, dated 25.01.2005 in Sessions Trial No. 82 of 1994, under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC'), convicting the appellants Khalid and Nannu of the offence punishable under Section 302 read with Section 34 IPC and passing a sentence of life imprisonment upon each of them, besides imposing a fine in the sum of Rs.10,000/- each, together with a direction that in the event of failure to pay the fine, the appellant in default would undergo one year rigorous imprisonment.

2. Pending this appeal, appellant No.2, Nannu, died on 30.04.2021 and this appeal was ordered to abate on his behalf by an order of this Court dated 21.01.2022. Therefore, this appeal shall now proceed at the behest of appellant No.1, Khalid alone. However, for the sake of convenience, while detailing the course of proceedings and discussing evidence, necessary reference would be made to appellant No.2, Nannu, as regards his role in the crime at the relevant time by describing him as 'appellant No.2' or 'Nannu'.

3. A written information was given by the first informant, Wahiuddin son of Abdul Majid, a resident of Bani Sarai, Meerut, to the Station House Officer, Police Station Bhojpur, District Ghaziabad on 07.01.1990 at 10.25 p.m. regarding an incident that happened earlier in the day at 3.00 p.m., where his son Sarafraz @ Pappu was murdered. The written information says that on 07.01.1990 at about 3.00 p.m., his son Sarafraz @ Pappu was called over by his nephew Khalid (appellant No.1) through his servant, Nannu (appellant No.2) to the latter's barn (gher). At that time, the informant and his son were there in their barn. The informant's son, in response to the message, set about for his nephew's barn and the informant too followed him. When the informant's son reached Khalid's barn, the latter told him that he was sending his servant to pick up Sarafraz's tractor-trolley and that Sarafraz should not refuse to oblige him, like he had done the day before yesterday. In response, Sarafraz said that his trolley was not currently free as they had to send a trolley full of chaff to Meerut. Upon hearing this, Khalid uttered a vulgar abuse and said that today the trolley would carry their consignment of paddy first and that Sarafraz's chaff would be dispatched later. Upon hearing these words, Sarafraz said that Khalid should not abuse and talk politely and that, if the latter had so much of fascination for the trolley, he should get his own repaired. To this Khalid reacted by saying that Sarafraz would not relent like this and asked his servant Nannu to catch hold of Sarafraz. Nannu caught hold of Sarafraz from the rear side, whereas

Khalid picked up a double barrel gun, that was at hand, and aiming it at his son, was about to shoot, when the informant suddenly caught hold of the weapon. In consequence, when Khalid opened fire, the deflected led hit Khalid's servant Nannu in his lower limbs. In a quick manoeuvre, Khalid drew out a pistol from the waist of his pant and shot the informant's son in the head. Sarafraz collapsed and was rushed by the informant on his Jeep car to Meerut, reaching the Pyare Lal Sharma Hospital for medical aid. The doctors declared Sarafraz dead. It is further reported by the informant that at the time of occurrence, Iqbal son of Ibrahim and the informant's other son, Sartaj @ Babli were also present.

4. On the basis of the aforesaid written report, which is marked Ex. Ka-1, the Police registered a check First Information Report (for short, 'FIR') on 07.01.1990 at 10.25 p.m., giving rise to Crime No.2 of 1990, under Section 302 IPC, P.S. Bhojpur, District Ghaziabad. The case was registered vide G.D. Entry No. 44 dated 07.01.1990. The check FIR is on record as Ex. Ka-5, whereas G.D. Entry No.44 is marked as Ex. Ka-6.

5. The appellant Nannu was examined for his injuries by the Medical Officer, Primary Health Centre, Bhojpur, Ghaziabad on 07.01.1990 at 7.30 p.m. brought by his father Ummed Ali. He had a firearm would sustained to his left lower limb.

6. The Inquest was held on 07.01.1990, commencing 10.15 p.m. and ending 11.30 p.m. The inquest report is on record as Ex. Ka-9.

7. The dead body of the deceased was subjected to autopsy on 08.01.1990, where a gunshot wound of entry 0.5 x 0.5 cm cranial cavity deep on the left side of head, 2.5 cm above the left ear was noted. In addition, an abrasion was also noticed. The autopsy report is on record and marked as Ex. Ka-2.

8. The Investigating Officer investigated the crime and drew up a site-plan, which is on record as Ex. Ka-7. After completion of investigation, he submitted a charge-sheet dated 09.02.1990 against both the appellants Khalid and Nannu, marked Ex. Ka-8.

9. The appellants were produced before the learned Magistrate, who took cognizance and furnished them copies of the relevant prosecution papers as provided under Section 207 Cr.P.C. Thereafter, the case against them was committed to the Court of Sessions for trial on 31.01.1994.

10. After committal, the case came up before Mr. N.K. Garg, the then Additional District and Sessions Judge, Fast Track Court No.2, Ghaziabad on 08.09.2003 for framing of charges. The learned Judge proceeded to frame a charge under Section 302 IPC against the appellant Khalid and another charge against Nannu, the deceased appellant, under Section 302/34 IPC.

11. The prosecution examined the following witnesses in support of their case:

1. PW-1 - Jalis Ahmad, who scribed the written information on the dictation of the first informant,

2. PW-2 - Sartaj @ Babli, brother of the deceased,

3. PW-3 -Iqbal, cousin of the deceased,

4. PW-4 - Dr. V.K. Bajpayee, who conducted postmortem of the deceased,

5. PW-5 - Dr. P.S. Agrawal, who examined the injuries of the accused, Nannu,

6. PW-6 - HCP Rakesh Kumar Tyag, the then Head Moharrir, who drew up the check FIR and made other G.D. entries,

7. PW-7 - Constable No. 629 Ravi Kiran Singh, in whose presence inquest, challan lash, photo lash, letter to the CMO, letter to the RI etc. were prepared.

12. The prosecution produced the following documentary evidence:

Sr. No.	**Exhibit No.**	**Exhibited documents with brief particulars**
1	Ex. Ka-1	Written report dated 07.01.1990 lodged with Police Station Bhojpur, District Ghaziabad, proved by PW-1, Jalis Ahmad
2	Ex. Ka-2	Postmortem report dated 08.01.1990, proved by PW-4, Dr. V.K. Vajpayee
3	Ex. Ka-3	Injury report of Nannu dated 07.01.1990, proved by PW-5, Dr. P.S. Agrawal
4	Ex. Ka-4	Application for examination of the injuries of Nannu given by him to the Medical Officer, PHC, Bhojpur, dated 07.01.29, proved by PW-5, Dr. P.S. Agrawal
5	Ex. Ka-5	Check FIR dated 07.01.1990, proved by PW-6, HCP Rakesh Kumar
6	Ex. Ka-6	Carbon Copy of GD Entry No.44 Time 22.25 hours dated 07.01.1990, proved by PW-6, HCP Rakesh Kumar
7	Ex. Ka-7	Site-plan of the place of occurrence dated 08.01.1990, proved by PW-6, HCP Rakesh Kumar
8	Ex. Ka-8	Charge sheet dated 09.02.1990, proved by PW-6, HCP Rakesh Kumar
9	Ex. Ka-9	Inquest report dated 07.01.1990, proved by PW-7, Constable Ravi Kiran Singh
10	Ex. Ka-10	Challan Lash dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh
11	Ex. Ka-11	Letter to the C.M.O. dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh
12	Ex. Ka-12	Photo Lash dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh

13	Ex. Ka-13	Letter to the R.I. dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh

13. After the prosecution evidence was over, the statement of the accused-appellant Khalid under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was recorded by the learned Trial Judge on 24.09.2004 and that of the deceased appellant Nannu on 17.08.2004. After trial, the learned Additional District and Sessions Judge by his judgment and order impugned held the appellants guilty of the offence punishable under Section 302 read with Section 34 IPC and passed sentences upon them as hereinabove mentioned.

14. Aggrieved, this appeal has been preferred by both the convicts Khalid and Nannu. Nannu being dead, as already pointed out, this appeal has been heard at the behest of Khalid alone.

15. Heard Mr. Ayush Singh, learned Counsel for the appellant, Mr. Sunil Singh, learned Counsel appearing on behalf of the informant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of the State.

The evidentiary value of the FIR

16. The first informant in this case, Wahiuddin, was admittedly dead before the case went to trial, and, therefore, never entered the witness-box to prove the FIR. The scribe of the FIR, Jalis Ahmad, was examined as PW-1. The question is, could Jalis Ahmad prove the contents of the FIR, and, if not, what could he prove by his testimony in the dock and what would be the evidentiary value of the FIR.

17. This question has engaged the attention of the Courts much in the past as well and the issue has also been considered that if the informant is dead, could the FIR be proved with the aid of Section 32 of the Indian Evidence Act, 1872 (for short, "Evidence Act"). The question fell for consideration before a Division Bench of this Court in **Pradeep v. State of U.P., 2022 SCC OnLine All 1139.** In Pradeep (supra), to which one of us (J.J. Munir, J.) was party, it was held:

"20. There is a distinctive feature about this case, where the first informant, Satya Prakash has been abducted some time in the year 2007, a fact that can be reckoned about the time of its occurrence from the testimony of PW-2, Ram Autar. Ram Autar, in his examination-in-chief on 02.04.2008, has stated that Satya Prakash was abducted 6-7 months ago. He does not know, whether he is dead or alive. It has figured in the judgment of the learned Trial Judge that a photostat copy of the FIR is on record, where, relating to the abduction of Satya Prakash, a crime was registered against Pradeep and some other persons under Section 364 IPC. Thus, Satya Prakash was no longer available to testify in the dock. It is for this reason that the FIR lodged by Satya Prakash has been proved by PW-2, Ram Autar, who is the scribe of the written first information.

30. Learned Counsel for the appellants has urged that until time when the trial was held, hardly two years had passed by and apart from the FIR accusing Pradeep of causing Satya Prakash to be abducted, there was no proof that he was dead. He further argues that Satya Prakash's death

cannot be presumed until the lapse of seven years without him being heard of by any one of those, who would naturally have known of his whereabouts. In short, Satya Prakash cannot be presumed to have suffered a civil death by time the trial was held.

31. We are of opinion that unless the case be one where the first informant is dead and what he reports through the FIR are facts related to the cause of his death, the FIR is not admissible as substantive evidence under Section 32 of the Indian Evidence Act, 18724. Their Lordships of the Supreme Court in Munnu Raja v. The State of Madhya Pradesh5 decisions, do not doubt the principle that an FIR can qualify as a dying declaration, if the informant dies in consequence of injuries that he reports through the FIR, or to put it more in the form of principle, if the FIR has some nexus with the informant's death. If the informant, after lodging the FIR, were to die a natural death, the FIR cannot be read as substantive evidence with the aid of Section 32 of the Evidence Act. Here, the informant has not reported anything that bears any nexus with his death. Moreover, it is not established whether the informant is dead or alive. What is true is that he is untraceable and there is an allegation that he has been abducted by the appellant, Pradeep, which now stands vindicated with Pradeep's conviction for that offence. The fact remains, however, that the first informant, who is the author of the FIR, could not be produced at the trial.

32. The moot question is whether the FIR, in the absence of the informant being produced in the dock, would be admissible for the purpose of corroborating or contradicting the eye-witnesses who have testified at the trial. In our opinion, that cannot be done. In fact, the FIR is the earliest account of the occurrence and it is only the author of the FIR, that is to say, the first informant, who can prove its contents. It is he alone who can be cross-examined to contradict or corroborate him. Once he proves the FIR, the account can be looked into to judge the probity of other witnesses and their testimony also. But, in the absence of the informant entering the witness-box to prove the FIR, its contents cannot be held to be proved by examining the scribe, who has written it, or the police personnel, who have registered it. The scribe i.e. PW-2 has testified that the informant dictated the FIR to him by word of mouth, which he reduced to writing. He read over the contents to the first informant, who signed the FIR after understanding the same. The evidence of PW-2, Ram Autar, is competent to establish that the written information is one that was narrated to the scribe by the informant and is faithfully transcribed. It proves that it was written by the scribe, PW-2 and signed by the informant, but does not prove the contents of the FIR.

33. An FIR is nevertheless the basis to set the process of criminal law in motion and it is proved that the FIR here was lodged by the first informant and registered at the police station. On its basis, investigation could and did commence, where material had to be collected and was collected. It is on the basis of that material that the appellants have been charge-sheeted and tried. It is on the basis of evidence led at the trial that the appellants have been found guilty beyond reasonable doubt, a conclusion that they assail before us. Admissibility and evidenciary value of an FIR, in the context of a dead first informant, whose death was not connected to the occurrence reported through the FIR, was considered by the Gujarat High Court in Bhavanbhai Premjibhai Vaghela v. State of Gujarat6 in an interlocutory challenge raised to the order of the Trial Court. The order challenged before the High Court had permitted the contents of the FIR to be proved by the Investigating Officer entering the witness-box, because pending trial, the first informant had suffered a natural death. The accused had objected to it and said that the Investigating Officer could

not prove the contents of the FIR. The Trial Court rejected the objection and permitted the Investigating Officer to prove the FIR. This order was challenged under Article 227 of the Constitution, where, after survey of authority bearing on the issue, it was held in Bhavanbhai Premjibhai Vaghela (supra):

"11. The basic purpose of filing a First Information Report is to set the criminal law into motion. A First Information Report is the initial step in a criminal case recorded by the police and contains the basic knowledge of the crime committed, place of commission, time of commission, who was the victim, etc. The term "First Information Report" has been explained in the Code of Criminal Procedure, 1973 by virtue of Section 154, which lays down that:

"Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

12. F.I.Rs. can be registered by a victim, a witness or someone else with the knowledge of the crime. The police can record three different kinds of statements. The first kind of statement is one which can be recorded as an F.I.R., the second kind of statement is one which can be recorded by the police during the investigation, and the third kind of statement is any kind of statement which would not fall under any of the two categories mentioned above. Evidence is the matter of testimony manifesting the fact on a particular precision or circumstances. The First Information Report is not by itself a substantial piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of Section 32 of the Evidence Act. It is an admitted fact that the original first informant because of the injuries caused by the applicants. The relative importance of a First Information Report is far greater than any other statement recorded by the police during the course of the investigation. It is the foremost information the police gets about the commission of an offence and which can be used to corroborate the story put-forward by the first informant under Section 157 of the Evidence Act or to contradict his version by facts under Section 145 of the Act in case he is summoned as a witness in the case by the Court. It may happen that the informant is the accused himself. In such cases, the First Information Report lodged byjhim cannot be used as an evidence against him because it is embodied in the basic structure of our Constitution that a person cannot be compelled to be a witness against himself.

13. x x x

14. If the informant dies, the First Information Report can be, unquestionably, used as a substantive evidence. A prerequisite condition must be fulfilled before the F.I.R. is taken as a substantive piece of evidence i.e. the death of the informant must have nexus with the F.I.R. filed or somehow having some link with any evidence regarding the F.I.R. This is what has been explained by the Supreme Court in the case of Damodar Prasad v. State of U.P., [(1975) 3 SCC 851 : (1975) 3 SCC 851 : AIR 1975 SC 757].

15. There are plethora of decisions taking the view that an F.I.R. can be a dying declaration if the informant dies of his injuries after lodging the same. [See Munna Raja v. State of M.P. ((1976) 3 SCC 104 : (1976) 3 SCC 104 : AIR 1976 SC 2199)].

16. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the sgnature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.

17. It is absolutely incorrect on the part of the Trial Court to say that in the absence of the first informant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.

18. In the case of Harkirat Singh v. State of Punjab, [(1997) 11 SCC 215 : (1997) 11 SCC 215 : AIR 1997 SC 3231], the Supreme Court observed as under:

"In our considered view, the High Court was not justified in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162, Cr. P.C. Equally unjustified was the High Courts reliance upon the contents of the FIR lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the FIR could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evidence."

19. In the case of Hazarilal v. State (Delhi Administration), [(1980) 2 SCC 390 : (1980) 2 SCC 390 : AIR 1980 SC 873], the Supreme Court, in para 7, observed as under: The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of S. 32 (1) of the Indian Evidence Act or permitted to

be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri. H.S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of □proved□ in Section 3 of the Evidence Act which is, □a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists□. We need say no more on the submission of Shri. Marwah except that the definition of proved does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred."

20. I have to my benefit a very lucid and erudite judgment rendered by a learned Single Judge of the Madhya Pradesh High Court in the case of Umrao Singh v. State of M.P. [1961 Criminal L.J. 270]. In this case, the petitioners Umrao Singh and Kunwarlal were convicted of the offence punishable under Section 323 of the Penal Code and sentenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured Barelal who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. Barelal, however, died a natural death after six months of the occurrence, but before he could be examined as a witness. It was contended that the F.I.R. lodged by Barelal could not be considered by the Courts below and that the evidence of the solitary witness, Pannala was unreliable, as he was not mentioned in the list of witnesses filed by the prosecution. In this set of facts, the Court observed as under:

"4. It is true that the first information report is not by itself a substantive piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of S. 32 of the Evidence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.

5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as "Dhannalal", but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accepted. It is proved by Ram Ratan P.W. 6 that he recorded the report which was lodged by Barelal There is a distinction between factum and truth of a statement. It has been aptly pointed out by Lord Parker C.J. in R. v. Willis, [1960] 1 WLR 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay.

It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. According to Ram Ratan,

Barelal mentioned Pannalal's name to him. Applying the above dictum, Ramratan's evidence is inadmissible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal had mentioned the name of Pannalal to the witness."

35. The first informant, for whatever reason not being available or produced in the witness-box to prove the contents of the FIR, we are of opinion that the FIR cannot be looked into to corroborate or contradict the prosecution witnesses. The contents of the FIR are not proved. It is also held that the FIR is not one that has any nexus with the death of the informant and, therefore, not admissible as substantive evidence under Section 32 of the Evidence Act. However, the fact that the FIR was dictated by word of mouth by the informant to PW-2, who has transcribed it and that it bears the signatures of the first informant and the scribe, are well proved. The registration of the FIR at the police station on the date and the time specified is also proved. This Court must also say that the fact that the FIR is not proved for the informant's absence does not impair the prosecution in establishing its case at the trial on the basis of material collected during investigation and proved by leading cogent evidence."

18. We are fortified in the view that we have taken in Pradeep and followed here by the Supreme Court in **Lalita v. Vishwanath and others, 2025 SCC OnLine SC 370**, where it is observed:

"34. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the Evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.

35. It is absolutely incorrect on the part of the Trial Court and the High Court to say that in the absence of the first informant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.

36. In the case of Harkirat Singh v. State of Punjab [(1997) 11 SCC 215 : AIR 1997 SC 3231], this Court observed as under:'

"In our considered view, the High Court was not justified in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162, Cr. P.C. Equally unjustified was the High Courts reliance upon the

contents of the FIR lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the FIR could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evidence."

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"The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any en- quiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of S. 32 (1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri. H.S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of 'proved' in Section 3 of the Evidence Act which is, 'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists'. We need say no more on the submission of Shri. Marwah except that the definition of proved does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred."

38. We have to our benefit a very lucid and erudite judgment of the Madhya Pradesh High Court in the case of Umrao Singh v. State of M.P. [1961 Cri LJ 270]. In this case, the petitioners Umrao Singh and Kunwarlal were convicted of the offence punishable under Section 323 of the Penal Code and sentenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured Barelal who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. Barelal, however, died a natural death after six months of the occurrence, but before he could be examined as a witness. It was contended that the F.I.R. lodged by Bare-lal could not be considered by the Courts below and that the evidence of the solitary witness, Pannala was unreliable, as he was not mentioned in the list of witnesses filed by the prosecution. In this set of facts, the Court observed as under:-

"4. It is true that the first information report is not by itself a substantive piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of S. 32 of the Evidence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.

5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as 'Dhannalal', but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accepted. It is proved by Ram Ratan P.W. 6 that he recorded the report which was lodged by Barelal There is a distinction between factum and truth of a statement. It has been aptly pointed out by Lord Parker C.J. in R. v. Willis [1960] 1 WLR 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay.

It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. According to Ram Ratan, Barelal mentioned Pannalal's name to him. Applying the above dictum, Ramratan's evidence is inadmissible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal had mentioned the name of Pannalal to the witness."

19. In this case, as already remarked, the FIR was attempted to be proven by PW-1, Jalis Ahmad son of Riazuddin, who is admittedly the scribe of the FIR. This witness in his testimony has said that he had scribed the FIR on the dictation of Wahiuddin on 07.01.1990, reducing to writing whatever Wahiuddin dictated. After the dictation was over, the contents were read over to Wahiuddin and he signed the same in the presence of the scribe, PW-1. It is further said that the witness□s name appears on the written report as the scribe. This witness has clearly said that Wahiuddin, PW-1, was already dead, that is to say, by time the trial commenced. The written information was read over to the witness, who verified the fact that this is the same written report that he had transcribed. It was exhibited as Ex. Ka-1. Considering the fact that Wahiuddin was dead by time the case went to trial and the FIR does not relate to the cause of his death or as to any circumstances of the transaction which resulted in his death, to borrow the phraseology of Section 32(1), the contents of the FIR cannot be held proved by the scribe. The evidence of PW-1, the scribe of the FIR, would, therefore, be limited to proving the facts that the FIR was dictated by word of mouth by the informant to PW-1, who has transcribed it and that it bears signatures of the first informant and the scribe as well. The registration of the FIR at the police station on the date and time specified is also proved. But, mere non-proof of the FIR, as held by us in Pradeep, does not impair the prosecution from proving their case otherwise by producing evidence in the dock. Of course, the prosecution would have one disadvantage that the earliest account of the occurrence is not available, of which an FIR, duly proved in accordance with law, is a treasured and reliable repository unless impeached by very cogent evidence about its veracity.

The date, time, place and manner of occurrence

20. On the basis of evidence available on record, there is little quarrel about the date, time and place of occurrence. The date was 07.01.1990, the time 3.00 p.m. and the place of occurrence was the appellant Khalid's barn, located on his farmhouse. The farmhouses of the appellant Khalid and the deceased were located close-by in Village Nahli. We accept these facts to be established on the basis of the prosecution evidence. The principal issue involved in this case is about the manner of occurrence and who inflicted the fatal injury. The charge is upon the appellant that he shot the victim Sarafraz @ Pappu to death.

21. Now, in this regard, the most dependable testimony is that of Sartaj @ Babli son of the late Wahiuddin, a brother of the deceased and the informant's son. According to the prosecution, he is an eye-witness of the occurrence. According to this witness, in his examination-in-chief, he has said that on 07.01.1990, his brother Sarafraz @ Pappu was murdered. That day, he along with his father Wahiuddin and younger brother, the deceased Sarafraz and Iqbal, a cousin of the deceased were at the farmhouse of the deceased's family, situate at Village Nahli, P.S. Bhojpur. They had gone over there. As soon as they reached the farm, they received a message from Khalid through his servant Nannu, the other co-accused, that Khalid was calling Sarafraz over. The time was about quarter to three in the afternoon. The deceased Sarafraz started out in response to Khalid's call to meet him at the latter's farmhouse. The witness's and the deceased's father, Wahiuddin, and the witness himself along with Iqbal, trailed his brother to Khalid's farmhouse. As soon as the party arrived there, Khalid demanded of his brother, the deceased, lending of the latter's tractor-trolley, a proposal which the witness's brother promptly declined on the ground that their own chaff had to be carried to destination.

22. Upon the deceased telling Khalid that the tractor-trolley was not available, Khalid abused the deceased. Sarafraz, the deceased, told him to mind his language. At the drop of these words from Sarafraz, Khalid exhorted his servant Nannu to catch hold of the deceased, saying that he would not agree with ease. Nannu caught hold of Sarafraz from his backside and Khalid, picking up his gun, aimed it at Sarafraz. The witness's father, at that time, intervened and forced the barrel downwards, in consequence of which the projectiles from the gun, that was fired to shoot Sarafraz, hit Nannu in his lower limbs. At this stage, Khalid took out a pistol from the pocket of his pant and shot Sarafraz, hitting him in the head. In consequence of the gunshot wound, Sarafraz collapsed. Thereupon, Khalid and Nannu, collecting their weapons, escaped. The witness put his brother in the Jeep and rushed him to Pyare Lal Hospital, Meerut, where the doctors declared him dead.

23. There are some oddities about the prosecution case that appear from the testimony of PW-2, who is an eye-witness, and also PW-3. Whereas PW-2 is the brother of the deceased, PW-3 is the latter's cousin, that is to say, he is the deceased's father's sister's son. It would be important to note that Khalid too is a cousin of the deceased and he is the deceased's father's brother's son. The place of occurrence is not the deceased's farmhouse or any part of it, but the appellant's farmhouse. The oddity that creeps into the prosecution account is due to the fact that when Khalid called the deceased over through his servant Nannu, the deceased's father, PW-2 and PW-3, all trailed him to Khalid's farmhouse and right into the gher, where Khalid and the deceased met and had a verbal altercation to begin with. There is no evidence to the effect that the relationship between the deceased or his family and Khalid or his family was in any manner soured by any dispute or otherwise. To the contrary, the two not only had adjoining farmhouses, but it seems from the evidence that they were on reasonably amiable terms. If the terms between parties were good and it was

commonplace for Khalid to call Sarafraz and for him to go there, there was no reason why on occasion, when Sarafraz went over to Khalid at the latter's call, his father, brother and cousin trooped behind him. The relevant part of PW-2's cross-examination in this regard may be noticed the way it has been recorded by the learned Trial Judge. It reads:

"मैंने नन्नू से नहीं पूछा था कि क्यू बुलाया है। खालिद इससे पहले भी बुला लेता था और सरफराल चला जाता था। मुझे भी बुला लेता था ओर मैं भी चला जाता था। घटना वाले दिन खालिद के बुलाने पर सरफराज के साथ हम तीनों भी चले गये थे। इसकी कोई खास वजह नहीं है। हमसे सरफराज या अन्य किसी ने खालिद के यहां चलने को नहीं कहा था यू ही चल दिये थे।"

24. The alternative hypothesis why besides the deceased, PW-2, PW-3 and their late father were at the place of occurrence and how actually the deceased was shot and Nannu received fatal injuries, also figures from PW-2's cross-examination, where it is said:

"□..यह कहना गलत है कि घटना से पहले खालिद ने हमारी ट्राली माँगी थी और वह खराब कर दी थी। यह कहना गलत है कि हमने खालिद से अपनी ट्राली ठीक कराने को कहा हो और उसने कहा हो कि ऐसा तो हो ही जाता है। यह कहना गलत है कि इस बात पर मेरे वालिद बन्दूक लेकर और हम तमंचे लेकर खालिद के घेर पर पहुँचे ओर उस पर हमला किया। यह कहना भी गलत है कि हमारी चलाई गई गोली से नन्नू जख्मी हुआ और खालिद ने अपनी जान बचाने के लिए सरफराज को कौली भरी हो और हमारे द्वारा चलाई गई गोली सरफराज को लगी हो। यह कहना गलत है कि हमने पुलिस से मिलकर मुलजिमान के विरूद्ध झूठा मुदकमा कायम कराया हो।"

25. The suggestion is that there was a dispute that erupted between the families of the two brothers and their children, who are collaterals, over the use of the deceased's tractor-trolley. Tempers ran high about the issue of borrowing the tractor-trolley, in consequence of which the deceased's father entered Khalid's farmhouse with a gun and PW-2 and PW-3 with country-made pistols. They opened fire injuring Nannu. Khalid, in order to save his life, caught hold of Sarafraz, making a shield out of him. When the witnesses and their party opened fire, Sarafraz sustained a bullet injury, in consequence of which he died.

26. It must be noticed here that Nannu lodged a cross-version under Section 307 IPC with P.S. Bhojpur, that was registered as Crime No.2-A of 1990 on 10.02.1990 at 3.45 p.m. The accused in the said FIR are Wahiuddin, Sarafraz (the deceased), Sartaj (PW-2) and Iqbal (PW-3). In his statement under Section 313 Cr.P.C., Khalid took the following defence in answer to the question, if he had any other thing to say:

"जी, सरफराज वगैरह मेरे (घेर) पर हथियारों से लैस होकर आये थे, उनके द्वारा चलायी एक गोली नन्नू को लगी तथा दूसरी गोली चलाते समय धक्कम धक्का होने के कारण इन्ही की गोली सरफराज को लगी तथा उन लोगों ने इस अपराध से बचने के लिये ही हम पर झूठा मुकदमा कराया है।"

27. The appellant has also produced documents in defence and one of these is the FIR in the cross-case, giving rise to Crime No.2-A of 2005, under Section 307 IPC, which is on record as paper No. 63-Kha / 3. This FIR was lodged by Nannu, Khalid's servant. It says that on 07.01.1990, Khalid was taking out moonji (paddy crop), when at about 3.00 p.m., Khalid's uncle Wahiuddin, carrying a gun in his hand and his son Sarafraz @ Pappu and Sartaj @ Babli armed with country-made pistols, besides Iqbal son of Ibrahim also carrying a country-made pistol, entered their barn, saying it with an abuse that they had ruined their trolley and Khalid should get it repaired. In response, Khalid said that what is there to turn abusive about it, because in

farming work, such things happen. He also said that you also use our trolley and that he had not damaged the trolley. To this, Wahiuddin said with another abuse that Khalid had the dare to argue with him and saying so opened fire, aiming at Khalid. The informant (Nannu) came between the assailant and Khalid, on account of which he received gunshot injuries to his leg. Khalid, in order to save himself, caught hold of Sarafraz, making a shield out of him. Iqbal then opened fire at Khalid, which instead of hitting the desired target, struck Sarafraz.

28. This is the cross-version that the appellant has come up with. However, the Police did not accept the cross-version and put in a final report, which was pending until judgment was passed in this case. The Trial Judge discounted this defence on the ground that apart from a final report being put in by the Police, though not conclusive as proceedings were pending until then, the FIR, that as lodged by Nanny, was after a delay of a little over one month. It is also remarked that against the first informant of the cross-case, FIR had been registered on 08.01.1990, and, therefore, the cross-version was a defence set up to escape the consequences. It is also remarked by the learned Trial Judge that 14 years have rolled by, but the final report is still pending and the appellants have not secured any orders from the Court.

29. It is to be seen, therefore, if the prosecution, going by the manner of occurrence, have established their case beyond reasonable doubt. It is quite another matter that the cross-version that Khalid's servant and appellant No.2 (since deceased) came up with, did not convince the Police into filing a charge-sheet. Possibly, they could not have done that after putting in a charge-sheet on the first informant's version here. The oddities in the prosecution case noticed so far, based as it is on the eye-witness account of PW-2, do not end at Wahiuddin, Sartaj and Iqbal following Sarafraz when the latter went over to Khalid's barn upon his call. We may remark here that this conduct of trailing Sarafraz to Khalid's barn could have been understood if there were any evidence of a hostility between the two families. There is none.

30. The oddity about the prosecution story continues when one looks to the manner of assault propounded by the prosecution: firstly, it is an absolutely unbelievable story by the very nature of things that Khalid would have asked Nannu to catch hold of Sarafraz for the purpose of enabling him to shoot the victim. In the standing position, a man, who catches hold of the victim, who is shot from the opposite direction, always runs the risk of being shot himself. Therefore, the story is highly improbable; almost unbelievable. The next strong improbability about the manner of occurrence is that if Nannu had caught hold of Sarafraz from the backside to disable him as he was being shot by Khalid, the flying led from the shot would certainly have hit Nannu, even if the barrel was pushed down by Wahiuddin, but not without injuring Sarafraz in his legs or foot or the lower part of his body. Sarafraz has sustained no injury referable to the gunshot that hit Nannu, when Wahiuddin pushed the barrel of the gun down, according to the prosecution, as Khalid opened fire from his gun. It is almost fantastic to think that the led would have flown around Khalid's lower limbs, as if those were in bulletproof armour, and work their way around to hit Nannu in his left lower limb.

31. This is all the more so because Nannu's injury report, Ex. Ka-3, shows that what he received were pellet injuries and the weapon used was apparently a double barrel shotgun. This kind of a firearm, where there is a spread of pellets, could never have left Sarafraz unscathed in his lower limbs, if Nannu had received injuries in the manner described by the prosecution. Both the aforesaid infirmities casts a grave shadow of doubt about the veracity of the prosecution case.

32. Turning to the testimony of PW-3, the fabric of the prosecution story is no doubt consistent between both the eye-witnesses and the examination-in-chief for this reason is unremarkable. About this

rather strange behaviour of Wahiuddin following his son, when he went to Khalid and PW-2 and PW-3 following Wahiuddin, is testified to by PW-3 in the following words:

"हमारे पहुंचने के थोडी देर के बाद यानि 4-5 मिनट के बाद खालिद नौकर सरफराज को बुलाने आया था। उसने कहा कि खालिद बुला रहा था। सरफराज ने नही पूछा कि मुझे क्यों बुला रहा है। हम तीनों में से भी किसी ने नही पूछा कि खालिद क्यों बुला रहा हौ। उसके कहते ही सरफराज उसके साथ चल दिया सरफराज ने हम से किसी से नही कहा कि मेरे साथ चलो। चूकि वहीदुद्दीन चल दिये इसलिए हम भी चल दिये। सरफराज से हम 1-2 कदम के फासले पर चल दिये।"

33. There is, therefore, no earthly reason assigned by this witness as well as to why three men followed Sarafraz to Khalid's barn, located in his farmhouse when the latter called him over. As already remarked, in the testimony of PW-3 as well, there is no evidence about any such hostility between parties, which might have made Wahiuddin or the two witnesses fear for Sarafraz, if he went to Khalid alone. There is absolutely a meaningless explanation offered by PW-3 as well. All that he says is that because Wahiuddin went after Sarafraz, PW-2 and PW-3 followed suit. This explanation about the presence of the three men, besides Sarafraz at Khalid's barn, is indeed very odd; something that we have remarked about earlier in this judgment in greater detail. This behaviour of the three eye-witnesses, one of whom is dead, that is to say, the first informant Wahiuddin, by itself casts a grave cloud of doubt on the prosecution.

The prosecution case if proved beyond reasonable doubt

34. It is too well settled a proposition that the prosecution have to prove their case, whether it be direct or circumstantial evidence by the exacting criminal standard, that is to say, proof beyond reasonable doubt. Reference in this connection may be made to**: Vijayee Singh v. State of U.P., (1990) 3 SCC 190, Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422, Anand Ramachandra Chougule v. Sidarai Laxman Chougala, (2019) 8 SCC 50, Vasudev v. State of M.P., (2022) 4 SCC 735, and Pawan Kumar Sharma v. Manoj Kumar, 2026 SCC OnLine SC 934.**

35. Here, we have found the evidence produced by the prosecution despite the consistent account of witnesses to be inherently unreliable and untrustworthy for the reasons indicated above.

36. In our opinion, the appellant Khalid is entitled to the benefit of doubt.

37. In the result, this appeal succeeds and is **allowed**. The impugned and order dated 25.01.2005 passed by the Additional District and Sessions Judge, Fast Track Court No.2, Ghaziabad, is hereby set aside and the appellant acquitted of the charge. He is in jail. He shall be set at liberty forthwith unless wanted in any other case.

38. The appellant Khalid shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

39. Let this judgment and order be communicated to the Chief Judicial Magistrate, Ghaziabad and through him to the Jail Superintendent, wherever the appellant is serving, for prompt compliance.

40. Let the lower court records be returned.

(2026) 7 ILRA 112
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 441 of 2020

Bhanwar Singh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal challenging conviction and life imprisonment under section 302/34 IPC. The deceased Sukhpal @ Munna was found murdered after he failed to return home from his milk-delivery work, leading to investigation and subsequent prosecution of the appellants.

Headnotes

Criminal law-Indian Penal Code,1860-Section 302/34 –Criminal Procedure Code,1973-Section 374(2)-Indian Evidence Act,1872-Section 3, 60-Murder-Appreciation of evidence-Conviction based on hearsay, suspicion and alleged motive-Prosecution initially implicated different person in the FIR and upon subsequent CBCID investigation, proceeded against the appellants, thereby giving rise to two inconsistent prosecution versions-No eye witness to the occurrence-Evidence relied upon by the Trial court regarding the alleged illicit relations of the deceased was admittedly based upon village rumours and hearsay-Suspicion however grave cannot take the place of proof-Conviction in a criminal case must rest upon cogent, reliable and legally admissible evidence establishing guilt beyond reasonable doubt.(Para 64 to 80) (E-6)

Held

The court ruled that evidence founded merely upon rumours regarding the deceased's alleged illicit relationships could not constitute reliable proof of guilt. In the absence of clear, cogent and unimpeachable evidence establishing guilt beyond reasonable doubt, the appellants were entitled to the benefit of doubt. Conviction under sections 302/34 IPC set aside and appeals allowed.

Case law Cited

Gade Lakshmi Mangaraju alias Remesh Vs State of A.P : (2001) 6 SCC 205, Sujit Biswas Vs State of Assam: (2013) 12 SCC 406, State of Odisha Vs Banabihari Mohapatra & Anr. ; (2021) 15 SCC 268-referred to.

List of Acts

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

List of Keywords

Hearsay Evidence, Circumstantial Evidence, Suspicion, Village Rumours, Alleged Motive, Illicit Relationship, CBCID Re-investigation, Credibility of witnesses, Inconsistent Prosecution Story, Benefit of Doubt, Acquittal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 441 of 2020

Bhanwar Singh Vs. State of U.P.
From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad

Appearances for Parties

Advs. for Appellant(s):-
Ajay Dubey, Arvind Kumar Singh, Harish Kumar Shukla, Kuldeep Singh Chahar, Satya Dheer Singh Jadaun, Sushil Kumar Chaturvedi Vikrant Pandey
Advs. for Respondent(s):-
Devi Prasad Tripathi, G.A., Manish Kumar Pandey

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Both these criminal appeals bearing Criminal Appeal No. 441 of 2020 (Bhanwar Singh v. State of U.P.) and Criminal Appeal No. 392 of 2020 (Beniram and 2 others v. State of U.P.), have been preferred by the convicts, to wit, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, against the judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Additional Sessions Judge, Court No. 15, Agra, in Sessions Trial No. 1144 of 2007 (State v. Beniram and Others) arising out of Case Crime No. 178 of 1998, under Section 302/34 of I.P.C., Police Station Kagarol, District Agra.

2. By the impugned judgment and order, the learned Additional Sessions Judge, Court No. 15, Agra, has convicted the appellants for an offence punishable under Section 302/34 IPC and sentenced them to suffer imprisonment for life. Aggrieved by the judgment and order dated 13.01.2020, the appellants have preferred this appeal.

3. Brief facts of the case are that informant Harbhan Singh (PW-1), son of Bhagwan Singh, resident of Bisalpur, Police Station Kagarol, District Agra, has got scribed a written report dated 15.10.1998 (Exhibit Ka-1) from Kishan Singh Rawat Jat and lodged at Police Station Kagarol, District Agra. Informant Harbhan Singh (PW-1) has stated in his written report (Exhibit Ka-1) that yesterday i.e. 14.10.1998, my brother Sukhpal @ Munna had gone to Munna Khan's dairy at Gaharra Ki Pyau to deliver milk. Usually, my brother would return home by around 9:00 P.M., but when he did not return on time that night, I, along with my brother Jawahar Singh, uncle Mahaveer Singh, brother-in-law Jawahar Singh and cousin Udaiveer, went towards Gaharra ki Pyau to look for him. On the way, we met Rajveer Singh, son of Hardam Singh and Dharmpal Singh, son of Jagan Singh, who do milk business in my village. When asked about my brother, these two men stated that Munna was returning to the village with them. However, at the second kilometer mark, they met Shivraj Singh & Mangal Singh, sons of Veeri Singh and Harpal Singh, son of Laxman Singh, from the village, with whom Munna started talking and stayed with them. Since there was an old dispute with these three individuals, they became suspicious. Moving forward, they noticed noise and screaming about three or four fields ahead of the second kilometer mark. They ran toward the sound shouting, we are coming and just as they were about to reach, they heard three or four gunshots. Upon hearing their voices, Shivraj Singh, Mangal Singh and Harpal Singh fled, saying, now he is dead, his family members are coming. In the light of our torches, we saw and identified these three men fleeing. When we reached the spot, we found the body of my brother Sukhpal @ Munna in the field of Laccho, a resident of Beri Chahar. It was about 11:00 P.M. at night. There were several wounds from gunshots and knives on my brother's body. Upon seeing the

dead body, we wept and screamed gradually, people from the surrounding area gathered. Some local leaders prevented us from going to the police station, saying that they would call the officials to the spot, initiate action, and block the road. The leaders did exactly that as soon as morning arrived. The aforementioned Shivraj Singh, Mangal Singh and Harpal Singh brutally murdered my brother due to personal enmity.

4. On the basis of the written report (Exhibit Ka-1), a first information report was registered at Police Station Kagarol, District Agra, on 15.10.1998 at about 11:15 A.M., against the accused Shivraj Singh, Mangal Singh and Harpal Singh, bearing Case Crime No. 178 of 1998, under Section 302 IPC.

5. After registration of the first information report, the investigation was taken up by Investigating Officer Sanjeev Katiyar (PW-8). He visited the place of occurrence, inspected the dead body of the deceased Sukhpal @ Munna and prepared the panchayatnama (Exhibit Ka-4). He also prepared other necessary police papers, such as, the photolash (Exhibit Ka-5), the report to the C.M.O. (Exhibit Ka-6), the letter to the R.I. (Exhibit Ka-7), and the challanlash (Exhibit Ka-8). He also prepared the site plan (Exhibit Ka-9) and collected two empty .315 bore cartridges and one bullet found near the deceased□s body, for which he prepared a recovery memo (Exhibit Ka-10). The Investigating Officer further collected and took into custody a bloodstained chappal (slipper) found near the deceased□s body and prepared a recovery memo (Exhibit Ka-12).

6. The Investigating Officer (PW-8) recorded the statements of the witnesses under Section 161 Cr.P.C. and sent the dead body of the deceased Sukhpal @ Munna, for post-mortem examination. After completing all necessary formalities of the investigation, PW-8 submitted a charge-sheet (Exhibit Ka-13) against the accused persons, namely, Mangal Singh and Shivraj Singh, under Section 302 IPC. Since accused Harpal Singh could not be arrested, the investigation against him remained pending.

7. Meanwhile, an application (Exhibit Ka-2) dated 19.11.1998, was submitted by the residents of village Bisalpur, Police Station Kagarol, District Agra, before the Superintendent of Police, Agra. In the said application, it was submitted by the villagers that in the night of 14/15.10.1998, near the Naga Beri Chahar Canal, the murder of Sukhpal @ Munna, son of Bhagwan Singh, was committed by unknown persons. It was also submitted in the application that, due to prior enmity, the informant falsely implicated Shivraj Singh and Mangal Singh, sons of Veeri Singh and Harpal Singh, son of Lakshman Singh, in the present case. In their application, the villagers also submitted that the deceased Sukhpal @ Munna, was a man of loose character and that when he went to deliver milk, he used to halt at night in Nagla Mohana at the house of Badan Singh and Phool Singh. The villagers also stated that there were rumours about Sukhpal @ Munna that he had illicit relations with a woman and a girl of Nagla Mohana. They further stated that after the murder, dog squad reached the room of Phool Singh, from which, it is apparent that in the night of the incident, the deceased Sukhpal @ Munna was present in that room. On the basis of the alleged illicit relations of Sukhpal @ Munna with a woman and a girl of Nagla, the villagers expressed their suspicion upon Phool Singh and Badan Singh. They further stated that an impartial investigation must be done so that innocent persons are not implicated in this case and the real culprits are brought to justice.

8. On the basis of the aforesaid application submitted to the Superintendent of Police, District Agra, by the villagers of Bisalpur, the case was handed over to the CBCID (The Crime Branch-Criminal Investigation Department). The CBCID re-investigated the matter and, after completing its investigation, rejected the previous charge-sheet filed against Shivraj Singh and Mangal Singh. Thereafter, the CBCID filed charge-sheets against the appellants, namely, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, under Sections 302/34 IPC and Section 27 of the Arms Act, vide Charge Sheet Nos. 10, 10A & 10B. In this way, the CBCID, in its investigation, found no role or involvement of the accused named in the written report (Exhibit Ka-1).

9. Dr. A. K. Singh (PW-7), conducted the postmortem examination of the deceased Sukhpal @ Munna, and prepared the postmortem report (Exhibit Ka-2). According to the postmortem report, the following ante-mortem injuries were present on the dead body of deceased:

"(i) Firearm entry wound measuring 3 cm □ 3 cm. A gunshot wound of entry measuring 4 cm* 3.5 cm was present just above the right ear. The margins were inverted (turned inward).

(ii) A gunshot wound of entry measuring 4 cm □ 3.5 cm was present on the front side of the neck towards the right side. Blackening and tattooing were present around the wound.

(iii) Superficial burn injury measuring 20 cm □ 15 cm was present on the front of the chest.

(iv) An incised wound measuring 1.5 cm * 1 cm was present on the right side of the chest at the 4 o'clock position from the right nipple.

(v) Multiple incised wounds were present in an area of 28 cm * 20 cm, approximately 13 in number, each measuring about 2 cm □ 1.5 cm, present on the upper abdomen. The intestines were protruding out.

(vi) Four incised wounds were present over an area of 15 cm * 10 cm on the front aspect of the arm.

(vii) An abrasion measuring 10 cm □ 8 cm was present on the front of the left arm."

According to Dr. A. K. Singh (PW-7), the cause of death was shock and hemorrhage as a result of ante-mortem injuries.

10. On 01.12.2007, the Trial Court framed charges against the appellants, namely, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, under Sections 302/34 of IPC and Section 27 of Arms Act, on the basis of the charge-sheets submitted by the CBCID against them. The appellants denied the charges and claimed trial.

11. In support of its case, the prosecution initially examined twelve witnesses, namely, Harbhan Singh (PW-1), Rajendra Singh (PW-2), Lal Singh (PW-3), Mohan Singh (PW-4), Ajay Pal Singh (PW-5), Dharam Pal Singh (PW-6), Dr. A.K. Singh (PW-7), Sanjeev Katiyar (PW-8),

Ranjeet (PW-9), Suresh Chand (PW-10), Suresh Chandra (PW-11) and Gopal Singh (PW-12). Thereafter, the prosecution further examined Jawahar Singh son of Bhagwan Singh as PW-1, Raj Kunwar Singh as PW-2, Jawahar Singh son of Lakhan Singh as PW-3, Dharam Pal Singh as PW-4, and Mahaveer Singh as PW-5. Apart from the oral evidence, the prosecution also relied upon documentary evidence marked as Exhibits Ka-1 to Ka-14.

12. After the examination of all prosecution witnesses, the Trial Court proceeded to record the statements of the appellants under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., the appellants denied all allegations levelled against them by the prosecution and asserted that they have been falsely implicated in the case. They further contended that the prosecution had relied upon false and fabricated evidence and that they have wrongly been charge-sheeted. The appellants, however, did not adduce any evidence in their defence.

13. After hearing the arguments advanced by the prosecution as well as the defence, the Trial Court found the appellants, namely, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, guilty of the alleged offence, therefore, convicted and sentenced them vide judgment and order dated 13.01.2020, for the offence punishable under Section 302/34 I.P.C. to imprisonment for life, along with a fine of Rs. 20,000/- each. However, the Trial Court acquitted the appellants of the charge under Section 27 of the Arms Act in Sessions Trial No. 1144 of 2007 (arising out of Case Crime No. 178 of 1998). Aggrieved by the impugned judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Trial Court under Section 302/34 I.P.C. in the aforesaid Sessions Trial, the appellants have preferred these two criminal appeals before this Court.

14. We have heard the arguments advanced by Mr. Satya Dheer Singh, learned Counsel for the appellants in both the appeals, Mr. Arvind Kumar Singh, learned Amicus Curiae for the appellant in Criminal Appeal No. 441 of 2020 and Mr. Shashi Shekhar Tiwari and Mr. Anil Kumar Mishra, learned Additional Government Advocates on behalf of the State. We have also perused the entire evidence on record, as well as the impugned judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Trial Court.

15. Learned Counsel for the appellants have submitted that the impugned judgment and order dated 13.01.2020 passed by the Trial Court, is based on conjectures and surmises, which is contrary to the evidence available on record. The trial of three accused named in the written report (Exhibit Ka-1) has been separated as Sessions Trial No. 1144-A of 2007, and they were acquitted by the Trial Court, vide order dated 30.01.2014. Trial Court has wrongly decided the case of the appellants and convicted them to life imprisonment. It is also submitted on behalf of the appellants that they are elderly persons, suffering from multiple ailments due to their advanced age.

16. The alleged incident occurred in the night, and none of the witnesses has claimed to have seen the incident. However, the appellants have been implicated in the present case only on the basis of suspicion and doubt, which was also not proved against them. In the present case, two stories were run by the prosecution. First by the informant, who gave direct evidence against accused Shivraj, Mangal and Harpal, named in the written report (Exhibit Ka-1) but did not give any evidence against the appellants. Only on the basis of the statements of Raj Kunwar Singh (PW-2) and Jawahar Singh (PW-3), who were not the eyewitnesses of the alleged incident, and were

later produced as prosecution witnesses, the appellants have been convicted and sentenced to life imprisonment. It is also submitted on behalf of the appellants that there is no eyewitness of the incident, who could have seen commission of the crime by the appellants with their own eyes. Only on the grounds of rumour, suspicion and doubt, which have been expressed by the later prosecution witnesses i.e., Raj Kunwar Singh (PW-2) and Jawahar Singh (PW-3), the appellants have been wrongly convicted and sentenced by the Trial Court, against the settled principle of law of evidence.

17. It is a well-settled principle of the law of evidence that no person can be convicted of any offence merely on the basis of rumours prevailing in the village or on the basis of doubt and suspicion. In the present case, the Trial Court has misread and misappreciated the evidence on record and has erroneously relied upon material which, in law, was not admissible or could not have been safely relied upon against the appellants. On the basis of the above arguments, it is submitted by the learned Counsel for the appellants that the impugned judgment and order passed by the Trial Court is contrary to law and not supported by any reliable and cogent evidence, therefore, both the criminal appeals preferred by the appellants are liable to be allowed.

18. Per contra, the learned Additional Government Advocate for the State submitted that subsequent to the registration of the first information report on the basis of the written report (Exhibit Ka-1) lodged by the informant, Harbhan Singh (PW-1), the villagers of Bisalpur submitted an application to the Superintendent of Police, District Agra. In the said application, it was asserted that the persons named in the written report (Exhibit Ka-1) have been falsely implicated due to prior enmity, and a prayer was made for a fair and impartial investigation. It is further submitted that, pursuant to the said application submitted by the villagers, the investigation of the case was entrusted to the CBCID. Upon re-investigation, the CBCID concluded that the persons named in the written report (Exhibit Ka-1) have been falsely implicated and have no role in the commission of the alleged offence.

19. It is further submitted that the CBCID, during the course of its investigation, found evidence against the appellants, namely, Beniram, Bhanwar Singh, Kaptan Singh and Om Prakash, in connection with the alleged crime, hence, charge-sheeted them under Section 302/34 of IPC & Section 27 of Arms Act. The prosecution witnesses, as adduced by the prosecution, have fully supported the prosecution case, and there exists a strong motive against the appellants for the commission of the alleged crime. On the basis of the evidence subsequently adduced by the prosecution witnesses, i.e., Jawahar Singh (PW-1) son of Bhagwan Singh, Raj Kunwar Singh (PW-2), Jawahar Singh (PW-3) son of Lakhan Singh, Dharam Pal Singh (PW-4), and Mahaveer Singh (PW-5), the Trial Court found ample evidence in their depositions against the appellants. Accordingly, the Trial Court, in the correct perspective and in a legal manner, appreciated the evidence available on record, found the appellants guilty and convicted them for the alleged crime. There is no illegality or perversity in the impugned judgment and order passed by the learned Trial Court. Hence, both the criminal appeals, preferred by the appellants, are devoid of merit and are liable to be dismissed.

20. In light of the above submissions advanced by the learned Counsel for the appellants and the counter submissions advanced by the learned A.G.A. for the State, we have perused the

evidence of the prosecution witness, Harbhan Singh (PW-1). Upon perusal, we find that PW-1 has deposed before the Court in the same manner as stated by him in his written report (Exhibit Ka-1). In this way, the informant (PW-1) has stated that he, along with other prosecution witnesses, saw Shivraj Singh, Mangal Singh and Harpal Singh running away from the place of occurrence in the light of a torch. However, Rajendra Singh (PW-2) has narrated a different version of the incident.

21. From a perusal of the testimony of Rajendra Singh (PW-2), we find that PW-2 stated that he was acquainted with the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh. He further deposed that on the date of the incident, i.e., 14.10.1998 at about 11:00 PM, while he was returning from Kagarol after procuring diesel for his tractor, he saw all four appellants in the light of the tractor. Upon noticing him, the appellants turned back and moved down from the road. According to this witness, on the following morning, at about 7-7:30 A.M., Ajay Pal, son of Rameshwar Ram, came to the Devi Mandir near Bisalpur and informed that Sukhpal @ Munna, had been murdered and that his dead body was lying in the field of Laccho. PW-2 further stated that Sukhpal @ Munna, was a characterless man and he had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash. According to PW-2, the murder was committed by the appellants as an act of revenge for the alleged illicit relations. The witness also stated that he had given his statement before the police as well as before the CBCID.

22. Rajendra Singh (PW-2), in his cross-examination had stated that it is correct that Harbhan Singh (PW-1) son of Bhagwan Singh, resident of Bisalpur, had filed a written report (Exhibit Ka-1) regarding the murder of his brother. The written report (Exhibit Ka-1) was filed on 15.10.1998. PW-2 stated that it is correct that Harbhan Singh had filed the written report for this incident against accused, Shivraj Singh, Mangal Singh and Harpal Singh under Section 302 I.P.C. PW-2 further stated that it is also correct to say that the police had filed a charge-sheet against named accused, Shivraj Singh, Mangal Singh and Harpal Singh under Section 302 I.P.C. In connection of this case, a senior police officer recorded my statement after two-three months. I have given statement to the police that one kilometer before Nagla Mohana from the direction of the canal, near Lachho's field, all four appellants were coming towards the road and I identified them in the light of the tractor. After that CBCID officials arrived, they interrogated me and recorded my statement.

23. From perusal of the cross-examination of PW-2, we find that this witness in a clear cut words stated that he did not inform the police officers or any other officer or the Station In-charge of Kagarol, etc., in writing or orally on the second, third, fourth day, or within a month of the incident, that in the night of 14.10.1998, he saw appellants, namely, Om Prakash, Beniam, Bhanwar Singh and Kaptan Singh coming from the direction of the road near Laccho's field from the side of Beri Chahar in Nagla Mohana and identified them in the light. PW-2 has accepted in his cross-examination that he had not seen the alleged illicit relations of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh, and with Savitri, the daughter of Om Prakash.

24. From a perusal of the evidence of the informant, Harbhan Singh (PW-1), it is apparent that he deposed against the accused, Shivraj Singh, Mangal Singh, and Harpal Singh, named in the written report (Exhibit Ka-1), in a doubtful and uncertain manner. The CBCID, during its investigation, did not find any involvement of the said accused in the present case. Subsequently,

after re-investigation, the CBCID submitted charge-sheets against the appellants, namely, Bhanwar Singh, Beniram, Om Prakash, and Kaptan Singh. It is noteworthy that the informant, Harbhan Singh (PW-1), deposed against persons who are not parties to these criminal appeals, and therefore, his evidence holds no relevance in the present case. The deposition and testimony of Harbhan Singh (PW-1) are neither reliable nor trustworthy, being entirely doubtful and suspicious.

25. From a perusal of the evidence of Rajendra Singh (PW-2), it is evident that despite his claim of having seen and identified in the light the appellants, namely, Om Prakash, Beniram, Bhanwar Singh, and Kaptan Singh coming from the roadside, he failed to disclose this fact for a period of four months from the date of the incident, i.e., 14.10.1998. In his cross-examination, this witness also admitted that he had not seen the alleged illicit relations of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh, and with Savitri, the daughter of Om Prakash. In view of these admissions, it becomes amply clear that Rajendra Singh (PW-2) has deposed falsely against the appellants in his testimony before the Court. In reality, this witness did not witness the incident with his own eyes on 14.10.1998. From a further perusal of the evidence of PW-2, it is apparent that he is giving false evidence in the Court against the appellants only on the ground of doubt and suspicion, which was based on the so-called illicit relations of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh and with Savitri, daughter of Om Prakash.

26. In this way, we find that Rajendra Singh (PW-2) has given evidence in the Court against the appellants only on the ground of suspicion and so-called rumours which were prevalent in the village that the deceased Sukhpal @ Munna had illicit relationship with Chandravati, wife of Hari Singh, and with Savitri, daughter of Om Prakash. Thus, evidence and statements which are wholly based on doubt, suspicion, and rumours cannot be treated as evidence according to the settled principles of law. Hence, we find no relevancy or reliability in the evidence of the informant Harbhan Singh (PW-1) and Rajendra Singh (PW-2).

27. The prosecution produced Lal Singh as PW-3. From the perusal of the evidence of Lal Singh (PW-3), we find that this witness has not seen the commission of the crime by the appellants with his own eyes. This witness received information on 15.10.1998 at 7-8 A.M. that the dead body of Sukhpal @ Munna was lying in the field. This witness has only stated in his evidence that about one week prior to the incident, Phool Singh and Madan Singh had come to the house of Bhagwan Singh during the daytime and had said that he should advise his child not to halt at night in their houses. At that time, according to this witness, he was sitting at the chabutra of temple situated near the house of Bhagwan Singh, and other people were also sitting there. According to this witness, Bhagwan Singh stated that he would advise his child.

28. From a perusal of the evidence of PW-3, it is revealed that this witness and many other villagers of Bisalpur had written a typed application (Exhibit Ka-2) to the Superintendent of Police, Agra, stating therein that the alleged murder had been committed by unknown persons. Thus, from a perusal of the evidence of this witness, we find that this witness is not an eyewitness to the alleged incident. Whatever has been stated by this witness, in his evidence, is only hearsay evidence as received by him from other persons of the village.

29. This witness was also a party in writing the application (Exhibit Ka-2) to the Superintendent of Police, Agra, for fair and impartial investigation in the case because, according to this witness himself, the murder was committed by unknown persons. Hence, there is no relevancy in the evidence of this witness, and the prosecution finds no legal support from the evidence of Lal Singh (PW-3).

30. The prosecution adduced Mohan Singh as PW-4. From the perusal of the evidence of this witness, it is revealed that this witness is also not an eyewitness to the alleged incident. Information about the murder of Sukhpal @ Munna was received by this witness from other people. After receiving this information, he also reached the place of occurrence and saw the dead body of the deceased Sukhpal @ Munna. Apart from this, according to this witness, dog of the police after smelling the dead body of the deceased Sukhpal @ Munna, reached the house of Phool Singh situated in Nagla Mohana. This witness also stated that the deceased had illicit relations with the wife of Hari Singh, due to which the wife of the deceased Sukhpal @ Munna, being angry, had gone to her parental home. The wife of Hari Singh wanted to keep Sukhpal @ Munna with her.

31. We find that, according to Mohan Singh (PW-4), it was the common opinion of the crowd that the murder of the deceased Sukhpal @ Munna had been committed by appellants, namely, Om Prakash, Beniram, Kaptan Singh, and Bhanwar Singh due to the alleged illicit relationship, and after committing the murder, appellants had thrown the dead body of the deceased Sukhpal @ Munna. However, in his cross-examination, this witness has also accepted that Harbhan Singh (PW-1) had lodged a report against Shivraj Singh, Mangal Singh, and Harpal Singh, which was wrong.

32. Thus, from a perusal of the whole evidence of this witness, Mohan Singh (PW-4), it is amply clear that this witness is expressing doubt only on the basis that it is the common opinion of the crowd that the deceased Sukhpal @ Munna, was murdered by the appellants due to the illicit relations. Thus, it clearly emerges from the evidence of this witness that, on the ground of rumours prevalent in the village that the deceased had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash, for this reason the appellants committed murder of the deceased Sukhpal @ Munna. However, whatever this witness has deposed in his evidence, is only based on hearsay facts and rumours prevalent in the village Bisalpur and nearby villages, hence, there is no relevancy or reliability in the evidence of this witness (PW-4). The prosecution story finds no support against the appellants from the evidence of this witness. Thus, the evidence of this witness has no relevancy in respect of the prosecution case. The evidence of this witness is wholly unreliable and unworthy of credit.

33. From a perusal of the evidence of Ajay Pal Singh (PW-5), it is revealed that this witness has also not seen the commission of the alleged crime with his own eyes. Information about the murder of the deceased Sukhpal @ Munna was received by this witness from Virendra, son of Ram Gopal, who told this witness that Sukhpal @ Munna of your village had been murdered by shooting in the night by some unknown person, and his dead body was lying in the field of Laccho. In his cross-examination, this witness has accepted that till date he has no knowledge as to who committed the murder of Munna.

34. Dharam Pal Singh (PW-6) has not supported the prosecution story and was declared hostile. According to the evidence of this witness, on 14.10.1998, the deceased had gone to the dairy with milk, after which he did not return and the next day his dead body was found. I do not know who murdered deceased Sukhpal @ Munna. However, in a surprising manner during course of his cross-examination by the defence, this witness stated that 'I used to go with Rajveer to deliver milk to Agrasen Dairy and on that day as well, both of us were returning. We met the deceased Sukhpal @ Munna at Gaharra Ki Pyau. Three of us were going to our village Bisalpur on bicycles. When we were two km away from the village, accused, Shivraj, Mangal Singh, and Harpal met us on the way. They stopped Sukhpal @ Munna and started talking to him. Rajveer and I returned to the village. After this, I do not know what happened. No incident took place in my presence.'

35. Thus, we find that PW-6 has turned hostile towards the appellants. However, he has wrongly pointed fingers towards accused, Shivraj Singh, Mangal Singh, and Harpal Singh named in the written report (Exhibit Ka-1). In this way, we find that highly contradictory statements and evidence have been given by this witness, which we find to be wholly unreliable and without any relevancy in support of the prosecution case. Thus, we find that the evidence of this witness is also wholly unreliable.

36. Prosecution adduced Ranjeet Singh as PW-9. In his examination-in-chief, Ranjeet (PW-9) has stated that on 14/15.10.1998 in the night at about 10:00 P.M., I was going to plough the field. There, I saw some people standing in the shade of a tree. Among them were appellants, namely, Om Prakash, Beniram, Kaptan and Bhanwar Singh. A dead body was lying next to the burji. The body belonged to Munna. At that time, I did not realize whose body it was, I found out in the morning that it was Munna's body. By morning, this news had spread through my village and the surrounding area. People had also blocked the road at Laheri Ki Pyau. I also went near the body the next day. The deceased had been shot in the chest. Sniffer dogs of police also arrived. The dogs went up to the houses of the accused. This is all that I saw. Munna used to work in the milk business.

37. In his cross-examination PW-9 has stated that, 'Harbhan Singh has lodged the first information report of this case, who is the real brother of the deceased Sukhpal @ Munna. Harbhan Singh had lodged the report against accused, Shivraj, Mangal and Harpal at Police Station Kagarol. It is true that today accused Shivraj has come to Court with me. It is true that on the date of the incident i.e., 14.10.1998, I had met Munna at Gaharra Ki Pyau at the time of delivering the milk. After that, I had not met Munna. This thing is also true that I had also not seen the appellants with Munna. I had seen the appellants in the light of the tractor about 1/2 km from the field. I had not asked the appellants standing in the night why they were standing there. The appellants also had not talked to me.'

38. This witness has further stated in his cross-examination that on the next day, he came to know at 9:00 A.M. in the morning that this dead body was of Munna. It is true that I had not seen the dead body in the night. I had told this fact of seeing the dead body in the night in my examination-in-chief in the Court for the first time. It is true that I had not told the Darogaji that I had seen the dead body in the night. This thing is true that my statement was recorded by the

CBCID after three years. When I reached near the dead body of Munna, there were thousands of people. The brothers of the deceased, Harbhan Singh and Jawahar Singh were also present. I had not told the brothers of the deceased, Harbhan and Jawahar that I had seen the appellants in the night standing near the dead body. This thing is true that at that time there were police and higher officials of the police present. I do not know whether the police and higher officials of the police were inquiring with the people present there or not. I had also not told the police and other higher officers of the police that I had seen the accused persons near the dead body of the deceased in the night. I had never told the informant Harbhan Singh (PW-1) that I had seen the appellants standing near the dead body in the night. There were gunshot injuries on the dead body of the deceased. I had not seen any article near the dead body of the deceased. The dead body was covered with a white cloth. Sniffer dog arrived at the place of occurrence in the morning at 10-11 A.M. At that time, I was also present there. After smelling the dead body, the sniffer dog immediately proceeded towards Nagla Mohana. I have no knowledge of what report was prepared by the police team regarding the sniffer dog. There is no report on record indicating that the sniffer dog went towards the houses of the appellants at Nagla Mohana, therefore, I am unable to provide any reason for this.

39. In his cross-examination, PW-9 has further stated that I had told the Darogaji of the CBCID that I had seen the dead body from the road. If this fact has not been written in my statement, I cannot give any reason for the same. It is correct to say that I had stated before the Darogaji of the CBCID that on 15.10.1998 at about 9:00 A.M., I heard from villagers that Sukhpal @ Munna had been murdered during the night. After hearing this news, I went near the dead body. It is also correct that prior to receiving this information, I had no knowledge regarding the occurrence. It is further correct that the accused, Shivraj Singh, Mangal Singh, and Harpal Singh, who were named in the written report (Exhibit Ka-1), were taken to the police station after being arrested. I had given my statement to the Darogaji of the CBCID after three years of the incident. During this period of three years, I had not disclosed these facts elsewhere, for which I cannot assign any reason.

40. Thus, from a perusal of the entire evidence of prosecution witness Ranjeet (PW-9), it is revealed that although this witness, in his examination-in-chief, stated that on the date of the incident, i.e., 14/15.10.1998 at about 10:00 P.M., while he was going to plough his field, he saw the appellants standing in the shade of a tree, but he did not disclose this important fact either to the informant Harbhan Singh (PW-1) or to any police officer, including the SHO in-charge present at the place of the incident. This witness kept this fact to himself and concealed it, and did not inform any person, including the informant Harbhan Singh (PW-1), any police officer, or any superior police officer present at the place of occurrence, although he also reached the place where the dead body of the deceased Munna @ Sukhpal was lying. Despite these circumstances, the witness withheld this information and did not disclose it to any person, whether private or public, and stated it for the first time before the Court during the course of recording his evidence. This fact was admitted by the witness in his cross-examination.

41. From an overall analysis and perusal of the evidence of this witness, Ranjeet (PW-9), it is revealed that the prosecution produced and projected this witness to support its case, however, during his deposition before the Court, the witness narrated and fabricated a false story. From the

testimony of this witness, it is evident that his evidence inspires no confidence and lacks reliability and truthfulness, on the basis of which it could not be regarded as reliable and trustworthy.

42. The prosecution produced Gopal Singh as PW-12, who turned hostile and did not support the prosecution's case. This witness clearly stated that he had no knowledge as to when the murder of Sukhpal @ Munna was committed. He also expressed his ignorance regarding the prosecution case and its facts.

43. After examining twelve witnesses in support of its case, the prosecution also adduced Jawahar Singh, son of Bhagwan Singh, as PW-1. Jawahar Singh (PW-1), is the real brother of the deceased Sukhpal @ Munna. From a perusal of the evidence of this witness, it emerges that Ajay Pal son of Rameshwar, a resident of the same village, had told this witness that the dead body of Sukhpal @ Munna, was lying in Beri Gaon in the field of Laccho. This witness has also stated that, due to party bandi, his elder brother Harban Singh lodged a false report against accused, Shivraj Singh, Mangal Singh and Harpal Singh. In the evidence of this witness, it is also stated that at the place of occurrence, thousands of villagers had gathered and blocked the road. At about 11:00 A.M., sniffer dog of the police came there and after smelling the clothes of the deceased, went at Nagla Mohana up to the houses of appellants, namely, Beniram, Kaptan Singh, Om Prakash and Bhanwar Singh.

44. During cross-examination by the defence, Jawahar Singh (PW-1) stated that after reinvestigation of the case by the CBCID, appellants were charge-sheeted and made accused in the present case. This witness, in his cross-examination, also stated that it is true that the murder of his brother, Sukhpal @ Munna, was committed at another place and after the murder, the dead body was laid in the field of Laccho. He further stated that it is true to say that accused, Mangal Singh, Shivraj Singh and Harpal Singh have not commit the murder of his brother.

45. Thus, from a perusal of the evidence of Jawahar Singh (PW-1), it is found that this witness has only stated that sniffer dog, after smelling the dead body and the clothes of the deceased, went up to the appellants houses. This witness has not seen the commission of the offence by the appellants with his own eyes. The witness clearly stated that his elder brother, Harban Singh, due to party bandi, falsely lodged a report against accused, Shivraj Singh, Mangal Singh and Harpal Singh. We find no relevance, reliability, or truthfulness in the evidence of this witness. From a perusal of the testimony of Jawahar Singh (PW-1), it is evident that he has made self-contradictory statements in his deposition before the Court. The prosecution derives no support from the evidence of this witness. There is no reliability or creditworthiness in the evidence of Jawahar Singh (PW-1) on the basis of which the appellants can be held guilty for the alleged crime. Thus, the evidence of this witness is self-contradictory and wholly unreliable.

46. Among the second set of witnesses, Raj Kunwar Singh has been adduced by the prosecution in support of its case as PW-2. From a perusal of the evidence of Raj Kunwar Singh (PW-2), it is evident that this witness is the cousin brother of the deceased Sukhpal @ Munna. From a perusal of the evidence of this witness, it is also evident that on 14.10.1998, he had seen on the way accused, Shivraj, Mangal and Harpal, named in the written report (Exhibit Ka-1), interacting with Munna. According to this witness, when Harbhan Singh, Udaiveer, Mahaveer, and

Jawahar, who were searching for the deceased Sukhpal @ Munna, approached him, this witness had told them that he had seen accused, Shivraj Singh, Mangal Singh and Harpal Singh on the way interacting with the deceased Sukhpal @ Munna. Later, it came to be known that accused, Shivraj Singh, Mangal Singh and Harpal Singh had murdered Sukhpal @ Munna.

47. From a perusal of the cross-examination of Raj Kunwar Singh (PW-2), it is evident that he had not seen the accused, Shivraj Singh, Mangal Singh and Harpal Singh murdering the deceased Sukhpal @ Munna. He only heard about the incident. He stated that the murder of Sukhpal @ Munna, had been done by the accused persons present in the Court. I am stating this fact solely on the basis of hearsay facts.

48. From a perusal and analysis of the evidence of Raj Kunwar Singh (PW-2), it is evident that he did not witness the commission of the alleged crime by the accused, Shivraj Singh, Mangal Singh and Harpal Singh named in the written report (Exhibit Ka-1). He only saw them interacting with the deceased, Sukhpal @ Munna, on 14.10.1998. The statements of this witness are doubtful, suspicious, and appear to be fabricated and concocted. During cross-examination, he admitted that his evidence is based on hearsay, derived from what he heard from others.

49. Thus, from a perusal of the evidence of Raj Kunwar Singh (PW-2), it is clear that his testimony is based on hearsay facts and cannot be relied upon according to settled principles of the law of evidence. In this respect, the prosecution derives no support from the evidence of this hearsay witness. The testimony of this witness has not inspired any confidence. It is highly doubtful and suspicious and therefore, wholly unreliable.

50. From a perusal of the evidence of Jawahar Singh (PW-3), son of Lakhan Singh, as deposed by this witness in Court, we find that this witness, after the alleged incident, had seen the dead body of the deceased Sukhpal @ Munna, in the Laccho□s field of Beri Gaon and identified the dead body. According to this witness, after hearing about the incident, the family members of the deceased Sukhpal @ Munna had gone to the place of occurrence. According to this witness, on the date of the incident, the accused, Shivraj, Harpal and Mangal, named in the written report (Exhibit Ka-1), had not met him on the way. This witness became hostile and denied any involvement of the named accused in the present case.

51. However, during the course of his cross-examination by the defence, PW-3 stated that later he came to know that Munna had illicit relationship with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash. Due to the alleged illicit relations, the appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh have enmity with the deceased Munna. He further stated that, due to said enmity, the appellants had murdered the deceased Sukhpal @ Munna, the brother-in-law of this witness and had thrown the dead body in the field of Laccho.

52. Thus, from the evidence of this witness, it clearly emerges that he did not give any evidence against the accused, Harpal Singh, Mangal Singh and Shivraj Singh, named in the written report (Exhibit Ka-1). However, on the basis of hearsay i.e., rumors prevalent in the village, the witness expressed doubt and suspicion against the appellants, namely, Om Prakash, Beniram, Bhanwar Singh, and Kaptan Singh, alleging that they had killed the deceased Sukhpal @ Munna

because the deceased had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash, residents of Nagla Mohana. This witness, however, had not seen any direct facts or circumstances regarding such alleged relations and only expressed suspicion against the appellants based on hearsay facts.

53. This witness has also not seen the commission of the crime by the appellants with his own eyes and has deposed against them solely on the basis of hearsay facts. Thus, from a perusal of the evidence as discussed and analyzed above, it is clear that there is no relevance or reliability in the testimony of this witness, as it is based entirely on facts and statements heard and known by others. Accordingly, we find that the evidence of this witness is not reliable and cannot support the prosecution's case.

54. The prosecution adduced Dharam Pal Singh as PW-4. This witness is also the cousin of the deceased Sukhpal @ Munna. From a perusal of the evidence of this witness, it is clear that this witness stated that he had not seen accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), interacting with the deceased Sukhpal @ Munna. This witness has not supported the prosecution version and turned hostile.

55. During cross-examination by the defence, PW-4 stated that it is true that the deceased Sukhpal @ Munna, was a characterless man. He used to sleep in the village Nagla Mohana and he had illicit relations with Savitri, daughter of Om Prakash and Chandravati, wife of Hari Singh. The CBCID re-investigated the case and after completing the investigation, filed charge-sheets against the appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh and did not file charge-sheet against accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1). According to this witness, the sniffer dogs had went and stopped at the houses of the appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh. The murder of the deceased Sukhpal @ Munna had been committed by the appellants.

56. Thus, from a perusal of the evidence of PW-4, it is clear that he did not see the commission of the alleged crime with his own eyes. Instead, on the basis of the so-called, unproven, and unseen illicit relationship of deceased Sukhpal @ Munna with the aforementioned ladies, this witness expresses the opinion that the appellants may have committed the murder. From a perusal of the evidence of Dharam Pal Singh (PW-4), it is further evident that this witness is stating the involvement of the appellants in the present case solely on the basis of hearsay evidence i.e., information he received from other persons. Thus, we find no relevance in the evidence of this witness. His testimony lacks trustworthiness and credibility, rendering the entire evidence unreliable. Consequently, the prosecution derives no support from the evidence of this witness.

57. Among the second set of witnesses produced by the prosecution in support of its case, Mahaveer Singh has been adduced as PW-5. From the evidence of this witness, it has emerged that this witness has not stated against accused, Shivraj Singh, Mangal Singh

and Harpal Singh, named in the written report (Exhibit Ka-1), and has not supported the prosecution story. Hence, this witness was also declared hostile.

58. However, in his cross-examination, PW-5 also stated the same facts and story as narrated and stated by Dharam Pal Singh (PW-4), that the deceased Sukhpal @ Munna, was a characterless man, who had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash, residents of the village Nagla Mohana. According to this witness, sniffer dogs had gone up to the houses of the appellants, namely, Beniram, Kaptan Singh, Om Prakash and Bhanwar Singh, situated at Nagla Mohana. According to this witness also, there is party bandi in the village, due to which Harbhan Singh (PW-1) had lodged a false first information report against accused, Shivraj Singh, Mangal Singh and Harpal Singh. However, due to opposition of the villagers, the CBCID had re-investigated the case, and after completing the investigation, the CBCID had charge-sheeted the appellants.

59. According to PW-5, the murder of Sukhpal @ Munna had not been committed by accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), but had been committed by the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh. Thus, from a perusal of the evidence of this witness, it has emerged that this witness, on the basis of the so-called illicit relationship of the deceased Sukhpal @ Munna with the abovementioned ladies, and also on the ground that the sniffer dog had gone up to the houses of the appellants, expressed his view that the murder of the deceased Sukhpal @ Munna had been committed by the appellants. However, this witness has also not seen the alleged incident with his own eyes, as he was not present at the place of occurrence at the time of the incident.

60. From the evidence of this witness, it becomes clear that this witness is also deposing in the Court against the appellants only on the basis of hearsay facts and rumours prevalent in the village. Thus, we find no truth or creditworthiness in the evidence of this witness. The evidence of this witness is also found to be unreliable and not creditworthy.

61. In this way, from a perusal of the evidence of all the prosecution witnesses adduced in support of the prosecution case, it is clear that the prosecution projected two versions of the case. First, in the written report (Exhibit Ka-1), Shivraj Singh, Mangal Singh, and Harpal were named as accused persons. Subsequently, the villagers of Bisalpur submitted a joint application before the Superintendent of Police, Agra for fair and impartial investigation. Thereafter, the CBCID re-investigated the matter. However, earlier, a charge-sheet had been filed against the accused, Shivraj Singh and Mangal Singh by the Investigating Officer, and the investigation remained pending against Harpal Singh. Before the framing of charges by the Trial Court, the CBCID rejected the earlier charge-sheet filed against the accused, Shivraj Singh and Mangal Singh, named in the written report (Exhibit Ka-1), and filed a charge-sheet against the present appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh, for the commission of the alleged crime. The second prosecution story, as projected by the prosecution itself is that the appellants committed the murder of the deceased Sukhpal @ Munna due to the alleged

illicit relations of the deceased with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash.

62. From a perusal of the record of the Trial Court, it is revealed that after the submission of the charge-sheets by the CBCID against the appellants, namely, Beniram, Bhanwar Singh, Om Prakash and Kaptan Singh, when the evidence of Harbhan Singh (PW-1), Rajendra Singh (PW-2), Lal Singh (PW-3) and Mohan Singh (PW-4) had been recorded, then applications under Section 319 Cr.P.C. were filed against the accused, Shivraj Singh, Mangal Singh, and Harpal Singh, named in the written report (Exhibit Ka-1). These applications were filed on behalf of the informant Harbhan Singh (PW-1) and a Senior Prosecution Officer of the CBCID, praying for summoning the above persons as accused to face trial. Accused, Shivraj Singh, Mangal Singh, and Harpal Singh were summoned by the Trial Court to face trial under Section 302/34 IPC vide order dated 06.07.2009.

63. From the record, it is also apparent that the accused Shivraj Singh, Mangal Singh, and Harpal Singh filed Application No. 124-B for the separation of their trial. Thereafter, the then Presiding Officer, vide order dated 27.01.2014, separated their trial as Sessions Trial No. 1144-A of 2007 (State v. Shivraj Singh and others) under Section 302 of the IPC. After the trial, on 30.01.2014, the accused Shivraj Singh, Mangal Singh, and Harpal Singh, named in the written report (Exhibit Ka-1), were acquitted of the alleged charges. However, the learned Additional Sessions Judge, Court No. 15, Agra, who delivered the impugned judgment and order dated 13.01.2020, adversely commented on the separation of the trial on page 5, in the last lines of the impugned judgment and order dated 13.01.2020.

64. Thus, the prosecution itself projected two prosecution stories in this case. From the above facts, it is evident that the prosecution is not clear about its own case and appears to be confused between the two prosecution stories. Regarding the two sets of accused persons, the first set, as mentioned in the written report (Exhibit Ka-1), comprises Shivraj Singh, Mangal Singh and Harpal Singh, while the second set, according to the second prosecution story, comprises the appellants, namely, Beniram, Bhanwar Singh, Kaptan Singh and Om Prakash, who were charge-sheeted by the CBCID. Therefore, this is a very peculiar case presented by the prosecution, in which there are two prosecution stories against two sets of accused persons, one named in the written report (Exhibit Ka-1) and the second charge-sheeted by the CBCID. Thus, the prosecution itself is not clear and certain as to which prosecution story, and against which set of accused persons, it is adducing evidence.

65. From a perusal of the evidence of all the prosecution witnesses, it is evident that the informant Harbhan Singh (PW-1) is still giving so-called doubtful evidence against the accused Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), despite the fact that the CBCID, after reinvestigation of the case, rejected the first charge-sheet filed against the accused named in the written report (Exhibit Ka-1). Thereafter, the Presiding Officer (not the Presiding Officer who delivered the impugned

judgment dated 13.01.2020) of the Trial Court separated the trial of the accused persons named in the written report (Exhibit Ka-1) and acquitted them of the charges.

66. Rajendra Singh (PW-2), in opposition to and against the doubtful evidence of the informant Harbhan Singh (PW-1), has given evidence on a hearsay basis against the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh, based on so-called rumors prevalent in the village that the deceased Sukhpal @ Munna had illicit relations with Chandravati, wife of Hari Singh, and Savitri, daughter of Om Prakash. Similarly, Lal Singh (PW-3), indirectly, on the basis of rumors and suspicion regarding the illicit relationship of the deceased Sukhpal @ Munna with the aforementioned two ladies, expressed doubt and suspicion against the appellants, but also submitted that some unknown persons may have killed the deceased. This fact is also written in the application (Exhibit Ka-2), which was submitted to the Superintendent of Police, Agra, for a fair and impartial investigation. Mohan Singh (PW-4) also exonerated the accused Shivraj Singh, Harpal Singh, and Mangal Singh, named in the written report (Exhibit Ka-1), from the alleged crime, and expressed his suspicion against the appellants based on the opinion of the crowd gathered at the place of occurrence, that the appellants had committed the murder of the deceased Sukhpal @ Munna due to the alleged illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash.

67. Ajay Pal Singh (PW-5) has not supported the prosecution story against any set of accused persons in his evidence. Dharam Pal Singh (PW-6) has also not supported the prosecution case, has not given any evidence against the appellants, and was declared hostile, clearly stating that no incident had occurred in his presence. Prosecution witness Ranjeet (PW-9) has given suspicious and doubtful evidence against the appellants, based on rumours and so-called tracking of sniffer dog reaching the houses of the appellants. Gopal Singh (PW-12) has not supported the prosecution story and was declared hostile. This witness has also not implicated any set of accused persons in the commission of the alleged crime.

68. Among the second set of prosecution witnesses adduced in support of its case, Jawahar Singh (PW-1), son of Bhagwan Singh, has not given any evidence against the accused persons named in the written report (Exhibit Ka-1) and stated that the sniffer dogs, after smelling the clothes of the deceased, went up to the houses of the appellants, namely, Beniram, Kaptan Singh, Om Prakash and Bhanwar Singh, situated in the village Nagla Mohana. Raj Kunwar Singh (PW-2) has given evidence only on the basis of hearsay facts against the first set of accused Shivraj Singh, Harpal Singh and Mangal Singh, named in the written report (Exhibit Ka-1). Jawahar Singh (PW-3), son of Lakhan Singh, has clearly exonerated the first set of accused Harpal Singh, Mangal Singh and Shivraj Singh, named in the written report (Exhibit Ka-1), and only expressed doubt that, due to the so-called illicit relationship of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh, and Savitri, daughter of Om Prakash, the appellants had murdered the deceased Sukhpal @ Munna and threw the dead body in Laccho's field.

69. Dharam Pal Singh (PW-5) exonerated the first set of accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), and turned hostile. He stated that the sniffer dogs had stopped at the houses of the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh, and on that basis, stated that the appellants had murdered the deceased Sukhpal @ Munna. Mahaveer Singh (PW-6) similarly exonerated the accused named in the written report (Exhibit Ka-1) and turned hostile. He also, on the basis that the sniffer dog, after smelling the dead body and clothes of the deceased, reached the houses of the appellants, stated that the appellants had committed the murder of the deceased Sukhpal @ Munna.

70. Therefore, from the above analysis and discussion of all the evidence of the prosecution witnesses, it is evident that the prosecution itself is not clear as to against which set of accused persons it is adducing evidence, whether the evidence is against the persons named as accused in the written report (Exhibit Ka-1) or against the appellants. Some of the prosecution witnesses exonerated the accused persons named in the written report (Exhibit Ka-1) and, on the basis of suspicion, doubt, or hearsay, expressed their doubt against the present appellants. Conversely, some of the prosecution witnesses exonerated the appellants and implicated the persons named in the written report (Exhibit Ka-1) on the basis of their suspicions and doubt. Hence, the prosecution is found to be confused and has no clear idea about the accused persons against whom it is prosecuting the case and adducing evidence.

71. From the above discussion of the evidence of all the prosecution witnesses, it clearly emerges that those who implicate the appellants in the commission of the alleged crime, do so, on the basis of hearsay evidence and rumours prevalent in the village regarding the alleged illicit relations of the deceased Sukhpal @ Munna. They have also expressed suspicion against the appellants on the ground that the sniffer dogs had reached the appellants' houses. However, a perusal of the record, as well as the statements of the prosecution witnesses, reveals that there is no report or document on record to establish that the sniffer dogs had, in fact, reached the appellants houses. Thus, there is no report about the proceeding of sniffer dog.

72. In our opinion, there must be a reliable and complete record of the exact manner in which tracking was done in the Panchnama. The dog tracking evidence will have to be clear and complete, properly proved and supported by the evidence of the handler. There must be no discrepancy between the version as recorded in the Panchnama and the evidence of the handler as deposed before the Court. The handler's evidence will have to pass the test of cross-examination independently.

73. However, in the present case, there is no document or report regarding the movements of the sniffer dogs from the place where the dead body of the deceased Sukhpal @ Munna was found, nor is there any record to show that, after smelling the dead body or clothes of the deceased, the sniffer dog reached and stopped at the houses of the appellants. The handler of the sniffer dogs has also not been examined as a prosecution witness before the Court. In view of the above facts and circumstances of the case, the so-called evidence

of the sniffer dogs, as stated by the prosecution witnesses in their testimony, cannot be relied upon as evidence against the appellants for the commission of the alleged crime.

74. The Suprme Court in ***Gade Lakshmi Mangaraju alias Ramesh v. State of A.P.; (2001) 6 SCC 205*** has held:

"There are inherent frailties in the evidence based on sniffer or tracker dogs. The possibility of an error on the part of the dog or its master is the first among them. The possibility of misunderstanding between the dog and its master is close to its heels. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Police dogs engage in these actions by virtue of instincts and also by the training imparted to them. Criminal courts need not bother much about such evidence based on sniffer dogs, although the investigating agency can employ such sniffer dogs for helping the investigation to track down criminals. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them."

75. However, upon examining the findings and reasoning recorded by the Trial Court while convicting the appellants, we find that, only upon the evidence of prosecution witnesses Rajendra Singh (PW-2), Lal Singh (PW-3), Mohan Singh (PW-4) and Ranjeet Singh (PW-9), the Trial Court held the appellants guilty and convicted them for the alleged murder of the deceased Sukhpal @ Munna, solely on the basis of hearsay evidence. The said prosecution witnesses have stated that the deceased had illicit relations with Chandrawati, wife of Hari Singh and Savitri, daughter of Om Prakash. However, these prosecution witnesses themselves admitted in their testimonies that they had merely heard, as part of village rumours, that the deceased Sukhpal @ Munna, had such illicit relations. This clearly indicates that the Trial Court relied upon hearsay evidence, which was not proved by the prosecution beyond reasonable doubt through cogent and reliable evidence, to conclude that the deceased had illicit relations with the aforementioned ladies and that, on account of which, the appellants committed his murder.

76. Thus, only on the ground of hearsay evidence, rumours prevalent in the village, doubt and suspicion, the Trial Court by misreading and misappreciating the prosecution evidence, wrongly held the appellants guilty for the commission of the alleged crime, which is, in our considered view, against the settled principles of law that no accused person can be convicted and held guilty only on the basis of hearsay evidence, which is based on suspicion and rumor. For the conviction of any person in any crime, strong and irrefutable evidence beyond reasonable doubt must be adduced by the prosecution. Therefore, we are totally in disagreement with the findings and reasoning given by the Trial Court. It appears that the Trial Court, only on the ground of suspicion and doubt as expressed by the prosecution witnesses about the illicit relations of the deceased Sukhpal @ Munna, held the appellants guilty and convicted them for the alleged crime.

77. The Supreme Court in ***Sujit Biswas v. State of Assam; (2013) 12 SCC 406*** has held in para-13 as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

78. The Supreme Court recently in ***State of Odisha v. Banabihari Mohapatra And Another; (2021) 15 SCC 268*** has held:

"It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

79. Thus, in light of the above discussions and analysis, we find that the impugned judgment and order dated 13.01.2020 passed by the learned Additional Sessions Judge, Court No. 15, Agra, is not sustainable in the eyes of law and is liable to be set aside.

80. Accordingly, the impugned judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Additional Sessions Judge, Court No. 15, Agra, in Sessions Trial No. 1144 of 2007, State v. Beni Ram and Others (arising out of Case Crime No. 178 of 1998), under Section 302/34 IPC, Police Station Kagarol, District Agra, is hereby **set aside**. Consequently, both the criminal appeals are allowed.

81. The appellants, namely, **Bhanwar Singh, Beniram, Kaptan Singh** and **Om Prakash,** are on bail. Their bail bonds stand cancelled and sureties discharged.

82. Let a copy of this judgment be transmitted to the learned Trial Court along with the lower Court records forthwith for necessary compliance.

(2026) 7 ILRA 132
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Appeal No. 671 of 2016

Karuwa @ Kali Charan **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to conviction for the offence punishable under S. 302 IPC on the basis of circumstantial evidence and an alleged last-seen circumstance, where the first informant's evidence was based on suspicion, the alleged last-seen witness turned hostile and the trial court chiefly relied upon a confessional statement made before the police. (Paras 14-18)

Headnotes

Criminal law - Indian Penal Code, 1860 - S. 302 - Murder - Circumstantial evidence - Last-seen evidence - Suspicion - First informant making contradictory statements and naming persons on suspicion - Alleged last-seen witness turning hostile and denying having seen the accused with the deceased - Other prosecution witnesses being formal in nature - Conviction cannot be sustained merely on suspicion or unsupported circumstantial evidence - Suspicion cannot take the place of proof - Conviction set aside. (Paras 14-18)

Evidence law - Indian Evidence Act, 1872 - S. 25 - Confessional statement - Confessional statement made before police - Trial court chiefly relying upon such confessional statement for conviction - Confessional statements could not be taken into account under S. 25 of the Evidence Act - Conviction based upon such statement unsustainable. (Para 17)

Criminal procedure - Code of Criminal Procedure, 1973 - S. 313 - Statement of accused - Denial of commission of crime - Consideration of prosecution evidence - Where prosecution evidence failed to establish guilt and alleged incriminating circumstance was denied by the material witness, conviction liable to be set aside. (Paras 12, 17-19)

Held: Suspicion cannot take the place of proof - the First Information Report mentioned three accused persons only on the basis of suspicion and the first informant subsequently mentioned another person and gave various contradictory statements regarding the search for the deceased and the circumstances in which the dead body was found - the evidence of the first informant was on the basis of his personal knowledge and on the basis of suspicion and all that he had stated on the basis of suspicion could not be taken into account for the purposes of the decision of the case - the witness who, as per the police, had stated that the appellant was last seen with the deceased had turned hostile and in his cross-examination continued to state that he had never ever seen the accused along with the deceased - the other prosecution witnesses were all formal in nature and their statements were of no consequence - the trial court had chiefly convicted the appellant on the basis of some confessional statement of the appellant, little realizing that confessional statements could not be taken into account under S. 25 of the Evidence Act - there being no tangible or intangible evidence sufficient to establish the guilt of the appellant, the appeal deserved to be allowed and the judgment and order of the trial court dated 14.01.2016 was liable to be set aside - accordingly, the appeal was allowed, the judgment and order of the trial court was set aside and the appellant was directed to be released forthwith if he was not required in any other case. (Paras 14-20) (E-7)

Case Law Cited

No case law cited.

List of Acts

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

List of Keywords

murder; circumstantial evidence; suspicion; proof; First Information Report; contradictory statements; hostile witness; last seen; confessional statement; police; strangulation; conviction; acquittal; S. 302 I.P.C.; S. 25 of the Evidence Act; S. 313 Cr.P.C.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order dated 14.01.2016 passed by the Additional Sessions Judge, Court No.3, Hathras in Session Trial No.247 of 2012 arising out of Case Crime No.182 of 2012, under S. 302 I.P.C., Police Station Sasni, District Hathras, whereby the appellant was convicted for the offence charged.

Appearances for Parties

Advs. for the Appellant: Shri Dharmendra Kumar Chaubey, learned counsel for the appellant; Shri Shad Khan, learned Counsel appointed by the High Court Legal Services Authority; Shri Ashish Pandey, learned counsel appointed to argue the case on behalf of the High Court Legal Services Authority.

Advs. for the Respondents: Shri Amit Sinha, learned A.G.A. for the State.

(Delivered By Hon'ble Siddhartha Varma, J.
&
Delivered by Hon'ble Achal Sachdev, J.)

1. Heard Shri Shad Khan, learned Counsel, who had been appointed by the High Court Legal Services Authority to assist the Court, Shri Dharmendra Kumar Chaubey, learned counsel for the appellant and Shri Ashish Pandey, learned counsel who had also been appointed to argue the case on behalf of the High Court Legal Services Authority and Shri Amit Sinha, learned A.G.A. for the State.

2. This Criminal Appeal has been filed by the accused appellant namely **Karuwa Alias Kali Charan** against the judgment and order dated 14.01.2016 passed by the Additional Sessions Judge, Court No.3, Hathras in Session Trial No.247 of 2012 arising out of Case Crime No.182 of 2012 (State vs. Karuwa Alias Kali Charan), under Section 302 of I.P.C., Police Station - Sasni, District - Hathras.

3. Upon the disappearance of the son of the first informant on 25.05.2012, an FIR was lodged by the P.W.-1 i.e. father of the deceased namely Bankelal. He had stated in the FIR that Deepu his 22 years old son had gone for some work in the sabzi mandi of the district of Mahamaya Nagar (Hathras) and when he did not come back in the evening his other son Raju was sent to search him out and at 05:30 hrs. in the closed factory of one Chandra Mohan Agarwal, the son found a crowd and upon an enquiry, it was found that the son of the informant was lying dead with a piece of cloth (angocha) around his neck. In the FIR, the first informant had suspected Bhola S/o

Doomar Singh, Adal Singh S/o Harnam Singh and Ajab Singh S/o Biri Singh to have caused the murder.

4. Upon lodging of the FIR, the investigation commenced and the police recovered a piece of cloth (angocha) and its recovery memo was exhibited as Ext. Ka-4. The plain soil and the soil having bloodstains was also recovered and recovery memo was prepared as Ext. Ka-5. The panchayatnama was conducted on 25.05.2012 itself and thereafter the body of the deceased was sent for post-mortem on 26.05.2012 and the cause of death was given out as asphyxia as a result of strangulation.

5. Upon the completion of the investigation, on the statement given by one Rajveer, the appellant was made an accused. The three named accused persons were exonerated by the police. On 06.11.2012 the appellant was charged by the court under Section 302 I.P.C. During the trial as many as six prosecution witnesses appeared in the witness-box.

6. P.W.-1, Bankelal, who is the father of the deceased and the first informant of the case, has stated that on 25.05.2012, he had gone out for his job in the mandi samiti at around 04:00 a.m. and he had come to know that his son had left for the work in *sabzi mandi* on the same day at around 09:00 a.m., however, when news reached him that the son had not returned then he alongwith his elder son had gone searching for him and had found the dead-body of his younger son Deepu in the closed factory of one Chandra Mohan Agarwal. He had also found that he had been strangulated to death by a piece of cloth *(angocha)*. He had in his examination-in-chief stated that he had suspected four persons Bhola, Adal, Ajab Singh and Raju as having involvement in the case and they had murdered his son. In the cross-examination, he stated somewhat the same facts as were stated in the examination-in-chief.

7. P.W.-2 Rajveer had been made to appear, as the police had stated that on his statement the appellant was made an accused. He had turned hostile. In the cross-examination, he continued to state what he had stated in his examination-in-chief.

8. P.W.-3 Head Constable, Amar Singh had prepared the chik of the case.

9. P.W.-4 was Dr. R.P. Singh, who had conducted post-mortem of the body of the deceased. He had categorically stated that it was strangulation which had resulted in the death of the deceased.

10. P.W.-5 Sub-Inspector Ramdas was the person, who had got the *panchayatnama* conducted and he had also made the recovery memo of the recovered article and had got the plain soil and the soil having bloodstains and had prepared recovery memo as Ext. Ka-5.

11. P.W.-6 Sub-Inspector Jitendra Kumar Singh was the Investigating Officer and he had stated the manner in which he conducted the investigation and had stated the manner in which he had prepared the site plan, etc.

12. Upon the completion of the evidence of the six prosecution witnesses, the statement of the accused was recorded under Section 313 Cr.P.C. He denied having committed the crime.

13. Upon the completion of the trial, when the Additional Sessions Judge, Court No.3, Hathras on 14.01.2016 had convicted the appellant for the offence he was charged for, the instant appeal has been filed.

14. Learned counsel for the appellant states that the P.W.-1 had been inconsistent in his statement which he had given in the court vis-a-vis the FIR which he had got reported on 25.05.2012. In the court he had stated that he alongwith his son had gone to search out for the deceased Deepu, but in the FIR it was stated that only his elder son Raju had gone out to search for the deceased Deepu. In the FIR, there was no mention of Rajeev but in the court, he had stated that he had always doubted that Rajeev was involved in the case as the deceased alongwith Bhola, Adal and Ajab Singh used to collect at the shop of Rajeev and therefore, he had stated that he had got the FIR lodged on the basis of suspicion. Learned counsel for the appellant states that suspicion cannot take the place of proof and therefore, when the entire case was based on suspicion and no evidence whatsoever, tangible or intangible was produced vis-a vis the appellant Karuwa Alias Kali Charan then the conviction was wrongly done and the same be set aside.

15. He further states that during investigation, the police i.e. investigating agency had somehow recorded that Rajveer had stated that accused-appellant Karuwa Alias Kali Charan had been last seen with the deceased but in the court Rajveer had categorically stated that he had never seen on 25.05.2012 the accused-appellant with the deceased. Learned counsel for the appellant states that even though P.W.-2 was declared hostile, his evidence which is there on record, substantially would go to show that the appellant was wrongly implicated in the case. Learned counsel for the appellant states that for the court, which had convicted the accused only on the basis of a confessional statement made before the police had committed a grave error and, therefore, the appellant be acquitted.

16. Shri Amit Sinha, the learned AGA for the State opposed the appeal and supported the judgment of the trial court. He submitted that the conviction made by the court was just and proper and therefore, no interference be made. He submitted that the circumstantial evidence was such, which definitely would lead to only one conclusion and that was that the appellant and the appellant alone had committed the crime.

17. Having heard Shri Shad Khan, Shri Dharmendra Kumar Chaubey, learned counsel for the appellant and Shri Ashish Pandey, learned counsel, who had been appointed by the High Court Legal Services Authority and Shri Amit Sinha, learned A.G.A. for the State, we are of the view that when the First Information Report was lodged, it only had mentioned about three accused persons namely; Bhola, Adal and Ajab Singh and that was also on the basis of only suspicion. The P.W.-1, who had lodged the First Information Report, had subsequently in his statement before the court mentioned the name of one Rajeev (Raju) at whose shop the deceased and the three accused persons used to quite often collect. We also find that the P.W.-1 had given various contradictory statements inasmuch as in the First Information Report, he had stated that he had only sent his son to search out for the deceased Deepu but in the court, he had stated that he himself had also gone. The first informant also was in a confused state of mind, as he had in the court to begin stated that the deceased had disappeared on 25.05.2012 but his dead body was found on next day i.e. on 26.05.2012 but subsequently he corrected himself and, therefore, we find that all that has been stated by the P.W.-1 was on the basis of his personal knowledge and on the basis of suspicion. Definitely suspicion cannot take the place of proof and therefore, all that the P.W.-1 had stated on the basis of suspicion could not be taken into account at all for the purposes of the decision of the case. We also find that the P.W.-2, who as per the police had stated that he had testified before the police that the appellant was last seen with the deceased in his shop had turned hostile. Not only had he turned hostile but in his cross examination he continued to stick to his guns and had stated that he had never ever seen the accused along with the deceased. The other prosecution witnesses, who had testified before the court, were all formal in nature and their statements were of no consequence. So far as the conviction part of the case was concerned, we are pained to note that the trial court had chiefly convicted the appellant on the basis of some confessional statement of the appellant, little realizing that confessional statements could not be taken into account under Section 25 of the Evidence Act.

18. For all the reasons which have been stated above, we are thus of the view that the appeal deserves to be allowed and the judgment and order of the trial court dated 14.01.2016 is liable to be set aside.

19. Accordingly, the appeal is **allowed** and the judgment and order of the trial court dated 14.01.2016 is set aside.

20. The appellant be released forthwith, if he is not required in any other case.

21. We would like to add a word of appreciation for Shri Dharmendra Kumar Chaubey, learned counsel for the appellant, Shri Ashish Pandey, and Shri Shad Khan, for their assistance to the Court.

(2026) 7 ILRA 137
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1002 of 1988

Udai Kumar **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The prosecution case arose from the murder of Khrishna Aadhar @ Chhote, who was found dead at his tube-well on 15.10.1982 after having gone there to sleep the previous night. The FIR was initially lodged against unknown assailants; accused implicated only after four months on the basis of suspicion.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 147, 148, 149, 302-Criminal Procedure Code,1973-Section 374(2)-Murder- Circumstantial evidence-FIR lodged against unknown persons-Delayed and unreliable witnesses-Prosecution witnesses introduced after 3-4 months, with material improvements and contradictions-No eyewitness, no last seen evidence, no recovery connecting accused with crime-Conviction founded merely on enmity, suspicion and village rivalry-Suspicion, however strong, cannot substitute legal proof-Conviction unsustainable-Appeal Allowed.(Para 38 to 51) (E-6)

Held

The court held that the prosecution failed to prove the accused's participation in the offence beyond reasonable doubt. In the absence of reliable direct or circumstantial evidence, the conviction founded on enmity, village rivalry and mere suspicion could not be sustained; Accordingly conviction and sentence were set aside and the accused was acquitted.

Case law Cited

Sushil & Ors Vs State of U.P., 1995 SCC (Cri.) 388, State of Punjab Vs Sucha Singh, (2003) 3 SCC 153, Sujit Biswas Vs State of Assam, (2013) 12 SCC 406, Babu Vs State of Kerala, (2010) 9 SCC 189, State of Odisha Vs Banabihari Mohapatra & Anr, Special Leave Petition (Criminal) No 1156 of 2021 : decided on 12.02.2021-referred to.

List of Acts

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

List of Keywords

Murder, Circumstantial evidence, Unreliable prosecution evidence-Delayed FIR, Enmity and Village rivalry-Suspicion and Conjectures, Burden of proof, Conviction, Acquittal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1002 of 1988

Udai Kumar Vs. State.
From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-
A.rathore, P.k. singh, Prashant Kumar Singh
Adv. for Respondent(s):-
A.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been filed against the judgment and order dated 28.04.1988 passed by learned IIIrd Additional Sessions Judge, Kanpur Dehat in Session Trial No. 24 of 1985, arising out of Case Crime No. 183 of 1982, under Sections 120B, 147, 302/149 IPC, Police Station Mangalpur, District Kanpur Dehat. By the impugned order, learned Additional Sessions Judge has convicted and sentenced the accused-appellants Udai Kumar, Dharmraj and Basant Singh to undergo one year□s rigorous imprisonment under Section 147 IPC and to undergo life imprisonment under Sections 302 read with Section 149 IPC. The accused Raja Ram also has been convicted to undergo eighteen months□'rigorous imprisonment under Section 148 IPC and to undergo life imprisonment under Section 302 read with Section 149 IPC. All the sentences awarded to the accused-appellants to run concurrently.

2. In nutshell, the prosecution case is that on 15.10.1982, the informant got a first information report lodged against the unknown assailants alleging inter alia that his tube-well and flour mill were situated in the north-west direction of village Mangalpur and his son Krishna Aadhar @ Chhote aged about 25 years used to manage affairs of the aforesaid tube-well and flour mill. Last night too, as usual, after having dinner at around 09:30 PM, his son Krishna Aadhar @ Chhote went to sleep on the tube-well. Today he did not return home till around 08:00 A.M. and he did not pay much attention to this because sometimes he used to return home later due to being busy with agricultural work. Today at around 08:15 A.M., Shri Ramautar Pandey of his village came and informed him that the body of his son Krishna Aadhar @ Chhhote was lying on the tube-well. Someone had killed him. He went to the tubewell and saw his son lying dead on a cot in a pool of blood.

3. On 15.10.1982, informant Ramadhar Tyagi (PW-6) lodged the first information report, Ext. K-1. After a lapse of four months, on 15.02.1983, the informant again submitted a written report, Ext. K-2, at Police Station Mangalpur, District Kanpur Dehat. In the second written report, Ext.K-2 dated 15.02.1983, informant Ramadhar Tyagi (PW-6) has stated that today he had gone at the police station at 11 AM and gave information to the Office Incharge, Head Constable and one Inspector Mishra Ji, to this effect that murderer, Udai Krishna Chaubey, of my son is immediately coming to caste his vote. Please you arrest him. They assured that they will catch the murderer. Thereafter, the murderer came at about 02:00 P.M. for casting vote. Then he caught hold of him and raised an alarm. At the same time, Udai Pratap Singh and Vir Pratap Singh and one person named Bhadauria, who is accomplice of those persons and also working as servant at Etawah, get the murderer freed from his grip. This happened before 50 persons. On the day of murder, at his instance, Udai Shankar was arrested and kept in custody. Today, again in broad daylight, due to the

carelessness of the police and without any assistance to me, he escaped. He think it proper that this information be written.

4. On written report, Ext.K-1, as given by Ramadhar Tyagi (PW-6) at police station Mangalpur, a case was registered under Section 302 IPC against unknown person at Case Crime No. 183 of 1982.

5. Investigating Officer started investigation of the case. He came to village Mangalpur and inspected the place of occurrence. Investigating Officer prepared site plan and has also taken bloodstained soil and plain soil from the ground below the cot, upon which the deceased was sleeping at the time of occurrence and prepared recovery memo as Ext.K-9. Apart from this, Investigating Officer also collected bloodstained soil and plain soil from the east direction of the cot, upon which dead-body of the deceased was lying and prepared fard baramadgi/recovery memo, Ext.K-10. Apart from this, Investigating Officer has also taken and collected part of the bloodstained kathri (mattress) of blue colour, half part of the quilt that covered with bloodstains, bloodstained rope of the cot, bloodstained maroon-coloured checked loincloth (tahmad), yellow colour pillow of khadi having flower of yellow and red colour with bloodstains, bloodstained red colour of bellbottom paint, light blue full-sleeve shirt with a printed (chhitdar) pattern and bloodstained shoes plastic delite 7 number. Investigating Officer prepared fard baramadgi/recovery memo as Ext.K-12. He also prepared Ext.K-3, which is fard supurdaginama of watch, torch and transistor taken from the place of occurrence and the same were handed over to the informant Ramadhar Tyagi (PW-6), who is father of the deceased in presence of the witnesses.

6. A panchayatnama of the dead body of the deceased, Krishna Aadhar @ Chhote was prepared and his dead body was sent for conducting post mortem. The post mortem of the dead body of the deceased, Krishna Aadhar @ Chhote, was conducted. Thereafter, the Investigating Officer investigated the case, recorded the statement of the prosecution witnesses. After completing all the formalities of the investigation, he submitted charge-sheet against the accused Dharam Raj Singh, Bhanu Pratap Singh, Basant Singh and Raja Ram Kanjar under Sections 302, 147, 149 IPC. The Investigating Officer also submitted charge-sheet against Udai Kumar Chaubey @ Udai Chaubey under Section 302 IPC. He also submitted charge-sheet against the accused Govardhan Singh under Sections 302, 120B IPC.

7. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

8. By the Trial Court, charge was framed against accused Govardhan Singh under Section 302 read with Section 120B IPC, against the accused Dharmraj Singh, Basant Singh, Rajaram and Udai Kumar under Sections 147, 148 and 302 read with Section 149 IPC. Charge was read over to the accused persons and they denied of the charge and claimed trial.

9. For substantiating the charge levelled against the accused persons, prosecution produced Shyam Bihari (PW-1), Bafati (PW-2), Atar Singh (PW-3), Yaqoob Khan (PW-4), Rajendra Prasad (PW-5), informant Ramadhar Tyagi (PW-6), Rampal Rawat (PW-7), Dr. Hari Das Verma (PW-8) and Ram Singh (PW-9). Prosecution also relied on documentary evidence, such as, written report,

Ext.K-1, second written report, Ext.K-2, first information report, Ext.K-18, recovery memo of bloodstained and plain soil, Ext.K-9, recovery memo of bloodstained soil and plain soil Ext.K-10, recovery memo of bloodstained cloth red color, Ext.K-12, post mortem report, Ext.K-17, panchayatnama, Ext.K-4 and charge-sheets, Ext.K-13, 14 and 15.

10. After adducing all oral evidences and examination of prosecution witnesses, accused persons were examined under Section 313 Cr.P.C. In their statement under Section 313 Cr.P.C., they denied the allegations and stated that they were falsely implicated in this case due to enmity and village rivalry. Defence also adduced Jagat Prakash (DW-1) as defence witness in their support.

11. Learned Trial Court, after perusing and appreciating all the evidence as available on record, has passed judgment and order of conviction, in which the Trial Court held the accused-appellants guilty under Section 302, 149 and 148 IPC. The Trial Court convicted and sentenced the accused persons, namely, Udai Kumar Chaubey, Dharam Raj Singh, Basant Singh and Rajaram. Aggrieved by the judgment and order of conviction dated 28.04.1988, accused persons preferred this criminal appeal before this Court.

12. Vide order dated 06.01.2026, the instant criminal appeal is declared to have abated so far as the accused-appellant nos. 1, 2 and 4, namely, Udai Kumar, Dharamraj and Raja Ram are concerned. The appeal survives for adjudication only so far as the accused-appellant no. 3 Basant Kumar is concerned.

13. We have heard the arguments of Mr. Prashant Kumar Singh, learned Counsel for the appellant and Mr. Anil Kumar Mishra, learned Additional Government Advocate for the State. We have also gone through the documentary as well as oral evidence as available on the record and also gone through the judgment and order of conviction dated 28.04.1988.

14. Learned counsel for the accused-appellant, Basant Singh has argued that the first information report was registered at police station Mangalpur against unknown persons. No accused-appellant was named in this case. Place of occurrence was at the tube-well having flour mill with it, which is situated towards north-west direction at a distance of three furlongs from Mangalpur. Occurrence happened at midnight. No person has seen the commission of crime with his or her own eyes. No evidence of last seen together was adduced by the prosecution. Apart from this, no circumstantial evidence was adduced by the prosecution from which a chain of circumstantial evidence could be completed and accused persons could be implicated for commission of the crime.

15. It was further submitted by learned Counsel for the appellant that from the place of occurrence, no material, objects or things, such as, murder weapon or any other object of this nature were recovered by the Investigating Officer, from which accused-appellant could be connected with the commission of crime. It was also argued by learned Counsel for the accused-appellant that after a long delay of 3-4 months, second Investigating Officer recorded the statements of the prosecution witnesses, and the prosecution tried to plant and project prosecution witnesses in this case to support their case. It is next argued that the Trial Court only on the ground

of enmity, doubt, suspicion and village rivalry held the accused-appellant guilty and convicted him on the basis of conjectures and surmises.

16. Learned Counsel for the accused-appellant also submitted that all the prosecution witnesses, who were adduced by the prosecution have not seen any happening of occurrence or coming of the accused persons at the night of 14/15.10.1982 from the tube-well of the informant Ramadhar Tyagi (PW-6), but the learned Trial Court wrongly and against the law relied upon the unbelievable evidence and testimony of prosecution witnesses in this case without discussing and appreciating the cross-examination of these prosecution witnesses, and thereby the Trial Court, by misappreciating, mis-evaluating and wrongly applying the law, held the accused-appellant guilty and convicted him for commission of the crime. Thus, it was submitted by learned Counsel for the appellant that the judgment and order of conviction passed by the learned Trial Court is totally against the evidence as available on record and also against the settled principles of law of evidence. Therefore, the judgment and order of conviction and sentence dated 28.04.1988 is liable to be set aside and the criminal appeal filed by the accused-appellant deserves to be allowed.

17. Per contra, learned Additional Government Advocate representing the State submitted that the Trial Court in this case rightly and in legal prospective appreciated the evidence. The Trial Court perusing the evidence as available on record and believing the evidence of the prosecution witnesses and enmity and rivalry found the accused-appellant guilty for commission of the crime. It was also submitted that long driven enmity and rivalry between the informant Ramadhar Tyagi (PW-6) and the deceased Krishna Aadhar @ Chhote on one side and accused persons on other side were prevailing and continuing among them. The accused-appellants regarded the deceased, Krishna Aadhar @ Chhote, as a hurdle in their way, because he had started objecting to and opposing every illegal and arbitrary act of the accused persons. Consequently, for this reason, the accused persons hatched a conspiracy and planned to eliminate the said hurdle, Krishna Aadhar @ Chhote, forever.

18. Learned A.G.A. further submitted that the Trial Court in proper and legal manner appreciated and evaluated the prosecution evidence and when the Trial Court found that the prosecution was able to prove its case beyond reasonable doubt then the Trial Court held guilty to accused-appellant for commission of the alleged crime and convicted him for commission of the alleged crime. He lastly submitted that there is no legal force in this criminal appeal and the same is liable to be rejected, being devoid of merits.

19. In view of the above arguments of learned Counsel for the parties, it is clear that in written report, Ext.K-1, no accused-appellant or any other person has been named for commission of the crime. After four months of the incident dated 14/15.10.1982, a second written report, Ext.K-2, dated 15.02.1983 was filed at the police station. In the second written report, Ext.K-2, informant Ramadhar Tyagi (PW-6) expresses doubt about the accused-appellant Udai Krishna Chaubey that he committed murder of his son Krishna Aadhar @ Chhote. The prosecution adduced total seven prosecution witnesses of facts.

20. Shyam Bihari, Pradhan (PW-1) was adduced as prosecution witness. In his examination-in-chief, this witness submitted that the accused Udai Chaubey, Basant Singh,

Dharam Raj Singh, Bhanu Pratap Singh and Raja Ram committed murder of Krishna Aadhar @ Chhote at his tube-well.□ On the point of enmity, this witness stated that before the election, accused Govardhan Singh was the village Pradhan. Govardhan Singh had contested elections against me and he lost. Ramadhar Tyagi, father of the deceased, helped me in the election and opposed accused Govardhan Singh. Regarding another enmity, this witness stated that in village Mangalpur, there was a pond and a market was also organised. These were properties of Gaon Samaj. Accused Govardhan Singh, after taking some money from Udai Chaubey, auctioned the pond and market in his favour. Udai Chaubey made Basant and Dharmraj Singh partners in this pond and market. Thereafter, Ramadhar Tyagi filed an application before Sub Divisional Magistrate and the auction was cancelled. Later, Naib Tehsildar auctioned it again and Krishna Aadhar Tyagi persuaded the Naib Tehsildar and the contract of the pond and market was given to Hari Krishna Kahar. Due to this, when the pond and market slipped away from the hands of the accused persons, they united and regarded enmity with Krishna Aadhar and Ramadhar Tyagi. It is stated in the evidence of this witness that there was a building, in which a hospital was running. Accused Govardhan Singh began to receive rent from the State Government on the ground that he is the owner of this building. When this fact came to the knowledge of Tyagi Ji and deceased Krishna Aadhar, they began to pursue and on their persuasion, the Government stopped paying rent of the building to accused Govardhan Singh. This was also a reason for enmity between accused Govardhan Singh and deceased Krishna Aadhar and informant Ramadhar Tyagi. From perusal of the evidence of this witness, it appears that this witness has stated that □at evening, before the murder of the deceased, I came to know that at the flour mill of Jageshwar, accused Basant, Dharmraj and Udai were talking, and they were saying the name of Pradhan and they were saying that this hurdle must be removed. I had told this fact to Islam Sheikh and Ramadhar Tyagi. Upon this, Islam Sheikh cautioned me that I need not to go here and there because Govardhan Singh was enraged due to his defeat in the election. Thereafter, today in the morning, it came to be known from the public that Krishna Aadhar @ Chhote was murdered. About two months prior to the murder, the accused Udai Kumar, Basant, Bhanu Pratap Singh, and Dharamraj were demanding money from Sitaram Chikwa for consuming liquor. At that time, Krishna Aadhar @ Chhote reached there and said that this poor person shall not give them money. On this point, an altercation took place between Udai Kumar Chaubey and Krishna Aadhar. Udai Kumar Chaubey has taken a vow that if he is truly of his father□s blood, he will kill Krishna Aadhar. This witness also stated that Govardhan Singh was involved in this murder."

21. In his cross-examination, Shyam Bihari (PW-1) has stated that □he spoke with daroga in connection with this case four months before this murder. He was returning from village then daroga called him in the police station and he inquired from him for about one hour.□ He, in his cross-examination, stated the fact that accused were preparing and planning to kill him. This fact was informed to me by Atar Singh in the evening at 4-5 P.M. At the same night, Krishna Aadhar was murdered. He had told this fact to his friends. He had also told this fact to Ramadhar Tyagi on the same day at 6-7 PM. He had also told this fact on the same evening at 5 P.M. to Islam at his workshop and to Ramadhar at his home. He had not told the name of Atar Singh to daroga because he has not asked him.

22. From the evidence of this witness, it appears that the prosecution tried to adduce this witness as a prosecution witness in this case. However, from the evidence of this witness, as

referred to above, it is amply clear that this witness is a planted and projected witness. From the evidence of this witness, it appears that this witness came to know this fact that a planning of murder was being hatched by the accused persons. According to this witness, he told this fact to Ramadhar Tyagi, father of the deceased Krishna Aadhar @ Chhote, on the same evening. On the same night, when the deceased Krishna Aadhar @ Chhote was murdered, if we believe the statement of this witness that this witness is truly stating the fact before the Court then a question arises that if this witness really told the hatching of the planning of murder by the accused persons and this witness told this facts to the informant Ramadhar Tyagi (PW-6) and Islam, then in this situation, name of the accused persons surely and certainly must have been written by the informant Ramadhar Tyagi (PW-6) in his written report, Ext.K-1 but we find that in written report, Ext.K-1, he has not named any person as an accused. From this fact, it is clear that this witness is concealing the real facts about the case and falsely and in artificial way, concocting and developing the prosecution story. From the evidence of this witness, it is clear that this witness is not an eye-witness of the incident. The prosecution tried to project this witness as a prosecution witness to give force and to strengthen the prosecution story but from any point of view, we cannot believe the testimony of this witness as there is no truth in the statement of this witness that could inspire confidence that the evidence of this witness could be believed as reliable and trustworthy.

23. Prosecution produced Bafati as PW-2. This witness in his examination-in-chief has stated that "I came to know about the murder after 15-20 days. Eight days before the murder, Udai Kumar Chaubey and Basant Singh, both present in Court, came to me at 08:00 P.M. Udai Kumar said to me that Govardhan Singh is calling. Govardhan Singh is also present in the Court. I had gone to Govardhan Singh. He was sitting in a room. He said to me that Chhote was very harassing. Market and pond had gone. Pradhani had also gone. Building of Rs. 50,000/- was also about to go. He also said that he had helped me. Now how much I will help him. I had asked him what is the work. Then Govardhan told that Chhote was very much harassing. Udai Chaubey is ready. You also be ready. Whatever money is required, he will spend. He also said that after leaving this place by us, you kill Chhote. I said that I have never done such work nor shall do. Then Udai Kumar Chaubey stated that he would carry out such an act, and once the hurdle in their way was removed, they would be exonerated from the matter. After that I went from there then again when I began to move, he said that I do not tell this fact to any person and keep this fact to myself. Upon this, I assured him that I would keep this fact to myself alone. At the time of this talk, accused Dharmraj, Basant, and Udai Kumar were also present in the room. This conversation took place before them."

24. In his cross-examination, this witness has stated that "this conversation had taken place in the room of Govardhan Singh before eight days of the murder of the son of Tyagi ji. He had not told Krishna Aadhar Tyagi that he be alert and cautious because there is danger to his life. He had not told this conversation to any other person. He had not informed the police. The Investigating Officer had taken his statement after 5-6 months of the murder. When he was returning from the market, in front of the police station, Daroga had called him. Daroga said that Udai Chaubey had told all the facts. You also tell the correct facts, otherwise he will keep him in prison. Due to fear and pressure, he started telling the Daroga. Daroga had not told him what facts were told by Udai Chaubey. At the time of occurrence, he was not in the village. Before seven days, he went away and returned after eight days.' This witness also stated in his cross-examination that he had not told this fact to the father of Krishna Aadhar.

25. Thus, from perusal of the evidence of this witness, it is clear that this witness was also projected and planted by the prosecution to support the prosecution story. Surprisingly, this witness was called upon by Govardhan Singh in his room and asked to commit murder of Krishna Aadhar @ Chhote. All other accused persons were also present in the same room. According to this witness, he refused to commit murder, but before this witness, in the same room, Udai Kumar Chaubey said that he would do such work, but in spite of this fact, this witness had not told this fact to Ramadhar Tyagi, father of the deceased. This witness also did not tell this fact to the police or any other persons. This witness clearly stated that before seven days of the happening of the incident, he had gone for trading of animals and returned after eight days of the incident. How can, in this situation, the evidence of this witness be believed and relied upon? Thus, from perusal of the evidence of this witness, it is clear that this witness is narrating a concocted, fabricated and false story in the Court, and tried unsuccessfully to falsely implicate the accused-appellant for commission of the crime. Thus, we find that the testimony and veracity of this witness is highly doubtful and suspicious. In this circumstance, the evidence of this witness cannot be relied upon and believed, according to settled principles of law of evidence.

26. Atar Singh was produced as PW-3 by the prosecution. This witness has stated that "on the date of murder, I was returning at about 4 o'clock from Dilbal. Then, on the way, at Mangalpur, I stopped at the flour mill of Jageshwar. At this flour mill, wheat is being ground and oil is also extracted. This flour mill has three doors on three sides, with one door opening towards the east, where the road is situated. I stood at the north wall inside the flour mill. Outside the flour mill, a cot was attached on the same wall. On this cot, Udai, Dharmraj, Basant Singh, Bhanu Pratap @ Dullan, present in Court, were sitting. Rajaram Kanjar, the accused present in Court, was also sitting on the floor. There were many holes in this wall, so that sound can be heard from the other side, and visibility was also clear. I heard the conversation of these persons. They were talking by saying pradhan-pradhan. They were saying that Pradhani had gone. The pond of fish and market had also gone. The building of the hospital was also became disputed. Due to this, we felt embarrassed, so finish this hurdle. After that accused Udai Chaubey present in the Court had given money to Raja Ram Kanjar to bring liquor. Raja Ram brought liquor. Then all those people began to eat and drink. I had went away. I told this fact on the same day to Shyama Pradhan. On the next date, I came to know that murder of Krishna Aadhar @ Chhote took place."

27. From perusal of the cross-examination of this witness, Atar Singh (PW-3), we find that this witness has stated that he told the plan of hatching conspiracy of murder to Shyama Pradhan on the same day. According to this witness, Pradhan at that time, said him to go to mill and he also went to report. Before this, he had told this fact to daroga upon inquiry by him. Daroga had called him after four months of the incident. He was going to the market from front of the police station when Daroga called him. At that time, there was no person with him. Thus, from perusal of the evidence of this witness, it emerged that this witness is stating in the Court that in the room of Jageshwar's flour mill, accused persons were talking among themselves and hatching a plan for murder of Shyama Pradhan but this witness also surprisingly told this fact on the same day to Shyama Pradhan, who did not inform the police. This witness also did not inform the police. According to the statement of this witness, Daroga took his statement after four months of the incident. It is unbelievable that this witness heard a so-called conspiracy and plan prepared by the accused persons at Jageshwar's flour mill, situated on the roadside, where many people used to

come for grinding wheat and extracting mustard oil. It is totally unbelievable that any accused would not hatch a plan and conspiracy to murder at such a public place. Culprits usually prepares and hatches plans in secrecy at a hidden place where ingress and egress are restricted. If this witness really heard the conversation about hatching a plan for murder of Shyama Pradhan, he was duty-bound to inform the police and other responsible persons maintaining law and order but he did not state this fact to the police. He told this fact to the Daroga after four months of the murder. Thus, from appreciation of the statement of this witness, it is clear that this witness is also adduced by the prosecution as a projected and planted witness to support the prosecution case with concoction and fabrication. The evidence of this witness cannot be believed for the conviction of the accused-appellant. The testimony of this witness is totally hypothetical, who tried to narrate an artificial story. Due to this reason, evidence of this witness is wholly unreliable.

28. Next witness produced by the prosecution is Yaqoob Khan (PW-4). This witness has stated in his examination-in-chief that murder of Chhote, son of Ramadhar Tyagi, of my village occurred in the night. At that night, I was suffering from loose motion and had gone to ease myself little away from the market at around 12:30 o clock. I after easing myself returned towards home then I saw five persons going from the side of market towards the direction of tubewell of Tyagi ji, which was on the north side. I, by turning on my torch, saw that Udai Shankar had a lathi in his hand, Rajaram had a khanta. Apart from them, Dharamraj Singh, Basant Singh, and Bhanu Pratap Singh were also present there, but I had not seen anything in their hands. When I asked them where they were going, accused Udai Chaubey replied that they were going to irrigate their field. At that time, the tubewell was running, and the rice crop was being irrigated. I himself was suffering from loose motion for the last 2-4 days. My health was not well and I returned home. In the morning, it was known that Chhote, son of Tyagi Ji, had been murdered at the tubewell. Subsequently, I fell ill for a month, and during this period, I informed the visitors who came to see me about this incident. Chhote, son of Tyagi ji, was a gentleman and had no enmity with anyone, but the accused persons had enmity with Tyagi ji and his son over the pond and tehbazari of market.

29. From perusal of the cross-examination of this witness, it is evident that he had stated that after four months of the incident, he was called to the police station by daroga and his statement was recorded. During these four months, he had not met any policeman, nor had he gone to the police station due to fear. He met Tyagi ji, the father of the deceased, after 3-4 months of the incident. Thus, from the perusal of the evidence of prosecution witness Yaqoob Khan, it appears that this witness was also produced by the prosecution as a projected and planted witness, as this witness stated in his evidence that he had seen the accused persons going towards the tubewell of the deceased, armed with lathi and khanta and on the same night, Krishnadhar @ Chhote was murdered, but despite this fact, this witness had not told this fact to anyone. He had not told this fact to Ramadhar Tyagi (PW-6), the father of the deceased. He had also not told this fact to the police. Surprisingly, after 3-4 months, he was called at the police station by daroga, and his statement was recorded. Then this witness stated all the facts after four months to the Investigating Officer. This factual position and conduct of this witness make the evidence of this witness highly doubtful and suspicious. It is clear that this witness was projected and planted later, after four months of the incident, to implicate the accused-appellant, when no clue about the real culprits of the crime came to the police. In other words, when the police and Investigating Officer could not trace the real culprits, then this witness and other prosecution witnesses purposely and thoughtfully

were planted and projected as prosecution witnesses to work out the case. We find no truthfulness or any element in the statement of this witness which could be believed as an evidence to hold the accused guilty for commission of crime, therefore, evidence of this witness is also wholly unreliable."

30. In the same way and style, prosecution witness Rajendra Prasad (PW-5) has also stated in his evidence that about four years ago, at night, Chhote, son of Tyagi ji, was murdered at tubewell. At that night, I was at my home. My mother was suffering from stomach pain. That day, Harnarayan Gupta was also present with me. When pain of my mother increased, then at about 01:30 AM, I and Harnarayan Gupta were going to bring a doctor then after passing through the market, when they reached between the tamarind tree, then few people were coming from the side of the tubewell of Tyagi ji. When I turned on my torch then I saw that people of the village, Udai Shankar with a lathi, Rajaram with a khanta, Dharmraj Singh, Basant Singh and Dullan Singh are coming. I had seen these people in the light of the torch then Harnarayan asked that from where they were coming and Udai Chaubey said they were coming from the tubewell. The doctor was not available at the hospital, so my mother was treated by a compounder of the neighbourhood. This witness further stated that I went to Derapur in the morning and received the information about the murder of Chhote. Chhote had no enmity with anyone, except the people of the village. I also stated that ex-pradhan Govardhan Singh had enmity in respect of tehbazari and auction of the market, pond and rent of the hospital building."

31. In his cross-examination, this witness stated that the Investigating Officer took his statement after four months of the incident, at the police station at around 08:00 AM. In his cross-examination, this witness has stated that he had received the information about the murder the next day at 12 noon in Derapur and he did not go to the place of incident as he was 10 miles away. He met Ramadhar Tyagi at the police station on the next day at sunset. He did not disclose this fact to anyone. At that time, dead body of the deceased was kept out of police station. He had not talked with Ramadhar Tyagi at that time. He had not told the fact of night at that day to any person. He had not disclosed the fact of incident at his home and outside after 2-4 days. Thereafter, Ramadhar Tyagi also got to know this fact. After two months of the incident, Ramadhar Tyagi had asked him then he told him all the facts. Udai Kumar had not given intimidation to kill the deceased Chhote before him. He had only heard this."

32. From perusal of the evidence of the prosecution witness Rajendra Prasad (PW-5), it becomes clear that this witness has also seen the accused persons coming from the direction of the tubewell of Tyagi Ji. The next morning, Krishnadhar @ Chhote was found murdered at the tubewell, but this witness has not told this fact to any person. Even this witness has not told this fact that in the night of murder, he had seen accused persons coming from the tubewell of Tyagi Ji. If this witness had really seen the accused persons in the night of incident coming from the side of tubewell of the informant, then this witness surely would have told this fact to informant Ramadhar Tyagi (PW-6) but this witness has also not told this fact which he saw at the night of the murder of the deceased. This witness has also not told or intimated this fact at the police station. After four months of the incident, the statement of this witness was recorded by the Investigating Officer at the police station then only at police station after four months from the date of incident this witness narrated the above story to the Investigating Officer. From the above facts, it is clear that this

witness is telling wrong facts and presenting in the Court a fabricated, artificial, and concocted prosecution story, so that accused-appellant could be implicated for commission of the crime. Upon perusal of the whole evidence of this witness, we find that the evidence of this witness is wholly unreliable since evidence of this witness is not found according to the settled principles of law of evidence.

33. The prosecution produced informant Ramadhar Tyagi (PW-6). From perusal of the statement of this witness, it is clear that at the time of recording the evidence, Shyam Bihari was the pradhan of village Mangalpur, and before him, accused Govardhan Singh was the pradhan from 1952 till the last elections. Regarding enmity with the accused-appellant, this witness stated the same facts as was stated by the prosecution witness Shyam Bihari, Pradhan (PW-1). He stated in his examination-in-chief that his son Chhote had no enmity with anyone, except the accused-appellants. He also stated that after 4-6 days of the incident, he began to know that how his son was murdered and within few days, it was known that in this murder, Dharmraj, Basant, Dullan, Rajaram and Udai Chaubey had their hands. Root cause of this incident was Govardhan Singh.

34. In his cross-examination, this witness has stated that on the date of reporting the incident, Investigating Officer has interrogated him and has taken his statement. Statement had taken in night at about 10:00 PM. Many a times, police inquired from him. Thus, from perusal of the evidence of this witness, it emerged that at the time of incident, this witness was not present at the scene of occurrence. This witness was present at his home in the village. Information about the murder of his son Krishnadhar @ Chote was given to him by Ramauatar Pandey next morning at about 08:00 AM. Receiving this information about murder of his son, he deputed his wife to supervise the dead body of the deceased son and he went to the police station and has written himself about the fact of murder and filed written report, Ext.K-1, at police station Mangalpur without naming any person as accused for commission of the crime. In other words, this witness filed written report, Ext.K-1, against unknown person, in which no accused nor any other person was named as accused either as suspect or responsible for commission of the crime.

35. From perusal of the evidence of this witness, it also emerges that after upon hearing hearsay evidence and rumour from people, this witness after four months from the date of murder of his son dated 14/15.10.1982 has written and filed a second written report, Ext.K-2, at police station Mangalpur. In the second written report, Ext.K-2, this witness stated that murder of his son was committed by Udai Chaubey. From the evidence of this witness, it is clear that for four months, this witness was not knowing the name of any culprit, who was responsible for commission of the crime. This witness had only given information about the incident at police station Mangalpur. Whatever has been stated by this witness in his evidence was based on only hearsay evidence and rumor as prevalent in the village. In his evidence, this witness stated those facts which were not stated by this witness to the Investigating Officer in his statement under Section 161 Cr.P.C. It is also clear from the evidence of this witness that this witness in the Court at the time of recording his evidence totally improved and has given a new fact and story which was based upon only doubt and suspicion. If really this witness and his son Krishna Aadhar @ Chhote had enmity with the accused persons and had also suspicion that the accused persons murdered Krishna Aadhar @ Chhote, then in this condition, this witness has clearly and naturally has written this fact in his written report Ext.K-1, which was filed at police station Mangalpur on

15.10.1982. Thus, from perusal of the evidence of this witness, we find that there is no truthfulness in the evidence of this witness which could be believed as fully reliable. The evidence of this witness is found fully unreliable and not believable from any point of view of law of evidence.

36. From perusal of the evidence of PW-7 Rampal Rawat, who was the first Investigating Officer of the case, it is clear that from the statement of this witness as given in his cross-examination that second Investigating Officer Jaid Naqvi had recorded the statement of informant on 12.01.1983. He also recorded the statements of witness Shyam Bihari and Sitaram on 12.01.1983. On 27.01.1983, again statements of informant Ramadhar Tyagi and Mohd. Islam were recorded by the second Investigating Officer on 11.02.1983. Statements of witness Rajendra Prasad, Harnarayan Gupta, Yaqoob Khan and Dr. Rama Shankar Srivastava were recorded. From the evidence of this witness, it is clear that after this, on 17.02.1983, copy of second written report, Ext.K-2, has been given to the informant and thereafter he was inquired. On the same day, statement of Atar Singh, Chhote Lal, Ram Sewak and Shri Ram had been taken. From the statement of this witness, it is clear that the statement of Bafati was taken on 02.04.1983. Thereafter, new Investigating Officer Om Prakash Ojha has taken the statement of Bafati on 02.08.1983. In his cross-examination by the defence, this witness has admitted that witness Shyam Bihari had made major improvement in his evidence in the Court. This witness has also confirmed that witness Yaqoob had not told to Naqvi about the fact of easing himself near the tamarind tree was not told by PW-4, Yaqoob Khan.

37. From perusal of cross-examination of this witness Rampal Rawat (PW-7), it is clear that statement of prosecution witnesses had been taken by calling them at the police station. Thus, from perusal of the evidence of prosecution witness Investigating Officer Rampal Rawat (PW-7), it is clear that all witnesses of the prosecution had given information about the fact of murder of the deceased at police station after four months of the incident. All the prosecution witnesses called by the Investigating Officer at police station and statement of all of them were recorded at police station Mangalpur. From the evidence of this witness, this fact also emerged that prosecution witnesses have improved their evidence in the Court. They have changed their statement during recording of their statement in the Court from what they had stated at the time of recording their evidence by Investigating Officer under Section 161 Cr.P.C. From the evidence of Investigating Officer Rampal Rawat (PW-7), it is also amply clear that evidence of the prosecution witness and their story as narrated by them are highly suspicious and doubtful.

38. Thus, from perusal and appreciation of the evidence, documentary and oral, as adduced by the prosecution, it is clear that in the written report, Ext.K-1, dated 15.10.1982 and second written report, Ext.K-2, dated 15.02.1983 which was filed after four months of the incident dated 15.10.1982, it is apparent on the face of record that in the first written report, informant Ramadhar Tyagi (PW-6) has not named any accused-appellant for commission of the crime. Informant Ramadhar Tyagi (PW-6) has not named any other persons upon whom he could express his doubt and suspicion for the alleged commission of the crime. Written report, Ext.K-1, was lodged by Ramadhar Tyagi (PW-6) against unknown person for murder of his son. Apart from this, informant Ramadhar Tyagi (PW-6) has not stated any enmity and has also not expressed any doubt and suspicion about the charge-sheeted accused-appellants in this case. In the second written report, Ext.K-2, dated 15.02.1983, he only expressed his doubt and suspicion about accused-appellant

Udai Chaubey for commission of the crime. Therefore, we find that in written report, Ext.K-1, dated 15.10.1982 and second written report, Ext.K-2, dated 15.02.1983, no enmity or cause of the village rivalry has been stated by the informant Ramadhar Tyagi (PW-6).

39. From perusal of the recovery memo, such as, bloodstained cloths, rope, Ext.K-12, and recovery memo of torch and transistor from the place of occurrence by the Investigating Officer Rampal Rawat (PW-7), it is amply clear that those materials, things and objects, whichever recovered from the place of occurrence, were belongings of the deceased Krishna Aadhar @ Chhote. In other words, all recovered materials, objects and articles belonged to the deceased Krishna Aadhar @ Chhote. Meaning thereby that, Investigating Officers in this case could not collect from the place of occurrence any such type of material, object, thing and article that could be related with the accused-appellant in this case. It is also noteworthy that Investigating Officer in this case could not recover weapon of murder neither from the place of occurrence nor from the custody or possession of the accused-appellant.

40. From perusal and appreciation of the oral evidence of prosecution witnesses, such as, Shyam Bihari (PW-1), Bafati (PW-2), Atar Singh (PW-3), Yaqoob Khan (PW-4), Rajendra Prasad (PW-5) and Ramadhar (PW-6), we find that all these prosecution witnesses have not seen the happening of the incident with their own eyes. These prosecution witnesses were also not the witnesses of last seen together. When Investigating Officer of the case was unable to trace out the real culprits, who committed this heinous crime, then to work out this murder case, Investigating Officers after three-four months from the date of occurrence called the prosecution witnesses at the police station and began to record their concocted and artificial statements. None of the prosecution witnesses are the eye-witnesses of the incident. All those in their examination-in-chief tried to support the prosecution story but in their cross-examination, they miserably failed in their attempt. From perusal of the cross-examination of these prosecution witnesses, it is clear that these prosecution witnesses have not stated whatever they saw or observed before the happening of the occurrence to any other person or to informant of the case Ramadhar Tyagi (PW-6) or even they have not given information or stated to the police about their observations and those suspicious facts. Thus, from perusal of the statement of these prosecution witnesses, it is amply clear that prosecution later on, with full consideration and afterthought, planted and projected these prosecution witnesses with a view to support the prosecution case. However, these prosecution witnesses could not stand in their cross-examination by the defence and they accepted in a clear-cut way that they have not stated whatever they observed or seen before the happening of this incident on 14-15.10.1982 to any other person including informant Ramadhar Tyagi (PW-6) or to any other persons or policemen.

41. However, when we had gone through the judgment and order of conviction of learned Trial Court dated 28.04.1988, we find that at page nos. 8, 9 and 10, Trial Court relied on the evidence of prosecution witness Yaqoob Khan (PW-4) and Rajendra Prasad (PW-5) and only on the ground of enmity based its observation on the evidence of Yaqoob Khan (PW-4) and Rajendra Prasad (PW-5) and held the accused-appellant guilty for commission of the crime. When we have gone through the finding and observations of learned Trial Court, we find that learned Trial Court only perused the examination-in-chief of the prosecution witnesses and the Trial Court has not considered the cross-examination of the prosecution witnesses and neglected the same. It is settled

principle of law of evidence that evidence of any witness must be read in totality. It is also settled principle of law that no accused shall be held guilty for commission of any crime only on the ground of enmity. However, in the case in hand, we find that Trial Court against the settled principles of law only on the ground of enmity and village rivalry held the accused-appellant guilty for commission of the crime. There is no evidence of this kind either direct or circumstantial on the basis of which accused-appellant could be held guilty for commission of the crime but learned Trial Court only on the ground of enmity and village rivalry against the settled principles of law of evidence wrongly relying on the evidence of prosecution witnesses held the accused-appellant guilty for commission of the said crime.

42. Hon'ble Supreme Court in the case of **Sushil and others v. State of Uttar Pradesh, 1995 SSC (Cri.) 388** and in the case of **State of Punjab v. Sucha Singh, (2003) 3 SCC 153**, has held that;

"enmity is a double aged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."

Therefore, only on the basis of enmity, the accused-appellant cannot be connected with the crime and held guilty for commission of the crime. For holding guilty any person for commission of any crime, full proof evidence either circumstantial or direct or last seen together must be present so cogently that accused persons could be connected with the crime on the basis of that evidence. Thus, it is evident from the evidence that prosecution only on the ground of enmities and village rivalry falsely implicated the accused-appellant in this case for commission of the crime.

43. From perusal of the evidence of prosecution, observation and finding of the Trial Court, it is clear that prosecution witnesses only on the ground of village rivalry, implicated the accused-appellant for commission of the crime on the ground of suspicion and doubt and learned Trial Court also relying on the prosecution witnesses on the ground of doubt and suspicion as expressed by the witnesses, held the accused-appellant guilty for commission of the crime against the settled principles of law of evidence. It is settled principle of law that doubt and suspicion, however, so strong cannot take the place of evidence. Heinous the crime, stricter the proof of evidence. In other words, where an allegation of commission of a heinous offence has been levelled against the accused-appellant, then in this situation, greater would be burden of proof upon the prosecution to prove its case with strict and by wholly reliable evidence whether it may be direct or indirect. However, in the present case in hand, learned Trial Court also based its finding and reasoning against the accused-appellant on the ground of doubt and suspicion.

44. Hon'ble Supreme Court in the case of **Sujit Biswas v. State of Assam, (2013) 12 SCC 406** has also held in para 13 that;

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that □may be□ proved, and something that □will be proved□. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between □may be□ and □must be□ is

quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between □may be□ true and □must be□ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between □may be□ true and □must be□ true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

45. Hon'ble Supreme Court in the case of **Babu v. State of Kerala, (2010) 9 SCC 189** has held in para 27 that;

"27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction."

46. Hon'ble Supreme Court in the case of **State of Odisha v. Banabihari Mohapatra and another, Special Leave Petition (Criminal) No. 1156 of 2021;** decided on 12.02.2021, has held that;

"it is well settled by a plethora of judicial pronouncement of this Court that suspicion, however, strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

47. From perusal of the postmortem report, Ext.K-17, of deceased Krishna Aadhar @ Chhote in the evidence of Dr. Hari Das Verma, who prepared the postmortem report, Ext.K-17, we find that eight ante mortem injuries were found on the dead body of the deceased, which are as follows:

1. Lacerated wounds 3-1/2 cm x 1 cm x bone deep on the upper of the right ear.

2. Lacerated wounds 4 cm x 2 cm x bone deep on the face about 2 cm away from right eye.

3. Lacerated wounds 8 cm x 2 cm x bone deep on the frontal bone on head about 1-1/2 cm away from right eyebrow.

4. Lacerated wound 2-1/2 cm x 1 cm x bone deep on the frontal bone about 3-1/2 cm away from right eye.

5. Lacerated wound 1 cm x □ cm x bone deep on the face 8 cm away from right eye.

6. Multiple contusions with abrasion 10 cm x 7 cm on the face on right side.

7. Contusion 6-1/2 cm x □ cm right shoulder joint.

8. Contusion 4-1/2 cm x 1-1/2 cm on the bicep muscular region left upper of about 9 cm away from left elbow joint.

48. Thus, from perusal of the injury report, Ext.K-17, it is clear that ante mortem injuries were found on the body of the deceased Krishna Aadhar @ Chhote and his murder was committed by assaulting on his vital part of the body as on head. Due to this fatal injuries, Krishna Aadhar @ Chhote has died at the spot but the prosecution is totally unsuccessful to prove this fact that these injuries were caused by the accused-appellant.

49. Prosecution was unsuccessful to adduce and produce any incriminating material, objects, things or articles from the place of occurrence or from the possession of the accused-appellant by which accused persons could be connected with the commission of the crime on this ground. Prosecution was fully unsuccessful to produce any reliable oral or circumstantial evidence against the accused-appellant, so that by which accused-appellant could be connected for commission of the alleged crime. When we have gone through the record of the case and also from perusal of the judgment and order of conviction of learned Trial Court, we find that the Trial Court only on the ground of enmity and so-called village rivalry and on the ground of doubt and suspicion without being evidence in this respect only on the ground of conjectures and surmises wrongly appreciated the evidence and against the settled principles of law held the accused-appellant guilty for commission of the crime.

50. From perusal of the whole evidence, judgment and order of conviction of the learned Trial Court, we are of the view that it is a case of no evidence, therefore, in view of the above discussions and observations, we find that finding and reasoning as given by the Trial Court is not sustainable in the eyes of law. We, therefore, inclined to set aside the finding and reasoning given by the learned Trial Court. Thus, the criminal appeal of the accused-appellant deserves to be allowed.

51. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 28.04.1988 of conviction and sentence passed against the accused-appellant by learned Trial Court in Session Trial No. 24 of 1985 arising out of Case Crime No. 183 of 1982, under Sections 120B, 147, 302/149 IPC, police station Mangalpur, district Kanpur Dehat. The appellant is acquitted of the charge under Sections 147 and 302/149 IPC. The appellant Basant Singh is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

52. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(2026) 7 ILRA 153
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1048 of 1989
Alongwith
Criminal Appeal No. 1377 of 1989

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

Issue for consideration

The appellants were convicted for the murder or Ram Kunwar, who was shot dead while returning from a temple, followed by removal and severing of his dead body, and were sentenced under sections 302, 201 and 324 IPC; aggrieved, they preferred criminal appeal against the conviction.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302, 201, 324-Criminal Procedure Code,1973-Section-Section 374(2-Murder-Appereciation of evidence-Related witnesses-FIR-Medical corroboration-Disappearance of dead body-Motive-Evidence of deceased's brother and other related eyewitnesses, though related to deceased, found wholly reliable and trustworthy, their presence being natural and testimony being consistent and corroborated by other witnesses and medical evidence-Relationship of witness with deceased by itself not sufficient to discard his testimony-FIR lodged about four hours after occurrence, police station being six kilometers away, held not to constitute unexplained delay or afterthought in the circumstances-Prior enmity arising from deceased's alleged involvement in elopement of accused's sister furnishing strong motive for commission of offence-Post mortem report showing multiple gunshot injuries corroborating ocular version-Failure of unarmed witnesses to intervene against armed assailants not rendering their presence doubtful-Conduct of accused in carrying away and concealing dead body establishing offence under section 201 IPC-Conviction and sentence affirmed-Appeal dismissed.(Para 17 to 41) (E-6)

Held

The court held that the ocular testimony, being duly corroborated by the post-mortem report showing multiple gunshot injuries, was sufficient to establish the prosecution case beyond reasonable doubt and the findings of the Trial Court suffered from neither perversity nor illegality.

Case law Cited

State of Rajasthan Vs Smt. Kalki & Anr; (1981) 2 SCC 752, G. Laxmanna & Ors Vs State of A.P; (2002) 8 SCC 333, Sucha Singh & Anr. Vs State of Punjab; (2003) 7 SCC 643-referred to.

List of Acts

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

List of Keywords

Ocular testimony, Post-mortem report, Gunshot injuries, Afterthought, Medical evidence, Related witness, Prior enmity, Elopement, Strong motive, Commission of offence, Conviction.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1048 of 1989

Balistor Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

P.b. Umrao (a.c.), Pratap Bhan Umrao

Advs. for Respondent(s):-

A.G.A., Zafar Abbas

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Both these Criminal Appeals bearing Nos. 1048 of 1989 (Balistor Vs. State of U.P.) and 1377 of 1989 (Mahesh and another Vs. State of U.P.) have been filed by accused-appellants, Balistor, Mahesh and Naresh, respectively, against the judgment and order of conviction dated 02.05.1989 passed by learned Vth Additional District and Sessions Judge, Moradabad in Session Trial No. 67 of 1988 (State Vs. Mahesh and others) arising out of Case Crime No. 287 of 1987, under Sections 302, 324/34 and 201 IPC, Police Station Kundarki, District Moradabad.

2. From the written report, Exhibit Ka-1, prosecution story in nutshell is that informant, Rohtash Singh @ Chhotey (PW-1), has filed this written report at police station Kundarki, District Moradabad against Mahesh, Naresh @ Chhotey, Virpal and Balistor stating therein that Ramayana was being recited in the temple of our village, where lanterns were illuminated. I along with my brother Ram Kunwar and father Ramphal Singh and other people of the village were present there. At around 09:45 P.M., after reciting Ramayana, I along with my brother Ram Kunwar and father were going home. My brother was ahead of us and my father and I were behind. As soon as my brother reached near the outer wall of Khairati's house, Mahesh, Naresh @ Chhotey, Virpal and Balistor from our village were already standing there. Mahesh, Virpal and Naresh had guns and Ballistor had a country-made pistol. They surrounded my brother. On seeing this, my father and I made a noise and on listening the noise, Prem Pal, Khandey Singh and Kishan Pal Singh came at the spot. Mahesh, Virpal, Naresh @ Chhotey fired the gun upon my brother Ram Kunwar before us, whereupon he fell down sustaining injury. Balistor threatened us with a country-made pistol and told the others to make the dead body disappear. Due to fear, we were unable to take any action. All four persons fled from the spot, carrying away the dead body while firing in the air. In the said firing, Km. Veerum, daughter of Jaswant, who was also coming from the Ramayana, sustained pellets injury. My father, other witnesses and I saw the whole incident in the light of the torch. Mahesh had already registered a case against my brother Ram Kunwar in respect of eloping his sister Suman, in which he was on bail. Due to this enmity, all the four accused committed murder of my brother and carried away his dead body."

3. After submission of written report, Exhibit Ka-1, by informant Rohtash Singh @ Chhotey (PW-1) at Police Station Kundarki, District Moradabad, an F.I.R., Exhibit Ka-4, was registered on 28.09.1987 by Head Constable Rajendra Singh (PW-5) at Case Crime No. 287 of 1987, under Sections 302/201 IPC against the accused-appellants Mahesh, Naresh @ Chhotey, Virpal and Balistor.

4. Station House Officer/Investigating Officer, Chandra Bhan Shukla (PW-8) has started investigation of this case. He visited the place of occurrence, took the torch from the witnesses into custody, and subsequently returned it to them with instructions to produce it whenever required. He also prepared Exhibit Ka-2 of taking over into possession and handing over the torch to the witnesses. The Investigating Officer also taken simple soil and bloodstained soil from the place of occurrence on 28.09.1987 before the prosecution witnesses and prepared a fard as Exhibit Ka-6. On 28.09.1987, the Investigating Officer, Chandra Bhan Shukla (PW-8), also collected plain soil and bloodstained soil from the millet crop field of Sumeri, son of Jeevan, located at the southern-western corner, and prepared a recovery memo, marked as Exhibit Ka-7. On 28.09.1987, the Investigating Officer had also taken into possession one piece of plastic shoe of brown colour of deceased Ram Kunwar, on which two leather tiklis (buttons) are attached, which was recovered from the southern-western corner of the millet crop field of Sumeri, son of Jeevan, and prepared a recovery memo as Exhibit Ka-7/A. The Investigating Officer, Chandra Bhan Shukla (PW-8), recovered the dead body of the deceased Ram Kunwar without head on 04.10.1987 from the sugar-cane field of Nazruddin, resident of Majholi, which was identified by witnesses as dead body of Ram Kunwar, son of Ramphal Singh. The Investigating Officer prepared a fard identification of dead body of the deceased as Exhibit Ka-3. On 04.10.1987 itself, the Investigating Officer, Chandra Bhan Shukla (PW-8), had also recovered from the right leg of the deceased Ram Kunwar one piece of plastic shoes of brown colour, on which Sansar was written. Number of the shoes is seven. In this shoes, three leather tiklis (buttons) are attached. The shoe is old used. The same was taken into possession. From the dead body of the deceased, one piece of white cotton waist-cloth which was bloodstained and one piece of shun rope which was tied on the waist of the dead body was recovered and taken into possession and fard recovery of the above articles was prepared before the witnesses of the fard by the the Investigating Officer as Exhibit Ka-11.

5. The Investigating Officer, Chandra Bhan Shukla (PW-8), inspected the place of occurrence, recorded the statement of the informant and other witnesses and inquired from the villagers, prepared the site plan as Exhibit Ka-8. The Investigating Officer also prepared site plan from the place where plastic shoe of the deceased was recovered from the field of Sumeri as Exhibit Ka-9. The Investigating Officer also inspected the place from where dead body of the deceased was found and prepared site plan of that place as Exhibit Ka-10. The Investigating Officer also tried to arrest accused-appellants but he was unsuccessful because they surrendered before the Court of Chief Judicial Magistrate on 08.10.1987. The Investigating Officer took the two accused-appellants on remand and interrogated them, during which they stated that they could lead to the recovery of the head of the deceased. The Investigating Officer accompanied the accused-appellants to the place where they claimed the head of the deceased could be recovered. However, the head of the deceased, Ram Kunwar, could not be recovered from the place shown by the accused-appellants. Thereafter, completing and preparing all the formalities of the investigation and preparing other police papers, such as, panchayatnama, etc., the Investigating Officer sent the dead

body of the deceased, Ram Kunwar, for conducting post mortem examination. Thereafter, after completing all the formalities of the investigation, recording the statements of the witnesses, the Investigating Officer filed charge-sheet under Sections 302/201/307 and 120B IPC against the accused-appellants in the court of Magistrate concerned. According to the post mortem report of the deceased Ram Kunwar, Exhibit Ka-19, following ante mortem injuries were found on the dead body of the deceased :

"1. Gunshot wound of entry in an area of 3 cm x 2 cm cavity deep sterni on the wound inverted. Sterni whole of the skin colour has changed to black blueish. Nothing can be said regarding charring and blackening of the skin on the wound. The colour has changed on the wound of putrefaction. The wound is over the left side of front of chest 6 cm below the left clavicle.

2. Gunshot wound of entry in an area of 1.5 cm x 1.5 cm x cavity deep on the left side of chest 6 cm below. The injury no. 1 with skin round the wound with inverted margins. Nothing can be said regarding blackening and charring of the wound because of putrefaction changes leading to black coloured of skin.

3. Gunshot wound of entry 7 cm x 3 cm on the right side chest 8 cm below the axilla. The margins of the wound is inverted and cavity deep. No opinion can be given regarding blackening and charring of the wound skin.

4. Gunshot wound of exit of 8.5 cm x 6.5 cm on the right side back of chest in the middle with everted margins of the wound. No opinion can be given regarding charring and blackening of the wound.

5. Neck and face absent from the body just above the 4th cervical vertebra with cut margin wound which has separated the neck from the body round the whole neck circumference (30 cm x 8 cm).

6. Whole of the toes of the left leg (all five) absent from the leg appear to be eaten by the insects and wild animals.

7. Left hand below the left elbow found burned has appearing charred.

8. Whole of the organ inside the chest cavity are eaten away by the wild animals."

6. Injured Km. Veerum was also examined by Dr. S.N. Verma on 28.09.1987 and following injury was found on her body :

"Gunshot wound on left hand palm Ant. 4 fingers. Index, middle, IIIrd and little fingers. Ant. Multiple injury."

7. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

8. Learned Trial Court framed charges against the accused-appellants Mahesh, Naresh and Virpal on 15.03.1988 under Sections 302, 201 and 324 IPC. Learned Trial Court also framed charges against the accused-appellant Balistor on 15.03.1988 under Section 302/34, 201 and 324/34 IPC. The accused-appellants denied the charges levelled against them and claimed trial.

9. In support of its case, prosecution adduced informant Rohtash Singh @ Chhotey (PW-1), Khandey Singh (PW-2), Prem Pal (PW-3), Sansar Singh (PW-4), Rajendra Singh (PW-5), Anwar (PW-6), Ashfaq (PW-7) and Chandra Bhan Shukla (PW-8). Apart from the ocular evidence, prosecution also relied on documentary evidence, such as, from Exhibit Ka-1 to Ka-22.

10. Prosecution witnesses were examined before the trial Court and their statements were recorded. After recording the prosecution evidence, Trial Court examined the accused-appellants under Section 313 Cr.P.C. The accused-appellants in their examination under Section 313 Cr.P.C. have denied from the questions put before them. They expressed ignorance about the questions that were read before them. They have also stated that they were unaware of the questions put up to them. In addition to the above, accused-appellant, Mahesh, has stated that due to enmity, witnesses have given evidence against him. He also stated that he had no enmity with Ram Kunwar but had enmity with Vinod. Accused-appellant, Virpal, had also stated that due to enmity, witnesses have given evidence against him and due to enmity, case was filed against him. The accused-appellants, Naresh and Balistor, have stated that due to enmity, case was registered against them and due to enmity, witnesses had given evidence against them. In this way, all accused-appellants have expressed ignorance about the questions and facts which were put up to them under Section 313 Cr.P.C. in their statements.

11. The accused-appellants have examined Onkar Gupta, Head Copyist as DW-1 in their defence.

12. Learned Trial Court after recording the evidence of the prosecution and defence and after hearing the arguments of both sides, delivered judgment and order dated 02.05.1989 against the accused-appellants. Learned Trial Court held the accused-appellants, Mahesh, Naresh and Virpal, guilty under Section 302 IPC and accused-appellant, Balistor, under Section 302/34 IPC and sentenced them for life imprisonment with a fine of Rs. 2000/- each. In default of payment of the fine, they all were directed to undergo rigorous imprisonment for one year. The accused-appellants were also held guilty under Section 201 IPC and sentenced them for two years rigorous imprisonment. The accused-appellants were also held guilty under Section 324/34 IPC and they were also sentenced to undergo rigorous imprisonment for one year.

13. Aggrieved by the judgment and order dated 02.05.1989 of the learned Trial Court, the accused-appellants have preferred these criminal appeals before this Court.

14. We have heard the arguments of learned Counsel for the appellants and learned A.G.A. for the respondent/State. We have gone through all oral and documentary evidences and also perused the impugned judgment and order of conviction and sentence dated 02.05.1989 passed by learned Trial Court.

15. Learned Counsel appearing for the accused-appellants submitted that incident occurred on 27.09.1987 at 09:45 P.M. and the F.I.R. was lodged on 28.09.1987 at 02:00 A.M. after a delay of about four hours. From the place of occurrence, Village Basera, distance of police station was only six kms., however, the informant lodged the written report after deliberation and with due afterthought, falsely implicating all the accused-appellants in the present case. It is also submitted that the accused-appellants had no enmity with the deceased, Ram Kunwar. All the prosecution□s eyewitnesses are family members of the deceased, Ram Kunwar, making them related witnesses. The other prosecution witnesses, Anwar (PW-6) and Ashfaq (PW-7), are helpers of the prosecution in supporting its case. They have falsely given evidence against the accused-appellants under pressure of the prosecution. It is also submitted on behalf of the accused-appellants that there are major and material contradictions in the evidence of the eye-witnesses of the prosecution, which shake the veracity of the prosecution story. However, learned Trial Court has not considered and kept in mind these major and material contradictions in giving the finding and reasoning against the accused-appellants. There was no motive on the part of the accused-appellants to commit the murder of the deceased, Ram Kunwar, but they have been falsely implicated in this case due to enmity. Learned Trial Court has not considered this major aspect in delivering the judgment and order of conviction and sentence against the accused-appellants. The finding and reasoning of the learned Trial Court are based on surmises and conjectures and not supported by any reliable evidence and are against the settled principle of law. By the above arguments, learned Counsel for the accused-appellants have submitted that the accused-appellants are innocent but the learned Trial Court wrongly appreciating the evidence has convicted them in the alleged commission of the crime. In this way, it is submitted that the judgment and order dated 02.05.1989 passed by the learned Trial Court is liable to be set aside. Hence, criminal appeals filed by the accused-appellants are liable to be allowed.

16. Per contra, learned A.G.A. for the State submitted that there is no delay in lodging the written report and registration of the F.I.R. against the accused-appellants. The eye-witnesses of the prosecution have seen the commission of the crime by the accused persons with their own eyes in the light of petromax lamps and by their torches. All the accused-appellants have been named in the written report, Exhibit Ka-1. After commission of the alleged crime, all accused had absconded from their home. The Investigating Officer tried to arrest them but he was unsuccessful in doing so. Ultimately, the accused-appellants surrendered before the Court of Chief Judicial Magistrate. The informant and other prosecution witnesses of the facts have seen occurrence of the incident with their own eyes. All the eye-witnesses of the prosecution have fully supported the prosecution story by their reliable and credible evidence in the Court. Learned Trial Court found ocular and documentary evidence of the prosecution as reliable and trustworthy and held the accused-appellants guilty for the commission of the crime. Learned Trial Court has appreciated the evidence in proper and judicious perspective and rightly convicted the accused-appellants. There is no perversity and illegality in the finding and reasoning given by the learned Trial Court. Hence, criminal appeal filed by the accused-appellants are devoid of merits and are liable to be dismissed.

17. In the light of the rival submissions advanced by learned Counsel for the parties, we have perused the written report. From a perusal of the written report, Exhibit Ka-1, it is revealed that all accused-appellants have been named specifically with their role played by them and also the murder weapon, which they have held in their hands. According to the written report, the incident

had occurred in the night of 27.09.1987 at 09:45 P.M. Informant Rohtash Singh @ Chhotey (PW-1) has lodged written report at the concerned police station and on the basis of the written report, Exhibit Ka-1, F.I.R., Exhibit Ka-4, was registered on 28.09.1987 at 02:00 A.M. in the night itself. The distance between the place of incident and the police station Kundarki is six kms. When we see the horrifying and cruel manner in which accused-appellants had committed the alleged crime in the night in the light of petromax lamps and torches, we find that there is no delay or connection in lodging the written report by informant Rohtash Singh @ Chhotey (PW-1). We also find that there is no afterthought in lodging the written report, Exhibit Ka-1. In view of the above fact and situation, it is clear that there is no delay in lodging the written report and registering the F.I.R. at the concerned police station against the accused-appellants, hence we find no force in the arguments of learned Counsel for the parties on this point.

18. We have gone through the evidence of informant Rohtash @ Chhotey (PW-1), who is real brother of deceased Ram Kunwar, and found that he is an eye-witness of the incident and he stated the same things in his evidence as was stated by him in his written report, Exhibit Ka-1. In his examination-in-chief, this witness has stated that "it was 09:45 P.M. at night. The deceased after listening Akhand Ramayan Path in the temple was going to home. I, along with my father Ramphal Singh, were also going with him. The deceased was my real brother. The deceased was 3-4 steps ahead. When we reached near southern wall of Khairati's house, then there accused Mahesh, Naresh @ Chhote, Virpal and Balistor met us. Virpal is uncle of Mahesh and Naresh; and Naresh is cousin of Mahesh. Mahesh, Naresh and Virpal had guns and Balistor had country-made pistol. They surrounded my brother Ram Kunwar. I, my father and my brother Ram Kunwar made a hue and cry. Prem Pal Singh, Khandey Singh and Kishan Pal Singh came. I and other witnesses had torch. My father was also carrying a torch, and all the torches were lit, providing sufficient light. Mahesh, Naresh and Virpal had collectively fired upon Ram Kunwar. Due to which, he sustained injury and died there. Balistor holding country-made pistol in his hand continuously intimidating us. Again Balistor said that make the dead body disappear. After this, accused fired in the air and dragged the dead body of my brother and carried away. By the fire in the air, Km. Veerum, daughter of Jaswant Singh, had also received pellets injury. We all saw the whole incident in the light of torch. I had carried my torch today which I had at the time of incident.

19. About motive of the incident, informant Rohtash Singh @ Chhotey has stated in his examination-in-chief that "accused Mahesh before 2-2" years of this incident had registered a case against my brother in respect of eloping his sister Suman with my brother. It was enmity of accused with my brother. All the four accused are present in Court. My brother was wearing a light checked shirt with red lines, a white waist-cloth (tahmad), underwear with green lining, and plastic shoes without laces. The dead body of my brother was found after six days in the sugar-cane field of Nazruddin in the jungle of Majholi. The head of the dead body was severed. We identified from clothes, shoes and by his body that this dead body is of my brother."

20. In his cross-examination by defence, informant Rohtash Singh @ Chhotey (PW-1) has stated that "name of father of accused Mahesh is Rajpal. I do not know whether Rajpal had lodged a case against Vinod in respect of Suman for the case under Section 498 IPC on 30.11.1986 or not. Mahesh had lodged a report against four persons in respect of eloping his sister. This report was

written against the deceased Ram Kunwar, Rashid, Santosh and Vinod. Except Ram Kunwar, rest three persons are alive.

21. In the same way, eye-witnesses Khandey Singh (PW-2) has also stated in his evidence that it was 09:45 P.M. at night. I was at temple. In our village, Akhand Ramayan Path was being recited. I heard a noise near the temple coming from the southern wall of Khairati s house. On hearing it, Kishan Pal, Prem Pal Singh and other villagers ran towards that. Km. Veerum, daughter of Jaswant Singh, too ran towards that. This witness has also stated in his evidence that all the prosecution witnesses had torches and all of them were lit. This witness further stated that I saw, in the light of my torch and the torches of others, that the accused Mahesh, Naresh, Virpal, and Balistor were surrounding Ram Kunwar. Mahesh, Naresh and Virpal had guns and Balistor had country-made pistol. Three persons, holding guns, fired at Ram Kunwar together. He fell down there and died. Balistor with country-made pistol was threatening us there. Balistor said that make the dead body disappear and they dragged the dead body in western direction. Before this, they had fired in the air. Due to which, Km. Veerum sustained injuries. The accused persons are of my village. I know them before.

22. In cross-examination, Khandey Singh stated that I secured bail for Ram Kunwar in case of Section 366/376 IPC. His father Ramphal had called me for his bail. Name of my father is Man Singh and my grandfather name is Niranjan Singh. Niranjan Singh had two sons, Pan Singh and Buddhi Singh. Ramphal is son of Buddhi Singh and Ram Kunwar is son of Ramphal. At the time of incident, I was attending the Ramayan Path. I arrived at the spot, upon hearing Ram Kunwar s commotion, before any firing occurred. In Ramayan program, three gas petromax lamps were lit."

23. Prem Pal is PW-3 but he has not supported the prosecution case and he was declared hostile on the request of the prosecution. However, from the perusal of the evidence of this witness, this fact is revealed and established that on the day of incident, there was reciting of Akhand Ramayan at the temple. This witness was also present there; he had also heard noise from the southern wall of Khairati s house. On hearing it, this witness along with other witnesses including Km. Veerum, daughter of Jaswant, came to the spot. There were people standing there. From the statement of this witness, happening of the incident and fact of reciting of Akhand Ramayan at the temple and coming of the noise of hue and cry are proved and testified.

24. Prosecution produced Anwar as PW-6. He has also supported the prosecution story. This witness has stated in his evidence the same statement as were stated by the informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2). He is a witness of recovery of plain soil and bloodstained soil, Exhibits Ka-6 and Ka-7. The fact with regard to aforesaid recovery has been proved by this witness in his cross-examination. He has also stated that "I had not told to Rohtash that I had also seen dragging of the dead body because Rohtash was himself present there and he had saw me. First of all, I had told these things to daroga that I had seen the accused dragging and carrying away the dead body. Balistor was walking 1-2 steps behind them. Balistor had fired 3-4 shots in the air when they were carrying away the dead body. Thus, from the evidence of Anwar (PW-6), prosecution story has also found support and corroboration. The role of accused-appellants have also been stated by this witness. In the same way as was stated by the informant Rohtash

Singh @ Chhotey (PW-1) and Khandey Singh (PW-2). Thus, we find the evidence of this witness as relevant and trustworthy in respect of the prosecution story.

25. Prosecution produced Ashfaq as PW-7. From the perusal of the evidence of this witness, it appears that he had stated and verified the fact that the accused-appellants, Virpal, Mahesh, and Naresh, were carrying away the dead body of the deceased, Ram Kunwar, while Balistor was 2□3 steps behind them, firing shots into the air. All of them were going towards west. During the course of cross-examination by the defence, this witness had also stated that "I had not told to Rohtash that I had also seen dragging and carrying away the dead body of the deceased because Rohtash was also present there. First of all, I had told about this to daroga. I had stated that all four accused were holding and dragging the dead body while carrying it away. From the perusal of the evidence of this witness Ashfaq (PW-7), we find that prosecution story has also found support from the statement of this witness as given by him in the Court.

26. Thus, from the perusal and discussions of the evidence of the informant, Rohtash Singh @ Chhotey (PW-1), and Khandey Singh (PW-2), we find that these witnesses are although related to the deceased, Ram Kunwar, but they are eye-witnesses of the occurrence, who have seen the happening of the whole occurrence with their own eyes.

27. From the perusal of the written report, Exhibit Ka-1, we find that informant, Rohtash Singh @ Chhotey (PW-1) himself scribed the written report, Exhibit Ka-1, in which he described the incident, naming all the accused and specifying the roles played by each, in very simple and natural words. There is no embellishment, exaggeration, concoction in the written report, Exhibit Ka-1. Apart from this, although informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2), who is related with his brother Ram Kunwar, have also stated and narrated the happening of the incident and roles played by each of the accused in very simple and natural language without any exaggeration, embellishment and concoction. At the time of happening of the incident, it was 09:45 P.M. and deceased with his brother informant Rohtash Singh and father Ramphal were returning from listening the reciting of Akhand Ramayan at the temple, in the way, accused-appellants appeared near the outer southern wall of Khairati□s house and surrounded the deceased, Ram Kunwar. Accused-appellants Mahesh, Naresh and Virpal had guns in their hands and accused Balistor had country-made pistol in his hand. The accused-appellants, Mahesh, Naresh and Virpal together fired shot from their guns at deceased Ram Kunwar, who died at the spot and accused Balistor holding country-made pistol in his hand was threatening to the people so that no person could come forward and save the life of deceased, Ram Kunwar. After committing the murder of the deceased, Ram Kunwar, the accused-appellants were not satisfied with their criminal act; they also dragged his dead body by tightening a shun rope around his waist and carried it away. In the jungle of Majholi, they severed the head of the deceased from his body and thrown the same away at a place from where despite pointing out of the accused-appellants, Investigating Officer could not recover the head of the dead body of the deceased, Ram Kunwar. However, except head, dead body of the deceased was recovered on 04.10.1987 from the sugar-cane field of Nazruddin, resident of Majholi. The dead body of the deceased was identified by informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) as dead body of Ram Kunwar from the clothes, shoes and from other articles. The commission of the crime and carrying away the dead body of the deceased, Ram Kunwar, by dragging and severing the head from rest of his body shows that the accused-appellants have committed the crime with full preparation and with intention to kill him in a very horrifying, cruel and brutal manner.

28. Although the informant Rohtash Singh @ Chhotey (PW-1) is real brother of the deceased, Ram Kunwar, and Khandey Singh (PW-2) is family member of the deceased and they are the eye-witnesses of the incident, who have seen the whole occurrence with their own eyes, thus, testimony of the above eye-witnesses is fully credible that inspire full confidence. We find that evidence of Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) are wholly reliable. There is no major and material contradictions by which evidence of these witnesses could be rejected and doubted. Prosecution witnesses Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) supported and corroborated the evidence of the Anwar (PW-6) and Ashfaq (PW-7). Likewise, Anwar (PW-6) and Ashfaq (PW-7) also corroborated the evidence of prosecution witnesses Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2).

29. No person or family member of the victim could falsely implicate an innocent individual in a crime as serious as murder while excluding the real culprit who committed the offence. In other words, family members of the victim always desire that name of the real culprit must be written in the F.I.R. and real culprit must be punished according to provisions of the law. In this case, there is no ground or circumstance of this nature by which this fact could be revealed that prosecution and eye-witnesses of the case have falsely implicated the accused-appellants for commission of the crime.

30. It is a settled principle of law that the evidence of a related witness cannot be rejected or doubted merely on the ground of their relationship.

31. The Supreme Court in ***State of Rajasthan v. Smt. Kalki And Another; (1981) 2 SCC 752,*** has held in paragraph no.7 that:

"7. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents."

32. The Supreme Court in ***G. Laxmanna And Others v. State of Andhra Pradesh; (2002) 8 SCC 333***, has held in paragraph no.10 on the point of related witness that:

"10. The mere fact that the prosecution witnesses are related to each other does not impress us, having regard to their natural presence and the consistency in their evidence. After all the deceased were also related to the witnesses as they belonged to the same family."

33. Although at the time of the incident, the informant, Rohtash Singh @ Chhotey, brother of the deceased Ram Kunwar, his father Ramphal, and several other people, including other prosecution witnesses, were present, the accused-appellants were armed with deadly weapons, like guns and country-made pistols,

and their conduct was extremely horrifying and cruel. For this reason, no person, including Rohtash Singh @ Chhotey (PW-1) and the other prosecution witnesses, dared to intervene or save the life of the deceased, Ram Kunwar, from the brutal acts of the accused. On this ground only, it could not be said that informant Rohtash Singh @ Chhotey (PW-1), Khandey Singh (PW-2), Anwar (PW-6) and Ashfaq (PW-7) are not the eye-witnesses of the incident.

34. The Supreme Court in ***Sucha Singh And Another v. State of Punjab; (2003) 7 SCC 643***, has held in paragraph no. 23 on the point of related witness that:

"23. So far as inaction of PWs 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence."

35. Motive assigned for the commission of the crime by the prosecution is that the deceased Ram Kunwar, participated in eloping of Suman, sister of the accused Mahesh. For this incident, a report was lodged against the deceased, Ram Kunwar, Rashid, Santosh and Vinod. Khandey Singh (PW-2) has also accepted in his cross-examination that □I had taken bail as a surety of Ram Kunwar in the case under Section 366/376 IPC.□

36. The Investigating Officer, Chandra Bhan Shukla (PW-8), has stated in his cross-examination that □I had not collected any evidence in respect of motive, however, I had seen that a case was registered against the deceased under Sections 366/376 IPC and he was on bail. I had not read over the F.I.R. registered under Sections 366/376 IPC but that case was registered at register no. 4 in which in the column of the accused, name of the deceased Ram Kunwar was written.□

37. Thus, from the above facts, circumstances, and evidence discussed in this respect, it is revealed that the accused-appellants had a strong motive for the commission of the offence. Since the deceased, Ram Kunwar, was allegedly involved in the elopement of Suman, sister of the accused Mahesh, with another person, it is amply established that the accused-appellants harboured a strong motive against the deceased, Ram Kunwar, which impelled them to commit the crime. Due to this motive, the accused-appellants with full preparation and intention had committed the crime in a brutal, horrifying and in a very cruel manner and tried to disappear the dead body of the deceased with intention to screen the evidence. Thus, the prosecution story is further corroborated by the established motive of the accused-appellants for the commission of the offence.

38. From the perusal of the post mortem report, Exhibit Ka-19, it appears that genuineness of the post mortem report has been admitted by the defence on 05.12.1988. After admitting the genuineness of the post mortem report of the deceased, Ram Kunwar, it was exhibited as Exhibit Ka-19. Although in the trial Court, the doctor, who conducted the post mortem examination of the deceased, Ram Kunwar, has not been examined by the trial Court since defence has admitted the genuineness of the post mortem report, Exhibit Ka-19. Due to this reason, post mortem report, Exhibit Ka-19, shall be legally read as evidence. From the perusal of the post mortem report of the deceased, Ram Kunwar, we find that the deceased, Ram Kunwar,

has sustained as many as eight injuries. Injury nos. 1, 2, 3, 4 are the gunshot injuries, which are located on his vital part of the body and injury nos. 5, 6, 7 and 8 are also on the vital part of his body. The injuries which are eight in numbers of the dead body of the deceased corroborate the evidence of the eye-witness of the prosecution, informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2). The written report, Exhibit Ka-1, and evidence of informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) find support and corroboration from the injuries as found in the post mortem report of the deceased, Ram Kunwar, Exhibit Ka-19. In other words, evidence of the informant Rohtash Singh @ Chhote and Khandey Singh (PW-2) found corroboration from the medical evidence as written in post mortem report, Exhibit Ka-19, of the deceased, Ram Kunwar. Thus injuries as found according to the post mortem report, Exhibit Ka-19, on the dead body of the deceased, Ram Kunwar, found full support from the ocular evidence of the prosecution witnesses. In this way, the ocular evidence of the prosecution witnesses and the post-mortem report, Exhibit Ka-19, of the deceased, Ram Kunwar, corroborate and support each other, thereby proving and establishing the prosecution case beyond reasonable doubt. Although injured Km. Veerum, daughter of Jaswant, who has also sustained gunshot injury and according to her injury report, Exhibit Ka-22, it appears that due to fear of the accused-appellants, she avoided to appear in the Court as a witness to give her evidence but the gunshot injuries which were found on her body also corroborate and support the prosecution story and horrifying criminal act of the accused-appellants.

39. From perusal of the judgment and order of the learned trial Court dated 02.05.1989, we find that trial Court has well discussed the prosecution evidence including the oral and documentary and based its finding and reasoning on cogent and reliable evidence. The finding and reasoning as recorded by the learned trial Court is based on cogent and reliable evidence. The finding and reasoning of the learned trial Court is based on settled principle of law of evidence. The finding and reasoning of the trial Court are fully supported by the settled principles of law in this respect. The trial Court minutely perused and discussed all the relevant evidence, appreciated it in the right and proper perspective, and based its finding on cogent and reliable evidence. Thus, we find that there is no perversity or illegality in the finding and reasoning as recorded in the judgment and order of learned Trial Court. Thus, from the above discussions, we find no force in the arguments advanced by learned Counsel for the accused-appellants in this respect.

40. In the light of above discussions, we find no merit in the criminal appeals filed by the accused-appellants. Hence, we find criminal appeals filed by the accused-appellants devoid of merits and are liable to be dismissed.

41. In the result, the criminal appeals are **dismissed**. The impugned judgment passed by the learned Vth Additional District and Sessions Judge, Moradabad is affirmed. The appellants, Balistor, Mahesh and Naresh are on bail. Their personal bonds stand cancelled and their sureties are discharged. They are directed to surrender before the learned Chief Judicial Magistrate, Moradabad within a period of fifteen days. In the event of default, the Chief Judicial Magistrate, Moradabad shall issue a non-bailable warrant to secure their arrest to undergo the sentence.

42. The Chief Judicial Magistrate, Moradabad is directed to intimate this Court regarding compliance of this order.

43. Let a copy of this judgment along with the Trial Court record be sent to the learned Trial Court forthwith for compliance.

(2026) 7 ILRA 165
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 1089 of 1985

Veer Singh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to conviction for offence punishable under S. 376 of the Indian Penal Code, 1860, whether the prosecution has been able to prove its case beyond reasonable doubt, effect of delay in lodging the FIR, discrepancies in the statements of the first informant and the victim, evidentiary value of the sole testimony of the prosecutrix, effect of hostile testimony of an eye-witness, absence of corroboration by medical evidence, non-explanation of injuries sustained by the accused, defective investigation, proof of age of the victim, appreciation of evidence on record. (Paras 26-48).

Headnotes

Criminal law - Indian Penal Code, 1860 - S. 376 - Rape - Delay in lodging FIR - Minor inconsistencies in statements of witnesses - Effect - For an offence like this, the prestige and honour of an unmarried girl of a family is at stake and therefore they hesitate in lodging the FIR - If there is some delay, then it may not be a ground to raise doubt over the prosecution case - Minor inconsistencies in the statements of the first informant and the victim with regard to when the FIR was lodged have no adverse effect over the prosecution case. (Paras 28-32).

Criminal law - Indian Penal Code, 1860 - S. 376 - Rape - Evidence of prosecutrix - Corroboration - Conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence - There is no rule of law that the evidence of the prosecutrix cannot be relied upon without corroboration - Corroboration is not a sine qua non for conviction in a rape case - Where the evidence of the victim does not suffer from any basic infirmity and the probabilities factor does not render it unworthy of credence, there is no reason to insist on corroboration except on medical evidence where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming - Testimony of the victim in such cases is vital and where her testimony inspires confidence and is found to be reliable, the Court may act on such testimony alone. (Paras 34-36).

Criminal law - Indian Penal Code, 1860 - S. 376 - Rape - Resistance by victim - Absence of injuries - Effect - A rustic village girl of tender age, overpowered by the accused, and out of fear and helplessness, if she did not offer any resistance or cause any injury to the accused, then merely this by itself would not render her testimony unreliable - Estimation of time and duration by a minor and illiterate victim may not be precise and accurate - Even slight penetration is sufficient to prove offence of rape - Consistent, trustworthy and reliable testimony of the victim of sterling quality with no major contradictions with regard to the incident establishes the prosecution case. (Paras 37-38).

Criminal law - Indian Penal Code, 1860 - S. 376 - Rape - Medical evidence - Absence of injury - Intact hymen - No spermatozoa - Effect - Rape is a crime and not a medical condition - Rape is a legal term and not a diagnosis to be made by the medical officer - Whether rape has occurred or not is a legal conclusion, not a medical one - Neither the non-rupture of hymen nor absence of injury to the private parts belies the testimony of the prosecutrix - Opinion of the doctor that no rape appeared to have been committed, based only on absence of rupture of the hymen and absence of injuries on the private parts, cannot throw out otherwise cogent and trustworthy evidence of the prosecutrix - Medical opinion having no material significance where the statement of the victim is otherwise found reliable, trustworthy and of sterling quality. (Paras 39-40).

Criminal law - Indian Penal Code, 1860 - S. 376 - Age of victim - Medical and oral evidence - Evidence of the victim, father and medical evidence - Epiphysis of elbow fused whereas epiphysis of radius and ulna at wrist had not fused - Medical opinion placing age between 12-14 years - No contrary evidence or suggestion regarding age - Victim established to be minor and aged about 14 years at the time of incident. (Para 41).

Criminal law - Indian Penal Code, 1860 - S. 376 - Defective investigation - Recovery of salwar - Non-sending for chemical examination - Effect - Failure to send the salwar for chemical examination amounts to defective investigation - If the prosecution case is proved otherwise, defective investigation would not be a ground to disbelieve the prosecution case. (Para 42).

Criminal law - Indian Penal Code, 1860 - S. 376 - Hostile witness - Evidentiary value - Statement of a hostile witness shall not outrightly be rejected in totality - That portion of the statement can be relied upon which is in support of prosecution and finds corroboration from other evidence - Testimony of the hostile witness corroborating the place of occurrence and the victim coming out of the field weeping relied upon. (Paras 43-44).

Criminal law - Indian Penal Code, 1860 - S. 376 - Circumstantial corroboration - Broken bangles - Place of occurrence - Recovery of broken pieces of bangles from the place of occurrence further corroborates the prosecution case that the victim's bangles may have been broken in her struggle at the time of incident - Place of occurrence fully established. (Para 45).

Criminal law - Indian Penal Code, 1860 - S. 376 - Injuries on accused - Non-explanation - Defence version - Though fourteen injuries to the accused were established by medical report, there was no evidence that these injuries were caused during the incident - Defence did not adduce evidence in support of its version - Non-explanation of injuries of the accused had no adverse effect over the prosecution case. (Para 33).

Held: The burden of proof lies upon the prosecution to prove its case beyond reasonable doubt - delay in lodging the FIR and minor inconsistencies in the statements of the first informant and the victim have no adverse effect on the prosecution case - the testimony of the prosecutrix, if it inspires confidence, is sufficient for conviction and corroboration is not a sine qua non - the testimony of the victim is consistent, trustworthy, reliable and of sterling quality - absence of resistance or injuries to the accused does not render her testimony unreliable - even slight penetration is sufficient to prove offence of rape - the statement of the victim cannot be disbelieved merely because of absence of conclusive medical evidence, non-rupture of hymen or absence of injury to private parts - the statement of a hostile witness can be relied upon to the extent it supports and finds corroboration with the prosecution case - broken bangles corroborate the prosecution case and establish the place of occurrence - defective investigation is not a ground to disbelieve an otherwise proved prosecution case - injuries sustained by the accused need not be explained in the absence of evidence connecting them with the incident - the victim was established to be a minor aged about 14 years - the prosecution proved the charge under S. 376 IPC beyond reasonable doubt - the Trial Court correctly appreciated the evidence and reached the conclusion of guilt - the appeal was dismissed and the conviction and sentence were affirmed. (Paras 26-48). (E-7)

Case Law Cited

Vishnu Vs. State of Maharashtra, **(2006) 1 SCC 283***; State of Rajasthan Vs. N.K.,* **(2000) 5 SCC 30;** *Ranjit Hazarika Vs. State of Assam,* **(1998) 8 SCC 635***; State of Tamil Nadu vs. Ravi @ Nehru,* **(2006) 10 SCC 534***; Ranjit Hazarika vs. State of Assam,* **(1998) 8 SCC 635.**

List of Acts

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

List of Keywords

rape; FIR; delay in lodging the FIR; prosecution case; minor inconsistencies; prosecutrix; sole testimony; corroboration; medical evidence; rustic village girl; tender age; resistance; slight penetration; sterling quality; hostile witness; place of occurrence; broken pieces of bangles; defective investigation; age of the victim; fourteen injuries; burden of proof; beyond reasonable doubt; false implication; conviction and sentence.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S. 374(2) of the Code of Criminal Procedure, 1973 against the impugned judgment and order dated 22.04.1985 passed by the then III Additional Sessions Judge, Ghaziabad in Sessions Trial No. 55 of 1984, arising out of Case Crime No. 36 of 1983, under S. 376 of the Indian Penal Code, 1860, Police Station Modi Nagar, District Ghaziabad, whereby the accused was convicted under S. 376 IPC and sentenced to seven years' rigorous imprisonment.

Appearances for Parties

Advs. for the Appellant:
Mr. Prayogendra Pal Singh, learned counsel for the appellant
Advs. for the Respondents:
Mr. Rajiv Pandey, learned AGA for the State.

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

1. This Criminal Appeal, under Section 374 (2) of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), has been filed by the appellant Veer Singh against the impugned judgment and order dated 22.04.1985, passed by Sri Y. S. Raizada, the then III Additional Sessions Judge, Ghaziabad, in Sessions Trial No. 55 of 1984, arising out of Case Crime No. 36 of 1983, under Section 376 Indian Penal Code,1860 (in short IPC), Police Station Modi Nagar, District Ghaziabad.

2. By the impugned judgment and order, the learned Trial Court convicted the appellant for offence punishable under Section 376 IPC and sentenced him to undergo seven years' rigorous imprisonment .

3. Brief facts of the prosecution case are that the first informant Hardwari, son of Naubat Kumhaar, resident of Bakhrawa, Police Station Modi Nagar, Ghaziabad, gave a written application, dated 16.01.1983 (Ext. Ka-1), before In-charge Police Station, Modi Nagar, District Ghaziabad, stating therein that on 15.01.1983, as usual his daughter (hereinafter referred to as 'victim'), aged about 14 years, had gone to the forest of Vidhyapur to cut green fodder. It was alleged that at about 11:00 a.m., Veer Singh, son of Lakhan Singh, forcibly caught hold of his daughter and took her into Ranjit Singh's sugarcane field, and committed rape upon her. Upon hearing his daughter's cries, Prakash son of Thawaria and Battu son of Aedli, his co-villagers, reached at the spot and witnessed the incident. Upon seeing them, the appellant fled from the spot. It was further stated that on previous day, he had gone to take a bath in river Ganges and upon returning the following day,

he came to know about the incident. It was further stated that he had brought his daughter and Veer Singh alongwith co-villagers Aedli, Prakash and Datey Ram to the Police Station to lodge the report.

4. Upon this information, FIR under Section 376 IPC, was lodged at Police Station Modi Nagar, District Ghaziabad and the investigation of the case was entrusted to S.I. Hukum Chand (P.W.6). The Investigating Officer commenced investigation and recorded the statement of the first informant and other witnesses. He recovered pieces of broken bangles from the place of occurrence and prepared its recovery memo (Ext. Ka-7). He also took into possession the trousers (salwar) of the victim, having some white spot, which appeared like semen and was encircled by a red pencil. He prepared its recovery memo (Ext. Ka-5). The victim was medically examined and in her internal examination, injury on private part was found. Hymen was found intact with bruise at 3 o'clock position red and tender. The appellant was also medically examined and there were 14 injuries found over his body. In vaginal smear of the victim, no spermatozoa was found.

5. The Investigating Officer, after collecting evidence, filed charge-sheet under Section 376/511 IPC before the Judicial Magistrate, Ghaziabad, who took cognizance of the offence and summoned the accused. The accused was furnished copy of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, the case was committed to the Court of Session for trial. The concerned Court of Session framed charge under Section 376 IPC against the appellant to which he pleaded not guilty and claimed to be tried.

6. The prosecution has examined seven witnesses to prove its case, to wit, Hardwari, the first informant and father of the victim (P.W.1); the victim (P.W.2); Prakash (P.W.3); Dr. Gyandndra Kumar (P.W4.); Head Constable Than Singh, who scribed the chik FIR (P.W.5); S.I. Hukum Chand (P.W.6) and Dr. Kanak Lata Joshi (P.W.7).

7. P.W.1 Hardwari is the father of the victim, who in his examination-in-chief has deposed that on the date of incident, his daughter, the victim, as usual had gone to bring green fodder, then the appellant Veer Singh took her in Ranjeet Singh's sugarcane field and committed rape upon her. He further deposed that Prakash and Battu witnessed the incident, whereupon Veer Singh fled from the spot. He further said that he had gone to river Ganges to take bath and returned in the evening and then came to know about the incident. The victim had told this incident to her mother, who subsequently told it to him. The next day, he, along with Prakash and Datey as well as the appellant, went to the Police Station to lodge the report. The witness has proved the written application as Ext. Ka-1.

8. In cross-examination, P.W.1 has said that before going to the Police Station, he had held conversation with Prakash and Battu. The next day, he went to the Police Station. The Constables had reached the village to take Veer Singh along with the Inspector. Veer Singh was caught and he himself accompanied him. The Policemen reached the village after 12 noon. He denied the suggestion that he, Prakash and others had beaten Veer Singh. At about 11:00 p.m., he returned from the hospital.

9. P.W.2 is the victim herself, who has supported the prosecution case and has said that about two years ago at about 12 noon, as usual she had gone to jungle to bring grass, when the appellant Veer Singh took her forcibly in a sugarcane field of Ranjeet and committed rape upon her. She further deposed that she cried a lot, then Prakash and Battu reached there. Thereafter, Veer Singh left her and fled from the spot. She further deposed that at the time of incident, she was aged about 14 years and it was Prakash and Battu, who took her to her house, where she narrated the entire incident to her mother. Her father had gone to take a bath in river Ganges and had returned at about 01:00 p.m.

10. In cross-examination, P.W.2 has said that she had gone alone to bring grass and the place of occurrence is about one kos (approximately 3.2 kilometers) from her village. She further testified that the appellant dragged her to Ranjeet's field. She did not hit the appellant or committed assault upon him. She also did not sustain any injury. She remained in Ranjeet's field for about half an hour. Thereafter, she came out from the field carrying her bundle (gathri). Prakash had entered in sugarcane field and saw the appellant, but Battu had not seen him. She testified that the appellant had committed rape upon her for about half an hour. The blood would have dropped on the ground, but she did not know about it. She deposed that she felt pain. Her father took her to the Police Station in the evening. She told the incident to her mother soon after she reached at her house and thereafter told her father about the incident in the evening. The Police came from Police Station and took Veer Singh. The Police or his father or any villager had not assaulted Veer Singh. She denied the suggestion that she had cut mustard crop and, upon complaint by Munnu and Veer Singh at her house, Veer Singh was beaten and was falsely implicated in this case.

11. P.W.3 Prakash is the eye-witness of the incident. He has turned hostile and said that he did not see any incident. He said that he saw the victim coming out of the field weeping and did not see any other person, except the victim. In cross-examination he has said that he along with Battu entered in the sugarcane field, but did not find Veer Singh there.

12. P.W.4, Dr. Gyanendra Kumar, Radiologist, is a formal witness, who has conducted x-ray of the victim, which he proved as Ext. Ka-2. P.W.4 said that the epiphysis of elbow had fused, however, the epiphysis of the radius and ulna at the wrist had not fused. In cross-examination, P.W.4 deposed that epiphysis of elbow normally fuses at the age of 16 years and fusion of epiphysis of wrists takes place at the age of 19 years.

13. P.W.5 Head Constable Than Singh is also a formal witness, who scribed chik FIR and entered its gist in G.D. No. 36 at 13:30, the same day, which he proved as Exts. Ka-3 and Ka-4 respectively. In cross-examination, he has said that the appellant was given first-aid by a compounder, as the doctor was not available. In G.D., the injuries sustained by the appellant were not entered.

14. P.W.6, S.I. Hukum Chand, is the Investigating Officer of the case. He has deposed about the investigation carried out by him and said that he recorded statements of the witnesses, the victim, and collected three pieces of broken bangles from the place of occurrence and also collected a salwar from the victim and prepared its recovery memo and thereafter, he submitted the charge-

sheet in the Court. He has denied the suggestion that, he had not recorded the statement of the victim.

15. P.W.7 Dr. Kanak Lata Joshi, is also a formal witness, who has medically examined the victim on 16.01.1983 at 08:30 p.m. She deposed that she did not find any mark of injury over her private parts. Hymen was found intact and there was one bruise at 3 o'clock position red and tender. There was no blood. She could not give any opinion that the rape was committed upon the victim. She opined the age of the victim between 12 to 14 years. She further testified that in further test, no spermatozoa was found in the specimen. In cross-examination, she has said that if a person of 20 or 22 years would have committed rape upon the victim, then it is possible that hymen may not remain intact, but sometimes it may remains intact. She admitted that she had added the word □with bruise at 3 o□clock position red and tender□ in view of x-ray report, lateron.

16. After closure of prosecution evidence, the statement of appellant Veer Singh was recorded under Section 313 Cr.P.C., in which, he denied the prosecution case and has said that the witnesses have given evidence against him under the pressure of police and they are of the same house. He further said that the recovery regarding the three pieces of broken bangles and salwar of the victim were fake. He further said that on 16.01.1983, Munnu and he himself had gone to Hardwari's house to raise a complaint regarding cutting of mustard crop from his field, thereupon, they assaulted him and called police and got him arrested.

17. In defence, the appellant has examined D.W.1 Dr. Murari Pandey, Medical Officer, State District Hospital, who stated that on 17.01.1983 at about 10:00 a.m., he medically examined Veer Singh and found following injuries over his body:

(*i) Lacerated wound 3 x 1/2 x 0.4 cm bone deep to the left of head 6 cm above the left ear.*

(ii) Lacerated wound 2.6 cm x 0.2 cm x 0.2 cm to the back of left ear.

(iii) Contusion 5 cm x 3 cm at the right of forehead above the temple.

(iv) Six contusions of brownish and reddish colour 1.5 cm x 3.5 cm over the back of both sides.

(v) Three abraded contusion 2 cm x 1 cm to 2 cm x 6 cm to the left of back and one in the middle and one to the right of back.

(vi) Contusion reddish and brownish in colour 5.5 cm x 3 cm over right shoulder.

(vii) Abrasion 1.7 cm x 1.5 cm over left shoulder.

(viii) Abrasion 3 cm x 1 cm in the middle of left arm.

(ix) Abrasion .4 cm x .05 cm below the thumb of left hand along with contusion.

(x) Abraded contusion 4.5 cm x 2 cm in the front of upper part of the right arm.

(xi) Abrasion 2 x 1 cm to the inner part and near elbow of the right forearm.

(xii) Contusion reddish and brownish in colour 8 cm x 2 cm to the outer and upper part of right thigh.

(xiii) Abrasion 1.7 cm x 1.2 cm to the front and middle part of the left thigh.

(xiv) Two abrasion .2 cm x .15 cm and 2 cm x 1 cm to the front and middle part of the left leg.

18. D.W.1 said that injury no.1 to 6, 9, 10 and 12 were caused by any blunt object and injury nos. 7 to 9, 11, 13, 14 were caused by friction. All the injuries were simple in nature and about one day old. The injured was brought by Constable Balvir Singh of the Police Station Modi Nagar. The witness has proved injury report as Ext. Kha-1. In cross-examination, he has said that he has not written about the general condition of the injured in his injury report.

19. The Trial Court after hearing arguments of both the parties and upon a perusal of evidence on record, came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and it is proved that the appellant had committed rape upon the victim and accordingly, the appellant was convicted and sentenced for the offence punishable under Section 376 IPC for the term as indicted above.

20. Heard Mr. Prayogendra Pal Singh, learned counsel for the appellant, Mr. Rajiv Pandey, learned AGA for the State and perused the trial court record.

21. Learned counsel for the appellant submits that there is inordinate delay in lodging the FIR and no sufficient explanation has been given by the prosecution, which raises serious doubt over the prosecution case and false implication of the appellant in this case cannot be ruled out. It is further submitted that there are major contradictions in the statement of P.W.1 Hardwari, the father of the prosecutrix and P.W.2, the victim herself.

22. Learned counsel for the appellant next submits that as per the prosecution case, there were two eye-witnesses of the alleged incident and the prosecution has only examined Prakash as P.W.3, even he has not supported the prosecution case. The other eye-witness has not been examined, therefore, an adverse inference ought to be drawn against the prosecution case. It is also submitted that the oral testimony of the prosecutrix is not supported by medical evidence, which raises serious doubt over the prosecution case.

23. Learned counsel for the appellant next submitted that the appellant sustained fourteen injuries and no explanation has been given regarding these injuries, which raises serious doubt over the prosecution case. It is also contended that the appellant has been falsely implicated in this case for the reason that on 16.01.1983, he had gone along with Munnu at first informant's house to raise a complaint of harvesting the mustard crop and there they were beaten and after calling the Police,

they were lodged in the lock up. Therefore, it is argued that the Trial Court has failed to appreciate the evidence on record correctly and reached at the wrong conclusion of guilt of the appellant, on the basis of surmises and conjectures and as such, the impugned judgment and order is liable to be set aside.

24. Per contra, learned AGA on behalf of the State has submitted that the prosecution case is fully established. The first informant is not the eye-witness of the alleged incident, as he had gone to take bath in river Ganges, and after his return, he came to know about the incident, thereafter he lodged the FIR. It is further submitted that the witnesses are illiterate, rustic village people belonging to lower strata of society, therefore, if there is any discrepancy in their testimony with regard to the date, when the FIR was lodged, then it is minor and has no bearing over the prosecution case. It is also submitted that the prosecutrix has supported the prosecution case. It is also contended that there are no major contradictions in the testimony of the victim, with regard to the alleged incident and for an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be trustworthy, unblemished and of sterling quality. The testimony of prosecutrix in the present case passes such test, therefore, only on the basis of the testimony of P.W.2, the victim, the prosecution case is proved.

25. Learned AGA has next submitted that rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim for an offence of rape. It is also argued that in the present case, some mark of injury is found over private part of the prosecutrix, which corroborates the prosecution case and even if, it is assumed that the medical evidence does not clearly say about the rape, then merely the statement of the prosecutrix is sufficient to prove the prosecution case. It is also submitted that the appellant did not sustain any such injuries during the incident and there is no such case of the appellant that during the above incident, he sustained injuries, therefore, the prosecution was not required to explain about the injuries found upon the person of the appellant. Therefore, the prosecution case is proved beyond reasonable doubt and this appeal has no force, which is liable to be dismissed.

26. In view of submissions of learned counsel for both the parties and the material on record, it is to be examined whether the prosecution has been able to prove its case beyond reasonable doubt, because it is settled law that the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. According to the prosecution, the incident occurred on 15.01.1983 at 11:00 a.m. under village Bakhrawa, Police Station Modi Nagar, District Ghaziabad, when the victim had gone to a jungle to bring green fodder, then in the sugarcane field of Ranjeet, the appellant forcibly took the victim and committed rape upon her.

27. It is the case of the prosecution, upon hearing the cries of the victim, Prakash and Battu reached at the spot and witnessed the incident and thereafter, the appellant fled from the spot upon seeing them.

28. The FIR in the instant case has been lodged the next day of the incident at 10:30 a.m. i.e. after more than 24 hours from the time of incident and in this regard, learned counsel for the appellant has argued that the prosecution has failed to explain the delay in lodging the FIR.

29. The above submission has no force. It is generally experienced that for an offence like this, the prestige and honour of an unmarried girl of a family is at stake and therefore, they hesitate in lodging the FIR. So, if there is some delay, then it may not be a ground to raise doubt over the prosecution case. P.W.1 Hardwari is the father of the victim and he has is the potter belonging to lower strata of the society. It has come in evidence that on the date of incident, he had gone to take bath in river Ganges and upon his return, the same day, he came to know about the incident from his wife and it was the victim, who after returning from the field, narrated the entire incident to her mother. Though there are some discrepancies as to when P.W.1 Hardwari returned after taking bath in river Ganges. In the FIR, it is stated that he returned the next day, then came to know about the incident, whereas in his statement before Court, he said that he had returned in the evening of the incident. P.W.2, the victim, an illiterate young girl of the age of 14 years, has stated that her father came in the afternoon of the incident. The first informant is an illiterate person and the Tehrir has not been written by him.

30. Learned counsel for the appellant has also submitted that, according to P.W.1 Hardwari, he went to the Police Station along with the victim and the appellant to lodge the FIR and P.W.2, the victim, has stated that they went to the Police Station in the evening of the incident, therefore, it raises doubt over the prosecution case.

31. The above submission also has no force. Though there are some discrepancies in the statement of P.W.2, about when they went to the Police Station, whether the same day alongwith the appellant or the next day with him, but in this regard the statement of appellant under Section 313 Cr.P.C., is relevant in which he says that on 16.01.1983, he alongwith Munnu went at the house of informant Hardwari to raise a compliant over cultivating his mustard crop, then they were beaten and after calling the Police, they were lodged in the lock up. So, as per above statement of the appellant, he was taken to the Police Station the next day of the incident i.e., 16.01.1983, and not the same day. Therefore, in this regard, if the victim has stated that they went to the Police Station the same evening of the incident, then it is not a very material contradiction to raise any suspicion over the prosecution case.

32. In view of the above, there is no inordinate delay in lodging the FIR and some minor inconsistencies in the statement of P.W.1 and P.W2, in this regard, have no adverse effect over the prosecution case.

33. Here, it is relevant to mention that the defence has not adduced any evidence in support of its version and there is no evidence to show that the appellant along with Munnu had gone to the house of the first informant where they were beaten up. There is also no evidence that any part of his mustard crop was cultivated. There is also no evidence that the appellant was assaulted at the house of the first informant. Though 14 injuries to the appellant are established, in view of his medical report, but there is no evidence that these injuries were caused during the incident. So the prosecution was not required to explain these injuries and as such, non-explanation of injuries of the appellant has no adverse effect over the prosecution case.

34. So far as the alleged incident is concerned, P.W.2, the victim, is the crucial witness of this case. In the case of **Vishnu Vs. State of Maharashtra (2006) 1 SCC 283**, the Hon'ble

Supreme Court has held that for such kind of offence, conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. In **State of Rajasthan Vs. N.K., (2000) 5 SCC 30,** the Hon'ble Supreme Court has again held that it is well settled by a catena of decisions of this Court that there is no rule of law that the evidence of the prosecutrix cannot be relied upon without corroboration and as such, it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence by a general rule, there is no reason to insist on corroboration except on medical evidence, whether, having regard to the circumstances of the case medical evidence can be expected to be forthcoming. It is well settled law that while evaluating evidence for such kind of crime, the Court must remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations, which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The testimony of a victim in such cases are vital and unless there are compelling reasons, which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury, as held by Hon'ble Supreme Court in **Ranjit Hazarika Vs. State of Assam (1998) 8 SCC 635**.

35. In view of the above legal position, if we look into the testimony of P.W.2, the victim, then it appears that her statement is consistent throughout and there are no major contradictions in her statement to render her testimony unreliable and untrustworthy. She has stated on oath that on the date of incident, she had gone to the jungle to collect fodder, as usual, then the appellant took her forcibly in Ranjeet's sugarcane field, where he removed her salwar and committed rape upon her. She further testified that she cried loudly, whereupon Prakash and Battu reached at the spot, and then appellant fled away. Thereafter, Prakash and Battu took her to her house, where she narrated the entire incident to her mother. She has stated that she was about 14 years of age at the time of the incident.

36. The witness has been thoroughly cross-examined, but her testimony could not be shaken and there are no major contradictions in her statement. She has said that the place of occurrence is about one kos (approximately 3.2 kilometers) from her village and she had gone alone to collect fodder. She cried loudly, but had not assaulted the appellant nor struck him with a hoe (khurpa). Upon this, it is submitted by learned counsel for the appellant that in the ordinary course of event, the victim would have resisted by assaulting or hitting the appellant. Since the victim, admittedly, did not do so, therefore, it is contended that the prosecution version is doubtful.

37. The above submission has no force. A rustic village girl of such a tender age, overpowered by the appellant, and out of fear and helplessness, if she did not offer any resistance or cause any injury to the appellant, then merely this, by itself, would not render her testimony unreliable. P.W.2 has testified that she was raped for about half an hour, resulting in pain and the

blood might have fallen on the ground, although she was not aware of it. Relying upon this statement, learned counsel for the appellant has submitted that the above statement is not reliable, as in the ordinary course of such an incident, the victim could have sustained injuries over her person as well as upon her private parts, however, in view of her medical examination, she did not suffer any such injury, which raises doubt over the prosecution case.

38. The above submission of learned counsel for the appellant is also not acceptable. As observed earlier, the victim is a minor girl of tender age and is illiterate, therefore, her estimation of time and duration with regard to the offence committed upon her, may not be precise and accurate, but the fact of the matter is that the witness has clearly stated that the appellant committed rape upon her. As per law, even slight penetration is sufficient to prove offence of rape. In this case, the evidence adduced by the prosecutrix proves that accused had inserted his penis in her vagina. So the testimony of P.W.2, the victim, with regard to the alleged incident is consistent, trustworthy and reliable and it is of sterling quality, having no major contradictions with regard to the incident, to raise any doubt about it. Further, P.W.3 Prakash, who turned hostile, has corroborated the prosecution case, where he has said that he had seen the victim at the place of occurrence coming out of Ranjit□s sugarcane field weeping, and he and Bittu tried to find someone there after entering inside the field of sugarcane crop, which discloses that something wrong had happened to the victim there and thus, upto this extent he corroborates the prosecution case.

39. It is also submitted by learned counsel for appellant that the ocular evidence is not supported with medical evidence which raises serious doubt over the prosecution case. The above submission has no force. The Hon'ble Supreme Court in **State of Tamil Nadu vs. Ravi @ Nehru (2006) 10 SCC 534**, ruled that "Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether rape has occurred or not is a legal conclusion, not a medical one.□ That is the reason why, even the opinion of the doctor, that there was no evidence of sexual intercourse or rape, is at times held to be not sufficient to disbelieve the accusation of the rape by a victim. In another case of **Ranjit Hazarika vs. State of Assam (1998) 8 SCC 635,** the prosecutrix was also a young girl, who was 14 years of age and subjected to rape by the accused, while she was on her way to home along with him. In her evidence before the court she clearly narrated the manner in which the accused forcibly performed sexual intercourse with her without her consent on the road side. Her statement remained virtually unchallenged in the cross examination and was amply supported by her mother and two witnesses, to whom she made immediate disclosure. The argument of the learned counsel for the accused was that medical evidence belies the testimony of prosecutrix as no injury was found on her private parts and her hymen was found to be intact. The Apex court, however, held that neither the non-rupture of hymen nor absence of injury to the private parts belies the testimony of prosecutrix. It was held that the opinion of the doctor, that no rape appeared to have been committed, which was based only on the absence of rupture of the hymen and absence of injuries on the private parts of the prosecutrix, cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix.

40. In view of the above legal position, if we look into the present case, then in the present case, the victim has been medically examined on 16.01.1983 at 08:30 p.m. by P.W.7 Dr. Kanak Lata Joshi. She found no mark of injury over her private part except that there was a bruise at 3 o□clock position red and tender over hymen, but no bleeding was present. The doctor has opined that no clear opinion could be given with regard to the rape upon the victim. In vaginal examination, no spermatozoa was found. Upon being questioned, the doctor has said that if a boy of 20-22 years of age commits rape upon a girl of such age, then, most probably, hymen would not remain intact, but sometimes it remains intact. The doctor has denied the suggestion that she has added the bruise injury under undue influence and had not found any such injury over hymen. She has said that the above sentence was added after examining the x-ray report. There is no evidence that the Investigating Officer or any other Police Officer or the doctor was on inimical terms to the appellant, or had colluded with the first informant, which could have prompted them to fabricate false evidence against the appellant. Therefore, the doctor is not certain with regard to rape, but it has no material significance in the present case as otherwise the statement of the victim is found reliable, trustworthy and of sterling quality.

41. So far as the age of the victim is concerned, as per prosecution, she was aged about 14 years at the time of incident. She herself, in her statement, has testified that she was 14 years of age at the relevant time. P.W.4 Dr. Gyanendra, who was a radiologist of District Hospital, Ghaziabad, has also, on the basis of x-ray (Ext. Ka.2) stated that he conducted x-ray of the victim and found that the epiphysis of elbow had fused, whereas the epiphysis of the radius and ulna at the wrist had not fused. In cross-examination, P.W.4 deposed that epiphysis of elbow normally fuses at the age of 16 years and fusion of epiphysis of wrist takes place at the age of 19 years. In the opinion of the P.W. 7, victim was aged between 12-14 years. The victim□s father Hardwari has stated that she was about 14 years of age. There is no other contrary evidence on record with regard to the age of the victim. The defence has also not suggested any other age of the victim. Therefore, it is established that the victim was minor and aged about 14 years at the time of incident.

42. The Investigating Officer has also prepared a recovery memo (Ext.Ka-5) of salwar of the victim and found that there were some white spots like semen between left thigh and nearby places. Though the Investigating Officer has not sent the salwar for chemical examination, which amounts to a defective investigation, but it is settled law that if the prosecution case is proved otherwise, defective investigation would not be a ground to disbelieve the prosecution case.

43. So far as the place of occurrence is concerned, the Investigating Officer has prepared its site-plan (Ext. Ka-6), in which he has shown the sugarcane field of Ranjeet Singh, as the place of occurrence, and has marked it as place □A□. The prosecutrix in her statement as P.W.2, has said that at the same place, rape was committed upon her by the appellant. The prosecution has examined Prakash as P.W.3, who is stated to be the person, who reached at the spot upon hearing the cries of the prosecutrix. P.W.3 has turned hostile and has said that except the prosecutrix, he did not see any other person at

the spot, though from his statement, it is established that he admits that at the alleged place, date and time, he heard some faint sound (khatka) in Ranjeet□s sugarcane field. There he saw nothing, but saw the first informant□s daughter coming out weeping. He also stated that the other witness Battu came later on and both of them entered in the sugarcane field, but did not find appellant Veer Singh. It is established law that the statement of a hostile witness shall not outrightly be rejected in totality and that portion of the statement can be relied upon, which is in support of prosecution and finds corroboration from other evidence.

44. In view of the above legal position, the testimony of P.W.3, Prakash, corroborates the place of occurrence, as at this place he found the prosecutrix coming out of field weeping.

45. The Investigating Officer has prepared a recovery memo of the pieces of bangles (Ext. Ka-7), which he recovered from the place of occurrence and proved them before the court. The broken pieces of bangles further corroborates the prosecution case that the victim's bangles may have been broken in her struggle at the time of incident. In view of the above discussion, the place of occurrence is fully established.

46. Here, it is also relevant to note that, according to the appellant, the appellant and Munnu were beaten by Hardwari, when they had gone to raise a complaint to his house, but in this regard the appellant or Munnu have not lodged any FIR at the Police Station. There is also no evidence that Munnu sustained any injuries. There is no reason why the first informant would falsely implicate the appellant alone. There is also no evidence that there was any previous enmity between both the parties giving any reason for false implication of the appellant in this case.

47. In view of the above discussion, this Court comes to conclusion that the prosecution has been able to prove, beyond reasonable doubt, that on the date of incident the appellant has committed rape upon the victim and, as such, charge against him under Section 376 IPC stands proved. Thus, the Trial Court has appreciated the evidence on record correctly and has rightly reached at the conclusion of guilt of the appellant and thus, this appeal has no force.

48. Therefore, the present appeal lacks merit and is, accordingly, **dismissed**. The conviction and sentence of the appellant by impugned judgment and order dated 22.04.1985 is **affirmed**. The appellant, Veer Singh, is on bail. His personal bonds and bail bonds are cancelled and sureties are discharged. He is directed to surrender before the learned Trial Court, within three weeks from today to undergo the remaining part of his sentence, failing which, the Trial Court is directed to adopt coercive measures for securing his presence.

49. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2026) 7 ILRA 178
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1090 of 1987

Gayasi & Anr. **...Appellants**
Versus
State **...Respondent**

Issue for consideration

The appellants, Gayasi and Ram Charan, were convicted under sections 302/34 IPC for murdering Ramola by assaulting him with a farsa and bhala arising from prior enmity over agricultural land and Mahua trees, which conviction was challenged in appeal.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302/34-Criminal Procedure Code,1973-Section 374(2)-Murder-Related witnesses-Reliability-Mere relationship of the prosecution witnesses with the deceased is no ground to discard their testimony when they are natural witnesses, their presence at the place of occurrence is established, and their evidence is cogent, consistent and free from material contradictions-Non-intervention by unarmed witnesses in an occurrence where the assailants were armed with deadly weapons cannot be made a ground for rejecting otherwise trustworthy ocular evidence-Recovery of the weapons, though not strictly in compliance with Section 27 of the Evidence Act and without forensic examination, may lend assurance to the prosecution version when considered along with reliable ocular and medical evidence-Conviction under section 302/34 IPC sustained-Appeal dismissed.(Para 19 to 45) (E-6)

Held

The court ruled that the testimony of related eye-witnesses cannot be discarded merely on the ground of relationship, particularly when their presence is natural and their evidence is cogent, consistent and trustworthy. Minor discrepancies do not impair the credibility of otherwise reliable ocular evidence. Ocular evidence, duly corroborated by medical evidence, established the prosecution case beyond reasonable doubt.

Case law Cited

State of Rajasthan Vs Smt. Kalki & Anr. (1981) 2 Supreme Court Cases 752, G. Laxmanna & Ors Vs State of A.P; (2002) 8 SCC 333, Sucha Singh & Anr. Vs State of Punjab; (2003) 7 SCC 643, Masalti Vs State of U.P.; AIR 1965 SC 202, Harbans Kaur & Anr. Vs State of Haryana; (2005) 9 SCC 195-referred to.

List of Acts

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

List of Keywords

Murder, Section 302/34 IPC, , Related witness, Ocular evidence, Medical evidence corroboration, Minor contradictions, Credibility of witnesses, Deadly weapons , Recovery of weapon, Section 27 Evidence Act.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1090 of 1987

Gayasi & Anr. Vs. State
From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-
A.Rathore, Keshari Nandan Singh
Adv. for Respondent(s):-
A.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the convicts, to wit, Gayasi and Ram Charan, against the judgment and order of conviction and sentence dated 10.04.1987 passed by the learned IIIrd Additional Sessions Judge, Hamirpur in Sessions Trial No. 48 of 1986, State v. Gayasi and Another (arising out of Case Crime No. 52 of 1984), under Section 302/34 IPC, Police Station Kulpahar, District Hamirpur.

2. By the impugned judgment and order, the learned IIIrd Additional Sessions Judge, Hamirpur, has convicted the appellants for an offence punishable under Section 302/34 IPC and sentenced them to suffer imprisonment for life. Aggrieved by the judgment and order dated 10.04.1987, the appellants have preferred this appeal.

3. The prosecution case, in brief, is that on the basis of a written report dated 11.07.1984 (Exhibit Ka-1) submitted by the informant Bari Bahu (PW-1), a First Information Report dated 11.07.1984 (Exhibit Ka-4) was registered as Case Crime No. 52 of 1984, under Section 302 IPC at Police Station Kulpahar, District Hamirpur, against the named accused persons (appellants herein).

4. According to the prosecution case, the informant Bari Bahu (PW-1) got scribed a written report (Exhibit Ka-1) from Ashok Kumar and filed the same at Police Station Kulpahar, District Hamirpur, stating therein that on 11.07.1984, her son Ramola was sowing groundnut crop in his field situated in the village Jaitpur Har. She had gone there in the afternoon to bring him food. Her son finished his work, took a bath, and ate his meal under the shade of a Banyan tree. She was sitting right there while her son was sleeping on his safi. Parsadi S/o Daruva Kachhi and Chhadami S/o Diviya Kachhi, were also sitting there under the shade of Banyan tree. At about 2:00 p.m. in the noon, from her own family/lineage, Gayasi S/o Pyare Kachhi, carrying a farsa and Ram Charan S/o Hallu, who is my stepson, carrying a bhala, arrived under the Banyan tree. Without saying a word, Gayasi attacked my son Ramola with the farsa and Ram Charan attacked him with the bhala and killed him. There has been an ongoing enmity between my son, Gayasi in respect of agricultural field and with Ram Charan regarding Mahua trees. The witnesses and I have seen this killing.

5. After registration of the First Information Report against the accused-appellants, Station Officer, Sauki Ram Chaudhary took the investigation of the case into his hands. However, when S.O. Sauki Ram Chaudhary went on training, the investigation of this case was handed over to Sub-Inspector, Jagvir Singh (PW-6). On 11.07.1984, the alleged murder weapons i.e. farsa and bhala,

were recovered on the pointing out of accused-appellants, and a recovery memo was prepared as Exhibit Ka-3. From the place of occurrence, on 11.07.1984, plain soil, bloodstained soil, and the bloodstained safi of the deceased Ramola, were also recovered and taken into custody, and recovery memo was prepared as Exhibit Ka-8.

6. The Investigating Officer prepared the site plan and other necessary police papers. The panchayatnama of the deceased Ramola was also prepared as Exhibit Ka-9. Thereafter, the Investigating Officer sent the dead body for postmortem examination. After completing all necessary formalities of the investigation, Investigating Officer Jagvir Singh (PW-6) submitted a charge-sheet against the accused-appellants under Section 302 IPC in the concerned Magistrate□s Court.

7. Dr. Ghanshyam Pandey (PW-2) conducted the postmortem examination of the deceased Ramola and prepared the postmortem report. According to Dr. Ghanshyam Pandey (PW-2), the cause of death was shock and hemorrhage resulting from ante-mortem injuries. He opined that the injuries were sufficient to cause death in the ordinary course of nature.

8. Since the case was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial. The learned Trial Court framed charges against the accused-appellants on 04.08.1986 under Section 302 read with Section 34 IPC, to which the accused-appellants pleaded not guilty and claimed trial.

9. In order to substantiate its case against the appellants, the prosecution examined the informant, Bari Bahu (PW-1); Dr. Ghanshyam Pandey (PW-2); Parsadi (PW-3); Ram Charan (PW-4); Jainarayan (PW-5); and the Investigating Officer, S.I. Jagvir Singh (PW-6). Besides the oral testimony, the prosecution relied upon documentary evidence from Exhibits Ka-1 to Ka-13, to establish its case.

10. The learned Trial Court, after recording the evidence of the prosecution witnesses, examined the accused-appellants under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., the accused-appellants denied the allegations leveled against them. They also stated that they had been falsely implicated in this case. They stated that, on the instigation of Parsadi (PW-3), the informant, Bari Bahu (PW-1), had registered a false case against them and all the prosecution witnesses have given false evidence against them. Although the accused-appellants stated in their statements recorded under Section 313 Cr.P.C. that they would adduce defence evidence, they did not produce any evidence in their defence.

11. After recording the evidence, the learned Trial Court heard the arguments of the prosecution and the defence. The Trial Court found the accused-appellants guilty of the alleged offence, as such, convicted and sentenced them to imprisonment for life under Sections 302/34 IPC. Aggrieved by the impugned judgment and order dated 10.04.1987, the accused-appellants have preferred the present criminal appeal before this Court.

12. During the pendency of this criminal appeal, appellant no. 2, Ram Charan, S/o Hallu, died. Accordingly, the criminal appeal insofar as it relates to appellant no. 2 has been abated vide

order dated 06.01.2026. Therefore, the present criminal appeal survives for adjudication only in respect of appellant no. 1, Gayasi.

13. We have heard the arguments of Mr. Keshari Nandan Singh, learned Counsel for the surviving appellant, Gayasi, and Mr. Deepakh Kapoor, learned Additional Government Advocate, appearing on behalf of the State. We have also perused the evidence on record as well as the impugned judgment and order of conviction and sentence dated 10.04.1987, passed by the learned IIIrd Additional Sessions Judge, Hamirpur.

14. Learned counsel for the surviving appellant, Gayasi, has submitted that the Trial Court wrongly relied upon the evidence of the informant, Bari Bahu (PW-1), who is the mother of the deceased Ramola, and the stepmother of appellant no. 2, Ram Charan (now deceased). Since Bari Bahu (PW-1) is the stepmother of appellant no. 2, Ram Charan, and the biological mother of the deceased Ramola, she has allegedly, falsely and deliberately implicated the accused-appellants in this case, making herself to be a related witness. It is further submitted that Parsadi (PW-3) is the real uncle of the deceased and appellant No. 2, Ram Charan S/o Hallu. Another prosecution witness, Ram Charan (PW-4), S/o Ram Dayal, testified regarding the recovery of the alleged murder weapons i.e. farsa and bhala. All these prosecution witnesses are thus closely related by blood to the deceased Ramola and appellant No. 2, Ram Charan (now deceased). Learned counsel for the appellant has vehemently submitted that there is no independent witness to substantiate the prosecution story.

15. It is next argued that the prosecution witnesses in this case are highly related witnesses, being family members of the deceased, and according to settled principles of law, the testimony of interested or close relatives cannot be relied upon without independent corroboration. However, the Trial Court failed to consider this aspect in its findings. The Trial Court also wrongly relied on the evidence of the recovery witness, Ram Charan (PW-4), S/o Ram Dayal. It is next submitted that the findings and reasoning given by the Trial Court are contrary to the settled principles of law and are liable to be set aside. The Trial Court convicted the accused-appellants primarily on surmises and conjectures, without any cogent or reliable evidence.

16. Learned counsel for the surviving appellant, on the basis of above submissions, has contended that the prosecution failed to prove its case beyond reasonable doubt. Accordingly, the impugned judgment and order of conviction and sentence dated 10.04.1987 is liable to be set aside, and the present criminal appeal filed by the appellant is liable to be allowed.

17. Per contra, learned Additional Government Advocate has submitted that the findings and reasoning recorded by the learned Trial Court are based on the testimony of prosecution witnesses, who have witnessed the occurrence with their own eyes. The prosecution witnesses were present at the place of occurrence and saw the commission of the alleged crime by the accused-appellants. It is further submitted that the oral evidence of the prosecution witnesses, namely, the informant Bari Bahu (PW-1), and Parsadi (PW-3), finds support and corroboration from the medical evidence, including the postmortem report of the deceased, Ramola, prepared by Dr. Ghanshyam Pandey (PW-2).

18. Learned A.G.A. further contended that the oral evidence of the prosecution is fully corroborated by the medical evidence. Accordingly, the learned Trial Court, after a proper appreciation of all the prosecution evidence in accordance with law, recorded the conviction of the accused-appellants. It is next submitted that the findings and reasoning of the Trial Court are based on both ocular and medical evidence, which support and corroborate each other. There is no perversity or illegality in the findings or reasoning given by the Trial Court. Therefore, the criminal appeal filed by the accused-appellants is devoid of merit and is liable to be rejected.

19. In view of the above arguments and counter-arguments advanced by both sides, and from a perusal of the written report (Exhibit Ka-1), we find that the informant Bari Bahu (PW-1), submitted a written report at the Police Station Kulpahar, on the basis of which a first information report was registered on 11.07.1984 at about 15:30 hours, in which the time of the alleged occurrence is mentioned as about 14:00 hours. It is thus amply clear that without any delay after the alleged incident on 11.07.1984 at about 14:00 hours, the informant Bari Bahu (PW-1), lodged the first information report promptly at the concerned police station at 15:30 hours on the same day. This fact shows that without any concoction, consideration, or afterthought, the informant Bari Bahu (PW-1), lodged the first information report immediately after the incident against the named accused-appellants. Thus, we find that in a simple and straightforward manner, the informant Bari Bahu (PW-1), lodged the first information report naturally and without any delay.

20. From a perusal of the evidence of the informant Bari Bahu (PW-1), who is the widow of Hallu, it is clear that the deceased, Ramola, was the son of the informant Bari Bahu (PW-1), born from her wedlock with Hallu. It is also revealed that appellant No. 2, Ram Charan (now deceased), was also a son of Hallu, born from Hallu□s previous wife. After the death of his previous wife, Hallu married Bari Bahu (PW-1), and the deceased, Ramola, was born from this subsequent marriage.

21. From a perusal of the examination-in-chief of the informant, Bari Bahu (PW-1), it is apparent that she has stated the same facts as written in her written report (Exhibit Ka-1). In a clear and straightforward manner, the informant (PW-1) stated in her evidence that appellant No. 1, Gayasi, had a farsa in his hand and appellant No. 2, Ram Charan, had a bhala in his hand and that due to enmity regarding agricultural land and Mahua trees, the appellants killed her son.

22. From a perusal of cross-examination of the informant Bari Bahu (PW-1), it is revealed that the PW-1 was previously married to one Munni, and after Munni’s death, Hallu took PW-1 as his wife, and deceased Ramola was born from this marriage. The prosecution witness, Parsadi (PW-3), is also brother-in-law of the informant, Bari Bahu (PW-1). During cross-examination by the defence, the informant (PW-1) reiterated the occurrence of the alleged incident in the same manner as stated by her in examination-in-chief.

23. From the evidence of the informant, Bari Bahu (PW-1), we find that she is an illiterate lady, who has affixed her thumb impression on her written report (Exhibit Ka-1) and evidence. Despite her illiteracy, she has narrated the occurrence of the alleged incident in a simple and straightforward manner, without any exaggeration or embellishment. What she witnessed is exactly that she has stated before the Court.

24. We find that the testimony of the informant, Bari Bahu (PW-1), contains no material or major contradiction that would render her evidence unbelievable or unreliable. In other words, she has presented the facts in simple and natural language, without any artificiality or concoction. There are no contradictions in her evidence sufficient to raise any doubt about its credibility. Merely because the informant, Bari Bahu (PW-1), is the mother of the deceased Ramola, the Court cannot reject the reliability and trustworthiness of the testimony of this witness. Accordingly, we are of the view that the testimony of this witness is wholly reliable.

25. Next to PW-1, the other eye-witness of the prosecution is Parsadi (PW-3). The prosecution has examined Parsadi (PW-3) as an eye-witness of the alleged incident, and his name also finds place in the written report (Exhibit Ka-1) as an eye-witness. From a perusal of the evidence of PW-3, we find that he has deposed in the same manner as the informant, Bari Bahu (PW-1). It is further evident from his testimony that he was present at the place of occurrence on 11.07.1984 when accused-appellant Gayasi, armed with a farsa and accused-appellant Ram Charan (now deceased), armed with a bhala, arrived at the place of occurrence. According to this witness, Gayasi assaulted Ramola with the farsa and Ram Charan assaulted Ramola with the bhala. As a result of the said assault by the appellants, the victim Ramola, died on the spot. This witness has also stated about the enmity with Gayasi regarding agricultural field and with Ram Charan regarding the Mahua trees.

26. From a perusal of the cross-examination of the eye-witness, Parsadi (PW-3), we find that although this witness has stated that the Investigating Officer recorded his statement after one month of the alleged incident, he has also stated that he could not assign any reason as to why the Investigating Officer did not record his statement earlier. This witness has further stated in his cross-examination that the field in which Ramola was sowing groundnut was in his name, and that no case was pending with any person in respect of that field. He has also stated that he had informed the Investigating Officer that he had gone to the spot for sowing groundnut, and if the Investigating Officer did not record the said fact in his statement, he could not assign any reason for the same.

27. From a perusal of the evidence of this witness, as available on the original record of the Trial Court, we find that he has affixed his thumb impression on his deposition. From this, it appears that he is an illiterate rural person who earns his livelihood through labour and agricultural work. After considering the entire evidence of PW-3, we find that he has deposed in a natural and straightforward manner, without any embellishment, concoction, or deliberation. Whatever he witnessed at the place of occurrence has been stated by him before the Court. From a perusal of cross-examination of Parsadi (PW-3), we further find that there is no material or major contradiction of such a nature as would render his testimony doubtful.

28. The testimony of Parsadi (PW-3) corroborates the evidence of the informant, Bari Bahu (PW-1), and the evidence of the informant, Bari Bahu (PW-1), in turn, corroborates the testimony of Parsadi (PW-3). In other words, the evidence of the informant, Bari Bahu (PW-1) and Parsadi (PW-3) mutually corroborate each other. Thus, we find that the prosecution story, as narrated in the written report (Exhibit Ka-1), finds full support and corroboration from the evidence of the informant, Bari Bahu (PW-1) and Parsadi (PW-3).

29. From a perusal of the evidence of the informant (PW-1) and Parsadi (PW-3), it is amply clear that both the informant (PW-1) and Parsadi (PW-3) are eye-witnesses of the alleged incident dated 11.07.1984 occurred at about 14:00 hours, when the accused-appellants attacked and assaulted the deceased,

Ramola, with a farsa and a bhala. These two prosecution witnesses were present at the place of occurrence, however, due to fear for their lives, as the appellants were armed with highly deadly weapons such as a farsa and a bhala, they could not intervene to save the life of the deceased, Ramola. The prosecution witnesses, namely, the informant, Bari Bahu (PW-1), and Parsadi (PW-3), are thus eye-witnesses of the alleged incident. From a perusal of their evidence, it is evident that they were present at the spot, witnessed the occurrence, and have narrated before the Court what they saw with their own eyes in a simple and natural manner. Accordingly, we find that the prosecution case stands fully established and proved beyond reasonable doubt on the basis of the evidence of the informant, Bari Bahu (PW-1), and Parsadi (PW-3).

30. The Supreme Court *in* ***State of Rajasthan v. Smt. Kalki And Another*****; (1981) 2 Supreme Court Cases 752,** has held in paragraph nos. 7 and 8 that:

"7. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

8. In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1."

31. The Supreme Court in ***G. Laxmanna And Others v. State of Andhra Pradesh;*** **(2002) 8 Supreme Court Cases 333**, has held in paragraph no.10 on the point of related witness that:

"*10. The mere fact that the prosecution witnesses are related to each other does not impress us, having regard to their natural presence and the consistency in their evidence. After all the deceased were also related to the witnesses as they belonged to the same family."*

32. The Supreme Court in ***Sucha Singh And Another v. State of Punjab*****; (2003) 7 Supreme Court Cases 643,** has held in paragraph nos. 13 & 23 on the point of related witness that:

"13. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

23. So far as inaction of PWs 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence."

33. The Supreme Court again in ***Masalti v. State of U.P.*; AIR 1965 SC 202**, has held in paragraph no. 14 that:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

34. The Supreme Court in ***Harbans Kaur And Another v. State of Haryana;* (2005) 9 SCC 195**, has held in paragraph no. 7 that:

"*7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. No evidence has been led in this regard."*

35. In light of the legal principles laid down by the Supreme Court in the aforementioned cases, it is clear that although the informant, Bari Bahu (PW-1), is the mother of the deceased, Ramola, and Parsadi (PW-3) is the uncle of the deceased as well as the uncle of appellant no. 2, Ram Charan (now deceased), both being sons of Hallu, the said witnesses are related family members. However, merely on the ground that the eye-witnesses, namely, the informant, Bari Bahu (PW-1) and Parsadi (PW-3), are related to the deceased, their evidence cannot be doubted, in view of the law laid down by the Supreme Court in the aforesaid decisions. It is also a natural human conduct that a family member of the victim would not falsely implicate an innocent person, particularly a member of his own family, in a heinous offence like murder.

36. The informant, Bari Bahu (PW-1), and Parsadi (PW-3) are natural witnesses of the incident, who witnessed the occurrence with their own eyes. The inconsistencies pointed out by the appellants during their cross-examination are minor and superficial in nature. The informant, Bari Bahu (PW-1) and Parsadi (PW-3) have fully supported the prosecution case through their testimonies. Their evidence is wholly reliable, and their testimonies are found to be credible and trustworthy.

37. It is also a notable fact that on the fateful day, i.e. 11.07.1984, when the alleged incident occurred, the prosecution eye-witnesses, namely, the informant, Bari Bahu (PW-1), and Parsadi (PW-3), were sitting under the shade of a banyan tree and were unarmed. In contrast, accused-appellant Gayasi was armed with a farsa and accused-appellant Ram Charan (now deceased) was armed with a bhala. Both the appellants were thus armed with deadly weapons. In such circumstances, an unarmed person could not be

expected to intervene to save the life of the deceased in the face of assailants armed with deadly weapons like a farsa and a bhala. Merely on this ground, the reliable testimonies of the eye-witnesses, PW-1 and PW-3, cannot be doubted or discarded. In the light of the above discussions, we find no force in the submissions advanced by the learned Counsel for the surviving appellant.

38. From a perusal of the postmortem report (Exhibit Ka-2), which was prepared by Dr. Ghanshyam Pandey (PW-2), following injuries were found on the body of deceased Ramola:-

(i) Two incised wounds were superimposed on each other and were in the same direction. These were present horizontally on the lower part of the front of the neck. The combined measurement of the wounds was 14cm x 12cm. Everything, including the major blood vessels of the neck and the food pipe (esophagus), was severed. A significant amount of clotted blood was present, and some semi-digested food was also found adhering to the area.

(ii) A punctured wound measuring 1□cm x 1□cm was present on the left side of the abdomen. Inside the abdomen, the loop of the large intestine was ruptured. A large amount of clotted blood was present inside the abdomen. Upon examination of internal part of the cadaver, I found that the heart was empty of blood. Inside the abdomen, there was some fecal matter along with clotted blood. By 'inside the abdomen,' I mean the peritoneal cavity. Other matters were normal. The deceased had been dead for approximately one day.

As per the opinion of Dr. Ghanshyam Pandey (PW-2), the death of the deceased was caused by shock and hemorrhage resulting from injuries sustained prior to death. These injuries were sufficient to cause death in the ordinary course of nature. Injury no. 1 must have been caused by a sharp-edged weapon, such as a farsa, and Injury no. 2 by a pointed weapon, such as a bhala. It is possible that the said injuries were inflicted around 2:00 p.m. on the date 11.07.1984.

39. From the written report (Exhibit Ka-1), the evidence of the informant Bari Bahu (PW-1) and the evidence of Parsadi (PW-3), it is evident that accused-appellant Gayasi was armed with a farsa and accused-appellant Ram Charan S/o Hallu was armed with a bhala. Both the eye-witnesses, namely, the informant Bari Bahu (PW-1) and Parsadi (PW-3), have in a very clear cut manner stated in their evidence that accused-appellant Gayasi assaulted the deceased Ramola with a farsa and accused-appellant Ram Charan S/o Hallu assaulted the deceased Ramola with a bhala. Due to the said attack by the appellants with deadly weapons like a farsa and a bhala, the deceased Ramola died on the spot. Thus, we find that the ocular evidence, namely, the evidence of the informant Bari Bahu (PW-1) and Parsadi (PW-3), is supported by the medical evidence of Dr. Ghanshyam Pandey (PW-2). In other words, the medical evidence finds support and corroboration from the ocular evidence of the informant Bari Bahu (PW-1) and Parsadi (PW-3). In this way, the prosecution story finds support from both medical and ocular evidence. The medical evidence corroborates the ocular evidence of the prosecution witnesses, and the ocular evidence supports the medical evidence. Each of them finds support and corroboration from the other.

40. From a perusal of the record, it is evident that on the date of the incident, i.e. 11.07.1984, the police recovered the alleged murder weapons at the instance of the accused-appellants. On the pointing out of accused-appellant Gayasi, a bloodstained farsa was recovered, and on the pointing out of accused-appellant Ram Charan (now deceased), a bloodstained bhala was recovered from a thick ambush. A recovery memo in respect thereof was duly prepared and exhibited as Exhibit Ka-3. During the course of trial, the said weapons

farsa and bhala were produced before the learned Trial Court at the time of recording the evidence of the Investigating Officer, Jagvir Singh (PW-6), who duly identified and proved the same.

41. Admittedly, the recovery of the aforesaid weapons was not effected in strict compliance with the provisions of Section 27 of the Evidence Act, nor were the said articles sent for forensic examination. However, upon a perusal of the recovery memo (Exhibit Ka-3) in conjunction with the testimonies of the prosecution witnesses, namely, PW-1 and PW-3, and considering the totality of the facts and circumstances of the case, the said recovery lends assurance to and corroborates the prosecution version as set forth by the informant, Bari Bahu (PW-1), in the written report (Exhibit Ka-1), as well as in her deposition and that of Parsadi (PW-3). In other words, when viewed in the overall factual matrix of the case, the prosecution story finds substantial support from the aforesaid recovery and attendant circumstances.

42. Apart from the above discussions, we have also examined the impugned judgment and order of conviction and sentence dated 10.04.1987 passed by the learned Trial Court and have perused the findings and reasoning recorded by the Trial Court. Upon such perusal, we find that the Trial Court has duly considered and discussed all relevant facts and evidence available on record. The findings have been recorded in the light of the evidence and are supported by well-settled principles of the law of evidence.

43. In our considered opinion, there is no perversity or illegality in the findings and reasoning of the Trial Court. The conclusions have been arrived at in their proper perspective, in accordance with law, and on the basis of the evidence on record. We, therefore, find no ground to interfere with the impugned judgment and order dated 10.04.1987.

44. In view of the above, we find no merit in the arguments advanced by the learned Counsel for the surviving appellant, Gayasi. Consequently, the present criminal appeal is devoid of merit and is liable to be dismissed.

45. Accordingly, the present criminal appeal is ***dismissed.***

46. The surviving appellant, Gayasi, is presently on bail. His personal bond stands cancelled, and his sureties are discharged from their liabilities. He is directed to surrender before the learned Chief Judicial Magistrate, Hamirpur, within a period of fifteen days to undergo the remaining sentence awarded by the Trial Court vide order dated 10.04.1987.

47. In the event the surviving appellant, Gayasi, fails to surrender before the Chief Judicial Magistrate, Hamirpur, within the stipulated period of fifteen days, the Chief Judicial Magistrate, shall issue a non-bailable warrant to secure his arrest. Upon arrest, he shall be sent to jail to serve the remaining sentence in accordance with the Trial Court's order dated 10.04.1987.

48. The Chief Judicial Magistrate, Hamirpur, is directed to intimate this Court regarding compliance of this order.

49. Let a copy of this judgment be sent to the learned Trial Court along with the Trial Court record **forthwith**.

(2026) 7 ILRA 188
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1140 of 1990

Shaheed & Ors. **...Appellants**
Versus
State **...Respondent**

Issue for consideration

The prosecution case arose from a fatal gunshot incident occurring on September 21, 1987, at Allahabad , following a dispute over an illicit relationship, primary accused Shaheed shot and kill Nanhey, while co-accused Laddan was alleged to have fired in the air during the escape. Appellants preferred appeal against the conviction and sentence under section 302/34 IPC.

Headnotes

Criminal law –Indian Penal Code,1860-Sections 302 r/w 34-Criminal Procedure Code,1973-Section 374(2)-Murder with Common Intention-Evidence corroboration-Ocular testimony of eye-witnesses regarding an accused firing in the air not corroborated by recovery of physical/ballistic evidence (bullets, pellets, empty cartridges) from the place of occurrence-Implication based solely on relationship or suspicion held doubtful-Liability under section 34 IPC requires definite conclusion of prearranged plan or prior concert among accused-Mere presence or suspected involvement insufficient for conviction-Appeal allowed.(Para 16 to 27) (E-6)

Held

The court found the lower court's reasoning unsustainable in law for mechanically applying section 34 IPC without establishing prior concert or a prearranged plan. Due to the absence of direct hostility, lack of relationship with the primary shooter, and uncorroborated ocular evidence, the surviving co-accused was given the benefit of doubt.

Case law Cited

Biswas Vs State of Assam; (2013) 12 SCC 406, State of Odisha Vs Banabihari Mohapatra & Anr, (2021) 15 SCC 268, Krishna Govind Patil Vs State of Maharashtra AIR 1963 SC 1413-referred to.

List of Acts

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

List of Keywords

Murder, Common Intention, Prearranged plan/Prior concert, Meeting of minds/Joint liability, Premeditation, Presumption of innocence, Benefit of doubt, Mere suspicion, Ocular evidence, Material corroboration, Ballistic evidence, Recovery memo, Motive/Hostility, False implication, Abatement of appeal, Reversal of conviction, Discharge of sureties/Cancellation of bail bonds.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1140 of 1990

Shaheed & Ors. Vs. State
From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-
Musarrat Parveen, Syed Farman Ahmad Naqvi (senior Adv.)
Adv. for Respondent(s):-
A.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal No. 1140 of 1990 has been preferred by the accused-appellants against the judgment and order of conviction and sentence of the learned IXth Additional District & Sessions Judge, Allahabad dated 28.05.1990 in S.T. No. 72 of 1988 State Vs. Shaheed and others arising out of Case Crime No. 166 of 1987 under Section 302/34 I.P.C., Police Station Cantt, District Allahabad. By the impugned judgment, the learned Trial Court has found guilty to accused-appellants and convicted and sentenced them for offence under Section 302 read with Section 34 I.P.C., for life imprisonment. Aggrieved by the above order of conviction and sentence dated 28.05.1990, the accused-appellant has preferred this criminal appeal.

2. Fact of the case as is revealed by written report Exhibit Ka-1 is that informant Shakeel Ahmad PW-1 had got ascribed written report dated 21.09.1987 Exhibit Ka-1 and lodged the same at police station Cantt on 21.09.1987. Informant Shakeel Ahmad PW-1 has stated in written report Exhibit Ka-1 that my brother Nanhey @ Abdul Rehman son of Safiur Rehman, resident of 112 A, Rajapur, Allahabad, before some years ago, had some illicit relations with Safina, sister of Shaheed, resident of Rajapur, Allahabad. Due to this reason, Shaheed Son of Naseeruddin, resident of Rajapur, Allahabad and Laddan son of Nanhu, resident of Rajapur, Rehmat resident of Dariyabad, who were relatives of Smt. Nazma, resident of Rajapur, Chunnu son of Ramjan Khan, resident of Rajapur has regarded enmity. Today, my brother and Sri Chiku @ Nandlal son of Ram Aadhar, resident of Rajapur had gone to drink tea at Rajapur tri-junction (Tiraha). After some delay happened, then I and my mother Smt. Kuresha went to call upon my brother. At that time it was about 8:30 pm in night. When reached near this iron door of Rehman Ali then, from this direction my brother was returning with Nandlal; that on reaching near his door, near the wall of the house of Sri Majnu, the above four persons were standing. Out of them, Shaheed had shot a fire at my brother Nanhey @ Abdul Rehman, which hit my brother Nanhey @ Abdul Rehman, due to which he injured. On making hue and cry of weep, Rehmat and Laddan have also fired and run away. We have seen this incident in the light of the tube-light and identified the accused with the help of Chiku @ Nandlal, I took my brother to Beli Hospital, Allahabad, there he died.

3. On the basis of the above written report Exhibit Ka-1, as lodged by the informant Shakeel Ahmad PW-1, an FIR Exhibit Ka-3 was registered against accused-appellant under Section 302 I.P.C., at Police Station Cantt., at Crime No. 166 of 1987 on 21.09.1987 at 21:45 pm by Head Constable 264 Ram Bachan Yadav, PW-4. Investigation of the case was taken by S.O. Karan Singh PW-6. The Investigating Officer Karan Singh PW-6 after registration of the FIR, reached at the place of occurrence, inspected the place of occurrence in the light of the street tube-light and prepared the map of site-plan. The Investigating Officer also prepared Panchayatnama of deceased

Nanhey @ Abdul Rehman. The Investigating Officer also recovered a bullet from the place of occurrence where incident happened after three days of the incident on 21.09.1987 and prepared recovery memo Exhibit Ka-9. The Investigating Officer also prepared other necessary police papers and got sealed the dead body of the deceased and sent the dead body of the deceased Nanhey @ Abdul Rehman for postmortem examination. The Investigating Officer recorded the statement of prosecution witnesses of facts and other formal witnesses. After completing all the formalities and necessities of the investigation, the Investigating Officer submitted a charge-sheet Exhibit Ka-18 against accused-appellant.

4. After happening of the incident, deceased Nanhey @ Abdul Rehman was taken to T.B. Sapru Hospital by Chiku son of Ram Aadhar and Dr. Swatantra Singh, PW-2 has examined the injured Nanhey @ Abdul Rehman and prepared an injury report Exhibit Ka-2. Dr. Swatantra Singh, Medical Officer, T.B. Sapru Hospital, Allahabad PW-2 has found the following injuries on the body of the then injured Nanhey @ Abdul Rehman were found :

"(1) Firearm wound of entry left side chest ½' x ¼' x depth, kept under observation margin inverted no blackening & tattooing, bleeding present.

2' above costal margin, & 6□ from mid line.

(2) Firearm wound of exit-right side abdomen ¼' x ¼' x depth kept under observation margin everted, no blackening and tattooing, bleeding present. 1□ below right costal margin 6□ lateral to umblicus."

5. Dr. U.S. Sinha, PW-9, who examined and conducted the postmortem of the dead body of deceased Nanhey @ Abdul Rehman and prepared the postmortem report Exhibit Ka-20, according to postmortem report Exhibit Ka-20, following ante-mortem injuries were found on the body of the deceased Nanhey @ Abdul Rehman:

"(1) Gun Shot wound of entrance measuring in area 1.5 c.m. x 1.5 c.m. x abdominal cavity deep, it is situated on the level of 12th rib 15 c.m. lateral on the left side from mid line in front of abdomen. It is directed obliquely downward from left to right. Side of lumber region, the margins are inverted and blackening and tattooing present all around the wound. Cause of death: shock and hemorrhage due to gun shot. Cause of death, according to Dr. U.S. Sinha, PW-9, was hemorrhage and shock due to ante-mortem injuries."

6. After charge-sheet was filed against accused-appellant by the Investigating Officer in the concerned Magistrate Court, case was committed to the Court of Sessions for trial, since the case exclusively triable by Court of Session.

7. Charge were framed against the names accused-appellant Laddan , Rehmat and Chunnu by the trial Court on 04.05.1988 under Section 302 read with Section 34 IPC. Charge was also framed against the accuse-appellant Shaheed under Section 302 IPC on 04.05.1988 but the accused persons have denied from the charge and claimed trial.

8. In support of the prosecution case, the prosecution adduced informant Shakeel Ahmad PW-1, Dr. Swatantra Singh PW-2, Nand Lal PW-3, Ram Bachan Yadav PW-4, Devmani Tripathi, PW-5, Karan Singh PW-6, Kailash Nath Katiyar PW-7, Santosh Kumar Shukla, PW-8 and Dr. U.S. Sinha, PW-9 as prosecution witnesses. Apart from the ocular evidence, prosecution has also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-22.

9. After recording of the evidence of prosecution witnesses, accused persons were examined under Section 313 Cr.P.C., by the trial Court. In their statement under Section 313 Cr.P.C., accused persons have denied from all allegations of the prosecution. They have also stated that due to enmity, prosecution witnesses have given evidence against them. They are innocent. Accused appellant Laddan has stated in his statement under Section 313 Cr.P.C., that he has no relation with Shaheed or his family members. There were many enemies of the deceased, any one has killed him. I was implicated due to confusion in this case. The accused-appellant has stated that they will adduce their evidence in defence. On behalf of the accused-appellant, G.P. Srivastava, DW-1, R.C. Shrivastava DW-2, J.N. Pandey DW-3 and Chhote Lal DW-4 were adduced as defence witnesses in the Court. Apart from the defence witnesses, on behalf of defence, documentary evidence have also been filed on the record as Exhibit Kha-1, Kha-2 and Kha-3.

10. After recording of the evidence of prosecution and defence, trial Court has heard arguments of both sides. In the light of arguments and after perusal of the evidence of prosecution and defence, learned Trial Court acquitted named accused Chunnu under Section 302 IPC read with Section 34 IPC. However, Trial Court found guilty to accused-appellant Shaheed for the alleged crime under Section 302 IPC and convicted and sentenced him for life imprisonment. The Trial Court convicted and sentenced accused-appellant Laddan and Rahmat under Section 302 IPC read with Section 34 IPC for life imprisonment. Thus, aggrieved by the above judgment and order of conviction and sentence dated 28.05.1990, accused-appellants Shaheed, Laddan and Rahmat have approached this Court by preferring this Criminal Appeal.

11. During the pendency of this criminal appeal, accused-appellant Shaheed and Rahmat have died. Due to this reason, appeal was abated against these accused-appellants Shaheed and Rahmat by order of this Court dated 6th November, 2025.

12. Thus, in the present criminal appeal, we are only adjudicating in respect of surviving accused-appellant No.2 Laddan.

13. We have heard learned counsel for the surviving accused-appellant Laddan and learned AGA on behalf of the State-respondents. We have gone through the whole evidence as available on records and we have also perused the finding and reasoning of the learned trial Court in this regard.

14. Learned counsel for the surviving accused-appellant No.2 Laddan has submitted that accused-appellant Laddan has been falsely implicated in this case. Due to Mohalla enmity, he was implicated on the ground of suspicion. The only role against accused-appellant Laddan was assigned by the informant Shakeel Ahmad PW-1 that accused-appellant Laddan and Rahmat have fired when they were making hue and cry at the time of the incident. However, the direct role of firing at deceased Nanhey @ Abdul Rehman was assigned to deceased accused-appellant Shaheed,

but only one bullet was found by the Investigating Officer from the place of occurrence. No pellets, ticklis were recovered from the place of occurrence by Investigating Officer. It is also submitted that Investigating Officer could not recover Tamancha/pistol from the possession of Laddan, thus there is no evidence against surviving accused-appellant Laddan and that he also fired a shot to threaten the informant and other prosecution witnesses. However, without considering and keeping in mind this fact, the learned Trial Court without any evidence against accused-appellant Laddan has convicted with the aid of Section 34 IPC for the commission of the crime. No person can be convicted with the aid of Section 34 IPC without pre-plan, pre-concert with other accused persons. There is no any pre-meditation, preplanning and pre-concert of the surviving accused-appellant Laddan with deceased accused-appellant Shaheed in the commission of the crime, but the Trial Court without any evidence has also convicted and sentenced the surviving accused-appellant Laddan with the aid of Section 34 IPC, which is against the settled principles of law. There is no cogent and reliable evidence against the surviving accused-appellant Laddan that he was present at the place of occurrence, therefore, the surviving accused-appellant Laddan is innocent and is falsely implicated in this case. Hence, the judgment and order of conviction and sentence as passed by the Trial Court in respect of the surviving accused-appellant Laddan is without any evidence and against the settled principles of law, therefore, the judgment and order of conviction and sentence as passed by the trial Court dated 28.05.1990 is liable to be set aside in respect of accused-appellant Laddan. Hence, the criminal appeal is liable to be allowed and the judgment and order of conviction and sentence dated 28.05.1990 in respect of surviving accused-appellant Laddan is liable to be set aside.

15. Per contra, learned AGA for the State-respondents has vehemently submitted that at the time of occurrence, the surviving accused-appellant Laddan was also present at the place of occurrence in support of accused-appellant Shaheed for the commission of the crime. Learned AGA has also submitted that informant Shakeel Ahmad PW-1, Nand Lal PW-3, who were the eye-witness of the case, have fully supported the prosecution case. The above eye-witnesses of the case in their evidence have stated that at the time of commission of the crime, accused-appellant Laddan was also present and he fired shot from Tamancha intimidated the prosecution witness, in this way presence of surviving accused-appellant Laddan at the place of occurrence at the time of commission of the offence is proved by the prosecution witness Shakeel Ahmad PW-1, and Nand Lal PW-3. The learned Trial Court has appreciated the evidence in proper perspective and found that presence of surviving accused-appellant Laddan is proved by the prosecution evidence at the place of occurrence. Due to this reason, trial Court has also convicted and sentenced to accused-appellant Laddan with the aid of Section 34 IPC for the commission of the alleged crime. There is no perversity and illegality in the judgment and order of conviction and sentence of the trial Court dated 28.05.1990. The finding and reasoning of the trial Court is based on cogent evidence and according to the settled principles of law. Hence, the criminal appeal, as filed by the accused-appellant is devoid of merit and liable to be rejected.

16. In the light of the arguments of learned counsel for the surviving accused-appellant Laddan and learned AGA appearing for the State respondents, from the perusal of the written report Exhibit Ka-1, we find that in written report Exhibit Ka-1 informant Shakeel Ahmad PW-2 has stated that near the wall of the house of Majnu, the above four persons were standing in which, Shaheed had fired shot at my brother Nanhey @ Abdul Rahman, which hit to Nanhey, due to which

he injured. When we people made hue and cry, then Rahman and Laddan fired shot and fled away. We have seen this incident in the light of the tube-light and identified the accused persons. Motive for the offence was stated by informant Shakeel Ahmad PW-1 in his examination-in-chief that before few years ago, Nanhey @ Abdul Rahman had illicit relations with Safina, sister of accused-Shaheed. The family members of Safina wanted that Safina be married with Nanhey @ Abdul Rahman. The family members of informant have not wanted to solemnized this marriage. My brother Nanhey @ Abdul Rahman also was not desirous for this marriage. Nanhey @ Abdul Rahman had stated to his family members that he shall not solemnize this marriage. From then, accused had regarded enmity. In written report Exhibit Ka-1, motive for the commission of the crime has also been stated on the same point and in the same manner by Shakeel Ahmad PW-1. In his examination-in-chief, the informant PW-1 has also stated that when my brother Nanhey @ Abdul Rahman reached near Iron Gate of the house of Majnu, near his wall, accused- Shaheed, Laddan and Rahmat were standing. The accused Shaheed has shot from pistol at my brother Nanhey @ Abdul Rahman, that shot hit my brother Nanhey. We people make hue and cry then Laddan and Rahmat also fired shot in air. In his cross-examination, this witness has also stated that Laddan and Rahmat had no relationship with Shaheed. Laddan and Rahmat had no enmity with Nanhey @ Abdul Rahman. Chunnu Khan had many enmities with Nanhey. Total three fires of the gunshot were made at the place of occurrence. Shahkeel had fired one shot, Rahmat and Laddan had fired one-one shot, but the shot fired by Laddan and Rahmat has not hit to any one.

17. Next eye-witness of the prosecution is Nand Lal PW-3, who supported the prosecution story, has also stated in his examination-in-chief that there I have saw that behind the wall of Majnu, Shaheed, Laddan and Rahmat and Chunnu were standing. Shaheed had shot a gunshot at Nanhey @ Abdul Rahman; I have made a hue and cry then upon this Chunnu Khan exhorted to kill, so that could not escape and go. Upon this Laddan and Rahmat by firing, went towards triangle. That people were firing from pistol. During cross-examination, Nand Lal PW-3 has stated that there was no pellets, ticklis, empty cartridges at the place of occurrence. Blood has not fell on the place of occurrence. The place of occurrence was very highly populated area. There was prior enmity between Chunnu Khan and Nanhey @ Abdul Rahman, that with sister-in-law of Chunnu Khan, Nanhey Khan had illicit relations, due to this there was enmity. Chunnu Khan wanted to solemnize marriage between them. Nanhey has refused to marry. This thing, I have heard from the people of the locality and from Nanhey.

18. Thus, from the perusal of the written report Exhibit Ka-1 and oral evidence of informant Shakeel Ahmad PW-1 and other eye-witnesses Nand Lal PW-3, it is revealed that deceased accused appellant Shaheed has fired a shot at Nanhery @ Abdul Rahman due to which Nanhey died at the hospital during his treatment. The only role against the surviving accused-appellant Laddan has been assigned according to the written report Exhibit Ka-1 and as per evidence of PW-1 and PW-3 that after accused-appellant Shaheed has fired shot at deceased Nanhey @ Abdul Rahman, informant PW-1 and PW-3 have made a hue and cry, upon this surviving accused-appellant Laddan and Rahmat have fired shot in air. These witnesses have also in their evidence stated that accused-appellant Laddan and Rahmat fired shot in air. The Investigating Officer Karan Singh PW-6, who reached at the place of occurrence on receiving information about the occurrence has recovered a bullet on 21.09.1987 and prepared recovery memo Exhibit Ka-9. The Investigating Officer PW-9 has not found any pellets, ticklis, empty

cartridges from the place of occurrence. If the Investigating Officer PW-6 would have found any pellets, ticklis and empty cartridges from the place of occurrence, he would have also disclosed the same in the recovery memo. In his cross-examination, Investigating Officer, Karan Singh PW-6 has clearly stated that when I had reached at the place of occurrence then, I have not found blood stains there. There was also no empty cartridge, pellets and ticklis recovered from the place of occurrence.

19. In view of the above evidence of the Investigating Officer Karan Singh PW-6 it is clear that if in reality a fire has been made by the surviving accused-appellant Laddan at the prosecution witnesses such as PW-1 and PW-3, in this condition there were injuries on the body of the prosecution witnesses. However, on the body of the informant PW-1 and PW-3 Nand Lal, there is no firearm injury and also there is no any injury report in this respect. If the surviving accused-appellant Laddan has really fired a shot in the area, as is alleged by the prosecution, in this condition also bullets and pellets would have surely be found at the place of occurrence or nearby place of occurrence. However, only one bullet was found by the Investigating Officer Karan Singh PW-6 from the place of occurrence. This fact indicate that only one fire by deceased accused-appellant Shaheed was made at the deceased Nanhey @ Abdul Rahman, but no pellets, empty cartridges were found by the Investigating Officer or other prosecution witnesses from the place of occurrence. This fact also indicate that implication and involvement of the surviving accused-appellant Laddan appears to be doubtful. This fact revealed that it was an afterthought story and it is possible that on the ground of suspicion, surviving accused-appellant Laddan was purposely named in the written report Exhibit Ka-1 with other accused-appellant and a role of firing in the area was mechanically assigned against accused-appellant Laddan, so that he be also implicated in this case for the commission of the alleged crime. In view of the above facts and circumstances, we find that presence of surviving accused-appellant Laddan at the place of occurrence is highly doubtful.

20. Apart from the above facts, informant PW-1 has also stated in his cross-examination that Laddan and Rahmat had no relationship with Shaheed. Laddan and Rahmat had no enmity with Nanhey @ Abdul Rahman. In this way, in cross-examination, informant PW-1 clearly accepted this fact that Laddan had no enmity with Nanhey @ Abdul Rahman then in this condition, why surviving accused-appellant Laddan could be present at the place of occurrence and fired in the air. It appears that surviving accused-appellant Laddan has been implicated in this case on the ground of suspicion because accused-appellant Laddan often used to come at the house of Smt. Nazma in Mohalla Rajapur since the accused-appellant Laddan, a resident of Rajapur was relative of Smt. Nazma and due to this relation, he used to come at his relative Smt. Nazma□s house at Rajapur and due to this fact only, the surviving accused-appellant Laddan has been named on the ground of suspicion and doubt. It appears that due to doubt and suspicion, the surviving accused-appellant has been named in a mechanical way in this case for the commission of the crime, but from the perusal of the whole prosecution evidence, we find no any cause, reason or motive that why surviving accused-appellant Laddan would be present at the place of occurrence. The accuse-appellant Laddan had no any relationship with accused-appellant Shaheed. This fact is also very material fact. Thus, from the above facts and evidence, we find that surviving accused-appellant Laddan is named in the written report Exhibit Ka-1 only on the ground of suspicion because Smt. Nazma was his relative who resides at Rajapur and surviving accused-appellant Laddan used to come to his

relatives house at Rajapur. Thus, we find that implication, involvement of the surviving accuse-appellant Laddan has not been corroborated by any oral or documentary evidence and his involvement in this case for the commission of the crime are found to be suspicious and highly doubtful.

21. It is settled principles of law that suspicion, however, be grave and strong but a man cannot be held guilty for the commission of any crime only on the ground of suspicion and doubt. The Supreme Court in Sujit Biswas Vs. State of Assam; (2013) 12 SCC 406 has held in para-13 as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

22. The Supreme Court recently in ***State of Odisha v. Banabihari Mohapatra And Another; (2021) 15 SCC 268*** has held:

"It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

23. Thus, no person can be held guilty on the ground of suspicion for commission of any crime. From the perusal of the prosecution evidence it is clear that surviving accused-appellant Laddan has been named in this case only on the ground of suspicion and doubt. Hence, finding and reasoning of the learned Trial Court is not sustainable against surviving accused-appellant Laddan. From a perusal of the finding and reasoning as recorded by the learned Trial Court, we find that Trial Court has held guilty to surviving accused-appellant Laddan with the aid of Section 34 I.P.C., but the Trial Court has not considered on this legal point that without being cogent evidence adduced by the prosecution that there was a prearranged plan and criminal act pursuant to the prearranged plan, no person can be held liable for guilty with the aid of Section 34 I.P.C. Apart from this for holding guilty to any person with the aid of Section 34 I.P.C., a definite conclusion by the Court should be given of this nature that the said person, who is accused for the commission of crime had a prior concert with one or more other persons named or unnamed for commission of the said offence. When we perused the finding and reasoning of the Trial Court on this point, we find that

Trial Court has not given any cogent reason and finding on this legal aspect and also against settled principles of law and also against the provisions of Section 34 I.P.C., has held guilty to surviving accused-appellant Laddan. We find that finding and reasoning as delivered by the Trial Court is without any cogent evidence and also against settled principles of law.

24. The Supreme Court in **Krishna Govind Patil Vs. State of Maharashtra AIR 1963 SC 1413** has also held on Section 34 IPC., in paragraph 6 thus:

".. it is well settled that common intention within the meaning of the section implied a prearranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under Section 302, read with section 34 of the Indian Penal Code, it should come to a definite conclusion that the said person, had a prior concert with one or more other persons, named or unnamed, for committing the said offence."

25. Thus, in the light of the legal principles as laid down by the Supreme Court in **Krishna Govind Patil (supra),** finding and reasoning of Trial Court is also found to be without any evidence and against the settled principles of law. The Trial Court has not kept this major legal aspect in mind that for the conviction of any person, with the help of Section 34 I.P.C., there must be a prearranged plan and a prior concert with one or more other persons named or unnamed for the commission of the crime and also some criminal act must be done by the alleged person pursuant to the prearranged plan. However, we find that there is no any prearranged plan and any prior concert of surviving accused-appellant Laddan with other accused-appellant for the commission of the alleged crime. Therefore, we find that the judgment and order of conviction and sentence as passed by trial Court in respect of surviving accused-appellant Laddan is without any evidence on the record and is against the settled principles of law in this respect. Finding and reasoning of the Trial Court in respect of the surviving accused-appellant Laddan is also against the legal principles of law as laid by the Supreme Court in ***Krishna Govind Patil (supra).***

26. Therefore, from the above discussion and analysis, we find that the judgment and order of conviction and sentence as passed by the Trial Court in respect of surviving accused-appellant Laddan is without evidence and against the settled principles of law, have not sustainable in the eyes of law. Due to above reasons, we are inclined to set aside the judgment and order of conviction and sentence as passed by the Trial Court in respect of surviving accused-appellant Laddan. Hence, the criminal appeal deserves to be allowed and the judgment and order dated 28.05.1990 of conviction and sentence as passed by the Trial Court in respect of surviving accused-appellant Laddan is liable to be set aside.

27. The Criminal Appeal is **allowed.** We **set aside** the judgment and order of conviction and sentence in respect of surviving accused-appellant Laddan dated **28.05.1990** as passed by the Trial Court in **Sessions Trial No. 72 of 1988 State Vs. Shaheed and others** arising out of Case Crime No. 166 of 1987 under Section 302 I.P.C., read with Section 34 IPC, Police Station Cantt., District Allahabad. The surviving accused-appellant Laddan is on bail. His bail bonds are cancelled and sureties are discharged from their liabilities.

28. Let this judgment and order be sent with record to the Trial Court for necessary compliance, forthwith.

(2026) 7 ILRA 197
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 1362 of 1984

Mahipal Singh & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to criminal appeal under S. 374(2) Cr.P.C. against conviction under Ss. 147, 452, 365/149 and 324/149 IPC, concerning whether the prosecution established the ingredients of abduction and the requisite intent for an offence under S. 366 IPC, whether conviction under S. 365 IPC, in substitution of S. 366 IPC, was sustainable in the absence of evidence of intent to secretly and wrongfully confine the victim, whether conviction under Ss. 147, 452 and 324/149 IPC was supported by consistent ocular and medical evidence, and whether, having regard to the age of the appeal, the role attributed to the appellant and absence of previous conviction, the benefit of S. 4 of the Probation of Offenders Act, 1958 could be extended. (Paras 20-25)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 147, 148, 149, 324, 365, 366 and 452 - Unlawful assembly - Abduction - Intent - Conviction - Evidence - Mere abduction not an offence unless combined with specific criminal intent - Victim alleged to have been taken away from the house of the informant by her former husband, mother and other accused - Marriage of victim with informant not established and divorce from former husband not established - No evidence that victim was abducted to compel her for marriage or seduce her to illicit intercourse - No evidence that victim was taken away with intent to secretly and wrongfully confine her - Conviction under S. 365 IPC unsustainable and set aside. (Paras 22-23)

Criminal Law - Evidence - Ocular evidence - Medical evidence - Ss. 147, 452 and 324/149 IPC - Prosecution witnesses consistent and reliable - Minor contradictions not material - Ocular evidence supported by medical evidence showing firearm injury and contusion - Participation in unlawful assembly and commission of offences proved - Conviction under Ss. 147, 452 and 324/149 IPC upheld. (Para 21, 24)

Criminal Law - Criminal procedure - Investigation - Missing victim and mother not traced - Investigating Officer did not make extensive search and filed charge-sheet hurriedly - Poor investigation - Statement of victim and her mother material - Defective investigation considered while assessing prosecution case relating to abduction and confinement. (Para 23)

Probation Of Offenders Act, 1958 - S. 4 - Benefit of probation - Appeal pending for more than forty-two years - Appellant old and infirm - No evidence of previous conviction - No specific role except presence along with other co-appellants - Ends of justice met by release on probation for six months to keep peace and maintain good behaviour - Conviction maintained but sentence modified. (Para 25-26)

Held: Mere abduction is not an offence unless combined with a specific criminal intent - where the victim was a major and was taken away by her husband along with her own mother and others, and the evidence did not establish that she was abducted to compel her for marriage or seduce her to illicit intercourse, the charge under S. 366 IPC was not proved - where the evidence did not establish the intent to secretly and wrongfully

confine the victim, conviction under S. 365 IPC could not be sustained - the relationship of the informant with the victim was highly suspicious and the alleged marriage was not proved from the evidence - the victim and her mother were not properly traced and the investigation was not properly conducted - the ocular evidence of the witnesses of fact was consistent and reliable and was supported by medical evidence in respect of the occurrence involving unlawful assembly, house trespass and causing hurt by firearm - conviction under Ss. 147, 452 and 324/149 IPC was therefore rightly recorded - having regard to the facts and circumstances of the case, the role of the appellant, pendency of the appeal for more than forty-two years, absence of evidence of previous conviction, old age and infirmity of the appellant and absence of any specific role except presence along with other co-appellants, the ends of justice would be met by extending the benefit of S. 4 of the Probation of Offenders Act, 1958 - appeal partly allowed - conviction under S. 365 IPC set aside - conviction under Ss. 147, 452 and 324/149 IPC upheld - sentence modified and appellant released on probation for six months to keep peace and maintain good behaviour upon furnishing personal bond of Rs. 50,000/- with two sureties of the like amount. (Paras 21-26) (E-7)

Case Law Cited

Joseph Shine Vs. Union of India **AIR 2018 SC 2019.**

List of Acts

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

List of Keywords

criminal appeal; unlawful assembly; abduction; specific criminal intent; kidnapping; secretly and wrongfully confine; court marriage; marriage certificate; divorce; victim; ocular evidence; medical evidence; poor investigation; extensive search; charge-sheet; old and infirm person; previous conviction; probation; good behaviour; benefit of probation; ends of justice.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal No. 1362 of 1984 against the impugned judgment and order dated 26.04.1984 passed by the Additional Sessions Judge-VIII, Bareilly in Sessions Trial No. 570 of 1982, Police Station-Bahedi, District-Bareilly, whereby the appellants were convicted and sentenced for offences punishable under Ss. 147, 452, 365/149 and 324/149 IPC and one appellant was additionally convicted under S. 148 IPC.

Appearances for Parties

Advs. for the Appellant:

Shri Hasan Parvej, learned Counsel for the appellants

Advs. for the Respondents:

Shri Akhilesh Kumar Mishra, learned A.G.A. on behalf of the State

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

1. This appeal has been filed under Section 374(2) Code of Criminal Procedure 1973 (in short Cr.P.C.), by appellants **Mahipal Singh, Ram Pal Singh, Ram Singh, Subeydar Singh, Kunwar Singh and Angan Singh**, against the impugned judgment and order dated 26.04.1984 passed by Sri Mahesh Chandra, Additional Sessions Judge-VIII, Bareilly in Sessions Trial No.570 of 1982, Police Station- Bahedi, District- Bareilly.

2. By the impugned judgment and order dated 26.04.1984, the learned trial court has convicted the appellants and for offence punishable under Section 147 Indian Penal Code,1860 (in short IPC) sentenced them to undergo rigorous imprisonment for a period of one year; for offence

punishable under Section 452 IPC sentenced them to undergo rigorous imprisonment of three years; for offence punishable under Section 365 read with 149 IPC sentenced them to undergo rigorous imprisonment of three years; for offence punishable under Section 324 read with 149 IPC sentenced them to undergo rigorous imprisonment of two years. Accused Angan Singh is convicted for offence punishable under Section 148 IPC and sentenced to undergo rigorous imprisonment for two years; for offence punishable under Section 452 IPC sentenced to undergo rigorous imprisonment of three years; for offence punishable under Section 365 read with 149 IPC sentenced to undergo rigorous imprisonment of three years; for offence punishable under Section 324 read with 149 IPC sentenced to undergo rigorous imprisonment of two years. It was further directed that all the sentences shall run concurrently.

3. During the pendency of this appeal, the appellants Mahipal Singh, Ram Pal Singh, Subeydar Singh, Kunwar Singh and Angan Singh have died and, therefore, this appeal stands **abated** against Mahipal Singh, Ram Pal Singh, Subeydar Singh, Kunwar Singh and Angan Singh, passed earlier. Now this appeal survives against Ram Singh, only.

4. Brief facts of the prosecution case are that Chandra Pal Singh son of Hem Singh, resident of Mitidandi, Police Station- Baheri, District- Bareilly, filed a written application dated 24.07.1980 (Ext.Ka.1), before Incharge Police Station- Baheri, stating that he had solemnized court marriage with Maya Devi, the daughter of Tara Singh, resident of Gurbara Gautihya, Police Station- Baheri about six months ago. She was living with her mother at his house. A day before yesterday i.e. on 22.07.1980 some altercation took place, as a result, her mother left the house. His wife was earlier married with Mahipal Singh son of unknown resident of Jham, Police Station- Baheri. Today, in the night he was sleeping with his wife then at about 12:30 a.m. Mahipal Singh, Ram Pal Singh, Ram Singh, Subeydar Singh, Kunwar Singh, Angan Singh and his wife□s mother after climbing the wall, entered in his house. He was sleeping with his wife in the courtyard, the lantern was lit. From the noise he got awaken and all of them forcefully pulled Maya Devi aged about 19-20 years. Thereupon, he and his wife raised alarm then Balka Ram, Ghan Shyam Singh, Nathu Singh and Kunwar Pal and other villagers came running flashing their torches. In the meantime, the accused pulled his wife outside the house and when he was trying to separate them, Angan Singh shot at him with a gun. Two other persons were armed with lathis and due to the fear of the gun, none could dare to stop them and the accused kidnapped his wife with the purpose to solemnize her marriage. He sustained firearm injury over his leg and had identified the accused in the light of lantern and flash of torches.

5. On this information FIR under Case Crime No.366 of 1980, Sections- 147, 148, 149, 452, 324 and 366 IPC was lodged at Police Station- Baheri on 24.07.1980 at 02:30 a.m. and the investigation was entrusted to S.I. P.N. Mishra. He recorded the statements of witnesses and inspected the place of occurrence and prepared its site-plan (Ext.Ka.4). The injured was medically examined and after investigation the I.O. has filed charge-sheet (Ext.Ka.5) against all the appellants under Sections- 147, 148, 149, 324, 352 and 366 IPC before the concerned Magistrate.

6. The court concerned took cognizance of the offence and summoned the accused, they appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

7. Before the Sessions Court, the accused appeared and charge under Sections- 147, 366 read with 149 IPC, 452, 324 read with 149 IPC was framed against appellants Mahipal Singh, Ram Pal Singh, Ram Singh, Subeydar Singh and Kunwar Singh and charge under Section 148, 366 read with 149, 452, 324 read with 149 IPC was framed against appellant Angan Singh. The accused pleaded not guilty and claimed to be tried.

8. The prosecution has examined five witnesses, to wit, P.W.1 Chandra Pal Singh; P.W. 2 Kunwar Pal Singh; P.W.3 Dariyab Singh; P.W.4 Dr. K.U. Ahmed; P.W. 5 S.I. Prem Nath Mishra, to prove its case.

9. P.W. 1 Chandra Pal Singh is the first informant of the case and has stated that he has solemnized marriage with Maya Devi about six months prior to the incident. It was a court marriage and his wife was living with him. Due to some altercation his mother-in-law left him sometime prior to the incident. Earlier his wife was married to accused Mahipal Singh. On the date of incident at about 12:30 a.m. he was sleeping in the courtyard of his house, the lantern was lit, then the accused along with Maya Devi□s mother climbed the wall and entered in the house. He got awaken and his brother Dariyab Singh and Maya Devi also woke up then, they kidnapped his wife Maya Devi. He chased them then Angan Singh shot at him with his gun. The witness Kunwar Pal Singh, Nathu Singh and others came there having torches. He went to the police station at about 02:30 a.m. in the night and lodged the FIR. The witness has proved the tehrir (Ext.Ka.1) and has said then he was sent for medical examination.

10. P.W.2 Kunwar Pal Singh, is the neighbour of the first informant and is an eye-witness of the incident. He has said that he reached at the house of the first informant upon hearing the noise. There he saw the incident and the accused along with a woman kidnapped the first informant□s wife. Angan Singh fired with a gun causing injuries to the first informant over his leg.

11. P.W.3. Dariyab Singh, is the brother of the first informant and he is also one of the inmates of the house in which the incident occurred. He has also supported the prosecution case and has said that Maya Devi was married to the first informant and it was a court marriage. The marriage took place about six months prior to the incident. He was sleeping inside the house and Chandra Pal and his wife are sleeping in the courtyard. Maya Devi□s mother had left house two days prior to the incident. Then the accused and Maya Devi□s mother came having gun and lathis. They pulled and took Maya Devi with them. Chandra Pal chased them, then Anagan Singh fired at him. It was a moon lit night and lantern was lit, and the accused had torches in their hands. Maya Devi is not traced out till today. He scribed the tehrir at the dictation of the first informant.

12. P.W. 4 Dr. K.U. Ahmad, is the Medical Officer, P.H.C. Baheri, who has medically examined Chandra Pal Singh, while he was posted as Incharge Medical Officer, there. He has found following injuries over his body:-

(i) Gunshot wound on dorsal aspect of the left lower leg and foot on the sole of the foot, measuring about 1/10 cm x 1/10 cm x skin and muscle deep and circular in nature. Some shots were skin deep and some were muscle deep and some of the nature of abrasion over lower part of left leg. Swelling was present. The movement of leg was painful. X.-Ray was advised.

(ii) Contusion 2 cm x 0.5 cm to the right of forehead.

In the opinion of the doctor injury no.1 was kept under observation till the X- Ray report. Injury no.1 was caused by firearm and injury no.2 was caused by any blunt object. Injuries were simple in nature. The witness have proved injury report as Ext.Ka.2 and said that all the injuries could have been caused on 23/24.07.1980 at 12 or 12:30 a.m. Injury no.2 could be caused due to a fall.

13. P.W.5 S.I. Prem Nath Mishra, is the investigating officer of the case, he has proved chik FIR as Ext.Ka.3 and copy of G.D. No.2 dated 24.08.1980, time 02:30 a.m. scribed by Head Moharrir Omkar Misra as Ext.Ka.6, is the secondary witness. He has stated that he has investigated the case and recorded statement of first informant and other witnesses, inspected the place of occurrence and prepared its site-plan which he proved as Ext.Ka.4. He searched out the missing girl Maya Devi, but she was not found. Thereafter, he filed charge-sheet which he proved as Ext.Ka.5.

14. After the closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C. The appellant Ram Singh in his statement under Section 313 Cr.P.C. has admitted that co-accused appellant Mahipal Singh was married to Maya Devi since before the incident. Rest of the prosecution case was denied and it was stated that false case has been lodged against him.

15. The accused have not adduced any evidence in their defence.

16. After perusal of evidence, the learned trial court came to the conclusion that the prosecution case is proved beyond reasonable doubt, but the court observed that the accused are guilty of offence punishable under Section 365 I.P.C. instead of Section 366 I.P.C. beside their conviction in other sections under which they were charged and accordingly, convicted and sentenced the appellants to the term as indicated above.

17. Heard Shri Hasan Parvej, learned Counsel for the appellants and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

18. It is submitted by learned counsel for the appellant that the prosecution case is not established. The abduction in itself is not an offence unless it is combined with a specific criminal intent as mentioned in the IPC. It is also submitted that there is no specific role assigned to the appellant. The marriage of the victim with the informant is also not proved and there are material contradictions in the testimony of the prosecution witnesses, which raises serious doubt over the prosecution case.

19. Per contra, learned counsel on behalf of the State has submitted that the charge against the appellant is fully established. The testimony of PW-1, PW-2 and PW-3 is consistent, reliable and trustworthy. It is proved that the appellant along with other co-accused reached at the house of the first informant and thereafter committed maarpeet and in furtherance of their common object, as member of unlawful assembly, shot at the first informant causing him injuries, and had abducted

the victim. Therefore the appellant has rightly been convicted, and therefore, this appeal has no force and is liable to be dismissed.

20. In view of the submissions of learned counsel for the both the parties and upon perusal of record, it is clear that the incident occurred on 23/24.07.1980 at about 12:30 AM and the FIR has been lodged the same night at 2:30 AM. Therefore, within two hours the FIR was lodged. The appellant is named in the FIR along with other co-accused. According to the first informant, at the time of incident Maya Devi was aged about 19-20 years, therefore, she was major and as per prosecution.

21. The prosecution has examined PW-1 Chandrapal, the first informant, PW-2 Kunwarpal Singh, the neighbour and PW-3 Dariyab Singh, the first informant's brother, as witness of fact. All the above three witnesses have supported the prosecution case. Apart from bearing minor contradictions, their deposition is consistent throughout. It is stated by these witnesses that on the fateful night, the appellant along with other co-accused arrived at the house of the first informant, where he was sleeping with victim Maya Devi. Then they kidnapped Maya Devi and upon being chased, co-accused Angan Singh shot at the first informant with his gun, causing injuries to his leg. According to PW-2, the neighbour, he reached there upon hearing noise and saw that the appellant along with other co-accused had kidnapped the first informant's wife. PW-3 Dariyab Singh is the brother of the first informant and also one of the inmates of the house, in which the incident occurred. He has also stated the same version. There are no material contradictions in their depositions. The first informant was medically examined by PW-4 Dr. K.U. Ahmed, who has proved the injury report and has said that the injury sustained was a gunshot wound over his left lower leg and contusion on the right side of forehead and was simple in nature. Therefore, the ocular evidence is supported by medical evidence and the testimony of all the witnesses of fact is consistent and reliable in this regard.

22. Here, according to the first informant, the victim Maya Devi was his wife whom he had married six months prior to the incident. It was a court marriage. He has stated that he has a marriage certificate with him but it was not produced in the court. It is an admitted fact to the prosecution that the victim was earlier married to co-appellant Mahipal Singh and the first informant himself has admitted that there is no evidence that the divorce has taken place between Maya Devi and Mahipal Singh. In view of the above fact that the divorce of the victim with co-appellant Mahipal Singh is not established, and he was the husband of the victim, and also there is no evidence that the first informant has married the victim, therefore, it is not established that Maya Devi was the first informant’s wife. Importantly, from the evidence it is proved that at the time of incident, co-appellant Mahipal Singh, the victim’s husband, and the victim’s mother had come along with other co-accused and had taken her away from the first informant’s house. So even if, it is presumed that it was a case of abduction as defined in Section 362 IPC, but mere abduction is not an offence as held by the Hon’ble Supreme Court in a catena of judgments, such as **Joseph Shine Vs. Union of India AIR 2018 SC 2019**. The prosecution has to prove the intent with which the victim was abducted. In the present case, the appellant has been charged for offence under Section 366 IPC, but there is no evidence that she was abducted to compel her for marriage or seduce her to illicit intercourse, therefore, the charge under Section 366 IPC is not proved against the appellant.

23. The Learned Trial Court has convicted the appellant under Section 365 IPC instead of Section 366 IPC, which provides that "kidnapping with intent to secretly and wrongfully confine a person shall be an offence punishable under this section." The intent to secretly and wrongfully confine the victim, cannot be gathered from the evidence adduced by the prosecution. The victim herself was not properly traced. The

mother of the victim was also not found, though according to the prosecution she was one of the accused, named in the FIR, who arrived at the place of occurrence alongwith other accused and had taken away her daughter. The I.O. did not bother to interrogate her or to capture her for the reasons best known to him. The statement of Investigating Officer shows that he has not investigated the case properly and did not make any extensive search of the victim as well as her mother. In this regard, the statement of victim and her mother was very material, but due to poor investigation both of them were not traced and the I.O. has filed charge-sheet hurriedly without any proper investigation.The relationship of the first informant with the victim is highly suspicious, under the circumstances that he claims himself as the husband of the victim, but this is not proved from the evidence. He has admitted that he is a home guard and was convicted in a murder case. Under what circumstances the victim was living with the first informant is not well explained by the prosecution. The victim was taken away by her husband along with her own mother and others. So it does not show that she was taken away with any intent to secretly and wrongfully confine her. Therefore, the offence under Section 365 IPC is also not made out. In this regard, the Learned Trial Court has not appreciated the evidence on record correctly and has reached at a wrong conclusion of the guilt of the accused, the appellant. So the offence under Section 366 or 365 IPC, under which the Learned Trial Court has convicted the appellant, is not proved. Therefore, the appellant deserves to be acquitted of the offence under Section 365 IPC.

24. So far as the other offence under Sections 147, 452, 324 read with 149 IPC are concerned, it is proved that the appellant along with other co-appellants formed an unlawful assembly and armed with weapons committed the above offence. Therefore, the appellant was rightly convicted of the offence punishable under Sections 147, 452, 324 read with 149 IPC.

25. So far as the sentence awarded to the appellant for the offence punishable under Sections 147, 452, 324 read with 149 IPC is concerned, looking into the facts and circumstances of the case, the role of the appellant, and the pendency of this appeal which is more than forty-two years old, it would serve no purpose to sentence the appellant and put him behind the bars. There is no evidence that the appellant was previously convicted in any case. The appellant is now an old and infirm person. He has been appearing in this appeal since last more than forty-two years and there was no specific role of the appellant in the said crime except that he was present along with other co-appellants. Therefore, the ends of justice would be met if, instead of passing any sentence, the appellant is given the benefit of Section 4 of the Probation of Offenders Act, 1958.

26. In view of the above this appeal is **allowed partly** and the conviction of the appellant under Section 365 IPC is set aside and the conviction of the appellant under Section 147, 452, 324/149 IPC, is upheld. But the sentence awarded to the appellant is modified and instead of sentencing him at once, he is released on probation for a period of six months to keep peace and maintain good behaviour for the aforesaid period, upon his furnishing a personal bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the concerned probation officer, with an undertaking that in case of breach of the condition he shall appear and be heard on sentence. The bonds and sureties aforesaid be filed by the convict within fifteen days from the date of the Judgment as per law and Rules.

27. Let a copy of this judgment be sent to the concerned Trial Court and concerned Probation Officer for intimation and necessary compliance.

(2026) 7 ILRA 204
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1401 of 2020
Alongwith
Criminal Appeal No. 1007 of 2020

Suhail **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The case pertains to the prosecution of the accused –husband and father-in-law for setting the deceased wife on fire by pouring kerosene oil, resulting in her death, with the conviction of the husband under section 302 and 498-A IPC & ¾ D.P. Act.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 304B, 302, 498-A & ¾ D.P. Act-Criminal Procedure Code,1973-Section 374(2), Indian Evidence Act,1872-Section 32-Dying declaration-Sole basis of conviction-Evidentiary value-Declaration recorded by Magistrate supported by medical fitness certificate-Non-examination or hostility of eye-witnesses immaterial when dying declaration is found to be voluntary, truthful and free from tutoring-Accused-husband pouring kerosene and setting wife on fire over childlessness-Subsequent conduct of accused in fleeing scene and failing to render medical assistance belies defense of accidental fire from cooking stove-Conviction under section 302 IPC upheld-Appeal dismissed-Cruelty by In-Laws- Separate residence-Co-accused father-in-law residing separately in a different hut without evidence of participation or harassment-Acquittal granted due to lack of specific role or evidence-Appeal allowed.(Para 23 to 42) (E-6)

Held

The court ruled that absence of a formal endorsement by a medical officer certifying the "fit state of mind" of the declarant does not render the dying declaration invalid or inadmissible. The requirement of medical certification is rule of prudence rather than a mandatory rule of law. The court further held that the defense of an accidental fire originating from a kerosene lamp during cooking is unsustainable where the conduct of the accused husband immediately after the incident demonstrates guilty mind. The failure of the husband to render medical assistance, take his severely burnt wife to the hospital, or report the matter to the police, coupled with his immediate flight from the scene, belies the plea of accident and strongly corroborates the homicidal nature of death by burning.

Case law Cited

Laxman Vs State of Maharashtra (2002) 6 SCC 710, Paparambaka Rosamma Vs State of A.P., (1999) 7 SCC 695, Koli Chunllal Savji & Anr. Vs State of Gujarat(1999) 9 SCC 562, Krishna Kumar @ Pamma Vs State of Haryana, (1998) 8 SCC 586, Khushal Rao Vs State of Bombay, 1957 LawSuit (SC) 93; Rasheed Beg Vs State of M.P., 1973 LawSuit (SC) 355; K. Ramachandra Reddy Vs Public Prosecutor , 1976 LawSuit (214) Darshan

Singh Vs State of Punjab, 1983 LawSuit (SC) 104; Paniben Vs State of Gujarat, 1992 LawSuit (SC) 228; Jugal Vs State of U.P., 2023 LawSuit (All) 1227; Phulel Singh Vs State of Haryana, 2023 LawSuit (SC) 951; & Sunil Kumar, Bal Krishna & Anr Vs State, 2024 LawSuit (All) 2327-referred to.

List of Acts

Indian Penal Code,1860, Dowry Prohibition Act, Criminal Procedure Code,1973, Indian Evidence Act,1872.

List of Keywords

Murder, Cruelty by husband or Relatives, Dowry death, Dying declaration, Certificate of mental fitness/Consciousness, Rule of prudence, Mandatory requirement, Tutoring, Hostile witnesses/ Evidentiary value of resiled testimony, Post-mortem report/Scepticemia/ Thermal burns, Homicidal death, Accidental fire, Subsequent conduct of accused, Separate residence, Panchayatnama, Severability of conviction/Partial acquitttal,Duty to render medical assistance.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1401 of 2020

Suhail Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Babu Lal Ram, Jitendra Kumar, Pradeep Kumar, Praveen Kumar Sanjay Vikram Singh, Santosh Kumar Yadav

Advs. for Respondent(s):-

G.A., Javed Alam, Krishna Dev Mishra

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

These criminal appeals have been filed by accused-appellants, Suhail and Tufail, against the judgment and order of conviction dated 14.01.2020 passed by learned Additional Sessions Judge/F.T.C.-II, Fatehpur in Session Trial No.119 of 2018 (State Vs. Suhail and another) arising out of Case Crime No. 235 of 2017, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act, Police Station Sultanpur Ghosh, District Fatehpur.

2. Brief facts of the case, according to written report, Exhibit Ka-1, which was lodged by Anarunnisha (PW-1), are inter alia that on 16.11.2017 at about 9:00 PM, the in-laws of my daughter, namely her husband Suhail, Imran, Afsar, Tufail, Jeena, Arbeena, and Rabiya, poured kerosene oil on the body of Sanno while she was sleeping and set her on fire. As a result, Sanno sustained severe burn injuries and her skin was badly damaged. She is currently fighting for her life, and there is little hope of her survival. Due to her not having children and the demand for a four-wheeler not being fulfilled, all of them together want to kill Sanno.

3. On the basis of the written report, Exhibit Ka-1, which was filed by informant Anarunnisha (PW-1), a case was registered at Case Crime No. 235 of 2017, under Sections 498A, 307 IPC and Section 3/4 Dowry Prohibition Act at Police Station Sultanpur Ghosh, District Fatehpur against the named accused persons, Suhail, Imran, Afsar, Tufail, Jeena, Arbeena and Rabiya by Head Moharrir Kanhaiya Singh (PW-6).

4. After registration of the F.I.R., Inspector Radheyshyam Dwivedi (PW-8) took the investigation of the case. He inspected the place of occurrence and also recorded the statement of informant Anarunnisha (PW-1). The Investigating Officer prepared the site plan of the place of occurrence on the pointing out of the informant, Anarunnisha (PW-1). He also collected and made a recovery memo of burned clothes and ashes of the hut as Exhibit Ka-6. The victim Sanno was firstly taken to the District Hospital, Fatehpur. Prosecution witness, Dr. Santraj Singh, Naib Tehsildar (PW-11) on 17.11.2017 on the direction of S.D.M., Sadar, Fatehpur visited District Hospital, Fatehpur and recorded the dying declaration of the victim Sanno. Thereafter victim Sanno was referred to Hallett Hospital, Kanpur for her treatment. At Hallett Hospital, Kanpur, the victim Sanno died on 30.11.2017 at 11:00 PM. After the death of deceased Sanno at Hallett Hospital Kanpur, Section 304B IPC was added and investigation of the case was handed over to Circle Officer, Surendra Kar. After suspension of Surendra Kar, the investigation was handed over to Circle Officer, Shripal Yadav (PW-7). Prosecution witness Arsala Naas, Naib Tehsildar, Sadar, Kanpur (PW-10) conducted the panchayatnama proceeding of the dead body of the deceased Sanno and prepared the panchayatnama, Exhibit Ka-8.

5. Investigating Officer Shripal Yadav (PW-7) recorded the statement of prosecution witnesses as well as of other formal witnesses under Section 161 Cr.P.C. and after completing all the formalities of the investigation, he submitted charge-sheet only against the accused-appellants, Suhail and Tufail, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act. The Investigating Officer also found the allegations against the other accused persons named in the written report, namely, Imran, Afsar, Jeena, Arbeena and Rabiya to be false, hence they all were exonerated.

6. Prosecution witness Dr. Sarvajeet Singh (PW-9) conducted the postmortem examination of the dead body of the deceased Sanno and prepared the postmortem report, Exhibit Ka-7. According to Dr. Sarvajeet Singh (PW-9), following ante mortem injuries were found on the body of the deceased Sanno :

"Superficial to deep thermal burn injuries all over the body except skull, face and both soles. Pus present all over the burn area. Pubic hairs burnt and singed. About 95% thermal burn injury seen"

7. According to Dr. Sarvajeet Singh (PW-9), about 95% body of the deceased Sanno was burnt. The deceased died by septicemia due to ante mortem burn injuries.

8. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

9. The charge was framed against the accused-appellants, Suhail and Tufail, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act. Apart from these charges, learned trial Court also framed alternative charge against the accused-appellants, Suhail and Tufail, under Section 302 read with Section 34 IPC. The accused-appellants denied from the charge and claimed trial.

10. To substantiate the charge against the accused-appellants, prosecution adduced Anarunnisha (PW-1), Babu @ Bablu (PW-2), Suman @ Suggan (PW-3), Pannabano (PW-4), Mohd. Husain (PW-5), Kanhaiya Singh (PW-6), Shripal Yadav (PW-7), Radhey Shyam Dwivedi (PW-8), Dr. Sarvajeet Singh (PW-9), Arsala Naas (PW-10), Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12). Apart from the above ocular evidence, prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-13.

11. In trial Court, the evidence of prosecution witnesses was recorded. After recording the evidence of prosecution witnesses, learned trial Court examined the accused-appellants under Section 313 Cr.P.C. The accused-appellants denied all the allegations and have stated that all allegations are false. The prosecution has given false evidence against them. The accused-appellants have also stated that the deceased Sanno was cooking food on the date of incident at 09:00 PM. Under hut, a lamp of kerosene oil was lit above the clay stove (chulha) at some distance. Due to pressure from some insects, the lamp of kerosene oil fell on the ground and by falling the same, spark spread and fire caught in the hut as well as in the clothes of deceased, Sanno. The accused-appellant, Suhail, has also stated that he tried to extinguish the fire. In this attempt, he also got burnt. He has not demanded any four wheeler vehicle from his wife or from his father-in-law and mother-in-law. He also stated that he has never taunted his wife for not having child. Both the accused-appellants have stated that they are innocent. They have also stated that the deceased has received burn injuries of 95% and she was not in a condition to speak. The victim has not given any statement to Naib Tehsildar and he in collusion with the informant has written false statement. In this way, the accused-appellants denied from all the charges and allegations. They have also stated that they will adduce defence evidence in their support. In their defence, accused-appellants have adduced Kallu as DW-1.

12. After recording the evidence of both sides, the trial Court heard the arguments of the prosecution and defence and found the accused-appellant, Suhail, guilty under Section 302, 498A IPC and accused-appellant, Tufail, was also found guilty under Section 498A IPC. However, the accused-appellant, Suhail, was acquitted under Section 304B IPC and Section 3/4 Dowry Prohibition Act. The accused-appellant, Tufail, was also acquitted under Section 302, 304B IPC and Section 3/4 Dowry Prohibition Act. The trial Court convicted and sentenced the accused-appellant, Suhail, for life imprisonment under Section 302 IPC and a fine of Rs. 10,000/- and in default of payment of fine, he was directed to undergo six months additional imprisonment. The accused-appellant, Suhail, was further sentenced under Section 498A IPC to undergo three years imprisonment and a fine of Rs. 3000/- and in default of payment of fine, he was directed to undergo three months additional imprisonment. The accused-appellant, Tufail, was convicted and sentenced under Section 498A IPC for two years imprisonment and a fine of Rs. 2000/- and in default of payment of fine, he was directed to undergo two months additional imprisonment. All the sentences were directed to run concurrently.

13. Aggrieved by the above judgment and order of conviction and sentence dated 14.01.2020, accused-appellants preferred these criminal appeals.

14. We have heard the arguments of learned counsel for the appellants and learned A.G.A. for the respondent-State. We have also gone through the evidence available on record and the judgment and order of the learned trial Court dated 14.01.2020.

15. Learned counsel for the accused-appellants has argued that at the time of passing of the impugned judgment and order, learned trial Court has not applied its judicial mind. The appellant, Suhail, is husband of the deceased, Sanno, and he has been falsely implicated in the present case without any evidence. The appellant, Tufail, is father-in-law of the deceased Sanno. He was also falsely implicated by the prosecution. Learned trial Court has illegally convicted the accused-appellants without considering real facts and circumstances of the case. It is also submitted by learned counsel for the accused-appellants that the deceased Sanno was cooking food at the time of the incident in her hut. A lamp of kerosene oil was lit above the clay stove (chulha) which fell down on the ground. Due to this, spark spread from the clay stove and caught fire in the hut. The fire was also caught the clothes of the deceased Sanno, who was cooking food at that time. Suhail, who is husband of the deceased Sanno, tried to save her life. In this attempt, he also got burnt and sustained injury. Prosecution witnesses of the facts turned hostile. They have not supported the prosecution story. Due to this, learned trial Court, although acquitted the accused-appellants under Section 304B IPC and Section 3/4 Dowry Prohibition Act, but convicted and sentenced the accused-appellant, Suhail, husband of the deceased Sanno, against the settled principles of law under Section 302 IPC. There is no evidence on the record from which it could be conclusively proved that accused-appellant, Suhail, has committed murder of his wife, deceased Sanno, by pouring kerosene oil upon her and setting her on fire. However, learned trial Court without any evidence available on record or from any prosecution witnesses wrongly held accused-appellant, Suhail, guilty under Section 302 IPC for murder of the deceased Sanno and convicted and sentenced him. The finding and reasoning of the learned trial Court are against the settled principles of law and without any evidence on the record. The accused-appellant, Tufail, who is father-in-law of the deceased is totally innocent and was living separately from his son, Suhail, in a separate hut and earning his livelihood by doing labour work, but the trial Court has wrongly convicted and sentenced Tufail for Section 498A IPC. It is also submitted on behalf of the accused-appellants that so called dying declaration of deceased Sanno is falsely recorded by the prosecution witness Dr. Santraj Singh (PW-11) in collusion with the informant Anarunnisha (PW-1). There are many defects and drawbacks in the dying declaration, Exhibit Ka-13, of the deceased Sanno, which was recorded by Dr. Santraj Singh (PW-11). The trial Court has not considered legal perspective in the light of the settled principles of law in this regard by the Supreme Court and in total disregard of the settled principles of law and against the evidence, held the accused-appellants guilty for commission of the alleged offence. On the above point of arguments, it is submitted by learned counsel for the accused-appellants that the accused-appellants are innocent and deserve to be acquitted by the Trial Court. Hence the judgment and order dated 14.01.2020 of the Trial Court is not sustainable in the eyes of law and is liable to be set aside and the criminal appeals filed by the accused-appellants deserve to be allowed.

16. Per contra, learned A.G.A. for the respondent-State has submitted that although witnesses of the facts have turned hostile but on the basis of dying declaration, Exhibit Ka-13, and evidence of the prosecution witnesses, Dr. Santraj Singh (PW-11), who recorded the dying declaration of the deceased Sanno, and Dr. Atul Kumar Srivastava (PW-12), who has testified and

given certificate that the deceased at that time was in conscious condition and she was able to give her statement. On the basis of the above evidence, trial Court has held the accused-appellants guilty for commission of the crime and sentenced them accordingly. There is no misappreciation and misreading of the evidence by the trial Court. The trial Court has appreciated all the evidence in proper perspective and according to the settled principles of law. There is no perversity or illegality in the judgment and order of trial Court. The finding and reasoning given by trial Court are based on cogent evidence, such as, dying declaration and evidence of prosecution witnesses, Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12). The evidence of the above prosecution witnesses and dying declaration, Exhibit Ka-13, were found fully reliable and creditworthy by the trial Court. Due to this reason, the trial Court delivered the above judgment and order of conviction and sentence. In this way, learned A.G.A. for the respondent-State has submitted that criminal appeals filed by the accused-appellants have no merit and are liable to be rejected and the judgment and order of conviction and sentence passed by the trial Court dated 14.01.2020 is liable to be affirmed.

17. In the light of above arguments and from perusal of the written report, Exhibit Ka-1, it is revealed that informant Anarunnisha (PW-1) filed written report, Exhibit Ka-1, alleging that "on 16.11.2017 at about 09:00 PM, the in-laws of my daughter, namely, Suhail (husband), Imran, Afsar, Tufail, Jeena, Arbeena, and Rabiya, poured kerosene oil on the body of Sanno while she was sleeping and set her on fire. As a result, Sanno sustained severe burn injuries and her skin was badly damaged. She is currently fighting for her life, and there is little hope of her survival." In the written report, Exhibit Ka-1, the informant, Anarunnisha (PW-1), stated that the cause of the incident was that her daughter was unable to give birth to child. In other words, childlessness and the demand for a four-wheeler vehicle were cited as the reasons and motive for the incident. Thus, it is apparent that aforesaid two causes or motives for the incident are stated in the written report, Exhibit Ka-1.

18. When informant Anarunnisha (PW-1) was examined in the trial Court, she, in her examination-in-chief, fully supported the prosecution story. She stated in her examination-in-chief that "I am illiterate. The incident is about one year old. I had married my daughter with Suhail, who is resident of the same village. Marriage was solemnized in the year 2014 about four years ago. In November last year, at about 9:00 PM, when my daughter was sleeping, her husband and in-laws, namely, Suhail, Imran, Afsar, Tufail, Jeena, Arbeena and Rabiya, set her on fire. After catching fire, my daughter rushed out of the house to save herself. Upon hearing the hue and cry in the village, I also reached at the spot. My daughter was badly burnt. In-laws of my daughter were demanding a four-wheeler vehicle in dowry. My husband and my elder brother-in-law had taken my daughter to the Government Hospital. From there, she was taken to Sadar Hospital, Fatehpur. Since the condition of my daughter was very serious, doctor referred her to Hallet Hospital, Kanpur. I had also went at Hallet Hospital. My daughter had died later at Hallet Hospital. The statement of my daughter was recorded by magistrate during her treatment at District Hospital, Fatehpur. After setting her on fire, in-laws of my daughter fled away from the house. Due to not fulfilling the demand of a four-wheeler vehicle in dowry, my daughter was burnt by her in-laws." However, in her cross-examination, she resiled from her statement in examination-in-chief and has not supported the prosecution story. In spite of becoming hostile in her cross-examination, written report, Exhibit Ka-1, has found fully corroborated by her statement given in the examination-in-

chief. Thus, we find that the written report, Exhibit Ka-1, found corroboration by the evidence of informant (PW-1) as given in her examination-in-chief.

19. Other prosecution witnesses of the facts, Babu @ Bablu (PW-2), Suman @ Suggan (PW-3), Pannabano (PW-4) and Mohd. Hussain (PW-5) have not supported the prosecution story and all turned hostile.

20. Now only dying declaration of the deceased Sanno, Exhibit Ka-13, become relevant in this case. From the perusal of the dying declaration, Exhibit Ka-13, it is revealed that on 17.11.2017 at 12:20 AM, her statement was recorded at District Hospital, Fatehpur. Before recording her dying declaration, Medical Officer, District Hospital, Fatehpur has given a certificate at the first page of the dying declaration, Exhibit Ka-13, that □patient is conscious and able to speak at 12:15 AM on 17.11.2017.□ After recording the dying declaration of the victim Sanno on the backside below the ending of dying declaration in middle of the page again a certificate is endorsed by the same Medical Officer, District Hospital, Fatehpur dated 17.11.2017 that □patient is conscious and able to speak and well oriented and mentally sound during her statement. Patient is mentally sound now at 12:52 AM.□ On backside of the dying declaration, Exhibit Ka-13, thumb impression of the right hand of the victim Sanno was endorsed. Signature of Naib Tehsildar are also endorsed with date □17.11.2017□.

21. From the perusal of the dying declaration, Exhibit Ka-13, of the deceased Sanno, it is revealed that incident happened on 16.11.2017 at 08:00 PM and dying declaration of the deceased Sanno was recorded on the same night on 17.11.2017 at 12:20 AM. Thus, there is no delay in recording the dying declaration of the deceased Sanno. In her dying declaration, Exhibit Ka-13, Sanno stated that □she is aged about 22 years and wife of Mohd. Suhail.□ She also stated that □on 16.11.2017 at about 08:00 PM, her husband suddenly started beating and abusing her and he poured kerosene oil on her body and set her on fire.□ She has also stated that □I made hue and cry and began to rush here and there. I rushed outside and fell on the road. Then my uncle-in-law, Afsar, reached me and extinguish the fire caught on my body and I become unconscious.□ According to the dying declaration, she also stated that □my matrimonial home and paternal home are in the same village. I was married before three years of the incident with Mohd. Suhail, who is son of my maternal uncle.□ According to her statement in dying declaration, she has also stated that □after three years of marriage, I could not conceive and was unable to give birth to the child. Due to this reason, my in-laws were aggrieved and taunting me for not giving birth to the children.□ Apart from the above statement, deceased Sanno has also stated in her dying declaration that □her husband had illicit relation with his sister-in-law, Rabiya. This relationship is known to me for the last two years. I had seen them on bed in a compromising situation. Due to this reason, they began to harass me and often committed cruelty.□ In this way, in her dying declaration, Exhibit Ka-13, deceased Sanno has stated above two causes and reasons, due to which her husband, Suhail, poured kerosene oil on her body and set her on fire.

22. Learned counsel for the accused-appellants has made arguments that prosecution witnesses, including informant Anarunnisha (PW-1), has not made any allegation against the appellants. There is no evidence of any independent witness that the appellant Suhail used to torture his wife Sanno for being issue-less. Hence, in the absence of any evidence to this effect,

prosecution story appears to be concocted and is liable to be rejected. It is also submitted that in the present case, in absence of any other evidence, the appellant was convicted by the trial Court only on the basis of dying declaration of the deceased without corroborating the contents of the dying declaration of the deceased. The dying declaration of the deceased is not free from tutoring and prompting since PW-1 was present at the time of recording the dying declaration. It is further submitted that from perusal of the post mortem report of the deceased, it is clear that at the time of making dying declaration, the deceased was burnt upto 95%. The deceased suffered ante mortem superficial to deep burnt injuries all over the body except skull, face and both soles. Brain and its internal matter were congested, lungs were congested, spleen and lever were also congested and both kidneys were also congested. Under such circumstances, it is highly improbable that the deceased has to make her statement which makes the dying declaration doubtful and the conviction based on it, is unsustainable. He also submitted that PW-1, who is mother of the deceased, has also admitted in her cross-examination that when the dying declaration of the victim Sanno was recorded, she was not fit to make any statement and her condition was very serious. Hence, the dying declaration appears to be doubtful and unreliable.

23. In the light of the above submissions of learned counsel for the accused-appellants, we have perused the evidence of Dr. Santraj Singh, Naib Tehsildar, Sadar, Fatehpur (PW-11), who has recorded dying declaration of the deceased Sanno on 17.11.2017 and evidence of Dr. Atul Kumar Srivastava (PW-12), who has given certificate of fitness and mental condition of the victim Sanno before and after recording of her dying declaration.

24. From the perusal of the evidence of Dr. Santraj Singh, Naib Tehsildar (PW-11), it is revealed that, on the direction of the S.D.M., Fatehpur, he reached the District Hospital, Fatehpur for recording the dying declaration of the victim, Sanno. According to this witness, on 17.11.2017, he went to the emergency ward of Sadar Hospital, Fatehpur, where the doctor, under whose supervision the deceased, Sanno, was undergoing treatment, was present. He requested Dr. Atul Kumar Srivastava (PW-12) for giving certificate about fitness and mental condition of the victim Sanno. Thereafter, Dr. Atul Kumar Srivastava (PW-12) has given certificate that "patient is conscious and able to speak at 12:15 AM on 17.11.2017." Apart from this, Dr. Santraj Singh (PW-11) also himself questioned the victim Sanno to know her condition and according to this witness, Sanno has given correct answer and he found that she is fully competent to give her statement. Thereafter, this witness has recorded the dying declaration of the victim/deceased Sanno with regard to whole incident. According to this witness, at the time of recording of the dying declaration, no patient except Sanno was present in the ward. According to this witness, after completion of the recording of the dying declaration of the victim Sanno, again Dr. Atul Kumar Srivastava (PW-12) has given certificate about fitness and mental condition of the victim Sanno that "patient is conscious and able to speak and well oriented and mentally sound during her statement. Patient is mentally sound now at 12:52 AM." The victim/deceased Sanno heard the contents of her dying declaration, Exhibit Ka-13, and she verified the same to be true. During the course of cross-examination by defence, this witness has denied all suggestions put to him. There is no question of this nature in the cross-examination of this witness by which we could doubt the veracity and trustworthiness of this witness.

25. In the same way, from the perusal of the evidence of Dr. Atul Kumar Srivastava (PW-12), it is revealed that before recording of dying declaration by Dr. Santraj Singh (PW-11), this witness Dr. Atul Kumar Srivastava (PW-12) has given fitness certificate about the mental condition and competency of the deceased Sanno. Even after recording of the dying declaration of deceased Sanno, this witness has also given certificate at the end of the dying declaration, Exhibit Ka-13, on the backside of the paper that "patient is conscious and able to speak and well oriented and mentally sound during her statement. Patient is mentally sound now at 12:52 AM." Both above prosecution witness Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12) verified this fact and testified after perusing the dying declaration, Exhibit Ka-13, in their handwriting. During cross-examination by defence, Dr. Atul Kumar Srivastava (PW-12) has stated in his cross-examination that there was no one present in the ward at the time of recording of dying declaration of deceased Sanno. Only he (PW-12) and Dr. Santraj Singh (PW-11) were present. Meaning thereby, no member of the deceased Sanno's paternal family members were present at the time of recording her dying declaration. Thus, from this fact, it is amply clear that there was no possibility or chance for tutoring and prompting to deceased Sanno about the statement. The dying declaration of deceased Sanno was found to be free from tutoring, prompting and false concoction.

26. We have perused the judgment of the Apex Court (Five-Judge Bench) in the case of **Laxman v. State of Maharashtra, (2002) 6 SCC 710**. The facts of the above case law and those of the present case, to some extent, are similar inasmuch as, in the said case, only a certificate was given by the doctor stating that the patient was conscious, and in the present case as well, Dr. Atul Kumar Srivastava has given a certificate that the patient was conscious and able to speak. On this point, the Supreme Court held that there was certificate of the doctor indicating that patient was conscious. The accused-appellants contended that, since the doctor's certification did not state that the patient was in a fit state of mind to make the statement, the dying declaration could not form the sole basis of conviction. The Supreme Court in the light of above arguments held that;

"The situation in which a man is on the deathbed is very solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying

declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and it is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he had recorded the dying declaration."

27. The Supreme Court overruled the case law of **Paparambaka Rosamma v. State of Andhra Pradesh, (1999) 7 SCC 695** as not a good law and affirmed the law laid down by the Supreme Court in the case of **Koli Chunilal Savji and another V. State of Gujarat, (1999) 9 SCC 562.** The three Judges Bench of the Supreme Court in the case of **Koli Chunilal Savji (supra)** held in para 7 that;

"In Ravi Chander v. State of Punjab, (1998) 9 SCC 303, this Court has held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court further observed that the Executive Magistrate is a disinterested witness and is a responsible officer and there is no circumstance or material on record to suspect that the Executive Magistrate had any animus against the accused or was in any way interested in fabricating the dying declaration and, therefore, the question of genuineness of the dying declaration recorded by the Executive Magistrate to be doubted does not arise."

28. The Supreme Court in the case of **Krishna Kumar @ Pamma v. State of Haryana, (1998) 8 SCC 586** has held in para 10 that;

"On perusal of the impugned judgment, we find that both the learned courts below went into the question as to whether the deceased met with homicidal death as alleged by the prosecution or a suicidal death as contended by the appellant and on detailed discussion of the evidence found the story made out by the appellant wholly unacceptable. The most important circumstance which persuades us to disbelieve the version of the appellant is the fact that immediately after the incident, he ran away from the spot. If his version was true, it was expected of him to take the deceased immediately to the hospital for the purpose of treatment. Indeed, he did not even get himself examined for his own burns. While on this point it will be pertinent to mention that Dr (Mrs) Sinha opined that the injuries found on the appellant were possible while putting somebody on

fire by pouring kerosene as in such a situation, flames emerge abruptly. We do not however for a moment suggest that his such conduct by itself points to his guilt but it certainly belies his version of the incident. It is, of course, true that the sister of the deceased has supported the appellant but we cannot lose sight of the fact that she was a witness for the prosecution and was summoned to testify on its behalf. She was however not examined by the prosecution as she was found to have been won over; and then she examined herself as a defence witness. She admitted in her cross-examination that for the purposes of testifying on behalf of the defence, she was not summoned by the Court but was brought by Raj Kumar, the brother of the appellant. Then again we find that she admitted in her deposition that she had been attracted to the spot on hearing the cries of the deceased. Obviously, the cries were raised by the deceased after she was put on fire and, therefore, she could not have been in a position to say how she had been set on fire."

29. Thus, in light of the legal principles laid down by the Supreme Court in the cases of **Laxman (supra), Koli Chunilal Savji (supra) and Krishna Kumar @ Pamma (supra),** it is clear that the requirement of a doctor's endorsement regarding the mental fitness of the deceased to make his/her declaration is not a rule of law or a mandatory provision, but merely a rule of prudence; the ultimate test is whether the dying declaration is truthful, voluntary, and free from any tutoring, prompting, or other suspicious circumstances.

30. From the appreciation and perusal of the evidence of Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12), we find that the dying declaration, Exhibit Ka-13, of deceased Sanno is free from any tutoring and prompting. It is found to be truthful and voluntary, which inspire confidence as being trustworthy and creditworthy and is wholly reliable.

31. Thus, in the light of the above legal principles as laid down by the Supreme Court in the cases of **Laxman (supra), Koli Chunilal Savji (supra) and Krishna Kumar @ Pamma (supra)** and in the light of the evidence of Dr. Santraj Singh (PW-11) and also Dr. Atul Kumar Srivastava (PW-12), we find no force in any arguments of learned counsel for the accused-appellants in this respect.

32. We have also perused the case law as referred and relied on by learned counsel for the accused-appellants, such as**, Khushal Rao v. State of Bombay, 1957 LawSuit (SC) 93; Rasheed Beg v. State of M.P., 1973 LawSuit (SC) 355; K. Ramachandra Reddy v. Public Prosecutor, 1976 LawSuit (SC) 214; Darshan Singh v. State of Punjab, 1983 LawSuit (SC) 104; Paniben v. State of Gujarat, 1992 LawSuit (SC) 228; Jugal v. State of U.P., 2023 LawSuit (All) 1227; Phulel Singh v. State of Haryana, 2023 LawSuit (SC) 951; and Sunil Kumar, Bal Krishna and another v. State, 2024 LawSuit (All) 2327**, and find that the facts and circumstances of the aforesaid cases as relied upon and referred to by the accused-appellants are different from the facts and circumstances of the present case at hand. Apart from the above, we also find that in the light of the legal principles as laid down by the Supreme Court in the case of **Laxman (supra), Koli Chunilal Savji (supra)**

and Krishna Kumar @ Pamma (supra), the accused-appellants are not found entitled for any benefit on the ground of case laws as referred above by them.

33. From the perusal of the evidence, documentary and oral, it is revealed that after happening of the incident, accused-appellants Suhail fled away from the place of occurrence. The house of parents of the deceased Sanno was in the same village. On hearing the hue and cry of the people, they reached at the spot and got admitted her daughter Sanno at Sadar Hospital, Fatehpur. Although all witnesses of facts, such as, mother and other prosecution witnesses turned hostile and have not supported the prosecution story but it is clear that the accused-appellant, Suhail, after the incident disappeared from the place of occurrence. If the accused-appellant Suhail was innocent, he would have been duty-bound to take his burnt wife Sanno to the hospital for treatment and also to inform the police by giving information at the concerned police station having jurisdiction about the incident. It is the defence of the accused-appellants that a kerosene oil lamp was lit above the clay stove where the deceased Sanno was cooking food and it accidentally fell on the ground, and due to the spark, fire caught the clothes of the deceased. In these circumstances, why did the accused-appellant Suhail, who is the husband of the deceased Sanno, flee from the place of the incident and not cared to admit her to the hospital for treatment? Why accused-appellant, Suhail, husband of the deceased Sanno, has not given information of so-called accidental occurrence at the police station? Thus, from the conduct of the accused-appellant, Suhail, it is amply clear that it is not an accidental death but a homicidal death. Thus, the defence of the accused-appellant, Suhail, is belied by his own conduct. Meaning thereby, incident dated 16.11.2017 is not an accidental incident but it is a homicidal one because after pouring kerosene oil upon his wife Sanno, accused-appellant, Suhail, fled away from the place of occurrence. He even not cared to take the victim to the hospital for her treatment and also he had not given any information at the concerned police station having jurisdiction in this respect. Thus, the conduct of the accused-appellant, Suhail, also corroborates the prosecution case of homicidal death and the statement of the deceased Sanno in her dying declaration, Exhibit Ka-13.

34. As far as the argument of learned counsel for the accused-appellants in respect of lodging the first information report after four day delay is concerned, we also find no force in this argument because the incident happened on 16.11.2017. The victim Sanno was admitted by her parents to District Hospital, Fatehpur on the same night on 16.11.2017 and her dying declaration was recorded on the same night at 12:20 on 17.11.2017. Since the condition of the victim was serious, she was referred to Hallett Hospital, Kanpur for her treatment where she died on 30.11.2017. It is revealed from the record of the case that after the incident, the accused-appellant, Suhail, whose wife deceased Sanno was burnt seriously has fled away from the place of occurrence with his family members. The paternal family members of the deceased Sanno were busy in her treatment to save her life. For this reason, the written report, Exhibit Ka-1, could be lodged by Anarunnisha (PW-1) only on 20.11.2017. Since the parents, brother, and sister of the deceased Sanno were busy in her treatment and in efforts to save her life, therefore, there was a delay of four days in lodging the written report, Exhibit Ka-1, at the concerned police station. Thus, we find that there is

no delay in lodging the written report, Exhibit Ka-1, at the concerned police station, therefore, we find no force in the argument of learned counsel for the accused-appellants in this respect.

35. As far as arguments of learned counsel for the accused-appellants that no witnesses of fact has supported the prosecution story and in this light, the prosecution story become suspicious is concerned, we are of the opinion that all witnesses of facts have been won over by the defence. Due to this reason, witnesses of facts have not supported the prosecution story. However, only on that ground, accused-appellant, Suhail, is not found entitled to gain any benefit because in the dying declaration, Exhibit Ka-13, it was found fully trustworthy and free from tutoring and prompting. The deceased herself narrated the incident in a very simple words. Learned trial Court based its finding and reasoning on the dying declaration, Exhibit Ka-13, and found the accused-appellant, Suhail, guilty for the commission of the murder of his wife, deceased Sanno, by pouring kerosene oil on her body and set her on fire. Thus, even after all prosecution witnesses of facts turned hostile, there is ample evidence, which is based on dying declaration, Exhibit Ka-13, of deceased Sanno against the accused-appellant, Suhail. Thus, we also do not find any force in the arguments of learned counsel for the accused-appellants in this respect.

36. As far as the arguments of learned counsel for the accused-appellants which are based on the postmortem report, Exhibit Ka-7, and the testimony of Dr. Sarvajeet Singh (PW-9), who prepared Exhibit Ka-7, are concerned, it is clear from the postmortem report, Exhibit Ka-7, and the statement of Dr. Sarvajeet Singh (PW-9) that the features of the dead body regarding the external and internal organs, as recorded in the postmortem report, were noted after the death of the deceased Sanno. Meaning thereby, on 17.11.2017 at 12:20 AM, she was fully conscious and able to give her statement. This shows that on 17.11.2017, there was no failure of internal and external organs of the deceased Sanno, when her dying declaration was being recorded by Dr. Santraj Singh, Naib Tehsildar (PW-11) in presence of Dr. Atul Kumar Srivastava (PW-12). In view of the above, we find no force in the argument of learned counsel for the accused-appellants in this respect also.

37. Thus, from the above discussions and perusal of the dying declaration, Exhibit Ka-13, of the deceased, which is corroborated by Dr. Santraj Singh, Naib Tehsildar (PW-11) and Dr. Atul Kumar Srivastava (PW-12), it is clearly revealed that when Sanno was sleeping, accused-appellant, Suhail, with intention to kill her, poured kerosene oil upon her and set her on fire and thereby killed his wife only for the reasons that she was not conceiving and giving birth to child and she had seen her husband, Suhail, with her sister-in-law (Jethani), Rabiya, in a compromising situation.

38. We have also gone through the finding and reasoning given by learned trial Court and found that the finding and reasoning given by learned trial Court in respect of the role and direct involvement of accused-appellant, Suhail, are based on cogent and reliable evidence as stated by deceased Sanno in her dying declaration, Exhibit Ka-13. However, we find that after registering the case under Sections 498A, 307 IPC and Section 3/4 Dowry Prohibition Act, the then Investigating Officer Inspector Radheshyam Dwivedi

investigated the case and at that time, the victim Sanno was alive. The then Investigating Officer Inspector Radheshyam Dwivedi (PW-8) stated in his cross-examination that "I have shown both houses of accused persons in the site plan in which one house is of accused Tufail and second house is of Suhail and were shown by me in the site plan."

39. From the perusal of the site plan, Exhibit Ka-5, we find that the house of Tufail is shown on the right side, in the eastern direction of the road, and the house/hut of accused Suhail, where the incident took place, is shown at the corner in the western - southern direction of the site plan, in the jungle and bushes. The accused-appellant, Suhail, was living with his wife, the deceased Sanno, separately from his father, accused Tufail, and other family members, in a separate hut. This fact indicates that all other family members of the accused-appellant, Suhail, were living with accused-appellant, Tufail, in a separate house. Thus, this fact also found corroboration from the dying declaration of the deceased that accused-appellant, Tufail, has no role in torturing or committing cruelty to deceased Sanno. It was the act of only Suhail, who tortured, harassed and killed his wife Sanno by pouring kerosene oil and setting her on fire.

40. In view of the above fact and situation, we find that implication and involvement of the accused-appellant, Tufail, was found to be doubtful. Due to this reason, the finding and reasoning in this respect of learned trial Court by which accused Tufail was held guilty under Section 498A IPC and his conviction for two years' imprisonment with a fine of Rs. 2000/- is not found sustainable in the eyes of law. Thus, we find that conviction and sentence of accused Tufail under Section 498A IPC is not sustainable and is liable to be set aside, but the judgment and order of conviction of the accused Suhail is found to be based on cogent finding and reasoning. Hence, we are only inclined to sustain the conviction and sentence of accused Suhail under Sections 302, 498A IPC.

41. In view of the above, Criminal Appeal No. 1007 of 2020 is **allowed**. We set aside the impugned judgment and order dated 14.01.2020 of conviction and sentence passed against the accused-appellant, **Tufail,** by learned Trial Court in Session Trial No.119 of 2018 (State Vs. Suhail and another) arising out of Case Crime No. 235 of 2017, under Section 498A IPC, Police Station Sultanpur Ghosh, District Fatehpur. The appellant, Tufail, is acquitted of the charge under Section 498A IPC. He is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged.

42. Criminal Appeal No. 1401 of 2020 filed by accused Suhail is dismissed. The impugned judgment dated 14.01.2020 passed by learned Additional Sessions Judge/F.T.C.-II, Fatehpur in Session Trial No.119 of 2018 (State Vs. Suhail and another) arising out of Case Crime No. 235 of 2017, under Sections 498A, 302 IPC, Police Station Sultanpur Ghosh, District Fatehpur is affirmed. The appellant, Suhail, is in jail. He shall remain in jail to serve out the sentence awarded to him by the learned Trial Court.

43. Let a copy of this judgment be transmitted to the learned trial Court along with the trial Court records forthwith for necessary compliance.

(2026) 7 ILRA 218
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 1470 of 1987

Kanahi & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to criminal appeal against conviction under S. 392 IPC, where the accused were unknown to the complainant and the prosecution case hinges upon their identification, whether the unexplained delay of about 42 days in holding the test identification parade, failure of independent witnesses to identify the appellants at the parade, non-observance of prescribed safeguards, absence of independent eye-witness and absence of recovery render the identification unreliable and whether conviction based upon the solitary identification of the appellants by the complainant for the first time in court can be sustained, and whether the appellants are entitled to benefit of doubt. (Paras 8-20)

Headnotes

Criminal Law - Indian Penal Code, 1860 - S. 392 - Test Identification Parade - U.P. Police Regulations and Jail Manual - Para 116 of the U.P. Police Regulations and Para 416, renumbered as Para 443 in the 2022 U.P. Jail Manual 1955 - Identification of accused unknown to witness - Unexplained and inordinate delay - Evidentiary value - Where accused are not previously known to the witness, unexplained and inordinate delay in holding test identification parade affords a reasonable opportunity of the accused being shown to the witnesses and seriously dilutes the evidentiary value of the identification proceedings - In absence of any explanation for delay, identification parade cannot be said to inspire confidence. (Paras 9, 13-15)

Criminal Law - Indian Evidence Act, 1872 - S. 9 - Test Identification Parade - Corroborative evidence - Substantive evidence - Identification in court - Test identification parade is not substantive evidence and is only corroborative evidence meant to lend assurance to identification of accused made in court - Identification of accused for the first time at trial is inherently of a weak character where accused are strangers to the witness - Prior test identification is a safe rule of prudence to test and strengthen trustworthiness of such identification. (Paras 11, 15-17)

Criminal Law - Indian Evidence Act, 1872 - S. 9 - Identification Parade - Failure of independent witnesses to identify accused - Where independent witnesses associated with identification proceedings failed to identify the appellants at the parade and identification of appellants rested exclusively upon solitary testimony of complainant given for the first time in witness box, identification parade furnished no corroboration to the prosecution case. (Para 10)

Criminal Law - Test Identification Parade - Procedural safeguards - U.P. Police Regulations and Jail Manual - Non-observance of safeguards designed to guard against possibility of accused being shown to witnesses before parade and to ensure fair and reliable identification, coupled with unexplained delay, further diminished reliability of identification proceedings - Benefit of material omissions and procedural lapses committed by prosecution liable to be extended to accused. (Paras 12-14)

Criminal Law - Indian Penal Code, 1860 - S. 392 - Identification of accused - Solitary testimony of complainant - Corroboration - Though sole testimony of an injured or robbed witness can, in appropriate cases, sustain conviction, such testimony must be of unimpeachable quality, particularly where accused were strangers to witness and case rests entirely on identification - Delayed and doubtful identification parade, failure of independent witnesses to identify appellants, absence of independent eye-witness and absence of recovery rendering prosecution evidence insufficient to prove identity beyond reasonable doubt - Conviction set aside and appellants acquitted. (Paras 18-22)

Held: Test identification parade is not substantive evidence and is, by its very nature, only corroborative evidence meant to lend assurance to identification of the accused made in court - where the accused were not previously known to the complainant and the entire prosecution case hinges upon identification, unexplained and inordinate delay in holding the test identification parade affords the accused a reasonable opportunity of being shown to the witnesses and seriously dilutes the evidentiary value of the identification proceedings - the identification parade in the present case, conducted about 42 days and more from the date of admission of the appellants to jail and over two and a half months from the date of the incident, without any satisfactory explanation for the delay, cannot be said to inspire confidence - the two independent witnesses associated with the proceedings failed to identify the appellants at the parade and the identification of the appellants rested exclusively upon the solitary testimony of the complainant given for the first time in the witness box, without any corroboration from the identification parade - non-observance of the safeguards prescribed under the U.P. Police Regulations and the Jail Manual, coupled with the delay, further diminished the reliability of the identification proceedings - no reliable independent public witness to the actual occurrence was examined and there was no recovery of the looted articles or weapon from the possession of the appellants - while the sole testimony of an injured or robbed witness can, in appropriate cases, sustain a conviction, such testimony must be of unimpeachable quality, particularly where the accused were strangers to the witness and the case rests entirely on identification - having regard to the delayed and doubtful identification parade, the failure of the independent witnesses associated with that parade to identify the appellants, the absence of any independent eye-witness and the absence of recovery, the prosecution failed to prove the identity of the appellants as the perpetrators of the offence beyond reasonable doubt - the benefit of the resultant doubt must go to the appellants - conviction under S. 392 IPC set aside and appellants acquitted - appeal allowed. (Paras 9-22) (E-7)

Case Law Cited

Budhsen v. State of U.P., **(1970) 2 SCC 128***; Malkhansingh v. State of M.P.,* **(2003) 5 SCC 746***; State of H.P. v. Lekh Raj,* **(2000) 1 SCC 247**

List of Acts

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

List of Keywords

Test Identification Parade; identification; corroborative evidence; substantive evidence; unexplained delay; inordinate delay; independent witnesses; independent public witness; solitary testimony; complainant; identification in court; identification proceedings; U.P. Police Regulations; Jail Manual; procedural safeguards; reasonable opportunity; absence of recovery; looted articles; weapon; benefit of doubt; acquitted

Case Arising From

APPELLATE JURISDICTION: Appeal against the judgment and order dated 15.5.1987 passed by the learned Special Judge, Budaun in Special Sessions Trial No. 98 of 1985, whereby the appellants were convicted under S. 392 IPC and each was sentenced to undergo five years' Rigorous Imprisonment.

Appearances for Parties

Advs. for the Appellant:
Sri Ravi Shankar Tripathi
Advs. for the Respondents:

Sri Hari Prakash Singh, learned A.G.A. for the State

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Sri Ravi Shankar Tripathi, learned counsel for the appellant and Sri Hari Prakash Singh, learned A.G.A. for the State and perused the record.

2. This criminal appeal has been preferred against the judgment and order dated 15.5.1987 passed by the learned Special Judge, Budaun in Special Sessions Trial No. 98 of 1985, whereby the accused Kanhai, Harpal, Dal Chand and Kalloo were convicted under Section 392 I.P.C. and each of them was sentenced to undergo five years' Rigorous Imprisonment. During the pendency of the present appeal, accused-appellants Harpal and Dalchand have since died. Their deaths have been brought on record and the appeal, insofar as it relates to the deceased appellants Harpal and Dalchand, stands abated vide order dated 26.11.2025. The appeal survives and is being disposed of qua the remaining two appellants, namely, Kanhai and Kalloo.

3. Briefly stated, the prosecution case was that on 21.2.1985 at about 6.30 P.M., the complainant Radhey Shayam Sharma, while going from Bisauli to his village Palia on a cycle, was way-laid on the side of the road between village Kot and Bisauli by four miscreants who surrounded him, held a knife to his chest and, after conducting a personal search, looted two containers of desi ghee weighing 4 kgs. each, a sum of Rs.126.50 and certain grocery articles. The written report was lodged at Police Station Bisauli against unknown persons, on the basis of which a case was registered as Crime No. 69 of 1985 under Section 392 I.P.C. The accused were subsequently arrested, put up for test identification and, after investigation, charge-sheeted. The learned Trial Court, on the basis of the evidence led, convicted all four accused and sentenced them as aforesaid. Aggrieved thereby, the present appeal has been preferred.

4. Learned counsel for the appellants has assailed the impugned judgment on the following grounds: The First Information Report was lodged against unknown persons. The occurrence is stated to have taken place on 21.2.1985, whereas the test identification parade of the accused was conducted only on 6.5.1985, i.e., after a gap of about 42 days from the date of their admission to jail (accused Dalchand and Harpal having been admitted to jail on 9.3.1985 and accused Kanhai and Kallu on 21.3.1985 and 20.3.1985 respectively). No explanation whatsoever has been furnished by the prosecution for this inordinate and unexplained delay in holding the identification parade. The report of the identification parade itself demonstrates that the two independent witnesses associated therewith, namely Ram Dass (P.W.1) and Ganga Sahai (P.W.3), could not correctly identify all four accused persons. It is well settled that a test identification parade is, at best, a weak type of evidence and is only corroborative in nature; it does not constitute substantive evidence. No independent public witness of the incident itself has been examined by the prosecution. There is no recovery whatsoever, either of the looted articles, cash, or any weapon, from the possession of the appellants, which would have lent independent assurance to the prosecution case. The First Information Report was lodged against unknown persons, and the names of the appellants did not figure therein at all.

5. On the strength of the above submissions, it has been contended that the entire prosecution case rests on a delayed and doubtful identification parade, uncorroborated by any independent witness, recovery, or other circumstance, and that the Trial Court has erred in placing reliance on the sole testimony of the complainant to record conviction.

6. Learned Additional Government Advocate, per contra, has supported the impugned judgment and has submitted that the delay in holding the identification parade stands sufficiently explained inasmuch as it was held within a reasonable time of the arrest of the accused, and that the sole testimony of the victim, if found trustworthy, is sufficient to sustain conviction, as held by the Trial Court.

7. I have given our anxious consideration to the rival submissions and have examined the evidence on record.

8. It is not in dispute that the First Information Report of the incident, dated 21.2.1985, was lodged against unknown miscreants. The appellants were, admittedly, not known to the complainant prior to the occurrence and the entire prosecution case therefore hinges upon identification of the appellants as the culprits.

9. So far as the test identification parade is concerned, it is an admitted position that accused Kanhai and Kallu were admitted to jail on 21.3.1985 and 20.3.1985 respectively, whereas the identification parade was conducted only on 6.5.1985, a gap of about 42 days and more from the date of their admission to jail, and over two and a half months from the date of the incident itself. No explanation, much less a satisfactory one, has been offered by the prosecution for this delay. It is well settled that where there is unexplained and inordinate delay in holding a test identification parade, and the accused are not previously known to the witness, such delay affords the accused a reasonable opportunity of being shown to the witnesses, whether by design or otherwise, and seriously dilutes the evidentiary value of the identification proceedings. In the absence of any explanation for the delay, the identification parade in the present case cannot be said to inspire confidence.

10. What is of greater significance is that the identification parade, even on its own terms, does not support the prosecution case qua the appellants. The report of the identification parade shows that the two independent witnesses associated with the proceedings, namely Ram Dass (P.W.1) and Ganga Sahai (P.W.3), were unable to identify all four accused. P.W.1 Ram Dass identified only the deceased appellants Dalchand and Harpal, and P.W.3 Ganga Sahai identified only the deceased appellant Dalchand. Neither of them identified the present appellants Kanhai and Kallu at the parade. Thus, the very safeguard of independent corroboration, which a test identification parade is intended to furnish, is conspicuously absent qua the appellants before us. This is not a case of partial success in identification of some culprits out of a gang, where the witness who deposed in court had also identified all the accused at the parade and his court testimony stood corroborated by the parade. In the present case, on the contrary, neither independent witness identified appellants Kanhai and Kallu at the identification parade at all, and their identification rests exclusively upon the solitary testimony of the complainant given for the first time in the witness box, without any corroboration from the identification parade.

11. It is a well-settled principle that evidence of test identification is not 'substantive evidence" it is, by its very nature, only "corroborative evidence" meant to lend assurance to the identification of the accused made in court. Where the identification parade itself is vitiated by unexplained delay and, further, fails to connect the appellants with the offence through any independent witness, it ceases to furnish any corroboration at all. In such a situation, the Court is left with nothing but the bare, uncorroborated word of the complainant, given more than two years after the occurrence, identifying persons who were total strangers to him at the time of the incident.

12. It has also been brought to our notice that the Investigating Officer did not conduct the identification proceedings in strict conformity with the safeguards prescribed under the U.P. Police Regulations and the Jail Manual for holding such parades, which are designed precisely to guard against the possibility of the accused being shown to the witnesses before the parade and to ensure a fair and reliable identification. Non-observance of these safeguards, coupled with the delay noticed above, further diminishes the reliability of the identification proceedings.

13. In Uttar Pradesh, the procedure for a Test Identification Parade (TIP) conducted in jail is governed principally by: *Paragraph 116 of the U.P. Police Regulations, and Paragraph 416 (renumbered as Paragraph 443 in the 2022 U.P. Jail Manual 1955)* dealing with undertrial prisoners who are to be identified by witnesses. The object of a TIP is not to constitute substantive evidence, but to test the memory and veracity of a witness who claims to have seen an unknown offender. The substantive evidence is the witness's identification of the accused during trial before the Court.

14. Step-by-step procedure regarding identification parade are;

(a)When the accused is sent to judicial custody, the Investigating Officer moves an application before the Magistrate requesting a Test Identification Parade.

(b) Normally, the parade should be held inside the jail, not at the police station.

(c) The Superintendent of Police or an officer not below the rank of Inspector informs the Jail Superintendent in writing that the prisoner is to be put up for identification. This information should be given at the time of admission or as soon thereafter as possible.

(d) After receiving such intimation, the Jail Superintendent must ensure that: the accused does not shave or grow a beard contrary to his appearance at arrest; hair style and moustache remain unchanged; no disguise is permitted; the accused wears the same or similar type of clothing as at the time of arrest.

(e) The Investigating Officer must ensure from the beginning of the investigation that: witnesses do not see the accused before the parade; police avoid showing the accused to witnesses; unnecessary production before witnesses is avoided. This is one of the most important safeguards because prior exposure substantially weakens the evidentiary value of the TIP.

(f) The TIP should ordinarily be conducted by a Judicial Magistrate. Police officers should not participate in the actual proceedings. A jail officer remains present only to comply with directions of the Magistrate.

(g) The accused is mixed with several persons of similar: age, height, complexion, build, dress, general appearance. The object is to ensure fairness and eliminate suggestive identification. Prisoners who themselves have to be identified in other cases should not be used as dummies.

(h) Each witness is brought individually. Witnesses are kept separate. They are not permitted to communicate with each other. Each witness identifies independently.

(i) Normally, after each witness: the accused is allowed to change his position in the line; the Magistrate records whether such change was requested or made. This prevents identification merely by remembering the position.

(j)The Magistrate records: names of persons mixed with the accused; objections raised by the accused; whether position was changed; exact words and conduct of each witness. whether identification was immediate, hesitant or mistaken. The proceedings are signed by the Magistrate.

(k) The U.P. Jail Manual provides that before the proceedings begin, the prosecuting inspector and the defence counsel (if present) may satisfy themselves that the prescribed safeguards have been observed. However, they do not participate in the actual identification process, which remains under the exclusive control of the Magistrate. In this case at hand, the test identification parade has not been conducted properly as per existing rule and procedure, thus the accused persons are liable to provide the benefit of the material omissions and procedural lapses committed by the prosecution in this regard.

15. The settled law of the Supreme Court In **Budhsen v. State of U.P., (1970) 2 SCC 128 , Malkhansingh v. State of M.P., (2003) 5 SCC 746** and in **State of H.P. v. Lekh Raj, (2000) 1 SCC 247** that The TIP is only corroborative evidence under Section 9 of the Evidence Act. Failure to hold TIP is not invariably fatal, especially where the accused was previously known to the witness. Where the accused was unknown and is identified for the first time in court without an earlier TIP, such dock identification is generally considered weak unless supported by other evidence.

16. In **Malkhansingh (supra)** Hon'ble Supreme Court held in paras 7 and 16 :-

"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.

16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine……"

17. Further in **Lekh Raj (supra)** The Hon□ble Supreme Court held in para 3:

"3....During the investigation of a crime the police agency is required to hold identification parade for the purposes of enabling the witness to identify the person alleged to have committed the offence particularly when such person was not previously known to the witness or the informant. The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Identification parade may also not be necessary in a case where the accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. This Court in Budhsen v. State of U.P. [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witness came to pick out the particular accused person and the details of the part which he allegedly played in the crime in question with reasonable particularity. In such cases test identification is considered a safe rule of prudence to generally look for

corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them."

18. I further find that no reliable independent □public witness□ to the actual occurrence has been examined by the prosecution. P.W.1 Ram Dass and P.W.3 Ganga Sahai, whose names do not figure in the First Information Report at all, were introduced for the first time before the Trial Court; even otherwise, as noted above, they have failed to identify the appellants at the identification parade. There is also □no recovery□ of the looted ghee, cash or any other article, nor of any weapon, from the possession of the appellants, which could have furnished independent corroboration to the prosecution story.

19. In these circumstances, what remains is the sole testimony of the complainant, P.W.2 Radhey Shayam Sharma, identifying the appellants for the first time in court, unsupported by any reliable identification parade and unaided by recovery or any other independent corroborative circumstance. While the sole testimony of an injured or robbed witness can, in appropriate cases, sustain a conviction, such testimony must be of unimpeachable quality, particularly where the accused were strangers to the witness and the case rests entirely on identification. Having regard to the delayed and doubtful identification parade, the failure of the independent witnesses associated with that parade to identify the appellants, the absence of any independent eye-witness, and the absence of recovery, we are of the considered opinion that the prosecution has failed to prove the identity of the appellants Kanhai and Kallu as the perpetrators of the offence beyond reasonable doubt.

20. The learned Trial Court, in my view, fell into error in placing implicit reliance on the sole testimony of the complainant without adequately appreciating the cumulative effect of the delayed identification parade, the failure of the independent witnesses to identify the appellants thereat, and the total absence of any other corroborative material. The benefit of the resultant doubt must, therefore, go to the appellants.

21. For the reasons recorded above, the appeal is **allowed.**

22. The judgment and order dated 15.5.1987 passed by the learned Special Judge, Budaun in Special Sessions Trial No. 98 of 1985, convicting the appellant Kanhai and the appellant Kallu under Section 392 I.P.C. and sentencing each of them to five years' Rigorous Imprisonment, is hereby set aside qua the said two appellants.

23. The appellants Kanhai and Kallu are acquitted of the charges under Section 392 IPC and are on bail, their bail bonds and sureties stand discharged. They need not surrender, and if in custody, they be released forthwith unless wanted in any other case.

24. The trial court record be sent back □forthwith□ to the trial court, along with a copy of this judgment, for information and necessary compliance.

25. Register (compliance) is directed to communicate this order to the concerned trial court through district and Sessions Judge within three days.

(2026) 7 ILRA 226
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1936 of 2026

Dr. Ravi Kant Sharma & Anr. ...Appellants
Versus
State of U.P. & Anr. ...Respondents

Issue for Consideration

Matter pertains to whether the learned Special Judge, SC/ST (P.A.) Act, was justified in allowing the application for discharge filed by the accused in a case alleging offences under Ss. 121, 115(2), 352, 351(3), 132, 221 BNS and Ss. 3(2)(va), 3(1)(r),(s) SC/ST Act, on the ground that the allegations did not disclose that the accused knew the complainant or his caste since before and that the provisions of the SC/ST Act were therefore not attracted, coupled with the finding that the medico-legal examination was vitiated and that the prosecution version was not believable. The issue further concerns whether, where no prima facie case is made out or the complaint is found to be prima facie false or mala fide, the trial Court can discharge the accused. (Paras 2, 10, 18, 24-30)

Headnotes

Criminal Law - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - S. 3(2)(va) - S. 3(1)(r),(s) - Intention to humiliate a member of Scheduled Caste or Scheduled Tribe - Knowledge of caste - Offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste - Where there was absolutely no material to show that the accused knew that the complainant belongs to a Scheduled Caste, it could not be said that the offence was committed because the complainant belongs to a Scheduled Caste - Offences under the SC/ST Act not made out. (Paras 21-24)

Criminal Law - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Abuse of process of law - Prima facie case - False or mala fide complaint - No absolute bar against grant of anticipatory bail where no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide - Protection of innocent against abuse of law is part of inherent jurisdiction of the Court - Trial Courts also can discharge the accused in cases of an apparently false implication. (Paras 14-18)

Criminal Law - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Discharge - Prima facie case - Courts required to scrutinise allegations - Where allegations are vague, omnibus and general in nature and lacking any material backing or evidence, such allegations should be shunned at the threshold - Subjecting a person to criminal trial on general and sweeping allegations without specific instances of criminal conduct would tantamount to an abuse of the process of law and Court. (Para 28)

Criminal Law - Medico-legal examination - Principles of natural justice - Where the doctor who was said to be the victim of the incident himself conducted the medico-legal examination of the complainant, the medico-legal examination was in violation of the principles of natural justice - Medico-legal examination report vitiated and could not be believed for making the accused face the trial. (Para 25)

Criminal Law - Prosecution case - Cause of altercation - Absence of disclosure of cause of altercation in the F.I.R. or statements recorded during investigation - Version of complainant held not believable where no person would enter a CHC and misbehave with a public servant/medical officer without any reason - Version of accused appearing natural and inspiring confidence. (Para 26)

Criminal Law - Investigation - Influence of apprehended breach of peace - Case diary recording agitation of other doctors and Doctors' Unions and apprehension of breach of peace - Investigation held to have been conducted under influence of the apprehended breach of peace by the Doctors' unions. (Para 27)

Criminal Law - Special laws - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Abuse of criminal justice system - Need of special laws to protect vulnerable sections recognised - Rampant abuse of the criminal justice system for settling civil, matrimonial, commercial or other disputes or to simply wreak vengeance on opponents noticed - Provisions of special laws enacted to protect vulnerable sections, including the SC/ST Act, also abused by a few unscrupulous persons acting with mala fide intentions. (Para 29)

Held: The trial court rightly held that even as per the F.I.R. version, the altercation started between the accused and the Doctor and the Doctor who is said to be the victim of the incident had himself conducted the medico-legal examination of the complainant which was in violation of the principles of natural justice and the medico-legal examination report was vitiated and could not be believed for making the accused face the trial - there was absolutely no material to show that the accused knew that the complainant belongs to a Scheduled Caste and therefore it could not be said that he committed any offence because the complainant belongs to a Scheduled Caste - the offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste - the version of the complainant was not believable as no person would enter a CHC and misbehave with a public servant/medical officer without any reason whereas the version of the accused appeared to be natural and inspired confidence - the investigating officer has recorded in the case diary that the other doctors of the CHC and the Doctors' Unions were agitated because of the incident and there was a possibility of protest by them and apprehension of breach of peace which showed that the investigating officer had conducted the investigation under influence of the apprehended breach of peace by the Doctors' unions - although there is a need of the special laws to protect the interests of vulnerable sections of the society and those laws are serving the purpose with which the same have been enacted, the Court is experiencing day in and day out rampant abuse of the criminal justice system for settling the civil, matrimonial, commercial or other disputes or to simply wreak vengeance on the opponents and in this process, the provisions of some special laws enacted to protect the interests of vulnerable sections of the societies, including the SC/ST Act, are also abused by a few unscrupulous persons acting with mala fide intentions - the trial court has not committed any error or illegality in passing the impugned order discharging the accused and the criminal appeal lacks merit and the same is dismissed. (Paras 18, 21-30) (E-7)

Case Law Cited

Dhiren Prafulbhai Shah v. State of Gujarat, **2016 SCC OnLine Guj 2076;** *Sharad v. State of Maharashtra,* **(2015) 4 Bom CR (Cri) 545***; Subhash Kashinath Mahajan v. State of Maharashtra:* **(2018) 6 SCC 454***; Pankaj D. Suthar v. State of Gujarat,* **(1992) 1 Guj LR 405***; N.T. Desai v. State of Gujarat,* **(1997) 2 Guj LR 942***; State of M.P. v. Ram Kishna Balothia,* **(1995) 3 SCC 221***; Manju Devi v. Onkarjit Singh Ahluwalia,* **(2017) 13 SCC 439***; Union of India v. State of Maharashtra,* **(2018) 6 SCC 450***; Lalita Kumari v. State of U.P.,* **(2014) 2 SCC 1***; Prathvi Raj Chauhan v. Union of India,* **(2020) 4 SCC 727;** *Hitesh Verma v. State of Uttarakhand,* **(2020) 10 SCC 710***; Masumsha Hasanasha Musalman v. State of Maharashtra,* **(2000) 3 SCC 557***; Ishwar Chand Sharma v. State of U.P.,* **2026 SCC OnLine SC 1004***.*

List of Acts

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Bhartiya Nyaya Sanhita, 2023 Bhartiya Nagarik Suraksha Sanhita, 2023; Protection of Civil Rights Act, 1955; Indian Penal Code, 1860 Code of Criminal Procedure, 1973; Constitution of India

List of Keywords

Scheduled Castes; Scheduled Tribes; atrocities; Special Courts; relief and rehabilitation; vulnerable; civil rights; indignities; humiliations; harassment; rampant misuse; abuse of the Act; false cases; personal vengeance; prima facie case; prima facie mala fide; inherent jurisdiction of the court; access to justice; protection of liberty; oppressive action; preliminary enquiry; false implication; discharge; exceptional cases; misuse of provisions; quashing; intention to humiliate; Scheduled Caste; Scheduled Tribe; principles of natural justice; medico-legal examination; vitiated; criminal justice system; vexatious litigation; abuse of process of law and court; mala fide intentions

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S. 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the validity of the order dated 09.06.2026 passed by the learned Special Judge, SC/ST (P.A.) Act, Hardoi in Sessions Case No. 1416 of 2024 in Case Crime No. 368 of 2024, whereby the application filed under S. 250 of the Bhartiya Nagarik Suraksha Sanhita seeking discharge was allowed.

Appearances for Parties

Advs. for the Appellant:
Sri Mahendra Kumar Rawat
Advs. for the Respondents:
Sri G.D. Bhatt, learned A.G.A.-I for the State
Sri Arunendra Nath Mishra, Advocate for the opposite party no. 2.

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

1. Heard Sri Mahendra Kumar Rawat, the learned counsel for the appellants, Sri G.D. Bhatt, the learned A.G.A.-I for the State and Sri Arunendra Nath Mishra, Advocate who has filed vakalatnama on behalf of the opposite party no.2, which is taken on record.

2. By means of the instant appeal filed under Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (which will hereinafter be referred to as 'the SC/ST Act') the appellants have challenged the validity of an order dated 09.06.2026 passed by the learned Special Judge, SC/ST (P.A.) Act, Hardoi in Sessions Case No. 1416 of 2024 in Case Crime No. 368 of 2024 under Sections 121, 115(2), 352, 351(3), 132, 221 Bhartiya Nyaya Sanhita (which will hereinafter be referred to as 'BNS') & Sections 3(2)(va), 3(1)(dha) SC/ST Act, allowing an application filed by the Opposite Party no. 2 under Section 250 of Bhartiya Nagarik Suraksha Sanhita (which will hereinafter be referred to as 'BNSS') seeking his discharge.

3. The aforesaid case was instituted on the basis of an F.I.R. No.368 of 2024, lodged by the appellant no.1 Dr. Ravi Kant Sharma, in Police Station Bilgram, Hardoi on 22.07.2024 under Sections 121, 115(2), 352, 351(3), 132, 221 against the Opposite Party No. 2 stating that when the complainant, who was working as a Medical Officer in Community Health Center, Bilgram, Hardoi, was roaming around in the CHC campus at about 09:30 p.m., he heard some altercation in emergency ward. Upon reaching there, he found that the appellant no. 2 Dr. Liyaqat Ali, was treating the patients. A middle-aged man, claiming himself to be a retired army personnel (the opposite party no. 2), was quarreling with the appellant no. 2. Pharmacist Satyendra, ward boy Manish Pal and sweeper Akash were also present there. The young man (whom the complainant has earlier referred to as a middle-aged man) ran to assault the appellant no. 2. The appellant no.1/complainant intervened whereupon the opposite party no.2 hurled casteist abuses, threatened

him and thereafter started beating him with fists and kicks, causing two-three scratch marks on his face and some internal injuries. Somehow the appellant no. 2 and the other persons performing the night duty saved him. Strangely, the complainant stated in the F.I.R. that after beating him, the young man (previously referred to as the middle-aged man), himself disclosed his name as Umesh Chand Trivedi (the opposite party no. 2).

4. In the statement recorded under Section 180 BNSS, the appellant no.1 Dr. Ravi Kant Sharma disclosed that he belongs to Chamar caste and he reiterated the F.I.R. version. He stated that while assaulting, the opposite party no. 2 had addressed him as 'sale chamatte'. Dr. Sharma also stated that besides telling his name as Umesh Chand Dwivedi, the opposite party no. 2 had also told that he was a resident of village Bargawan.

5. The other employees of the CHC gave statements supporting the version given by the complainant Dr. Sharma. They stated that the opposite party no. 2 had come to the CHC in an inebriated condition. He asked to administer a vaccine of tetanus. The persons present asked him to come in the morning whereupon the opposite party no.2 started quarreling.

6. The medico-legal examination of the complainant/appellant no.1 was conducted by the appellant no.2 CHC Bilgram and the injury report mentions an abrasion of 2 cm x 0.8 cm present on the right side of face, an abrasion of 0.8 cm x 0.2 cm present at the left eyebrow, swelling and pain in the upper region of the face below the left eye, complaint of pain and swelling 6 cm x 4 cm on the left side of chest and complaint of pain in the whole body.

7. After investigation, the investigating officer submitted a charge-sheet dated 08.08.2024 against the opposite party no. 2 for the offences under Sections 121, 115(2), 352, 351(3), 132, 221 Bhartiya Nyaya Sanhita (BNS) and 3(2)(va), 3(1)(r),(s) SC/ST Act. The trial court took cognizance of the offences on 09.12.2024 and summoned the opposite party no.2 to face the trial.

8. The opposite party no.2 filed an application seeking his discharge, stating that on 22.07.2024 he had suffered an injury in his thumb. He had gone to the CHC for getting a Tetanus vaccine administered. The appellant no.2 and the other staff members were present on duty in an inebriated condition and in spite of repeated requests, they did not administer the injection and they implicated him falsely. The opposite party no.2 stated that he did not know the staff members personally and he did not know the caste of any person and there was no occasion for him to hurl any casteist abuse. The opposite party no.2 further stated that even as per the allegations, the entire staff of CHC was present on the spot whereas the opposite party no. 2 was alone there and, therefore, the incident is inherently improbable. The opposite party no.2 stated that he is a disciplined person and has retired from the post of Junior Warrant Officer after serving the Indian Air Force for 26 years, he has no criminal history and he has been falsely implicated.

9. The appellants did not file any objection against the said application.

10. The trial court has allowed the discharge application by the impugned order dated 09.06.2026, holding that the allegations levelled in the F.I.R. do not disclose that the opposite party no. 2 knew the appellant no.1 or his caste since before and in these circumstances, the provisions of

SC/ST Act are not attracted. The altercation is said to have started between the accused and the appellant no. 2 Dr. Liyaqat Ali. Dr. Liyaqat Ali, who is said to be the victim of the incident, has himself conducted the medico-legal examination of the complainant/ appellant no.1, which is in violation of the principles of natural justice and the medico-legal examination report is vitiated for this reason.

11. The trial court further noted that the F.I.R. or the statements recorded during investigation do not disclose the cause of altercation, whereas the accused has stated that he had gone to the CHC to get a Tetvac injection administered, the appellant no. 2 Dr. Liyaqat Ali and other staff members were present on duty in an inebriated condition and in spite of repetitive requests, they did not administer the injection to the accused. Non-disclosure of motive of the incident in the F.I.R. and in the statements of the complainant and other persons present in CHC indicates that the version of the complainant is not believable as no person would enter a CHC and misbehave with a public servant/medical officer without any reason.

12. The SC/ST Act was enacted to remove the disparity of the Scheduled Castes and Scheduled Tribes who remain vulnerable and are denied their civil rights. The Preamble to the SC/ ST Act states as under: -

"An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

13. The Statement of Objects and Reasons of the 1989 Act, for which it had been enacted is as under: -

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations, and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social, and economic reasons.

2. ? When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of the commission of certain atrocities like making the Scheduled Castes persons eat inedible substances, like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these

crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

14. In **Subhash Kashinath Mahajan v. State of Maharashtra**: (2018) 6 SCC 454, the Hon'ble Supreme Court was dealing with the question whether Section 18 of the SC/ST Act creates an absolute bar to the grant of anticipatory bail. Section 18 of the SC/ST Act is as follows: -

"18. Section 438 of the Code not to apply to persons committing an offence under the Act-?Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

The Hon'ble Supreme Court expressed its concern about the rampant misuse of the provisions of the SC / ST Act by observing that: -

"*63. **We have already noted the working of the Act in the last three decades. It has been judicially acknowledged that there are instances of abuse of the Act by vested interests** against political opponents in panchayat, municipal or other elections, to settle private civil disputes arising out of property, monetary disputes, employment disputes and seniority disputes. [Dhiren Prafulbhai Shah v. State of Gujarat, 2016 SCC OnLine Guj 2076] **It may be noticed that by way of rampant misuse complaints are "largely being filed particularly against public servants/quasi-judicial/judicial officers with oblique motive for satisfaction of vested interests".** [Sharad v. State of Maharashtra, (2015) 4 Bom CR (Cri) 545]*

64. Innocent citizens are termed as accused, which is not intended by the legislature. The legislature never intended to use the Atrocities Act as an instrument to blackmail or to wreak personal vengeance. ...

15. In view of the rampant abuse of the provisions of the SC / ST Act by filing false cases to wreak vengeance upon the opponents, the Hon'ble Supreme Court held that: -

*"65. Accordingly, **we have no hesitation in holding that exclusion of provision for anticipatory bail will not apply when no prima facie case is made out or the case is patently false or mala fide. This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In doing so, we are reiterating a well-established principle of law that protection of innocent against abuse of law is part of inherent jurisdiction of the court being part of access to justice** and protection of liberty against any oppressive action such as mala fide arrest. In doing so, we are not diluting the efficacy of Section 18 in deserving cases where court finds a case to be prima facie genuine warranting custodial interrogation and pre-trial arrest and detention.*

16. The Hon'ble Supreme Court had drawn the following conclusions in **Subhash Kashinath Mahajan v. State of Maharashtra** (supra): -

"79.1. Proceedings in the present case are clear abuse of process of court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D. Suthar [Pankaj D. Suthar v. State of Gujarat, (1992) 1 Guj LR 405] and N.T. Desai [N.T. Desai v. State of Gujarat, (1997) 2 Guj LR 942] and clarify the judgments of this Court in Balothia [State of M.P. v. Ram Kishna Balothia, (1995) 3 SCC 221] and Manju Devi [Manju Devi v. Onkarjit Singh Ahluwalia, (2017) 13 SCC 439];

79.3. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

79.5. Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective."

17. The Union of India sought a review of the aforesaid judgment in the case of **Subhash Kashinath Mahajan** (supra) on the ground that when the Court does not accept the legislative and specific provisions of law passed by the legislature and only the legislature has the power to amend those provisions if the Court finds provisions are not acceptable to it, it has to strike them down being violative of fundamental rights or in case of deficiency to point out to the legislature to correct the same. The review application was partly allowed by the judgment in **Union of India v. State of Maharashtra**, (2018) 6 SCC 450, wherein the Hon'ble Supreme Court has observed that: -

"52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. ***There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 CrPC.***

56. To treat such incumbents with a rider that a report lodged by an SCs/STs category person, would be registered only after a preliminary investigation by DSP, whereas under CrPC a complaint lodged relating to cognizable offence has to be registered forthwith. It would mean a report by upper caste has to be registered immediately and arrest can be made forthwith, whereas, in case of an offence under the 1989 Act, it would be conditioned one. It would be opposed to the protective discrimination meted out to the members

of the Scheduled Castes and Scheduled Tribes as envisaged under the Constitution in Articles 15, 17 and 21 and would tantamount to treating them as unequal, somewhat supportive action as per the mandate of the Constitution is required to make them equals. It does not prima facie appear permissible to look them down in any manner. It would also be contrary to the procedure prescribed under CrPC and contrary to the law laid down by this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1].

* * *

70. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above."

18. Thus even after reviewing the judgment, although the Hon'ble Supreme Court set aside certain other directions, it affirmed the law laid down in **Subhash Kashinath Mahajan** (supra), that there is no absolute bar against grant of anticipatory bail in cases under the SC/ST Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide, as there may be certain cases which may be false and in such a situation, they can be taken care of in proceeding under Section 482 CrPC. Therefore, the trial Courts also can discharge the accused in cases of an apparently false implication.

19. In **Prathvi Raj Chauhan v. Union of India**: (2020) 4 SCC 727, the Hon'ble Supreme Court clarified that: -

"12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised."

20. The complainant in the present case is Dr. Ravi Kant Sharma, a Doctor in Government Service. He has lodged the First Information Report against a retired Junior Warrant Officer who has served the Indian Air Force for 26 years, alleging that the accused was quarreling with another Doctor working in the CHC in presence of the Pharmacist, the ward boy and the sweeper and then the accused suddenly ran to assault the Doctor. When the appellant no.1/complainant intervened, the accused hurled casteist abuses and beat him with fists and kicks, causing two-three scratch marks on his face and some internal injuries.

21. The appellant no. 1 writes his surname as 'Sharma', which is normally used by persons belonging to Brahmin upper caste or Badhai (carpenter) or Nai (barber) backward castes. The trial Court has rightly observed that it is an exceptional situation where a person of a Scheduled Caste is using the surname 'Sharma'. There is no allegation that the opposite party no. 2 knew the complainant or his caste since before and, therefore, it cannot be said that the accused intended to humiliate the complainant because of his caste.

22. In **Hitesh Verma v. State of Uttarakhand**: (2020) 10 SCC 710, the Hon'ble Supreme Court held that the offence under the Act is not established merely on the fact that the informant is a member of

Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

23. In **Masumsha Hasanasha Musalman v. State of Maharashtra**: (2000) 3 SCC 557, the Hon'ble Supreme Court held that: -

"9. ... To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises..."

24. When there is absolutely no material to show that the accused knew that Dr. Ravi Kant Sharma belongs to a Scheduled Caste, it cannot be said that he committed any offence because the complainant belongs to a Scheduled Caste. In this condition, the offences under the SC / ST Act are not made out.

25. The trial court rightly held that even as per the F.I.R. version, the altercation started between the opposite party no. 2 and the appellant no. 2 Dr. Liyaqat Ali. Dr. Liyaqat Ali, who is said to be the victim of the incident, has himself conducted the medico-legal examination of the complainant/ appellant no.1, which is in violation of the principles of natural justice. In case no other doctor was available in the CHC, the appellant no. 1 ought to have got his medico-legal examination conducted in any other Hospital. The medico-legal examination report is vitiated and cannot be believed for making the opposite party no. 2 face the trial.

26. The trial court further noted that the F.I.R. or the statements recorded during investigation do not disclose the cause of altercation. However, the accused - opposite party no. 2 has stated that he had suffered an injury in his thumb, he had gone to the CHC to get a Tetvac injection administered, the appellant no. 2 Dr. Liyaqat Ali and other staff members were present on duty in an inebriated condition and in spite of repetitive requests, they did not administer the injection to the opposite party no. 2. This indicates that the version of the complainant/opposite party no.1 is not believable as no person would enter a CHC and misbehave with a public servant/medical officer without any reason, whereas the version of the accused ? opposite party no. 1 appears to be natural and it inspires confidence.

27. The investigating officer has recorded in the case diary that the other doctors of the CHC and the Doctors' Unions were agitated because of the incident and there was a possibility of protest by them and apprehension of breach of peace, which shows that the investigating officer has conducted the investigation under influence of the apprehended breach of peace by the Doctors' unions.

28. In **Ishwar Chand Sharma v. State of U.P.:** 2026 SCC OnLine SC 1004, the Hon'ble Supreme Court has expressed its concern against the rising trend in vexatious litigation, particularly in the context of matrimonial disputes, but the observations would apply to abuse of criminal justice system in general also. The relevant passage of the judgment is being reproduced below: -

"9.6 While we are conscious of the fact that there are instances and a plethora of cases that are true and deserve the utmost attention and deft handling on the side of authorities and Courts and which should be pursued vigorously to reach a logical conclusion, on the other side of the spectrum, are cases invoking such serious and heinous allegations which are prima facie vague, omnibus and general in nature

and thereby lacking any material backing or evidence which should be shunned at the very threshold. We say so for the reason that ***if a person is made an accused and forced to face a criminal trial on general and sweeping allegations without bringing on record any specific instances of criminal conduct, it would tantamount to an abuse of the process of law and court.*** *Hence, legal practitioners who tender advice in such cases must restrain parties from filing such false/frivolous complaints when requested to do so. Further, lawyers/advocates must also not advise filing of criminal complaints which are false/concocted so as to keep the opposite parties under a tight leash so that they could come forward for a settlement on the terms dictated by their parties or else, to face a criminal prosecution which can prolong for years. When such is the trend, on the other side, efforts are made to seek anticipatory bail by persons apprehending arrest owing to a false/frivolous complaint being lodged which sometimes reach the portals of this Court after being unsuccessful at the level of the trial court and High Court. Also, steps are taken for seeking quashing of such false/frivolous complaints before the High Court which has its own saga of uncertainties causing undue pressure, harassment, stress and tension on the so-called accused.* ***The consequence of all this is docket explosion and burden on Courts resulting in genuine complaints and cases not being given due time and attention that they need.***

9.7 ***Courts then owe a duty to subject the allegations levelled in the complaint to a thorough scrutiny to ascertain if a prima facie case is made out or not, and whether there is any kernel of truth in the allegations or whether the said allegations have been made only with the sole intent of spite so as to harass the opposite party with a prolonged process of criminal litigation, arrest and sometimes a conviction which later on may result in an acquittal by a higher Court or in a worse case, no relief at all being given to an innocent party.*** *This stands more true when prosecution arises from a matrimonial dispute."*

29. It is true that there is a need of the special laws to protect the interests of vulnerable sections of the society and those laws are serving the purpose with which the same have been enacted. However, the Court is experiencing day in and day out rampant abuse of the criminal justice system for settling the civil, matrimonial, commercial or other disputes or to simply wreak vengeance on the opponents and in this process, the provisions of some special laws enacted to protect the interests of vulnerable sections of the societies, including the SC/ST Act, are also abused by a few unscrupulous persons acting with mala fide intentions.

30. I find myself in complete agreement with the reasons recorded in the impugned order passed by the trial Court for discharging the accused ? opposite party no. 2. The trial court has not committed any error or illegality in passing the impugned order discharging the opposite party no. 2 in the case which was instituted by the appellant no. 2 Government Doctor as a gross abuse of the law which is meant to protect the interests of persons belonging to a downtrodden and vulnerable section of the society. It prima facie shows commission of an offence under Section 182 IPC/217 BNS by the complainant himself.

31. The criminal appeal lack merit and the same is ***dismissed.***

38. A copy of this order be communicated to the Director General Medical Health as well as to the Additional Chief Secretary, Medical Health, State of UP.

(2026) 7 ILRA 236
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1978 of 1990

Ram Kishore & Ors. **...Appellant**
Versus
State **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal challenging a conviction for abduction, cheating, and forgery (sections 364, 420 and 468 of the IPC) arising out of the alleged abduction of a man and the fraudulent execution of a sale deed for his land.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 364, 420, 468, 471-Criminal Procedure Code,1973-Section 374(2)-Indian Evidence Act,1872-Section 106-Abduction-Cheating-Forgery-Circumstantial evidence-"Last seen together" Theory-Unexplained delay in FIR-Absence of Civil Court finding on forged document-The circumstances of last seen together does not by itself lead to man inference of guilt without corroborative evidence connecting the accused to the crime-Onus of proof under section 106 of the Evidence Act cannot shift onto the accused when the prosecution fails to discharge its initial burden-Delay in lodging FIR-Absence of any plausible explanation for an inordinate delay of one month in reporting the matter casts severe suspicion on the prosecution story-Validity of sale deed-Allegation of cheating and forgery in executing a registered sale deed by impersonation-A Criminal Court cannot, without a prior conclusive finding or decree from a Civil Court of competent jurisdiction, assume the role of a civil tribunal to hold a registered sale deed to be forged or fraudulent-Conviction under sections 420 and 468 IPC held unsustainable in law-Appeal Allowed.(Para 21 to 32) (E-6)

Held

The court held that where the testimony of so-called last seen witnesses suffers from material contradictions, non-interference at the time of the alleged taking away, and an unexplained failure to report the missing person for nearly a month, such evidence is highly doubtful and unreliable.

Case law Cited

Kanhaiya Lal Vs State of Rajasthan, (2014) 4 SCC 715, Ashok Vs State of Maharashtra, (2015) 4 SCC 393-referred to.

List of Acts

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

List of Keywords

Abduction, Cheating & Forgery, Circumstantial Evidence, Last seen together, Section 106, Evidence Act-Delay in FIR, Civil Vs. Criminal jurisdiction, Acquittal, Sale seed, Burden of proof.

Case Arising from
CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1978 of 1990

Ram Kishore & Ors Vs. State
From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-
Ajendra Kumar, Akhilesh Singh Shivam Yadav
Advs. for Respondent(s):-
Ravi Prakash Srivastava, Shivajee Srivastava

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been filed by accused-appellants, Ram Kishore, Ram Bharosey, Bhudeo and Dinesh Singh against the judgment and order of conviction dated 09.10.1990 passed by learned Vth Additional Sessions Judge, Etah in Session Trial No.393 of 1987 (State Vs. Ram Kishore and others) arising out of Case Crime No. 98 of 1986, under Sections 364, 420, 468, 471 IPC, Police Station Jaithra, District Etah.

2. Brief facts of the case, according to Exhibit Ka-1, which was lodged by Phoolshri (PW-2), are inter alia that informant, Phoolshri, daughter of Lakhan Singh, is a resident of Village Halaiya. Ram Kishore, Dinesh Singh, Ram Bharose, and Bhudeo allegedly lured her brother, Ram Dulare, and took him away on 08.03.1986. This incident was witnessed by Kirpal Singh, Virendra Singh, and Mahaveer Singh of the village. By impersonating another person in place of her brother, the accused got a sale deed of Ram Dulare s land executed on 12.03.1986 at Tehsil Aliganj. Thereafter, they caused the disappearance of Ram Dulare. When the accused returned, Phoolshri asked them about her brother. They replied that they had left him at Dumri and did not know his present whereabouts. Becoming suspicious, she went to the tehsil and discovered that the accused had fraudulently got executed the sale deed in the name of Dinesh and other persons were witnesses, and had subsequently made her brother disappear. She further stated that her mother is helpless and blind by both eyes, with no one to look after her. The written report (Exhibit Ka-1) was scribed by Ranveer Singh and lodged at Police Station Jaithra."

3. On the basis of the written report, Exhibit Ka-1, chik F.I.R., paper no. 4A was registered against the accused-appellants at Case Crime No. 98 of 1986, under Sections 364, 420, 468, 471 IPC, Police Station Jaithra, District Etah.

4. Investigating Officer investigated the case and inquired about the incident. The Investigating Officer also recorded the statement of the prosecution witnesses under Section 161 Cr.P.C. After completing all the formalities, the Investigating Officer submitted charge-sheet, Exhibit Ka-2, against the accused-appellants in the court of concerned Magistrate under Sections 364, 420, 468, 471 IPC.

5. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

6. Learned Trial Court has framed charges against the accused-appellants on 06.09.1989 under Sections 364, 420, 468 IPC. The accused-appellants denied from the charges and claimed trial.

7. Prosecution in support of its case adduced Kirpal Singh (PW-1), Phoolshri (PW-2), Mahaveer (PW-3) and D.K. Sisodiya (PW-4). The prosecution also relied on Exhibits Ka-1 and Ka-2 in support of its case.

8. After completing the proceedings of the evidence, Trial Court examined the accused-appellants under Section 313 Cr.P.C. The accused-appellants denied from the alleged charges against them. They were also stated that they did not know about Ram Dulare. They had been falsely implicated in this case due to enmity. They refused to give any evidence in their defence.

9. After hearing the arguments of the prosecution and defence, learned Trial Court found the accused-appellants guilty and they were convicted and sentenced under Section 364 IPC to life imprisonment and a fine of Rs. 2000 each and in case of default in payment of fine, they were directed to undergo three months' additional imprisonment. All accused-appellants were also convicted and sentenced under Section 420 IPC for five years' imprisonment. They all were also convicted and sentenced under Section 468 IPC for seven years' rigorous imprisonment. All the sentences were directed to run concurrently.

10. Aggrieved by the judgment and order of conviction and sentence dated 09.10.1990, the accused-appellants have preferred this criminal appeal before this Court.

11. We have heard the arguments of learned counsel for the appellants and learned A.G.A. for the respondent-State. We have also gone through the evidence available on record and the judgment and order of the learned trial Court dated 09.10.1990.

12. Learned counsel for the appellants has submitted that the written report, Exhibit Ka-1, was lodged by Phoolshri (PW-2) at Police Station Jaithra after a delay of about one month. This fact indicates that, after due consideration, deliberation, and concoction and with a view to falsely implicate the accused-appellants, Phoolshri (PW-2) lodged the said report solely on the basis of suspicion. It is also submitted that only on the ground of evidence of so called last seen witnesses of the prosecution, no accused can be convicted without any other corroborating evidence. The prosecution has no corroborative evidence from which so called last seen evidence of the prosecution witnesses can be corroborated and find any support. However, learned Trial Court, without considering this legal aspect in the matter, has wrongly appreciated and misread the evidence against the accused-appellants and has delivered a judgment and order against the accused-appellants without any evidence available on the record and also against the settled principles of law. Thus, learned counsel has submitted that judgment and order of the learned Trial Court dated 09.10.1990 has been passed without any evidence against the accused-appellants and is based on conjectures and surmises and also not supported by any legal principles of law. Hence, judgment and order of learned Trial Court dated 09.10.1990 is perverse and illegal according to the rules of evidence and law, therefore, is liable to be set aside. In view of the above, criminal appeal of the accused-appellants is liable to be allowed.

13. Per contra, learned A.G.A. for the State has submitted that prosecution witnesses had seen Ram Dulare being taken away from his house on 08.03.1986. After 08.03.1986, the whereabouts of Ram Dulare were not known to anyone. The accused-appellants impersonated another person in place of Ram Dulare and got a forged sale deed of all his land executed in the name of Dinesh. These facts were found to be verified from the sale deed as the same was executed in the name of Dinesh at Tehsil Aliganj. The so-called forged sale deed executed by Ram Dulare has proved this fact that after taking away Ram Dulare at Tehsil Aliganj, the accused-appellants have got executed a sale deed of all land of Ram Dulare impersonating other person in the name of Dinesh. Thereafter the accused-appellants made Ram Dulare, brother of the informant Phoolshri (PW-2), disappear. A lot of search was made by Phoolshri (PW-2) and other relatives of Ram Dulare but whereabouts of Ram Dulare were not known at any place. Neither Ram Dulare was found nor his dead body was recovered. Thereafter learned Trial Court keeping in mind and considering this fact and evidence in this respect found the accused-appellants guilty and rightly convicted them for the alleged crime. The finding and reasoning of the learned Trial Court are based on evidence which found support from the settled principles of law. There is no illegality or perversity in the judgment and order of the learned Trial Court. For this reason, the criminal appeal filed by the accused-appellants has no merit, hence is liable to be rejected.

14. In the light of rival submissions of both the parties, we have perused the whole evidence as available on the record.

15. From the perusal of the examination-in-chief of Kirpal Singh (PW-1), we find that this witness has stated that informant Phoolshri is daughter of his elder uncle. Abductee Ram Dulare was brother of Phoolshri. Ram Dulare was issueless. The wife of Ram Dulare had died about twenty-three and a half years ago. The father of Ram Dulare, Lakhan, had died about eleven and a half years ago. The mother of Ram Dulare, Naiksi, is alive. She often stays at her maternal house in Village Mochi, which falls under Police Station Raja Ka Rampur. Ram Dulare had six bigha of land in his share. It is about three and half years when Ram Dulare and Phoolshri were at their house. It was 04:00 PM in the evening. I, my brother Virendra Singh and Mahaveer Singh of the village were sitting on their platform (chabutra). This platform is out of our Bakhri near exit. My house is also located in this Bakhri. Houses of Ram Dulare and Mahaveer are also situated in this Bakhri. The accused-appellants Ram Kishore, Ram Bharosey, Bhudeo and Dinesh Singh called Ram Dulare from his home and took him away towards Nagla Vijayi. We know all the four accused persons beforehand. These people often used to come and go to Ram Dulare□s house. With their company, Ram Dulare also became addicted to drinking alcohol and gambling. Since the time the accused took away Ram Dulare, he has neither been seen nor returned. I have seen that the sale deed was got executed in the name of accused Dinesh, in which Jaisar had been written by Ram Dulare and Ram Kishore and Ram Bharosey were the witnesses. The accused persons caused the disappearance of Ram Dulare.

16. From the perusal of the cross-examination of this witness, we found that when Ram Dulare was going with accused persons then this witness has not interacted and questioned him. This witness has also not seen accused persons and Ram Dulare in Tehsil executing the sale deed. According to this witness, accused persons had not taken away Ram Dulare by catching hold. They had went together. After that day, I have not seen accused and Ram Dulare together. This witness

has also submitted in his cross-examination that □I have not told these things to anyone till today that I had asked Ram Dulare that in which panchayat and where he is going but he has not replied. Before this incident, I have not seen accused persons threatening or alluring Ram Dulare. Ram Dulare had also not told me that accused have threatened or gave any kind of allurement. When accused returned on 17.03.1986 then I had asked accused about Ram Dulare. Before this, I have not lodged any missing report with this respect.

17. Thus, from the perusal of the whole evidence of Kirpal Singh (PW-1), it is clear that this witness has not seen threatening or alluring Ram Dulare by the accused-appellants. According to this witness, Ram Dulare has not forcibly been taken away by the accused persons with them. According to this witness, he has only seen going of Ram Dulare with accused-appellants on 08.03.1986. However, this witness only inquired on 17.03.1986 from the accused-appellants about whereabouts of Ram Dulare. However, despite this, this witness has not lodged any missing report about Ram Dulare. Thus, from the evidence of this witness, this fact emerged that this witness has been projected and produced by the prosecution with a view to support its case but from the evidence of this witness, it is clearly revealed that this witness has not lodged any missing report even after one month of the disappearing of Ram Dulare. Due to this reason, we found no truthfulness, credence and reliability in the evidence of this witness. Therefore, evidence of this witness is doubtful and unbelievable. Due to this reason, the evidence of this witness is not reliable and believable against the accused-appellants.

18. From the perusal of evidence of informant, Phoolshri (PW-2), it is revealed that this witness is sister of missing person Ram Dulare. This witness has also submitted in her evidence in the same way as has been submitted by Kirpal Singh (PW-1) in his evidence. According to this witness, when Ram Dulare was being taken away from his house by the accused, Kirpal, Mahaveer, and Virendra had also seen the incident. According to this witness, she has also asked from the accused that where have you sent and kept my brother. Then these persons replied that he halted at ghumri, and we did not know about him. After that, this witness along with her relatives have made a search at every place at her relatives. Thereafter, according to this witness, family members and relatives went at Tehsil Aliganj and then it was came to know that by impersonating any other person in place of her brother Ram Dulare, Dinesh got executed sale deed of six bigha of land in his favour. Then this witness becomes suspicious that land worth rupees fifty thousand has been executed only for a sale consideration of rupees fourteen thousand only. This witness also stated that either they have killed my brother or made him disappeared. From the perusal of the cross-examination of this witness, it appears that this witness permanently resides at her matrimonial home and 2-4 times used to come to her paternal home. From the evidence of this witness, it also appears that this witness had seen going of Ram Dulare with accused then this witness had not asked anything from her brother because these people often used to come and go at the house of Ram Dulare and also used to sit with him. According to this witness, it is revealed that brother of this witness was drinking alcohol but was not gambling. Whenever the brother of this witness sat with the accused, they drank alcohol. Thus, from the perusal of the evidence of this witness, Phoolshri (PW-2), it is clear that this witness became suspicious when a piece of land worth fifty thousand rupees was sold for only fourteen thousand rupees. From the evidence of this witness, it also emerged that this witness is sister of missing person Ram Dulare. This witness lived at her matrimonial home with her family away from her paternal home, therefore, on the date of incident, i.e., 08.03.1986, she was present at her matrimonial home. In other words, presence of this witness at the house of missing brother Ram Dulare appears to be doubtful

and suspicious. It is also revealed that this witness Phoolshri (PW-2) came to know about the so called missing of his brother from other so called prosecution witnesses and only on the basis of known fact and information received, this witness after one month of delay from the date of incident has lodged the written report naming the accused-appellants for making her brother Ram Dulare disappear. Thus, presence of this witness on 08.03.1986 at the house of Ram Dulare is doubtful and suspicious. Meaning thereby, this witness has not seen Ram Dulare was being taken away by the accused-appellants, therefore, prosecution has not found any support from the evidence of this witness.

19. From the perusal of evidence of Mahaveer (PW-3), we find that this witness has stated that on the date of incident, this witness has seen taking away of Ram Dulare from his home by the accused-appellants. According to this witness, at that time, Phoolshri was also present at her home. She came out of the room. Thereafter, Ram Dulare has not returned till today. This witness expressed that either accused or any other person had killed Ram Dulare. We found that this witness has also stated that accused persons have not taken Ram Dulare by force, but Ram Dulare has gone with them on his own will. Accused persons usually come and go at the house of Ram Dulare. Ram Dulare had no prior enmity with the accused persons. The witness stated that, at that time, he had not seen any interaction between Ram Dulare and the accused persons. He also stated that Virendra and Kirpal, who were also sitting with him, had also not interacted with Ram Dulare or the accused persons. Thus, from the perusal of the evidence of this witness, we find that this witness in clear-cut words has stated that this witness and other prosecution witnesses, Virendra and Kirpal, had also not interacted or made any conversation with Ram Dulare or accused persons. However, Kirpal Singh (PW-1) has stated in his cross-examination that "I had asked Ram Dulare that in which panchayat and where he is going, then he has not given any answer." Thus, on the same point, prosecution witness Kirpal Singh (PW-1) is stating one thing, whereas prosecution witness Mahaveer (PW-3) has stated other things. In view of the contradictory statements of these two prosecution witnesses, Kirpal Singh (PW-1) and Mahaveer (PW-3), it clearly emerges that they are stating different facts on the same point.

20. In view of the above fact and situation, it is revealed that evidence of this witness is suspicious and doubtful since Kirpal Singh (PW-1) has clearly stated in his cross-examination that "I had not told these things to anyone till today that I had asked Ram Dulare that in which panchayat and where he is going.' From this fact, it is revealed that these prosecution witnesses have been projected and produced by the prosecution with consideration and afterthought for projecting and concocting the prosecution story which could find support from the evidence of these witnesses. However, from the above perusal and discussion of the evidence of these three prosecution witnesses of so called last seen theory, we find that evidence of the above prosecution witnesses does not inspire any confidence. The evidence of so called last seen prosecution witnesses appears to be highly doubtful, suspicious, concocted and afterthought.

21. In this way, the prosecution unsuccessfully attempted to support its case on the last seen together theory on the basis of the evidence of the above-mentioned prosecution witnesses. However, the prosecution miserably failed in its attempt to prove the case against the accused-appellants beyond reasonable doubt. It is also a settled principle of law that only on the ground of last seen together, no accused can be convicted without any other corroborating evidence.

22. The Supreme Court in the case of **Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715** has held in para 12 that;

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

23. The Supreme Court in the case of **Ashok v. State of Maharashtra, (2015) 4 SCC 393** in para 12 held that;

"Initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."

24. Thus, in light of the legal principles as laid down by the Supreme Court in the aforementioned case laws, we find that, in the present case, the prosecution has been wholly unable to discharge its initial burden of proof that the missing person, Ram Dulare, was called, or that on the date of the incident, i.e., 08.03.1986, the accused-appellants came to his house and took him away with them. When the prosecution has failed to discharge its initial burden, the onus of proof cannot be shifted on the accused-appellants under Section 106 of the Evidence Act.

25. The prosecution has no evidence and has not adduced any material evidence from which the accused-appellants could be connected with the disappearance of Ram Dulare after the execution of the sale deed dated 12.03.1986.

26. We have also gone through the findings and reasoning given by the trial Court. We have found that the trial Court has not considered this legal aspect in its judgment and order of conviction. Trial Court has completely neglected this legal point and has not given any finding and reasoning on this aspect.

27. From the perusal of the judgment and order of the trial court, it is evident that the trial court, relying on the so-called executed sale deed by Ram Dulare in favour of Dinesh, held that the sale deed dated 12.03.1986 was a forged document.

28. We have also gone through all the documentary evidence available on record and find that there is no document showing that any Civil Court of competent jurisdiction has given a finding, based on evidence, that the so-called execution of the sale deed by Ram Dulare in favour of Dinesh was forged or fabricated sale deed. Thus, without any conclusive proof from a Civil Court of competent jurisdiction, the learned trial Court itself held the so-called executed sale deed dated 12.03.1986 to be a forged document, which is wholly contrary to settled principles of law. In this way, the trial Court has travelled beyond jurisdiction in respect of civil matters and wrongly held that so called sale deed which was executed on 12.03.1986 by Ram Dulare in favour of Dinesh was a forged sale deed. Not only this, learned Trial Court also on the ground of sale deed dated 12.03.1986 held the accused-appellants guilty for the offence of cheating and dishonestly inducing delivery of property and committing forgery for the purpose of

cheating. In this way, the trial Court without any evidence only on the ground of sale deed executed on 12.03.1986 has given a totally wrong finding and conclusion against the accused-appellants. A criminal court cannot, in this manner, hold any accused person guilty of cheating and forgery under Sections 420 and 468 of the IPC without conclusive findings and order from a Civil Court. Thus, from the finding and reasoning given by learned Trial Court, we find that the trial Court only on the ground of so called last seen theory and document of sale deed which was executed by missing person Ram Dulare in favour of Dinesh held the accused-appellants guilty and convicted them for the commission of the alleged crime. It is a settled principle of law that in cases where allegations are made that a sale deed was executed by cheating or forgery, only a Civil Court of competent jurisdiction, after recording evidence and examining the documentary evidence of both parties, is empowered to determine whether the deed, a sale deed or a gift deed, is genuine or executed by means of cheating or forgery.

29. However, we find that there is no documentary evidence on the record of the case from which it could be verified that any Civil Court of competent jurisdiction had given a finding and judgment that the so-called sale deed dated 12.03.1986 was forged or it was executed by Ram Dulare under cheating and forgery by the accused-appellants. Thus, we find that the finding and reasoning given by the learned trial Court in this respect is without any evidence and against the legal principles of law. Hence, due to this reason, the finding and reasoning of the learned trial Court in this respect is not sustainable in the eyes of the law.

30. It is also notable that so called date of incident is 08.03.1986 at unknown time. The written report has been lodged by Phoolshri (PW-2) on 06.04.1986 after about one month from the date of incident. No plausible explanation for one month delay in lodging the written report has been stated by the prosecution. This one month delay in lodging the written report also makes the prosecution story doubtful and suspicious. This fact also goes against the prosecution and casts doubt on the prosecution□s version itself.

31. Thus, from the above discussions, we find that the judgment and order of conviction and sentence passed by learned Trial Court dated 09.10.1990 is not sustainable in the eyes of law because the finding and reasoning of the learned Trial Court is against the settled principles of law and without any cogent and reliable evidence, therefore, we find that the judgment and order of conviction and sentence dated 09.10.1990 of the learned Trial Court is liable to be set aside. In this way, we find that the criminal appeal filed by the accused-appellants has merit and is liable to be allowed.

32. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 09.10.1990 of conviction and sentence passed against the accused-appellants by learned Trial Court in Session Trial No. 393 of 1987 (State Vs. Ram Kishore and others) arising out of Case Crime No. 98 of 1986, under Sections 364, 420, 468, 471 IPC, Police Station Jaithra, District Etah. The appellants are acquitted of the charge under Sections 364, 420, 468 IPC. The appellants, Ram Kishore, Ram Bharosey, Bhudeo and Dinesh Singh, are on bail. They need not surrender. Their bail bonds are cancelled and sureties stand discharged. However, they shall comply with the provisions of Section 437-A Cr.P.C.

33. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(2026) 7 ILRA 244
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE RAJEEV BHARTI, J.

Criminal Appeal No. 1989 of 2016
Alongwith
Criminal Appeal No. 1763 of 2016
and
Criminal Appeal No. 1905 of 2016

Anku @ Parshuram **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal challenging a conviction and sentence under sections 363, 366, 376 IPC and section 6 of POCSO Act arising out of alleged kidnapping, unlawful confinement, and aggravated penetrative sexual assault of a 14 year old minor victim.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 363,366 and 376(2(i)-Protection of children from Sexual Offences Act,2012-Section 6 & 42-Criminal Procedure Code,1973-Sections 164, 374(2)-Rape and Kidnapping of Minor-Age of prosecutrix established as 14 years by radiological examination-Consent of minor legally immaterial-Sole testimony of victim credible and corroborated by section 164 CrPC statement-Conviction upheld-First time offender aged 24 years without criminal antecedents and having family dependencies-Absence of extreme depravity or brutality-Life imprisonment sentence modified to 14 years rigorous imprisonment-Section 42 –Bar against double jeopardy-Trial court erred in awarding separate substantive sentences under section 376 IPC and Section 6 of POCSO Act-Separate sentences set aside-Partly Allowed.(Para 57 to 74) (E-6)

Held

The court ruled that a girl child below 16 years of age is legally incapable of giving informed consent, rendering any plea of consensual relationship legally immaterial. The conviction for sexual assault can be sustained on the uncorroborated sole testimony of the minor prosecutrix if it inspires confidence, as the victim of a sexual offence stands on a higher pedestal akin to an injured witness. Statement 164 CrPC serves as valid corroborative material under Section 157 of the Evidence Act to reinforce court testimony. Implication of co-accused based on hearsay or named solely to prevent them from pursuing legal defense for the primary accused-as explicitly admitted in cross-examination by prosecution witnesses (PW-1 and PW-2)-creates fatal doubt in the prosecution case. In the absence of an overt act, shared common intention, or proof of meeting of minds beyond reasonable doubt, co-accused are entitled to total acquittal.

Case law Cited

State of U.P. Vs Manoj Kumar Pandey, AIR (2009) SC 711, Santosh Moolya Vs State of Karnataka, (2010) 5 SCC 445, Satish Kumar Jayanti Lal Dabgar Vs State of Gujarat (2021) 3 SCC 12, Ram Kishan Singh Vs Harmit

Kaur, (1972) 3 SCC 280, George Vs State of Kerala, (1998) 4 SCC 605, Edakkandi Vs State of Kerala, (2025) 3 SCC 273 & Ilangovan Vs State of TN, (2020) 10 SCC 533, Lok Mal Vs State of UP, (2025) 4 SCC & Santosh Prasad Vs State of Bihar, (2020) 3 SCC 443,Sharad Virdhi Chand Sarda Vs State of Maharashtra, (1984) 4 SCC 116-referred to.

List of Acts

Indian Penal Code,1860, Protection of children from Sexual Offences Act,2012, Criminal Procedure Code,1973.

List of Keywords

POCSO Act, Section 6, Sections 363, 366 & Section 376(2(i), Kidnapping, Penetrative Sexual Assault, Irrelevancy of Minor's Consent, Sole Testimony of Prosecutrix, Injured witness, Corroborative Evidentiary Value, Double Jeopardy, Benefit of Doubt.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1989 of 2016

Anku @ Parshuram Vs. State of U.P.

From the judgment and order dated 02.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Abhinav Pankaj, Anjali Dubey Archana Rawat, Arshad Hafeez Khan Dinesh Kr. Sharma, Dr. Manoj Kumar Dubey, Jay Narayan Mishra, Jyoti Rawat, Mukesh Singh, Pramod Kumar, Pranvesh Awasthi, Rajiv Mishra, Ravi Prakash Yadav, Rohit Upadhyay, Roopani Mishra, Sanjay Kumar Yadav, Smt. Shikha Srivastava, Vishwa Nath Singh

Advs. for Respondent(s):-

Ravish Mishra A.G.A.

(Delivered by Hon'ble Rajeev Bharti, J.)

1. Heard Shri Sanjay Kumar Yadav, learned counsel for the appellant in Criminal Appeal No.1989 of 2016; Shri Rohit Upadhyay, learned counsel for the appellant in Criminal Appeal No.1763 of 2016; Shri Jay Narayan Mishra, learned counsel for the appellant in Criminal Appeal No.1905 of 2016, Shri Ravish Mishra, learned AGA for the State and perused the record.

2. These appeals under Section 374 (2) Cr.P.C. have been preferred by appellants- Anku @ Parshuram bearing Criminal Appeal No.1989/2016; Santosh Kumar Gautam bearing Criminal Appeal No.1763/2016 and Pintu alias Dinesh bearing Criminal Appeal No.1905/2016, challenging the judgment and order dated 04.11.2016, passed by learned Special Judge (POCSO Act) /Additional Sessions Judge, Barabanki in S.T. No. 03/2015 and S.T. No. 22/2015, arising out of Crime No.387 of 2014, Police Station- Deva, District- Barabanki, convicting and sentencing the appellant- Anku @ Parshuram to undergo imprisonment for life under Section 376 I.P.C. with a fine of ₹10,000/-, and in default of payment of fine to further undergo on year rigorous imprisonment. The appellant- Anku @ Parshuram was further convicted and sentenced to undergo imprisonment for life under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to □POCSO Act□) with a fine of ₹10,000/-, and in default of payment of fine, to further undergo one year's rigorous imprisonment. Further, the appellants, namely, Anku @ Parshuram, Santosh Kumar Gautam, and Pintu @ Dinesh were convicted under Section 363 IPC

and sentenced to five years' rigorous imprisonment with a fine of ₹10,000/- each, and in default of payment of fine, to undergo one year's rigorous imprisonment. They were also convicted under Section 366 IPC and sentenced to five years' rigorous imprisonment with a fine of ₹10,000/- each, and in default of payment of fine, to undergo one year's rigorous imprisonment. All the substantive sentences were directed to run concurrently.

3. Considering the circumstances of the case, the name of the victim is not being mentioned in this judgment.

4. The informant Santram submitted a written complaint at Police Station- Deva on 22.10.2014 stating that his daughter, aged about 14 years, had been enticed away on 13.10.2014 at about 01:00 PM by the accused Anku @ Parshuram s/o Dularey, resident of Madhavpur, Police Station Deva, Barabanki. He alleged that Anku @ Parshuram fled with her in a Maruti car bearing registration No. UP32-AB-7365.

5. It was further alleged that Anku @ Parshuram's friends were also involved in the incident. Despite an extensive search, the victim could not be traced. On the basis of a written complaint, FIR bearing Crime No.387/2014, under Sections 363, 366 I.P.C, and Section 6 of the POCSO Act was registered at Police Station- Deva, District- Barabanki, and the investigation commenced. After investigation, the police found sufficient evidence and submitted the charge sheet against the accused Anku @ Parshuram, under Sections 363, 366, 376 IPC and Section 6 of the POCSO Act; against the accused Harishchandra @ Harvindar under Section 368 IPC and Section 6 of the POCSO Act; and against the accused Pintu alias Dinesh and Santosh Kumar Gautam, under Sections 363, 366 IPC. The Court took cognizance of the offenses and summoned the accused persons. After hearing both sides, the charges were framed against the accused persons under the above-mentioned sections.

6. On 05.10.2016, after hearing both the parties, the trial court passed a detailed order consolidating the Criminal Case No.3/2015 against Anku @ Parshuram and Harinandan @ Harishchandra @ Harvindar with Criminal Case No.22/2015 against Santosh Kumar Gautam and Pintu. Criminal Case No. 03/2015 was treated as the leading file. Therefore, both the matters, are being decided together through this common judgment.

7. The prosecution examined the witnesses Santram- informant as PW-1, Ramu as PW-2, Dr. Sangeeta as PW-3, HCP Ramraj as PW-4, victim/prosecutrix as PW-5, Inspector Amarnath Yadav as PW-6, Sub-Inspector Omkar Nath Yadav as PW-7 and Dr. Rajiv Kumar Singh as PW-8. Further, the prosecution proved written complaint as Ex-Ka-1, recovery memo as Ex-Ka-2, medical report as Ex-Ka-3, supplementary medical report as Ex-Ka-4, FIR as Ex-Ka-5, GD entry as Ex-Ka-6, statement under Section 164 Cr.P.C. as Ex-Ka-7, site plan as Ex-Ka-8, application for recording statement under Section 164 Cr.P.C. as Ex-Ka-9, application for inspection of statement as Ex-Ka-10, charge sheet as Ex-Ka-11, X-ray report as Ex-Ka-12 and age certificate as Ex-Ka-13 and after concluding all the prosecution evidence, the statements of the accused were recorded under section 313 Cr.P.C. in which they denied the allegations and claimed false implication due to malice and mal-intention.

8. Before the Trial Court, Santram (PW1), who is the informant and father of the victim, in his deposition stated that about 8-9 months earlier, the accused Anku @ Parshuram, with the help of Santosh, Pintu and Harishchandra @ Harvindar enticed away his 14-year-old daughter in a Maruti car. Despite searching for several days, he could not find her daughter and later lodged the FIR. He further stated that after about one and a half months, the girl was recovered from Anku @ Parshuram's custody near Bhayara road crossing.

9. Ramu (PW-2), brother of the victim, deposed that his sister, aged about 15 years, was enticed away by Anku @ Parshuram with the help of Santosh, Pintu, Harishchandra @ Harvindar, and her sister was later recovered from Anku @ Parshuram's custody after about one month.

10. The victim was medically examined by Dr. Sangeeta (PW-3) on 24.11.2014. The findings in the medical examination stated that the condition of the victim was normal. Hymen was old, torn, and healed. No spermatozoa or gonococci were found. No definite opinion regarding sexual assault could be given. She further stated that the age of the victim was assessed as about 14 years.

11. The victim/prosecutrix, examined as PW-5, stated that about one year and nine months ago, while she was going to the field, the accused Anku, along with the co-accused Santosh and Pintu, approached her and asked her to run away and marry him. When she refused, they forcibly pushed her into a Maruti van, gagged her mouth, and threatened to kill her if she screamed. She further stated that the accused Santosh and Pintu got off the way. Anku @ Parshuram kept her first at his brother-in-law Harinandan @ Harishchandra @ Harvindar's house at Kodari. Then took her to Piprauli, where he kept her for one month. During this period, Anku @ Parshuram used to do bad things with her. He filled vermillion in her hair parting. Despite her request to be sent back home, the accused refused. Eventually, the police recovered her while she was standing with Anku @ Parshuram near Bhayara road.

12. Inspector Amarnath Yadav (PW-6) described the investigation process, preparation of the site plan, recording of statements, medical examination of the victim and filing of the charge sheet. Dr. Rajiv Kumar Singh (PW-8) produced the X-ray report and the age certificate of the victim.

13. On the basis of the aforesaid discussion of facts, the entire evidence on record, and the applicable legal principles, the learned Trial Court concluded that the prosecution had successfully proved, beyond reasonable doubt, the charges levelled against accused Anku @ Parshuram under Sections 363, 366 and 376 of I.P.C. and Section 6 of POCSO Act. The Trial Court further held that the prosecution had succeeded in establishing, beyond reasonable doubt, the charges under Sections 363 and 366 of I.P.C. against accused Santosh Kumar Gautam and Pintu @ Dinesh.

14. However, the learned Trial Court found that the prosecution had failed to prove, beyond reasonable doubt, the charges under Section 368 of the Indian Penal Code and Section 6 of POCSO Act against co-accused Harishchandra @ Harvinder @ Harinandan.

SUBMISSION ON BEHALF OF THE APPELLANT ANKU @ PARSURAM

15. Learned counsel for the appellant submitted that the FIR was lodged after an unexplained delay, which creates serious doubts regarding the genuineness of the prosecution's case. There was no independent public witness either at the stage of recovery or investigation. The medical evidence does not conclusively establish the commission of rape, and no external injury was found on the body of the prosecutrix. It is also submitted that the prosecution failed to conclusively prove the age of the prosecutrix. The possibility of a consensual relationship could not be ruled out, and there were material contradictions in the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and the deposition before the trial court. It is also submitted that the learned trial court failed to appreciate the settled principles. Learned counsel for the appellant further argued that the statement under Section 164 Cr.P.C. is not substantive evidence and can only be used for limited purpose of corroborations or contradictions.

SUBMISSION ON BEHALF OF THE APPELLANTS PINTU @ DINESH AND SANTOSH

16. Leaned counsel for the appellants further argued that Pintu @ Dinesh and Santosh were residing along with the main accused in the same village and the appellants have been falsely implicated due to village politics. There was no motive for the appellants to kidnap the prosecutrix. The learned Trial Court erred in law by failing to correctly appreciate and apply the legal principles governing the facts and circumstances of the present case. The findings recorded by the learned Trial Court are not only contrary to law but are also manifestly erroneous, perverse, and against the weight of the evidence on record.

17. The learned Trial Judge failed to properly appreciate the material contradictions and inconsistencies in the testimony of the prosecution witnesses and, instead of extending the benefit of reasonable doubt to the appellants, erroneously accepted the prosecution case.

SUBMISSION ON BEHALF OF THE STATE

18. Per contra, learned A.G.A. supported the impugned judgment and submitted that the testimony of the prosecutrix is wholly reliable and inspires confidence. The minor contradictions are natural and inconsequential and the prosecutrix consistently supported the prosecution's case at every stage. The age of the prosecutrix stood fully established through medical examination.

19. It is submitted that the consent of a minor under the POCSO Act is legally immaterial. It is further argued that the absence of injuries or semen does not negate sexual assault. The statement under Section 164 Cr.P.C. substantially corroborates depositions before the trial court, and the findings recorded by the trial court are based upon proper appreciation of evidence and warrant no interference.

POINTS OF DETERMINATION

(i) Whether the charges under sections 363, 366, 376 IPC, and section 6 of the POCSO Act against Anku @ Parshuram have been proved beyond reasonable doubt?

(ii) Whether the conviction of Pintu alias Dinesh and Santosh Kumar Gautam is sustainable in law on the basis of facts and evidence on record?

(iii) Whether the impugned judgment suffers from perversity or legal infirmity warranting interference under Section 374(2) Cr.P.C.?

ANALYSIS

20. While exercising power under Section 374(2) Cr.P.C., the Appellate Court is entitled to re-appreciate the evidence. However, interference with conviction is warranted only when findings are perverse, manifestly illegal, or wholly unsupported by evidence.

21. In so far as the delay in lodging the FIR is concerned, the same stands satisfactorily explained. The normal rule that prosecution has to explain delay and lack of prejudice does not apply per se to rape cases, as the Hon'ble Supreme Court held in the case of **State of U.P. Vs. Manoj Kumar Pandey, AIR 2009 SC 711** (Three-Judge Bench) and **Santosh Moolya Vs. State of Karnataka, (2010) 5 SCC 445.** In offenses involving minor girls' family members ordinarily search for the victim before approaching authorities due to social stigma and emotional trauma. Thus, the delay in lodging the FIR is not fatal in the present case.

22. It is pertinent to mention here that prosecution witness no.1 was, in fact, subjected to cross-examination by the counsel appearing for the co-accused Pintu and Santosh. Although the counsel representing appellant Anku @ Parshuram could not independently cross-examine the informant- P.W.-1 due to his death.

23. Furthermore, P.W.1 was the informant, and whatever he deposed regarding the incident was also narrated by P.W.5/victim and when the said witness had already been cross-examined on behalf of the co-accused, the appellant has failed to demonstrate any specific prejudice caused to his defence.

24. Significantly, neither before the Trial Court nor in the present appeals had the appellants specifically contended that the inability of their counsel to cross-examine prosecution witness no.1 resulted in a failure of justice or caused irreparable prejudice to their defence.

25. It is a settled principle of criminal jurisprudence that every procedural irregularity does not vitiate a trial unless actual prejudice is shown to have been caused to the accused.

26. Moreover, the conviction of the appellants are not founded solely upon the testimony of prosecution witness no.1. The prosecution case is substantially supported by testimony of the victim, the recovery of the victim from the company of the appellants, and other attending circumstances appearing on record. Therefore, in the facts and circumstances of the present case, the absence of a separate cross-examination of prosecution witness no.1 by the appellants counsel does not constitute a ground to discard the prosecution case or to extend the benefit of doubt to the appellants.

27. However, while appreciating the evidence of prosecution witness no.1, the Court has remained conscious of the fact that the appellants did not have the opportunity of independent cross-examination. Consequently, any improvement or assertion made by the witness beyond the contents of the First Information Report is required to be scrutinized with due caution.

28. The legislative objective behind the POCSO Act is the protection of children from sexual exploitation. A child in law is incapable of giving valid consent for sexual intercourse within the meaning of the POCSO Act. Once the prosecutrix is found to be below 18 years of age, the plea of consent becomes legally insignificant.

29. In this regard, reliance may be placed on the decision of the Apex Court in **Satish Kumar Jayanti Lal Dabgar Vs. State of Gujarat, reported in (2021) 3 SCC 12.** The relevant para is being reproduced below :-

"16. The Legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as a mitigating circumstance."

(Emphasis has been laid upon underline parts)

30. In the present case, no convincing material could be elicited by the defence to demolish the prosecution's evidence regarding age. In this case, though the prosecution did not produce any educational certificate of the prosecutrix, but the radiological examination substantially supports the prosecution's case. Accordingly, this Court holds that the prosecutrix was a minor (around 14 years) on the date of occurrence.

31. Much emphasis has been laid by learned counsel for the appellants upon the alleged inconsistencies between the statements under Sections 161 and 164 Cr.P.C. and testimony before the court. At this stage, it becomes necessary to examine the legal character and evidentiary value of a statement recorded under Section 164 Cr.P.C.. A statement under Section 164 Cr.P.C. is recorded by a Judicial Magistrate during investigation in order to preserve the version of a witness at the earliest possible stage, free from police influence. Such a statement is not substantive evidence by itself. However, it can be utilized for the purpose of corroboration under Section 157 of the Evidence Act or contradictions under Section 145 of the Evidence Act.

32. The Hon'ble Supreme Court in the case of **Ram Kishan Singh vs. Harmit Kaur, (1972) 3 SCC 280** observed that the statement under Section 164 Cr.P.C. cannot be treated as substantive evidence but can be used to corroborate or contradict thereof. Similarly, in the case of **George vs. State of Kerala, (1998) 4 SCC 605**, it has been held that a statement under Section 164 Cr.P.C. assumes significance where a witness supports the prosecution's case during trial.

33. In the present matter, the prosecutrix in her statement under Section 164 Cr.P.C. specifically stated that she had been taken away by the appellant and was subjected to sexual intercourse. During deposition before the trial court, the prosecutrix substantially reiterated the same allegations. Minor omissions or variations relating to peripheral details do not affect the prosecution's version.

34. Human memory is not expected to possess photographic precision, particularly in a case involving traumatic sexual offenses. The broad consistency between the statement under Section 164 Cr.P.C. and testimony before the trial court lends substantial assurance to the prosecution's case. No material contradictions going to the root of the prosecution's story could be demonstrated by the learned counsel for the appellant. Thus, the statement under Section 164 Cr.P.C. in the present case materially corroborates the testimony of the prosecutrix and strengthens the prosecution's version.

35. It is important to note that Section 361 provides for kidnapping from lawful guardianship.-*Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.*

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

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

36. Furthermore, Section 363 IPC contemplates regarding punishment for kidnapping.- Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

37. Section 366 I.P.C. contemplates kidnapping or abduction with the intent that a woman may be compelled to marry or forced/seduced to illicit intercourse. The evidence on record clearly establishes the removal of the prosecutrix from lawful guardianship, followed by repeated sexual exploitation. Essential ingredients of Section 366 IPC, therefore, stand fully established.

38. From a perusal of Section 361 of IPC, it appears that there must be an act of enticing or taking, in addition to establishing the child□s minority (being sixteen for boys and eighteen for girls) and care/keep of a lawful guardian. Such □enticement□ need not be direct or immediate in time and can also be through subtle actions like winning over the affection of a minor girl, which is being clearly established from the evidence on record.

39. Section 376(2)(i) of I.P.C. contemplates committing rape on a *woman when she is under sixteen years of age.*

40. So far as the conviction of the appellants under Section 376 (2)(i) I.P.C. and Section 6 of POCSO Act is concerned, it is a settled law that conviction can be founded upon the sole testimony of the prosecutrix, if it inspires confidence. The prosecutrix has consistently supported the prosecution's case during the investigation as well as the trial. Nothing substantial could be elicited during cross-examination to discredit her testimony on material particulars. Minor inconsistencies regarding peripheral effects are natural and inconsequential. In addition thereto, Human memory is not expected to possess photographic precision, particularly in a case involving traumatic sexual offenses.

41. In her deposition before the Court, the prosecutrix stated that at the time of the incident ,she was about 14 years of age. At about 12:00□1:00 P.M., while she was proceeding from her house to the fields, Anku alias Parshuram, accompanied by Santosh and Pintu, came to her and asked whether she would marry him. She refused. Anku insisted that he would marry her. Thereafter, all three persons forcibly lifted her into a Maruti van and gagged her mouth with a cloth, preventing her from raising an alarm. They also threatened to kill her if she shouted.

42. The witness further stated that Pintu and Santosh got down from the vehicle on the way. Thereafter, Anku took her to Kodri and kept her at the house of his brother-in-law, Harinandan, for one day. Subsequently, he took her to the house of another of his sisters at Piprauli, where she was kept for about one month. The witness stated that during this period, "वहां अंकू उसके साथ बुरा काम करते थे." She further stated that she understood the meaning of the expression "बुरा काम".

43. The witness further deposed that at Piprauli, Anku applied sindoor in the parting of her hair and his sister residing there applied colour to her feet. Although she objected, they did not heed her objections and told her to let them do as they wished. She further stated that the name of Anku's brother-in-law at Piprauli was Ashok. Harinandan had also come there, and she requested him to take her back to her parents, but no one paid heed to her request.

44. The witness also deposed regarding the arrival of the police while she and Anku were standing on the road towards Bhayara, their apprehension by the police, the preparation of the recovery memo and other related documents, her medical examination, and the recording of her statement under Section 164 Cr.P.C. before the Magistrate.

45. In Court, the witness identified her signatures on the Recovery Memo (Exhibit Ka-2) and proved the statement recorded before the Magistrate as Exhibit Ka-7.

46. Maxim "*falsus in uno, falsus in omnibus*" is not applicable in India. It is merely a rule of caution. Thus, even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding the acquittal of a number of other co-accused persons, his conviction can be maintained. The Court has to separate grain from chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto. A witness may be speaking untruth in some respect and it has to be appraised in each case as to what extent the evidence is worthy of acceptance; merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Falsity of a particular material witness on a material particular would not ruin it from the beginning to the end. The aforesaid Maxim, while it does not apply in India, is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery, or embellishment. Similar view has been taken by the Apex Court in the case(s) of **Edakkandi Vs. State of Kerala, (2025) 3 SCC 273 (Para 22) and Ilangovan Vs State of TN, (2020) 10 SCC 533 (Three-Judges Bench).**

47. In a case of rape, the testimony of the prosecutrix stands at par with that of an injured witness. It is not necessary to insist on corroboration if the evidence of the prosecutrix inspires confidence and appears credible. An accused can be convicted on the basis of the sole testimony of the prosecutrix without any further corroboration, provided the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. A woman or girl raped is not an accomplice, and to insist on corroboration of the testimony amounts to an insult to womanhood. In principle, the evidence of a victim of sexual assault stands at par with evidence of an injured witness, just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender. The evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration in the form of an eye-witness account of an independent witness may often be forthcoming in physical assault cases, but such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration, drawing inspiration from rules devised by the courts in the Western world. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence as a general rule, there is no reason to insist on corroboration except from the medical evidence where having regard to the circumstances of the case, medical evidence can be expected to be forthcoming subject to this qualification that corroboration can be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having leveled such an accusation on account of the instinct of self-preservation or when the probability factor is found to be out of tune. In the case(s) of **Lok Mal Vs. State of UP, (2025) 4 SCC 470 (Para 13) and Santosh Prasad Vs. State of Bihar, (2020) 3 SCC 443,** the Hon'ble Apex Court has repeatedly held that the testimony of a victim of sexual assault stands on a higher pedestal akin to injured witness.

48. Learned counsel for the appellant (Anku) has emphasized the absence of injuries and the lack of detection of semen. However, the absence of injuries by itself cannot negate the offense of rape, particularly where examination is delayed. The medical evidence is corroborative in nature and trustworthy.

49. As regards the role attributed to Anku @ Parshuram in the commission of the offence, the prosecution has successfully proved, beyond reasonable doubt, that the prosecutrix was a minor at the time of occurrence. The prosecution has further proved the charges of kidnapping and penetrative sexual assault against the prosecutrix; statement recorded under Section 164 Cr.P.C. materially corroborates her statement before the Court. Upon a careful appraisal of the evidence on record, the prosecutrix is found to be reliable, trustworthy and worthy of credence. Ocular testimony cannot be discarded solely on medical grounds. The finding regarding the old, torn hymen and attending circumstances lends assurance to the prosecution's case.

50. The findings recorded by the learned Trial Court are well founded and supported by the evidence available on record and, therefore, warrant no interference by this Court. Consequently, in the case of Anku @ Parshuram, no perversity or miscarriage of justice could be demonstrated by learned counsel for the appellant.

51. So far as the complicity of the co-appellants Pintu and Santosh are concerned, this Court has carefully scrutinized the evidence on record. The prosecution's case against the said co-accused-appellants rests primarily upon their names being disclosed by the prosecutrix and subsequently mentioned in the FIR. However, a closer scrutiny of the evidence reveals that their implication is not beyond reasonable doubt. It is neither supported by reliable ocular testimony nor by any independent corroborative material. PW-1, informant (father of the prosecutrix) categorically admitted during cross-examination that he had not witnessed the occurrence with his own eyes and that the report was lodged solely on the basis of information allegedly received from his daughter over the telephone. He specifically stated that "*maine apne ankho se nahi dekha tha, maine apni ladki ke batana ke adhar par report likhwayi*". He also admitted that the name of Santosh was mentioned in the FIR on the basis of what was told to him by his son, i.e. P.W.2. More importantly, P.W.2 during cross-examination made material admissions striking at the root of the prosecution's case against Pintu and Santosh. He stated that he had deposed before the court on the basis of information heard from others and further admitted that the persons related to the appellant Anku and his friends were also implicated in this case. P.W.2 specifically stated that '*Anku ke rishtedaro ko bhi phasaya gaya aur Anku ke mitro ko bhi is case me phasaya gaya*'. He further admitted that '*Anku ke rishtedaro wa mitro ko isliye likha diya ki we pairvi na kar sake'*. The aforesaid admission is of great significance. It demonstrates that the relatives and friends of the main accused were named in the case, not on account of their actual involvement, but with the object of preventing them from pursuing or supporting the defence of the main accused. The statement of the prosecutrix was recorded thereafter under Section 164 Cr.P.C. wherein she mentioned about presence of these co-accused Santosh and Pintu along with main accused Anku @ Parshuram on the road. In her testimony before the Court also she reiterated the same and also stated that Santosh and Pintu got off the vehicle on way. She had not stated about their presence with others, thereafter nor has she attributed any role to them in examination-in-chief and in her statement recorded under Section 164 Cr.P.C. after they had got off from the vehicle, but surprisingly in her cross-examination by Pintu's counsel she mentioned about presence of Pintu and Santosh at the house of Harinandan in Village- Kodri and also that they left the house after sometime which is inconsistent. Read conjointly with the testimony of P.W.1 and P.W.2, as discussed earlier, implication of co-accused Santosh and Pintu appears to be on saying of others and is not corroborated by any other evidence. The admission of P.W.2, referred above, creates a

serious doubt in the prosecution's story and renders the implication of the co-accused persons highly doubtful.

52. No overt act constituting rape, wrongful confinement, or any other subsequent offence has been attributed to the co-appellant Pintu or Santosh in the FIR, in statements under Sections 161 and 164 Cr.P.C., or in deposition before the trial court. The prosecution has also failed to establish any prior meeting of minds, common intention or common object so as to attract constructive criminal liability. No independent witness has supported the prosecution's version regarding the participation of co-accused/appellants Pintu and Santosh. The Investigating Officer also failed to collect any material demonstrating their continued involvement after the initial stage of the occurrence.

53. It is the settled principle of criminal jurisprudence that suspicion, however, strong, cannot substitute legal proof. In ***Sharad Virdhi Chand Sarda vs. State of Maharashtra, (1984) 4 SCC 116,*** the Hon'ble Supreme Court has held that guilt must be established beyond reasonable doubt and cannot rest upon conjectures or suspicion.

54. In the present case, the admissions of PW-1 and PW-2 themselves create substantial doubt regarding the involvement of co-accused/appellants Pintu and Santosh. The evidence on record does not satisfy the standard of proof required in a criminal trial. The trial court failed to appreciate these material admissions and proceeded to convict the co-accused/appellants without there being cogent and reliable evidence establishing their participation beyond a reasonable doubt.

55. Accordingly, this Court is of the considered opinion that the prosecution has failed to prove the guilt of co-accused/appellants Pintu and Santosh beyond reasonable doubt. They are, therefore, entitled to the benefit of the doubt and deserve to be acquitted of all charges levelled against them.

56. It is pertinent to mention here that the learned Sessions Judge acquitted one other accused, Harishchandra @ Harvinder @ Harinandan, on the ground that the prosecution failed to adduce any specific, cogent, and reliable evidence establishing his active participation in the commission of the alleged offences. The prosecutrix did not level any direct allegation of rape or sexual assault against him and merely stated that she had been kept at his house for one day by the accused Anku @ Parshuram. The trial Court further noted that the prosecutrix had not made any complaint against Harishchandra while staying at his house. In the absence of evidence demonstrating his knowledge of the offence, common intention, or any overt act facilitating the crime, the learned Sessions Judge held that the prosecution had failed to prove the charges against him beyond a reasonable doubt and consequently extended to him the benefit of doubt, resulting in his acquittal.

57. In the present case, the appellant Anku @ Parshuram has been convicted under section 376 IPC as well as section 6 of the POCSO Act on account of the same act of sexual assault committed upon the victim. The occurrence pertains to 13.10.2014, and therefore, the punishment provisions as existing on the date of occurrence are required to be taken into consideration. Before proceeding to determine the appropriate quantum of sentence, it is necessary to advert to section 42

of POCSO Act. This provision stipulates that any act or omission constitutes an offense punishable under the POCSO Act as well as under certain provisions of the Indian Penal Code, including Section 376 IPC. The offender shall be liable to punishment under the provision that provides for punishment greater in degree.

58. A perusal of the record demonstrates that the prosecutrix was approximately 14 years of age on the date of occurrence. Consequently, the offence, proved, was not punishable under Section 376 IPC simpliciter but was squarely covered by Section 376(2)(i) IPC, as applicable at the relevant time, which specifically dealt with rape upon a girl under sixteen years of age and prescribed rigorous imprisonment for a term not less than ten years, extendable to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine. The learned Trial Court, however, framed a charge and recorded a conviction under Section 376 IPC simpliciter without adverting to the aggravated provision attracted by its own findings regarding the age of the victim.

59. Further, the learned Trial Court awarded separate substantive sentences under Section 376 IPC and Section 6 of POCSO Act. Such an approach is contrary to Section 42 of the POCSO Act, which mandates that where the same act constitutes an offence punishable under the POCSO Act as well as under Section 376 IPC and its aggravated forms, the offender shall be liable to punishment only under the enactment providing punishment greater in degree. The object of Section 42 of POCSO Act is to prevent duplication of punishment for the same act.

60. At the relevant time, Section 6 of POCSO Act prescribed a minimum sentence of ten years' rigorous imprisonment extending to imprisonment for life and fine, while section 376(2)(i) I.P.C. prescribed rigorous imprisonment for a term not less than ten years, extendable to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

61. Therefore, once the conviction arose out of the same act of penetrative sexual assault upon a child, separate punishments under both provisions could not legally be imposed. The learned Trial Court thus committed an error in law in sentencing the appellant-Anku @ Parshuram separately under Section 376 IPC and Section 6 POCSO Act, instead of applying Section 42 of the POCSO Act and imposing punishment only under the appropriate aggravated provision, namely Section 376(2)(i) IPC.

62. **The object of section 42 of the POCSO Act is to avoid duplication of punishment where the same act constitutes offenses under both enactments and to ensure that the offender is not subjected to double punishment for the same criminal act. The provision does not mandate the imposition of maximum punishment in every case, nor does it curtail the judicial discretion of the Court to determine an appropriate sentence within the statutory limits prescribed by law.**

63. Therefore, while mentioning the conviction of the appellant- Anku @ Parshuram under both Sections 376(2) (i) IPC and Section 6 of the POCSO Act, this Court is required to impose a sentence that satisfies the mandate of Section 42 of the POCSO Act and remains proportionate to

the facts and circumstances of the case. This Court is of the opinion that the convict shall remain in prison for the remainder of his natural life, amounts to a punishment qualitatively more severe than ordinary life imprisonment, as it extinguishes the possibility of release through remission or commutation under the statutory regime.

64. Accordingly, this Court proceeds to examine whether the sentence imposed by the trial court requires interference on the touchstone of proportionality, mitigating circumstances, and settled principles governing sentencing discretion, also keeping in view the legal provision permitting conviction under a more serious penal sections 376(2)(i) I.P.C. than the one 376 I.P.C. under which the charge has been framed.

65. Considering the totality of the facts and circumstances, this Court is of the opinion that while the conviction of the appellant (Anku) warrants no interference, the sentence imposed by the learned Trial Court calls for reconsideration.

66. As argued by learned counsel for the appellant, the age of the appellant, Anku @ Parshuram, was about 24 years at the time of conviction, which is also mentioned in the statement of the accused persons recorded under Section 313 Cr.P.C., and further stated that he is a first-time offender. There is no material available on record indicating that he has a criminal history or has previously been involved in any criminal activity. From a perusal of statement of the victim recorded under Section 164 Cr.P.C., it would further reveal that the appellant-Anku @ Parashuram was a family man having a child dependent upon him. Though such factors cannot absolve the appellant of criminal liability, they nevertheless constitute relevant mitigating circumstances for the purpose of determining the appropriate quantum of sentence.

67. The Court further finds that the record does not disclose the existence of any exceptional aggravating circumstances such as extreme brutality, repeated acts of violence, use of deadly weapons, or conduct showing exceptional depravity so as to justify the imposition of the maximum punishment of imprisonment for life. While the age of the prosecutrix and the nature of the offence remained serious aggravating circumstances, the principle of proportionality and individualized sentencing require the Court to balance the aggravating and mitigating factors in a fair and judicious manner.

68. Accordingly, having regard to the age of the appellant- Anku @ Parshuram, his status to be a first-time offender, the absence of criminal antecedents, his family responsibilities and the overall facts and circumstances of the case, this Court is of the considered opinion that the ends of justice would be adequately served by modifying the sentence of imprisonment for life to rigorous imprisonment of 14 years along the fine imposed by the learned Trial Court.

69. From a perusal of custody certificate dated 01.07.2026, received by learned A.G.A. from Senior Superintendent, Central Jail, Varanasi, it appears that the appellant- Anku @ Parshuram has already spent a period of 14 years, 2 months and 28 days in jail including remission period.

70. In view of the above, Criminal Appeal No.1989 of 2016 is **partly allowed** so far as the appellant Anku @ Parshuram is concerned. The conviction of the appellant-Anku @ Parshuram under the relevant provisions of law, as recorded by the learned Trial Court, is hereby affirmed. However, the order of sentence is modified to the extent that the appellant shall undergo:

(i) Rigorous imprisonment for fourteen (14) years with a fine of ₹10,000/- for the offence under Section 376(2)(i) IPC. In default of payment of fine, he shall further undergo one year of rigorous imprisonment.

(ii) Rigorous imprisonment for five (5) years with a fine of ₹10,000/- for the offence under Section 363 IPC. In default of payment of fine, he shall further undergo one year of rigorous imprisonment.

(iii) Rigorous imprisonment for five (5) years with a fine of ₹10,000/- for the offence under Section 366 IPC. In default of payment of fine, he shall further undergo one year of rigorous imprisonment.

71. All the substantive sentences of imprisonment shall run concurrently. The appellant-Anku @ Parshuram shall be entitled to the benefit of Section 428 of the Code of Criminal Procedure, 1973 (corresponding to Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023, as applicable) for the period already undergone during investigation, inquiry and trial.

72. The appellant-Anku @ Parshuram shall deposit the entire amount of fine of ₹30,000/-, if not already deposited, before the learned Trial Court, failing which the default sentences shall follow in accordance with law.

73. In so far as the remaining appellants, namely Santosh Kumar Gautam and Pintu @ Dinesh, are concerned, since the prosecution has failed to adduce cogent and reliable evidence to establish their guilt beyond reasonable doubt, they are entitled to the benefit of doubt. Consequently, their convictions and sentences are set aside, and they are acquitted of all the charges.

74. Accordingly, Criminal Appeal Nos.1763 of 2016 and 1905 of 2016, filed by appellants, namely, Santosh Kumar Gautam and Pintu @ Dinesh, are **allowed**. The accused-appellants, namely, Santosh Kumar Gautam and Pintu @ Dinesh shall be released forthwith, if they are in jail, unless they are wanted in any other case, subject to compliance of Section 437-A Cr.P.C. The amount of fine, if deposited by the appellants, namely, Santosh Kumar Gautam and Pintu @ Dinesh shall be refunded.

75. Trial court record along with copy of this judgment and order be transmitted to the court concerned forthwith.

76. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

(2026) 7 ILRA 259
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 2174 of 1987

Ganga Ram **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to conviction under Ss. 366 and 376 IPC where the appellant challenged the conviction on the grounds of the age of the prosecutrix, alleged consent, absence of definite medical evidence of rape, delay in lodging the first information report, conduct of the prosecutrix, discrepancy regarding the salwar and the legality of the sentence, and the question whether the conviction and sentence awarded by the trial court called for interference in appeal. (Paras 8, 11-18, 20-23)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 366, 376 - Kidnapping and rape - Minor prosecutrix - Consent - Legal effect - Consent of a minor prosecutrix is wholly immaterial and affords no defence to a charge under Ss. 366 and 376 IPC - Where the prosecutrix was below eighteen years of age, her accompanying the accused willingly does not constitute consent known to law - Conviction upheld. (Paras 11, 15, 21-23).

Criminal Law - Indian Penal Code, 1860 - Ss. 366, 376 - Evidence - Testimony of prosecutrix - Corroboration - Evidence of a prosecutrix in a case of rape or kidnapping, if truthful, natural and inspiring confidence, does not require corroboration as a matter of rule - Testimony found reliable and corroborated in material particulars by medical, radiological and recovery evidence - Conviction sustainable. (Paras 12-14, 21).

Criminal Law - Indian Penal Code, 1860 - S. 376 - Medical evidence - Negative vaginal-sperm report - Absence of definite medical opinion regarding rape - Such circumstance, in the facts of the case, not sufficient to discredit otherwise credible and corroborated testimony of the prosecutrix. (Paras 8, 13-16).

Criminal Law - Indian Penal Code, 1860 - Ss. 366, 376 - Delay in lodging first information report - Six days' delay - Delay satisfactorily explained by search for the prosecutrix following her disappearance and subsequent report upon her recovery - Trivial and natural discrepancies not going to the root of the prosecution case - Conviction not vitiated. (Para 16).

Criminal Law - Indian Penal Code, 1860 - S. 376 - Sentencing - Fine - Penal provision contemplating imprisonment coupled with fine - Failure of trial court to impose fine constitutes a material legal error - However, where appeal is preferred only by convicted accused, imposition of fine in appellate proceedings would amount to enhancement of sentence and accused cannot be placed in a more disadvantageous position - Omission cannot be rectified in appeal preferred by accused alone. (Paras 18, 20).

Criminal Law - Indian Penal Code, 1860 - Ss. 366, 376 - Appellate jurisdiction - Acquittal of co-accused and conviction of appellant - Specific and individuated assessment of role - Direct, specific and consistent evidence against appellant distinguished from absence of overt act against co-accused - Conviction affirmed. (Para 17).

Held: The consent of a minor prosecutrix is wholly immaterial and affords no defence to a charge under Ss. 366 and 376 IPC - the prosecutrix, being of tender age and belonging to an unlettered, backward background, could neither be expected to raise an alarm at every stage nor could her silence, born out of fear and threat at the point of a knife, be equated with consent - the evidence of a prosecutrix in a case of rape or kidnapping stands on a footing different from that of an ordinary witness and, if found to be truthful, natural and inspiring confidence, does not require corroboration as a matter of rule - the testimony of the prosecutrix, if found reliable, is by itself sufficient to found a conviction - courts must be wary of insisting on corroboration as a condition for judicial reliance on such testimony - the trial court has recorded a clear finding that the statement of the prosecutrix, read as a whole and tested in cross-examination, inspires confidence and stands corroborated in material particulars by the medical, radiological and recovery evidence - the age of consent under the extant criminal law is eighteen years, and sexual intercourse with, or the taking away of, a girl below that age cannot be validated by any purported consent on her part - the trial court's approach in giving the appellant the benefit of the marginally lower end of the radiological estimate and yet convicting him discloses a careful and appellant-favourable, rather than a perverse, appreciation of the ossification evidence - the delay of six days stands satisfactorily explained by the fact that it was the maternal uncle of the prosecutrix who, upon her disappearance, first engaged in a search for her rather than rushing to lodge a report, and by the fact that a further report was made by the father upon her recovery - trivial and natural discrepancies of the kind pointed out do not, without more, warrant rejection of an otherwise credible and corroborated prosecution case - the trial court's judgment demonstrates a specific and individuated assessment of the role of each accused - no evidence was found to connect the co-accused with any overt act of kidnapping or confinement whereas the role attributed to the appellant was direct, specific and consistently spoken to by the prosecutrix at every stage - failure to impose fine, though legally erroneous, cannot be rectified in the present appellate proceedings as imposition of fine would undoubtedly amount to enhancement of the sentence already awarded and the present appeal has been preferred only by the convicted accused - no infirmity, illegality or perversity having been found in the findings recorded by the trial court, the prosecution having proved beyond reasonable doubt that the appellant kidnapped the prosecutrix and thereafter committed rape upon her, the conviction under Ss. 366 and 376 IPC and sentence of seven years' rigorous imprisonment on each count, to run concurrently, call for no interference and the appeal is dismissed. (Paras 11-18, 20-23). (E-7)

Case Law Cited

Anversinh @ Kiransinh Fatesinh Zala Vs. State of Gujarat, **(2021) 3 SCC 12***; King Emperor v. Gokaran; Emperor v. Abdur Rahmans,* **1916 SCC OnLine All 63***; Bharwada Bhoginbhal Hirjibhai v. State of Gujarat,* **(1983) 3 SCC 217***; State of Punjab v. Gurmit Singh,* **(1996) 2 SCC 384***; Independent Thought Vs. Union of India,* **(2017) 10 SCC 800***; State of M.P. v. Surendra Singh,* **(2015) 1 SCC 222.**

List of Acts

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

List of Keywords

kidnapping; rape; minor prosecutrix; consent; lawful guardianship; testimony of prosecutrix; corroboration; medical evidence; radiological opinion; ossification evidence; vaginal-sperm report; first information report; delay; recovery; salwar; human blood; specific role; individuated assessment; sentence; fine; enhancement of sentence; rigorous imprisonment; benefit of doubt; appellate proceedings; proportionality during sentencing.

Case Arising From

APPELLATE JURISDICTION: Appeal under S. 374(2) of the Code of Criminal Procedure against the judgment and order dated 20.08.1987 passed by the 4th Additional Sessions Judge, Mathura, in S.T. No. 393 of 1986, whereby the appellant was convicted under Ss. 366 and 376 IPC and sentenced to seven years' rigorous imprisonment on each count, the sentences to run concurrently.

Appearances for Parties

Advs. for the Appellant:

Shri Nityanand Srivastava, Advocate holding brief of Shri Suhel Ahmad Azmi, learned counsel for the appellant.
Advs. for the Respondents:
Shri Purshottam Maurya, learned AGA for the State.

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Shri Nityanand Srivastava, Advocate holding brief of Shri Suhel Ahmad Azmi, learned counsel for the appellant and Shri Purshottam Maurya, learned AGA for the State.

2. This criminal appeal under Section 374(2) of the Code of Criminal Procedure has been preferred by the appellant Ganga Ram against the judgment and order dated 20.08.1987 passed by the 4th Additional Sessions Judge, Mathura, in S.T. No. 393 of 1986 (State Vs. Devi Singh and others), by which the appellant was convicted for the offence punishable under Section 366 IPC and sentenced to seven years' rigorous imprisonment, and further convicted for the offence punishable under Section 376 IPC and sentenced to seven years' rigorous imprisonment, both the sentences directed to run concurrently. By the very same judgment, the co-accused Devi Singh and Tilak Raj alias Gopal, who had been charged respectively under Sections 363/366 IPC and 368 IPC, were acquitted and given the benefit of doubt.

3. The prosecution case, briefly stated, is that the complainant Mawasi lodged a first information report on 18.05.1986 at Police Station Vrindaban alleging that his niece Kela, who was residing with him, had gone to fetch water from a hand-pump on 12.05.1986 at about 6.00 p.m. and was kidnapped by the appellant Ganga Ram. It transpired during investigation and trial that the appellant took the prosecutrix from Vrindaban to Chatikara, thence to Kosi, Faridabad and Jagadri, and thereafter confined her at his house in Palwal, where she was ultimately recovered by the police on 17/18.05.1986.

4. The prosecution examined Mawasi (complainant) as PW-1, witness Ram Chand as PW-2, witness Kalua as PW-3, Dr. Nirupma Srivastava as PW-4, the prosecutrix Kela as PW-5, father of the prosecutrix Girdhar as PW-6, SI Pradeep Kumar Gautam as PW-7, SI Veer Pal Singh as PW-8 and Head Constable Girraj Singh as PW-9.

5. The prosecutrix, examined as PW-5, deposed on oath that the appellant committed rape upon her at Jagadri at the house of his brother's wife, at the point of a knife, and thereafter kept her confined at Palwal.

6. The accused-appellant stated in his statement recorded under Section 313 Cr.P.C. that he has been falsely implicated in this case and the prosecution allegations against him are wrong. He further stated that he has never kidnapped and victim and has not committed rape upon her.

7. The grounds of the appeal in brief are that the conviction of the appellant is against the weight of evidence on record and is bad in law. Furthermore, the sentence awarded to the appellant is too severe.

8. Learned counsel for the appellant assailed the conviction on the following grounds: (i) that the radiological opinion placed the age of the prosecutrix at about sixteen years, with a variation of a year on either side, and there was no other reliable material, such as a birth certificate or school record, to conclusively establish that she was below eighteen years of age; (ii) that the vaginal-sperm report was negative and no definite medical opinion regarding rape could be given; (iii) that the first information report was lodged six days after the alleged occurrence, casting doubt on the prosecution version; (iv) that the conduct of the prosecutrix, in not raising an alarm and not disclosing the incident to anyone despite several opportunities, was consistent only with her being a consenting party; and (v) that there was a discrepancy between the description of the colour/print of the salwar in the fard and the salwar produced in court.

9. Learned AGA, per contra, supported the impugned judgment and submitted that the trial court, after a threadbare and balanced appraisal of the evidence, has clearly and specifically attributed a distinct role to the appellant alone, namely, that of having induced, kidnapped and confined the prosecutrix and having committed rape upon her, as distinguished from the co-accused Devi Singh and Tilak Raj, against whom no specific act or role was attributed either by the prosecutrix or by any other witness, and who were consequently, and rightly, extended the benefit of doubt. It was submitted that the conviction of the appellant rests on the cogent, consistent and creditworthy testimony of the prosecutrix (PW-5), duly corroborated by the statement of her father (PW-6, Girdhar), the recovery of the prosecutrix from the appellant's own house at Palwal, the site plan, the seizure of her salwar bearing human blood, and the radiological opinion, and that the minor discrepancies pointed out by the defence do not go to the root of the prosecution case.

10. This Court has given its anxious consideration to the rival submissions and to the evidence on record.

11. So far as the plea of consent is concerned, it is well settled that the consent of a minor prosecutrix is wholly immaterial and affords no defence to a charge under Sections 366 and 376 IPC. **In Anversinh @ Kiransinh Fatesinh Zala Vs. State of Gujarat, (2021) 3 SCC 12**, the Hon'ble Supreme Court reiterated that even where the prosecutrix may have accompanied the accused willingly, such consent, being the consent of a minor, is not a consent known to law and does not absolve the accused of the offence of kidnapping from lawful guardianship or the consequences flowing therefrom. Para 12 and 13 of the judgement in Anverish @ Kiransinh Fatesinh Zala (supra) are as under:

"12. Having given our thoughtful consideration to the rival submissions, it appears to us that although worded succinctly, the impugned judgment does not err in appreciating the law on kidnapping. It would be beneficial to extract the relevant parts of Sections 361 and 366 IPC which define "kidnapping from lawful guardianship" and consequential punishment. These provisions read as follows:

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

366. Kidnapping, abducting or inducing woman to compel her marriage, etc. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

13. A perusal of Section 361 IPC shows that it is necessary that there be an act of enticing or taking, in addition to establishing the child's minority (being sixteen for boys and eighteen for girls) and care/keep of a lawful guardian. Such "enticement" need not be direct or immediate in time and can also be through subtle actions like winning over the affection of a minor girl. However, mere recovery of a missing minor from the custody of a stranger would not ipso facto establish the offence of kidnapping. Thus, where the prosecution fails to prove that the incident of removal was committed by or at the instigation of the accused, it would be nearly impossible to bring the guilt home as happened in King Emperor v. Gokaran and Emperor v. Abdur Rahmans, 1916 SCC OnLine All 63.

(emphasis supplied)

The trial court has, on facts, correctly found that the prosecutrix, being of tender age and belonging to an unlettered, backward background, could neither be expected to raise an alarm at every stage nor could her silence, born out of fear and threat at the point of a knife, be equated with consent and furthermore, she was enticed and removed from legal guardianship on the basis of false information given by the accused-appellant that her mother is not well.

12. As regards the sufficiency of the sole testimony of the prosecutrix, it is equally well settled that the evidence of a prosecutrix in a case of rape or kidnapping stands on a footing different from that of an ordinary witness and, if found to be truthful, natural and inspiring confidence, does not require corroboration as a matter of rule.

13. In **Bharwada Bhoginbhal Hirjibhai v. State of Gujarat, (1983) 3 SCC 217,** Honble Supreme Court held in para 11 as under:-

"11..... We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the "probabilities factor" is found to be out of tune."

14. In **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, Honble Apex Court held in para 21 as under:-

"21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

Thus, the Supreme Court held that the testimony of the prosecutrix, if found reliable, is by itself sufficient to found a conviction, and courts must be wary of insisting on corroboration as a condition for judicial reliance on such testimony. The trial court, applying this very standard, has recorded a clear finding that the statement of the prosecutrix (PW-5), read as a whole and tested in cross-examination, inspires confidence and stands corroborated in material particulars by the medical, radiological and recovery evidence.

15. On the question of age, this Court is further fortified by the consistent line of authority including **Independent Thought Vs. Union of India, (2017) 10 SCC 800,** recognizing that the age of consent under the extant criminal law is eighteen years, and that sexual intercourse with, or the taking away of, a girl below that age cannot be validated by any purported consent on her part. The trial court's approach in giving the appellant the benefit of the marginally lower end of the radiological estimate (holding the age to be 'not more than seventeen years' rather than exactly sixteen) and yet convicting him, discloses a careful and appellant-favourable, rather than a perverse, appreciation of the ossification evidence.

16. The contentions regarding delay in lodging the first information report, the discrepancy in the description of the salwar, and the negative vaginal-sperm report have all been specifically dealt with by the trial court. The delay of six days stands satisfactorily explained by the fact that it was the maternal uncle of the prosecutrix who, upon her disappearance, first engaged in a search for her rather than rushing to lodge a report, and by the fact that a further report was made by the father (PW-6) upon her recovery. Trivial and natural discrepancies of the kind pointed out do not, without more, warrant rejection of an otherwise credible and corroborated prosecution case.

17. What weighs with this Court, in particular, is that the trial court's judgment demonstrates a specific and individuated assessment of the role of each accused. Whereas no evidence was found to connect either Devi Singh or Tilak Raj alias Gopal with any overt act of kidnapping or confinement, the sole allegation against Devi Singh being that he was casually met at Kosi, and against Tilak Raj that his house was, without more, named as a place of brief stay, the role attributed to the appellant Ganga Ram is direct, specific and consistently spoken to by the prosecutrix at every stage, from the inducement at the water-pump to his confining and committing rape upon her at Jagadri and Palwal. This distinction, resulting in the acquittal of the co-accused and the conviction of the appellant alone, itself demonstrates that the trial court did not proceed on generalised or assumed culpability but on a specific finding of individual role and responsibility qua the appellant.

18. Prior to substitution by Act 13 of 2013, Section 376(1) IPC provides that "whoever, except in the cases provided for by sub section (2), commits rape **shall be** punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years, and shall also be liable to fine…". Furthermore the same provision regarding mandatory part of imposition fine is provided under section 363 and 366 of IPC. Thus, where the IPC provision prescribes punishment in the form*: "…shall be punished with imprisonment and shall also be liable to fine",, or "..with imprisonment and fine",* the trial court is expected to impose fine also. Failure to impose fine amounts to a material legal error in sentencing. It is true that the learned trial court has committed an error in not imposing the fine though the penal provision contemplates punishment of imprisonment coupled with fine. Nevertheless, the present appeal has been preferred only by the convicted accused. Neither the State nor the victim has preferred any appeal seeking enhancement of sentence, nor has any revisional jurisdiction for enhancement been invoked after due notice. Since imposition of fine would undoubtedly amount to enhancement of the sentence already awarded, this Court, while deciding the appeal preferred by the accused alone, cannot place him in a more disadvantageous position. The omission of the trial court, though legally erroneous, cannot therefore be rectified in the present appellate proceedings.

19. Para 21 of the judgement of Apex Court in *Anversinh @ Kiransinh Fatesinh Zala (supra)* is extracted below:

"21. Having held so, we feel that there are many factors which may not be relevant to determine the guilt but must be seen with a humane approach at the stage of sentencing. The opinion of this Court in State of M.P. v. Surendra Singh, (2015) 1 SCC 222 on the need for proportionality during sentencing must be re-emphasised. This Court viewed that: (SCC p. 227, para 13)

"13. We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider ull relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society." (emphasis supplied)

20. It is true that the learned trial court has committed an error in not imposing the fine though the penal provision contemplates punishment of imprisonment coupled with fine. Nevertheless, the present appeal has been preferred only by the convicted accused. Neither the State nor the victim has preferred any appeal seeking enhancement of sentence, nor has any revisional jurisdiction for enhancement been invoked after due notice. Since imposition of fine would undoubtedly amount to enhancement of the sentence already awarded, this Court, while deciding the appeal preferred by the accused alone, cannot place him in a more disadvantageous position. The omission of the trial court, though legally erroneous, cannot therefore be rectified in the present appellate proceedings.

21. For the reasons aforesaid, this Court finds no infirmity, illegality or perversity in the findings recorded by the 4th Additional Sessions Judge, Mathura. The prosecution has proved beyond reasonable doubt that the appellant kidnapped the prosecutrix and thereafter committed rape upon her, and the conviction of the appellant under Sections 366 and 376 IPC, and the sentence of seven years' rigorous imprisonment on each count (to run concurrently), call for no interference.

22. The judgment and order dated 20.08.1987 passed by the 4th Additional Sessions Judge, Mathura, in S.T. No. 393 of 1986, convicting the appellant Ganga Ram under Sections 366 and 376 IPC and sentencing him to rigorous imprisonment for seven years on each count, to run concurrently, is hereby affirmed.

23. The appeal is **dismissed.**

24. The appellant, if on bail, shall surrender within a period of two weeks from today to serve out the remainder of the sentence. The bail bonds are cancelled and sureties, if any, are discharged from their liabilities.

25. If the appellant fails to surrender within stipulated period as above, learned trial court is directed to take immediate legal steps adopting coercive measures including issuance of non-bailable warrant to take the appellant into custody for execution of sentence in accordance with law.

26. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for information and compliance.

27. The trial court is directed to submit its compliance report within two months from the date of receipt of this order. Further more, the registry is also directed to place the compliance report on record.

28. The Registrar (Compliance) is also directed to serve a copy of this order within 48 hours by FAX/e-mail to the concerned court through District & Sessions Judge, Mathura for compliance.

29. Before parting with this judgment, this Court records its appreciation for the sincere assistance rendered by the Research Associates, Mr. Shivansh Pandey and Mr. Sandeep Kumar Singh and law intern Ms. Ishika Rai in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(2026) 7 ILRA 267
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 2283 of 2009

Prem Pal Singh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The appellant, a railway depot store keeper, was convicted under section 420 IPC and section 13(1)(d) of the Prevention of Corruption Act on alleging of issuing unauthorized issue notes resulting in missing steel material worth over Rs. 20 lakhs, despite prosecution evidence establishing that no material could move out of the depot premises without a gate pass and no such gate pass was ever issued.

Headnotes

Criminal law-Indian Penal Code,1860-Section 420-Prevention of Corruption Act,1988-Section 13(1)d) r/w S. 13(2)-Indian Evidence Act,1872-Section 106-Criminal Procedure Code,1973-Section 374(2)-Offence of Cheating and Criminal misconduct-Alleged disappearance of steel stock-No gate pass proved to have been issued-Material in question comprising 64 tonnes of heavy steel, impossible to be removed clandestinely on person-In absence of evidence showing that material actually exited premises or was taken by accused for personal or third party benefit, ingredients of Section 420 IPC and Section 13(1)(d) PC Act not made out-Trial court erred in invoking section 106 against accused without foundational proof-Principle of Audi Alteram Partem-Ex-Party physical Inspection Report-Reliability-Physical stock inspection report prepared behind back of accused without involving him in verification process, held, non-admissible against accused to form sole basis of conviction, being in violation of natural justice prinicples-Appeal Allowed.(Para 32 to 44) (E-6)

Held

The court held that prosecution has failed to establish that the appellant had removed the material from store premises. When the prosecution has failed to discharge the initial burden of proof by establishing even a prima facie case, the burden of proof could not shifted upon the appellant under section 106 of the Evidence Act. There is no proof that the appellant had intentionally enriched himself illicitly through the alleged act.

Case law Cited

Shri Krishan Kumar Vs Union of India : AIR 1959 SC 2, Sujit Biswas Vs State of Assam:(2013) 12 SCC 406, Nathiya Vs State represented by Inspector of Police Bagayam: (2016) 10 SCC 298, B. Jayaraj Vs State of A.P: (2014) 13 SCC 55, Digamber Vaishnav & Anr. Vs State of Chhattisgarh (2019) 4 SCC 522, State of Odisha Vs Banabihari Mohapatra & Anr: 2021) 15 SCC 268, Nagendra Sah Vs State of Bihar: (2021) 10 SCC 725, Shri Krishan Kumar Vs Union of India : AIR 1959 SC 2, Sadashiv Dhondiram Patil Vs State of Maharashtra: (2025) 4 SCC 275,Reena Hazarika Vs State of Assam: (2019) 13 SCC 289, Jupally Lakshmikantha Reddy Vs State of A.P.: 2025 SCC OnLine SC 1950, Hridaya Ranjan Prasad Verma Vs State of Bihar: (2000) 4 SCC 168-referred to.

List of Acts

Indian Penal Code,1860-Section 420-Prevention of Corruption Act,1988-Section 13(1)d) r/w S. 13(2)-Indian Evidence Act,1872

List of Keywords

Prevention Corruption Act,1988, Section 13(1)(d), Criminal misconduct, Pecuniary advantage, Unlawful Gain, Disproportionate Assests, Cheating, Dishonest Inducement, Fraudulent intention,Burden of proof, Chain of Circumstances, Foundational Facts, Section 313 Examination,Issue Notes, Depot store keeper, Inspection, Disappearance of Goods, Audi Alteram Partem-Ex-Party physical Inspection Report.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 2283 of 2009

Prem Pal Singh Vs. State of U.P. Thru. C.B.I

From the judgment and order dated 02.07.2026 of the High Court of Judicature at Allahabad.

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Appearances for Parties

Advs. for Appellant(s):-

Shreesh Chandra, Amrendra Nath Tripathi, Anurag Verma, Arvind Kumar Pandey, Suryansh Narula

Advs. for Respondent(s):-

Bireshwar Nath, Anurag Kumar Singh

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

1. Heard Sri Anurag Verma, Advocate, the learned counsel for the appellant, Sri Anurag Kumar Singh, Advocate assisted by Sri Akhilendra Singh, Advocate, the learned counsel for the opposite party-Central Bureau of Investigation and perused the material placed on record, including the lower court record.

2. By means of the instant appeal filed under Section 27 of the Prevention of Corruption Act, 1988, read with Section 374(2) Cr.P.C., the appellant has challenged the validity of judgment and order dated 29.09.2009, passed by the learned Special Judge, Anti-Corruption, U.P. (Central), Lucknow in Criminal Case No.5 of 2002, arising out of RC No.15(A) of 2000, titled State Vs. Prem Pal Singh, whereby the appellant has been convicted for the offences under Section 420 I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and he was sentenced to undergo rigorous imprisonment for three years and to pay Rs.10,000/- as fine and in default of payment of fine to undergo simple imprisonment for an additional period of one year, for the offence under Section 420 I.P.C. and to undergo the same sentence for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The sentences were directed to run concurrently.

3. The appeal was admitted by means of an order dated 08.10.2009 and the appellant was enlarged on bail but the payment of fine was not stayed.

4. Briefly stated, the facts of the case are that the CBI registered FIR No. RC-15A/2000 on 28.07.2000 against the appellant Prem Pal Singh and some unknown persons for committing offences under Sections 120-B, 409, 467, 468, 471 IPC, and 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act 1988, stating that a reliable information was received to the

effect that while the appellant was posted as Depot Store Keeper (DSK-III Steel Ward), Alambagh Store, Lucknow during the period between January 1999 to March 1999, he entered into a criminal conspiracy with some unknown officials of the office of Deputy Controller of Stores and some unknown private persons under a common object of committing the offence of cheating, forgery and criminal misconduct and defrauding Northern Railways to the tune of approximately Rs.20,00,000/-. In furtherance of the conspiracy, the appellant misused his official position and thereby dishonestly and fraudulently made the following issue notes of MS sheets/MS plate/MS wire to different parties: -

Sl.No.	Issue No.	Dated	Quantity	MS Sheets/Angle	Shown have to issued
1.	13/1414	17/2/99	2,000 kg.	1.6 mmM	SB/SEB
2.	13/1415	17/2/99	5,000 kg.	8 mm	DRM/MB
3.	13/1416	17/2/99	3,000 kg.	8" x 4"	SE/W/HW
4.	13/1417	17/2/99	2,000 kg.	75 mm	"
5.	13/1449	12/03/99	15,000 kg.	1.6 mm	CWM/Loco/CB/LKO.
6.	13/1421	26/2/99	15,000 kg.	"	"
7.	13/1409	15/2/99	20,000 kg.	"	"
8.	13/1378	21/1/99	2,000 kg.	3.15 mm	SSE/C&W/MB

5. The F.I.R. stated that the materials mentioned at serial nos. 1 to 4 had been indented by the consignees, but the materials mentioned at serial nos.6 to 8 had not been indented and the issue notes no.6, 7 and 8 were forged. Although these materials were shown to have been issued to the consignees, the materials never reached the destination. In this manner, the appellant misappropriated the above-mentioned materials by forging the issue notes and thereby caused losses to the Northern Railway to the tune of Rs. 20 lakhs, approximately.

6. After investigation, a charge-sheet dated 23.05.2002 was submitted against the appellant for the commission of offences under Section 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 stating that the investigation revealed that during January 1998 to March 1999, the appellant had functioned as DSK-III and he was in-charge of issuance of materials to different consignees after verifying the sanctioned strength of material from the stores department by converting the indent into issue notes in six copies, while retaining one copy in the store department and sending all the five copies of issue notes to GD Section. In this process the appellant issued the material vide seven issue notes mentioned above. The appellant had issued material worth Rs.22,74,860/- but it was not received by any of the consignees, which constitutes offences punishable under Section 420 read with Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

7. On 06.05.2002, the Deputy Controller Stores, Northern Railway, Alambagh granted sanction for prosecution of the appellant for the offences under Section 420 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The trial court took cognizance of the offences on 30.05.2002 and thereupon Case No.5 of 2002 was instituted.

8. On 22.11.2003, the Special Judge, Anti-Corruption (Central, UP, Lucknow framed charges against the appellant for the commission of the aforesaid offences.

9. The prosecution examined as many as 24 witnesses.

10. The trial court framed the following points for discussion:-

"(1) Whether the disputed indents were duly forwarded to the Stores department, Lucknow?

(2) Whether any material was issued/dispatched as per disputed indents/issue notes?

(3) Whether accused being public servant, by corrupt and illegal means obtained for or any other person or any valuable thing of pecuniary advantage, which he is not legally entitled to?"

11. The learned trial court held that indent nos.1 to 4 had been duly forwarded by the concerned departments to the store department at Lucknow, but indent nos.5 to 7 had never been processed by the concerned sections/departments. Indent nos. 5, 6, and 7 do not bear the signatures of the competent authority. The issue notes no.1 to 7 had been prepared by PW-9 under the directions of the appellant and the same had been issued under the signatures of the appellant, who was in-charge of the store department.

12. The learned trial court further held that the material mentioned in the issue notes could not pass or be dispatched through the premises as no gate pass had been prepared by the concerned section. The material in furtherance of the issue notes could only be dispatched after an authorized gate pass was prepared. As per the testimony of prosecution witnesses no gate pass was ever prepared in respect of the material mentioned in the issue notes nos.1 to 7. Therefore, it can be presumed that the material could not be dispatched or passed from the premises of the stores department, Lucknow. The trial court concluded that the material as per the disputed issue notes never moved out of the premises and it had to be in the store department itself or it could have been displaced somewhere within the premises or outside the premises.

13. The trial court referred to the statement of PW-20, who had prepared a physical inspection report and who stated that in physical verification of the current balance of the store department the material was found to be correct, but the material as per issue notes was nowhere traceable in that section. The trial Court has recorded the submission of the learned counsel for the appellant that the physical inspection report was not admissible under Section 162 Cr.P.C. The learned trial court held that even if this objection is accepted, the oral testimony of PW-20 would still be admissible. The trial court held that although the material could not be moved out without a

gate pass and a gate pass had not been issued, since the material was not found in the store premises and the appellant could not give any explanation regarding absence of the material, there was no alternative except to accept that the appellant is responsible for absence of the material and as no other person is said to be responsible for this, hence, the appellant was held guilty for the absence of the material.

14. Assailing validity of the impugned judgment, Sri. Anurag Verma, the learned counsel for the appellant has submitted that it is strange that although initially the FIR was lodged on 28.07.2000 against the appellant and some unknown persons for the offences under Sections 120-B, 409, 467, 468, 471 IPC, and Section 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 after conducting investigation for almost two years, a charge-sheet was submitted on 23.05.2002 against the appellant only for commission of the offences under Section 420 read with Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act. He has submitted that no offence could be established during the investigation, but as some material had gone missing in the stores of railways and the appellant was the depot storekeeper, a charge-sheet was filed implicating him.

15. Sri. Verma has submitted that there is no allegation that the appellant has misappropriated any material or the value thereof or that the appellant has obtained any wrongful gain either for himself or for any other person and, therefore, the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act against him has not been established. He has submitted that the offence of cheating is also not made out from the aforesaid facts.

16. Sri Anurag Kumar Singh, learned counsel for the respondent-CBI has submitted that the impugned judgment is well-reasoned and legally sound and hence it does not warrant any interference of this Court. He has placed reliance on a judgment of Hon'ble Supreme Court in the case of **Shri Krishan Kumar Vs. Union of India**: AIR 1959 SC 2, in which following observations have been made: -

"*9. It is not necessary or possible every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated a strong circumstance against the accused person.* ***In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant□s knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. Of course the prosecution has to establish a prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act to throw the onus on him to prove his innocence."***

(emphasis added)

17. Per contra, Sri. Anurag Verma the learned counsel for the appellant has placed reliance on the judgment in the case of **Sujit Biswas Vs. State of Assam**: (2013) 12 SCC 406, wherein the Hon'ble Supreme Court has held that: -

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. *In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343], State v. Mahender Singh Dahiya [(2011) 3 SCC 109] and Ramesh Harijan v. State of U.P. [(2012) 5 SCC 777])*

14. In Kali Ram v. State of H.P. [(1973) 2 SCC 808] this Court observed as under:

:25. ***Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."***

* *

17. Similarly, in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116] this Court held as under:

"Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence."

18. Thus, in view of the above, the court must consider a case of circumstantial evidence in the light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The court must draw an inference with respect to whether the chain of circumstances ***is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused."***

(emphasis added)

18. The judgment in the case of **Sujit Biswas** (supra) has been followed in the case of **Nathiya Vs. State represented by Inspector of Police, Bagayam**: (2016) 10 SCC 298.

19. In the case of **B. Jayaraj Vs. State of Andhra Pradesh**: (2014) 13 SCC 55, the Hon'ble Supreme Court has held as under: -

"9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

20. In **Digamber Vaishnav and another Vs. State of Chhattisgarh:** (2019) 4 SCC 522, the Hon'ble Supreme Court has held that: -

"14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculpate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in Jaharlal Das v. State of Orissa [(1991) 3 SCC 27], has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the

completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. In Varkey Joseph v. State of Kerala [1993 Supp (3) SCC 745], this Court has held that suspicion is not the substitute for proof. There is a long distance between "may be true' and "must be true" and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [see Kali Ram v. State of H.P. [(1973) 2 SCC 808]."

21. In the case of **State of Odisha Vs. Banabihari Mohapatra and another**: (2021) 15 SCC 268, the Hon'ble Supreme Court has held that: -

"33. Before a case against an accused can be said to be fully established on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must fully be established and the facts so established should be consistent only with the hypothesis of guilt of the accused. There has to be a chain of evidence so complete, as not to leave any reasonable doubt for any conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

34. In Shanti Devi v. State of Rajasthan [(2012) 12 SCC 158], this Court held that the principles for conviction of the accused based on circumstantial evidence are:

"10.1. The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established.

10.2. The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

10.3. The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.

10.4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence"

22. Having examined the principles of law regarding the standards of proof required in a criminal case based on circumstantial evidence, I proceed to examine whether the prosecution evidence establishes the guilt of the appellant. PW-2 has proved the procedure for supply of goods from the store and he stated that an indent is received in the accounts section after being signed by the concerned Divisional Engineer and Assistant Engineer. After a dummy currency is issued, it reaches RR section in the stores department, where the indent is received in five copies. The indent is registered in RR section. After the indent is processed and five copies of the same are received in the issuing ward, the store keeper issues the material and then the indent is called the issue note. All the five copies of the issue note are sent to General Dispatch Section for preparation of a gate pass. Before preparation of the gate pass, the identity card, authority letter, railway pass, etc. of the representative who comes to receive the material, is examined in GD Section and after being satisfied, a gate pass is issued. The gate pass number and vehicle number is mentioned on the issue note and the vehicle used for transportation, the driver's name, the person who is taking the material, his authorization letter number and identity card number are also mentioned thereon. PW-2 stated that this procedure is in practice.

23. PW-9 Shiv Shankar Yadav was working as the Issue Note Writer and he stated that the issue notes had been prepared by him under instructions of the appellant and the appellant had put his signatures on the issue notes. During cross-examination, he stated that when the material is issued to the consignee, he mentions it on the issue note.

24. PW-18 Mohammed Sajid stated that during the year 1998-99, he was working as DSK-I and during cross-examination he stated that no material can pass through the gate without issuance of a gate pass.

25. PW-20 Madhav Singh proved the procedure of issuing material. During cross-examination, he also stated that any material can move out of the store only after issuance of a gate pass. The wagon number is mentioned on the pass regarding material which is moved out on a wagon. Gate passes are prepared in the dispatch section and are checked by the RPF on the gate. Only that material can move out of the gate regarding which a gate pass has been issued. He stated that he had only seen the ledger and the ground of the steel yard and he had not seen any other document. This witness was re-examined and during re-examination, he stated that he had inspected the material in the steel yard under orders of the Deputy Controller of Stores and had

found that the material sent through the issue notes in question was not available in the store. Upon checking the record, he had found that there was an entry in the records regarding issuing the material, but the mode of dispatch, the date of dispatch, the gate pass number and other information regarding dispatch were not there. He had prepared a detailed report after checking the ground balance of the store. During cross-examination, he stated that the appellant had not been involved in this verification process.

26. PW-22, Shabbir Ahmad Khan stated that he was working as an Office Superintendent and it was his duty to verify the issue notes related to the store. The transfer certificate vouchers were verified by his section. The same were presented before the Assistant Electrical Engineer for verification of signatures through Head Clerk Poonam Sharma. PW-22 used to accept and verify the issue notes. This witness stated that issue note D-1 had not been presented before him for verification and it did not bear his signature or the signatures of Smt. Poonam Sharma. This issue note number 1414 had not been received in his office. During cross-examination, PW-22 stated that Smt. Poonam Sharma used to receive the issue notes and she was the custodian of the issue notes. Record of receiving the issue notes is maintained in the verification register and it was maintained by Smt. Poonam Sharma. Smt. Poonam Sharma was still in the employment of Railways.

27. From the aforesaid statements, it appears that numerous officials of different sections are involved in the process, but except for the appellant, no other person was implicated in the FIR by name and the charge-sheet was filed and trial was held only against the appellant.

28. Shri Mahendra Pratap Verma, Senior Store Keeper (PW-2) has proved the procedure for issuance of material, as per which numerous officials of different departments are involved in receiving an indent, its processing, issuance of the material conversion of the indent into an issue note, preparation of a gate pass and movement of material through the gate of the premises. The issue notes were prepared by PW-9 Shiv Shankar Yadav. PW-18 Mohammed Sajid, who worked as DSK-I, stated that no material can pass through the gate without issuance of a gate pass. PW-20 Madhav Singh Gate passes are prepared in the dispatch section and are checked by the RPF on the gate. Only that material can move out of the gate regarding which a gate pass has been issued. There is no allegation that any gate pass had been issued and that any material had actually moved out of the premises.

29. There is absolutely no evidence to establish that the material had actually moved out of the store. The material was not such material as could be taken out by the appellant carrying the same on his person in a clandestine manner, as it was 64 tonnes of steel. In the absence of proof of the fact that the appellant had taken out the material for his benefit or for the benefit of any other person, the appellant cannot be held guilty of the offence under 420 IPC or Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

30. The learned trial court has rightly held that the material mentioned in the issue notes could not pass or be dispatched through the premises as no gate pass had been prepared by the concerned section. The material in furtherance of the issue notes could only be dispatched after an authorized gate pass was prepared. As per the testimony of the prosecution witnesses no gate pass was ever prepared in respect of the material mentioned in the issue notes nos.1 to 7. Therefore, it

can be presumed that the material could not be dispatched or passed from the premises of the stores department, Lucknow. The trial court concluded that the material as per the disputed issue notes never moved out of the premises and it had to be in the store department itself or it could have been displaced somewhere within the premises or outside the premises.

31. The trial court referred to the statement of PW-20, who had prepared a physical inspection report and who stated that in physical verification of the current balance of the store department the material was found to be correct, but the material as per issue notes was nowhere traceable in that section. This verification report prepared behind the back of the appellant cannot be relied upon for convicting him, as it would violate the principle of natural justice of audi alteram partem which is that nobody can be condemned unheard.

32. The learned trial court has convicted the appellant only on the basis of the oral testimony of PW-20, that the material was not found in the inspection carried out by him. The trial court held that although the material could not move out without a gate pass and a gate pass had not been issued, since the material was not found in the store premises and the appellant could not give any explanation regarding absence of the material, there was no alternative except to accept that the appellant is responsible for absence of the material and as no other person is said to be responsible for this, hence, the appellant was held guilty for the absence of the material.

33. Although the trial Court has not referred to any statutory provision, apparently it has shifted the burden of proof on the accused-appellant relying upon the provision contained in Section 106 of the Evidence Act, which reads thus: -

"106.Burden of proving fact especially within knowledge*.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b)□A□is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

34. In the case of **Nagendra Sah Vs. State of Bihar:** (2021) 10 SCC 725, the Hon'ble Supreme Court has held as under: -

"21. Under Section 101 of the Evidence Act, whoever desires any court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt. Thus, Section 106 constitutes an exception to Section 101. On the issue of applicability of Section 106 of the Evidence Act, there is a classic decision of this Court in Shambu Nath Mehra v. State of Ajmer [AIR 1956 SC 404], which has stood the test of time. The relevant part of the said decision reads thus:

"10. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof.

"101. Burden of proof.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist"

Illustration (a) to Section 106 of the Evidence Act says"

"(a) A desires a court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime"

11. ***This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried.*** *These cases are Attygalle v. R. [1936 SCC OnLine PC 20] and Seneviratne v. R. [1936 SCC OnLine PC 57]*

12. Illustration (b) to Section 106 has obvious reference to a very special type of case, namely, to offences under Sections 112 and 113 of the Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass, etc. Now if a passenger is seen in a railway carriage, or at the ticket barrier, and is unable to produce a ticket or explain his presence, it would obviously be impossible in most cases for the railway to prove, or even with due diligence to find out, where he came from and where he is going and whether or not he purchased a ticket. On the other hand, it would be comparatively simple for the passenger either to produce his pass or ticket or, in the case of loss or of some other valid explanation, to set it out; and so far as proof is concerned, it would be easier for him to prove the substance of his explanation than for the State to establish its falsity.

13. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove

them, are all matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."

(emphasis supplied by Hon'ble Supreme Court)

22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference."

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

35. Even in **Shri Krishan Kumar Vs. Union of India**: AIR 1959 SC 2, which has been relied upon by the learned Counsel for the respondent CBI, it has been held that the prosecution has to establish a prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act to throw the onus on the accused to prove his innocence. I have to examine the facts of the case in light of the well settled law, to ascertain whether the prosecution has established the ingredients of the offence alleged.

36. In **Sadashiv Dhondiram Patil v. State of Maharashtra**: (2025) 4 SCC 275, the Hon'ble Supreme Court held that: -

"50.The law in the aforesaid regard is well-settled. The prosecution has to prove its case beyond reasonable doubt and that too on its own legs. The initial burden of proof is always on the prosecution. ... However, Section 106 of the Evidence Act is subject to one well-settled principle of law. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot straightaway invoke the said section and throw the entire burden on the accused to establish his innocence."

37. The prosecution merely established that a single official could not find some material upon verification of the store. Although numerous other persons are involved in the procedure for removal of goods from the store, no other person has been made an accused which indicates that no other person is involved in commission of the alleged offence. The prosecution witnesses have themselves proved that the goods could not be removed without issuance of a gate pass and admittedly, no gate pass was issued. The prosecution has failed to establish that the appellant had removed the material from the store premises. When the prosecution has failed to discharge the

initial burden of proof by establishing even a prima facie case, the burden of proof could not be shifted upon the appellant under Section 106 of the Evidence Act.

38. Moreover, in the statement of the appellant recorded under Section 313 Cr.P.C., he had denied the allegations against him and he had stated that he did not know as to who had prepared indent number 225789, dated 31.07.1997 from Haridwar. He stated that there are two steps for supplying material - (i) DY. COS Alambagh, Lucknow passes an order for issuing the material and (ii) after the material is taken out from the store, a gate pass is issued and thereafter the material is taken out of the premises. No material can go out without a gate pass. In this case, no material has moved out as no gate pass has been issued. He stated that no material can move out merely by preparation of an issue note and without issuance of a gate pass.

39. Although after examining the prosecution evidence, the trial Court has held that no material has moved out as no gate pass has been issued, which was stated by the appellant also, but the trial Court has completely discarded the appellant's statement recorded under Section 313 Cr.P.C.

40. In **Reena Hazarika v. State of Assam**: (2019) 13 SCC 289, the Hon'ble Supreme Court has held that: -

20.Unfortunately neither the trial court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 CrPC to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete non-consideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability as observed in Hate Singh Bhagat Singh v. State of Madhya Bharat [AIR 1953 SC 468] observing as follows:

"26. We have examined the evidence at length in this case, not because it is our desire to depart from our usual practice of declining to re-assess the evidence in an appeal here, but because there has been in this case a departure from the rule that when an accused person puts forward a reasonable defence which is likely to be true . then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit. "

21. A similar view is expressed in M. Abbas v. State of Kerala [(2001) 10 SCC 103] as follows:

"10. On the other hand, the explanation given by the appellant both during the cross-examination of prosecution witnesses and in his own statement recorded under Section 313 CrPC is quite plausible. Where an accused sets up a defence or offers an explanation, it is well settled

that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. "

41. The learned trial Court has committed an error of both fact and law by discarding the appellant's statement recorded under Section 313 Cr.P.C. wherein he has denied having committed any cheating and having abused his official position for any unlawful gain.

42. In the case of **Jupally Lakshmikantha Reddy v. State of A.P.:** 2025 SCC OnLine SC 1950, the Hon'ble Supreme Court relied upon the precedent in the case of **Hridaya Ranjan Prasad Verma v. State of Bihar**: (2000) 4 SCC 168, wherein it was held that Section 415 IPC contemplates two distinct situations; the first where a person is dishonestly induced to deliver property, and the second where a person is induced to do or omit an act which, but for the deception, he would not have done or omitted. In the former, the inducement must be fraudulent or dishonest, whereas in the latter it need only be intentional. Therefore, intention is the gist of the offence.

43. The only allegation against the appellant is that he was the store keeper and, in a verification, conducted by another single official without involving the appellant, 64 tonnes steel was found missing in the premises. The prosecution witnesses have stated that no material could move out without issuance of a gate pass and admittedly no gate pass has been issued. There is no proof that the appellant had obtained any valuable thing or pecuniary advantage to himself or that he had intentionally enriched himself illicitly through the alleged act. Further, the appellant has not been found to be in possession of pecuniary resources or property disproportionate to his known sources of income at any time during the period of his office which may cast a doubt about him having abused his official position during his term of office for pecuniary gain. In light of the said facts, charges under Section 13(1)(d) of Prevention of Corruption Act cannot be said to be proved against the appellant and the prosecution has rather miserably failed to establish the charges against the appellant. The trial Court has convicted and sentenced the appellant without adverting to the aforesaid aspects of the matter, due to which the findings of the Trial Court are vitiated.

44. Accordingly, the appeal is ***allowed.*** The judgment and order dated 29.09.2009, passed by the learned Special Judge, Anti-Corruption, U.P. (Central), Lucknow in Criminal Case No.5 of 2002, arising out of RC No.15(A) of 2000, titled State Vs. Prem Pal Singh, whereby the appellant has been convicted and sentenced for the offences under Section 420 I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, is set aside. The appellant is acquitted of all the charges.

45. The amount of fine shall be refunded to the appellant.

46. The appellant is directed to comply with the provision of Section 437-A Cr.P.C. and submit a personal bond and two sureties before the Chief Judicial magistrate, Lucknow, within a period of two weeks, for his appearance before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal and such bail bonds shall be in force for six months.

(2026) 7 ILRA 282
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.07.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 2343 of 1989

Ram Autar & Ors. **...Appellants**
Versus
State **...Respondent**

Issue for consideration

The appellants challenged their conviction and sentence under section 302, 498-A, 323 IPC for the alleged murder of the deceased-wife by administering poison. She was subjected to continuous dowry harassment and torture by her in-laws demanding business funds.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302., 498-A, 323-Criminal Procedure Code,1973-Section 374(2)-Murder by Poisoning-Inconsistencies in Prosecution evidence-Physical impossibility of forced poisoning without resistance injuries-Failure of the trial court to confront the accused persons with the viscera report during their Section 313 examination renders the said report completely inadmissible and excluded from consideration against them-Prosecution fails to establish a continuous and untampered chain of custody of preserved viscera, failing to produce entry registers, safe –custody logs from the CMO office, or witness testimony from the forensic laboratory-the viscera report loses all evidentiary value and cannot form the basis of conviction-Appeal Allowed.(Para 21 to 35) (E-6)

Held

The court allowed the appeal and acquitted the surviving appellants due to major witness contradictions, lack of defensive injuries on the deceased or accused during alleged forced poisoning, unreliability of PW-3's injuries, and severe chain of custody defects in handling the viscera report which was also never put to the accused under section 313 CrPC. Conviction set aside.

Case law Cited

Chandan Pasi & Ors. Vs The State of Bihar 2025 SCC OnLine SC 2599., Kalicharan & Ors. Vs State of U.P. (2023) 2 SCC 583, Sharad Birdhichand Sarda Vs State of Maharashtra, Samsul Haque Vs The State of Assam (2019) 18 SCC 161, Sujit Biswas State of Assam (2013) 12 SCC 406, Maheshwar Tigga Vs State of Jharkhand (2020) 10 SCC 108, Asraf Ali Vs State of Assam-referred to.

List of Acts

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

List of Keywords

Murder, Poisoning, Zinc Phosphide, Section 313 CrPC, Viscera Report, Surviving Appellant, Major witness contradictions, Forensic science laboratory, Injuries, Conviction, Conclusive piece of evidence, C.M.O. Office.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 2343 of 1989

Ram Autar & Ors. Vs. State
From the judgment and order dated 03.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-
Amit Saxena, Kunwar Bhaskar Parihar, Vikas Sharma
Adv for Respondent(s):-
D.G.A.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Vikas Sharma and Sri Kunwar Bhaskar, learned counsel for the appellants and Sri Amit Sinha, learned A.G.A. for the State.

2. The instant Criminal Appeal has been filed against the judgement and order dated 07.12.1989 passed by the Ist Additional District & Sessions Judge, Kanpur Nagar, convicting the appellants Ram Autar, Rakesh Kumar Misra @ Doctor, Laddan Misra @ Mahesh and Smt. Rajdei under Sections 498A, 302, 323 of the Indian Penal Code (hereinafter referred to as "I.P.C."), Police Station Maharajpur, District - Kanpur Nagar.

3. On the 13th of January, 1986 at 10:00 AM, a first information report (hereinafter referred to as "F.I.R.") was lodged under Section 498A and 328 of I.P.C. alleging that the brother of the first informant (Ganga Ram Sevak Pandey) had alleged that his sister Vijay Laxmi, who was married to one Rakesh Mishra @ Doctor in the summer of 1984, was all the time being tortured by the in-laws. After her marriage she had gone to her maternal home (maika) two or three times only. Everytime she had visited her maika, she used to complain about being tortured and beaten at her in-laws house (sasural). She, deceased, had told him that the in-laws were saying that her brothers may give money to the husband of Vijay Laxmi to do business or her brothers may make the husband of Vijay Laxmi a partner in their business. On 12.01.1986, he had stated that his brother Ganga Charan and the son of his other sister had gone to the house of Vijay Laxmi to bring her to her maternal home (mayka). The son of the other sister was named Vijay Kishor @ Munna. When they asked the mother-in-law to send Vijay Laxmi to her mayka, she outrightly refused and again insisted on the demands which she had earlier made. Upon this Ganga Charan, the brother of the first informant, returned home. However, the bhanja i.e. Vijay Kishor @ Munna was left behind. On the next day i.e. on 13.01.1986 at around 10:00 AM, the bhanja went to the house of the first informant and informed the first informant and his brothers that his mausi i.e. Vijay Laxmi was not being permitted to go to her maika and that she was also being beaten by the in-laws. He also indicated that they were giving Vijay Laxmi something to eat and were saying that if she did not eat what was being given to her then they would beat her even more. The bhanja had stated that when he tried to intervene then he was also given a beating by the in-laws of Vijay Laxmi. Upon this, the first informant reached the matrimonial house of Vijay Laxmi at Bausar, where he was informed that Vijay Laxmi was suffering from cholera. However, when the first informant inquired

about the well being of Vijay Laxmi, then she informed that the in-laws had given her something to eat and because of which her tongue was faltering and she was not feeling very well.

4. To make the case look stronger, the first informant stated that the demands which were made by the in-laws were made in the presence of Dinesh Kumar, Shravan Kumar Shukla and Shriprakash Mishra. He had stated that upon the information reaching the mayka, the other two brothers i.e. Ganga Prasad Pandey and Ganga Sharan Pandey also reached Bausar, the matrimonial home of the sister. Upon seeing that the sister was not very well, Ganga Prasad Pandey and Ganga Sharan Pandey, the two brothers who had reached Bausar, made arrangements for transportation and took their sister to Kanpur. He himself i.e. Ganga Ram Sevak had come to the police station to get the F.I.R. lodged. The sister of the first informant, upon reaching Kanpur, however died on 13.01.1986 at 07:00 PM. The case was thereafter being investigated under Section 498A and 302 of the I.P.C. The inquest of the deceased was done in the presence of five witnesses namely Ganga Prasad, Shyam Shankar, Shyam Sundar, Arvind Kumar and Smt. Rekha Devi. Ganga Prasad was one of the brothers of the deceased. In the opinion of the panches, it was stated that the death had occurred on account of administration of poison. The inquest, which had commenced at 11:30 AM on 14.01.1986, got concluded on the very same day by 12:30 PM. Thereafter, the body was sent for postmortem. The postmortem report was dated 15.01.1986 and was finally prepared at 03:45 PM. The two injuries which were on the body of the deceased were

"(i) Abrasion 2□ cm x 2 cm on (Rt) Paraspinal region 2 cm lateral to midline at the level of 10th & 11th Dorsal Spine.

(ii) Abrasion 3 cm x 2 cm on the left Paraspinal region 3 cm lateral to midline at the level of 11th & 12th Dorsal Spine.

5. Also, since the bhanja i.e. Vijay Kishor @ Munna had alleged that he was also injured while the in-laws were beating the deceased, his injuries were also examined and an injury report was prepared on 13.01.1986 itself. The three injuries, which were found on Vijay Kishor, are being reproduced here as under:

"(i) Bruise on left side of moxbridge 1 cm medial to medial angle of left eye. Size 2.1 cm x 1.8 cm.

(ii) Bruise in the ant. aspect of Rt. Thigh & above Rt. knee joint size 4.6 cm x 2.1 cm some bluish in colour

(iii) e/o pain in back

Opinion:- Injuries No. i & ii are simple caused by some hard & blunt object and duration is about one day

6. The viscera report, which was sent after the conclusion of the post-mortem, was received on 27.10.1986 and in the stomach, portion of intestine, kidneys and spleen, the poison "zinc phosphide" was found.

7. After the police had submitted its report and the case was taken cognizance of by the Sessions Court, charges were framed under Section 302 and 498A of I.P.C. for the killing and torturing of the deceased vis-a-vis Rakesh Kumar Misra @ Doctor, Laddan Misra @ Mahesh (Jeth), Ram Autar (Father-in-law) and Smt. Rajdei (Mother-in-law). For the injuries caused to Vijay Kishor @ Munna, charges were framed under Section 323 of I.P.C. Upon the commencement of the trial from the side of the prosecution as many as ten witnesses were examined. The PW-4, Dr. A.K. Tiwari, was brought as a court witness also.

8. PW-1, Ganga Sewak, was the brother of the deceased and had got the F.I.R. lodged and he deposed about the incident in question resulting in death of his sister. He had proved the written report Exhibit Ka-1 and he had also proved the F.I.R. Exhibit Ka-12. He had testified as to how, to begin with, on the 12.01.1986, his younger brother Ganga Charan and bhanja, Vijay Kishor @ Munna, had gone to fetch his sister. When the in-laws had refused to send the sister, then Ganga Charan had gone back to his house while the nephew had stayed back. The PW-1 had again told as to how the nephew came running to him on 13.01.186 and told about the entire incident. He also told about the injuries he had sustained. Upon getting the news, he alongwith his younger brothers Ganga Prasad and Ganga Charan reached the matrimonial home of the deceased where he found Kamta Mishra and Rakesh Kumar were present who, upon being asked, had told him that she was suffering from cholera. When he reached his sister she also told him that she was suffering from cholera and then he had testified that he went to a doctor called Dr. Ramesh Kumar Sharma who had refused to treat her as he could not understand the illness. When the doctor scolded Vijay Laxmi, the deceased, and had asked her as to what exactly had happened then she had stated that her husband and her mother-in-law had given her some medicine because of which her condition had deteriorated. Thereupon, the other brother of the deceased and the first informant i.e. Ganga Prasad took the sister on a tempo to Kanpur and on the way she died. He had stated that to the scribe he had told that Vijay Laxmi was administered some medicine by her mother-in-law and her husband, but why the specific allegation had not been mentioned in the F.I.R., he did not know. He had, however, stated that when he had reached the matrimonial home of his sister, she was very much speaking. Vijay Kishor @ Munna, bhanja, quite often used to go to the sister□s matrimonial home, but he had never informed him i.e. PW-1 about the maltreatment which was being meted out to his mausi. He had stated that Rakesh Kumar Mishra @ Doctor and Vijay Laxmi used to stay in a separate unit of the house. He had also stated that there was no froth coming out of the mouth of the deceased while she was alive or even after she had died.

9. PW-2, Shri Kant Shukla, was the Executive Magistrate, Kanpur. He had deposed about the panchayatnama being prepared by him relating to the dead-body of Vijay Laxmi. He was also the person who had sent the body for postmortem.

10. PW-3, Vijai Kishore, was the bhanja, who was related to the deceased and the PW-1, and had deposed about the fact relating to his presence at the time of the beating of Vijay Laxmi by the family members of Rakesh Kumar Misra @ Doctor. He had also detailed about the fact that Vijay Laxmi was forced to eat something and it had later on resulted in her death. Even though the PW-1 had stated that the bhanja had stayed back on 12.01.1986, he had stated that after his mama had left the matrimonial home of the deceased, he had also returned home and on his return journey he had visited some farmer to get wheat etc. which he intended to sell for weiging and thereafter he

had gone back to his mausi□s house where he witnessed that the mausi was being beaten and when he intervened, he was also beaten by them with danda (stick). His nose was therefore bleeding. However when the in-laws of the mausi, the next morning, went for answering the call of nature, he ran away from the house of his mausi and went straight to the house of PW-1. He informed that in the night Rakesh Kumar Misra @ Doctor, husband of the deceased, had dissolved some medicine in water and had given it to Vijay Laxmi. Despite the fact that mausi was unable to drink that medicine, Rakesh Kumar Misra had still administered it to her. He had stated that when he had come back in the evening on 12.01.1986 then no one by the name of Kamta Mishra was there at the house of his mausi. About the medicine which was administered, questions were put to him and he had stated that he had no knowledge as to what kind of medicine it was, but the husband of his mausi had spread her mouth and had forcefully poured it into the mouth. Whether her mausi had resisted, he did not know. He had not seen the colour of the medicine. After the medicine was administered, water was also given to his mausi.

11. PW-4, Dr. A.K. Tiwari, was the doctor who had proven the post-mortem report, Exhibit Ka-7, which was prepared by him. He had stated that the injuries which were there on the body of the deceased were not serious in nature and could have been caused because of the fact that she was taken on a tempo to the hospital. He had stated that the viscera which was preserved, was sealed in his presence and the viscera was sent to the C.M.O. Office. What number was there on the preserved bottle, he did not know. When the bottle was taken to the Office of the C.M.O., he did not know and where from the Office of the C.M.O. the bottle had gone that also he did not know.

12. PW-5 was Dr. D.R. Verma who had examined the injuries of the bhanja, Vijay Kishor @ Munna.

13. PW-6, Dr. Ramesh Chandra, was the doctor to whom the PW-1 had taken his sister in the evening on 12.01.1986. This doctor was taken to the house of the sister i.e. Vijay Laxmi and he had advised her to be taken to Kanpur for proper treatment.

14. PW-7 was Constable Raj Narayan Singh who had proved the G.D. entry about the arrest of Ram Autar, father-in-law of the deceased.

15. PW-8, Chitrangad Singh, was the Investigating Officer. He had clearly stated that the PW-3 Vijay Kishor @ Munna had stated in his statement under Section 161 of Cr.P.C. that Kamta Mishra was present at the time when the beating etc. of the deceased was being done. He had stated that he had not taken any statement of the chemical examiner who was to conduct the test on the viscera. The viscera was sent to the C.M.O. Office by Constable Rajpal, PW-10.

16. PW-9 was Constable Upendra Kumar Dubey who had proven the chick, prepared by him.

17. PW-10 was Constable Rajpal who had stated that he had taken the sealed bottle from the Office of the C.M.O. on 21.03.1986 to the Forensic Science Laboratory.

18. Dr. A.K. Tiwari, PW-4, who had conducted the post-mortem was called again as a court witness and had told about the fact that zinc phosphide was responsible for the death of the deceased. Thereafter, the statement of the four accused persons namely Ram Autar, Rakesh Kumar Misra @ Doctor, Laddan Misra @ Mahesh and Smt. Rajdei were recorded under Section 313 of Cr.P.C. Upon the conclusion of trial when the judgment of conviction was passed by the learned Ist Additional District and Sessions Judge, Kanpur Nagar on 07.01.1989, the instant Appeal was filed.

19. The appellant no. 4, Smt. Rajdei, died during the pendency of the appeal and the appeal, therefore, was dismissed as abated vis-a-vis the appellant no. 4

20. Sri Vikas Sharma and Sri Kunwar Bhaskar, learned counsel appearing for the appellants have made the following submissions:

(i) Learned counsel for the appellants submitted that even though the conviction was on the basis of the fact that some poison had been administered to the deceased, there was absolutely no eye-witness to the fact that any poison was administered. He submitted that there was a possibility of the fact that because the matrimonial life of the deceased was not a happy one, she had herself taken the poison. He had stated that at the time of the lodging of the F.I.R., the PW-1 had stated that the deceased had told him that something had been given to Vijay Laxmi to eat. To corroborate this evidence, the PW-3 gave his statement but he had clearly stated that something was mixed in water and was administered to her and she was made to drink the same and thereafter water was also given to her. Learned counsel for the appellants further submitted that there was every possibility that the deceased herself had taken the poison earlier and thereafter the in-laws were trying to give her medicines without understanding the reason for her illness. Even the PW-1, had though stated in the examination-in-chief that his sister had told him that the in-laws had given something to eat but, in the cross-examination he had stated that she had categorically stated that she was suffering from cholera. He had stated that Dr. Ramesh Chandra, the PW-6, had stated that the condition of the patient was not good and, therefore, the version of the PW-1 who had stated that her husband and her mother-in-law had given to her poison mixed in the medicine, could not believed as she was not in a condition to speak.

(ii) Learned counsel for the appellants submitted that the PW-3 had wrongly been shown as an eye-witness of the alleged incident. His age was only 12 years at the time he was testifying in the court. He was shown as a shopkeeper. He had given a contradictory statement that the husband had not given the medicine but it was in fact given by Laddan Misra i.e. jeth of the deceased and also nothing was given to her to eat but something was mixed in water and was given to her. This witness had denied the presence of Kamta Misra but the I.O. had stated that in fact Kamta Misra was throughout there and in his statement under Section 161 of Cr.P.C. the PW-3 had also stated that Kamta Misra was present at the spot. Learned counsel stated therefore that the PW-3 was an unreliable witness.

(iii) Further, learned counsel for the appellants stated that “zinc phosphide” was a pesticide which could not be given on the sly. It had a bitter taste and had a bad/foul smell and if it had to be given forcefully then the person who was being administered and was in a good health would resist the taking of it tooth and nail. However, if she had taken it herself then it was a

different matter altogether. He had stated that the injuries as had been opined by the doctor who had conducted the post-mortem were also not the injuries which were a result of beating etc. but were a result of the fact that she had got injured by the tempo on which she was being carried to the hospital.

(iv) Even the injuries of the PW-3, he submitted, had appeared to be self inflicted. He had stated that the PW-3 had himself stated that he had after getting the beating, gone to deal with some shopkeepers and had also weighed wheat etc. This could not have happened if he had already received a beating and he was bleeding.

(v) The three brothers namely Ganga Prasad, Ganga Charan and Ganga Sharan were very much witnesses of what had happened and in fact Ganga Prasad and Ganga Sharan had also accompanied her to the hospital at Kanpur but they were never produced in the witness box.

(vi) Learned counsel for the appellants stated that the viscera report itself was shrouded in mystery. After the doctor who had conducted the post-mortem had sealed the viscera, it was nowhere entered in any register. Who received it and took it to the Office of the C.M.O. and who thereafter kept guard over it, was not clear from the case of the prosecution. Which viscera and whose viscera, the PW-10, Constable Rajpal, had taken from the Office of the C.M.O. to the Forensic Science Laboratory, was not clear. Even the expert at the forensic science laboratory was not produced. The accused persons were neither confronted by the viscera report nor were they confronted with the viscera while the statements of their were being recorded under Section 313 of Cr.P.C.

21. With regard to the above argument, learned counsel for the appellants relied upon the judgment of the Apex Court in **Chandan Pasi & Ors. versus The State of Bihar reported in 2025 SCC OnLine SC 2599**. He relied upon the paragraphs no. 6 to 9 of this judgment and the same are being reproduced here as under:

"6. One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.

7. This Court, in many judgments, delineated the scope and object of"Section 313"CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

7.1. In Sanatan Naskar v. State of W.B4, this Court as follows, regarding the scope of the examination under Section 313 CrPC:

"21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. ...

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. ..."

(emphasis supplied)

*7.2.In **Indrakunwar v. State of Chhattisgarh5**, this Court, through one of us (Sanjay Karol, J.), after consideration of various judgments formulated the following principles vis-□- vis this Section:*

"35. A perusal of various judgments15 rendered by this Court reveals the following principles, as evolved over time when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning. 35.6 The right

to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under"Section 3"of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision."

7.3. In ***Raj Kumar v. State (NCT of Delhi)6*** *as subsequently approved by a bench of three-Judges in* ***Aejaz Ahmad Sheikh v. State of U.P. and Another7****, the Court laid down the following factors:*

"22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

[See also: ***Ranvir Yadav v. State of Bihar8 and Naresh Kumar v. State of Delhi)9]***

8. Having duly considered the position of law and principles as above, we now examine the statements of the appellant(s) recorded under this Section. For ready reference, the statements are reproduced below:

Appellant No.1 (Chandan Pasi) statement:

"My name is Chandan Pasi, My Father's name is Birendra Pasi "

1. Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM, with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False statement.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.2 (Pappu Pasi) statement:

"My name is Pappu Pasi @ Hindustan Pasi "

1. Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegation.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.3 (Gidik Pasi) statement:

"My name is Gidik Pasi "

1. Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

*9. The statements extracted above reveal a sorry state of affairs- an abject failure on the part of the Court in complying with the basic tenets of law. The statements given by all three persons are carbon copies of each other. How such statements can pass muster at the hands of the learned Trial Judge is something which we fail to understand. Out of the four questions asked, directly related to the sequence of events, were only two. The second question was as general as can be, with reference to only the bare allegations, to which an omnibus denial was issued. The third was also of similar nature, saying that it has been alleged and evidenced, and nothing further. This cannot be said to be the putting of every material circumstance. It is equally disturbing for us to see that in the desire to secure a conviction for the accused persons, the prosecutor also let their duty of assisting the Court in conducting the examination of the accused under this section fall by the wayside. The prosecutor is an officer of the Court and holds a solemn duty to act in the interest of justice. They cannot act as a defence lawyer, but for the State, with the sole aim of making the gauntlet of punishment fall on the accused. [See**: Sovaran Singh Prajapati v. State of U.P.10]***

22. He further relied upon a judgment in **Kalicharan & Ors. versus State of Uttar Pradesh reported in (2023) 2 SCC 583**. Since the learned counsel for the appellants relied upon the paragraphs no. 16, 17, 20, 21 and 22 and they are being reproduced here as under:

"16. There are provisions made in CrPC in Chapter XVII regarding the framing of charge. The object of the said provisions is obviously to make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him. The object of the provisions regarding the framing of charge is that accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. That is why there are elaborate provisions in CrPC in that behalf. Sub- section (1) of Section 212 is material for our consideration which reads thus:

*"212**. Particulars as to time, place and person**.-(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.*

What is more important for this case is Section 213 which reads thus:

***"213. When manner of committing offence must be stated.-**When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."*

17. The emphasis is on giving details of the manner of committing offence. Unless the particulars such as specific Sections of the penal statute as well as the time and place of the

commission of the alleged offence are incorporated in the charge, the accused will not be in a position to properly defend himself. Even these particulars may not be enough in many cases to enable the accused to properly defend himself. That is why there is a specific requirement incorporated in Section 213 that if the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. Illustration (e) to Section 213 provides that when the charge contains an allegation that □A□ is accused of the murder of 'B' at a given time and place, the charge need not state the manner in which 'A' murdered 'B'. Going by the charge framed in this case, it is alleged therein that it was accused no.2 who murdered deceased Harpal Singh by firing bullets from his pistol. Though the case of the prosecution as can be seen from the evidence is that accused nos.1, 3 and 4 committed the murder of Harpal Singh by using sharp weapons in their hand, there is no charge framed against accused nos.1, 3 and 4 alleging that they murdered Harpal Singh. As there is no charge framed against accused nos.1,3 and 4 of committing the murder of Harpal Singh, Illustration (e) will not apply. Therefore, it was necessary to frame a charge in terms of Section 213 by stating the manner of committing the offence of murder by accused nos. 1,3 and 4.

20. When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.

21. At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus:-

"313. Power to examine the accused.-(*1) In every inquiry or trial,* ***for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him,*** *the Court"*

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]"

The questions in separate statements of the accused nos. 1 to 4 recorded by the Trial Court are almost identical. Question no.5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal Singh. Question no.5 put to accused no.3 reads thus:-

"Ques 5 - That it has come up in prosecution evidence that on being exhorted by ***accused Kalicharan, accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his country made pistol with intention to kill, that hit complainant's cousin Harpal Singh and he died on the spot.***

What do you have to say in this regard?"

(emphasis added)

22. Such a case was not at all made out by the prosecution in the evidence before the Court. The material brought on record by the prosecution witnesses (PW-1 and PW-2) is to the effect that Harpal Singh died due to injuries sustained as a result of an attack made by accused nos.1,3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh. It is not put to the witness that the cause of death of Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons. Questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself. In paragraph 21 of the decision of this Court in the case of ***Jai Dev v. State of Punjab1****, it was held thus:-*

"21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468] . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him

a chance of explaining it if he can. But these observations must be read in the light of the other conclusions 1 (1963) 3 SCR 489 reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. ***The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances****. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination.* ***The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity****. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material."*

(emphasis added)

In paragraph 145 of the well known decision of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra****2, it was held thus:*

"145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. ***In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration."***

(emphasis added)

23. For the same argument learned counsel for the appellants also relied upon **Samsul Haque versus The State of Assam reported in (2019) 18 SCC 161**. Since he relied upon the paragraphs no. 13, 21 and 22 of this judgment and the same are being reproduced here as under:

"13.In the aforesaid context learned Senior Counsel has referred to the judgment of this Court in Sharad Birdichand ***Sarda v. State of Maharashtra1*** *to contend that if the circumstances are not put to the accused in his statement under Section 313 of the Cr.P.C., they must be completely excluded from consideration because the accused did not have any chance to explain*

them. This is stated to be the consistent view of this Court starting from 1953 in the case of ***Hate Singh Bhagat Singh v. State of Madhya Bharat2*** *Learned Senior Counsel also referred to the judgment in* ***Sujit Biswas v. State of Assam3*** *for the proposition that the very purpose of examining the accused persons under Section 313 of the Cr.P.C. is to meet the requirement of the principles of natural justice, i.e., audi alteram partem. The accused, thus, must be given an opportunity to explain the incriminating material that has surfaced against him and the circumstances which are not put to the accused in his examination underSection 313 of the Cr.P.C. cannot be used against him and must be excluded from consideration.*

21. The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to accused No.9, and the statement recorded under Section 313 of the Cr.P.C. To say the least it is perfunctory.

22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in ***Asraf Ali v. State of Assam7.*** *The relevant observations are in the following paragraphs:*

"21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom 7 (2008) 16 SCC 328 that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S. Harnam Singh v. The State (AIR 1976 SC 2140), while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non- indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.

24. Relying upon the abovementioned judgments, learned counsel for the appellants submitted that in the absence of the confrontation of the viscera and its report vis-a-vis the accused persons, the viscera and its report could not be relied upon by the prosecution for the purposes of the conviction of the accused. In this regard, learned counsel for the appellants relied upon a judgment of Supreme Court **in Sujit Biswas v. State of Assam reported in (2013) 12 SCC 406.**

The relevant portion of this judgment is the paragraph no. 20 and the same is being reproduced here as under:

"20. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 CrPC, is to meet the requirement of the principles of natural justice i.e. audi alteram partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 CrPC, cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement."

25. Also, learned counsel for the appellants relied upon the judgment in **Maheshwar Tigga versus State of Jharkhand reported in (2020) 10 SCC 108**. Since he relied upon the paragraphs no. 7 to 9 of this judgment, they are being reproduced here as under:

"7. A bare perusal of the examination of the accused under Section 313 CrPC reveals it to be extremely casual and perfunctory in nature. Three capsuled questions only were asked to the appellant as follows which he denied:

"Question 1. There is a witness against you that when the informant V. Anshumala Tigga was going to school you were hiding near Tomra canal and after finding the informant in isolation you forced her to strip naked on knifepoint and raped her.

Question 2. After the rape when the informant ran to her home crying to inform her parents about the incident and when the parents of the informant came to you to inquire about the incident, you told them that □if I have committed rape then I will keep her as my wife"

Question 3. On your instruction, the informant's parents performed the "Lota Paani" ceremony of the informant, in which the informant as well as your parents were present, also in the said ceremony your parents had gifted the informant a saree and a blouse and the informant's parents had also gifted you some clothes."

8. It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.

9. This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 CrPC. In Naval Kishore Singh v. State of Bihar [Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502 : 2004 SCC (Cri) 1967] , it was held to be an essential part of a fair trial observing as follows: (SCC p. 504, para 5)

"5. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence."

26. Also reliance was placed upon the judgment of **Asraf Ali v. State of Assam** and since he relied upon paragraphs 21, 22 and 24 of this judgment and the same are being reproduced here as under:

"21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (Delhi Admn.) [(1976) 2 SCC 819 : 1976 SCC (Cri) 324 : AIR 1976 SC 2140] while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.

24. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial court, with a direction to retry from the stage at which the prosecution was closed."

27. Sri Amit Sinha, learned Additional Government Advocate, however, opposed the Appeal and submitted that no advantage could be taken by the appellants of the fact that the appellants were not confronted with viscera and its report. Definitely, the viscera was sealed and was sent to the C.M.O. Office and from there, in the sealed state, it was sent to the forensic science laboratory. He also submitted that the PW-1 and the PW-3 were reliable eye-witnesses and that the deceased had stated in the presence of the PW-1 and PW-3 that poison was administered to her then it could not be in any way doubted. Also, he submitted that the PW-3 was a young boy of 11 years at the time of occurrence and, therefore, he could while he was keeping guard of his mausi go outside and also deal with customers and this did not mean that he was in any manner not present at the spot and was only trying to make out a case. He further submitted that since the deceased was bodily weak even if the bitter taste and the bad smell of the poison were there she might have not resisted while it was being administered.

28. Having heard the learned counsel for the parties, we find that the deceased had four brothers but only PW-1 was active and the other brothers though had appeared on the scene, but never appeared in the court. Also, we find that the PW-1 in his statement-in-chief had stated that something had been forcefully administered to the deceased but in his cross-examination he had stated that the deceased had told him that she was suffering from cholera. Also, he had stated in his cross-examination that when the doctor had scolded her then she had divulged that in fact she had been administered something forcefully. This fact as was placed before us was not believable because at the time when the doctor i.e. Dr. D.R. Verma was looking after the deceased, he had opined that she was in a very bad condition and that she had to be taken to Kanpur Nagar and there was thus every possibility that she might not have spoken at all. The PW-3, we find, had throughout been consistently stating that something was mixed in water and then the deceased was made to drink the same. This story becomes very different from the story that the PW-1 had come up with that the deceased had told him while she was alive that she had been made to eat something. In a case where the guilty has to be punished with a punishment as grave as life imprisonment, the prosecution case has to be dealt very cautiously and when there was a definite digression in the cases taken by the PW-1 and the PW-3 then the Court should deal with the matter very prudently and if there is inconsistency in the case taken by the prosecution witnesses then it should lean in favour of the accused.

29. Also, we find that the poison □zinc phosphide□ is not such a poison which can be administered on the sly. It tastes bitter and has a very bad smell. Thus if a person who is hale and hearty is administered that poison then he or she would resist to the administration of the same and would get injuries on her body and if he or she would resist powerfully then the person who was administrating would also get injured. In the instant case, the mother-in-law who was an elderly person definitely would have got some injuries, but we find that no injuries were there either on the mouth of the deceased or on the persons who were trying to administer the poison because of the resistance put up by the deceased.

30. What is more, we find that neither the viscera nor the report with regard to it had been ever placed before the accused persons when their statements were being recorded under Section 313 of Cr.P.C. Even though questions were put with regard to poison being administered, no question was put with regard to the viscera and its report. Definitely, as per all the judgments which have been cited by the learned counsel for appellants, the viscera report should therefore not be taken into account at all.

31. What is more, the Court here again would lean in favour of the appellants and would decide, not to look into the viscera report because we find that after the viscera was sealed as per Dr. A.K. Tiwari, PW-4, it was not certain as to where the viscera was kept. No entry with regard to its preservation in any register was produced before the Court. No one was produced before the court, who would have, with any responsibility, stated that he had taken the sealed viscera from the doctor who had sealed it to the Office of the C.M.O. Also, no one from the C.M.O. Office was produced to state that the viscera was kept in safe custody. Only the PW-10, Constable Rajpal, was produced who had stated that he had taken a sealed viscera to the forensic science laboratory. He did not state as to from whose custody he had taken the sealed viscera and he also did not state as to in whose hands he handed over the viscera. We also find from the entire evidence which has been placed before us that no one from the forensic science laboratory was produced to prove the fact that in fact the viscera had come in a sealed state or whether it was entered in some register and thereafter it was kept in the safe custody of some malkhana and thereafter it was taken by the PW-10, Constable Rajpal, to the laboratory. It was not shown that it was handed over by some responsible person and thereafter it was got received in the forensic science laboratory.

32. In view of what we have observed, we are definitely of the view that no reliance can be placed on the viscera report. The viscera report alone was a conclusive piece of evidence which would have gone to show that murder was done by the accused persons by administering poison and since the viscera report itself now becomes such an evidence which as per us cannot be read in evidence, we are definitely of the view that the appeal should be allowed and the accused be acquitted.

33. So far as the injury on the body of the PW-3 is concerned, we find that his case also is not very reliable as he himself had stated that on 12.01.1986, he had intermittently gone out of the house of his mausi and had also dealt with shopkeepers. Meaning thereby that if there were any injuries as were examined by the doctor, PW-6, then they could have been self inflicted only to make out a case.

34. We are thus of the view that the appellants namely Ram Autar, Rakesh Kumar Misra @ Doctor and Laddan Misra @ Mahesh be acquitted of all the charges for which they were tried.

35. The Appeal is **allowed**. The judgment and order dated 07.12.1989 passed by the Ist Additional District & Sessions Judge, Kanpur Nagar in Session Trial No. 180 of 1986 is hereby set-aside.

36. If the appellants are on bail, they need not surrender and their sureties and bail bonds be discharged. The trial court record be sent back to the concerned trial court.

(2026) 7 ILRA 302
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Appeal No. 2377 of 1989

Chhail Behari **...Appellant**
Versus
State **...Respondent**

Issue for Consideration

Matter pertains to - determination of the sustainability of conviction under Ss. 302 and 307 IPC - appreciation of the testimony of an injured eyewitness and a related eyewitness - evidentiary value of prompt lodging of the FIR and recovery of empty cartridges from the place of occurrence - effect of non-recovery of the weapon of offence, non-examination of certain witnesses and the treating doctor, hostility of an independent witness, and minor discrepancies between ocular and medical evidence - effect of previous enmity and alleged false implication - whether the prosecution evidence establishes guilt beyond reasonable doubt and whether the conviction and sentence call for interference in appellate jurisdiction. (Paras 16-35)

Headnotes

Criminal law - Indian Penal Code, 1860 - Ss. 302, 307 - Conviction - Appreciation of evidence - Injured eyewitness - Reliability - A conviction can safely be based on the testimony of a single injured eyewitness, provided that the eyewitness is wholly reliable - evidence of the injured eyewitness being natural, consistent and inspiring confidence, corroborated by medical evidence, prompt lodging of FIR, recoveries made during investigation and surrounding circumstances - conviction upheld. (Paras 25, 27, 30, 32)

Criminal procedure - Code of Criminal Procedure, 1973 - FIR - Alleged ante-dating - Prompt lodging - FIR lodged within a short time of the incident - FIR, inquest report and injury report reflecting a continuous and natural sequence of events - delay in recording statement under S. 161 Cr.P.C. explained by condition of injured witness - allegation of ante-timing unsupported by convincing evidence - FIR held not ante-timed. (Para 23)

Evidence - Ocular evidence - Medical evidence - Appreciation - Medical evidence is primarily corroborative in nature - substantive evidence remains the testimony of eyewitnesses - minor variances between medical and ocular evidence are not sufficient to discredit otherwise cogent and trustworthy testimony unless they go to the root of the matter. (Paras 27, 29, 32)

Evidence - Injured witness - Evidentiary value - An injured witness's testimony carries special evidentiary weight, since such a witness's presence at the scene is ordinarily beyond doubt and such a witness would not ordinarily let the real assailant escape to falsely implicate another - corroboration being a rule of prudence rather than law. (Para 25)

Evidence - Related witness - Independent witness - Non-examination - A relationship with the victim does not, by itself, render a witness interested or require independent corroboration - non-examination of other witnesses does not weaken the prosecution case where their evidence would at best be cumulative and a reliable injured eyewitness has deposed to the occurrence. (Paras 26, 29)

Evidence - Medical evidence - Non-examination of treating doctor - Non-examination of the treating doctor does not by itself destroy the prosecution's case where the injury report stands proved and is corroborated by reliable eyewitness testimony and no prejudice is shown to have been caused to the defence. (Para 32)

Evidence - Recovery - Weapon of offence - Non-recovery - Non-recovery of the firearm is not, by itself, fatal where the prosecution has otherwise placed cogent evidence on record connecting the appellant with the offence, including recovery of six empty cartridges from inside and outside the house consistent with the ocular account. (Para 29)

Evidence - Motive - Previous enmity - Where the occurrence is proved by reliable direct evidence, motive recedes in importance and matters more in cases of circumstantial evidence - plausible motive arising out of previous hostility nevertheless established. (Para 24)

Criminal trial - Defence plea - Dacoity - Suggestion that the occurrence was in fact a dacoity, unsupported by any evidence on record, could not displace the direct testimony of the injured eyewitness. (Para 29)

Appellate jurisdiction - Criminal appeal - Judgment of conviction and order of sentence do not suffer from any illegality, perversity, or infirmity warranting interference by the Court in exercise of its appellate jurisdiction - appeal devoid of merit and dismissed. (Paras 33, 34)

Held: The prosecution has established the appellant's guilt beyond reasonable doubt - the testimony of the injured eyewitness inspires confidence and is duly corroborated by the medical evidence, the prompt lodging of the First Information Report, the recoveries made during the course of the investigation, and the surrounding circumstances - the evidence of the informant also supports the prosecution case - the previous enmity between the parties furnishes a cogent motive for the commission of the offence, though the case itself rests on reliable direct evidence and not merely on motive - the contention regarding ante-dating of the First Information Report does not merit acceptance, the FIR, inquest report and injured witness's injury report reflecting a continuous and natural sequence of events immediately following the occurrence - the delay in recording the injured witness's statement was explained by her condition and cannot, by itself, suggest fabrication or an ante-timed report - a conviction can safely be based on the testimony of a single injured eyewitness, provided that the eyewitness is wholly reliable - the evidence of the injured eyewitness is natural, consistent and inspires confidence and there is no material contradiction or inherent improbability warranting its rejection - the absence of independent local witnesses and the fact that no villager arrived during the incident were satisfactorily explained by the location of the house outside the main habitation - non-recovery of the firearm is not, by itself, fatal where cogent evidence otherwise connects the appellant with the offence - non-examination of other witnesses does not weaken the prosecution case where their evidence would at best be cumulative - the alleged absence of blackening or tattooing around the gunshot wound does not so contradict the ocular account as to render it unreliable - minor variances between medical and ocular evidence are not sufficient to discredit otherwise cogent and trustworthy testimony unless they go to the root of the matter - medical evidence is primarily corroborative in nature and the substantive evidence remains the testimony of eyewitnesses - non-examination of the treating doctor does not by itself destroy the prosecution's case where the injury report stands proved and is corroborated by other reliable evidence and no prejudice is shown to have been caused to the defence - the judgment of conviction and the order of sentence do not suffer from any illegality, perversity, or infirmity warranting interference by the Court in exercise of its appellate jurisdiction - the appeal, being devoid of merit, is dismissed and the conviction under Ss. 302 and 307 of the Indian Penal Code, together with the sentences awarded thereunder, is affirmed. (Paras 23-35) (E-7)

Case Law Cited

State of U.P. Vs Bhagwan & Ors., **(1997) 11 SCC 19***; Amar Singh Vs. State(NCTof Delhi),* **(2020) 19 SCC 165***; State of Rajasthan Vs. Kishan Singh,* **(2002) 10 SCC 160***; Mahendra Singh Vs State of UP,* **2004 LawSuit(All)635***; Thulia Kali v. State of Tamil Nadu; Pala Singh v. State of Punjab; Ranbir v. State of Punjab; State of Uttar Pradesh v. Satish; Marudanal Augusti v. State of Kerala; Bikau Pandey v. State of Bihar; State of Uttar Pradesh v. Kishanpal; Sunil Clifford Daniel v. State of Punjab; Hari Shankar v. State of Uttar Pradesh; Babu v. State of Kerala; Vadivelu Thevar v. State of Madras,* **(1957) 1 SCC 700***; Namdeo v. State of Maharashtra,* **(2007) 14 SCC 150***; Jarnail Singh v. State of Punjab,* **1993 Supp (1) SCC 588***; Abdul*

Sayeed v. State of Madhya Pradesh **,(2010) 10 SCC 259***; Dalip Singh v. State of Punjab,* **(1997) 11 SCC 573***; State of M.P. v. Dayal Sahu,* **AIR 2005 SC 3570***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Arms Act, 1959

List of Keywords

Criminal appeal; conviction; order of sentence; murder; firearm injuries; injured eyewitness; ocular evidence; medical evidence; First Information Report; ante-dated; prompt lodging; previous enmity; motive; non-recovery of weapon; empty cartridges; independent witnesses; related witness; treating doctor; dacoity; reasonable doubt; appellate jurisdiction; corroboration; direct evidence; circumstantial evidence; illegality; perversity; infirmity

Case Arising From

APPELLATE JURISDICTION: Appeal filed against the judgment of conviction and order of sentence passed by the trial court convicting the appellant under Ss. 302 and 307 IPC for the murder of the deceased and for causing firearm injuries to the injured witness.

Appearances for Parties

Advs. for the Appellant:
Shri Harish Chandra Tiwari
Advs. for the Respondents:
Shri Amit Sinha, learned AGA appearing for the State

(Delivered by Hon'ble Achal Sachdev, J.)

1. Heard Shri Harish Chandra Tiwari, learned counsel for the appellant, and Shri Amit Sinha, learned AGA appearing for the State, and perused the record.

2. The facts necessary for disposing of the present appeal are that the appellant, Chhail Bihari, was convicted by the trial court under Sections 302 and 307 of the Indian Penal Code for the murder of Rajesh alias Mantey and for causing firearm injuries to Rajesh's sister, Smt. Shyam Pyari, and was sentenced accordingly. The present appeal was preferred against that judgment of conviction and order of sentence. A First Information Report was lodged by the informant, Ayodhya Prasad - father of the deceased and of the injured - on the basis of a written report (Tahrir, Exhibit Ka-1) at 12:45 a.m. on 8.8.1985. It was registered under General Diary Report No. 4 at the same time at Police Station Bara, situated about two miles north-west of Village Chhiri, the place of occurrence. The investigation of the case commenced forthwith.

3. According to the prosecution, on the intervening night of 7/8.8.1985, at about 10:00 p.m., all family members had taken their evening meal before sunset. The informant, Ayodhya Prasad, was in the northern part of his house with his wife, Dukhiya; his son-in-law, Soni Lal; and a neighbour, Krishnanand. Inside the house, in the southern room, his son, Rajesh (alias Mantey), was asleep on a cot (charpai), while his daughter, Smt. Shyam Pyari, was sleeping on the floor of the same room. A lantern was lit in that room, providing sufficient light, and the main entrance of the house had been left open. At that time, the appellant, Chhail Bihari, armed with a single-barrel gun, accompanied by two associates carrying country-made pistols (katta) in their right hands and torches in their left, entered the house from the east, shouting a challenge to the effect: "Come out,

Ayodhya Prasad - call whoever you wish to call; today we will not leave without beating/killing you." The appellant fired a shot from the doorway (deodhi) of the southern room, which struck Smt. Shyam Pyari on the right thigh, causing her to fall immediately. When she attempted to rise, the appellant also struck her with the butt of the gun. The appellant then entered the room and, upon Rajesh being awakened by the gunfire and attempting to rise from the cot, fired a second shot at him, striking him in the right side of the chest. Rajesh fell back onto the cot and died within about four to five minutes. Blood from the fatal wound fell onto the cot, the bedding (kathri) spread on it, and the ground beneath.

4. The appellant and his companions were, according to the prosecution, searching for the informant and threatening to eliminate him as well. Out of fear, the informant, his wife, his son-in-law, and Krishnanand concealed themselves - behind a heap of loose hay (bhusa) and dung-cakes at the north-west corner of the house - and did not come out until the assailants had fled the scene, abusing and threatening as they left that they would not rest until they had killed the family. The informant stated that he personally saw the appellant approaching the room from his place of concealment, though the detailed sequence of the assault inside the room was narrated to him afterwards by his injured daughter. Soon after the assailants withdrew, the informant came out, went to his daughter, and learnt from her that the appellant, Chhail Bihari, was one of the assailants; he then went to his son and found him dead. He left the deceased's body undisturbed in the position in which it had fallen, before proceeding to the police station to lodge the report.

5. The informant's house was situated outside the main habitation of Village Chhiri - variously described as about six to seven bighas, and by the Investigating Officer as about one furlong - to the south-west of the village population - with neighbouring houses not in close proximity, roughly ten to fifteen paces apart. The main door of the house opened to the east, with rooms built adjacent to it and to the south. The deceased and the injured witness were sleeping in the eastern room on the southern side of the house, while the informant and the others were in the northern part, about fifteen to twenty paces away; there was no separate wall running north-south between the rooms on the southern side. The southern room had a lantern hung from a bamboo pole or wall-bracket, was kept lit because of the rainy season and it hung high enough that the injured witness could not reach it herself; the northern room had a chimney lamp (dibri), which had been extinguished by the time the Investigating Officer reached the scene, and which the informant did not show to the Investigating Officer. Loose bhusa was confirmed to be present at the north-west corner of the house, though no heap of dung-cakes was found there by the Investigating Officer. The site plan (Exhibit Ka-19), prepared on the informant's pointing-out, showed the informant's position which was near the middle pillar south of the veranda and the deceased's position in the eastern room on the southern side, and it records the recovery of three empty cartridges each from inside and outside the house, at points marked X-1, X-2 and X-3.

6. The motive attributed to the occurrence is previous enmity. The prosecution attributed the occurrence to previous enmity. About three to four years prior to the present incident, the appellant had forcibly entered the informant's house ? according to the injured witness, the courtyard - armed with a country-made pistol and abusing the occupants. The informant, with the assistance of other villagers, had apprehended the appellant and had handed him over to the police, leading to a criminal case against the appellant under Section 25 of the Arms Act. The informant

appeared as a prosecution witness, and the injured witness stated that her father had also given evidence along with other villagers. Although the appellant requested the informant not to depose against him, the informant nevertheless gave evidence, resulting in deep-seated animosity towards the appellant. Both the informant and the injured witness maintained this account under cross-examination; the informant admitted he did not know the outcome of that earlier case. This background was independently corroborated by the Investigating Officer (PW-8), who confirmed that the informant had appeared as a witness in the earlier Arms Act case against the appellant and furnished the motive relied upon by the prosecution for the present offence.

7. Both the informant and the injured witness stated that they had known the appellant, Chhail Bihari, before the occurrence, due to the earlier katta incident about three to four years earlier; the injured witness denied ever having visited the appellant's house or knowing his family members. She clarified that her marriage had taken place about three to four years before the incident in Chandauli district, that she had lived at her marital home for three to four years, during which a child was born to her, and that she had returned to live at her father's house about three to four months before the incident - a chronology she maintained despite the suggestion that she could not have been at her parental home at the relevant time. The informant stated that the appellant and his companions had not covered their faces or attempted to conceal their identities, and that he too had seen the appellant during the occurrence. Both witnesses categorically denied suggestions that the incident was in fact a dacoity in which no assailant could be identified, and that the appellant had been falsely named on account of prior enmity.

8. The injured witness remained at home for about one and a half hours before being placed on a cot - there being no ambulance facility ? and carried to the police station, accompanied by her father and four to five other villagers. From the police station, she was sent by jeep, in the custody of a constable, to the Primary Health Centre, Jasra, where she was medically examined by PW- 2, Dr. A. K. Saxena, on 8.8.1985. She was thereafter referred to Bailey (District) Hospital, Prayagraj/Allahabad, for further treatment, including an X- ray. She remained admitted for about one month, during which twenty- four pellets were removed from her body. Her statement under Section 161 Cr. P. C. was recorded only about five to six days after admission, once her condition permitted.

9. PW- 2, Dr. A. K. Saxena, examined the injured, Smt. Shyam Pyari, aged about 22 years, on 8.8.1985 at 4:20/4:30 a. m. at the Primary Health Centre, Jasra, and found: multiple oval gunshot wounds of entry, ranging from 0.3 cm x 0.2 cm to 0.6 cm x 0.5 cm, over an area of about 15 cm x 17 cm on the front and inner aspect of the right thigh; a contusion measuring 11 cm x 1. 1.2 cm across the upper half of the posterior right forearm; and traumatic swelling measuring 5 cm x 4 cm over the outer aspect of the left hand. The thigh injury was attributed to a firearm, and the other two to a blunt object - the forearm contusion being consistent with the butt of a gun and the hand swelling with either a fall or blunt impact ? with a duration of about one- fourth of a day, consistent with an occurrence at about 10:00 p. m. on 7/8.8.1985. The injury report was proved as Exhibit Ka-2; an X- ray plate and supplementary report were placed on record but they were not formally proved.In his cross- examination, the doctor stated that Injury No. 2 could have been caused by the butt of a gun, whereas Injury No. 3 could have resulted either from a fall on the

ground or from the impact of a blunt object. He further opined that the injuries could have been caused at about 10: 00 p. m. on the intervening night of 7/8.8.1985.

10. PW-6, Dr. U.S. Sinha, conducted the post mortem examination of the deceased, Rajesh alias Mantey, on 9.8.1985 (Exhibit Ka-3), finding a single entry gunshot wound in the third intercostal space, about 1 cm above the left nipple, measuring roughly 14 cm x 14 cm and penetrating the thoracic cavity, with no exit wound. The thoracic cavity was full of blood, and the heart and left lung were lacerated. Sixty pellets and a piece of wadding were recovered from the thoracic cavity and sealed. Death was attributed to shock and hemorrhage from this firearm injury. The post mortem findings, which showed a single deep gunshot wound without any mention of blackening, tattooing or charring around the entry wound, were relied upon by the defence to question the ocular claim that the fatal shot had been fired from very close range.

11. The informant left for the police station about one hour after the occurrence. One Awadhesh Prasad Shukla reached the scene about half an hour after the incident, remained there until the informant left, and accompanied him to the police station, where he wrote out the report (Exhibit Ka-1) at the informant's request after the informant purchased paper for the purpose; the Investigating Officer thereupon asked for and received the written report, which was registered the same night as the FIR at Police Station Bara, a certified copy being furnished to the informant. The informant admitted that no police had come to his house during the hour he remained there after the occurrence, and that he stayed with the injured witness throughout her roughly two hours at the police station, though he did not accompany her to Jasra Hospital. The injured witness stated that she had told her father, at the time the FIR was being lodged, that the appellant had struck her with the gun butt in addition to shooting her, and that her father had seen this injury.

12. PW-8, Koram Kalicharan, the then Station House Officer, Police Station Bara, immediately took up the investigation on registration of the FIR, recording the informant's statement at 12:45 a.m. at the police station and sending the injured for medical examination in the custody of Constable Ram Prasad Singh. He proceeded to the scene that night with the police force in search of the appellant, who could not be found, and returned the following morning to prepare the inquest report (panchayatnama) of the deceased's body, along with the specimen seal, photo-nash, R.I. letter, and letter to the Chief Medical Officer (Exhibits Ka-7 to Ka-13), before sending the sealed body for post mortem in the custody of Constables Bishram Singh and Vishnu Tiwari.

13. During the investigation, three empty cartridges were recovered from inside the informant's house and three from outside - a total of six, consistent with the informant's cross-examination admission that he had heard about six to seven shots fired - and sealed under a recovery memo (Exhibit Ka-14); blood-stained and plain earth were collected from the scene (Exhibit Ka-15, produced in court as Material Exhibits 7 and 8); the blood-stained portion of the deceased's bedding was seized (Exhibit Ka-16, produced as Material Exhibit 9); and the burning lantern found at the scene was seized and then returned to the informant's custody for continued use under a supurdaginama (Exhibit Ka-17). The injured witness's blood-stained clothing -a sari and petticoat/stole - was seized on 08.08.1985 (Exhibit Ka-18). The appellant was arrested at Chilla Mod, after which the site plan was prepared (Exhibit Ka-19). The injured witness's statement was recorded on 14.08.1985 at Bailey Hospital, and Krishnanand's on 24.08.1985. The charge-sheet against the appellant was submitted on 05.10.1985 (Exhibit Ka-22). No firearm was recovered from the appellant during the investigation.

14. On 17.5.1986, the trial court framed charges against the appellant under Sections 302 and 307 IPC, which he denied, claiming trial. The prosecution examined eight witnesses: PW-1 Ayodhya Prasad, the informant and an eyewitness; PW-2 Dr. A.K. Saxena, who examined the injured; PW-3 Smt. Shyam Pyari, the injured eyewitness; PW-4 Constable Bishram Singh and PW-7 Constable Mahavir Singh, formal witnesses; PW-5 Krishnanand, a fact witness who did not support the prosecution case and was declared hostile; PW-6 Dr. U.S. Sinha, who conducted the post-mortem; and PW-8 Koram Kalicharan, the Investigating Officer.

15. After the prosecution's evidence, the appellant's statement was recorded under Section 313 of the Cr.P.C.; he denied the incriminating circumstances, claimed false implication, and led no defence evidence. On appreciation of the evidence, the trial court convicted the appellant under Sections 302 and 307 of the IPC and sentenced him accordingly, giving rise to the present appeal.

16. Learned counsel for the appellant has vehemently argued and has stated that:-

(a) First, that the appellant was falsely implicated on account of long-standing enmity, the informant having earlier, in collusion with the local police, falsely implicated him in a criminal case, and that the same enmity explained the present false accusation.

(b) Second, it was argued that the FIR was ante-dated and lodged only after deliberation and consultation, as shown by PW-3's evidence that she was taken to the police station about an hour after Awadhesh Kumar arrived ? the alleged scribe of the Tahrir, Exhibit Ka-1 - despite the occurrence having taken place after 10:00 p.m. on 7.8.1985 and the FIR being lodged at 00:45 hours on 8.8.1985. It was also pointed out that this Awadhesh Kumar was not called to the witness box and that PW-5, Krishnanand, did not support the prosecution.

(c) Third, it was submitted that the weapon of offence was never recovered during the investigation, a material lapse in the prosecution's case.

(d) Fourth, it was argued that PW-1, the informant, was not an eyewitness to the assault: he was admittedly seated in the northern part of the house with his wife, son-in-law, and Krishnanand, while the deceased and injured were in the southern room. The site plan shows trees, bushes, and a hut obstructing the line of sight between the two points, so his account of the manner of occurrence and the identity of the assailant is hearsay, derived from what his injured daughter told him, and not direct evidence.

(e) Fifth, it was contended that the prosecution examined only three witnesses of fact - PW-1, PW-3, and PW-5 (who turned hostile) ? while withholding the informant's wife, Dukhiya, and son-in-law, Soni Lal, both of whom were admittedly present at the time, without cogent explanation, thereby warranting an adverse inference and undermining the credibility of the prosecution case.Moreover , the prosecution did not examine the treating doctor at the Bailey Hospital who had treated the injured Smt.Shyam Pyari , thereby casting serious aspersions on prosecution story itself.

(f) Sixth, it was submitted that PW-3 deposed that the deceased had been shot from very close range, yet the post-mortem report records no blackening, tattooing, or charring around the wound, as would

ordinarily be expected from a close-range firearm injury, rendering the ocular evidence inconsistent with the medical evidence.

(g) Seventh, it was argued that PW-3's very presence at the place of occurrence was doubtful, as she had already been married to one Ram Kishore, making her presence at her parental home at the relevant time improbable.

(h) Eighth, it was submitted that what had in fact occurred on the intervening night was a dacoity in the village, during which the deceased and the injured sustained their injuries, and that the informant, taking advantage of pre-existing hostility, falsely named the appellant as the assailant ? a hostility admittedly arising from the earlier incident in which the appellant had been apprehended by the informant and handed over to the police.

(i) Ninth, it was pointed out that despite the firing and the cries of the injured, no villager came to the family's rescue, rendering the prosecution's version doubtful; and finally, that since PW-5, the sole independent witness cited, did not support the case, the conviction rests only on the testimony of PW-1 and PW-3 ? both closely related to the deceased and hence interested witnesses whose evidence, absent independent corroboration, is not of sterling quality.

17. Learned counsel for appellant has filed written submissions and has placed reliance on the following case laws:-

(i) **State of U.P. Vs Bhagwan & Ors. (1997) 11 SCC 19**

(Non recording of statement under s.161 Cr.P.C of the eye witnesses on the first day)

(ii) Amar Singh Vs. State(NCTof Delhi) (2020) 19 SCC 165

(Sole Testimony of Eye witness-reliability)

(iii**) State of Rajasthan Vs. Kishan Singh (2002) 10 SCC 160**

(Deliberate improvements made to bring their testimony in the line to the medical evidence)

(iv) Mahendra Singh Vs State of UP 2004 LawSuit(All)635

(Rule of Appreciation of evidence of an injured witness)

18. The learned A.G.A. resisted these contentions, submitting that the incident, which occurred after 10:00 p.m. on 7.8.1985, was witnessed by PW-1 and PW-3 - the latter grievously injured - and that both positively identified the appellant. It was submitted that the injured, in the absence of any ambulance facility, was carried to the police station on a cot by her father and five to six villagers, and was thereafter sent to PHC Jasra for examination by PW-2 at about 4:30 a.m. The local police simultaneously reached the scene with the informant to conduct the inquest, the informant having left the deceased's body undisturbed on the cot where it had fallen - a sequence disclosing no unreasonable delay in lodging the FIR.

19. It was further submitted that the site plan corroborates the prosecution case, showing the recovery of three empty cartridges from the doorstep of the room where the assault occurred (marked X-1 to X-3). The informant's candid admission of having concealed himself in fear near a store of hay and of having heard six to seven shots is consistent with the total recovery of six empty cartridges from in and around the house - a circumstance lending support to the ocular account. As to the absence of villagers at the scene, it was submitted that the informant's house lay outside the village at a distance of six to seven bighas, or about one furlong, without close neighbours, as independently confirmed by the Investigating Officer.

20. It has further been submitted that the injured, Smt. Shyam Pyari, accompanied her father to the police station along with five to six other villagers and, in the absence of any ambulance facility, had to be carried to the police station on a cot. From the police station, she was sent for medical examination to the Primary Health Centre, Jasra, a fact duly deposed to by her before the trial court. The injured was medically examined by PW-2, Dr. A.K. Saxena, at PHC Jasra on 8.8.1985 at 4:30 a.m. In the meantime, the local police reached the place of occurrence along with the informant, and inquest proceedings over the body of the deceased were conducted. The informant has, in his statement, deposed that he had left the body of the deceased on the cot upon which the deceased had fallen after being shot by the appellant. It is submitted that there has been no unreasonable delay in lodging the First Information Report.

21. Learned A.G.A. further submitted that the site plan prepared during the investigation itself corroborates the prosecution case. It shows that three empty cartridges were recovered from the doorstep of the room where the deceased, Rajesh alias Mantey, was shot dead, and that the injured, Smt. Shyam Pyari, sustained firearm injuries. The said places of recovery are marked as X-1, X-2, and X-3 in the site plan. It was further pointed out that, in cross-examination, the informant candidly admitted that, out of fear for his life, he had concealed himself in a room used for storing hay (bhusa) during the occurrence, and that he heard about six to seven gunshots fired by the assailants. Learned A.G.A. submitted that the recovery of a total of six empty cartridges-three from within the house premises and three from outside the house-is consistent with and lends assurance to the prosecution version regarding the manner in which the incident unfolded, and constitutes a significant circumstance corroborating the ocular account of the prosecution witnesses.

22. As regards the submission that no villager came to the rescue of the informant or his family, the informant stated in his cross-examination that his house is situated outside the village, at a distance of about 6-7 bighas, and that the neighbouring houses are not in close proximity thereto-a fact independently corroborated by PW-8, the Investigating Officer, who deposed that the village population was situated about one furlong to the south of the place of occurrence.

23. The contention of learned counsel for the appellant that the First Information Report is ante-timed does not merit acceptance. The Court held that the FIR, inquest report, and the injured witness's injury report reflect a continuous and natural sequence of events immediately following the occurrence, with the injured witness taken straight for medical treatment and later referred for further management. Accordingly, her Section 161 statement was necessarily recorded only after her condition improved - a delay that, by itself, cannot suggest fabrication or an ante-timed report. The FIR was lodged within a short time of the incident, at 12:45 a.m., after the informant learnt from his injured daughter that the appellant was an assailant and ensured she was taken for treatment. PW-8's admission that he met the informant only after the FIR was lodged and that he had sent no constable to the scene beforehand was found wholly inconsistent with the suggestion of prior deliberation or consultation with the investigating agency. Reliance was placed on **Thulia**

Kali v. State of Tamil Nadu, Pala Singh v. State of Punjab, Ranbir v. State of Punjab, State of Uttar Pradesh v. Satish, and Marudanal Augusti v. State of Kerala, for the propositions that prompt lodging of an FIR lends assurance to the prosecution case, that delay becomes material only when unexplained or suggestive of embellishment, that delay in recording witness statements is not fatal absent shown prejudice or fabrication, and that an ante-timing allegation must rest on convincing evidence rather than conjecture or minor discrepancy.

24. The prosecution has also established the motive for the commission of the offence. The Court found the motive well established through PW-1's evidence of the appellant's earlier trespass with a country-made pistol, his apprehension and handover to the police, and the informant's evidence against him in the subsequent Arms Act case, despite the appellant's request that he not depose-? corroborated by PW-8's confirmation of that earlier case-? which gave the appellant deep-seated animosity towards the informant and a strong motive for the present offence. Where the occurrence is proved by reliable direct evidence, motive recedes in importance and matters more in cases of circumstantial evidence, citing **Bikau Pandey v. State of Bihar, State of Uttar Pradesh v. Kishanpal, Sunil Clifford Daniel v. State of Punjab, Hari Shankar v. State of Uttar Pradesh, and Babu v. State of Kerala**. It held that the present case rests on credible direct evidence and not on motive alone, though a plausible motive had, in any event, been established. In the present case, the prosecution has not only adduced reliable ocular evidence but has also established a plausible motive arising out of the previous hostility between the informant and the appellant.

25. On the submission that PW-1 was not an eyewitness and that his account was hearsay, PW-1's own testimony candidly distinguished between what he saw directly- the appellant approaching the room from his place of concealment - and what he learnt afterwards from PW-3 about the detailed manner of the assault inside the room; this was not a case of a witness falsely claiming a vantage point he did not have. Even treating PW-1's account of the precise assault as derivative, the prosecution case rested independently on the direct, first-hand testimony of PW-3, the injured eyewitness actually present in the room. The Court reiterated that a conviction may safely rest on a solitary witness found wholly reliable, with corroboration being a rule of prudence rather than law, and that an injured witness's testimony carries special evidentiary weight, since such a witness's presence at the scene is ordinarily beyond doubt and such a witness would not ordinarily let the real assailant escape to falsely implicate another- **citing Vadivelu Thevar v. State of Madras (1957) 1 SCC 700, Namdeo v. State of Maharashtra (2007) 14 SCC 150, Jarnail Singh v. State of Punjab 1993 Supp (1) SCC 588, and Abdul Sayeed v. State of Madhya Pradesh (2010) 10 SCC 259.** PW-3's account was found natural, consistent, and corroborated by the medical evidence, the recovered cartridges, and the promptly lodged FIR naming the appellant, with no material contradiction or inherent improbability warranting rejection.

26. The absence of independent local witnesses and the fact that no villager arrived during the incident were satisfactorily explained by the house's location outside the main habitation - six to seven bighas, or about one furlong, from the village, without close neighbours - as confirmed by both PW-1 and PW-8. A relationship with the victim does not, by itself, render a witness interested or require independent corroboration, particularly where, as here, the injured witness's testimony is found natural, consistent, and trustworthy, citing **Dalip Singh v. State of Punjab (1997) 11 SCC 573 and Namdeo v. State of Maharashtra (2007) 14 SCC 150.**

27. In the present case, the evidence of PW-3 is natural, consistent, and inspires confidence. She has consistently identified the appellant, Chhail Bihari, as the person who entered the house and fired the fatal shot at her brother, Rajesh alias Mantey, and also inflicted firearm injuries on her during the intervening night of 7/8 August 1985. Her account is corroborated by the medical evidence, which records gunshot injuries on her person and a fatal gunshot injury on the deceased, consistent with the manner of assault described by her; by the recovery of empty cartridges from the place of occurrence; and by the prompt lodging of the First Information Report naming the appellant. There is no material contradiction or inherent improbability in her testimony warranting its rejection.

28. The remaining submissions advanced on behalf of the appellant-namely, the non-recovery of the weapon of offence, the suggestion that the incident was in fact a dacoity, the non-examination of Dukhiya and Soni Lal, the alleged doubt over PW-3's presence at her parental home, and the alleged absence of blackening or tattooing around the gunshot wound on the deceased-do not create any reasonable doubt in the prosecution case in the absence of any defence evidence showing that the prosecution's evidence is biased and untrustworthy.

29. The non-recovery of the firearm is not, by itself, fatal where the prosecution has otherwise placed cogent evidence on record connecting the appellant with the offence, including the recovery of six empty cartridges-three from inside the house and three from outside-at the very places indicated by the site plan and consistent with the ocular account. The suggestion that a dacoity, rather than a targeted assault, had taken place remains a bare suggestion put to the witnesses in cross-examination, unsupported by any evidence on record. It cannot be permitted to displace the direct testimony of the injured eyewitness. The non-examination of Dukhni and Soni Lal does not weaken the prosecution case, since their evidence, even if led, would at best have been cumulative to that of PW-1 and PW-3, and the prosecution is not obliged to multiply witnesses on the same point once a reliable injured eyewitness has deposed to the occurrence. The suggestion that PW-3 could not have been present at her parental home on account of her marriage remains an unsubstantiated assertion, not established by any evidence brought on record by the defence, and does not detract from her direct and consistent testimony regarding her presence at the time of the incident. Similarly, the alleged absence of blackening or tattooing on the deceased's gunshot wound, without more, does not so contradict the ocular account as to render it unreliable. Minor variances of this nature between the medical and ocular evidence are not sufficient to discredit otherwise cogent and trustworthy testimony unless they go to the root of the matter. Likewise, the circumstance that PW-8, the Investigating Officer, recorded PW-3 as having told him that the appellant fired at her after entering the room, whereas the written report, Exhibit Ka-1, states that the first shot was fired from the doorway, is a minor variation as to the precise point from which the appellant fired the first shot. It does not affect the substratum of the prosecution case, namely, that the appellant entered the house and shot both the injured and the deceased, a fact consistently and reliably established by the direct testimony of PW-3.

30. In light of the foregoing discussion, this Court finds that the prosecution has established the appellant's guilt beyond reasonable doubt. The testimony of PW-3, Smt. Shyam Pyari, the injured eyewitness, inspires confidence and is duly corroborated by the medical evidence, the prompt lodging of the First Information Report, the recoveries made during the course of the investigation, and the surrounding circumstances. The evidence of PW-1, Ayodhya Prasad, also supports the prosecution case. The previous enmity between the parties, arising out of the earlier criminal case in which the informant had apprehended

the appellant and deposed against him, furnishes a cogent motive for the commission of the offence, though the case itself rests on reliable direct evidence and not merely on motive.

31. The submissions advanced on behalf of the appellant regarding the alleged ante-dating of the First Information Report, the non-recovery of the weapon of offence, the non-examination of certain witnesses, and the hostility of PW-5 do not create any reasonable doubt in the prosecution case. These circumstances neither demolish the otherwise cogent and trustworthy ocular evidence nor outweigh the consistent medical and documentary evidence on record.

32. It is well settled that a conviction can safely be based on the testimony of a single injured eyewitness, provided that the eyewitness is wholly reliable. In the present case, the evidence of PW-3 is natural, consistent, and inspires confidence. There is no material contradiction or inherent improbability that warrants its rejection. Consequently, this Court finds no reason to take a view different from that of the learned trial court.The contention raised by learned counsel for the appellant that the treating doctor at Baily hospital . Where the injured Smt Shyam Pyari had been admitted has not been examined would affect the credibility of prosecution case carries no weight.It is well-settled that medical evidence is primarily corroborative in nature. The substantive evidence remains the testimony of eyewitnesses. in criminal cases involving hurt/grievous hurt under the IPC and in MACT/workmen's compensation claims), courts have consistently held that non-examination of the treating doctor does not by itself destroy the prosecution's or claimant's case, provided the injury report (MLC/wound certificate) has been duly proved - either by the EMO who first examined the victim, or by another doctor familiar with the author's handwriting/signature who can authenticate the document. In **State of M.P. v. Dayal Sahu, AIR 2005 SC 3570** - Supreme Court held that non-examination of the doctor and non-production of the medical report is not fatal to the prosecution if the testimony of the injured/victim and other witnesses inspires confidence. Corroboration by medical evidence is a rule of prudence, not a rule of law. Furthermore,non-examination of the doctor is not fatal if the injury report is proved and corroborated by other reliable evidence. In the present case, the injury report stands proved, by PW-2 Dr. A.K.Saxena, EMO, PHC ,Jasra and is corroborated by eyewitness testimony. No prejudice is shown to have been caused to the defence. Accordingly, the ground urged by the appellant is devoid of merit.

33. The judgment of conviction and the order of sentence passed by the learned trial court do not suffer from any illegality, perversity, or infirmity warranting interference by this Court in the exercise of its appellate jurisdiction.

34. The appeal, being devoid of merit, is accordingly dismissed. The conviction of the appellant, Chhail Bihari, under Sections 302 and 307 of the Indian Penal Code, together with the sentences awarded thereunder, is hereby affirmed.

35. The appellant is on bail. His bail bonds are cancelled, and the sureties are discharged. He is directed to surrender before the court concerned within four weeks of today to serve the remaining sentence awarded to him. If the appellant fails to surrender within the aforesaid period, the court concerned shall take immediate and effective steps to secure his arrest and commit him to prison to serve the sentence in accordance with law. Let the lower court record be transmitted forthwith to the court concerned for compliance.

(2026) 7 ILRA 314
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 2541 of 1987

Deshraj & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a quarrel over cutting moonj in the field, during which Desh Raj allegedly fired a country-made pistol, while Bahadur inflicted a knife injury on Kaushal, resulting in their conviction under sections 307 read with 34 IPC.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 307/34 –Criminal Procedure Code,1973-Section 374(2)- Probation of Offenders Act,1958-Section 4-Attempt to murder-Intention to kill-Absence of premeditation, single injury, no fracture and no repeated attack showing absence of intention to kill-Conviction u/s 307/34 IPC modified to u/s 324/34 IPC; Evidence-Hostile witness-supporting portion of testimony, when corroborated by other evidence, can be relied upon-Probation of Offenders Act,1958-Section 4-Incident 42 years old, appeal pending for about 39 years and no criminal antecedents-appellants released on probation-Allowed partly.(Para 36 to 40) (E-6)

Held

The prosecution proved the appellants' participation in causing the injury, but the evidence did not establish the requisite intention to kill, having regard to the single simple injury, absence of fracture, lack of premeditation and absence of repeated assault, conviction under section 307/34 was modified to Section 324/34. In view of the incident being more than 42 years old, prolonged pendency of the appeal and absence of criminal antecedents, the appellants were extended the benefit of Section 4, Probation of Offenders Act,1958 and released on probation.

List of Acts

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

List of Keywords

Section 307/34, Attempt to murder, Common intention, Simple injury, Ocular evidence, Medical evidence, Hostile witness, Motive, Dying declaration, Non-examination of injured witness, Probation, Defective Investigation, Section 161 CrPC statement.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 2541 of 1987
Deshraj & Ors Vs. State of U.P.
From the Judgment and order dated 03.07.2026 of the High Court of Judicature at Allahabad.

Appearances for the parties

Advs. for Appellant(s):
Akhilesh Singh, Brij Raj Singh, Shivam Yadav
Adv. for Respondent(s):-

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

1. This appeal has been filed under Section 374 (2) Code of Criminal Procedure 1973, (in short Cr.P.C.), by appellants Desh Raj and Bahadur, against the judgment and order dated 26.10.1987, passed by Mr. Swaroop Lal, V Additional Sessions Judge, Mainpuri, in Sessions Trial No.76 of 1986 (State Vs. Desh Raj and Another), arising out of Case Crime No.172 of 1984, under Section 307 read with 34 Indian Penal Code,1860, (in short I.P.C.), Police Station- Allau, District- Mainpuri.

2. By the impugned judgment and order, dated 26.10.1987, the learned trial court has acquitted co-accused Kali Charan and convicted both the appellants for offence punishable under Section 307 read with 34 IPC and sentenced them to undergo rigorous imprisonment for a period of 4 years and a fine of Rs. 500/- each in default of payment of fine they were further directed to undergo three months rigorous imprisonment.

3. Brief facts of the prosecution case are that Raghuveer son of Subedar, resident of Village- Summerpur, Police Station- Allau, District- Mainpuri, submitted a written application dated 25.11.1984 (Ext. Ka.1), before Police Station- Kotwali, District- Mainpuri, stating therein that his field is adjacent to Kali Charan□s field and there is moonj (wild grass) growing over the intervening boundary of both the fields. Today i.e. on 25.11.1984 at about 01:30 p.m. accused Bahadur and Desh Raj both sons of Kali Charan and Kali Charan son of unknown, resident of Nagla Hariram, Mauja- Veerpur Kala, Police Station- Allau, District- Mainpuri started cutting moonj. The first informant□s nephew Kaushal @ Rajesh was in his field where gram was sown and he alongwith Daya Ram and Ram Naresh were weeding the chickpeas crop. Kaushal @ Rajesh objected for cutting moonj thereupon, the accused Desh Raj fired at him with country-made pistol, with the intention to kill, his nephew bent and lied down as a result he escaped unhurt. In the meantime, accused Bahadur struck knife over his back causing him injuries. The first informant was in his field and he himself, Daya Ram and Ram Naresh challenged the accused, whereupon they ran towards the village. He alongwith other villagers has brought his nephew on cot to District Hospital- Mainpuri, where he was admitted in serious condition. Due to the fear from accused he is afraid of going to Police Station- Allau. Upon this information, FIR under Case Crime No. Nil, Section 307 IPC, was lodged at Police Station- Kotwali, District- Mainpuri and the FIR was forwarded to Police Station- Allau, where it was written down under Case Crime No. 172 of 1984, Section 307 IPC. The investigation was carried out by S.I. Manik Chand, who recorded the statements of the first informant, the injured and other witnesses. The injured was medically examined on 25.11.1984 at about 04:50 p.m. in District Hospital- Mainpuri. One incised wound over right side back of chest was found with margins clear cut, everted and fresh bleeding was present. In the opinion of the doctor the injury was caused by a sharp cutting weapon and the duration was fresh. X-Ray was advised and in X- Ray no fracture was found and the injury was opined as simple in nature.

4. The investigation officer inspected the place of occurrence and prepared its site-plan (Ext. Ka-8), and after concluding the investigation he filed charge-sheet against all the three accused, under Section 307 IPC, before the concerned court.

5. The court concerned took cognizance of the offence and summoned the accused. They appeared before the court and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

6. Before the Sessions court, the accused appeared and charge under Section 307 read with 34 IPC was framed against Desh Raj, Bahadur and Kali Charan. The accused pleaded not guilty and claimed to be tried.

7. The prosecution examined nine prosecution witnesses, to wit, P.W.1 Dr. B.P. Bansal; P.W. 2 Raghuveer Chandra; P.W.3 Ram Naresh; P.W.4 Daya Ram; P.W. 5 Lakshmi Chandra; P.W. 6 Narain Singh; P.W.7 Constable Jagdish Chandra Mishra; P.W.8 S.I. Vishwanath and P.W.9 S.I. Manik Chandra, to prove its case.

8. P.W. 1 Dr. B.P. Bansal, is the formal witness who has medically examined injured Rajesh Kumar at District Hospital, Mainpuri on 25.11.1984 at 04:50 p.m. and found following injuries over his body:-

(i) An incised wound measuring 3cm x 1 cm x 3cm deep over back side of chest to the right of backbone, 2 cm outer side and 11.5 cm x below right of acromion process vertically placed. The margins were clear cut and everted, fresh bleeding was present. Advised X-Ray.

In his opinion the injury was caused by any sharp edged weapon and it was fresh. P.W.1 has proved injury report as Ext. Ka.1 and has said that this injury could have been caused by knife on 25.11.1984 at about 01:00 p.m.

9. In his cross-examination, he has said that this injury is not possible by any nail and if a piece of glass having a shape of knife is struck then this injury is possible.

10. P.W. 2 Raghuveer Chandra, is the first informant, who has supported the prosecution case and has said that injured Kausal @ Rajesh is his nephew. On the date of incident at 04:10 p.m. he himself was working in field and Kaushal was weeding sweet peas alongwith Ram Naresh and Daya Ram in his field. There was moonj growing over the boundary of their fields to which the accused started cutting. When he and Kaushal objected to it, Desh Raj fired at his nephew with a country-made pistol. He lied on the ground, as a result he escaped unhurt. Accused Bahadur struck knife over back of Kaushal. The first informant, Ram Naresh and Daya Ram challenged the accused, thereupon they ran away towards village. They took Kaushal to District Hospital on a cot and he got the application written from Lakshmi Chandra, thereafter he put signature over it. The witness has proved application as Ext. Ka.2 and has said that he lodged the FIR.

11. P.W. 3 Ram Naresh, is the eye-witness of the alleged incident. He has supported the prosecution case and has said that the injured is now not alive. About two years ago at about 01:00

p.m. the injured was weeding his field with him and Daya Ram. Raghuveer Chandra was working in his field. There was moonj growing over the boundary of their fields which the accused started cutting. Kaushal had also reached there, but he did not see any person hitting him. The witness has been declared hostile and has been cross-examined by the prosecution.

12. P.W. 4 Daya Ram, is also one of the public witness of the alleged incident and has also not supported the prosecution case and has said that now the injured is not alive. On the date of incident at about 11 a.m.-12:00 p.m., some quarrel took place but he did not see any person hitting the injured.

13. P.W. 5 Lakshmi Chandra, has said that on the date of incident at about 01:00 p.m. Kaushal was lying in injured condition in Kali Charan□s field, there was wound over his back caused by knife. He was taken to District Hospital, Mainpuri by Raghuveer and 6-7 persons and was admitted there. Raghuveer Singh got the application written from him. He wrote down the application upon his dictation, thereafter, the first informant put his signature over it. In the Hospital, Kaushal was conscious and has said that Bahadur has struck him with knife.

14. P.W. 6 Constable Narain Singh, is the formal witness who has scribed chik FIR, upon application of the first informant and entered its gist in G.D. No.54, time 02:30 p.m. The witness has proved chik FIR (Ext. Ka.2) and copy of G.D. (Ext. Ka.3).

15. P.W.7 Constable Jagdish Chandra Mishra, is also a formal witness who has stated that on 01.02.1985 he was posted as Head Moharir at Police Station- Allau and on that day, blood-stained clothes and Baniyan (vest) of injured Kaushal @ Rajesh were deposited by Lakshmi Chandra. He took them in possession and prepared its fard baramadagi. The witness has proved clothes as Material Exts. 2 and 3, in court.

16. P.W.8 S.I. Vishwanath, is the second Investigating Officer of the case and has said that prior to him, the S.O. Manik Chandra has investigated the case and after his transfer he took over the investigation. He has stated about the investigation carried out by him and has said that the statement of injured was recorded on 15.02.1985 and he collected his injury report. The witness has proved statement of injured recorded under Section 161 Cr.P.C. as Ext. Ka.4. He collected report from the concerned doctor under whom the injured was under treatment and has proved the report as Ext. Ka.5. After investigation, he submitted charge-sheet which he proved as Ext. Ka.6. Till submission of charge-sheet the injured has not died, but he was admitted in hospital. It is not mentioned in the case diary when the injured has died.

17. P.W. 9 S.I. Manik Chandra, is the first Investigating Officer of the case. He has said about the investigation carried out by him and as a secondary witness of the Head Moharir, who has scribed G.D., proved G.D. as Ext. Ka.7. He has proved the site-plan (Ext. Ka.8) and thereafter he was transferred.

18. After closure of prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C. in which they admitted that accused Kali Charan is the father of the accused Bahadur and Desh Raj and Kali Charan□s field is adjacent to the informant- Raghuveer's field. It is also admitted that on 25.11.1984, moonj was growing over intervening boundary of their respective fields.

They have said that the Kaushal has not died due to the injuries and after reaching home from the hospital, he died due to illness after about 13-14 months of the incident.

19. The accused have not produced any evidence in defence.

20. After hearing argument on behalf of learned Counsel for the parties and perusal of evidence on record, the learned trial court came to the conclusion that prosecution has been able to prove its case beyond reasonable doubt, so far as appellants Bahadur and Desh Raj are concerned. It is proved that they attempted to kill injured Kaushal @ Rajesh in furtherance of their common intention. The co-accused Kali Charan was given benefit of doubt and was acquitted and accordingly, both the appellants were found guilty and hence, convicted and sentenced for offence punishable under Section 307 read with 34 IPC, for the term as indicated above.

21. Heard Shri Brij Raj Singh, learned Counsel for the surviving appellants and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

22. It is submitted by learned Counsel for the appellants that the public witnesses have turned hostile and have not supported the prosecution case. The first informant is the relative and interested witness of the injured. The injured has not been examined, as he has died. There is no motive for the appellants to commit this crime. It is also submitted that the clothes were not sent for forensic examination, therefore, in absence of any forensic report the prosecution case is weak and not reliable. In view of the above, the prosecution has not been able to prove its case beyond reasonable doubt and the learned trial court failed to appreciate the evidence on record correctly, therefore, the impugned judgment and order is liable to be set aside and the appellants deserve to be acquitted.

23. Per contra, learned A.G.A. on behalf of the State has submitted that prosecution has been able to prove its case beyond reasonable doubt. It is a day light incident based on direct evidence. The first informant is the eye-witness and has supported the prosecution case. P.W. 5 Lakshmi Chandra reached at the place of occurrence soon after the incident and he found the injured lying in the injured condition at the place of occurrence. The FIR was lodged promptly. The oral testimony is supported with medical evidence. The lapse on the part of the Investigation Officer for not sending the blood-stained clothes, of the injured, for forensic examination is not fatal to the prosecution case, as it is settled law that if the case is proved otherwise, then defective investigation would have no bearing over the prosecution case.

24. It is settled law that in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the alleged incident took place on 25.11.1984 at 01:00 p.m. in the field under Village- Summerpur, Police Station- Alau, District- Mainpuri and the FIR was lodged by P.W.2 Raghuveer Chandra, the same day at about 10:30 p.m. at Police Station- Kotwali. The distance from the place of occurrence to police station is sixteen kilometers, as per the chik FIR. Thus, within nine and a half hour the FIR was lodged by the first informant and it is stated by him that after the incident he with the help of villagers brought his nephew, the injured Kaushal @ Rajesh, on cot to the District Hospital-Mainpuri, where he was admitted in serious condition. He has also stated that due to the fear from the accused he was afraid of going to Police Station- Allau to lodge the FIR. He has said that he got the application written from P.W. 5 Lakshmi Chandra who supported the version of the first informant that he wrote it down at the dictation of first informant Rahugveer in Hospital. P.W.6, Constable Narain Singh, is the

scribe of the chik FIR and the gist which he wrote down in concerned G.D.. Therefore, all the above evidence goes to show that the FIR was lodged promptly, without any undue delay and the appellants have also not raised any such issue in this regard.

25. So far as the place of occurrence is concerned, it is the field in Village- Summerpur, Police Station- Alau, District- Mainpuri. P.W.2 Raghuveer Chandra, P.W.5 Lakshmi Chandra, have supported the prosecution case that the incident occurred at the place as alleged by the prosecution. The Investigation Officer has also inspected the place of occurrence and prepared its site-plan which shows the same place of occurrence. Even P.W.3 Ram Naresh, who is the hostile witness has also stated that altercation took place between the injured and accused with regard to cutting moonj over the intervening boundary of their respective fields. It is submitted on behalf of learned Counsel for the appellant that the place of occurrence is not established because no blood was found at the spot. I do not agree with this submission because there is no case and also there is no evidence that the blood had fallen on the ground at the time of incident. Therefore, in absence of any blood at the spot, it cannot be doubted that the incident has not occurred at the place as alleged by the prosecution. The Investigation Officer has stated that when he investigated the place of occurrence, he found shara moola (roots of moonj) at the place of occurrence. The defence has also not suggested any other alternative place of occurrence. In view of the above, the place of occurrence is fully established.

26. So far as the ocular evidence is concerned, the prosecution has examined four witnesses to prove the fact. In this regard, P.W.2 Raghuveer Chandra is the uncle of the injured Kaushal @ Rajesh and he has fully supported the prosecution case. There are no material contradictions in his statement. His testimony is consistent and thus reliable and trustworthy. He has said that when accused Bahadur, Desh Raj and Kali Charan started cutting the moonj, his nephew Kaushal objected to it. Then Desh Raj fired at him with country-made pistol to which he escaped unhurt, thereafter, appellant Bahadur struck knife over the back of his chest and when he challenged the accused they fled away from the spot. This witness has been cross-examined at length, but nothing material has come in his evidence which would discreet his evidence. He has said that he was ploughing his field, at the time of incident. He admitted the injured in hospital, thereafter, he lodged the FIR. All the three accused were cutting moonj with hasiya (sickle). The altercation took place and then Bahadur dropped hasiya and pulled out a knife from the pocket. He went to the Police Station alone. Therefore, P.W.2 Raghuveer Chandra has fully supported the prosecution case.

27. P.W. 3 Ram Naresh, is the hostile witness, but he has supported the prosecution case to the extent that at the time of incident the injured and other witnesses were present in the filed and there was moonj growing over the intervening boundary of the first informant and accused Kali Charan. The accused came there to cut moonj, to which Kaushal objected. The witness has not supported the other part of the prosecution case and has said that he has not seen who caused injuries. It is settled law that the evidence of a hostile witness would not be rejected outrightly and that part of his testimony, which supports the prosecution case and finds corroboration from other evidence can be relied upon. Therefore, P.W. 3 Ram Naresh, has supported the prosecution case to the extent that at the time of incident the accused were cutting the moonj and the injured had objected to it.

28. P.W. 4 Daya Ram is the hostile witness, he has not supported the prosecution case and has said that the quarrel had taken place but he did not see any person causing injuries.

29. P.W. 5 Lakshmi Chandra is the witness who has said that he reached at the place of occurrence soon after the incident. He saw the injured lying in Kali Charan's field, having wound over his back, caused by a knife. He has said that thereafter, the injured was taken to the hospital and was admitted there. He wrote down the application at the dictation of first informant Raghuveer Singh. He has also said that the Kaushal was conscious at the hospital and said that the Bahadur had struck him with knife. This witness has also been cross-examined at length but nothing material has come in his testimony to discredit him. His testimony is fully consistent and reliable.

30. In view of the above discussion, the prosecution has been able to prove its case that appellants started cutting moonj, then the injured Kaushal @ Rajesh objected to it then the appellant Bahadur struck a knife over his back causing him injuries.

31. In the present case, the injured Kaushal @ Rajesh has not been examined as before his examination in court, he died. The prosecution has proved his statement recorded under Section 161 Cr.P.C. and prosecution has tried to prove it for the purpose that it be admitted in evidence as his dying declaration under Section 32 of Evidence Act. This statement, which is recorded under Section 161 Cr.p.C. and is proved by the I.O., does not fall in the category of dying declaration because the prosecution has not been able to prove that the deceased has died due to the above injuries. The prosecution has not filed any evidence, when the injured has died or what was the cause of his death. On the other hand, the defence has said that the injured has died after about 13-14 months from the date of incident due to illness and not due to the injuries caused to him in this incident. Therefore, the statement of injured recorded under Section 161 Cr.P.C. does not fall within the category of Section 32 Evidence Act as dying declaration and thus, not reliable.

32. As the injured has died, so he could not be examined by the prosecution and as discussed above from the statement of witnesses of fact the prosecution has been able to prove its case against the appellants, therefore, non-examination of injured Kaushal @ Rajesh have no adverse effect over the prosecution case.

33. So far as the oral and medical evidence is concerned, as per the statement of Dr B.P. Bansal, he medically examined injured Kaushal @ Rajesh and found one incised wound over the back of chest which is caused by any sharp cutting edge. It has come in oral evidence that appellant Bahadur had struck knife over the back of chest of the injured causing him injuries and it is well known that the knife is a sharp cutting instrument. Therefore, oral testimony is fully supported by medical evidence.

34. It is submitted by learned Counsel for the appellants that there was no motive for the appellants to commit the crime and in absence of any such motive, prosecution case is not reliable. I do not agree with this submission, because in a case based on direct evidence, the motive looses its significance. Beside this, the motive is a state of mind of a person which cannot be judged from outside. As from the direct evidence prosecution has proved its case, therefore, absence of any motive does not have any adverse effect over the prosecution case.

35. In view of the above discussion, I come to the conclusion that the prosecution has been able to prove its case, that on 25.11.1984 at about 01:00 p.m. in village Summerpur, Police Station- Allau, District-Mainpuri, the appellants Bahadur and Desh Raj, in furtherance of their common intention, struck knife over the back of chest of Kaushal @ Rajesh causing him injuries. The I.O. has not found trace of any fire shot from pistol at the place of occurrence. Only evidence is that appellant Bahadur struck knife over the back of

chest of Kaushal @ Rajesh and the altercation took place due to cutting of moonj. There is no evidence that the appellants had any previous enmity against the first informant or the injured. There is also no evidence that the appellants have any criminal history. There is no evidence that the attack was premeditated. The injury report of the injured shows that he sustained only one injury of the nature of incised wound over the back of his chest. X-Ray was performed and no fracture was found. In the opinion of the doctor, the injury was simple in nature. There is also no evidence that the appellants tried to attack the injured again. On the other hand, they ran away from the spot upon alarm raised by the witnesses. It goes to show that the appellants had no intention to kill the injured Kaushal @ Rajesh.

36. In view of the above, the learned trial court has reached at the right conclusion of the guilt of the appellants, but, so far as conviction and sentence under Section 307 read with 34 IPC is concerned, it deserves to be modified, because, the act of the appellants was not of such a nature that they have had any intention to kill the injured and the nature of injury also does not support the prosecution case that the act committed would fall under the category of attempt to murder. In my view, the offence falls under Section 324 IPC and not under Section 307 read with 34 IPC.

37. In view of the above discussion, the appellants Bahadur and Desh Raj are held guilty of offence punishable under Section 324 read with 34 IPC and the conviction of the appellants, by the learned trial court, under Section 307 read with 34 IPC, is modified and the appellants are convicted under Section 324 read with 34 IPC.

38. So far as the sentence part of the appellants is concerned, it is submitted by learned Counsel for the appellants that they have no criminal history and the appeal is pending since last about 39 years. At present, they are very old persons having no money an are suffering with age related ailments, therefore it is pleaded that the appellants be given the benefit of Section 4 of first offender under Probation of Offenders Act,1958.

39. Looking into the facts and circumstances of the case, it is noteworthy to note that the incident had taken place way back in the year 1984, which is more than 42 years ago and this appeal is pending since last about 39 years. There is no criminal antecedents of the appellants. It appears that the incident took place without any pre-mediation of the mind and had started at the spur of moment, therefore, looking into the entire facts and circumstances of the case, the appellants deserve to be given the benefit of Section 4 of Probation of Offenders Act, 1958 and Section 360 Cr.P.C.

40. In view of the above discussion, this appeal is **allowed in part** and the impugned judgment and order is modified to the extent that the appellants Bahadur and Desh Raj are held guilty of Section 324 read with 34 IPC, and instead of sentencing them to imprisonment, they are given the benefit of Section 4 of Probation of Offenders Act, 1958. Therefore, the appellants, to wit, **Desh Raj** and **Bahadur** are released on probation and it is directed that they would file a personal bond each of Rs.20,000/- and two sureties of the like amount before District Probation Officer, concerned, and also an undertaking to the effect that they will maintain good behavior during the period of one year from the date of release. The said bonds shall be filed by the appellants within two weeks from the date of this judgment. In case of breach of any of the above conditions, the appellants shall be called and heard on quantum of sentence.

41. Let a copy of this judgment alongwith record of the trial court be returned to court concerned for information and necessary compliance.

(2026) 7 ILRA 322
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 2718 of 2008
Alongwith
Criminal Appeal No. 2075 of 2008

Dharmendra Singh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether conviction under Ss. 302/34, 394 and 411 IPC and S. 25 of the Arms Act,1959 can be sustained where the witnesses of fact have turned hostile, the recovery of the looted property is proved through police witnesses in the absence of independent public witnesses, and the prosecution relies upon the recovery, evidentiary value of the First Information Report and other corroborative evidence, and whether the conviction under S. 25 of the Arms Act,1959 is sustainable when the recovered firearm and cartridges were neither sent for expert examination nor tested for their workable condition. (Paras 18-58)

Headnotes

Criminal Law - Indian Penal Code,1860 - Ss. 302/34, 394 and 411 - Arms Act,1959 - S. 25 - Evidence - Hostile witnesses - First Information Report - Evidentiary value - Informant turning hostile - Held, merely because the informant turned hostile, it cannot be said or presumed that the First Information Report has lost its relevancy and cannot be looked into for any purpose - Where registration of the First Information Report was duly and legally verified and testified to and other admissible, cogent and reliable evidence supported the prosecution case, the written report remained relevant, trustworthy and firmly supported the prosecution story. (Paras 25-38)

Criminal Law - Evidence - Recovery - Police witnesses - Independent witnesses - Absence of independent or public witness - Held, there is no rule of law which stipulates that testimony of police personnel as recovery witnesses cannot be relied upon without corroboration from independent public witnesses - Police personnel are also responsible citizens of the country and merely because recovery witnesses happen to be police personnel, their reliable, trustworthy and creditworthy testimonies cannot be disbelieved or discredited - Where their evidence inspires confidence and is found trustworthy and reliable, conviction can be safely recorded on the sole testimony of police witnesses. (Paras 39-51)

Criminal Law - Evidence - Recovery of looted property - Rs. 1,25,000/- and personal articles - Immediate recovery from possession of accused - Motive - Premeditation and prior concert - Held, arrest immediately after the incident near the place of occurrence and recovery of the looted amount of Rs. 1,25,000/- clearly proved and established the motive behind the commission of the alleged crime - Recovery of the looted amount and other articles, coupled with the evidence of prosecution witnesses, established active role with premeditation, a pre-arranged plan and prior concert. (Paras 40-48, 53-55)

Criminal Law - Indian Penal Code,1860 - Ss. 302/34, 394 and 411 - Appreciation of evidence - Benefit of doubt - Accused not arrested from place of occurrence and no incriminating material

recovered - Presence at place of occurrence highly doubtful - Conviction unsustainable - Benefit of doubt extended and accused acquitted. (Paras 57-61)

Criminal Law - Arms Act,1959 - S. 25 - Recovery of 12-bore tamancha and three cartridges - Firearm not sent for expert examination - Firearm not personally tested for workable condition - Prosecution failed to establish whether recovered firearm and cartridges were used in commission of alleged crime - Conviction under S. 25 of the Arms Act bad in the eyes of law and contrary to settled legal principles - Conviction set aside and accused acquitted of said charge. (Para 56)

Criminal Law - Indian Penal Code,1860 - Ss. 302/34, 394 and 411 - Evidence properly appreciated against accused - Conviction well-founded - Conviction and sentence affirmed. (Paras 58, 62-64)

Held: The informant having turned hostile does not by itself render the First Information Report irrelevant and the written report remains relevant, trustworthy and firmly supports the prosecution story where its registration is duly and legally verified and other evidence is available - the evidence of police witnesses cannot be doubted or discarded merely on the ground that they belong to the police force and where their evidence inspires confidence and their testimony is found to be trustworthy and reliable, there is no justification to disbelieve them and conviction can be safely recorded based on the sole testimony of police witnesses - the arrest immediately after the incident near the place of occurrence and recovery of the looted amount of Rs. 1,25,000/- and other personal articles belonging to the deceased clearly proved and established the recovery and established the motive behind the commission of the alleged crime - the evidence established that the accused persons were well-acquainted with the fact that the deceased regularly visited Moradabad to collect payments and the substantial sum of Rs. 1,25,000/- provided the motive to loot the deceased - the evidence further established premeditation, a pre-arranged plan and prior concert and the active role of the accused in the commission of the alleged crime - there was no material fact elicited by the defence to cast doubt on the presence and testimony of the recovery witnesses and their testimonies fully corroborated and supported each other - the defence evidence failed to establish the alleged false arrest and there was no substance or relevance in the evidence of the defence witness - however, where an accused could not be arrested from the place of occurrence and no incriminating materials were recovered from his possession, his presence at the place of occurrence was highly doubtful and the benefit of doubt was required to be extended to him - in respect of the firearm charge, although one 12-bore tamancha and three 12-bore cartridges were recovered, the recovered tamancha and cartridges were not sent for expert examination and the investigating officer did not personally test whether the recovered tamancha was in a workable condition and consequently the recovered tamancha and cartridges could not be connected with the alleged crime and the prosecution failed to establish whether the recovered 12-bore tamancha along with three 12-bore cartridges was used in the commission of the alleged crime or not and therefore the conviction under S. 25 of the Arms Act was bad in the eyes of law and contrary to settled legal principles and was unsustainable in the eyes of law - the conviction under Ss. 302/34, 394 and 411 of the IPC was well-founded and liable to be affirmed whereas the conviction under S. 25 of the Arms Act was liable to be set aside and the benefit of doubt was extended in respect thereof. (Paras 25-63) (E-7)

Case Law Cited

Goverdhan and Another v. State of Chhattisgarh, **(2025) 3 SCC 378***; Bable @ Gurdeep Singh v. State of Chhattisgarh,* **(2012) 11 SCC 181***; Girja Prasad (Dead) by LRS. v. State of M.P.,* **(2007) 7 SCC 625***; Madhu @ Madhuranatha v. State of Karnataka,* **(2014) 12 SCC 419***; Pradeep Narayan Madgaonkar v. State of Maharashtra,* **(1995) 4 SCC 255.**

List of Acts

Indian Penal Code,1860; Arms Act,1959; Code of Criminal Procedure,1973.

List of Keywords

hostile witness; First Information Report; written report; evidentiary value; police witnesses; recovery witnesses; independent public witnesses; recovery; looted suitcase; Rs. 1,25,000/-; motive; premeditation; pre-arranged plan; prior concert; common intention; benefit of doubt; recovery of tamancha; three cartridges;

expert examination; workable condition; conviction; acquittal; settled legal principles; trustworthy and reliable evidence

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order of conviction and sentence dated 27.03.2008 passed by the learned Additional Sessions Judge, Court No. 9, Moradabad in Sessions Trial No. 1037 of 1996, arising out of Case Crime No. 612 of 1995, under Ss. 302/34, 394 and 411 IPC, Police Station Kotwali, District Moradabad, and in Sessions Trial No. 1038 of 1996, arising out of Case Crime No. 613 of 1995, under S. 25 of the Arms Act, Police Station Kotwali, District Moradabad.

Appearances for Parties

Advs. for the Appellant:
Shri Ashok Kumar Mishra and Shri Krishna Kant Tiwari
Advs. for the Respondents:
Shri G.N. Kanaujia, learned A.G.A.-Ist for the respondent-State.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Shri Ashok Kumar Mishra and Shri Krishna Kant Tiwari, learned counsel for the appellants, and Shri G.N. Kanaujia, learned A.G.A.-Ist for the respondent-State and perused the record.

2. Both these criminal appeals, bearing Criminal Appeal No. 2718 of 2008 and Criminal Appeal No. 2075 of 2008, have been filed by appellants Dharmendra Singh and Charan Singh, respectively, against the judgment and order of conviction and sentence dated 27.03.2008 passed by the learned Additional Sessions Judge, Court No. 9, Moradabad in Sessions Trial No. 1037 of 1996 (State vs. Dharmendra Singh and others), arising out of Case Crime No. 612 of 1995 (Case Crime No. 911 of 1995) under Sections 302/34, 394 & 411 IPC, P.S. Kotwali, District- Moradabad. Further, Criminal Appeal No. 2718 of 2008 (Dharmendra Singh vs. State of U.P.) has also been filed against the judgment and order of conviction and sentence dated 27.03.2008 passed by the learned Additional Sessions Judge, Court No. 9, Moradabad in Sessions Trial No.1038 of 1996 (State vs. Dharmendra) arising out of Case Crime No. 613 of 1996, under Section 25 of the Arms Act, Police Station Kotwali, District Moradabad.

3. Brief facts of the case as revealed in the written report (Exhibit Ka-1), which has been lodged by informant Suresh Kumar Khanna (PW-2) are that Pappu @ Raj Kishore Prasad, a resident of Mohalla Chhata Bazar, Police Station Town, Muzaffarpur (Bihar), sells raw materials, to collect payment for which he frequently visits Moradabad, and had currently come to Moradabad for the same purpose. On dated 22.12.1995, after collecting approximately Rs.1,25,000/- from the traders of Moradabad, such as, Sachin, Mohd. Nasir, Rajesh Metal, Ishwar and Ibrahim, Pappu was heading back to his home. Due to huge amount and sympathy, informant Suresh Kumar Khanna (PW-2), Surendra Kumar S/o Harkishan, a resident of Jigar Colony near Damdama Kothi, P.S. Civil Lines, District Moradabad, were going to drop Pappu at the Moradabad Railway Station on a rickshaw. They left the rickshaw on the main road near the eastern gate of the Moradabad Railway Station. Right there on the road, at around 3:45 P.M., Dharmendra Singh, Sher Singh and Charan Singh started snatching the suitcase (attache) from Pappu's hands. While scuffling over the suitcase (attache), they moved near the railway boundary wall. When they raised an alarm and resisted, Sher

Singh shot Pappu in the chest. Dharmendra Singh immediately snatched the suitcase (attache) from the hands of Pappu and fled with the snatched suitcase. Upon hearing the commotion, Rajesh Kumar and several other people arrived, and with their help, Dharmendra Singh was caught red handed along with the looted suitcase, while Sher Singh and Charan Singh escaped through the railway tracks. Pappu fell down in front of the ticket counter passenger hall and died. Dharmendra Singh is in police custody along with the looted suitcase, and the police are conducting the necessary legal paperwork.

4. On the basis of the written report (Exhibit Ka-1), a First Information Report (Exhibit Ka-23) was registered against Dharmendra Singh, Sher Singh and Charan Singh as Case Crime No. 612 of 1995, under Sections 302, 394 and 411 I.P.C. at Police Station G.R.P. Moradabad, District Moradabad, on 22.12.1995, at about 16:30 hours, by Yashpal Singh (PW-14). S.H.O. Hemant Kumar Mishra (PW-1), P.S. G.R.P., District Moradabad, who was on duty in a routine checking, on hearing hue and cry, rushed towards the direction from where the noise of people was coming and caught appellant Dharmendra Singh red-handed with a suitcase (attache), before he could climb and cross the railway bridge going towards Ramtalaiya at about 4:00 P.M. S.H.O. Hemant Kumar Mishra (PW-1), recovered a 12-bore desi tamancha from the left pocket of the pant of appellant Dharmendra Singh, and from the pocket of the kurta, three live cartridges of 12-bore were also recovered.

5. The case was handed over to S.I. Laxmichandra Upadhyay (PW-7), for investigation. Investigating Officer Laxmichandra Upadhyay (PW-7), prepared panchayatnama of the deceased, Pappu @ Raj Kishore Prasad as (Exhibit Ka-22). He also prepared other necessary police papers relating to panchayatnama such as letter to R.I. (Exhibit Ka-6), letter to C.M.O. (Exhibit Ka-7), the report to Medical Officer (Exhibit Ka-8), photolash (Exhibit Ka-9), sample of seal (Exhibit Ka-10), the report to R.I. (Exhibit Ka-11), and challanlash (Exhibit Ka-12). After preparing the above necessary police papers, the dead body of the deceased, Pappu @ Raj Kishore Prasad, was sent for postmortem examination. The Investigating Officer recorded the statement of Yashpal Singh (PW-14) and informant Suresh Kumar Khanna (PW-2). In the presence of witnesses Om Prakash and Shyam Mohan, Investigating Officer collected simple soil and blood-stained soil from the place of occurrence and prepared recovery memo as Exhibit Ka-13. He also inspected the place of occurrence and prepared site plan as Exhibit Ka-14. He inspected the place of occurrence on the pointing out of informant Suresh Kumar Khanna (PW-2), and recorded statements of witnesses relating to the arrest of appellant Dharmendra Singh. After that, the case was handed over to Inspector D.K. Jain for investigation. However, after the transfer of Inspector D.K. Jain, the case was handed over to S.I. Suresh Chandra Sharma (PW-8). Suresh Chandra Sharma (PW-8), completed the investigation of the case and submitted a charge sheet, Exhibit Ka-15, against accused appellants Dharmendra Singh, Charan Singh, and Sher Singh under Sections 302, 394, and 411 I.P.C. in the Court of the concerned Magistrate having jurisdiction.

6. On the basis of recovery of an illegal tamancha along with three cartridges of 12-bore by S.I. Hemant Kumar Mishra (PW-1) from the possession of appellant Dharmendra Singh, another case was registered as Case Crime No. 613 of 1995, under Section 25 of the Arms Act against the appellant Dharmendra Singh by Yashpal Singh (PW-14), as chik First Information Report (Exhibit Ka-16). After registration of the First Information Report under Section 25 of the Arms Act against

appellant Dharmendra Singh, investigation of that case was handed over to S.I. Kailash Chandra Verma (PW-9).

7. S.I. Kailash Chandra Verma (PW-9), identified and proved the chik First Information Report as Exhibit Ka-16 and carbon copy of the G.D. as Exhibit Ka-17 in the handwriting and signatures of Head Moharrir Yashpal Singh, (PW-14). S.I. Kailash Chandra Verma (PW-9), also obtained permission from the District Magistrate, Moradabad for the prosecution under Section 25 of the Arms Act against appellant Dharmendra Singh as Exhibit Ka-20. S.I. Kailash Chandra Verma (PW-9), also prepared site plan as Exhibit Ka-18 and, after completing all the necessary formalities of the investigation, filed a charge sheet (Exhibit Ka-19) against appellant Dharmendra Singh under Section 25 of the Arms Act.

8. S.I. Hemant Kumar Mishra (PW-1), prepared recovery memo of the suitcase (attache) along with the other articles/objects, which were found inside the suitcase, recovered from the possession of the appellant Dharmendra Singh as Material Exhibit-4 to Material Exhibit-58. PW-1 also prepared recovery memo of tamancha along with three cartridges of 12-bore, recovered from the possession of the appellant Dharmendra Singh before recovery witnesses on 22.12.1995.

9. The body of the deceased, Pappu @ Raj Kishore Prasad, was sent for post-mortem examination. Dr. Vijay Kumar Gopal (PW-3), who conducted the examination on 23.12.1995, prepared the post-mortem report, marked as Exhibit Ka-2. As per the said report, the following ante-mortem injuries were found on the body of the deceased:-

"(i) Gunshot wound of entry 1x1 cm size chest cavity deep, on front of right sided chest 2x1/2 cm below to the medial end of right clavicle, margins of wound are inverted with abraded collar, wound directing inwards and backwards, underneath pleura and lungs are perforated through and through, one and half litre free & clotted blood present in the chest cavity, one big metallic pellet (looking like bullet) recovered from the tissue side chest cavity.

(ii) Abrasion 1x1/2 cm on right knee front side.

(iii) Multiple abrasion in 11x5 cm area in front of left knee.

(iv) One abrasion 1x1/2 cm on left side forehead."

Dr. Vijay Kumar Gopal (PW-3) opined that the cause of death was shock and hemorrhage as a result of ante-mortem gunshot (firearm) injuries.

10. After completing all the necessary formalities and recording the statements of witnesses, investigating officer Suresh Chandra Sharma (PW-8) submitted a charge sheet (Exhibit Ka-15) against accused Sher Singh and appellants Dharmendra Singh and Charan Singh under Sections 302, 394 and 411 IPC in the Magistrate Court having jurisdiction. In respect of the Arms Act case, investigating officer Kailash Chandra Verma (PW-9) also filed a charge sheet (Exhibit Ka-19) against appellant Dharmendra Singh under Section 25 of the Arms Act.

11. Since the case was exclusively triable by the Court of Session, the learned Magistrate Court committed the case to the Court of Session for trial.

12. Charges were framed against appellants, Dharmendra Singh, Charan Singh and accused Sher Singh on 14.10.1996 by the Trial Court under section 302/34 and 394 IPC. Charges were also framed against appellant Dharmendra Singh under section 411 IPC and under section 25 of the Arms Act on 14.10.1996. However, on 14.03.2008, an amended charge was framed by the Trial Court against appellant Dharmendra Singh under section 411 IPC. Against appellant Dharmendra Singh, an amended charge was also framed on 14.03.2008 under section 25 of the Arms Act by the Trial Court. The charges were read over to the accused persons, the accused persons pleaded not guilty and claimed trial.

13. In support of its case, the prosecution adduced Hemant Kumar Mishra as PW-1, informant Suresh Kumar Khanna as PW-2, Dr. Vijay Kumar Gopal as PW-3, Suresh as PW-4, Ashok Kumar as PW-5, T.R. Kothari as PW-6, Laxmichandra Upadhyay as PW-7, Suresh Chandra Sharma as PW-8, Kailash Chandra Verma as PW-9, Mahendra Singh Tyagi as PW-10, Rajesh Kumar as PW-11, Surendra Kumar as PW-12, Om Prakash as PW-13, and Yashpal Singh as PW-14. Apart from the above oral evidence, the prosecution also relied upon documentary evidence from Exhibit Ka-1 to Exhibit Ka-21. The prosecution further relied upon material exhibits from Exhibit-4 to Exhibit-58 in support of its case.

14. After the evidence of all the prosecution witnesses was completed before the Trial Court, accused-appellants Dharmendra Singh and Charan Singh were examined under section 313 Cr.P.C. Appellants Dharmendra Singh and Charan Singh answered all the questions put to them under section 313 CrPC in the negative. They denied all allegations and expressed their ignorance about the questions put to them. They also stated that they were falsely implicated in this case by the police. They further stated that they would adduce defence evidence, and in their defence, appellants Dharmendra Singh and Charan Singh adduced Gajju Singh as DW-1.

15. It is worthwhile to mention here that during the pendency of the trial, accused Sher Singh had died. Due to the death of accused Sher Singh, the case was abated against him by the learned Trial Court, as revealed from the last paragraph at page six of the impugned judgment and order dated 27.03.2008.

16. After recording the evidence of the prosecution and defence, the Trial Court heard the arguments of both sides. After hearing the arguments, the Trial Court found the appellants, Dharmendra Singh and Charan Singh, guilty of the alleged crime. The Trial Court convicted and sentenced Dharmendra Singh and Charan Singh to rigorous life imprisonment under section 302/34 IPC, along with a fine of Rs. 2,000/- each. Both the appellants, Dharmendra Singh and Charan Singh, were also convicted and sentenced under section 394 IPC for 10 years of rigorous imprisonment, along with a fine of Rs. 2,000/- each. In default of payment of the fine, both appellants, Charan Singh and Dharmendra Singh, were ordered to serve two years of rigorous imprisonment. Appellant Dharmendra Singh was also convicted and sentenced for three years of rigorous imprisonment, along with a fine of Rs. 2,000/- under section 411 IPC. In default of payment of the fine, appellant Dharmendra Singh was also sentenced to four months of additional

rigorous imprisonment. Appellant Dharmendra Singh was also convicted and sentenced to one year of rigorous imprisonment, along with a fine of Rs. 500/- under section 25 of the Arms Act, and in case of default of payment of the fine, two months of rigorous imprisonment. All the sentences of the appellants were directed to run concurrently.

17. Aggrieved by the above impugned judgment and order of conviction and sentence dated 27.03.2008, passed by the learned Additional Sessions Judge, Court Number 9, Moradabad, appellant Dharmendra Singh filed Criminal Appeal No. 2718 of 2008, and appellant Charan Singh filed Criminal Appeal No. 2075 of 2008, before this Court.

18. Learned counsel for the appellants submitted that there is no reliable and trustworthy evidence against the appellants. The witnesses of fact, who are said to be the eyewitnesses of the case, such as, informant Suresh Kumar Khanna (PW-2), Suresh (PW-4), Ashok Kumar (PW-5), Rajesh Kumar (PW-11), and Surendra Kumar (PW-12), have not supported the prosecution story before the Trial Court and they all turned hostile. Since informant Suresh Kumar Khanna (PW-2) turned hostile and has not supported the written report (Exhibit Ka-1), the whole prosecution story fell on the ground. Due to this reason, there is no eyewitness evidence by which the prosecution could prove the case against the appellants beyond reasonable doubt. It is also submitted that the so-called suitcase (attache) of the deceased, which was recovered by the police from the possession of the appellant Dharmendra Singh, could not find support from the evidence of any independent recovery witness. All independent recovery witnesses turned hostile and have not supported the recovery of the suitcase (attache) and any articles/objects found inside of it, relating to the deceased from the possession of the appellant Dharmendra Singh. Since there is no independent evidence of recovery witnesses because they have turned hostile, the prosecution case could not be proved against the accused-appellants for the commission of the alleged crime solely on the basis of police personnel as witnesses of the recovery and on the strength of their evidence.

19. It is further submitted that the recovery and the crime alleged against the appellants could not be proved and established by the prosecution beyond reasonable doubt only on the basis of police witnesses. Police personnel have an interest and motive to prove their case, so they are interested witnesses to prove their recovery memos at any cost against the appellants. Therefore, in view of the above, the prosecution is totally unsuccessful in proving its case against the appellants beyond reasonable doubt. It is further argued on behalf of the appellants that the Trial Court failed to consider this vital aspect while appreciating the evidence on record. Owing to misappreciation and improper evaluation of the evidence, the Trial Court erroneously held the appellants guilty and convicted them for the commission of the alleged offence. The findings recorded by the Trial Court are contrary to the material evidence available on record and, therefore, unsustainable in the eyes of law.

20. Further, the appellants have duly established their defence through the testimony of defence witness Gajju Singh (DW-1), however, the Trial Court failed to properly consider and appreciate the reliable testimony of the said defence witness. The Trial Court misread the evidence on record and relied upon evidence which could not legally be relied upon against the appellants. Therefore, the impugned judgment and order of conviction and sentence dated 27.03.2008 is perverse in law, without support of any cogent evidence, and also against the settled principles of

law. Hence, the impugned judgment and order dated 27.03.2008 is liable to be set aside and both these criminal appeals of the appellants deserve to be allowed.

21. Per contra, learned A.G.A. on behalf of the State-respondent, has vehemently opposed the arguments of the learned counsel for the appellants and submitted that although all witnesses of fact have turned hostile, yet the prosecution case finds support from their hostile statements, and the occurrence of the alleged incident as well as the participation of the appellants in the commission of the alleged crime stand fully proved and established beyond reasonable doubt. It is a settled principle of law that the evidence of hostile witnesses cannot be rejected in toto. The evidence supporting the prosecution case has rightly been considered against the appellants. Therefore, the learned Trial Court, after properly appreciating and relying upon the prosecution evidence, rightly held the appellants guilty of the alleged offence. It is also submitted that there is no such law that the evidence of police witnesses shall be rejected solely on the ground of their being police personnel. The police witnesses had no enmity or personal interest against the appellants to falsely implicate them in the case.

22. The recovery of the looted suitcase (attache) and all articles/objects which were found inside of it, along with cash of more than Rs.1,25,000/- belonging to the deceased, were recovered from the possession of the appellant Dharmendra Singh. Appellant Dharmendra Singh was caught red-handed at the railway station near the place of occurrence by the police personnel along with the prosecution witnesses. In such a situation, the recovery of the looted suitcase (attache) of the deceased, Pappu alias Raj Kishore Prasad, from the appellant Dharmendra Singh cannot be doubted or suspected merely on the ground that only police witnesses have supported the recovery of the looted suitcase (attache) and the articles/objects found therein.

23. Further, the Trial Court has appreciated the evidence in its proper perspective and recorded a reasonable finding which is based on cogent evidence available on record against the appellants. It is also submitted that the appellants committed the alleged offence with common intention, prior planning, premeditation and prior concert, and each of them actively played his respective role in the commission of the alleged offence. In view of the aforesaid arguments, the learned A.G.A. has submitted that there is no perversity or illegality in the impugned judgment and order of conviction and sentence dated 27.03.2008 passed by the learned Additional Sessions Judge, Court Number 9, Moradabad. Consequently, both the criminal appeals filed by the appellants, being devoid of merit, are liable to be dismissed, and the impugned judgment and order of conviction and sentence dated 27.03.2008 passed by the learned Trial Court deserve to be affirmed.

24. In light of the submissions made by the learned counsel for the parties, we have perused the written report (Exhibit Ka-1). It reveals that the accused Sher Singh (who died during the course of trial), along with the present appellants, were named as accused persons in the written report by the informant, Suresh Kumar Khanna (PW-2). A perusal of the written report further reveals that appellant, Dharmendra Singh was caught red-handed with the looted suitcase (attache) and other articles belonging to the deceased, Pappu @ Raj Kishore Prasad. The accused Sher Singh (who died during the course of trial) and appellant Charan Singh managed to escape from the scene of occurrence. Thus, it is clear that the accused, Sher Singh (who died during the course of trial)

and the present appellants, Dharmendra Singh and Charan Singh, were named in the written report (Exhibit Ka-1) and a case was registered against them as Case Crime No. 612 of 1995, under Sections 394, 302 and 411 of the IPC.

25. The informant, Suresh Kumar Khanna (PW-2), who lodged the written report (Exhibit Ka-1) at the police station, was produced before the Court as PW-2. From a perusal of the evidence of informant, Suresh Kumar Khanna (PW-2), we find that the informant has turned hostile and has not supported the prosecution story, although he himself had lodged the written report against the named accused persons. Furthermore, from a perusal of the entire evidence of the informant (PW-2), we find that this witness refused to identify the accused persons in Court and stated that he does not know the accused Dharmendra Singh, Charan Singh and Sher Singh. However, he accepted the fact that the incident occurred on 22.12.1995, at about 3:45 P.M. From the statement of this hostile witness, it is also revealed and established that deceased, Pappu @ Raj Kishore, was a resident of Chhata Bazar, Police Station Town, District Muzaffarpur, Bihar. He used to sell raw materials to this witness and other traders, and usually visited Moradabad to collect payments.

26. A perusal of the evidence of this hostile witness discloses and establishes the fact that on the date of the incident, i.e. 22.12.1995, Pappu @ Raj Kishore had come to Moradabad to collect payments. He had collected a total sum of Rs.1,25,000/- in cash from traders, namely, Sachin, Mohammad Nasir, Rajesh Metal, Ishwar and Ibrahim. After collecting the payments, which was kept in a suitcase (attache) in his hand, he was returning to the railway station to catch a train. Out of courtesy, this witness and one Surendra Kumar accompanied Raj Kishore to see him off at the railway station. It is further established from the statement of this hostile witness that when they reached near the eastern gate on the main road of the railway station, left the rickshaw, and began to walk on foot, three persons came there and started snatching the suitcase (attache) from the hands of Raj Kishore. According to this witness, by the time he reached the exact spot, Pappu @ Raj Kishore had already sustained a gunshot injury, and the shooter had fled. The witness claimed he did not see the shooter.

27. Thus, despite the hostile statement of the informant (PW-2), the fact remains clear that the deceased, Pappu had come to Moradabad on 22.12.1995, to collect payments, and had indeed collected it from the traders of Moradabad. The incident occurred on 22.12.1995 at about 3:45 P.M. The suitcase (attache) containing Rs.1,25,000/- which was in the hands of Pappu @ Raj Kishore, was snatched. In the process of snatching the suitcase (attache), Pappu @ Raj Kishore was shot dead by the accused persons. Although the witness clearly mentioned in the written report (Exhibit Ka-1) that accused Sher Singh had fired a gunshot at Pappu @ Raj Kishore's chest, causing his death on the spot, he turned hostile during his cross-examination and failed to reiterate those facts.

28. In his cross-examination, Suresh Kumar Khanna (PW-2) stated that he had written the report of this incident and what Daroga Ji told him, he wrote. This implies that upon turning hostile, the witness resiled from his statement previously recorded by the Investigating Officer under Section 161 of the CrPC. He sought to shift liability by alleging that the written report was prepared solely under the dictation of Daroga Ji and that he merely recorded what was dictated to him. It appears from the hostile deposition of this witness that, due to fear and intimidation by the accused persons, he chose not to support the prosecution□s case. Furthermore, the deceased Pappu

@ Raj Kishore Prasad was a resident of Chhata Bazar, P.S. Town, District Muzaffarpur, Bihar, and had died on the spot during the incident. The material change in circumstances following the death of Pappu @ Raj Kishore Prasad also appears to be a reason why the informant (PW-2) turned hostile.

29. Another witness of fact, Suresh (PW-4), has also turned hostile and has not supported the prosecution story. However, from a perusal of the hostile statement of PW-4, we find that the date and time of the incident have been fully established. From the statement of this witness, it is also established that three persons were snatching the suitcase (attache). This witness stated that he knew the accused persons, Charan Singh, Sher Singh and Dharmendra Singh. However, with the intent to protect the accused persons and weaken the prosecution case, this witness initially stated that Charan Singh had snatched the suitcase from the businessman and it was recovered from the possession of Charan Singh. This witness also accepted the fact that one of the three persons had fired at the businessman.

30. In his cross-examination by the prosecution, Suresh (PW-4) acknowledged that the accused, Dharmendra, who snatched the suitcase (attache), was not present in the Court on that day. This witness further admitted that it was by mistake he had stated that Charan Singh snatched the suitcase (attache). From the evidence of this witness, it is established that the suitcase was actually recovered from the possession of accused, Dharmendra Singh and that the accused, Sher Singh (who died during the course of trial), had shot at the deceased. However, during his cross-examination by the defence, this witness also stated that he agreed to be an eyewitness under the influence of the police. Thus, from the hostile statement of this witness (PW-4) as well, the factum of the incident dated 22.12.1995, along with the time and place of the occurrence, has been clearly established. This fact has also been established that the accused Sher Singh (who died during the course of trial) had shot at the deceased Pappu @ Raj Kishore, and the accused Dharmendra Singh had snatched the suitcase (attache) from the hands of the deceased Pappu @ Raj Kishore.

31. Another witness of fact, Ashok Kumar (PW-5), has also supported the prosecution story. From a perusal of the evidence of this witness, it is apparent that the incident, as narrated in the written report (Exhibit Ka-1), occurred in his presence. This witness saw the occurrence of the alleged incident with his own eyes. This witness has clearly stated that the accused, Sher Singh (who died during the course of trial) and who was present in the Court, had shot at Pappu @ Raj Kishore. He stated that the accused who snatched the suitcase (attache) was not present in the Court on that day. The person who snatched the suitcase (attache) ran away and was caught red-handed on the bridge, while the other two accused fled from the spot. A suitcase (attache) was recovered from his possession. Thus, the prosecution story finds strong support from the evidence of prosecution witness Ashok Kumar (PW-5). From the evidence of this witness, the respective roles of the accused Sher Singh (who died during the course of trial) and the present appellant, Dharmendra Singh, have clearly emerged and been established exactly as narrated in the written report (Exhibit Ka-1) by the informant (PW-2).

32. From a perusal of the evidence of another prosecution witness, Rajesh Kumar (PW-11), we find that this witness has turned hostile and has not supported the prosecution story. He stated

that he does not know any of the accused persons and was also unacquainted with the deceased, Pappu @ Raj Kishore.

33. Prosecution witness Surendra Kumar (PW-12) has also turned hostile and failed to support the prosecution story, stating that he does not know the accused persons. However, this witness established the fact that he was familiar with the deceased, Pappu @ Raj Kishore, who was engaged in the business of supplying raw materials for utensils and was a native of District Muzaffarpur, Bihar. Thus, from the evidence of Surendra Kumar (PW-12), it is established that deceased,Pappu @ Raj Kishore, was a resident of Chhata Bazar, District Muzaffarpur, Bihar, and worked as a supplier of raw materials for manufacturing utensils in Moradabad.

34. The next prosecution witness, Om Prakash (PW-13), has verified and testified to the Panchayatnama (Ex. Ka-22) of the deceased, Pappu alias Rajkishore Prasad.

35. Thus, from a perusal of the evidence of the informant, Suresh Kumar Khanna (PW-2), we find that the informant has accepted and verified the fact that he had written and lodged the written report (Ex. Ka-1) at the concerned police station. Following the lodging of the written report, a case was registered by the police. Although the informant (PW-2) stated that he had written the report under the dictation of the Daroga Ji, and that whatever was narrated by the Daroga Ji, had been recorded by him in the written report (Ex. Ka-1), yet, by the aforesaid statement of the informant (PW-2), the sanctity and legality of the First Information Report does not lose its importance, and thereby, the prosecution story cannot fall to the ground. The reason for this is that prosecution witness S.I. Yashpal Singh (PW-14), who was posted as Head Moharrir at GRP, Moradabad on 22.12.1995, had registered the First Information Report (Ex. Ka-23) as Crime No. 612 of 1995, under Sections 302, 394 and 411 of the IPC against the named accused persons. This witness, Yashpal Singh (PW-14), on the same date and on the basis of the recovery memo prepared by the In-charge Inspector Hemant Kumar Mishra, had also registered a case under Section 25 of the Arms Act as Crime No. 613 of 1995 against the accused-appellant, Dharmendra Singh, which is Exhibit Ka-16. On the basis of the above recovery, the First Information Report under Section 302 of the IPC, and the case under Section 25 of the Arms Act, the Investigating officers undertook the task of investigation and investigation of the cases commenced.

36. Therefore, merely on the ground of the statement of the informant (PW-2) that he had written the written report (Exhibit Ka-1) under the dictation of the Daroga Ji and recorded only what was told by the Daroga Ji, the prosecution story and the sanctity of the First Information Report, cannot be doubted on this count. Hence, the written report (Exhibit Ka-1), in which the names of the accused persons have been clearly mentioned by the informant (PW-2), remains relevant, trustworthy and firmly supports the prosecution story.

37. Recently, on the point of hostility of the informant and regarding negative statements made by the informant about the First Information Report, the Hon'ble Supreme Court in ***Goverdhan and Another v. State of Chhattisgarh; (2025) 3 SCC 378***, has held in paragraph no-32 as under:-

"In this regard, we may profitably refer to the decision of this Court in Bable @ Gurdeep Singh v. State of Chhattisgarh, (2012) 11 SCC 181, wherein it was observed as follows:

"14. Once registration of the FIR is proved by the police and the same is accepted on record by the court, and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent, and reliable evidence, it will be impermissible for the court to ignore the evidentiary value of the FIR. The FIR, Ex. P-1, has been duly proved by the statement of PW 1, Sub-Inspector Suresh Bhagat. According to him, he had registered the FIR upon the statement of PW 1, and it was duly signed by him. Thus, the FIR was registered and duly formed part of the record of the police station, which were maintained in the normal course of its business and investigation. Thus, in any case, it is a settled proposition of law that the FIR by itself is not a substantive piece of evidence, but it certainly is a relevant circumstance of the evidence produced by the investigating agency. Merely because PW 1 has turned hostile, it cannot be said that the FIR would lose all its relevancy and cannot be looked into for any purpose."'

38. In view of the legal principles as settled by the Hon'ble Supreme Court in ***Goverdhan (supra),*** it is clear that merely because the informant (PW-2) has turned hostile, it cannot be said or presumed that the First Information Report has lost its relevancy and cannot be looked into for any purpose. In the present case, Yashpal Singh (PW-14) has duly and legally verified and testified to the registration of the First Information Report on the basis of the written report (Exhibit Ka-1) submitted by the informant (PW-2) at the concerned police station. Apart from Yashpal Singh (PW-14), the registration of the First Information Report under Section 302 of the IPC and Section 25 of the Arms Act has already been proved by the evidence of other police witnesses, who were produced as prosecution witnesses.

39. At the time of the incident, SHO Hemant Kumar Mishra (PW-1) of Police Station GRP, Moradabad, along with his police team, and SHO Majhola, Brij Kishore Dwivedi, were also present near the place of occurrence. Upon hearing the gunshot and hue and cry of the people, SHO Hemant Kumar Mishra (PW-1) and the police team of SHO Brij Kishore Dwivedi, of which, S.I. T.R. Kothari (PW-6) was also a member, rushed towards the source of the noise. The police team of SHO Hemant Kumar Mishra (PW-1) and other police officials caught the accused-appellant, Dharmendra Singh, red-handed with the looted suitcase (attache) of the deceased, Pappu @ Raj Kishore, near the pathway leading to Ramtalaiya from the stairs of the railway station bridge at 4:00 P.M. The recovery was effected, and the recovery memo was prepared on 22.12.1995, in the presence of the recovery witnesses for the prosecution, who were police personnel.

40. SHO Hemant Kumar Mishra (PW-1), S.I T.R. Kothari (PW-6), and S.I. Mahendra Singh Tyagi (PW-10), who were recovery witnesses, were present at the time when the present accused-appellant, Dharmendra Singh, was caught red-handed with the looted suitcase (attache). Upon opening the suitcase (attache), one old used white-coloured kurta and trousers, one khaki-colored pants, one Coca-Cola-coloured shirt, one yellow bedsheet, one tahmat (lungi), one Casio calculator, one towel, and shaving cream were recovered. Apart from the above recoveries, a sum of Rs. 1,25,000/- was also recovered, which included 10 bundles of Rs. 100/- notes and 5 bundles of Rs. 50/- notes. Among these, three bundles of Rs. 100/- notes, totaling Rs. 30,000/-, bore the seal of Mohammed Nasir; three bundles of Rs. 100/- notes bore the seal of Rajesh Metal; two bundles

totaling Rs. 20,000/- bore the signature of Ibrahim in Urdu; the remaining two bundles of Rs. 500/- and Rs. 100/- notes bore the signature of Sachin in Hindi; and 5 bundles of Rs. 50/- notes bore the signature of Ishwar. Along with the money and articles, one 12-bore tamancha (country-made pistol) along with three 12-bore cartridges were also recovered from the possession of the accused-appellant, Dharmendra Singh. SHO Hemant Kumar Mishra (PW-1), under whose leadership the accused-appellant, Dharmendra Singh, was caught red-handed with the looted suitcase (attache) near the place of occurrence, duly testified to all the facts regarding the recovery memo before the Court.

41. From a perusal of the evidence of SHO Hemant Kumar Mishra (PW-1), it is evident that this witness, in his examination-in-chief, has stated the facts regarding the arrest of the accused-appellant, Dharmendra, and the recovery of the looted suitcase (attache) along with other articles and Rs.1,25,000/- as found inside the suitcase, which belonged to the deceased, Pappu @ Raj Kishore. In the Trial Court, all the articles found in the suitcase (attache) and recovered from the possession of the accused-appellant, Dharmendra Singh, were produced, and each and every article was endorsed as Material Exhibit-4 to Material Exhibit-58.

42. A lengthy and grueling cross-examination was conducted by the defence. However, from a perusal of the cross-examination done on behalf of the accused persons, we find that it centered only around the location of the place of occurrence and the different platforms, roads, and places where the present accused-appellant, Dharmendra Singh, was caught red-handed with the looted suitcase (attache) and articles belonging to the deceased, Pappu @ Raj Kishore. In this manner, the entire cross-examination by the accused-appellants mainly focused on the place of occurrence and the spot from where the accused-appellant, Dharmendra Singh, was caught red-handed with the looted suitcase (attache). Thus, from a perusal of the cross-examination, we find that no material fact could be elicited by the defence to cast doubt on the presence and testimony of SHO Hemant Kumar Mishra (PW-1) on any ground. The testimony of SHO Hemant Kumar Mishra (PW-1) as a recovery witness, finds ample corroboration and support from the other recovery witnesses of the prosecution, namely, S.I. T.R. Kothari (PW-6) and S.I. Mahendra Singh Tyagi (PW-10).

43. From a perusal of the entire evidence of S.I. T.R. Kothari (PW-6) and S.I. Mahendra Singh Tyagi (PW-10), we find that PW-6 and PW-10 have testified to and corroborated the fact of the arrest of the accused-appellant, Dharmendra Singh, who was caught red-handed with the looted suitcase (attache) and the articles found therein in the same manner and words as stated in the evidence of SHO Hemant Kumar Mishra (PW-1).

44. A lengthy and grueling cross-examination was also conducted by the defence of these recovery witnesses, S.I. T.R. Kothari (PW-6) and S.I. Mahendra Singh Tyagi (PW-10). However, even after the lengthy cross-examination, no such fact emerged in the evidence of these witnesses by which their testimony could be regarded as suspicious or doubtful.

45. Thus, from a perusal of the evidence of SHO Hemant Kumar Mishra (PW-1), it is amply clear that at the time of the incident, these witnesses (PW-6 and PW-10) were present near the place of occurrence. Following the incident, these witnesses, along with the police team, caught

the present accused-appellant, Dharmendra Singh, red-handed with the looted suitcase (attache) belonging to the deceased, Pappu @ Raj Kishore, and recovered Rs.1,25,000/- found inside the suitcase (attache), along with other personal articles of daily use belonging to the deceased. The evidence and testimony of SHO Hemant Kumar Mishra (PW-1) find full support and corroboration from the evidence of the other recovery witnesses, S.I. T.R. Kothari (PW-6) and S.I. Mahendra Singh Tyagi (PW-10), who were also members of the police force. In this manner, the testimonies of SHO Hemant Kumar Mishra (PW-1), S.I. T.R. Kothari (PW-6), and S.I. Mahendra Singh Tyagi (PW-10) fully corroborate and support each other.

46. Therefore, the factum of the arrest of the accused-appellant, Dharmendra Singh, immediately after the incident near the place of occurrence, and the recovery of the looted amount of Rs. 1,25,000/-, has been clearly proved and established by the evidence of prosecution witnesses Hemant Kumar Mishra (PW-1), T.R. Kothari (PW-6), and Mahendra Singh Tyagi (PW-10). Thus, this recovery of the amount of Rs. 1,25,000/- establishes the motive behind the commission of the alleged crime by the accused persons. The accused persons were well aware of the fact that Pappu @ Raj Kishore was a businessman and a resident of Chhata Bazar, P.S. Town, District Muzaffarpur, Bihar, who used to deal in raw materials used for the manufacturing of utensils. The deceased, Pappu @ Raj Kishore, regularly supplied raw materials to traders in Moradabad and frequently visited the area to collect payments from them. This fact was well within the knowledge of the accused persons. The substantial sum of Rs.1,25,000/- induced and motivated the accused persons to commit the alleged crime. In this manner, a strong motive is established against the accused persons for the commission of the offence, namely, the acquisition of Rs. 1,25,000/-, which was a highly significant and valuable amount in the year 1995. Hence, the motive for the commission of the crime stands clearly established and proved beyond reasonable doubt from the evidence of the prosecution witnesses and other materials available on record.

47. Although there is no independent or public witness to the recovery, and the recovery witnesses are exclusively police personnel, there is no rule of law which stipulates that the testimony of police personnel as recovery witnesses cannot be relied upon without corroboration from independent public witnesses. Police personnel are also responsible citizens of the country, they hold public offices and discharge their official duties with the utmost responsibility. Therefore, merely on the ground that SHO Hemant Kumar Mishra (PW-1), S.I. T.R. Kothari (PW-6), and S.I. Mahendra Singh Tyagi (PW-10) happen to be police personnel, this Court finds no ground or material to disbelieve or discredit their reliable, trustworthy, and creditworthy testimonies.

48. From a perusal of the evidence of SHO Hemant Kumar Mishra (PW-1), S.I. T.R. Kothari (PW-6), and S.I. Mahendra Singh Tyagi (PW-10), it is evident that the testimonies rendered by them before the Court inspire absolute confidence. Their evidence fully establishes and proves the prosecution case as set forth in the written report (Exhibit Ka-1).

49. Hon'ble Supreme Court in ***Girja Prasad (Dead) by LRS. v. State of M.P., (2007) 7 SCC 625***, has held in paragraph-25 as follows:-

"25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and

trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence."

50. In the same way, Hon'ble Supreme Court in ***Madhu @ Madhuranatha v. State of Karnataka, (2014) 12 SCC 419,*** has held on the same points in paragraph nos. 17, 18 and 19 as follows:-

"17. The learned counsel for the appellant has vehemently argued that in some of the recoveries, though a large number of people were available, but only police personnel were made recovery witnesses. Thus, the whole prosecution case becomes doubtful.

18. The term □witness□ means a person who is capable of providing information by way of deposing as regards relevant facts, by via an oral statement, or a statement in writing, made or given in court, or otherwise. In Pradeep Narayan Madgaonkar v. State of Maharashtra, (1995) 4 SCC 255, this Court dealt with the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court held that though the same must be subject to strict scrutiny, however, the evidence of police official cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particular should be sought.

19. Thus, a witness is normally considered to be an independent unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause to bear such enmity against the accused so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon if it inspires confidence."

51. Thus, in the light of the law laid down by the Hon'ble Supreme Court in the aforementioned cases, it is a well-settled principle that the evidence of police witnesses cannot be doubted or discarded merely on the ground that they belong to the police force. If the evidence of a police witness inspires confidence and their testimony is found to be trustworthy and reliable, there is no justification to disbelieve them. Under such circumstances, the conviction of an accused can be safely recorded based on the sole testimony of police witnesses. In the present case, the defence has neither adduced nor filed any evidence to show that the police harbored any enmity or grudge against the accused-appellants. There is absolutely no reason why the police personnel would falsely implicate innocent persons like the accused-appellants in a heinous offence involving

murder and the robbery of Rs. 1,25,000/-, along with other personal articles belonging to deceased, Pappul @ Raj Kishore.

52. Although the defence produced a defence witness, Gajju Singh (DW-1), a perusal of his evidence reveals that the defence merely attempted to establish that the accused-appellant, Dharmendra, was falsely arrested by the police while returning from his sister Bina's house. However, from a perusal of the testimony of Gajju Singh (DW-1), we find no statement explaining why or under what circumstances the police would falsely arrest the accused-appellant, Dharmendra, and implicate him in the commission of the alleged crime. Therefore, it is evident that while defence witness Gajju Singh (DW-1) attempted to shield the accused-appellant, Dharmendra Singh, he was miserably unsuccessful in his endeavor. Consequently, we find no substance or relevance in the evidence of defence witness Gajju Singh (DW-1), and accordingly, we disbelieve and reject his testimony.

53. From the evidence of the prosecution's witnesses of fact, namely, Suresh Kumar Khanna (PW-2), Suresh (PW-4), Ashok Kumar (PW-5), and Surendra Kumar (PW-12), it is established and substantiated by the record that the deceased, Pappu @ Raj Kishore, was a resident of Chhata Bazar, P.S. Town, District Muzaffarpur, Bihar. He was a trader who supplied raw materials for manufacturing utensils to various traders in Moradabad and regularly visited Moradabad to collect payments for the materials supplied. On the date of the incident, i.e., 22.12.1995, he was in Moradabad for this purpose. The fact that he had collected payments totaling Rs. 1,25,000/- from traders such as Sachin, Mohammad Nasir, Rajesh Metal, Ishwar, and Ibrahim is firmly established by the testimonies of the aforementioned fact witnesses, the recovery witnesses as well as the recovery memo itself.

54. The accused persons were well-acquainted with these facts. This substantial sum of Rs. 1,25,000/- provided the motive for the accused, Sher Singh (who died during the course of trial), and the present appellant, Dharmendra Singh, to loot the deceased, Pappu @ Raj Kishore. With a premeditated plan and prior concert, accused, Sher Singh (who died during the course of trial) and appellant, Dharmendra Singh, lay in wait and monitored the movements of the deceased. As soon as the deceased arrived at the railway station and deboarded the rickshaw, the accused persons, driven by the aforesaid motive, attempted to snatch the suitcase (attache) from his hands. Upon facing resistance from the deceased, accused, Sher Singh (who died during the course of trial) fired at the chest of Pappu @ Raj Kishore, while the present appellant, Dharmendra Singh, forcibly snatched the suitcase (attache) from the victim's hands and attempted to flee with the looted property. However, the appellant, Dharmendra Singh, was caught red-handed on the railway station overbridge immediately after the incident by the police party, along with the looted suitcase (attache) containing Rs. 1,25,000/- and other personal articles belonging to the deceased.

55. The looted amount of Rs. 1,25,000/- was recovered from the suitcase (attache) found in the possession of the present appellant, Dharmendra. Thus, it is clear that the present appellant, Dharmendra, played an active role with premeditation, a pre-arranged plan, and prior concert along with co-accused, Sher Singh (who died during the course of trial), in the commission of the alleged crime.

56. Although one 12-bore tamancha and three 12-bore cartridges were also recovered from the possession of the appellant, Dharmendra Singh but the prosecution witness, S.I. Kailash Chandra Verma (PW-9), who investigated Case Crime No. 613 of 1995, under Section 25 of the Arms Act, did not send the recovered tamancha and cartridges for expert examination to the Forensic Science Laboratory. Furthermore, he did not personally test whether the recovered tamancha was in a workable condition or not. This fact was explicitly admitted in his evidence by the Investigating Officer, Kailash Chandra Verma (PW-9), who conducted the investigation in the Arms Act matter. Due to which, the recovered tamancha and cartridges could not be connected with the alleged crime. Consequently, it is evident that the prosecution has failed to establish whether the recovered 12-bore tamancha, along with three 12-bore cartridges, was used in the commission of the alleged crime or not. On this ground, we find that the conviction of the appellant, Dharmendra Singh, under Section 25 of the Arms Act is bad in the eyes of law and contrary to settled legal principles. Hence, his conviction under Section 25 of the Arms Act is unsustainable in the eyes of law, and the accused-appellant, Dharmendra Singh, is liable to be acquitted of the said charge.

57. From a perusal of the prosecution evidence available on record, it is evident that the appellant, Charan Singh, could not be arrested from the place of occurrence, and no incriminating materials were recovered from his possession. Therefore, we find the presence of the appellant, Charan Singh, at the place of occurrence to be highly doubtful. In light of the evidence available on record, we find no role or involvement of the appellant, Charan Singh, in the commission of the alleged crime. Consequently, we are of the considered view that the benefit of doubt must be extended to the appellant, Charan Singh, in this case.

58. We have also perused and duly considered the findings and reasoning given by the learned Trial Court. We find that the Trial Court, by misappreciating the evidence, has erroneously held the appellant, Charan Singh, guilty of the commission of the alleged crime. Furthermore, from a perusal of the findings and reasoning, it appears that the Trial Court failed to appreciate the evidence against the appellant, Dharmendra Singh, for the charge levelled under Section 25 of the Arms Act in its proper perspective, and wrongly, without any cogent evidence, held him guilty under the said Section. However, from a perusal of the findings and reasoning of the Trial Court, we find that it has appreciated and evaluated the evidence against the appellant, Dharmendra Singh, for the charges under Section 302/34, 394 and 411 of the IPC in a proper perspective and in accordance with well-settled principles of law. In this regard, the learned Trial Court has duly evaluated the evidence against the appellant, Dharmendra Singh, based on the material available on record and in accordance with the established tenets of law.

59. In view of the aforesaid, the judgment and order passed by the learned Trial Court dated 27.03.2008 is liable to be modified. Accordingly, we modify the judgment and order of conviction and sentence passed by the learned Trial Court dated 27.03.2008.

60. Thus, in light of the aforesaid discussion, we find that the conviction of the appellant, Charan Singh, under Sections 302/34 and 394 of the IPC as well as the conviction of the appellant, Dharmendra Singh, under Section 25 of the Arms Act, are unsustainable and liable to be set aside.

61. In view of the above, we ***allow*** the Criminal Appeal No. 2075 of 2008 filed by the appellant, ***Charan Singh***, by extending the benefit of doubt to him, he is being acquitted of all the charges levelled against him. Consequently, we set aside the impugned judgment and order of conviction and sentence dated 27.03.2008 passed against the accused-appellant, Charan Singh, by learned Trial Court in Sessions Trial No. 1037 of 1996 (State Vs. Dharmendra Singh and Others), arising out of Case Crime No. 612 of 1995 (Case Crime No. 911 of 1995) under Sections 302/34, 394 IPC, Police Station- Kotwali, District- Moradabad. He is on bail, his bail bonds stand canceled, and his sureties are discharged from their liabilities.

62. In light of the discussions held above, we find that the conviction of the appellant, ***Dharmendra Singh***, under Sections 302/34, 394 and 411 of the IPC is well-founded and is liable to be affirmed. Consequently, the impugned judgment and order of conviction and sentence dated 27.03.2008 passed against the accused-appellant, Dharmendra Singh, by learned Trial Court in Sessions Trial No. 1037 of 1996 (State Vs. Dharmendra Singh and Others), arising out of Case Crime No. 612 of 1995 (Case Crime No. 911 of 1995) under Sections 302/34, 394, 411 IPC, Police Station Kotwali, District-Moradabad, is hereby ***affirmed*** and the impugned judgment and order of conviction and sentence dated 27.03.2008 passed against the accused-appellant, **Dharmendra Singh**, by learned Trial Court in Sessions Trial No. 1038 of 1996 (State Vs. Dharmendra Singh), arising out of Case Crime No. 613 of 1995, under Section 25 of the Arms Act, Police Station Kotwali, District- Moradabad, is hereby ***set-aside***.

63. Accordingly, Criminal Appeal No. 2718 of 2008, filed by the appellant, **Dharmendra Singh**, is ***partly allowed*** only in respect of the offence registered under Section 25 of the Arms Act. By extending the benefit of doubt, the appellant, Dharmendra Singh, is hereby acquitted of the charge under Section 25 of the Arms Act.

64. The accused-appellant, Dharmendra Singh, is on bail. He is directed to surrender before the court of the learned Chief Judicial Magistrate (CJM), Moradabad, within a period of one month from the date of production of a certified copy of this order, to serve out the remaining sentence as passed by the learned Trial Court vide its order dated 27.03.2008 in Sessions Trial No. 1037 of 1996 (State Vs. Dharmendra Singh and Others), arising out of Case Crime No. 612 of 1995 (Case Crime No. 911 of 1995) under Sections 302/34, 394, 411 IPC, Police Station Kotwali, District-Moradabad.

65. In the event that the appellant, Dharmendra Singh, fails to surrender before the court concerned within the stipulated period of one month, CJM, Moradabad, shall take immediate steps by issuing non-bailable warrants against him to secure his arrest. Upon his arrest, the appellant shall be sent to jail to serve out the remaining sentence as awarded by the learned Trial Court vide order dated 27.03.2008.

66. Let a copy of this judgment and order, along with the Lower Court Record (LCR), be transmitted to the learned Trial Court forthwith for necessary information and compliance.

(2026) 7 ILRA 340
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 2870 of 1985

Mahesh Chand **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

A criminal appeal against conviction for accepting illegal gratification by a Lekhpal under section 161 IPC and Section 5(2) of the Prevention of Corruption Act, arising from a vigilance trap.

Headnotes

Criminal law-Prevention of Corruption Act,1947-Section 5(2)-Criminal Procedure Code,1973-Section 374(2), Indian Penal Code,1860-Section 161-Illegal gratification-Vigilance trap-Recovery of tainted currency from accused-Lekhpal-Consistent testimony of trap party and public witness-Non-examination of complainant not fatal where demand and acceptance independently proved-Absence of further independent witnesses not material-Defence of false implication unsupported by evidence-Prosecution establishing demand and acceptance of bribe beyond reasonable doubt-Conviction under section 161 IPC and section 5(2), Prevention of Corruption Act, upheld-Appeal dismissed.(Para 36 to 38) (E-6)

Held

The court held that the prosecution had established beyond reasonable doubt that the appellant, while posted as Lekhpal in the Consolidation Department, demanded and accepted illegal gratification of Rs. 300 from Virendra Singh for extending an undue favour in the consolidation proceedings. The evidence of the vigilance officials and public witnesses was found consistent, reliable and trustworthy, and the recovery of the tainted currency notes from the appellant, coupled with the positive phenolphthalein test, corroborated the prosecution case. The plea of false implication was unsupported by any convincing evidence. **Accordingly, the appeal dismissed.**

List of Acts

Prevention of Corruption Act,1947, Criminal Procedure Code,1973, Indian Penal Code, 1860.

List of Keywords

Illegal gratification, Bribery, Vigilance trap, Demand and acceptance of bribe, Recovery of tainted currency, Phenolphthalein test, Public witnesses, Burden of proof, Non-examination of complainant, Section 161 IPC, Section 5(2), Prevention of corruption Act.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 2870 of 1985
Mahesh Chand Vs. State of U.P.
From the judgment and order dated 03.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):
Aushim Luthra, P.N Khare
Adv. for Respondent(s):
A.G.A.

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

1. This appeal has been filed, under Section 374(2) Code of Criminal Procedure, 1973, (in short Cr.P.C.), by appellant Mahesh Chand son of Phoola Ram, resident of village- Bavali, Police Station- Kuthau, District- Jalaun, against the judgment and order dated 09.10.1985 passed by Shri K.N. Ojha, Vth Additional Sessions Judge, Kanpur, in Special Trial No.10 of 1981, under Section 161 Indian Penal Code, 1860, (in short IPC) and Section 5(2) of Prevention of Corruption Act,1947.

2. By the impugned judgment and order, dated 09.10.1985, the learned trial court has convicted the appellant for offence punishable under Section 161 IPC and Section 5(2) of Prevention of Corruption Act, and sentenced him to undergo rigorous imprisonment for a period of one year on both counts. It was also directed that all the sentences shall run concurrently.

3. Brief facts of the prosecution case are that Virendra Singh, resident of Bisoha, Tehsil- Derapur, District- Kanpur had a litigation pending against Smt. Asha Devi of the same village. He was allotted Chak No.193 and Smt. Asha Devi was allotted Chak No.7 by the Consolidation Officer during consolidation proceedings. Its appeal was pending in the court of Settlement Officer (Consolidation) (in short SOC), Mr. Sirohi. The date for hearing was fixed as 31.03.1977. On that day, no work was done and the next date fixed was 05.04.1977. It was told to Virendra Singh that judgment will be pronounced on 05.04.1977. To know about the case, Virendra Singh started for Kanpur by the morning bus, on 01.4.1977, which was also boarded by Lekhpal Mahesh Chand and Kanoongo Chandra Sen. Both of them demanded Rs.400/-, as illegal gratification, and promised that the appeal preferred by Smt. Asha Devi for the change of chak from that of chak No.193, allotted to Virendra Singh, would be got dismissed. Both these accused and Virendra Singh stepped down from the bus at Chunniganj Bus Stand. Virendra Singh gave Rs.100/- to Chandra Sen, in the form of one currency note of Rs.50 and five notes of Rs.10 each. Thereafter, he came to his son Jai Vijai Singh□s office at Maal Road, Kanpur and demanded Rs.300/- from him and told that it was to be given to Mr. Sirohi, through the accused. He also told that the money was to be given in the court and the accused would meet in the court of Mr. Sirohi Saheb. Upon this Jai Vijay Singh asked him to get such persons arrested by the Vigilance Department. He wrote down a letter (Ext.Ka.1) and alongwith his father met Mr. D.K. Panda, Superintendent of Police, Vigilance, Kanpur, in his office situated at Laxman Bagh. Mr. Panda made some queries from Jai Vijay Singh and noted down their answers. Three currency notes of Rs.100/- each were given by Jai Vijay Singh, thereafter, S.P. Vigilance passed an order on his application dated 01.07.1977 directing R.B. Tiwari, the Inspector Vigilance to take two officers, along with him and lay down a trap the same day. The questions and answers were also noted down at the back of application given by Jai Vijay Singh.

4. Thereafter, Virendra Singh and his son Jai Vijay Singh along with trap party, led by Inspector R.B. Tiwari, along with S.I. Surya Bhan Singh, two constables, one Sub-Inspector and S.I. M.R. Singh reached near Kaushik Park in Civil Courts, Kanpur. Public witness, Shyamlal and Onkar Singh were arranged. S.I. Kirat Singh put phenolphthalein powder on three currency notes of Rs.100/- each, (Exhibits 2,

3 and 4), respectively, given to him by Virendra Singh and then S.I. R.B. Tiwari, signed in the corner of these notes and circled it with red ink. After making other formalities and giving necessary precautions, these currency notes were given to Virendra Singh. Thereafter, constable Gaya Prasad and Virendra Singh, went to the court of Mr. Sirohi, SOC, to meet Lekhpal Mahesh Chand and Kanoongo Chandra Sen, the accused of the case. Witnesses Onkar Singh and Shyam Singh were present inside the court room, after a short while they came out of the court and went to the Chaurasiya Hotel.

5. According to the prosecution, when the money was offered by Virendra Singh to Chandra Sen, he did not take the money and asked Virendra Singh to give it to Mahesh Chand. The witnesses, the informant and others reached Chaurasiya Hotel and there they had a cup of tea. One Police Sub-Inspector was already sitting inside the Chaurasiya Hotel. When Virendra Singh asked the owner to provide tea, then Mahesh Chand asked Virendra Singh whether he had money with him and told that he was sent by Chandra Sen, Kanoongo. Virendra Singh handed over those three currency notes to Mahesh Chand who kept them in pocket of his pant and told that his chak would not be disturbed.

6. Inspector Suraj Bhan Singh came there, public witnesses Ram Chandra Mewalal was already sitting there having tea and upon gesture made by constable Gaya Prasad, S.I. R.B. Tiwari and others came inside the Chaurasiya Hotel and took personal search of Mahesh Chand and recovered three currency notes from his possession and a wrist watch was also recovered from his another pocket. Mahesh Chand was asked about the money to which he admitted that it was given by Virendra Singh. Chandra Sen was also called and from his personal search five currency notes of Rs. 10 each (total Rs. 50/-) were recovered from his pocket. Kanoongo Chandra Sen□s pant was also taken in custody. The recovery memo was prepared, upon recovery of notes, Mahesh Chand□s hands was washed which turned into pink colour. The pant of Mahesh Chand which was taken into custody, was also sealed. The sample of water in which Mahesh Chand□s hands were washed, was kept in bottles (Ext.5 and 6) and recovery memo (Ext. Ka.3), was prepared.

7. The investigation was conducted by S.I. R.B. Singh, under the orders of S.P. Vigilance, Kanpur. He recorded statements of witnesses reached at the place of occurrence and prepared the site-plan (Ext. Ka.8).

8. After his transfer, further investigation was carried out by S.I. Basdeo Sahai. Since accused Mahesh Chand was temporary in service so, he was removed from his service immediately, therefore, no sanction for his prosecution was taken from the District Magistrate. Kanoongo Chandra Sen was placed under suspension. Superintendent of Police, U.P. Vigilance Department, Kanpur, sent letter to the District Magistrate, on 16.06.1979, seeking sanction to prosecute Chandra Sen. Sanction (Ext. Ka-4) for prosecuting Chandra Sen was granted by the District Magistrate on 19.06.1979, under Section 6(1)(c) of the Prevention of Corruption Act. S.I. Basdev Sahai conducted further investigation and filed charge-sheet (Ext.Ka.6) against both the accused before the competent court.

9. The concerned court took cognizance of the offence and summoned the accused. The copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C., and thereafter, the case was committed to the court of Sessions for trial. The trial court summoned the accused and framed charge under Section 161 IPC and Section 5 (2) of Prevention of Corruption Act, against both the accused. They pleaded not guilty and claimed to be tried.

10. The prosecution examined six witnesses, to wit, P.W.1 Ram Bahadur Tiwari, (Inspector Vigilance Department); P.W. 2 Constable Gaya Prasad, (Vigilance Department); P.W.3 Mewa Lal; P.W.4 Jai Vijai Singh, P.W. 5 Retired Inspector Basdeo Sahai, (Vigilance Department); and P.W. 6 Sub-Inspector Rabjeer Singh, Investigating Officer, to prove its case.

11. P.W.1 Inspector Ram Bahadur Tiwari, of Vigilance Department, Kanpur is the first informant of this case. He has led the police party, under the orders of Superintendent of Police, Vigilance Department, to lay a trap to capture the accused taking/ demanding illegal gratification. He has stated that he arranged three currency notes of Rs.100/- each and thereafter, making all necessary formalities and arranging public witnesses, apprehended accused, Mahesh Chand at the spot while he took three currency notes of Rs.100/- each, as illegal gratification from Virendra Singh. The accused Kunwar Sen was also caught and from his personal search Rs.50/- (five notes of Rs.10/- each) were recovered.

12. P.W.2 Gaya Prasad is the constable and was one of the members of the police team which trapped the accused taking illegal gratification. He has supported the prosecution case.

13. P.W.3 Mewalal is one of the public witness of the recovery of the alleged currency notes from accused which were taken by them for illegal gratification. He has also supported the prosecution case.

14. P.W.4 Jai Vijai singh, is son of Virendra Singh, for whose chak illegal gratification was taken by the accused and who was present at the time when the accused were trapped, while taking currency notes in the form of illegal gratification.

15. P.W.5, Retired Inspector Basdeo Singh, is the first Investigating Officer of the case. He had stated about the investigation carried out by him and has said that an application for grant of prosecution sanctionwas moved before the District Magistrate, who granted the prosecution sanction against Kanoongo Chandra Sen. As Lekhpal Mahesh Chand was dismissed from service, therefore, no sanction was required to prosecute him.

16. P.W. 6 Inspector Rajbeer Singh, is the second Investigation Officer of the case, he has carried further investigation from the stage left by the first I.O. and after completing the investigation, he filed charge-sheet against the accused.

17. The statement of accused were recorded under Section 313 Cr.P.C. The appellant, Mahesh Chand, denied the prosecution case and stated that under the drive of the Vigilance Department, he has been falsely implicated in this case. He has further stated that, Jai Vijai Singh lodged a false case so that his chak land remains at the same place and after consolidation proceedings his chak remained at the same place. He has said that no such case was pending before S.O.C. Kanpur, regarding which there is allegation that the accused demanded illegal gratification so that the case be decided in Virendra Singh's favour. In his written statement, Mahesh Chand has admitted that he was posted as a Lekhpal in the Consolidation Department at Tehsil- Derapur, District- Kanpur on 01.04.1977. He has also admitted that he went with Virendra Singh to have a cup of tea in Chaurasiya Hotel. He has denied that on 01.04.1977, he and co-accused Chandra Sen did go by bus and had conversation regarding payment of bribe, which took place between them and Virendra Singh. He has stated that in fact they had come by train to Kanpur and performed their respective work, in the office of Settlement Officer Consolidation (S.O.C.). He further stated that Virendra Singh came in his office

and took him to Chaurasiya Hotel. He has stated that Ram Chandra and Mewalal, were not present there and that Sub-Inspector Tiwari has falsely implicated him in this case, at the instance of Jai Vijai Singh. He has also said that in fact Chandra Sen was called by Sub-Inspector Tiwari and upon his direction Chandra Sen handed over Rs.100/- and 90 paise. He has further stated that no proceeding with regard to the alleged recovery took place in Chaurasiya Hotel. They remained there for about a year and Tiwari took them outside and after calling the witnesses got their signature over the fard baramadagi in court. He has stated that Chak No.7 under Village- Bisoha, District- Derapur was carved in the name of Smt. Asha Devi and Chak No.193 in the name of Virendra Singh. There was some dispute in this regard and Asha Devi has filed a case against Virendra Singh before S.O.C., that her Chak No.7 should be carved at the place of Chak No.193 of Virendra Singh. Virendra Singh has opposed it and after hearing appeal Mr. Siroha (SOC), passed verbal judgment against Virendra Singh on 31.03.1977. Virendra Singh came to his son Jai Vijai Singh, who was employed in Flex Company Maal Road, Kanpur and told him the entire facts, thereupon Jai Vijai Singh, hatched a plan to rope in the Lekhpal and the Consolidation Officer in a bribery case so that the concerned record of appeal would be confiscated and the decision could not be reduced in writing. For this purpose Jai Vijai Singh, gave a false application before S.P. Vigilance Department and the applicant has been falsely implicated in this case. The concerned record was also confiscated as a result the judgment could not be dictated or implemented. Later on in revision of Chak No.193 remained at the place with Virendra Singh, thus, Jai Vijai Singh succeeded in his plan.

18. The accused have not adduced any evidence in their defence.

19. The learned trial court after perusing the evidence on record, came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt against appellant Mahesh Chand. So far as co-accused Chandra Sen, the learned trial court observed that the prosecution failed to prove charge against him, accordingly, co-accused Chandra Sen was acquitted and the appellant Mahesh Chand was held guilty and convicted for offence punishable under Section 161 IPC and Section 5(2) of Prevention of Corruption Act, and was sentenced to the term as indicated above.

20. I have heard Shri Aushim Luthra, learned Counsel for the appellant and Shri Om Prakash Mishra, learned A.G.A on behalf of the State and perused the evidence on record.

21. It is submitted by learned Counsel for the appellant that there are major contradictions in the statement of prosecution witnesses which raise doubt over the prosecution case. It is also submitted that Virendra Singh, the owner of the land, regarding whom case was pending before S.O.C., Kanpur and from whom bribe was allegedly demanded, has not been examined by the prosecution which raises serious doubt over the prosecution case.

22. It is further submitted that the alleged place of recovery, namely Chaurasiya Hotel, is a public place. It is difficult to believe that the accused would choose such a public place, for the purpose of accepting an illegal gratification. It is also submitted that no independent public witness has been examined by the prosecution to corroborate the alleged trap proceedings. In the absence of any such independent evidence, the trap proceedings and the entire prosecution case appears highly doubtful. Consequently, the prosecution has failed to establish its case beyond reasonable doubt, and the appellant is entitled to the benefit of doubt and deserves to be acquitted.

23. Learned A.G.A. on behalf of the State has submitted that prosecution has been able to prove its case beyond reasonable doubt. The testimony of the prosecution witnesses is consistent, reliable and trustworthy. There is no reason why the prosecution witnesses would depose falsely against the appellant, when some of them are public servant. It is further submitted that appellant demanded bribe regarding which S.P. Vigilance Department, Kanpur was informed, who after query ordered to lay trap and formed a police team, which carried out further proceedings and the appellant was caught red handed taking illegal gratification. There are public witnesses of the recovery, who have been examined by the prosecution. Therefore, this appeal has no force and is liable to be dismissed.

24. In a criminal case, the burden of proof lies upon the prosecution case to prove its case beyond reasonable doubt. In the present case, the allegation against the applicant is that he, while being posted as Lekhpal in Consolidation Department, alongwith Kanoongo Chandra Sen Saxena, had taken illegal gratification from Virendra Singh to save his Chak No.193 from being disturbed in consolidation proceedings and remains with him and in this regard, he was caught red handed taking bribe of Rs.300/- from Virendra Singh after a complaint was made by Virendra Singh□s son Jai Vijai Singh with the Superintendent of Police, Vigilance Department, Kanpur, who ordered to lay a trap and the concerned police party laid trap and caught him red handed taking bribe.

25. As per prosecution, the appellant was caught red handed at Chaurasiya Hotel in Civil Lines, Kanpur. In this regard, prosecution has examined P.W.1 Retired Inspector Ram Bahadur Tiwari, who led the police party to trap the appellant. He has stated that upon application of Jai Vijai Singh against Chandra Sen, Kanoongo and Mahesh Chand, Lekhpal of Consolidation Department, S.P. Vigilance, Mr. Panda, passed an order to lay the trap to apprehend them. He has proved concerned orders and documents and has said that he alongwith other police men gathered in the park alongwith public witness Shyam Singh and Onkar Singh. Jai Vijai Singh handed him over three currency notes of Rs.100/- each, which were to be give as bribe to the accused. Inspector Ram Kirat Singh sprinkled phenolphthalein powder over them and made his initials, not easily visible, and thereafter, these notes were handed over to Virendra Singh and Jai Vijai Singh after giving them necessary directions. Constable Gaya Prasad was directed to accompany them to hear the conversation with regard to illegal gratification. As per plan they collected around court premises and after a while Virendra Singh and accused Mahesh Chand, Lekhapal and Gaya Prasad came out and proceeded to Chaurasiya Hotel.

26. The witness has said that he himself sat at a nearby table having a cup of tea. Virendra Singh and Mahesh Chand kept on their conversation and thereafter, Virendra Singh handed over the three currency notes to Mahesh Chand, which he kept in his left pocket of trouser. Thereafter, they reached near them and upon search three notes of Rs.100/- each were recovered from the possession of Mahesh Chand. The serial numbers of the recovered notes were matched with the fard baramadagi, which was also got down having small initials. Mahesh Chand□s hands were washed from sodium carbonate solution, as a result the solution turned red in colour. The pocket was also dipped in solution which also turned red, thereafter, necessary formalities were made and fard baramadagi was prepared. The witness has been cross-examined at length, but nothing material has come in his statement which can raise any doubt over his testimony. His statement is consistent, reliable and trustworthy. There is no reason and also no evidence why he would depose falsely against the appellant. He has said that the trap party was present till the money was handed over to Mahesh Chand.

27. P.W. 2 Gaya Prasad, a Constable of the Vigilance Department, was one of the members of the trap party. He has also supported the prosecution case and stated that he accompanied Virendra Singh. He deposed that at the time money was handed over, the appellant Mahesh Chand said that give me the money and your chak would remain where it is presently located. He further stated that he had accompanied Virendra Singh to the SOC office. This witness has also been cross-examined at length but no material contradiction has come in his statement to raise any suspicion over his testimony. He has stated that they did not try to have any public witness from SOC office and he does not know that SOC was informed that any accused was arrested. He further stated that he was standing very close to Virendra Singh and that the conversation with regard to the bribe took place in SOC office and not in the court room. There were many persons present when appellant Mahesh Chand was arrested.

28. P.W.3, Mewa Lal, is one of the public witness, before whom the appellant, Mahesh Chand, was allegedly caught red-handed while accepting a bribe. He has supported the prosecution case and stated that on the date of incident at about 02:30 p.m. he and some other persons were having tea at Chaurasiya Hotel, near court premises. Mahesh Chand was also present there and he was having conversation with Virendra Singh, sitting on a bench. Mahesh Chand said that your chak would remain at the same place and for that, you have to pay Rs.300/-. Thereupon, Virendra Singh handed over him over three notes of Rs.100/- each, which Mahesh Chand kept in his trouser□s pocket, then the Inspector took personal search of Mahesh Chand and recovered those three notes, given by Virendra Singh. They matched the numbers from the documents and then other formalities took place. The appellant□s hands were washed in solution which turned red. His pant was also washed, which had also turned red and the Inspector collected sample in bottle and sealed them at the spot. Thereafter, other formalities took place and fard baramadagi was reduced into writing. He has also been cross-examined at length, but nothing material has come in his statement to raise any suspicion over his testimony. He has said that, he reached at the Chaurasiya Hotel. Virendra Singh and others came there. It took about 5-10 minutes for the conversation to be over, between Virendra Singh and Mahesh Chand and then Virendra Singh handed over money to Mahesh Chand and at once he was arrested. Therefore, his testimony is reliable and trustworthy and there is no reason and also no evidence why he would depose falsely against the appellant.

29. P.W. 4, Jai Vijai Singh, is the son of Virendra Singh from whom the accused allegedly demanded a bribe. He has also supported the prosecution case and stated that his father, Virendra Singh, came to him and asked for Rs.300/- and when he asked the reason then his father told that the accused had demanded a bribe. Thereupon, P.w. 4, Jai Vijai Singh, moved an application before S.P. Vigilance, Kanpur, to trap them and as per order of Mr. Panda, S.P. Vigilance, the police team was constituted and laid trap and apprehended Mahesh Chand red-handed. P.W. 4 further stated that he was present when the money was handed over by his father to the appellant, Mahesh Chand, and the entire proceeding took place before him. There are no material contradictions in his statement to reject his testimony or raise any doubt over his evidence. He has said that his father handed over three notes to Mahesh Chand, who kept in his pocket at about 02:45 p.m. Mahesh Chand asked his father give money. The witness has proved his application given to S.P. Vigilance, for taking action against the appellant and co-accused.

30. Therefore, all the above witnesses have supported and proved the prosecution case. There is no evidence that there was any enmity between these witnesses and the appellant and there is no reason why they would depose falsely against him. It is submitted by learned Counsel for the appellant that Virendra Singh had not been examined, who is the person from whom the alleged demand of bribe was raised by the

appellant, therefore, the prosecution case is not reliable. I do not agree with this submission, because it has come in the statement of P.W.4 Jai Vijai Singh, the son of Virendra Singh, that his father's mental condition is not stable and his treatment is going on as such, he is not in a position to depose before the court. P.W.4 has produced photo copy of the prescriptions of the treating doctor. In this regard, the witness has been cross-examined in which he has stated that he has not produced the cash memo of the medicine purchased and has stated that his father's treatment was going on in District- Gwalior from doctor Mrs. Mehrotra, the Superintendent of Mental Hospital, there. It has come in evidence that Jai Vijai Singh and his father are villagers and if under these circumstances, the further treatment of Virendra Singh has not taken place then it has no adverse effect over the case. Even, if for the sake of argument, it is accepted that Virendra Singh was deliberately withheld by the prosecution to depose before the court then it has no adverse effect over the prosecution case because the alleged taking of illegal gratification has taken place not only before Jai Vijai Singh, son of Virendra Singh, but also before the Inspector of Vigilance Department under whose leadership the raid party was formed by the Vigilance and also before the public witness who has been examined before the court. Therefore, the argument advanced on behalf of the appellant has no force.

31. It is submitted on behalf of appellant that there is no evidence that there was any litigation pending between the Virendra Singh and Smt. Asha Devi with regard to chak under Consolidation proceedings, therefore, the prosecution has no legs to stand. I do not agree with this submission because the appellant Virendra Singh in his written statement before the court, at the time of recording of his statement under Section 313 Cr.P.C., has admitted that the dispute between Virendra Singh and Smt. Asha Devi was pending before SOC with regard to chak No.193 and Chak No.7 and in this regard, the appeal was fixed for hearing at the stage of argument before Mr. Sirohi, the S.O.C.

32. It is submitted by learned Counsel for the appellant that no public witness has been examined by the prosecution which has adverse effect over the prosecution case. I do not agree with this submission also because the appellant was trapped after the team of police officers was formed and public witnesses were collected. There are two public witness of the alleged recovery, beside Jai Vijai Singh and his father Virendra Singh, so if no other person, present at Chaurasiya Hotel was made a witness, then it would have no adverse effect over the prosecution case.

33. It is submitted by learned Counsel for the appellant that it was highly improbable that within a public view of such kind, the appellant would ask for and accept illegal gratification at Chaurasiya Hotel, so the prosecution story is highly doubtful. I do not agree with this submission also, because such kind of trap are laid in secrecy and the information is kept secret between the members of raiding party and the place is arranged in such a manner that the accused would not have any apprehension of his being caught red handed. Here it is relevant to mention that the appellant in his written statement, alongwith statement under Section 313 Cr.P.C., has admitted that he went to Chaurasiya hotel with Virendra Singh and he put his signature over fard baramadgi, though as per him, the signatures were taken in court. There is also no evidence on his behalf to prove it.

34. It is also submitted by learned Counsel for the appellant that he has been falsely implicated in this case as there was a drive against bribery going on in Vigilance Department, so under the pressure of Jai Vijai Singh, the appellant has been falsely implicated in this case. I do not agree with this submission, as there is no evidence that any such drive was going on in Vigilance Department and there is also no reason why the Superintendent of Police, Vigilance Department,

the Inspector and other police personnel of the raiding party as well as public witness would all be pressurized by Jai Vijay Singh and they would collude with him to falsely implicate the appellant in this case.

35. The appellant has admitted that Virendra Singh came in the office and took him to Chaurasiya Hotel to have a cup of tea, so he admits that he was present at the place of occurrence alongwith Virendra Singh. He also admits that the leader of raiding party, Inspector Mr. Tiwari, was also there but says that after keeping him there for about an hour, Inspector Tiwari took him outside and got signatures upon the fard baramadagi, in the court campus, and thus the appellant admits that fard baramadagi was prepared inside the court campus. The appellant also admits that Virendra Singh came to his son Jai Vijai Singh and told him the entire things on 01.04.1977. It is the statement of the appellant that Jai Vijai Singh hatched conspiracy to falsely rope him in a bribery case so that the concerned file would be confiscated and the judgment would not be dictated. The above stand of the appellant is not very convincing. There is no evidence that the concerned file was confiscated or Mr. Sirohi, the SOC had dictated oral judgment on 31.03.1977 and the judgment could not be reduced into writing. Therefore, the entire reason and motive assigned by the appellant against Jai Vijai Singh, regarding his false implication has no force.

36. In view of the above discussion, I come to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and it is proved that appellant Mahesh Chand, while being posted as Lekhpal in the Consolidation Department, demanded bribe from Virendra Singh to do undue favour to him in Consolidation proceedings and in this regard, Virendra Singh's son Jai Vijay Singh moved an application before S.P. Vigilance raising complaint, and thereupon S.P. Vigilance ordered to lay a trap forming a trap party lead by Inspector Tiwari, who as per plan reached at the Chaurasiya Hotel, where, the appellant Mahesh Chand was caught red handed taking bribe of Rs.300/- from Virendra Singh. Therefore, the appellant Mahesh Chand is guilty of offence punishable under Section 161 I.P.C. and Section 5(2) Prevention of Corruption Act.

37. In view of the above, the prosecution has proved its case beyond reasonable doubt. So the Trial Court has appreciated the evidence on record correctly and reached at the right conclusion of guilt of the appellant. The appellant is rightly held guilty and covicted and sentenced under Section 161 I.P.C. and Section 5(2) Prevention of Corruption Act, by the learned trial court. Accordingly, this appeal has no force and is liable to be dismissed.

38. Thus, the present appeal lacks merit and is, accordingly, **dismissed**. The impugned judgment and order is **upheld** and the conviction and sentence of the Appellant Mahesh Chand is **affirmed.** Appellant Mahesh Chand is on bail. His personal bonds and bail bonds are cancelled and sureties are discharged. He is directed to surrender before the learned Trial Court within four weeks to undergo the remaining part of his sentence, failing which, the Trial Court is directed to adopt coercive measures for securing his presence.

39. Let a copy of this order be forwarded to the learned Trial Court concerned, alongwith trial court record for information and necessary compliance.

(2026) 7 ILRA 349
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 3418 of 2020
Alongwith
Criminal Appeal No. 12 of 2021

Kabir Khan **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to the conviction of the accused under section 302/34 and 201 IPC, primarily based on the prosecution's uncorroborated "last seen together" theory and unreliable circumstantial evidence.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302/34 and 201-Criminal Procedure Code,1973-Section 374(2)-Circumstantial evidence-Last seen theory-Mere "last seen together" circumstance, by itself, cannot sustain conviction unless supported by a complete and unbroken chain of circumstances pointing unerringly towards the guilt of the accused-Prosecution must first discharge its initial burden of proving that the deceased was last seen in the company of the accused; only thereafter can the burden under section 106 of the Evidence Act arise-Where prosecution witnesses regarding last seen together materially contradicted one another, their conduct was found unnatural and unreliable, no motive was established, and no incriminating article or material connecting the accused with the crime was recovered, conviction under section 302/34 and 201 IPC held unsustainable-Allowed.(Para 38 to 52) (E-6)

Held

The court ruled that where the prosecution case rested entirely on circumstantial evidence and the "last seen together" theory, but the testimonies of key witnesses (PW-1 to PW-4) were contradictory, lacked motive and demonstrated highly unnatural conduct, the initial burden of proof remained undischarged. **Conviction set aside, and the appellants were acquitted.**

Case law Cited

Gambhir Vs State of Maharashtra, (1982) 2 SCC 351, Kanhaiya Lal Vs State of Rajasthan, (2014) 4 SCC 715, Ashok Vs State of Maharashtra, (2015) 4 SCC 393-referred to.

List of Acts

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

List of Keywords

Last seen theory, Burden of proof, Circumstantial evidence, Testimonies, Conviction, Acquittal, Common intention, Absence of Incriminating recovery, Immediate release. Prosecution witnesses.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 3418 of 2020

Kabir Khan Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Abhishek Mayank, Ram Jatan Yadav, Surendra Kumar Tripathi

Adv. for Respondent(s):

G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

Both these Criminal Appeal bearing Nos. 3418 of 2020 (Kabir Khan Vs. State of U.P.) and 12 of 2021 (Irshad Vs. State of U.P.) have been filed by accused-appellants Kabir Khan and Irshad, respectively, against the judgment and order of conviction dated 03.11.2020 passed by learned Additional Sessions Judge/Fast Track Court No. 1, Agra in Session Trial No. 29 of 2014 (State Vs. Irshad and another) arising out of Case Crime No. 638 of 2013, under Sections 302/34 and 201 IPC, Police Station Shahganj, District Agra.

2. By the impugned judgment and order dated 03.11.2020, the learned Trial Court held the accused-appellants guilty and convicted them under Section 302 read with Section 34 of the Indian Penal Code. They were sentenced to imprisonment for life and a fine of Rs. 50,000/- each. In default of payment of the fine, they were directed to undergo additional simple imprisonment for a period of six months. Both the accused-appellants were also held guilty under Section 201 IPC and each of them was sentenced to undergo seven years imprisonment and fine of Rs. 10,000/- each. In default of payment of the fine, each accused-appellant was directed to undergo additional simple imprisonment for a period of two months.

3. From the written report, Exhibit K-1, prosecution story in nutshell is that informant Sarvesh Kumar Sharma (PW-1) has filed this written report at police station Shahganj, District Agra stating therein that he is resident of 61/122/2, Rasoolpur, Sarai Khwaja, Police Station Shahganj, District Agra. He is engaged in electrical work and earns his livelihood to maintain his family. On 05.11.2013 at about 7:00 p.m., his younger son, Prince, aged about 12 years, was called by one Irshad, who worked at Shalimar Tent, and was taken away by him. After a considerable lapse of time, when his son Prince did not return home, he searched for him till late at night. However, his whereabouts could not be ascertained. On 06.11.2013, in front of his house near the Railway Ground, where garbage was lying, a large number of people had gathered. At about 7:00 a.m., when he reached there, he saw that his son Prince was lying on a heap of garbage. Fire was burning from all sides. His legs were tied. The body of his son below the chest and the legs had been burnt. Upon seeing this, he identified the body as of his son, Prince. He believed that Irshad had murdered his son Prince and thereafter, attempted to burn his dead body in the heap of garbage. It is, therefore, requested that his report be duly registered and appropriate action be taken.

4. On the basis of the above written report, Exhibit K-1, a first information report, Exhibit K-6, was registered by Constable Clerk Munesh Singh (PW-6) at police station Shahganj, District

Agra at Case Crime No. 638 of 2013, under Sections 302, 201 IPC on 06.11.2013 at 07:50 a.m. against Irshad. On receiving the information about the incident, police came to the place of occurrence and Station House Officer, Sunil Kumar (PW-8) took simple ashes and bloodstained ashes from the place of occurrence before the witnesses of fard and prepared the fard recovery, Exhibit K-3.

5. Inspector Sitaram Saroj (PW-7) prepared panchayatnama of the dead body of the deceased Prince, Exhibit K-2/4, under the direction of the Station House Officer, Sunil Kumar (PW-8), and he also prepared other police papers, such as, letter to R.I., challan nash, naksha nash and letter to C.M.O., etc. After that, the dead body of the deceased Prince was sent for conducting post mortem.

6. Dr. R.V. Singh (PW-5) conducted the post mortem examination of the dead body of the deceased Prince and prepared the post mortem report, Exhibit K-5. In post mortem report, Exhibit K-5, medical witness Dr. R.V. Singh (PW-5) found following ante mortem injuries :

(i) Multiple abrasion 5 x 3 cm. front of neck,

(ii) Bleeding from nose.

(iii) Superficial to deep burn as coal like. Both upper limbs, part of the chest, abdomen and lower limbs were found like coal.

According to Dr. R.V. Singh (PW-5), cause of death of the deceased was asphyxia as a result of throttling. In internal medical examination, it was described that the membranes of the brain were congested. The pylorus was congested. The hyoid bone was broken. The lungs were congested. The right chamber of the heart was full, and the left chamber was empty. The stomach contained pasty food. The small intestine contained digested food and gas. The large intestine contained feces and gas. The liver was congested. The gall bladder was half filled. The kidneys and spleen were congested. The genitals were burned.

7. Investigating Officer, Sunil Kumar (PW-8), took the charge of the investigation, recorded the statements of the witnesses under Section 161 Cr.P.C., prepared site plan, Exhibit K-12. After completing all the formalities, he filed charge-sheet, Exhibit K-13, against the accused-appellants Irshad and Kabir Khan, under Sections 302, 201 IPC in the Court of learned Magistrate having jurisdiction.

8. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

9. Learned Sessions Judge, Agra framed charges against the accused-appellants Irshad and Kabir Khan under Sections 302/34 and 201 IPC on 04.04.2014. The accused-appellants denied from the charges levelled against them and claimed trial.

10. During the course of trial, prosecution adduced and relied on the oral evidence of the informant Sarvesh Kumar Sharma (PW-1), Atul Kumar (PW-2), Ashok Mishra (PW-3), Ravi Kumar (PW-4), Dr. R.V. Singh (PW-5), Munesh Singh (PW-6), Sitaram Saroj (PW-7) and Sunil Kumar (PW-8). Apart from oral evidence, prosecution also relied and supported their case on documentary evidence from Exhibit K-1 to Exhibit K-14.

11. After recording the evidence of the prosecution witnesses, statements of the accused-appellants were recorded under Section 313 Cr.P.C. The accused-appellants, in their statements recorded under Section 313 Cr.P.C., denied the charges levelled against them. They have stated that the allegations and the evidence put to them were false and incorrect. In addition to the above, accused-appellants have also stated in their statements under Section 313 Cr.P.C. that they were wrongly prosecuted and charge-sheet was filed against them on false grounds. They further stated that the police had taken them from their homes for inquiry and had falsely and illegally implicated them in the present case and challaned them. The accused-appellants also stated that they have not committed any crime and they were innocent.

12. Learned trial Court after hearing the arguments of the prosecution and defence and perusing the evidence as available on record held the accused-appellants guilty under Section 302 read with Section 34 IPC and sentenced them for life imprisonment and fine of Rs. 50,000/- each. In default of payment of fine, additional simple imprisonment for six months was awarded to them. The Trial Court also sentenced the accused-appellants under Section 201 IPC for seven years imprisonment and fine of Rs. 10,000/- each and in default of payment of fine, two months additional simple imprisonment.

13. Aggrieved by the impugned judgment and order of conviction and sentence dated 03.11.2020, accused-appellants preferred these criminal appeals in this Court.

14. We have heard the arguments of learned counsel for the accused-appellants and also the arguments of learned A.G.A. for the State. We have gone through the evidence available on record and also perused the judgment and order of conviction passed by learned Trial Court.

15. Learned counsel for the accused-appellants submits that learned trial Court passed the impugned judgment and order of conviction without considering the evidence available on record. The trial Court has also not considered the facts and circumstances of the case. In the present case, there is no direct and circumstantial evidence against the accused-appellants. Only so-called last seen together theory, concoctedly and afterthought, was produced by the prosecution to give a force to the prosecution story.

16. The prosecution was unable to collect any incriminating materials, objects, things, articles either from the place of occurrence or from the accused-appellants by which they could be legally connected with the commission of the alleged crime. It is also submitted on behalf of the accused-appellants that there is no evidence, direct or indirect, against them. However, despite this, the learned trial Court wrongly interpreted the evidence, which could not be relied upon or believed in any circumstances against the accused-appellants. The prosecution was totally unable to state and prove any motive for commission of the alleged crime by the accused-appellants. In other

words, on behalf of the accused-appellants, it is submitted that in the present case, there is no motive or direct or circumstantial evidence only so-called last seen together theory was projected by the prosecution with a view to falsely implicate the accused-appellants, who are totally innocent in this case. The learned trial Court did not consider this legal point that a person cannot be convicted of a crime solely on the basis of the last seen together theory.

17. Thus, learned Counsel for the appellants has submitted that judgment and order of conviction and sentence passed by learned trial Court dated 03.11.2020 is wholly illegal and without any oral or documentary evidence. Hence, criminal appeals of the accused-appellants are liable to be allowed and judgment and order of conviction and sentence passed by learned trial Court dated 03.11.2020 is liable to be set aside.

18. Per contra, learned A.G.A. for the State has submitted that accused-appellant Irshad was seen in the evening of 05.11.2013 with deceased Prince. Thereafter, the dead body of the deceased, Prince, was found in front of the informant□s house, lying in the heap of garbage at the Railway Ground on 06.11.2013 in the morning at 7:00 a.m. Informant Sarvesh Kumar Sharma (PW-1), who is father of the deceased Prince, has testified this fact by deposing his evidence in the Court. Other prosecution witnesses Atul Kumar (PW-2), Ashok Mishra (PW-3) and Ravi Kumar (PW-4) have also supported the last seen together theory of the prosecution. In other words on 05.11.2013 at 07:00 p.m., the deceased Prince was seen with accused-appellant Irshad. Thereafter, in the morning of 06.11.2013, dead body was found. All the prosecution witnesses have fully supported the prosecution story.

19. During investigation, complicity of the accused-appellant Kabir Khan also came into light for commission of the alleged crime. Learned Trial Court has appreciated the evidence in right perspective and in a legal manner and thereby given the finding with regard to conviction of the accused-appellants. The finding and reasoning given by learned trial Court is based on right appreciation of evidence and the law of the evidence as applicable in this regard, hence the criminal appeals preferred by the accused-appellants are totally devoid of merits, therefore, are liable to be rejected.

20. In the light of rival submissions of both the parties and from perusal of the written report filed by informant Sarvesh Kumar Sharma (PW-1), it is revealed that the informant (PW-1) has stated that on 05.11.2013 at 07:00 p.m., his younger son Prince aged about 12 years has been called upon by a man named Irshad, who took him away. After lapse of time, when his son Prince did not return home, he searched whole night but he was unable to know the whereabouts of his son. On 06.11.2013, the dead body of Prince was found lying in the heap of garbage in front of the informant□s (PW-1) house at the railway ground. The dead body of Prince was found burning in the heap of garbage. In his evidence in the Court, this witness has deposed that □the date of incident is 05.11.2013 at 07:00 p.m., I was at my home, then Irshad had come to my home, who was working at Shalimar Tent House and is a resident of Shiv Nagar. Irshad had called my son from home. When my son did not return home after lapse of much time, then I and my family members searched Prince. However, Prince was not found. I have gone to see Irshad at his home at Shiv Nagar but he was not found at his home. Due to late night, I returned my home. On 06.11.2013 at 07:00 a.m., there was crowd gathered in front of railway ground. Then I went there

and saw that the dead body of my son Prince was lying. His legs were tied. Fire was burning and due to this, lower part of his body below chest was burnt. I identified the dead body as of my son. At that time, at the place of occurrence, Atul, Devendra and many other people were present there and they told me that Irshad and Kabir Khan were seen assaulting Prince.

21. Informant Sarvesh Kumar Sharma (PW-1) stated in his cross-examination that Irshad used to come to my house. Irshad had taken my son Prince at 07:00 p.m. When Irshad called and took my son, no one else was present at that time. From perusal of the cross-examination of this witness, it is revealed that this witness had searched his son till 10:00 p.m. at many places but he was unable to find his son. According to the statement of this witness, it appears that he returned his home at about 01:00-1:30 a.m. at night. This witness has also stated that at 01:30 a.m., he went to the house of Irshad. This witness has stated that he knows the house of Irshad. He went there with his brother Ravi and Irshad was not at his home. One girl came out of the house of Irshad and said that Irshad is not at the home. Thereafter, he returned his home after one hour. Then he slept at his home. When he woke up in the morning then at railway ground, which is situated in front of my house, there was garbage lying. He went there and saw the dead body of his son, Prince, lying there. During his cross-examination, this witness further stated that the police had come on their own and he had not gone to report. He informed the police that Irshad had taken Prince with him. Later on, he went to the police station and got the report scribed by Ashok Mishra at the police station. In his cross-examination, this witness also stated that he woke up at 6:30 a.m., and after taking a cup of tea, he was sitting outside the house. Until 7:00 a.m., he had not received any information about the dead body of his son. He saw a crowd of people in front of his house. He went there and saw that his son s legs were tied and tongue was out of his mouth. Fire was burning from all sides, and all parts below the chest had been burnt. When he reached the place of occurrence, the police arrived at the spot. He searched for his son along with Ravi and his sister Baby. He searched collectively. He searched for his son for two hours. He had not given any information to the police station or police post (chowki) before finding the dead body of his son. It is true that he did not see the accused beating his son, nor did he see them committing murder or hiding the dead body.

22. Thus, from perusal of the evidence of the informant (PW-1) as deposed by this witness in the Court, it is clear that, according to this witness, when his younger son Prince had not returned home late at night, he began searching for him. This witness, along with his family members, searched for two hours. He searched for his son but could not find his deceased son, Prince. According to this witness, he also went to the house of the accused, Irshad. When he called upon the accused-appellant Irshad, a girl came out of the house and informed him that Irshad was not at home. After searching for his deceased son Prince, this witness returned home and slept at night. It is also clear that this witness, with a calm mind, slept whole night, woke up early at 6:30 a.m., had tea, and then sat outside of his house.

23. The above conduct and behavior, as stated by this witness himself, indicate that he was sitting outside the house with a very calm and peaceful mind after having tea. The conduct and behaviour of this witness shows that this witness is not stating true facts in the Court. It is totally unnatural and against human behavior for a father, whose son has not returned home at night, and he sleep entire night in a peaceful and calm state, woke up in a routine manner, have tea at 6:30

a.m., and, regardless of the fact that his son had not come home, sit outside the house after tea. This conduct and behavior, as stated by this witness, clearly indicate that he is presenting a totally false and unbelievable story during recording of his evidence in Court. It is also noteworthy that this witness until 06:30 a.m. on 06.11.2013 had not went to police station or police post and also had not given any information about the missing of his son and also had not lodged the F.I.R. When this witness was sitting outside his house after having tea, he saw a crowd gathered in front of his house at the railway ground. The police were also present there. Many other people were also present there. Seeing the crowd, this witness went there and saw the dead body of a child was lying in the heap of garbage and burning. At this juncture, this witness identified the dead body of the child as his son Prince. Thereafter with full deliberation, concoction and afterthought, this witness went to the police station and got scribed the written report, Exhibit K-1, by Ashok Mishra (PW-3), in which he named the accused-appellant Irshad.

24. Apart from the above facts, as indicated by the conduct and behavior of the informant (PW-1), it is also revealed from the perusal of the written report, Exhibit K-1, and the evidence of this witness, as deposed by him in Court, that no motive of any kind was mentioned either in the written report, Exhibit K-1, or in his evidence in Court explaining the reasons or causes for which the accused-appellant Irshad had taken away his child and murdered him. It is also surprising that the accused-appellant Irshad, after killing the child, threw the deceased□s body into the heap of garbage at the railway ground, which is situated in front of the house of the informant (PW-1). The informant (PW-1), Sarvesh Kumar Sharma, has also not given any evidence in this respect that what was the relationship between him and the accused Irshad, or why the accused Irshad came to his house and took his child Prince with him.

25. No enmity has been mentioned in the written report, Exhibit K-1, or in the evidence given by the informant (PW-1). The nature of the relationship between this witness and the accused-appellant Irshad was also not stated by him in his evidence. It is also not stated what was the motive or why the accused Irshad took Prince, younger son of this witness and murdered him. Thus from the evidence of this witness, it is clearly revealed that after many people were gathered at railway ground in front of his house police was also present there. Curiously this witness also reached at the place where the dead body of the child was lying then this witness identified the dead body of the child as his son Prince and concocting a false narrative and story got scribed a written report by Ashok Mishra (PW-3) at police station and falsely implicated the accused-appellant Irshad and lodged a written report in this respect. From overall perusal and analysis of the statement of this witness, we find that this witness is not a witness of last seen together. It is also clear that this witness had not seen accused-appellant Irshad taking his son from his home. The conduct and manner in which this witness allegedly searched for his missing son, deceased Prince, and lodged the written report only after finding the dead body at the railway ground, is wholly unbelievable and unreliable.

26. From the evidence of this witness as deposed by him in his examination-in-chief and cross-examination, conduct and behaviour of this witness indicate that this witness is not a natural and reliable witness of the last seen together theory as adduced by the prosecution, hence in the light of observation, we find the evidence of this witness is wholly unreliable and liable to be rejected.

27. Atul Kumar (PW-2) stated in his evidence that he is a friend of the deceased, Prince. From the evidence of this witness, it also emerged that on 05.11.2013, between 7:15 and 7:30 p.m., while he was walking in the Railway Colony, Agra, he saw Irshad taking Prince with him from the colony toward the Cantt. railway station. According to this witness, he informed the father of the deceased about this fact.

28. In his cross-examination, he stated that "I could not tell that what was the day of the incident. Investigating Officer had recorded his statement on 06.11.2013. I could not tell the day. I had not seen accused beating and burning Prince. During the cross-examination by the trial Court, this witness stated that age of Prince was 10-12 years. My age at that time was 18 years." In his cross-examination, he has further stated that "I had met father of Prince in the morning of 06.11.2013. I met with father of Prince at the place of occurrence. Father of Prince was already present at the place of occurrence."

29. Thus, from the above statement as given by this witness in his cross-examination, question arises that when this witness had seen that accused-appellants Irshad and Kabir Khan were taking Prince with them, then why this witness had not told this fact to the informant Sarvesh Kumar Sharma (PW-1), father of the deceased Prince. According to the evidence of this witness itself, this witness met with father of the deceased at the place of occurrence where dead body of the deceased was lying in the morning of 06.11.2013. Thus, from the conduct and behaviour as indicated by this witness in his evidence, it is clearly emerged that this witness has not seen accused-appellants Irshad and Kabir Khan beating and taking the deceased Prince with themselves. It is clearly emerged from the evidence of this witness that prosecution projected this witness as a witness of last seen together to strengthen the prosecution story and also to give force to the prosecution case. In view of the above facts and circumstances, evidence of this witness is also totally unreliable and unbelievable.

30. Ashok Mishra (PW-3) was produced by the prosecution in support of the prosecution story. This witness has also stated in his examination-in-chief that "on the evening of 05.11.2013, I saw Irshad taking Prince with him, and Kabir Khan was also following them from behind." According to this witness also, he searched Prince with informant Sarvesh Kumar Sharma and their family but whereabouts of Prince was unknown. According to this witness, accused Irshad was also not found at his home. Thereafter it is came to the knowledge that dead body of Prince son of Sarvesh Kumar Sharma, was lying half burnt in the heap of the garbage at railway ground. This witness also stated that "as told by Sarvesh Kumar Sharma, I had written tehrir in respect of the murder of Prince."

31. During the cross-examination, this witness stated that "I had received information about the death of Prince on 06.11.2013 at 06:00 a.m. and I went to see. No information was received. I was taking tea at my house. There was crowd in front of railway ground. I had went from my house to see the place where crowd was gathered. There were many people gathered at the place of occurrence. The police were already present there when I reached at the spot. It is true that in my tehrir, this fact was not written that in the evening of 05.11.2013, I had seen Prince going with Irshad. My house is adjacent to the house of Sarvesh Kumar Sharma. I had met with Sarvesh Kumar Sharma at the place of occurrence. I met with Sarvesh Kumar Sharma on 05.11.2013 at

11:00 p.m. I told the time of going of Prince with Irshad to the Investigating Officer in my statement under section 161 Cr.P.C. If Investigating Officer has not written time, then I could not tell reason for this.

32. Thus, from perusal of the evidence of prosecution witness Ashok Mishra (PW-3), who has written tehrir on the dictation of the informant (PW-1) Sarvesh Kumar Sharma, it is revealed that this witness has also narrated a false and fabricated story that he had also seen accused persons taking with them Prince son of informant on 05.11.2013 at evening. However, despite stating that the accused persons were carrying the deceased with them, this witness did not inform the informant, Sarvesh Kumar Sharma (PW-1), or any other responsible person about this fact. From the evidence of this witness, it emerged that this witness was also taking tea at his home in the morning of 06.11.2013 at 06:00 a.m. This witness also went at the place of occurrence at railway ground. Crowd of people was also gathered there. Curiously, this witness also went at the place of occurrence then this witness had seen the dead body of the deceased Prince.

33. From perusal of the evidence of this witness, it is clear that conduct and behaviour of this witness is totally abnormal and against the human nature. This witness is also neighbour of the informant Sarvesh Kumar Sharma (PW-1) and their houses are adjacent to each other. This witness was also projected and produced by the prosecution after due deliberation and afterthought and to inject force to the prosecution story and also to give a force to the evidence of informant (PW-1) and (PW-2). However, in this attempt, we find that evidence of this witness Ashok Mishra (PW-3) is not reliable from any point of view of law of evidence. Testimony of this witness is unbelievable and does not inspire any confidence. Hence, in the light of observation, we find that evidence of this witness is also wholly unreliable, unnatural and thereby liable to be rejected.

34. Ravi Kumar (PW-4) has also stated in his examination-in-chief that on 05.11.2013, in the evening at 7:00 p.m., Irshad came to my house, called my nephew Prince, and took him away. We searched for our nephew, but he was not traceable. The next morning, at 7:00 a.m., a crowd of people had gathered near the heap of garbage at the railway ground. I also reached there. I went with my brother and saw that my nephew was lying dead near the heap of garbage, which was burning.

35. In his cross-examination, Ravi Kumar (PW-4) has stated that I received information about missing of Prince in the next morning. We reached the place of occurrence at 6:00 a.m. Ashok Mishra, my neighbour, came to my home and gave information. Both my brother and I were at home when Ashok Mishra arrived. Upon receiving the information, I, my brother Sarvesh Kumar Sharma, and Ashok Mishra all went to the spot. When we reached the place of occurrence, a crowd of people had gathered. I did not see Irshad or Kabir beating or burning Prince. I informed the Investigating Officer that Irshad was carrying Prince with him. If this fact was not recorded, I cannot give any reason for it.

36. Therefore, from perusal of the evidence of prosecution witness Ravi Kumar (PW-4), it becomes clear that prosecution tried to project and produce this witness as a witness of last seen together but the prosecution has miserably failed in its attempt. From perusal of evidence of this witness, it is clear that this witness had received information about missing of Prince in the

morning of next day. In other words, this witness has received information of missing of deceased Prince in the morning of 06.11.2013.

37. In view of the above statement, how can this witness be regarded as a witness of last seen together. It is evident from the above statement of this witness that this witness had received information about missing of Prince in the morning of next day. It is clear that deceased Prince was missing from 05.11.2013 and this witness had received information in respect of missing of Prince on the next day morning, i.e., 06.11.2013. From the above facts, it becomes clear that this witness is contradicting himself that Irshad had come at home and carried away his nephew on 05.11.2013 at 07:00 p.m. In the light of appreciation of evidence of this witness, it is also clear that this witness is not a witness of last seen together or taking away Prince with accused-appellant Irshad. Thus, we find that testimony and evidence of this witness also does not inspire any confidence and the same is not believable and reliable according to the facts and circumstances of the present case at hand, therefore, we also reject the testimony of this witness.

38. Hon'ble Supreme Court in the case of **Gambhir v. State of Maharashtra, (1982) 2 SCC 351** has held in para 9 that;

"The law regarding circumstantial evidence is well settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

39. In the light of the principles laid down by the Hon□ble Supreme Court, when we have perused and appreciated the evidence in the present case at hand, we find that Prince aged about 12 years was missing from the evening of 05.11.2013 but informant Sarvesh Kumar Sharma (PW-1), father of the deceased Prince, has not given any information about the missing of his son to the police station or at the police post (chowki) that his son Prince aged about 12 years was missing. As per the evidence of PW-1/informant, as given in the Court, he along with other family members made a search for missing child Prince till late night but they were unsuccessful in their attempt to know the whereabouts of the missing child Prince. After searching till late night, informant PW-1 came to his home at late night and slept there, woke up in the morning of next day on 06.11.2013 at 06:30 a.m. and took tea. He was sitting outside the house in the open area. When PW-1 saw in front of his house that crowd of people had gathered nearby the heap of garbage at the railway ground,

then this witness also due to curiosity reached at the place of occurrence and identified the dead body of a child as his son Prince. Before this witness has reached at the place of occurrence, police were already present there. How can a father of a missing child sleep in the night, wake up early in the next morning, have tea, peacefully and with cool mind sit outside the house in an open area without giving any information or lodging the first information report. When he reached at the place of occurrence which was located in front of his house, saw the dead body of his son and thereafter, he went to the police station, got scribed written report from Ashok Mishra (PW-3) naming accused-appellant Irshad and lodged the F.I.R. Thus, from the conduct and behaviour of this witness, we find that this witness is not a witness of last seen together. The statement given by this witness in the Court is totally a thoughtful narration and fictitious story. It is amply clear that with full consideration and afterthought, this witness falsely implicated the accused-appellant Irshad in this case for the alleged crime.

40. Informant Sarvesh Kumar Sharma (PW-1) had only stated that Irshad had come to his home, called Prince and carried him away. On the same point, Ashok Mishra (PW-3) narrated a different fact that this witness had seen on 05.11.2013 at evening that Prince was going with Irshad and accused-appellant Kabir Khan was following them from behind. On the same point, informant (PW-1) Sarvesh Kumar Sharma and Ashok Mishra (PW-3) are stating two different statements.

41. It is admitted fact by both sides that there is no direct evidence in the case. Prosecution only based its story on the theory of last seen together. In support of its theory of last seen together, prosecution adduced as many as four prosecution witnesses; informant Sarvesh Kumar Sharma (PW-1), Atul Kumar (PW-2), Ashok Mishra (PW-3) and Ravi Kumar (PW-4) but from the above discussions, it is amply clear that above prosecution witnesses are contradicting each other□s statements. All the four prosecution witnesses mentioned above were adduced by the prosecution with the view to support and establish the theory of last seen together and to corroborate each other□s evidence but the prosecution has miserably failed in its attempt. Since, in spite of corroborating each other's evidence, the prosecution witnesses Sarvesh Kumar Sharma (PW-1), Atul Kumar (PW-2), Ashok Mishra (PW-3), and Ravi Kumar (PW-4) have contradicted and falsified each other's statements..

42. In written report, Exhibit K-1, no motive was stated. From the evidence of the prosecution witnesses, it is also clear that the witnesses of the so-called last seen together theory have not stated in their evidence what was the motive and why the accused-appellant Irshad came to the home of PW-1, Sarvesh Kumar Sharma, and in the presence of this witness, called the deceased Prince and took him away. What were the reasons and causes for which the accused-appellant Irshad took the deceased, Prince, with him and committed his murder. Written report, Exhibit K-1, is totally silent on this point. Prosecution witnesses of facts, such as, Sarvesh Kumar Sharma (PW-1), Atul Kumar (PW-2), Ashok Mishra (PW-3) and Ravi Kumar (PW-4) have not stated any words in their evidence that what was the enmity and cause which compelled Irshad to kill the deceased Prince. Thus, we find that in this case, prosecution was liable to prove motive against the accused-appellants by their evidence but prosecution is totally silent on this point, which makes the prosecution story highly suspicious and doubtful.

43. It is also a notable fact that according to the prosecution witnesses, accused-appellant Irshad carried the child Prince with him and murdered him. It is also evident from the prosecution evidence that accused-appellant Irshad was resident of other locality. It is totally unbelievable that the accused-appellant Irshad carried the child in presence of the informant PW-1/Sarvesh Kumar Sharma from their home, and after committing the murder of the child, why did the accused-appellant Irshad come again in front of the house of the informant PW-1 at the railway ground, throw the dead body of the deceased, and set it on fire. It is highly risky for any accused person to come in front of the informant PW-1 and hide the dead body of the deceased. Thus, prosecution story as narrated by the prosecution witnesses were found wholly unbelievable and unreliable. It is also a fact that the Investigating Officer could not collect any material or object from the place of occurrence that would legally connect the accused-appellants with the alleged crime. It is also noteworthy that Investigating Officer was unable to recover any material objects, things or articles from possession of the accused-appellants, by which accused-appellants could be connected with the commission of the crime in spite of arrest of the accused-appellant Irshad on 06.11.2013.

44. Hon'ble Supreme Court in the case of Gambhir (supra) has held that theory of last seen together by itself is not a conclusive proof of killing by the accused. Initial burden lies on the prosecution to prove its case that victim/deceased was lastly seen in the company of the accused-appellants but in the present case at hand, prosecution was miserably unsuccessful to prove this fact that the deceased Prince was in the company of the accused-appellant Irshad before his death.

45. Hon'ble Supreme Court in the case of **Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715** has held in para 12 that;

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

46. Hon'ble Supreme Court in the case of **Ashok v. State of Maharashtra, (2015) 4 SCC 393** in para 12 held that;

"Initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."

47. Thus, in the light of the legal principles as laid down in the case laws by the Hon'ble Supreme Court, we find that in the present case at hand, prosecution was wholly unable to discharge its initial burden of proof that Prince was called upon and carried away by accused-appellant Irshad. When prosecution was unable to discharge its initial burden, then onus of proof has not shifted on the accused-appellants under Section 106 of the Evidence Act.

48. We have also gone through the findings and reasoning given by the learned Trial Court. We find that the trial Court did not consider this legal aspect in its judgment and order of conviction. The trial Court has completely neglected this legal point and has not given any finding or reasoning on this aspect. Trial Court has also not considered this fact that evidence of prosecution witnesses, such as, informant Sarvesh Kumar Sharma (PW-1), Atul Kumar (PW-2), Ashok Mishra (PW-3) and Ravi Kumar (PW-4) are not the witnesses of last seen together.

49. The Trial Court, without properly appreciating and evaluating the evidence and in a casual and routine manner, totally believed the evidence of Sarvesh Kumar Sharma (PW-1), Atul Kumar (PW-2), Ashok Mishra (PW-3) and Ravi Kumar (PW-4) as reliable, which, in our opinion, is wholly unreliable. From perusal of the finding and reasoning given by the trial Court, we find that trial Court only by mentioning the evidence of prosecution witnesses held that chain of evidence against the accused-appellants is complete. The finding and reasoning of the Trial Court is totally against the evidence available on the record and it is also against the settled principles of law in this respect as enunciated by the Hon□ble Supreme Court in the above referred case laws. Therefore, we find that the finding and reasoning given by learned Trial Court is not sustainable in the eyes of law.

50. In view of the above, we find and held that finding and reasoning given by learned Trial Court by which accused-appellants are held guilty for the alleged offence are liable to be set aside.

51. In view of the above, we find that judgment and order of conviction and sentence dated 03.11.2020 passed by learned Trial Court is liable to be set aside and the criminal appeal of the accused-appellants are liable to be allowed.

52. The criminal appeals are allowed. Accordingly, we set aside the impugned judgment and order dated 03.11.2020 of conviction and sentence passed against the accused-appellants by learned Trial Court in Session Trial No. 29 of 2014 (State Vs. Irshad and another) arising out of Case Crime No. 638 of 2013, under Sections 302/34 and 201 IPC, Police Station Shahganj, District Agra. The appellants are acquitted of the charge under Sections 302/34 and 201 IPC. The appellants, Kabir Khan and Irshad, are in jail and shall be released from prison forthwith unless wanted in connection with any other case and subject to fulfilling the requirements under Section 437-A Cr.P.C.

53. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(2026) 7 ILRA 362
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 4008 of 2021

Deshraj & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal against conviction in a dowry death case involving Sections 498-A and 304-B and the Dowry Prohibition Act.

Headnotes

Criminal law-Indian Penal Code,1860- Sections 498-A and 304-B and the ¾ Dowry Prohibition Act,1961-Criminal Procedure Code,1973-Section 374(2)-Dowry death & Cruelty-Re-appreciation of evidence-Vague and general allegations-Father-in-law, a daily wage rickshaw puller, falsely implicated without specific role or overt act-Order of conviction against father-in-law set aside-Husband's conviction upheld-Mitigation of sentence-Balancing of aggravating and mitigating factors-Both parties belonging to weaker socio-economic strata-Sentence of life imprisonment reduced to ten years rigorous imprisonment.-Allowed partly.(Para 16 to 35) (E-6)

Held

The court held that general allegations of dowry demand against extended family members without any specific overt act cannot from the basis of a conviction under section 304B IPC. Where the father-in-law is an elderly daily-wage earner and absent during the day, roping him on omnibus allegations reflects false implication. Further, while upholding the conviction of the husband under section 304B IPC, imposing the extreme sentence of life imprisonment is unwarranted unless the offence falls within the rarest of rare categories. Considering the equal and low socio-economic status of both parties, the absence of direct evidence connecting the accused to the actual act of strangulation, and the fact that the accused immediately took the victim to the hospital, the ends of justice are met by modifying the sentence from life imprisonment to ten years of rigorous imprisonment.

Case law Cited

Hem Chand Vs State of Haryana, (1994) 6 SCC 727-referred to.

List of Acts

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

List of Keywords

Dowry death, Section 304B IPC, Section 498-A IPC. Asphxia by Throttling, General and Omnibus Allegations, Absence of Overt act, False implication, Quantum of sentence, Reduction of life sentence, Socio-economic status, Mitigating circumstances.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 4008 of 2021

Deshraj and another Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Akhilesh Pandey, Jagmohan Singh, Jainendra Kumar Mishra, Syed Mohammad abbas Abdy

Adv. for Respondent(s):

G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This Criminal Appeal has been filed by the accused-appellants Deshraj and Ram Sajeevan against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Court Room No. 26, Kanpur Nagar in S.T. No. 514 of 2016 State Vs. Desh Raj and Others and Sessions Trial No. 655 of 2016 State Vs. Ram Sajeevan, both arising out of same Crime No. 314 of 2016 under Sections 498A, 304B, 302 I.P.C., and 3/4 Dowry Prohibition Act, Police Station Naubasta, District Kanpur Nagar. By the impugned judgment and order of conviction and sentence, learned Trial Court held guilty and convicted to accused-appellant Deshraj and Ram Sajeevan under Section 304B I.P.C., for life imprisonment. The accused-appellant Deshraj and Ram Sajeevan were also held guilty under Section 498A I.P.C and convicted for two years simple imprisonment and a fine of Rs. 5,000/-. In default of payment of fine, they were ordered to serve an additional imprisonment for one month. The accused-appellants Deshraj and Ram Sajeevan were also held guilty under Section 4 of Dowry Prohibition Act and convicted for two years simple imprisonment and a fine of Rs. 5,000/-. In case of default of payment of fine, they were ordered to serve one month of additional simple imprisonment.

2. Brief fact as is revealed from the written report-exhibit Ka-1 is that, informant Sitapati (P.W.-1), who is resident of Village Chauhanpur, P.S. Udaipur, District Pratapgrah, has lodged a written report-exhibit Ka-1, at Police Station Naubasta, stating therein that, applicant had married her daughter with Deshraj son of Ram Sajeevan, resident of Kidwai Nagar, P.S. Naubasta, District Kanpur Nagar on 11.06.2014, after giving full gift and dowry according to custom and traditions, but the in-laws of my daughter were not satisfied with the dowry and they had been demanding Rs. 5,00,000/- in dowry. The economic condition of my family was not so sound so that above demand could be fulfilled. On this thing, husband of Savita, father-in-law Ram Sajeevan, Pappu son-in-law of Ram Sajeevan, Lalita daughter of Ram Sajeevan were beating her due to this demand of dowry and for many days, they had not give her food and many times they attempted to kill her by pouring kerosene oil. This thing was told by my daughter Savita to us, when she came to my home. Applicant and her husband tried to persuade the in-laws of Savita, but they were not agreed. On the occasion of festival of Holy, my daughter had came to my house. When she had returned with her husband Deshraj, then, at the time of departure, Deshraj had given this intimidation that if you cannot give Rs.5,00,000/-, then your daughter will not return at home. On 28.04.2016, at 1:00 hours in day, Pappu (Nandoi) of my daughter Savita has informed that your daughter has died. When we went at the home of my daughter then saw that my daughter was not at home; after receiving information from neighbours, we all went at postmortem house and saw my daughter in dead

condition. All the above peoples by a common intention, had murdered my daughter by strangulating her neck for not fullfiling further demand of dowry.

3. After lodging the written report-exhibit Ka-1, by informant Sitapati P.W.-1, First Information Report -Exhibit Ka-9 was registered as Crime No. 314 of 2016 at P.S. Naubasta, District Kanpur Nagar, under Section 498A, 304B, I.P.C., and 3/4 D.P. Act, on 01.05.2016 at 13:13 hours by then Constable Clerk Ashok Tiwari, PW-6. After registration of the F.I.R. exhibit-Ka-9, investigation of the case was taken up by Vishal Pandey P.W-8, the Investigating Officer reached at the spot and inspected the place of occurrence on the pointing out of the informant Sitapati and prepared site plan. He got prepared panchayatnama of dead body of Savita. He prepared other necessary police papers. The dead body of deceased Savita was sent for postmortem examination.

4. After transfer of first I.O. Vishal Pandey PW-8, investigation of the case was taken by second I.O. Gyanendra Kumar Singh, PW-7. Second I.O. Gyanendra Kumar Singh, PW-7 completed the investigation, he recorded the statement of the prosecution witnesses under Section 161 Cr.P.C. After completion of all the formalities of investigation, the second I.O. Gyanendra Kumar Singh, PW-7 has filed charge-sheet exhibit Ka-11 against accused Deshraj, Pappu and Lalita. Thereafter second I.O. Gyanendra Kumar Singh, PW-7 also filed a charge-sheet exhibit Ka-12 against accused-appellant Ram Sajeevan.

5. Dr. Sumit Kumar Mishra, PW-5, examined the dead body of the deceased Savita and prepared postmortem report exhibit Ka-8. According to postmortem report exhibit Ka-8 of deceased Savita, which was prepared by Dr. Sumit Kumar Mishra PW-5, following ante mortem injuries were found on her dead body:

1. Abraded contusion measuring 7 cm □ 2 cm on the front side of the neck, starting between the lower jaw and extending 5 cm downward, up to the thyroid cartilage.

On cutting the above injury, clotted blood was found underneath it.

2. Abraded contusion measuring 1 cm □ 1 cm located below the left side of the lower lip.

3. Contusion measuring 5 cm □ 3 cm on the left eye.

4. Contusion measuring 4 cm □ 3 cm present on the occipital area (back portion) of the head. Cause of death was asphyxia due to ante mortem throttling.

6. After submission of the charge-sheet by Second I.O. Gyanendra Kumar PW-7 in the concerned Magistrate's Court having jurisdiction, the case was committed to the Court of Session for trial because case was totally triable by Court of Session.

7. On 30.09.2016, charges were framed by the trial Court against accused persons Lalita, Deshraj, Pappu under Sections 498A, 304B I.P.C. and Section 3/4 D.P. Act. The learned trial Court also framed alternative charge against above accused persons under Section 302 I.P.C. Learned trial Court also framed charge against accused appellant Ram Sajeevan under Section 498A, 304B

I.P.C. and also an alternative charge under Section 302 I.P.C. was framed by the trial Court against Ram Sajeevan on 20.12.2016. The accused persons denied from the charge and claim for the trial.

8. In support of their case, prosecution examined and adduced prosecution witnesses informant Sitapati Devi PW-1, Dinesh Kumar PW-2, Anil Kumar PW-3, Gyanendra Kumar Dwivedi, PW-4 , Dr. Sumit Kumar Mishra PW-5, Ashok Tiwari, PW-6 Gyanendra Kumar Singh (C.O) PW-7 and Vishal Pandey (C.O.) PW-8. Harilal father of the deceased Savita was also adduced and examined as CW-1. Apart from the above ocular evidence, prosecution also relied on documentary evidence as Exhibit Ka-1 to Exhibit Ka-13 in support of their case.

9. After recording of the evidence of all the prosecution witnesses, trial Court examined all the accused persons under Section 313 Cr.P.C. In their statement under Section 313 Cr.P.C., all the accused persons denied from the charge and all of theme have stated that they were falsely and wrongly implicated in the case. They have not committed the alleged crime. Accused appellant Deshraj have also sated in his statement under Section 313 Cr.P.C., that he is innocent. The family members of the in-laws of my wife had come before four to five days of the incident in the Mundan Ceremony of my daughter.. At the time of the incident, all the family members of the in-laws of my wife were present at my home. We all the people, my father and sisters were out of home. I had went at my work place at 06:00 p.m. After returning home, then I know about the incident. In his written statement under Section 313 Cr.P.C., accused-appellant Deshraj also stated that he is a very poor person. Applicant lived in a kachcha hut (Madhai). By the applicant never demand of dowry has been made nor he committed cruelty of any kind before four days of the incident. The family members of my wife, such as mother, father, brothers, sisters, had come in the Mundan Ceremony of my daughter. Between my wife Savita and my father-in-law Harilal, Savita a quarrel occurred among them on the point of not giving money for wine. On the day of incident on 28.04.2016, the applicant was in Ordinance Factory Kalpi Road, Kanpur for training of BTR from the morning at 07.45 am to evening 16:45 pm. He remained present in the Ordinance Factory. When he returned home, then he came to know about the incident. My father has demanded an information under the Right to Information Act from G.C. Rawat, Additional G.M. Ordinance Factory/Central Information Officer. My father-in-law had give information on 28.04.2016 by a written application at Police Station Naubasta, Kanpur. That was registered in the GD No. 47 at night (10:00 pm). However, after that my mother-in-law (Saas) had given second false application, implicated to me and my family members, registered a false case against me and my family members. My sister was married twenty years back and they were living in District Pratapgarh and my father is too old and ill person and by pulling rickshaw trolley nearby for earning their livelihood. The accused-appellant Ram Sajeevan has also stated in his statement under Section 313 Cr.P.C., that mother and father of my daughter-in-law Savita were present at the time of incident; I was out of house; I am innocent; I had never demanded a single penny in the form of dowry.

10. In their statements under Section 313 Cr.P.C, accused-appellants submitted that they adduced their defence evidence. The accused-appellant examined Ram Kishore DW-1, Matadeen DW-2, Raj Vishwakarma as DW-3, Shyam Kumar Bajpayee as DW-4, Anjani Kumar Tiwari as DW-5 and Lalit Mohan Shukla as DW-6 in their statements.

11. The learned trial Court after recording evidence of both the sides, heard arguments of the accused person and found guilty to them. The trial Court does not find any evidence against accused-Lalita and Pappu for the alleged crime under Section 304B, 498A IPC., and Section 3/4 D.P. Act, hence acquitted accused Lalita and Pappu. The trial Court found accused-appellant Deshraj and Ram Sajeevan, guilty under Section 498A, 304B IPC and Section 4 of D.P. Act and convicted accused-appellant Deshraj and Ram Sajeevan for the alleged incident. The trial Court also acquitted the accused-appellant Deshraj under Section 302 IPC and 3 of D.P. Act. Aggrieved by the above judgment and order of conviction and sentence, accused-appellant Deshraj and Ram Sajeevan have preferred this criminal appeal in this Court.

12. We have heard learned counsel for the accused-appellants and learned AGA for the State-respondent. We have also perused all the evidence and have also gone through the impugned judgment and order of conviction as delivered by the trial Court dated 25.08.2021.

13. Learned counsel for the accused-appellant have submitted that the sentence awarded to the appellants is too severe and not in accordance with law and further the Court below has awarded punishment against the material evidence available on record.

14. Appellant No.1 is the husband and the appellant No.2 is father-in-law of the deceased Savita against whom and other family members a general allegation of demand of additional dowry of Rs. 5,00,000/- has been levelled and further the appellants have not caused murder of deceased as alleged in the First Information Report. It is also submitted that the incident is said to have occurred on 28.04.2016 and it is an admitted case of the informant that on the information she has reached at the spot on the same day and the F.I.R. has been lodged by her on 01.05.2016, we do not find that why between 28.04.2016 to 01.05.2016 at about 13:40 pm, no FIR has been lodged by her. It is also argued by the learned counsel for the accused-appellants that at the time of alleged incident, the father of the deceased was already present in the house of the deceased, but he never lodged any F.I.R., in pursuance of the alleged incident. The informant Smt. Sitapati Devi, who was wife of Harilal was examined as PW-1 before the trial Court, but she could not give explanation for lodging the delayed F.I.R. It is also submitted on behalf of the accused-appellant that father of the deceased, who was present at the time of the incident, had already submitted an application before the police, in which he had stated that his daughter Smt. Savita had died on account of committing suicide by hanging. There is no evidence before the trial Court which may say the involvement of the applicants in commission of alleged offence has come, even though the trial Court has convicted and sentenced the appellants for maximum period of life imprisonment and total fine of Rs.10,000/- which is not sustainable in the eyes of the law. It is also submitted that trial Court awarded maximum punishment of life imprisonment to accused-appellant without considering and keeping in mind the socio-economic condition and family background of the prosecution and defence side. From the evidence of prosecution, it is revealed that accused-appellant persons are very poor and father of the accused-appellant Ram Sajeevan is a very old and poor man. He earns his livelihood for his family by pulling rickshaw trolley. However, in respect of these facts and circumstances of the case, the trial Court without keeping this fact in mind awarded maximum punishment of life imprisonment to accused-appellant, which is against the settled principles of law. When in the law, under Section 304B IPC, minimum punishment of seven years imprisonment has been provided, then in this condition without assigning any reason and not considering the

socio-economic condition of the accused-appellants, a conviction for life imprisonment for accused-appellant is too harsh and severe, which is not sustainable in the eye of the law. In this way, learned counsel for the accused-appellants has submitted that judgment and order of conviction and sentence as awarded by the learned trial Court is too severe and excessive as alleged against the accused-appellant persons. Thus, learned counsel for the appellants submitted that the judgment and order of conviction as passed by the trial Court is not sustainable in the eye of law, hence liable to be set aside.

15. Against the above argument of the learned counsel for the accused-appellants, learned AGA for the State-respondents has submitted that trial Court after perusing and examining all the documentary and oral evidence, as available on the record, has passed a perfect and judicious order in the light of the evidence in the case. The trial Court found that it is a dowry death case, which happened in the matrimonial home of the deceased Savita. Postmortem report indicated death by strangulation. In view of the above facts, the trial Court sentenced and convicted the accused-appellants for life imprisonment so that after giving reasonable finding found that a message can be given to the society that no other person could dare to commit this kind of heinous offence, like dowry death. It is also submitted by learned AGA for the State-respondent that the reasoning of the trial Court is supported by the evidence oral and documentary, there is no any perversity and illegality in the findings and reasoning of the trial Court in the judgment and order of conviction dated 25.08.2021. The Criminal Appeal as preferred by the accused-appellants is devoid of merit, hence liable to be dismissed.

16. In the light of the above arguments and counter arguments of learned counsel for the accused-appellants and learned AGA on behalf of the State-respondents, we have gone through all prosecution evidence as available on the records. The informant Smt. Sitapati Devi PW-1 has stated in her examination-in-chief that the deceased Savita was my daughter; I have married her on 11th June, 2014 with Deshraj. Accused Ram Sajeevan is the father-in-law, Pappu is (Nandoi) and Lalita is (Nanad). These all peoples live together at Daskuan, Naubasta in own house. After marriage, my daughter had gone to Naubasta at Kanpur. About five days after marriage, my daughter returned to my home (Maika) then she told that my in-laws are not happy with dowry which you have given to them at the time of marriage; I have given in dowry one passion pro-motorcycle, gold ring, almirah, bed, utensils charpai and Rs. 20,000/- cash; My son had told me that these all peoples are not satisfied with the above dowry and demanding Rs.5,00,000/- as additional dowry; I have expressed my inability in giving Rs.5,00,000/- because I have no worth of that kind; I have persuaded my daughter Savita and send her with her husband at matrimonial home. After marriage, before her death she came five times at her maika and she had told that all the accused persons had been demanding Rs.5,00,000/- and in case of refusal, they are beating and committing cruelty; the informant Smt. Sitapati Devi PW-1 further stated in her examination-in-chief that they had not give food to her and pouring kerosene oil upon her and tried to kill her. Before one month of the current festival of Holi Savita had told that above four accused persons are demanding Rs.5,00,000/- and they are beating and committing cruelty. On 28.04.2016, at about 01:00 p.m. in noon accused Pappu (Nandoi) had made a telephonic call that your daughter has died; after this, all of us reached at the house of my daughter Savita; my daughter was not there. This came to knowledge from neighbours that my daughter had been taken to Hallet Hospital, Kanpur; after that we all reached at Hallet Hospital, there we saw the dead body; there was injury in the neck of the dead body; sign of

injury was also on her face, eyes and back side of the head; dead body of my daughter was packed in the hospital; postmortem was conducted on the same day; after postmortem, the dead body of my daughter was handed over to us at 4:10 pm; after postmortem, Deshraj had performed rituals of cremation; we all of us had participated in these rituals; after that on 30.04.2016, I got typed an application in Kutchery.

17. The informant Sitapati Devi PW-1 has stated in her cross-examination that my daughter had one daughter, her name was Kritika; when my daughter had died then Kritika was of eight months. At that time, daughter of my deceased daughter is with his father in jail; at that time the girl had came from jail; her father is nourishing her; her Mundan ceremony was performed one day before the incident; my husband had participated in the Mundan ceremony; we all of us were in Delhi at that time; we live at Delhi in a rented house; address is not correctly remembered; my husband do daily labour work; I live at my house; in Mundan ceremony, my sons had came before two days; after Mundan ceremony my husband halted and sons had returned back; at the day of incident, my husband was in Kanpur; I after marriage had only one time had gone to matrimonial home of my daughter then I had seen her house; in the main house of the door there is a wooden tattar, one room of Zhuggi; all of these peoples had been living in the above Zhuggi. Ram Sajeevan father of Deshraj was a rickshaw puller. His son Deshraj does not do anything.

18. In her cross-examination, she further stated that at 09:00 am in the morning, we reached at Kanpur; we reached at the home of my daughter. There was no person except the neighbours meet; they told that dead body of the girl is in Hallet Hospital. The neighbours told only that dead body of my daughter is in the hospital; we have straight forward gone to Hallet Hospital. In hospital, my daughter was found dead. Police had taken to my husband for three days; he was locked behind the bar in the Police Station; I had stayed at the home of my Nanad. Next day morning I came to Kutchery; I had got typed an application by typewriter. At that time, my brother had came with me in Kutchery; I had not written my application; she further stated that when my husband was locked in police station then none had gone to meet him; my son and brother had not gone at police station; my husband earned 200 to 300 Rs. daily; we both people had same socio-economic status.

19. Apart from informant Smt. Sitapati Devi PW-1, other prosecution witnesses of the fact such as Dinesh Kumar PW-2, Anil Kumar PW-3, have stated and narrated the same thing and facts in their evidence in the Court as was stated by their mother informant Sitapati Devi PW-1 in her evidence.

20. From a perusal of the evidence of the above witnesses of fact, such as informant Sitapati Devi PW-1, Dinesh Kumar PW-2 and Anil Kumar PW-3, we find that general allegations regarding demand of additional dowry and cruelty are levelled by the above prosecution witnesses against accused-appellants. No specific statement or any other evidence has been adduced by the prosecution from which it could be revealed that in what way and manner father-in-law (Sasur) appellant Ram Sajeevan had committed cruelty to her deceased daughter-in-law Savita and demanded Rs.5,00,000/- From the perusal of the evidence of the above prosecution witness, it is also revealed that general allegations against accused-appellant persons including accused appellant Ram Sajeevan are levelled by the said prosecution witness. The deceased Savita was married to

accused-appellant Deshraj. This fact is clearly emerged from the prosecution evidence that, accused-appellant Ram Sajeevan father of the accused-appellant Deshraj is a very poor person. He earn his livelihood and nourishing the family by pulling rickshaw trolley. A person who earns his livelihood by pulling rickshaw trolley, naturally leave home in the morning and will return at his home in the late evening. Since the above prosecution witnesses clearly accepted in their evidence that Ram Sajeevan father of accused-appellant Deshraj was a rickshaw puller and is maintaining his family by pulling rickshaw trolley, then in this condition we find that involvement of the accused-appellant Ram Sajeevan is falsely concocted by the prosecution side to harass the whole family of the defence side. From the perusal of the evidence of the above prosecution witness, we find that involvement of the accused-appellant Ram Sajeevan in the alleged crime is doubtful and suspicious. However, when we perused the finding and reasoning of the learned trial Court in this respect, we find that trial Court has not considered this material aspect in its judgment and order of conviction and sentence dated 25.08.2021.

21. The trial Court only on the basis of the general allegations against all the family members of the deceased Savita□s matrimonial home held guilty and convicted Ram Sajeevan for the alleged crime, which we find not supported by any cogent evidence on the record. It is settled principles of law that no accused person can be held guilty for heinous crime only on general allegations without supported by any cogent and reliable evidence. Thus, from the above discussions, we are of the considered view that the judgment and order of conviction passed by the trial Court in respect of the accused-appellant Ram Sajeevan is not judicious and proper, hence nor sustainable in the eye of the law.

22. As far as accused-appellant Deshraj is concerned, from the perusal of the evidence of the prosecution witnesses, such as informant Smt. Sitapati Devi PW-1, Dinesh Kumar PW-2, Anil Kumar PW-3, this fact emerges that accused-appellant Deshraj live in a hut of Zhuggi made up of mud having a gate of tatter. It is also clear from the prosecution evidence that socio-economic condition of the prosecution side and accused-appellants are same, meaning thereby that socio-economic condition of both the sides are same. Both sides are daily wage earner peoples. They did daily labour work and earn their livelihood for their family members. It is thus clear that both sides are people of low strata, they go daily for work on daily basis and earn by doing labour work for their livelihood for maintaining their family members. This is also clear from the prosecution evidence as stated by informant Smt. Sitapati Devi PW-1, Dinesh Kumar PW-2 and Anil Kumar PW-3 that when these prosecution witnesses have reached at the house of the deceased Savita, they did not found her at her home.

23. She was taken to the Hallet Hospital by the accused persons. This fact indicate that after so called incident it was the accused-appellant persons who carried deceased Savita to the hospital for her treatment but unfortunately life of Savita could no be saved by the treatment. This fact also emerges that after death of the deceased Savita in Hallet Hospital, last cremation rituals were performed by her husband accused-appellant Deshraj. From the prosecution evidence this fact also emerges that Kritika-daughter of the deceased Savita, who was eight months old, was living with her father Deshraj accused-appellant in jail. The accused-appellant Deshraj nourishing and maintaining her daughter Kritika in jail after the death of deceased Savita. It is also a fact that

husband of informant Sitapati Devi PW-1, do the labour work and earn daily 200 to 300 rupees per day.

24. Thus, from above facts, it is clearly emerges that socio-economic condition of both sides are the same. Both sides are very poor people of low strata earning their livelihood by doing daily labour work for maintaining their family members. However, when we have gone through the findings and reasoning recorded by the learned trial Court, we find that learned trial Court has not considered this major aspect in the judgment and order of conviction and sentence in this respect. Without keeping in view the socio-economic condition of the accused-appellant persons and prosecution side, trial Court sentenced accused-appellant persons to the maximum sentence of life imprisonment under Section 304B IPC. Under Section 304B of IPC, minimum sentence of seven years imprisonment is provided. The trial Court without considering this major and material aspect and totality of the fact and circumstances of the case, awarded a very severe and disproportionate punishment of life imprisonment to accused-appellant persons.

25. From the records of the file, it appears that families of the informant and accused-appellant belongs to the weaker section of the society, earning their livelihood by doing labour work on daily basis. It is settled principle of law that punishment should be of the nature and extent that it must not be too lenient and also must not be too severe and harsh. Both sides belong to weaker sections of the society and are daily wage earner. In view of the above social condition and economic capacity of the accused-appellants as well as also of the prosecution sides, we find that life imprisonment under Section 304B IPC as awarded by learned Trial Court is too harsh and severe.

26. The Three Judges Bench of Hon'ble Supreme Court in the case of **Hem Chand v. State of Haryana, (1994) 6 SCC 727,** which was also a case under Section 304B IPC (dowry death), held in para 7 that;

"A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned in the section are satisfied. In the instant case the prosecution has proved that the deceased died an unnatural death, but there is no direct evidence connecting the accused with the death. The accused has not been charged under Section 302 IPC. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which case also Section 304-B IPC would be attracted.

But this aspect i.e., absence of direct connection of the accused with death has certainly to be taken into consideration in balancing the sentence to be awarded to the accused.

Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case."

27. Thus, from the above case law of Hon'ble Supreme Court, it is clear that under Section 304B IPC for dowry death, life imprisonment should be awarded in rarest of the rare cases, where it is alleged that bride was killed in a brutal and ruthless manner and also where there is no mitigating circumstances, then in this condition, life imprisonment should be awarded as a rarest of the rare cases. However, the trial Court also held the accused-appellants guilty under Section 4 of Dowry Prohibition Act and convicted them for two years imprisonment and a fine of Rs. 10,000/- to each accused and in default of payment of fine, both the accused-appellants were directed to undergo further imprisonment for three months. The accused-appellants were also convicted under Section 498A IPC for two years simple imprisonment and a fine of Rs.5,000/- each and in default of payment of fine, they were ordered to serve one month of additional imprisonment.

28. At this stage, it is also noteworthy to mention here that Harilal CW-1, who is the father of deceased Savita has also given an information to the concerned police station of this incident that his daughter Savita had committed suicide in her matrimonial home. The prosecution witness Ashok Tiwari PW-6 who was Head Moharrir at police station Naubasta on 01.05.2016 have stated in his cross-examination that one fauti information about committing of suicide by his daughter Savita was given at police station Naubasta. This information was recorded in the G.D No.48 dated 28.04.2016 at 22:00 pm., meaning thereby that after the incident Harilal CW-1 father of the deceased Savita has given fauti information about her daughter stating that her daughter Savita has committed suicide. After this Sitapati Devi PW-1, mother of deceased Savita came to surface and got typed a written report in Kutchery on 30.04.2016 and on the basis of a typed application dated 30.04.2016, the first information report exhibit Ka-9 was registered against accused appellant persons on 01.05.2016.

29. Only on this ground that accused-appellant Ram Sajeevan father of the accused-appellant Deshraj against which only general allegation has been levelled by the prosecution regarding demand of additional dowry and committing of cruelty, we cannot hold guilty to accused-Ram Sajeevan for the alleged commission of the crime. Only on this ground that accused-appellant Ram Sajeevan is father-in-law of the deceased and he is father of the accused-appellant Deshraj, Ram Sajeevan could not be held guilty for the alleged crime. For recording a finding of guilty, cogent and consistent reasons and also evidence must be adduced by the prosecution. We find that no any cogent and consistent evidence is present in this case against the accused-appellant Ram Sajeevan for the alleged commission of the crime except general allegations.

30. In view of the above discussions, facts and circumstances of the case, conviction and sentence awarded by the trial Court against accused-appellant Ram Sajeevan is not sustainable in the eyes of the law and, therefore, liable to be set aside.

31. We are of the considered view that quantum of punishment should be proportionate to the crime. It should neither be too lenient nor too excessive and harsh. While awarding sentence, the Court must take an overall view of the facts and circumstances of the case, including the socio-economic conditions of both the parties, so as to meet the ends of justice and convey a clear message to society that no person could dare to commit any heinous crime. In view of the above facts and circumstances of the case, as revealed from the records, we are inclined to sustain the order of conviction only against accused-appellant Deshraj and maintaining the finding and reasoning in this respect. However, we are inclined to reduce the sentence from life imprisonment to the period already undergone by the accused-appellants Deshraj, without altering the finding of the trial Court in respect of accused-appellant Deshraj. The finding as given by the learned trial Court in respect of conviction and sentence against accused-appellant Ram Sajeevan is not sustainable in the eye of the law, hence we are inclined to set aside the finding and reasoning of conviction and sentence against the accused-appellant Ram Sajeevan by the trial Court.

32. In the light of the above discussion, we are of the considered view that the ends of justice would meet by reducing the sentence of life imprisonment, as awarded by the trial Court against accused-appellant Deshraj, to imprisonment for a period of ten years. Thus, we reduce the life imprisonment against accused-appellant Deshraj awarded by the trial Court to the imprisonment for ten years only.

33. In the light of the above discussion, we set aside the judgment and order of conviction and sentence against accused-appellant Ram Sajeevan.

34. The accused-appellant Deshraj is in jail since 2016 and serving the sentence, meaning thereby that accused-appellant Deshraj had already served more than 9 years in jail, hence we reduced the sentence of accused-appellant Deshraj for ten years imprisonment. Thus, the criminal appeal filed by the accused-appellant is liable to be partly allowed.

35. Accordingly, the appeal is **partly allowed**. The judgment and order of conviction and sentence awarded by the trial Court against accused-appellant Ram Sajeevan is, accordingly, set aside. It is directed that the appellant be released forthwith, if not warranted in any other case and also subject to the compliance of Section 437A Cr.P.C.

36. The sentence of life imprisonment under Section 304B IPC as awarded by the learned trial Court to accused-appellant Deshraj is reduced to the period of ten years imprisonment. After completing of the sentence of ten years of imprisonment, the accused-appellant Deshraj shall be released from jail.

37. Let the trial Court record be returned by the office along with the copy of this judgment for necessary information and compliance forthwith. This order shall also be sent to the jail authorities concerned for necessary compliance forthwith.

(2026) 7 ILRA 373
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 4487 of 2019

Ranjeet Patel **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to criminal appeal challenging the conviction and life sentence under section 302 IPC. The appellant assaulted the deceased on the head with an iron rod during a monetary dispute.

Headnotes

A. Criminal law-Indian Penal Code,1860-Section 302, 504-Criminal Procedure Code,1973-Section 374(2)-Murder-Conviction-Related and natural witnesses-Relatives residing together in a common sehan(courtyard) testifying as eye witnesses-Relationship per se no ground to discard testimony if intrinsically reliable-Non-examination of independent public witnesses not fatal-Prompt FIR naming sole accused cousin-Absence of over-implication of family members lends assurance-Ocular Vs. Medical evidence-Minor discrepancy between "iron rod" and "sabbar/rambha" non-fatal as both are heavy iron implements matching the fatal temporal bone fracture-Identification at summer dawn in open area-Close relatives capable of identifying a known person by voice, gait and physiognomy even in dim light-Intention to cause death-Targeted blow with heavy iron weapon to vital part (head) establishing murderous intent-Motive loses significance in presence of direct eyewitness testimony-Conviction and sentence affirmed.(Para 29 to 45)

Held

The court ruled that Co-residents sleeping in a shared sehan are natural witnesses to an early morning crime; close kinship goes to the caution required in scrutinizing their testimony, not its automatic rejection. Direct assault on the head with a deadly weapon proves the intent to cause death beyond reasonable doubt, overriding the need to prove motive. **Appeal dismissed**. (E-6)

Case law Cited

Ashok Kumar Chaudhary & Ors Vs State of Bihar, 2008 (61) ACC 972, Namdeo Vs State of Maharashtra,2007 AIR SCW 1835,Nathuni Yadav Vs State of Bihar, 1998 (9) SCC 238-referred to.

List of Act

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

List of Keywords

Section 302 IPC, Murder, Related witness, Ocular evidence, Eyewitness Credibility, Sehan(Courtyard), Appreciation of Evidence, Prompt FIR, Sole Accused, Section 313 CrPC, Ante-mortem Injury, Temporal Bone

Fracture, Autopsy, Iron Rod, Weapon Recovery, Summer dawn, Identification in Dim Light, Recognition by Voice, Gait and Physiognomy, Intention to Cause Death, Attack on Vital Part (Head).

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 4487 of 2019 01.07.2026

Ranjeet Patel Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Jeet Bahadur Gautam, Mohd Akhtar, Sufiya Bano

Advs. for Respondent(s):

Ashutosh Singh, G.A., Sanjay Vikram Singh

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the convict Ranjeet Patel against a judgment and order passed by Mr. Om Prakash Tripathi, the then Sessions Judge, Jaunpur dated 28.03.2019 in S.T. No. 268 of 2015 (arising out of Case Crime No. 557 of 2015), under Sections 302, 504 I.P.C., Police Station Jalalpur, District Jaunpur, convicting the appellant of the offence punishable under Section 302 IPC and sentencing him to suffer imprisonment for life. A fine of Rs. 10,000/- was also imposed. In case of default in payment of fine, the appellant was directed to serve additional rigorous imprisonment for a further period of six months.

2. Aggrieved by this judgment and order of conviction and sentence, the appellant Ranjeet Patel has preferred this criminal appeal before this Court.

3. The facts of this case in a nutshell are that the informant Lal Sahab, PW-1, son of Ram Dhani, a resident of Village Lakhamipur, Police Station Jalalpur, District Jaunpur lodged a written report stating therein that, today on 26.05.2015 his cousin Ranjeet Patel son of Sewak Patel, had come over to his place at 03:30 a.m. and on account of a dispute relating to money, abused his brother Ram Asrey in filthy language. When his brother woke up, Ranjeet Patel who carried an iron rod on him, assaulted the informant's brother on the head with an intention to kill him, and as a result, caused him to be seriously injured. The other family members present there tried to intervene and save his brother, but Ranjeet Patel after injuries escaped along with the iron rod. Due to seriousness of the injury, the injured was conveyed to the BHU Hospital straightaway, where doctors declared him dead. He had come to the police station with his brother (a reference to his dead body). The dead body was kept in Jeep No. UP62 C/1613. This written report is Exhibit Ka-1. The informant Lal Sahab, PW-1 got the written report scribed by one Ramshiromani Patel and lodged it with Police Station Jalalpur, District Jaunpur.

4. On the basis of the report, Exhibit Ka-1, a case was registered against named appellant Ranjeet Patel under Section 302, 504 IPC. Prosecution witness, Constable 755 Rajnath Yadav, PW-6 registered a chik First Information Report as Crime No. 557 of 2015, under Sections 302 and 504

IPC. Station Officer, Anil Kumar Singh, PW-7 reached the place of occurrence. He took up investigation of the case. He took samples of the bloodstained soil and unstained soil and also the mesh of the cot, where the deceased was sleeping at the place of occurrence, as Exhibit Ka-8. After holding inquest relating to Ram Asrey's body and preparing other police papers at the place of occurrence, the dead body was sent for postmortem examination to district headquarters.

5. On 26.05.2015, after receiving information from a police informer, the appellant was arrested. On the pointing out of the appellant, the weapon of murder a Sabbar (rambha) made of iron was recovered from the sunflower field of one Surender, a resident of Lohmaza. Fardbaramadgi was prepared as Exhibit Ka-6. The Investigating Officer inspected the place of occurrence and on the pointing out of the informant, prepared the site plan. He took down the statements of witnesses under Section 161 Cr.P.C. After completing all formalities of the investigation, a charge-sheet was filed before the Magistrate against the appellant Ranjeet Patel.

6. Medical witness Dr. V.K. Sonkar, PW-5, conducted postmortem examination of deceased Ram Asrey's body on 26.05.2015 and prepared a postmortem report, Exhibit Ka-2. According to Dr. V.K. Sonkar, PW-5, the following ante-mortem injuries were present on the dead body of the deceased:

(1) Contusion present on both eyelid.

(2) Laceration present on left ear pinna.

(3) 1.5 cm x 1.5 cm, lacerated wound present on left temporal region into deep bone fracture of left temporal bone.

(4) In the opinion of Dr. V.K. Sonkar, PW-5, who prepared the postmortem report, Exhibit Ka-2, the cause of death is due to hemorrhage, shock and coma, as a result of ante-mortem head and brain injury.

7. Since the case was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Court of Session for trial. On 08.09.2015, charge was framed against appellant Ranjeet Patel by the learned Sessions Judge, Jaunpur under Sections 302 and 504 I.P.C. The appellant denied the charge and claimed trial.

8. To substantiate their case, the prosecution produced witnesses, informant Lal Sahab Patel, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3, Sangeeta, PW-4, Dr. V.K Sonkar, PW-5, Constable Raj Nath Yadav, PW-6, and S.O. Anil Kumar Singh, PW-7. Apart from the oral evidence, prosecution also relied on the documentary evidence from Exhibit Ka-1 to Exhibit Ka-16.

9. In the Trial Court, prosecution witnesses were produced and their evidence recorded. After hearing all the prosecution evidence, appellant Ranjeet Patel was examined under Section 313 Cr.P.C. on 22.01.2019. During his examination under Section 313 Cr.P.C., the appellant denied all the allegations. The appellant has stated that a false recovery of the murder weapon was made and he was falsely implicated due to enmity. He also stated that all prosecution witnesses have

testified wrongly under pressure. The appellant has also stated that he is innocent. The informant Lal Sahab, PW-1, in collusion with the S.O. Jalalpur, wrongly implicated him in the First Information Report. Deceased Ram Asrey was not a man of good character. Some unknown assailant at some time (not known) has committed the crime during the night that was not seen by anyone. The informant has implicated him due to enmity with regard to monetary transaction. In his statement under Section 313 Cr.P.C., the appellant although said that he would adduce defence evidence but no defence evidence was adduced by the appellant during trial.

10. After hearing the prosecution witnesses and perusing all the prosecution evidence, oral and documentary, the learned Trial Judge acquitted the appellant of the offence under Section 504 IPC but convicted him under Section 302 IPC and sentenced him to imprisonment for life. A fine of Rs. 10,000/- was also imposed.

11. Aggrieved by the above judgment and order of the Trial Court, the appellant has preferred this criminal appeal.

12. We have heard Mr. Ashutosh Yadav, learned Amicus Curiae along with Ms. Suman Sonkar, Advocate for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate along with Mr. K.K. Nishad, learned State Law Officer on behalf of the State and perused the record. We have also perused all the documentary and oral evidence. We have also considered the findings and reasoning of the Trial Court.

13. The learned Amicus Curiae for the appellant has submitted that the findings of the Trial Court are perverse, as admittedly the incident took place in front of the complainant's house and all the witnesses are interested witnesses because they are family members of the informant, but the Trial Court has not considered this important aspect at all. All witnesses of fact, who were examined before the Trial Court, their statements are slightly contrary with regard to nature of the murder weapon and, therefore, the conviction and sentence is totally bad in the eyes of law. It is also submitted by the learned Amicus Curiae for the appellant that the Trial Court has failed to appreciate that there is a clear contradiction in the statement of the witnesses, and, therefore, the conviction of the appellant is bad in the eyes of law. There is contradiction between the testimonies of Lal Sahab Patel, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4. Therefore, the conviction of appellant is against the settled principles of law. Hence, the appeal is liable to be allowed and the conviction set aside.

14. It is also submitted by the learned Amicus Curiae for the appellant that the evidence of the complainant is self-contradictory, as he has said on the one hand that they went to the police station before they went to the BHU Hospital, and, on the other, said that they went to the BHU Hospital before the police station concerned. It is also submitted that the testimony of witnesses of fact, Lal Sahab Patel, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4, and the testimony of medical witness, Dr. V.K. Sonkar, PW-5, are also contradictory with regard to the injury sustained by the deceased. The nature of the murder weapon and the shape of injury were not corroborated, but the Trial Court failed to consider this fact. On the basis of the above submission, the learned Amicus Curiae for the appellant vehemently submitted that the Trial Court has not considered the above legal point and against the evidence and law, delivered a judgment of

conviction. Hence, the judgment and order of conviction and sentence as passed by the Trial Court dated 28.03.2019 is liable to be set aside and the appeal of the convict-appellant is liable to be allowed.

15. The submissions advanced by the learned Amicus Curiae for the appellant, have been repelled by Mr. Shashi Shekhar Tiwari, learned AGA for the State. He has submitted that the appellant has been named in the written report. Except appellant Ranjeet Patel, no other family member of the appellant has been named as the accused. From this fact, it is clear that the informant Lal Sahab, PW-1, has not falsely implicated the appellant Ranjeet Patel. The incident happened in front of the houses of both sides and in the presence of eye-witnesses. The date of incident is 26.05.2015 at 03:30 a.m., which is a summer morning. When the appellant assaulted deceased Ram Asrey, all the witnesses of fact for the prosecution were sleeping nearby Ram Asrey□s cot in the open, in front of the house. They woke up and saw that appellant Ranjeet Patel was assaulting deceased Ram Asrey, employing the weapon of crime. No material contradictions are present in the evidence of the prosecution witnesses. If there are any contradictions, these are of a very trivial nature, which cannot affect the prosecution story. In front of the victim□s house in the open area in the early morning on 26.05.2015, the appellant brutally assaulted the deceased with an iron rod (Sabbal/Rambha) on the head, due to which Ram Asrey died. All the witnesses have seen the occurrence with their own eyes, which was committed by appellant Ranjeet Patel.

16. It is also submitted by the learned AGA for the State that the findings and reasoning recorded by the Trial Court are according to the evidence on record and the settled principles of law. The Trial Court has appreciated the evidence in right perspective and according to the legal principles applicable. No perversity and illegality are there in the judgment and order of conviction and sentence passed by the Trial Court. Hence, the criminal appeal preferred by appellant Ranjeet Patel is devoid of merit and liable to be dismissed.

17. Considering the submissions advanced by both sides and upon a perusal of the written report, it appears that appellant Ranjeet Patel alone has been named as the accused involved in the commission of the crime. Upon a perusal of the F.I.R, it is evident that the incident occurred on 26.05.2015 at 03:30 a.m. and a report at the police station concerned has been lodged on 26.05.2015 at 09:30 a.m. by informant, Lal Sahab, PW-1.

18. Upon a perusal of the report, it is also clear that in the said report, Exhibit Ka-1, informant Lal Sahab, PW-1 has said that on 26.05.2015 his cousin Ranjeet Patel had come over to his door and at 03:30 a.m, begun to abuse his brother Ram Asrey. When his brother Ram Asrey woke up, appellant Ranjeet Patel assaulted him with an iron rod on the head, due to which he was seriously injured. Thereafter, Ranjeet Patel ran away. In the written report, Exhibit Ka-1, it is stated that due to seriousness of the injury, the deceased was carried to the BHU Hospital, where doctors declared him dead.

19. In his examination-in-chief, Lal Sahab, PW-1, has stated the same facts as stated by him in his written report, Exhibit Ka-1. From the cross-examination of informant Lal Sahab, PW-1, it is evident that Ram Dhani Patel, Ram Chander and Ram Sewak were brothers of full blood. Ram Dhani Patel, Ram Chander and Ram Sewak would reside in the same house at the time of the

incident. Ram Dhani Patel had two sons, the deceased Ram Asrey and informant Lal Sahab, PW-1. Ram Sewak had two sons, appellant Ranjeet Patel and Sarwajeet Patel. Ram Chander had two sons, Shiv Kumar Patel and Hemant. At the time of incident, only Hemant was living out of station, whereas all others stayed home. From the cross-examination of this witness, it appears that all the families of the three brothers, including that of informant Lal Sahab, PW-1 had been living in one house. Each had got two rooms in partition. The sehan of the house was not partitioned. All used the sehan of the house jointly. Informant Lal Sahab, PW-1, has said in his cross-examination that when appellant Ranjeet Patel was abusing Ram Asrey, they all woke up and heard the abuses. The family members of Ram Chander and Ram Dular, who were also awake did not come forward. When the Investigating Officer came over to the spot for investigation, PW-1 was present at the place of occurrence. He told all details to the Investigating Officer. The Investigating Officer had inquired from him. The witness has denied the suggestion that at the time of the incident that night, he and his wife were not present and sleeping at the place of occurrence. The witness also denied the suggestion that he and his wife were not present at home on the night of the incident and came back at 08:00 a.m. after hearing about it all.

20. During his cross-examination, this witness has stated that he did not convey the deceased to the Jalalpur Government Hospital directly, but had gone to the police station. At the police station, the Daroga told him to take the victim to the BHU Hospital, but before reaching BHU Hospital, Ram Asrey died. Nevertheless, they reached there. On reaching BHU Hospital, the doctor said that death had occurred ten to fifteen minutes earlier. This witness also stated that deceased Ram Asrey had received a total of three injuries. He was assaulted by the appellant three times. One injury in the frontal area of the head, the second injury on the left and right side of the head, both sides bleeding. There was no bleeding from any other injury. This witness denied this suggestion that at the time of the incident, there was darkness. This witness further said that at the time of the incident, there was no light illuminating on his door. On hearing the abusive words by the appellant, at the time of incident, PW-1 and Ram Asrey, Sangeeta, Suman and Sukhwanti, all had woken up. Three blows that were delivered to Ram Asrey, caused grievous injuries. Ram Asrey was assaulted with a rambha, which was not just an iron rod. It was flat, not rounded on the mouth side; it was pointed.

21. Thus, upon a perusal of the evidence of informant, Lal Sahab, PW-1, it is revealed that at the time of the incident, this witness and all other prosecution witnesses, such as Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4 were sleeping in front of their house in the sehan. It was early in the morning at 03:30 hours. The appellant Ranjeet Patel on account of a dispute related to a monetary transaction, abused deceased Ram Asrey. On hearing abuses hurled by appellant Ranjeet Patel, all witnesses i.e. informant Lal Sahab, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4 woke up. During abusive diatribe, appellant Ranjeet Patel assaulted Ram Asrey with the iron rod (sabbal/rambha) striking him on the head. There is a minor contradiction in the evidence of informant Lal Sahab, PW-1 about this fact that at one place, informant Lal Sahab, PW-1 has stated that after the incident, he carried injured Ram Asrey straight to the BHU Hospital, but elsewhere in his evidence, he has said that for a first, he took Ram Asrey to the police station, where the Daroga asked the informant to convey the victim to the BHU Hospital.

22. In our view, the above contradictions are not major and material ones at all. The contradictions which figure in the evidence of this witness, are very minor ones, which in our view, do not affect the prosecution story or worth of the evidence of informant Lal Sahab, PW-1. Upon a perusal of the evidence of informant Lal Sahab, PW-1, we find that this witness in a very natural way, has stated those facts, which he has seen at the time of occurrence. After the happening of the incident, he carried Ram Asrey to the BHU Hospital and lodged the FIR. We find no material and major contradiction in the evidence of this witness. We also do not find any contradiction, embellishment, concoction and false narration of facts by this witness. Therefore, in the light of the above discussion, we do not find any force in the arguments of the learned Amicus Curiae.

23. The prosecution witness Suman Devi, PW-2 is the wife of deceased Ram Asrey. Upon a perusal of the evidence of Suman Devi, PW-2, it appears that this witness has also corroborated the date, time and place of occurrence as also the manner and mode of commission of the offence by appellant Ranjeet Patel. This witness has testified that she had seen appellant Ranjeet Patel assaulting her husband, striking him on his head. This witness has also stated that the Police had inquired of her about the incident. Upon a perusal of the evidence of this eye-witness, it is evident that this witness also confirmed the fact that all family members of Ram Sewak, Ram Chander and Ram Dhani were living jointly in one common house and they all had a common sehan in front of their house. From the evidence of this witness, it is clear that this witness had come from Surat with her husband Ram Asrey to her village Lakhamipur. It is also evident from the evidence of this witness that this witness stated that after Ram Asrey was injured, his brother-in-law Lal Sahab, PW-1, wife and sister-in-law carried Ram Asrey in the night to the hospital for treatment. Upon a perusal of the evidence of this witness, it appears that she expressed her ignorance about the monetary transaction. However, she also said that Lal Sahab, PW-1, had knowledge about the monetary transaction. Upon an overall assessment of this witness, we do not find any kind of major or material contradiction in her evidence giving rise to a cause, on the ground of which, we may disbelieve the testimony of this natural eyewitness of the incident. In other words, the prosecution witness Suman Devi, PW-2, has testified in a natural manner that inspires confidence without any embellishment, concoction and exaggeration. Whatever be the discrepancy or contradiction in her evidence, it is of very minor nature, and, therefore, we find the evidence of this witness, wholly reliable. From the evidence of this witness, the evidence of informant Lal Sahab, PW-1, finds support and corroboration.

24. Prosecution witness Sukhwanti, PW-3, is the mother of deceased Ram Asrey. This witness has also supported the prosecution story as narrated and testified to by the prosecution witness informant Lal Sahab, PW-1 and Suman Devi, PW-2.

25. From a perusal of the evidence of this witness, we find that this witness has also stated the fact that the Sehan was in the common use of all the family members. This relevant fact emerges that there was a marriage of Gulab□s son and there was also a marriage in the house of Ram Chander. Both the marriages were scheduled after the date of incident. It is another account that on the date of incident, brothers and sisters and other relatives had come. From this fact, it is established that on the date of incident, Suman Devi, PW-2, was present at her matrimonial home and she had seen the incident with her own eyes.

26. This witness has denied the suggestions of the defence that it is wrong to say that Ram Asrey has had illicit relations with Gudiya, daughter of Ranjeet Patel, due to which, she had become pregnant and committed suicide. Although, PW-2 denied this suggestion, however, this suggestion by the defence reveals a serious fact relevant to the present case.

27. The prosecution produced Sangeeta as PW-4. This witness is the wife of informant Lal Sahab, PW-1. Upon a perusal of the evidence of this witness Sangeeta, PW-4, it is clear that, this witness also supports the prosecution story. By the evidence of this witness, the evidence of informant Lal Sahab, PW-1, Suman Devi, PW-2 and Sukhwanti, PW-3, find support and corroboration. This witness has testified that there was a dispute about a monetary transaction between Ram Asrey and Ranjeet Patel.

28. All four witnesses in this case are close relatives of deceased Ram Asrey, informant Lal Sahab, PW-1 being the real brother of the deceased, Suman Devi, PW-2 is deceased Ram Asrey's wife, Sukhwanti, PW-3, deceased Ram Asrey's mother and Sangeeta, PW-4, the deceased's sister-in-law. It is also noteworthy that appellant Ranjeet Patel is a cousin of deceased Ram Asrey and informant Lal Sahab, PW-1. Thus, both sides are family members amongst themselves. Appellant Ranjeet Patel has been named in the written report, Exhibit Ka-1, as the sole accused. If informant Lal Sahab, PW-1, intended to implicate Ranjeet Patel falsely, he could easily implicate all the family members of Ranjeet Patel. However, the fact that the appellant alone has been nominated in the FIR, lends assurance that the appellant has not been falsely implicated in this case. All the above prosecution witnesses- Lal Sahab, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4 had witnessed the incident with their own eyes and they have stated true facts in a natural manner without any embellishment, exaggeration or concoction. Therefore, on the ground alone that all the prosecution witnesses of fact are family members of deceased Ram Asrey, evidence of these eye-witnesses cannot be rejected.

29. As per law, it is well settled that the Court is required to scrutinise and analyse the evidence of family members with great care and caution. It is also noteworthy that a family member of a victim would not falsely implicate an innocent man in the commission of the crime or exculpate the real culprit of the crime.

30. The Supreme Court in the case of **Ashok Kumar Chaudhary and Others Vs. State of Bihar, 2008 (61) ACC 972** has held in paragraph 7:

"7. We are not impressed with the argument. Though it is true that the incident having taken place near the market around 6 p.m. on 17th July, 1988, the prosecution should have attempted to secure public witnesses who had witnessed the incident, but at the same time one cannot lose sight of the ground realities that the members of the public are generally insensitive and reluctant to come forward to report and depose about the crime even though it is committed in their presence. In our opinion, even otherwise it will be erroneous to lay down as a rule of universal application that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise credit-worthy, cannot be relied upon unless corroborated by public witnesses. Insofar as the question of credit-worthiness of the evidence of relatives of the victim is concerned, it is well

settled that though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive."

31. In **Namdeo Vs. State of Maharashtra, 2007 AIR SCW 1835**, the Supreme Court has held that "a close relative cannot be characterized as an "interested" witness. He is a natural witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one".

32. Upon a perusal of the prosecution evidence, it appears that in the FIR, the weapon of murder is described as an Iron rod. Recovery from appellant Ranjeet Patel was that of Sabbar/rambha made of iron. On this point, the prosecution witness/informant Lal Sahab, PW-1, in his evidence, described the weapon of murder as an iron rod. In his cross-examination, Lal Sahab, PW-1, described the murder weapon, employed in the assault as a rambha made of iron. Suman Devi, PW-2, described the murder weapon as an iron rod. Sukhwanti, PW-3, described the weapon of murder as rambha, which is used for digging earth. PW-4, Sangeeta has also described the weapon of murder as rambha. However, it is a clear fact that between a rambha and an iron rod, there is no major difference. In dimension, an iron rod is little thinner than a rambha. A rambha is fabricated out of a very thick iron rod for boring earth or digging up a hole. In other words, both are iron rods. An iron rod is comparatively thin while a sabbar is slightly thicker in diameter than an iron rod. But, both are made of hard iron. Thus, on this ground, we cannot disbelieve the evidence of eye-witnesses for the prosecution. We also cannot doubt and reject the prosecution story on that ground.

33. Upon a perusal of the findings and reasoning given by the learned Trial Judge on this point, we find that the Trial Court has discussed and appreciated the evidence on this point in right perspective and has given a cogent finding. From a perusal of the evidence of medical witness Dr. V.K. Sonkar, PW-5, who did the autopsy and prepared the postmortem report of deceased Ram Asrey, Exhibit Ka-2, it is evident that injury No.3 is 1.5 x 1.5 cm, a lacerated wound present on left temporal region x deep bone fracture of left temporal bone. Thus, from a perusal of injury no.3, it is clear that this type of injury could only be caused by an object made of iron, such as iron rod (rambha). Due to the use of an iron rod (rambha), a deep bone fracture was found on left temporal bone of deceased Ram Asrey. Thus, from the above discussion, we find no force in the arguments of the learned Amicus Curiae assisting us on behalf of the appellant.

34. Further, upon a perusal of the report, Exhibit Ka-1, it is apparent that the incident occurred on 26.05.2015 at 03:30 a.m. It is also evident that the month of May is a summer month, but no fact about the source of light has been mentioned in the FIR. In the

month of May, which is a very hot month of the summer season, at 03:30 hours in the early morning, it is quite possible to identify a person in the open sky, particularly, in front of one□s house, say the sehan. It is also noteworthy that the appellant and the victim are very close family members. Appellant Ranjeet Patel was a cousin of Lal Sahab, PW-1. It is well known that residents of a village can identify locals in dim light or where it is slightly dark. To add to it, in the case in hand, the appellant is a cousin of informant Lal Sahab, PW-1. In this condition, prosecution witnesses, informant Lal Sahab, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4, who are all family members, could easily have identified appellant Ranjeet Patel by his speech, language, gait, even in very poor light or when it was slightly dark.

35. In **Nathuni Yadav Vs. State of Bihar, 1998 (9) SCC 238**, the Supreme Court held:

"Even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. If the light then available, though meagre, was enough for the assailants why should we think that the same light was not enough for the injured who would certainly have pointedly focussed their eyes on the faces of the intruders standing in front of them. What is sauce for the goose is sauce for the gander."

36. Therefore, in view of the law laid down by the Supreme Court in the above authority, it is also clear that the prosecution witnesses in the present case would have easily and clearly identified appellant Ranjeet Patel at 03:30 hours early in the morning, in the occurrence that happened on 26.05.2015 i.e. during the summers. Thus, in view of the above guidance of the Supreme Court and the facts and circumstances of the case in hand, the argument of the learned Amicus Curiae has no force in this respect.

37. It is a settled principle of law that where the prosecution story finds support from eyewitnesses of the case, the motive loses its significance. In other words, if in any case where a crime is committed by a person and other persons have witnessed the incident with their own eyes, and such witnesses testify to it in Court, motive loses its significance. In the present case, eyewitnesses produced by the prosecution have clearly seen the occurrence which was committed by appellant Ranjeet Patel. All the four prosecution witnesses of fact have supported the prosecution story and they have specifically said in

their evidence that they have seen appellant Ranjeet Patel assaulting deceased Ram Asrey on the head, employing a sabbar/rambha, with their own eyes.

38. It is also a well-known fact that the head of a human body is a very sensitive and vital part. Without doubt, appellant Ranjeet Patel assaulted deceased with an iron rod (rambha) on his head, fracturing the temporal bone, with the intention to kill Ram Asrey.

39. The kind of the weapon employed and the site of the injury also clearly indicate the intention of appellant Ranjeet Patel, which was clearly one to kill. The assault on the deceased's head by Ranjeet Patel with an iron rod (rambha) is self-speaking.

40. Although, all the four prosecution witnesses, to wit, informant Lal Sahab Patel, PW-1, Suman Devi, PW-2, Sukhwanti, PW-3 and Sangeeta, PW-4 are family members and interested witnesses, but on this ground alone, reliable and trustworthy testimony of theirs cannot be rejected. Upon a perusal of the evidence of the prosecution witnesses, it is amply clear that all the prosecution witnesses of fact have clearly testified to the manner and mode in which appellant Ranjeet Patel had assaulted deceased Ram Asrey on his head and committed the crime. Therefore, only on the ground that all prosecution witnesses of fact are family members and interested witnesses, we cannot reject the testimony of the eyewitnesses in this case.

41. From a perusal of the findings and reasoning of the Trial Court, we find that the Trial Court has discussed and given findings on other arguable points raised by the defence. The findings and reasoning given by the Trial Court are supported by evidence of the prosecution, and are based on a sound appreciation of the evidence on record. Hence, we find no illegality, infirmity or perversity in the judgment and order of conviction and sentence as passed by the Trial Court.

42. Therefore, in view of the above discussion, we find no force in the arguments of the learned Amicus Curiae.

43. Resultantly, this criminal appeal filed by the appellant is devoid of merit and liable to be dismissed and the judgment and order of conviction and sentence passed by the Trial Court affirmed.

44. In view of the above discussion, we affirm the impugned judgment and order of conviction and sentence as passed by the Trial Court in S.T. No. 268 of 2015, State Vs. Ranjeet Patel (arising out of Crime No.557 of 2015), under Section 302 IPC against appellant Ranjeet Patel.

45. The appeal is, accordingly, ***dismissed.***

46. Let this order be communicated to the Trial Court concerned and the lower Court records be transmitted.

(2026) 7 ILRA 384
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 4588 of 2022
Alongwith
Criminal Appeal No. 4617 of 2022

Jugendra Singh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal before the Allahabad High Court challenging the trial court's conviction of three accused under sections 302/34 IPC and Section 25 of the Arms Act.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302/34 & Section 25 of the Arms Act,1959-Criminal Procedure Code,1973-Section 374(2)-Murder-Conflict between Eyewitness Testimony and Medical Findings-PW-1 and PW-2 claiming two gunshots were fired at the deceased, whereas postmortem report and doctor's testimony establishing only a single firearm injury showing blackening and tattooing-Proof of motive-Hearsay evidence-Alleged motive rooted in village rumors and hearsay regarding illicit relationship rather that direct personal knowledge-Unverified rumor cannot be treated as reliable proof of motive-Motive attributed by prosecution highly doubtful and concocted-FSL revealing disputed bullet/cartridge did not match weapon recovered from accused-Weapons allegedly recovered at instance of co-accused from open fields accessible to general public after ten days of incident-No evidence showing recovered tamanchas were ever sent for forensic examination or linked to crime scene-Mere recovery without proving direct connection to commission of crime insufficient to establish guilt-Conviction set aside-Allowed.(Para 22 to 51) (E-6)

Held

The court ruled that unproven motive rooted in unverified hearsay regarding an illicit relationship coupled with a negative FSL report showing firearm mismatch and uncorroborated recoveries from open, accessible places, breaks the chain of guilt. Prosecution failed to prove charge beyond reasonable doubt-Appellants acquitted.

Case law Cited

khambham Raja Reddy & Anr. Vs Public Prosecutor, High Court of A.P. (2005) 11 SCC 239-referred to.

List of Acts

Indian Penal Code, 1860, Arms Act,1959-Criminal Procedure Code,1973.

List of Keywords

Section 302/34 IPC, Section 25, Arms Act, Ocular Evidence, Blackening and Tattooing, Unnatural Witness Conduct, Interested witness, Hearsay evidence, Motive, FSL mismatch, Open and Accessible Place, Benefit of Doubt, Acquittal, Section 27 Evidence Act, Weapon recovery, Close-range firearm wound.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 4588 of 2022

Jugendra Singh Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Akhilesh Srivastava Arvind Kumar Singh, Harish Chandra Tiwari Pushpendra Kumar Ramdhan

Adv. for Respondent(s):-

G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Both the criminal appeals, being Criminal Appeal No. 4588 of 2022 and Criminal Appeal No. 4617 of 2022, have been preferred by the convicts, to wit, Jugendra Singh, Deputy Singh and Ramveer, against the judgment and order of conviction and sentence dated 02.06.2022, passed by the learned Additional Sessions Judge, Court No. 8, Aligarh, in Sessions Trial No. 1009 of 2004 (State vs. Jugendra Singh and others), arising out of Case Crime No. 249 of 2004, under Section 302/34 IPC, Police Station Akrabad, District Aligarh; Sessions Trial No. 1010 of 2004 (State vs. Jugendra Singh), arising out of Case Crime No. 250 of 2004, under Section 25 of the Arms Act, Police Station Akrabad, District Aligarh; Sessions Trial No. 1011 of 2004 (State vs. Deputy Singh), arising out of Case Crime No. 276 of 2004, under Section 25 of the Arms Act, Police Station Akrabad, District Aligarh; and Sessions Trial No. 829 of 2005 (State vs. Ramveer), arising out of Case Crime No. 275 of 2004, under Section 25 of the Arms Act, Police Station Akrabad, District Aligarh.

2. The prosecution story, as per the written report (Exhibit Ka-1), is that the informant, Pappu Singh (PW-1), submitted a report written in his own handwriting, stating therein that in the intervening night of 9/10.08.2004, at about 2:15 A.M, his brother, Bhagwan Singh, was sleeping on a cot in front of their gher, which was illuminated by electric light. The informant himself was lying on the same cot, and his mother, Smt. Kalawati, was lying on another cot nearby. At that time, Naihna @ Mannu, son of Ramswaroop Baghel, resident of Village Hiranpura, Police Station Akrabad; Jugendra, son of Jangveer Baghel; Ramveer, son of Siyaram Baghel; and Deputy, son of Siyaram Baghel, residents of Village Bahadurpur, Police Station Akrabad, entered the premises, all armed with country-made pistols (tamancha). Ramveer and Deputy caught hold the informant and his mother, while Naihna and Jugendra, armed with tamanchas, shot at his brother, Bhagwan Singh. After killing his brother, the four accused fled towards the fields. Upon hearing the commotion and gunshots, family members and neighbours rushed to the spot and also saw the assailants in the light. They attempted to chase and apprehend the accused, but the accused managed to escape. The informant further stated that the motive was longstanding enmity, as Naihna had illicit relations with Jugendra's sister, Shashi. Two or three days prior to the incident, Bhagwan Singh had

confronted Naihna in this regard, which led to an altercation, and Naihna extended a threat that I will see you. Naihna was also stated to be a frequent visitor to the house of Ramveer.

3. The written report (Exhibit Ka-1) was submitted by the informant, Pappu Singh (PW-1), at Police Station Akrabad on 10.08.2004 at about 5:15 A.M. On the basis of the said report, a case was registered against the named accused persons (appellants herein) at Police Station Akrabad, District Aligarh, as Case Crime No. 249 of 2004, under Section 302 IPC by Head Moharrir (H.M.), Rakshpal Singh (PW-3) on 10.08.2004.

4. After the registration of the first information report at Police Station Akrabad, District Aligarh, Sub-Inspector Subhash Chandra Tyagi (PW-7) took up the investigation of the case. The Investigating Officer, Subhash Chandra Tyagi (PW-7), reached the place of occurrence along with a police team. He inspected the place of occurrence and recovered a 315 bore bullet from near the cot of the deceased and prepared a recovery memo, which has been marked as Exhibit Ka-14. He also prepared the site plan in his own handwriting, which has been marked as Exhibit Ka-13.

5. Under the direction and supervision of the Investigating Officer, Sub-Inspector Shiv Kumar Singh (PW-5), the inquest report (panchayatnama) of the deceased, Bhagwan Singh, was conducted and marked as Exhibit Ka-8. He also collected samples of bloodstained soil and plain soil from the place of occurrence. Sub-Inspector Shiv Kumar Singh (PW-5) further prepared other necessary police papers, which have been marked as Exhibits Ka-7, Ka-9, Ka-10 and Ka-11. Thereafter, following the inquest proceedings of deceased Bhagwan Singh, the dead body was sent for autopsy.

6. The Investigating Officer, Subhash Chandra Tyagi (PW-7), arrested appellant Jugendra Singh and recovered a tamancha with an empty cartridge in its barrel, along with one live cartridge of 315 bore, from his possession. He prepared a recovery memo, which has been marked as Exhibit Ka-15. The other appellants, Ramveer and Deputy Singh, had surrendered before the Court. The Investigating Officer, with the permission of the competent Court having jurisdiction, interrogated Ramveer and Deputy Singh. During interrogation, Ramveer and Deputy Singh disclosed the place where the murder weapons had been concealed. He visited the place indicated by the appellants and searched for the tamanchas, however, they could not be recovered at that time. Thereafter, by order of the concerned Court, the Investigating Officer took appellants Ramveer and Deputy Singh into police custody remand for 24 hours. They were taken to the police station and subsequently to the place indicated by them. On the pointing out of appellant Ramveer Singh, a 12 bore tamancha in working condition was recovered. On the pointing out of appellant Deputy Singh, a 303 bore tamancha, also in working condition, was recovered. A recovery memo of these recoveries was prepared, which has been marked as Exhibit Ka-16, dated 11.09.2004.

7. On the basis of the above recovery of an illegal tamancha and cartridge from the possession of appellant Jugendra Singh, a case was registered as Case Crime No. 250 of 2004 under Section 25 of the Arms Act at Police Station Akrabad against appellant Jugendra Singh. On the basis of the recovery of the aforesaid illegal tamanchas and cartridge from appellants Ramveer and Deputy Singh, cases were registered against them as Case Crime No. 275 of 2004 and Case

Crime No. 276 of 2004 under Section 25 of the Arms Act at Police Station Akrabad, District Aligarh, against appellants Ramveer and Deputy Singh, respectively.

8. After recording the statements of the prosecution witnesses and preparing the site plan of the places from where illegal tamanchas had been recovered from the possession of the appellants, the Investigating Officer submitted the charge sheet, marked as Exhibit Ka-18, against appellants Jugendra Singh, Ramveer Singh and Deputy Singh under Section 302 IPC. Head Constable Ramesh Chandra investigated the case registered as Case Crime No. 250 of 2004 against Jugendra Singh under Section 25 of the Arms Act and submitted the charge sheet, marked as Exhibit Ka-22. Head Constable Suresh Chandra Pandey investigated the case registered as Case Crime No. 275 of 2004 against Ramveer under Section 25 of the Arms Act and submitted the charge sheet, marked as Exhibit Ka-26.Head Constable Suresh Chandra Pandey also investigated the case registered as Case Crime No. 276 of 2004 against Deputy Singh under Section 25 of the Arms Act and submitted the charge sheet, marked as Exhibit Ka-24.

9. Although the accused, Naihna @ Mannu, was named in the written report (Exhibit Ka-1), the Investigating Officer made repeated efforts to arrest him. The Investigating Officer also initiated proceedings under Sections 82 and 83 Cr.P.C. pursuant to the orders of the Court. However, despite the issuance of process under Sections 82 and 83 Cr.P.C. against the absconding accused, Naihna @ Mannu could not be arrested. Consequently, the Investigating Officer submitted the charge-sheet (Exhibit Ka-24) only against the present appellants. The present appellants were, therefore, put to trial and were ultimately found guilty and convicted by the Trial Court.

10. Doctor Vimal Kumar Gupta (PW-6), who conducted the postmortem examination of the dead body of the deceased, Bhagwan Singh, and prepared the postmortem report (Exhibit Ka-12), found the following ante-mortem injuries on the dead body of the deceased:

*"**Injury No. 1**: An abraded wound measuring 3 cm □ 5 cm on the left side of the forehead.*

***Injury No. 2**: A lacerated wound measuring 2 cm □ 1 cm present on the margin of the right ear.*

***Injury No. 3**: A firearm wound of entry measuring 3 cm □ 1.5 cm located on the right side of the face, directly in front of the right ear. This wound was deep enough to reach the jaw, causing fracture of the jawbone. Upon dissection, it was found that the pharynx was ruptured. In addition to this, the right temporal bone was also found fractured."*

During the postmortem examination, Dr. Vimal Kumar Gupta (PW-6) recovered a bullet from near the left jaw of the deceased and handed over the same to the concerned constable in sealed cover. According to the opinion of PW-6, the cause of death was haemorrhage and shock as a result of ante-mortem firearm injuries.

11. After submission of the charge-sheets before the concerned Magistrate Court, since the main case under Section 302 IPC was exclusively triable by the Court of Session, the learned Magistrate committed all the cases to the Sessions Court for trial.

12. Charges were framed against appellants Jugendra Singh, Ramveer and Deputy Singh under Section 302 IPC by the Trial Court on 25.01.2005. Separate charges were also framed against the appellants as follows; against appellant Jugendra Singh under Section 25 of the Arms Act on 25.01.2005; against appellant Ramveer Singh under Section 25 of the Arms Act on 24.02.2006; and against appellant Deputy Singh under Section 25 of the Arms Act on 25.01.2005. Appellants denied all the charges levelled against them and claimed trial.

13. To substantiate its case, the prosecution produced a total of nine prosecution witnesses, namely Pappu Singh (PW-1), Kalawati (PW-2), Rakshpal Singh (PW-3), Narayan Singh (PW-4), Shiv Kumar Singh (PW-5), Dr. Vimal Kumar Gupta (PW-6), Sub-Inspector Subhash Chandra Tyagi (PW-7), Virendra Kumar (PW-8), and Umashankar (PW-9). Apart from the above ocular evidence, the prosecution also relied upon documentary evidence, from Exhibit Ka-1 to Exhibit Ka-30.

14. The Trial Court recorded the evidence of the prosecution witnesses. Thereafter, the appellants were examined under Section 313 Cr.P.C.. In their statements, the appellants denied all the allegations levelled against them and asserted that they had been falsely implicated in the case due to prior enmity and village rivalry.

15. The Trial Court, after completing the proceedings of recording of evidence and examination of the appellants under Section 313 Cr.P.C., heard arguments of both sides and found the appellants guilty under Section 302/34 IPC and sentenced them to rigorous imprisonment for life along with a fine of Rs. 5,000/- each. In default of payment of fine, the appellants were directed to serve an additional two months of rigorous imprisonment. The appellants were also found guilty by the Trial Court under Section 25 of the Arms Act, and each of them was convicted and sentenced to two years of rigorous imprisonment along with a fine of Rs. 2,000/-. In default of payment of fine, the appellants were directed to serve an additional one month of imprisonment. The Trial Court ordered that all the sentences awarded to the appellants shall run concurrently.

16. We have heard the arguments of learned Counsel for the appellants and learned A.G.A. on behalf of the State-respondent, perused the impugned judgment and order of conviction and sentence dated 02.06.2022 passed by the learned Additional Sessions Judge, Court No. 8, Aligarh, and also gone through the entire evidence available on record.

17. Learned Counsel for the appellants has submitted that the informant, Pappu Singh (PW-1) and Kalawati (PW-2) are said to be the eyewitnesses of the incident by the prosecution. Both these eyewitnesses are highly interested and partisan witnesses and they are also family members of the deceased, Bhagwan Singh. The way in which PW-1 and PW-2 have stated about the alleged occurrence, is wholly unnatural and unbelievable. Although, according to PW-1, he was sleeping on the same cot upon which his brother, the deceased Bhagwan Singh, was sleeping, Pappu Singh

(PW-1) has not received any injury on his body. He did not even try to catch the culprits. No bloodstains were found on the clothes of the informant, Pappu Singh (PW-1).

18. The incident is said to have occurred at about 2:15 A.M. in the night. The time of 2:15 A.M. is a time when people sleep in a very deep and sound sleep. When a person sleeps in such a deep and sound condition, how can he suddenly identify the accused. It is also submitted that although PW-1 and PW-2 stated that they had seen the occurrence of the incident and identified the accused in the presence of electric light, however, PW-1 and PW-2 have admitted in their evidence that they had no electricity connection at their home or at their gher. PW-1 and PW-2 have stated that electricity was available at the temple and that they had taken illegal electric supply from the temple through a wire. This fact also makes the availability of electric light at the time of the incident doubtful. There are many major and material contradictions in the evidence of the informant, Pappu Singh (PW-1) and Kalawati (PW-2). However, without considering and giving any cogent and reasonable findings, the Trial Court has wrongly held the appellants guilty of the commission of the alleged crime.

19. Learned Counsel for the appellants has also submitted that the recovery of the so-called illegal tamancha from appellant Jugendra Singh by the Investigating Officer, is highly doubtful and suspicious. The recovery of illegal tamanchas, on the pointing out of appellants Ramveer and Deputy Singh, after taking them on police custody remand, is also highly doubtful. The illegal tamanchas said to have been recovered from appellants Ramveer and Deputy Singh, are recovered from an open field, which is accessible to everyone, but despite this fact, the Trial Court has also held the appellants, namely, Jugendra Singh, Ramveer and Deputy Singh, guilty under Section 25 of the Arms Act and convicted them. The Trial Court, without any legal and reliable evidence, has held the appellants guilty under Section 25 of the Arms Act. The findings and reasoning of the Trial Court are based on improper appreciation of evidence and are against the settled principles of law. The Trial Court has not appreciated the evidence in the proper perspective and only on the basis of conjectures and surmises, without there being any cogent and reliable evidence against the appellants, convicted them. The evidence of PW-1 and PW-2 is highly doubtful and thereby untrustworthy. The testimonies of these prosecution witnesses are doubtful and, due to this, are highly suspicious and unreliable.

20. In view of the above, learned Counsel for the appellants has submitted that the impugned judgment and order dated 02.06.2022 passed by the Trial Court, is not sustainable in the eyes of law and is liable to be set aside. Hence, the present criminal appeal is liable to be allowed.

21. *Per contra*, learned A.G.A. for the State has submitted that prosecution witnesses, informant Pappu Singh (PW-1) and his mother Kalawati (PW-2), have seen the alleged occurrence with their own eyes. They were sleeping at the place of occurrence along with the deceased Bhagwan Singh. Appellants Ramveer and Deputy Singh caught hold of informant Pappu Singh (PW-1) and his mother Kalawati (PW-2), and absconding accused Naihna @ Mannu and appellant Jugendra Singh killed the deceased Bhagwan Singh by firing gunshots from their tamanchas. PW-1 and PW-2 witnessed the incident in the light of electric bulb. Both these prosecution witnesses are natural witnesses who have seen the incident with their own eyes. There is no chance of false implication of the appellants. The tahreer was lodged promptly. There are no such contradictions,

omissions, or embellishments by reason of which the evidence of these prosecution witnesses can be doubted. The Trial Court has appreciated the evidence in a proper perspective based on the material available on record and has recorded findings and reasoning fully based on the evidence and facts of the case. There is no illegality or perversity in the judgment and order of the learned Trial Court. There is no force in these criminal appeals preferred by the appellants. Hence, both these criminal appeals are devoid of merit and liable to be dismissed.

22. In the light of the above arguments and counter arguments of the learned Counsel for the appellants and learned A.G.A. for the State, from a perusal of the written report (Exhibit Ka-1) as well as first information report (Exhibit Ka-2), it is apparent that alleged incident occurred on 09/10.08.2004 at about 2:15 A.M. in the night, meaning thereby it was night of 09.08.2004 and morning of 10.08.2004 at about 2:15 A.M. Informant Pappu Singh (PW-1) has lodged written report against absconding accused Naihna @ Mannu, who could not be arrested and against appellants, namely, Jugendra Singh, Ramveer and Deputy Singh. First information report was registered against appellants on 10.08.2004 at about 5:15 A.M. Thus, it appears that first information report was lodged against the appellants promptly without any delay within three hours of the alleged incident.

23. Prosecution has produced the informant Pappu Singh as PW-1. PW-1 in his examination-in-chief has stated that deceased Bhagwan Singh was my brother. The incident occurred about five years ago at around 2:15 A.M. I, my mother Kalawati and my brother deceased Bhagwan Singh, were sleeping in front of the gher. My brother Bhagwan Singh and I were on the same cot (charpai), my mother was on a second cot and my father was sleeping on a cart (baggi) at a short distance. Naihna, Jugendra and Ramveer came there. Naihna and Jugendra had tamanchas in their hands. Ramveer pinned me down on the cot. Deputy pinned my mother down. Naihna and Jugendra shot Bhagwan Singh. As soon as they grabbed us, my eyes opened. There was electric light. In the electric light, I clearly saw them shooting and identified them. After shooting, they fled while waving their pistols. The villagers chased them, but they could not be caught and escaped. Naihna had illicit relationship with Jugendra's sister, Shashi. Bhagwan Singh had seen Naihna and Shashi in an objectionable position. He had complained about this to Naihna, Deputy, Jugendra and Ramveer. Because of this, Naihna and Jugendra said, you are defaming us, therefore, we will not leave you. On this very matter, they killed my brother by shooting him."

24. The informant, Pappu Singh (PW1), has stated in his cross-examination that "it is true that I and all accused are of the same family clan. On the date of the incident, it was summer season, not cold or rainy season. I have read up to seventh or eighth standard. It was a dark night. I have no knowledge about the date. I have no knowledge whether there was an electric connection in my locality or not on the date of the incident. I have no electric connection in my home. On the date of the incident, I and my deceased brother, Bhagwan Singh, were sleeping on the same cot. On the second cot, my mother, Kalavati, was sleeping. There was a distance of one step from my cot to my mother's cot. We were sleeping in damra, in front of my gher. On the western side of the gher, there were open fields. These fields are mine. On the north side of the gher, the houses of Rajpal, Dharampal and school are located and the temple is in the south direction. Between my gher and the temple, there is no one else's house. After the temple, the house of Charandevi is situated. Jugendra had not said anything to my mother when he came. **At that time, I was in sound sleep**. I do not know from which direction the miscreants came. **My eyes opened upon hearing the sound of**

gunfire and noise. Only two shots were fired; there was no continuous firing. At the time of the incident, my deceased brother and I were sleeping on the same cot. After firing the shots, the miscreants fled towards the western direction. I was sleeping on the eastern side. As soon as I woke up, I immediately started shouting. Hearing my cries, the villagers gathered at the spot without delay."

25. PW-1 further stated that "my deceased brother had told me about the illicit relations of Naihna with Shashi, sister of Jugendra. I have not seen Shashi and Naihna in an objectionable condition. About this illicit relation, there were rumors from three to four years. Naihna was living at the house of Ramveer and Deputy. None was a criminal. Naihna had threatened my brother Bhagwan Singh by saying that I will see you. I had not made any complaint about this at the police station. At that time, I was not Pradhan. I was afraid, so I did not make any complaint. From my house, the gher is located three to four houses away, and a school was also located between my house and the gher. There is whole village between my house and gher. Between my house and gher, there are houses of Netrapal, Mahipal, Bhikamchandra, Om Prakash and Mahendra. My father was not at the house. My wife was sleeping at the house, and there was no other. The length of my cot was six feet and the breadth was two feet. The cot of my mother was also of the same length and breadth. The whole cot was not soaked in blood. The side I was sleeping on, that side's rope (jebari) was soaked in blood. I was wearing a vest and underwear. There was no blood on my clothes. The police had taken the rope of the cot and the bloodstained soil from the spot. I had got arrested Jugendra from his house. I had got the accused caught from in front of his house. My mother was sleeping on another cot at a distance of one step from me. My father was sleeping at a distance of three-four steps from us."

26. In his cross-examination, informant Pappu Singh (PW-1), has further stated that "my brother had an injury on the ear. Except the ear, there was no other injury. The bullet did not pass through the ear. My wife is Pradhan. Both things are true that I and my wife are Pradhan. Deputy and Ramveer are real brothers. I have told Darogaji that Shashi, sister of Deputy and Ramveer, had illicit relations with Naihna. If Darogaji has not written this fact in my statement, I could not give reason for this. It is wrong to say that on the date of the incident, there was no electricity in the village. The house of Ramveer and Deputy are 50 meters away from my house."

27. Prosecution produced Kalawati, mother of deceased Bhagwan Singh as PW-2. In her examination-in-chief, she has stated that "It was about five years ago, after midnight; I, along with my sons Bhagwan Singh and Pappu, were sleeping on the same cot, which was next to my own cot in gher. The cot was made of sun and the electric light was on. At night, Ramveer, Deputy, Naihna and Jugendra arrived and all four were armed with tamanchas. Ramveer caught hold Pappu and Deputy caught hold me down. Naihna and Jugendra shot Bhagwan Singh. Bhagwan Singh died on the spot. I identified them in the electric light. After committing the crime, all four fled towards the forest. There was no prior enmity between the accused and my son. There had been an altercation with my son Bhagwan Singh. The altercation had occurred over Jugendra's sister, Shashi." Thus, it is evident that Kalawati (PW-2), in her examination-in-chief, has deposed about the occurrence of the incident in the same manner as stated by Pappu Singh (PW-1) in his examination-in-chief.

28. On a perusal of the cross-examination of Kalawati (PW-2), it transpires that she has stated that Ramveer and Deputy had no illicit relations with Shashi. At the time of the incident, Ramveer was the Pradhan of the village. She further deposed that the incident occurred on a dark night, however, electric light was available. She stated that there is no electricity connection in her house. Electricity was taken from the

temple. She further stated that she was sleeping on a cot, while her husband was sleeping on a buggy, at a distance of about four to five steps from her. In the said incident, neither she nor her son, Pappu Singh, sustained any injuries. She also stated that I had become unconscious. She admitted that it is correct that neither she nor her son sustained any injury in the incident. She further deposed that in front of her gher, there are houses of Rajpal, Dharampal and the wall of Netrapal. Among them one of the houses was vacant. At the time of the alleged incident, these persons, along with other villagers, arrived at the spot. She also stated that the incident took place during the summer season and it was very hot. Her two sons were sleeping on a cot without any bed-sheet or covering. She further stated that she woke up when her son was caught hold of and killed. She also stated that I have no knowledge whether anyone other than me has an electricity connection. Lastly, she stated that the temple is situated at a distance of about 10-15 steps from her gher, from where her son had arranged electricity. She further stated that she had not become unconscious when she was caught hold of. She deposed that the faces of all four accused persons were uncovered. All the accused persons fled from the spot, and none of them was apprehended at the scene. She further stated that she disclosed the names of all four accused persons to the police officer who recorded her statement. My son was shot. Both of them fired. The bullet struck him in the ear.

29. From a perusal of the written report (Exhibit Ka-1), the evidence of the informant, Pappu Singh (PW-1), and the evidence of his mother, Kalawati (PW-2), it emerges that the main motive alleged for the crime committed by the appellants is that the absconding accused, Naihna @ Mannu, had illicit relations with Shashi, sister of Jugendra Singh. The deceased, Bhagwan Singh, is said to have witnessed Naihna @ Mannu and Shashi in a compromising situation. Bhagwan Singh is further alleged to have informed Jugendra Singh, Deputy Singh, and the absconding accused, Naihna @ Mannu, about this objectionable fact, stating that it was improper. According to the prosecution, the absconding accused, Naihna @ Mannu, along with the appellants, had warned and threatened Bhagwan Singh, stating that they would "see" him. Owing to this enmity, the prosecution alleges that Naihna @ Mannu along with the appellants murdered Bhagwan Singh by firing gunshots at him. However, the prosecution evidence further reveals that, except the absconding accused, Naihna @ Mannu, all the appellants and the family members of the deceased Bhagwan Singh, were residents of the same village and were neighbours. It is also revealed that the appellants and the family members of the deceased were kith & kins to each other. Furthermore, the prosecution evidence indicates that none of the witnesses had actually seen Naihna @ Mannu in a compromising situation with Shashi, sister of Jugendra Singh.

30. From the prosecution evidence, it is evident that the witnesses PW-1 and PW-2 had heard about the illicit relations from villagers, and that such a rumor was prevalent in the village. Pappu Singh (PW-1) stated in his evidence that my brother, the deceased Bhagwan Singh, told me that he had seen the absconding accused, Naihna @ Mannu with Shashi in a compromising situation. There was no prior enmity between the parties. Even according to the prosecution evidence, no civil or criminal litigation was pending between the parties. In view of these facts, the motive attributed by the prosecution to the appellants for the commission of the alleged crime appears to be suspicious and doubtful, because a rumor or hearsay about any person cannot be regarded as a verified, reliable or truthful fact. Therefore, the motive as narrated in the prosecution evidence as well as in the written report (Exhibit Ka-1), appears to be doubtful, concocted and an afterthought.

31. According to the written report (Exhibit Ka-1) and the evidence of the informant, Pappu Singh (PW-1), and his mother, Kalawati (PW-2), on the date of the incident, i.e., the night of 09/10.08.2004 at

about 2:15 A.M., the accused persons named in the written report arrived at the spot armed with tamanchas. It is alleged that appellant Ramveer caught hold of the informant, Pappu Singh (PW-1), while Kalawati (PW-2) was caught hold by Deputy Singh, and the absconding accused, Naihna @ Mannu, along with Jugendra, fired gunshots at Bhagwan Singh.

32. It is a matter of common knowledge that around 2:15 A.M. in the night, is a time when people are generally in deep sleep. During this period of the night, particularly after midnight, individuals are usually in a sound and relaxed state of rest. It is also a matter of common human experience, known to most adults, that assailants often choose night time for committing crimes, as darkness reduces the likelihood of identification or disclosure of their identity. Assailants generally consider the period after midnight to be a suitable and safe time for committing the offence. It is, therefore, a natural inference that assailants and criminals tend to operate silently under the cover of darkness, without creating noise at the place of occurrence, and thereafter quietly flee from the scene.

33. However, in the present case, appellant Ramveer is alleged to have caught hold of the informant, Pappu Singh (PW-1), while appellant Deputy Singh caught hold of Kalawati (PW-2). Upon being restrained, both PW-1 and PW-2 woke up. This version of the prosecution, as well as the testimony of PW-1 and PW-2 in this regard, appears to be untruthful and highly suspicious. According to the prosecution case itself, PW-1 and PW-2 were sleeping on their respective cots when they were apprehended by the aforesaid appellants. Pappu Singh (PW-1) was sleeping on the same cot with deceased Bhagwan Singh, while Kalawati (PW-2) was sleeping on another cot at some distance.

34. In these circumstances, a pertinent question arises as to why the appellants would come to the place of occurrence and catch hold of PW-1 and PW-2, who were in deep sleep, thereby causing them to wake up, and identify the assailants, and subsequently depose against them in the Court. This version of the prosecution witnesses, PW-1 and PW-2, therefore, does not inspire confidence. It is a matter of common practice that when persons are in deep sleep at night, assailants or culprits, if they intend to commit a crime, would ordinarily enter the place of their target silently without making any noise and, after committing the offence, would also leave quietly so as to avoid disclosure or identification of them. However, in the present case, appellant Ramveer is alleged to have caught hold of PW-1, and appellant Deputy Singh is alleged to have caught hold of PW-2. This version appears to be unreliable and unconvincing. It is also natural that, in such a situation, the appellants, if they had come to commit the offence, would act silently and after causing the death of Bhagwan Singh, would fled from the place of occurrence silently without attracting attention of any person. The appellants would not ordinarily risk first catching hold of PW-1 and PW-2, thereby waking them up, enabling them to identify the assailants, and subsequently disclose their identity. Since, at the time of the commission of the crime, according to the prosecution version itself, Bhagwan Singh, Pappu Singh (PW-1) and their mother, Kalawati (PW-2), were in deep sleep, there was no necessity for appellant Ramveer to have caught hold of the informant, Pappu Singh (PW-1), or for appellant Deputy Singh to have caught hold of Kalawati (PW-2) for the commission of the alleged offence.

35. Thus, from the above discussions, the prosecution story as set out in the written report (Exhibit Ka-1) and as narrated by the informant, Pappu Singh (PW-1), and Kalawati (PW-2) in their testimony, appears to be highly doubtful and unbelievable. Consequently, the evidence of the prosecution witnesses, i.e., PW-1 and PW-2, in this regard appears to be untrustworthy, concocted and an afterthought story.

36. According to the written report (Exhibit Ka-1) and the evidence of the informant, Pappu Singh (PW-1) and Kalawati (PW-2), there was an electric light at the place of occurrence. However, PW-1 and PW-2, in their evidence, have clearly admitted that there was no electricity connection at their house or at their gher, where the incident is alleged to have occurred. Though PW-1 and PW-2 have stated that there was an electric bulb at the place of occurrence, in front of the gher, which was illuminating, they have further stated that electricity was illegally drawn by means of a wire from a nearby temple situated at some distance from their gher. PW-2 has further stated, in her evidence, that the accused persons had not covered their faces and that their faces were visible. This version of the prosecution also appears to be doubtful. It is a matter of common knowledge that accused persons, at the time of commission of any offence, ordinarily attempt to conceal their identity so as to avoid recognition.

37. In the present case, according to the prosecution version, there was an electric bulb illuminating at the place of occurrence, and the accused persons are stated to be closely related to informant (PW-1). In such circumstances, it is difficult to believe that the accused persons would have come to the place of occurrence without covering their faces in the light of the electric bulb, thereby enabling PW-1 and PW-2 to easily identify them and name them in the written report as the perpetrators of the crime. These facts and circumstances also render the prosecution story doubtful.

38. The informant, Pappu Singh (PW-1) has stated in his evidence that on the date of the incident, he and his deceased brother, Bhagwan Singh, were sleeping on the same cot, while his mother, Kalawati (PW-2), was sleeping on another cot at some distance. Kalawati (PW-2) has also stated that her sons, i.e., the deceased Bhagwan Singh and the informant, Pappu Singh (PW-1), were sleeping on the same cot. Pappu Singh (PW-1), has further stated in his evidence that the length of the cot was 6 feet and its breadth was 2 feet. According to PW-1, both he and the deceased Bhagwan Singh were sleeping on a cot measuring 6 feet in length and 2 feet in width when the alleged incident occurred. However, despite allegedly sleeping on the same cot with his deceased brother, Bhagwan Singh, no blood was found on the clothes or body of Pappu Singh (PW-1). This circumstance appears to be quite surprising. It is also difficult to believe that two adult persons could comfortably sleep on a cot made of jute rope and measuring only 2 feet in width. From these circumstances, it appears that the prosecution has projected this version of the incident in order to establish PW-1 and PW-2 as the eyewitness and the story appears to have been developed deliberately and as an afterthought.

39. The above facts and circumstances of the case, also create a reasonable doubt about the veracity of the prosecution story. We find that, according to the informant, Pappu Singh (PW-1), two shots were fired and PW-1 accepted that the police recovered an empty cartridge of 315 bore in his presence. There was an injury on his brother's ear. Apart from the ear, there were no other injuries. According to Kalawati (PW-2), Naihna and Jugendra shot at Bhagwan Singh, meaning that two gunshots were fired at the deceased, Bhagwan Singh. Two accused persons fired gunshots which hit the ear of the deceased, Bhagwan Singh. Thus, from the eyewitnesses of the prosecution, namely, the informant Pappu Singh (PW-1) and Kalawati (PW-2), it emerges that, according to the prosecution witnesses, two gunshots were fired at Bhagwan Singh. However, according to Dr. Vimal Kumar Gupta (PW-6), who conducted the autopsy of the deceased Bhagwan Singh, has found in the postmortem report (Exhibit Ka-12), only one gunshot injury, i.e., **Injury No. 3;** "A firearm wound of entry measuring 3 cm * 1.5 cm located on the right side of the face, directly in front of the right ear. This wound was deep enough to reach the jaw, causing fracture of the jawbone. Upon dissection, it was found that the pharynx was ruptured. In addition

to this, the right temporal bone was also found fractured."Dr. Gupta (PW-6) stated that injury no. 3 was caused by a firearm, while no definite opinion could be given regarding the weapon that caused injury nos. 1 & 2.

40. There was blackening and tattooing in injury no. 3. Thus, according to the medical witness, Dr. Vimal Kumar Gupta (PW-6), there was only one gunshot injury on the dead body of the deceased, Bhagwan Singh, and that injury showed blackening and tattooing. From this fact, it is clear that the ocular testimony of the prosecution witnesses and the medical evidence of Dr. Vimal Kumar Gupta (PW-6) differ on these points. The prosecution witnesses, i.e., PW-1 and PW-2, stated that two gunshots were fired at the deceased, Bhagwan Singh, but the medical witness, Dr. Vimal Kumar Gupta (PW-6) found only one gunshot injury, which is injury no. 3, which was caused by a firearm. In this way, there is a difference between the ocular evidence and the medical evidence regarding the injuries found on the dead body of the deceased, Bhagwan Singh. Thus, it is evident that the ocular evidence is not corroborated by the medical evidence. It is further evident that the medical witness and the ocular witnesses are stating different facts on the same points. It also follows that the prosecution version, particularly the evidence of PW-1 and PW-2, has not found any support or corroboration from the medical evidence of Dr. Vimal Kumar Gupta (PW-6). This fact also creates a reasonable doubt about the truthfulness of the prosecution story.

41. The Supreme Court in ***Khambham Raja Reddy and another v. Public Prosecutor, High Court of Andhra Pradesh;*** (2006) 11 SCC 239, has held in paragraph 19 that:

"The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in State of M.P v. Dharkole; (2004) 13 SCC 308 where the medical evidence was at variance with the ocular evidence, the testimony of the eyewitness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in Dharkole case may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts."

42. Thus, in the light of the legal principle as enunciated by the Supreme Court in ***Khambham Raja Reddy (Supra),*** we find that there is a variation between the ocular evidence and the medical evidence regarding the gunshot injuries found on the dead body of the deceased, Bhagwan Singh. The prosecution witnesses, Pappu Singh (PW-1) and Kalawati (PW-2), have stated that two gunshots were fired at the deceased, Bhagwan Singh. However, from the postmortem report (Exhibit Ka-12), prepared by Dr. Vimal Kumar Gupta (PW-6), it is evident that only one gunshot injury was found on the dead body of the deceased, Bhagwan Singh and that injury showed blackening and tattooing. The presence of blackening and tattooing indicates that the gunshot was fired at Bhagwan Singh from a very close range. The difference between the ocular evidence and the medical evidence regarding the injuries, particularly the number of gunshot injuries, makes the prosecution story suspicious and unworthy of credit.

43. From a perusal of evidence of the informant, Pappu Singh (PW-1), it is apparent that this witness has stated in his evidence that he got arrested accused Jugendra by the police from the front of the house of the accused itself. However, Investigating Officer, Subhash Chandra Tyagi (PW-7), has arrested appellant, Jugendra Singh near 100 steps away from the G.T. road at a different place and recovered a tamancha, in its barrel an empty cartridge was stuck, and also recovered a live cartridge of 315 bore. Tamancha, empty cartridge and live cartridge were recovered from the appellant, Jugendra and the bullet, which was recovered from the dead body of the deceased Bhagwan Singh, were sent for forensic examination. However, according to report of the Vidhi Vigyan Prayogshala, Agra, paper number 45kha/2 to 45kha/3, disputed cartridge marked as EC-1 was not found to be fired from the country-made pistol (tamancha), marked as 1/2005. Disputed bullets, EB-1 and EB-2, could not be matched from the country-made pistol (tamancha) marked as 1/2005, because there was no characteristic for comparison. Hence, no opinion could be given. Thus, it is clear that from the so-called tamancha, empty cartridge, live cartridge of 315 bore and bullets recovered from the dead body of the deceased, Bhagwan Singh, could not be matched and not found fired by the recovered country-made pistol (tamancha), from the possession of Appellant, Jugendra Singh.

44. From the evidence of Investigating Officer, Subhash Chandra Tyagi (PW-7), we find that the appellants Ramveer and Deputy Singh have surrendered in the Court. The I.O. submitted an application before the concerned Court seeking police custody remand of appellants Ramveer and Deputy Singh, and after obtaining their police custody remand, on 11.09.2004, i.e., ten days after the alleged incident, recovered a tamancha on the pointing out of Ramveer Singh from an open and empty field of maize (corn), and also recovered a tamanacha on the pointing out of Deputy Singh from below a Jamun tree in an open field. However, the illegal country-made pistols (tamanchas) recovered at the instance of the appellants Ramveer Singh and Deputy Singh were not sent for forensic examination by the Investigating Officer.

45. A perusal of the site plan (Exhibit Ka-25) reveals that a tamancha was allegedly recovered at the pointing out of appellant Ramveer from the place marked as □A□, which is an open area accessible to everyone. The said place is neither concealed nor of such a nature as to be within the exclusive knowledge or possession of appellant Ramveer. Similarly, a perusal of Exhibit Ka-17 shows that another tamancha was recovered from the place marked as □B□ at the pointing out of appellant Deputy Singh. The said place □B□ is also an open field accessible to all and is neither a concealed location nor a place within the exclusive knowledge or control of appellant Deputy Singh. It is further noteworthy that the appellants, Ramveer and Deputy Singh, were taken into police custody remand approximately ten days after the alleged incident, and only thereafter were the alleged country-made pistols (tamanchas) shown to have been recovered at their instance.

46. The Investigating Officer, Subhash Chandra Tyagi (PW-7), admitted during his cross-examination that no shot had been fired from the tamancha allegedly recovered from appellant Ramveer. He further admitted that, as recorded in the forensic examination report, the disputed cartridge marked EC-1 had not been fired from the country-made pistol (tamancha) marked as 1/2005. There is no evidence on record to show that the tamanchas allegedly recovered from appellants Ramveer and Deputy Singh were sent to the Forensic Science Laboratory for examination. Moreover, no report of the Forensic Science Laboratory has been produced in respect

of the said tamanchas. From the aforesaid facts and circumstances of the case, it is evident that the country-made pistols (tamanchas) allegedly recovered from appellants Jugendra Singh, Ramveer and Deputy Singh cannot be connected with the commission of the alleged offence.

47. It is a settled principle of law that mere recovery of an incriminating article at the instance of an accused is not sufficient to establish guilt unless it is further proved that such recovered article is directly connected with the commission of the crime. In the present case, there is no evidence whatsoever to establish that the alleged incriminating articles, namely, the country-made pistols (tamanchas), were used by the appellants in the commission of the offence. In other words, the prosecution has wholly failed to prove that the said tamanchas were used in the alleged crime. This circumstance raises a serious doubt regarding the genuineness of the alleged recoveries and suggests that the said weapons may have been planted by the police to lend support to the prosecution case, particularly in relation to the offence under Section 302 IPC.

48. Despite these material deficiencies and inconsistencies in the prosecution case, the learned Trial Court failed to properly appreciate the evidence on record. The Trial Court, without adequately scrutinizing the testimony of the prosecution witnesses, namely, Pappu Singh (PW-1) and Kalawati (PW-2), whose evidence appears unreliable and doubtful, proceeded to convict the appellants Jugendra Singh, Ramveer and Deputy Singh under Sections 302/34 IPC. The Trial Court further convicted them under Section 25 of the Arms Act in a cursory manner, without recording any cogent finding as to the use of the alleged recovered tamanchas in the commission of the offence.

49. In our considered view, the Trial Court failed to appreciate the prosecution evidence in its proper perspective and in accordance with settled legal principles, and, in the absence of cogent evidence, erroneously held the appellants guilty of the alleged offence. The prosecution has thus been wholly unsuccessful in proving its case beyond reasonable doubt. The Trial Court, without due consideration of the evidence on record and without recording findings consistent with established principles of law, proceeded to convict the appellants for the alleged offence.

50. Thus, in light of the foregoing discussion, we are of the considered opinion that the judgment and order of conviction and sentence dated 02.06.2022, passed by the learned Additional Sessions Judge, Aligarh, is not sustainable in the eyes of law and is liable to be set aside. Accordingly, both the criminal appeals deserve to be allowed.

51. Consequently, the impugned judgment and order of conviction and sentence dated 02.06.2022 are hereby ***set-aside***, and both the criminal appeals are **allowed.**

52. The appellants- **Jugendra Singh, Deputy Singh** and **Ramveer,** are stated to be in jail. They shall be released forthwith, if not required in any other case.

53. Let a copy of this judgment be transmitted to the Trial Court forthwith, along with the lower court record, for necessary compliance.

(2026) 7 ILRA 398
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Appeal No. 4605 of 2017
Alongwith
Criminal Appeal No. 4606 of 2017

Gauri Shankar & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Issue for consideration

The matter pertains to a criminal appeal challenging the conviction and life sentence of the husband and in-laws under section 302/34 IPC for the homicidal death of a woman in her matrimonial home.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302/34 & ¾ of the Dowry Prohibition Act,1961-Indian Evidence Act,1872-Section 106-Criminal Procedure Code,1973-Section 374(2)-Circumstantial evidence-Burden of proof-Hostility of prosecution witnesses of fact including close relatives-Effect-Murder within four corners of matrimonial house-Cause of death established as asphyxia due to ante-mortem strangulation with fractured hyoid bone and multiple contusions indicating struggle-Medical evidence ruling out suicidal hanging-Superficially narrated plea of unknown miscreants entering house found unconvincing and false-Accused-inmates failing to offer any cogent explanation regarding the circumstances leading to the victim's violent death-Complete chain of circumstantial evidence established-Section 106 invoked to draw adverse inference against husband and in-laws-Order of conviction and life imprisonment upheld.(Para 19 to 36) (E-6)

Held

The court held that in a case of custodial death within a matrimonial home, the hostility of factual witnesses does not shatter the prosecution's case if the chain of circumstantial evidence is otherwise complete. The court emphasized that when a wife suffers an unnatural death by ante-mortem strangulation within the four walls of her matrimonial house, a heavy evidential burden shifts to the inmate-accused under section 106 of the Indian Evidence Act,1872, to offer a plausible explanation regarding the facts within their special knowledge. The total failure of the husband and parents-in-law to explain the fatal neck injuries and extensive bodily contusions, combined with their false defense of unknown intruders, serves as the decisive link completing the chain of circumstances, thereby fully justifying their conviction and life sentence under section 302 read with section 34 of the Indian Penal Code.

Case law Cited

Sharad Birdhichand Sarda Vs State of Maharashtra, (1984) 4 SCC 116, Balvir Singh Vs State of Uttarkhand ,(2023) 16 SCC 575-referred to.

List of Acts

Indian Penal Code,1860, Dowry Prohibition Act,1961, Indian Evidence Act,1872, Criminal Procedure Code,1973.

List of Keywords

Common intention, Burden of Proof, Section 106 of Indian Evidence Act,1872, Circumstantial evidence, Hostile witnesses, Hanging, Ante-Mortem Strangulation, Hyoid Bone Fracture, False Defense, Section 302/34 IPC.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 4605 of 2017 01.07.2026

Gauri Shankar & Anr. Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellants:-

Dinesh Kumar Verma, Raghuraj Singh, Rakesh Pati Tiwari, Sushil Kumar Mishra

Adv. for Respondent(s):-

G.A.

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

1. By this judgment, we propose to decide Criminal Appeal No.4605 of 2017 and Criminal Appeal No.4606 of 2017.

2. Whereas Sudhakar, the appellant in Criminal Appeal No.4606 of 2017, and Gauri Shankar, appellant No.1 in Criminal Appeal No.4605 of 2017, stood their trial vide Sessions Trial No.194 of 2015 for the offences punishable under Sections 498-A, 304-B, 302, 323 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC') and Section 3/4 of the Dowry Prohibition Act, 1961 (for short, 'DP Act'), appellant No.2 in Criminal Appeal No.4605 of 2017, Smt. Munni Devi stood her trial on the selfsame charges vide Sessions Trial No.291 of 2015. Both the sessions trials arose out of Case Crime No.191 of 2015, under Sections 498-A, 304-B, 302, 323 IPC and Section 3/4 DP Act, Police Station Bakewar, District Etawah, and, were, therefore, consolidated and tried together by Mr. Umesh Chandra Pandey, the then Additional District and Sessions Judge, Fast Track Court No.1, Etawah. The learned Additional Sessions Judge, by means of the impugned judgment and order dated 22.07.2017, has convicted all the three appellants, who have preferred the two appeals aforesaid of the offence punishable under Section 302/34 IPC and sentenced each of them to suffer imprisonment for life, besides imposing a fine of Rs.20,000/- upon each of them.

3. The first informant, Kishan Babu, lodged a written report with the Station House Officer, P.S. Bakewar, District Etawah dated 10.05.2015, saying that he had married his daughter on 28.06.2012 to Sudhakar son of Gauri Shankar, a resident of Village Tadwa Kachhiyan, P.S. Bakewar, District Etawah. In the marriage, he had given away to the newly weds a sum of Rs. 3 lacs in cash, besides movables worth Rs.1.50 lacs. In addition, he had also given his daughter a ring besides earrings and a chain. Shortly after marriage, her daughter's husband Sudhakar, mother-in-law Munni Devi, father-in-law Gauri Shankar, brother-in-law (jeth) Pratap Singh and sister-in-law (nanad) Neeti and others without rhyme or reason, commenced indulging in physical violence. They would beat up his daughter and demand rupees one lac in cash, besides a Pulsar motorcycle.

The informant said that his daughter complained to him in the matter a number of times over and also said that her husband Sudhakar would come back home in the evening drunk. She also said that in that inebriated state, he would beat her up and demand money besides the motorcycle. The informant goes on to say that in this connection, he spoke to the appellant Gauri Shankar on a number of occasions and also convened a panchayat. Next, Gauri Shankar, in retaliation to the panachayat, threatened his daughter a number of times. The informant goes on to say that he brought in the mediator, who had settled the marriage, one Virendra Singh, informing him of the matter, but Sudhakar, his parents, brother and sister, would not relent as they had become slaves to their habit. On the 8th of May, 2015 at about 11 o'clock, he received a call on his mobile No. 9897924296 from mobile No. 7409697499, where his daughter Preeti called him to say that he should rush to her place and take her away because her in-laws were beating her up and were going to lock her up in a room in order to do her to death. The informant says that he told her daughter not to loose her nerve and that he would soon be there. While this conversation was going on, the phone was disconnected. The informant, thereupon, along with his brother Lakhan Singh and another Satya Prakash, a total of three men, rode a motorcycle to his daughter's place, reaching there by 2 o'clock. There, he saw that the inmates of the house, upon seeing him, avoided him. The informant entered the house and saw that his daughter was lying dead. She had injuries to her neck and arms and her face had yellowish marks. Upon seeing the informant, all the inmates of the house deserted the place. In the meantime, Nanak @ Sahbeer, Suresh Chandra and Abhay Ram, natives of his village, reached there and it was in their company that he proceeded to Aheripur Police Chowki. The Police there told him to go to Bakewar or Etawah. He called the Police on Number 100 Facility and then made a call to the Superintendent of Police on mobile No. 9454401043. He got a reply from the S.P. that he should proceed to the place of occurrence and the Police would reach there. The Police arrived by 7 o'clock in the evening and took away the dead body. The report requests the registration of a case and necessary proceedings.

4. On the basis of the aforesaid report, a case was registered by the Police, being Crime No.191 of 2015, under Sections 498-A, 323, 304-B IPC and Section 3/4 DP Act, Police Station Bakewar, District Etawah. The check FIR, that was drawn up, shows that the crime was registered on 10.05.2015 at 11.30 a.m. The distance of the police station is shown to be nine kilometers from the place of occurrence.

5. A Tehsildar, on the instructions of the Sub-Divisional Officer, held inquest with the assistance of a Sub-Inspector of Police on 09.05.2015 at the mortuary, where the dead body was retained.

6. The dead body of the deceased was subjected to autopsy on 09.05.2015 at 2.00 p.m. The autopsy report is on record as Ex. Ka-13. The doctor, on external examination, found the following antemortem injuries:

(1) Ligature mark present continuously horizontal about 29.0 x 1.0 in neck below the thyroid. The base of the groove soft & reddish. Subcutaneous tissue under the mark ecchymosed.

(2) Contusion 6.0 x 0.5 cm Lt. are just below shoulder joint laterally.

(3) Contusion 6.0 x 4.0 cm on Rt. side of abdomen just lateral to umbilicus.

(4) Multiple contusions Rt. lower limb.

(5) Contusion 5.0 x 4.0 cm Rt. hip.

(6) Contusion 7.0 x 4.0 cm Lt. hip laterally.

(7) Contusion 6.0 x 5.0 cm Lt. thigh just above popliteal fossa.

The cause of death opined by the autopsy doctor in the postmortem report is asphyxia due to strangulation. The hyoid bone was found fractured on the right side.

7. The Investigating Officer investigated the case and submitted two charge-charges, viz: one dated 24.06.2015 against Sudhakar and Gauri Shankar and the other dated 20.10.2015 against Pratap Singh, Smt. Munni Devi and Smt. Neeti. The appellants were produced before the learned Magistrate, who took the cognizance and furnished them copies of the relevant prosecution papers as provided under Section 207 Cr.P.C. Thereafter, the case against the appellants Sudhakar and Gauri Shankar was committed to the Court of Sessions for trial on 22.07.2015 and on 10.11.2015 against the appellant Munni Devi, besides the two co-accused Pratap Singh and Neeti.

8. Mr. Gajendra Singh, the then Additional Sessions Judge, Court No.4, Etawah, proceeded to frame charges against the appellants Sudhakar and Gauri Shankar together vide order dated 14.09.2015, numbering four, to wit, firstly, under Section 498-A IPC; secondly, under Section 304-B IPC and alternatively under Section 302 IPC; thirdly, under Section 323 read with Section 34 IPC; and, fourthly, under Section 3/4 DP Act. Charges against the appellant, Munni Devi, were also framed by Mr. Gajendra Singh, the then Additional Sessions Judge, Court No.4, Etawah on 02.01.2016 along with the co-accused Pratap Singh and Neeti jointly on like counts as the appellants Sudhakar and Gauri Shankar.

9. The prosecution examined the following witnesses in support of their case:

1. PW-1 □ Kishan Babu, father of the deceased and the informant of the case,
2. PW-2 □ Manoj Kumar, brother of the deceased,

3. PW-3 □ Vineet Devi, sister-in-law (bhabhi) of the deceased,

4. PW-4 □ Lakhan Singh, uncle of the deceased,

5. PW-5 □ Satya Prakash, a native of the informant's village,

6. PW-6 □ Virendra Kumar, mediator of the marriage,

7. PW-7 □ Suresh Chandra, a native of the informant's village,

8. PW-8 □ Abhay Ram, a native of the informant's village,

9. PW-9 □ Jitendra Kumar, another brother of the deceased,

10. PW-10 □ Lady Constable 526 Kalpana Devi, who scribed of the check FIR and made other relevant entries,

11. PW-11 □ Dr. Sanjiv Kumar, who conducted postmortem of the deceased,

12. PW-12 □ Shiv Narain Pandey, the then Naib Tehsildar, Bharthana, District Etawa, who got prepared the inquest.

10. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report lodged with Police Station Bakewar, District Etawah, proved by PW-1, Kishan Babu
2	Ex. Ka-2	Charge sheet dated 24.06.2015 submitted against Sudhakar and Gauri Shankar
3	Ex. Ka-3	Check FIR dated 10.05.2015, proved by PW-10, Lady Constable Kalpana Devi
4	Ex. Ka-4	Site-plan of the place of occurrence dated 10.05.2015
5	Ex. Ka-5	Carbon Copy of GD Entry No.14 Time 09.05 hours dated 14.09.2015
6	Ex. Ka-6	Recovery memo dated 10.05.2015 taking into possession marriage card of the deceased
7	Ex. Ka-7	Report of the Forensic Science Laboratory dated 08.05.2015
8	Ex. Ka-8	Inquest report dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
9	Ex. Ka-9	Letter to the C.M.O. dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
10	Ex. Ka-10	Letter to the R.I. dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
11	Ex. Ka-11	Photo Lash dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
12	Ex. Ka-12	Challan Lash dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
13	Ex. Ka-13	Postmortem Report of the deceased dated 09.05.2015, proved by PW-11, Dr. Sanjiv Kumar
14	Ex. Ka-14	Charge sheet dated 20.10.2015 submitted against Pratap Singh, Smt. Munni Devi and Smt. Neeti
15	Ex. Ka-15	Carbon Copy of GD Entry No.16 Time 11.30 hours dated 10.05.2015, proved by PW-10, Lady Constable Kalpana Devi

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11. After the prosecution evidence was over, the statements of the three appellants were recorded under Section 313 Cr.P.C. on 21.07.2016 and their supplementary statements were recorded under Section 313 Cr.P.C. on 06.07.2017.

12. The learned Trial Judge vide the judgment and order impugned proceeded to acquit the co-accused Pratap Singh and Smt. Neeti of the offences under Sections 498-A, 304-B, 302, 323/34 IPC and Section 3/4 DP Act, extending to them the benefit of doubt. However, the appellants, Sudhakar, Gauri Shankar and Smt. Munni Devi, were convicted of the offence under Section 302/ 34 IPC on the basis of circumstantial evidence. They were, however, acquitted of the charges under Sections 498-A, 304-B, 323/34 IPC and Section 3/4 DP Act. All the three appellants, as already said, were sentenced to suffer imprisonment for life, besides being imposed with a fine of Rs.20,000/- each.

13. Aggrieved, these appeals have been preferred.

14. Heard Mr. Rakesh Pati Tiwari, learned Counsel for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of the State and perused the record.

15. Now, this is a case which was reported to the Police by the deceased's father through a written information that was lodged with the Police on 10.05.2015 at 11.30 a.m. Admittedly, the incident had happened on 08.05.2015 at 11.00 a.m. The Police had got information of the crime before the formal registration of the FIR with the deceased's father, PW-1, calling the Dial 100 facility and then reaching the Superintendent of Police over telephone, who detailed the Police to immediately reach the place of occurrence. The inquest in this case was held on 09.05.2015, as would appear from Ex. Ka-8, and the autopsy too was done on 09.05.2015, a fact which Ex. Ka-3 demonstrates in ample measure. The FIR was lodged after the Police were already in know of the crime and had taken substantial steps by holding the inquest and causing the autopsy to be done. The FIR came to be registered, as already said, on 10.05.2015 at 11.30 a.m., a fact evident from a perusal of Ex. Ka-3.

16. During investigation, the statements of a number of witnesses for the prosecution were recorded under Section 161 Cr.P.C. They supported the prosecution case of a dowry demand by the deceased's in-laws and then the case of the in-laws doing her to death by throttling her. It must be remarked that none of the witnesses in this case are eye-witnesses. Some of them, like the first informant, PW-1, or the deceased's brother, PW-2, Manoj Kumar, may be witnesses of some relevant facts, particularly res gestae, but none of them have seen the occurrence. Therefore, we do not have an eye-witness account. It is a case that ultimately turns upon circumstantial evidence. The unfortunate part of the case is that nine witnesses of fact have been examined, where a number of them are blood relatives of the deceased, but they have turned hostile in the dock evidence. Therefore, some of the relevant facts, that could have come in evidence of these witnesses, have been lost to hostility.

17. The first informant, who is the deceased's father and testified during trial as PW-1, has disowned the FIR by the most unconvincing explanation about his act in lodging the FIR with all its contents, accusing the appellants, as also his conduct in frantically contacting the Police by reaching the Dial 100 facility as well as the Superintendent of Police, all of which ultimately led to the arrival of the Police at the scene of crime. It is rather odd that the Police, upon reaching the scene of crime and finding the dead body of a young daughter-in-law in the matrimonial home, did

not take down an oral information or ask for a written report from PW-1 or whoever was willing to report and promptly register an FIR in the gruesome crime before embarking upon their investigation. They commenced investigation by causing the dead body to be removed to the morgue, where they held the inquest and then caused the autopsy to be done, much before the FIR, giving rising to the crime, was registered. Ideally, these steps should have been taken after the registration of a prompt FIR, on the basis of an oral or written information from the relatives of the deceased, who were present or whoever was willing to report. We say this for the reason that this was not a case where a dead body was found in an unknown place with no clue about the cause of the unnatural death. It is invariably in such cases that an inquest has to be done promptly without awaiting the registration of a crime.

18. The other lapse, which is apparent on the part of the Police, is that they did not hold the inquest at the place where the body was found, that is to say, the deceased's in-laws' house. An inquest should be held wherever the body is found and not in the manner done here, that is to say, by first dispatching the body to the morgue and then holding the inquest there, away from the place of occurrence, where the deceased's body was found lying, that is to say, her matrimonial home. The prosecution witnesses of fact, who are mostly blood relatives of the deceased, as already remarked, and have testified in the dock as PW-1 to PW-9, have not at all supported the prosecution case. Quite apart, the prosecution witnesses of fact, if they had faithfully testified, could have proved some relevant facts, that would add to the chain of circumstances, cited by the prosecution to bring home the charge. There is no manner of doubt that given the state of things in this case, it is a case that primarily rests on circumstantial evidence. The testimony of the prosecution witnesses 1 to 9 could only have added to proof, may be of a few of the circumstances, on which the prosecution wish to rely. Therefore, with the witnesses turning hostile, all that has happened is the failure of proof of some relevant facts or circumstances; nothing more.

19. This being a case of circumstantial evidence, the standard, by which evidence has to be evaluated, is well-known. In a case of circumstantial evidence, the law requires the prosecution to establish circumstances that form so complete a chain that there is no other inference possible, but one consistent with the guilt of the accused. Anything lesser is not acceptable and would entitle the accused to the benefit of doubt. The five principles, by which a case of circumstantial evidence can alone be established, have been summarized by the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116,** where it has been held:

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

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

20. There is one feature to this case, which is commonplace in homicides suffered by women in their matrimonial homes. That oft-occurring feature in such cases is that there are hardly eye-witnesses of the occurrence because in the nature of things, the terminal violence takes place in the four-corners of the husband's place, where more often than not the unfortunate victim has neither a relative nor a friend nor a person of such high moral fiber that he or she would speak out the truth, though related to the accused by blood or unconnected to both of them, say a trusted servant of the victim's in-laws. Therefore, in cases that are not dowry deaths, as defined under Section 304-B IPC, the prosecution is not relieved of their burden by any kind of a reversal thereof upon the establishment of certain facts. If it is a case where the charge to be considered is one of murder, punishable under Section 302 IPC, pure and simple, the prosecution would have to establish the case by circumstances beyond reasonable doubt. Section 106 of the Evidence Act also does not come to the rescue of the prosecution in the matter of discharging their overall burden proving the accused's guilt. All that Section 106 comes in handy in such a situation is that after the prosecution have sufficiently established facts and there are blind spots, that are known to the accused alone, and facts regarding these have to be within their special knowledge, a limited burden to explain those facts, consistent with their innocence in the sense of an evidential burden, would shift to the accused. If the accused can offer a good explanation supported by reasonable evidence, explaining facts especially within their knowledge, consistent with their innocence, that is all that the accused may have to do about it. If, however, the accused fail to offer a cogent explanation for a fact that is inculpatory and especially within their knowledge, it would be added to the chain of circumstances appearing against him. The aforesaid principle is elucidated by the Supreme Court in **Balvir Singh v. State of Uttarakhand, (2023) 16 SCC 575**, where it has been held:

"35. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The

word □especially□ means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its Illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, □especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

36. In Shambu Nath Mehra v. State of Ajmer [Shambu Nath Mehra v. State of Ajmer, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] , this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under : (SCC OnLine SC para 9)

"9. … The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. R. [Attygalle v. R., 1936 SCC OnLine PC 20 : AIR 1936 PC 169 (AIR V 23)] and Stephen Seneviratne v. R. [Stephen Seneviratne v. R., 1936 SCC OnLine PC 57 : (1936) 3 All ER 36 at 49] "

(emphasis in original)

37. The aforesaid decision of Shambu Nath [Shambu Nath Mehra v. State of Ajmer, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] has been referred to and relied upon in Nagendra Sah v. State of Bihar [Nagendra Sah v. State of Bihar, (2021) 10 SCC 725 : (2022) 1 SCC (Cri) 127] , wherein this Court observed as under : (SCC pp. 734-35, paras 22-23)

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden

under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

(emphasis supplied)

38. In Tulshiram Sahadu Suryawanshi v. State of Maharashtra [Tulshiram Sahadu Suryawanshi v. State of Maharashtra, (2012) 10 SCC 373 : (2013) 1 SCC (Cri) 193] , this Court observed as under : (SCC pp. 381-82, para 23)

"23 [Ed. : Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./58/2012 dated 9-10-2012.]. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)

"38. Vivian Bose, J., had observed [Shambu Nath Mehra v. State of Ajmer, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambu Nath Mehra v. State of Ajmer [Shambu Nath Mehra v. State of Ajmer, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] the learned Judge has stated the legal principle thus : (SCC OnLine SC para 9)

"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge." ' "

(emphasis in original and supplied)

39. In Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] , this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case : (SCC pp. 690-91 & 694, paras 14-15 & 22)

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [Stirland v. Director of Public Prosecutions, 1944 AC 315 (HL)] quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [State of Punjab v. Karnail Singh, (2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

(emphasis supplied)

40. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in State of W.B. v. Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] . In this case, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2.30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364 read with Section 34IPC, and sentenced them to ten years' rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to the deceased after he was abducted by them. The Sessions Judge, after referring to the law on circumstantial evidence, had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following principles in paras 31 to 34 of the report : (Mir Mohammad Omar case [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] , SCC p. 392)

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct, etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody."

(emphasis supplied)

41. Applying the aforesaid principles, this Court in Mir Mohammad Omar case [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] while maintaining the conviction under Section 364 read with Section 34IPC, reversed the order of acquittal under Section 302 read with Section 34IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

42. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

43. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden of the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

44. Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused gives an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

"All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence. □"

21. The foremost circumstance that appears in this case is the disowned FIR. Though PW-1 has said that he did sign the written information, on the basis of which the FIR was registered, he has disowned its contents by saying that some men from his village got an application typed out, whereon they had his signatures affixed. They did not read out its contents to him. The FIR was lodged two days after the occurrence on 10.05.2015. It is not a case where at the contact point with tragedy when the first informant, PW-1, was out of his senses, somebody wrote out a script and

made him sign it. In the space of 48 hours, it is difficult to believe that the contents of the FIR were ones where the informant's mind did not accompany his signatures. Apparently, the FIR was lodged after the inquest and autopsy were all over. Therefore, the FIR, though one which can be castigated as the product of afterthought and premeditation, is certainly not a document that may be disowned for its contents by the first informant on the pretext that he signed it without reading or understanding the contents in a moment of great distress. The FIR, though not a substantive piece of evidence, is certainly the earliest account of the occurrence, which has its own evidentiary value. The circumstance, that PW-1 within two days of the occurrence nominated the appellants, besides the two other co-accused, as perpetrators of the crime, is certainly very relevant notwithstanding his hostility in the dock evidence.

22. The second most important circumstance appearing against the appellants is that the victim died an unnatural death within the four-walls of her matrimonial home, suffering as many as seven injuries with a continuous horizontal ligature mark, the cause of death being medically opined to be ‘asphyxia due to strangulation’. The learned Counsel for the appellants about this circumstance has argued that the autopsy doctor in his cross-examination has said that in case of hanging a ligature mark is there, and in cases involving hanging, death occurs as a result of oxygen supply being cutoff. In Hindi, the relevant evidence reads: Hanging vale cases me dam ghutne se maut hoti hai. The learned Counsel for the appellants has urged that it is, therefore, not conclusively proved that the deceased was strangulated to death by someone else. She could have well died as a result of hanging. Unfortunately, for the appellants, the doctor in the autopsy report has clearly opined the case to be one of death, as a result of asphyxia due to ante-mortem strangulation. Moreover, the ligature mark is continuously horizontal about 29.0 x 1.0 cm in the neck below the thyroid. In the base of the groove, soft and reddish subcutaneous tissue under the mark is ecchymosed. The hyoid bone is fractured on the right side. The general appearance of the dead body showed at the time of autopsy a protruded tongue and the eyes bulged out. In addition to the injury to the neck, there are six other injuries, already noted, all of which are contusions on the right lower limb, right hip, left hip and the left thigh, besides one on the abdomen and still another on the shoulder joint.

23. In the celebrated treatise on **Medical Jurisprudence - A Textbook of Medical Jurisprudence and Toxicology by Modi, 24th Edition, published by Lexis Nexis, Butterworths Wadhwa,** a comparative study of the postmortem presentation of injuries and other medical features in cases of hanging and strangulation is to be found at Page 456 (Chapter 19). The comparative study is important and reproduced here:

	Hanging		**Strangulation**
1	Mostly suicidal.	1	Mostly homicidal
2	Face-Usually pale and petechiae rare.	2	Face-Congested, livid and marked with petechiae.
3	Saliva-Dribbling out of the mouth down on the chin and chest.	3	Saliva-No such dribbling.

4	Neck-Stretched and elongated in fresh bodies.	4	Neck-Not so.
5	External signs of asphyxia, usually not well marked	5	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6	Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	6	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7	Abrasions and ecchymoses round about the edges of the ligature mark, common.
8	Subcutaneous tissues under the mark-White, hard and glistening.	8	Subcutaneous tissues under the mark-Ecchymosed.
9	Injury to the muscles of the neck-Rare.	9	Injury to the muscles of the neck-Common.
10	Carotid arteries, internal coats ruptured in violent cases of a long drop.	10	Carotid arteries, internal coats ordinarily ruptured.
11	Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.	11	Fracture of the larynx trachea and hyoid bone
12	Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.	12	Fracture-dislocation of the cervical vertebrae-Rare.
13	Scratches, abrasions and bruises on the face, neck and other parts of the body-Usually not present.	13	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.
14	No evidence of sexual assault.	14	Sometimes evidence of sexual assault.
15	Emphysematous bullae on the surface	15	Emphysematous

of the lungs-Not present	bullae on the surface of the lungs-May be present.

24. In addition about the inference about strangulation from a hyoid bone fracture, the following opinion is expressed by Modi at Page 462 of the treatise:

"The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, postmortem detection of hyoid fracture is relevant to the diagnosis of strangulation."
"

25. A look at the postmortem report in this case would show, as already noticed, that the ligature mark is 'continuously horizontal'. In cases of hanging, the ligature mark is oblique, non-continuous and placed high up in the neck between the chin and the larynx, as the comparative study with cases of strangulation would show (supra). Similarly, in cases of strangulation, the ligature mark is horizontal or transverse continuous, round the neck, low down the neck below the thyroid and in the base of the groove or furrow, the tissue is soft and reddish. Here, the ligature mark is below the thyroid and the base of the groove shows soft and reddish subcutaneous tissue, which is ecchymosed. This is also typical of strangulation, where, according to Modi, subcutaneous tissue under the mark is ecchymosed, as distinguished from hanging, where it would be white, hard and glistening. Fracture of larynx, trachea and hyoid bone is also typical of a case of strangulation. Here, admittedly, the hyoid bone is fractured on the right side. The doctor's opinion, therefore, in the autopsy, which is clear about a case of strangulation and has not been materially impeached during cross-examination, is to be accepted. It is a case of death on account of ante-mortem asphyxia as a result of strangulation.

26. Above all, considering the wholesome cause of death, it is evident that the deceased was subjected to much violence before her death. Apart from the ligature mark to the neck, that accounts for the fatal injury, there are six other injuries already noticed, all of which are contusions over various parts of the body, particularly the limbs. This would show, in our opinion, ante-mortem struggle and an act of overpowering the deceased before she was done to death.

27. Therefore, the next circumstance that is firmly established is that the deceased was violently murdered by an act of throttling her to death. On the evidence established, the deceased and the three appellants were the inmates in the house, where she suffered a fatal assault and died. It has figured in the evidence of PW-1, by way of a very casual remark, much in contradiction to the first information version, that he came to know later on that his daughter had been murdered by miscreants. PW-9, Jitendra Kumar, who is a brother of the deceased, has also spoken in the same vein in his examination-in-chief, casually saying that he came to know later on that his sister was done to death by miscreants.

28. Now, assuming for a moment that there were some intruder in the deceased's matrimonial home, who had entered the premises and murdered the victim. There is no earthly reason why miscreants would enter the deceased's matrimonial home, unless they had an intention to commit some offence, like theft, robbery or dacoity. There is no such case of robbery or dacoity.

Assuming further that miscreants entered the deceased's home with whatever intention, assaulted and killed her, there is no earthly reason why the assault would be limited to the deceased alone and all other inmates would remain unscathed. There could be an explanation for it in a case of robbery, if the appellants were to say in their statements under Section 313 Cr.P.C. that the robbers entered the matrimonial home and were resisted by the deceased alone, leading to violence and her death. In a situation of the last mentioned kind, one could think of the other inmates remaining uninjured. These are hypotheses to analyze and understand the casual remark in the testimony of PW-1 and PW-9 that they came to know later on that some unknown miscreants murdered the victim.

29. The next inculpatory circumstance, therefore, is that in her matrimonial household comprised of the three appellants and the deceased, it was the deceased alone, who received violent injuries, including the one that resulted in her death, with all others remaining unscathed. Still further is the circumstance that assuming that on account of an intrusion from outside, say intruding robbers, the deceased was done to death, it would be the natural sequence of things that out of the three appellants, her husband or her father-in-law, would have promptly called the Police and reported the matter. The Police were after all called by the deceased's father, PW-1, the first informant. No one from the deceased's family ever intimated the Police either at the station or the Dial 100 Facility or by reaching the Superintendent of Police. This is a circumstance, which is again inculpatory and one link in the chain of the different circumstances that point a finger to the guilt of the appellants.

30. Now, that there are an overbearing chain of circumstances, almost complete, pointing to the guilt of the appellants, where the deceased passed away in her matrimonial home, in the company of the appellants, throttled to death with no injury sustained by any other inmate, say as a result of any intruder's assault, the stage would have arrived where the appellants would be obliged to reveal facts especially within their knowledge attending the deceased's homicidal death.

31. Assuming that the information about the victim's death was given to PW-1 by her father-in-law, the appellant Gauri Shankar, there is not a word in his testimony or that of any other witness or the appellants' explanation under Section 313 Cr.P.C. as to how the victim met a violent death with a fatal injury of throttling her to death being established by medical evidence. There were a number of other injuries too, indicative of violence suffered by the victim before she passed away. Now, the fact, how the victim met an unnatural death within the four-walls of her matrimonial home, is something especially within the knowledge of the appellants. The appellants having not come up with any explanation either about the injuries sustained by the deceased, that were apparently non-fatal or the fatal injury of a continuous ligature mark around her neck that led to her death on account of asphyxia as a result of throttling.

32. Given all these circumstances, burden under Section 106 of the Evidence Act would lie upon the appellants to explain how the deceased came to be done to death in a most violent manner within the four corners of her matrimonial home. Absent that explanation by the appellants, by as much as a hint even in the statements under Section 313 Cr.P.C., this is a clinching link of circumstances pointing to the appellants' guilt.

33. The following circumstances appear against the appellants:

(1) The deceased was the daughter-in-law of the appellants Gauri Shankar and Smt. Munni Devi and the wife of Sudhakar, the appellant in Criminal Appeal No. 4606 of 2017 and was staying together with the appellants as part of their household when she died an unnatural and violent death;

(2) The fact that within two days of the occurrence, the first informant, PW-1, lodged an FIR, nominating the three appellants as the perpetrators of the crime and notwithstanding the appellants disowning its contents, though admitting his signatures, we have found the FIR to be a dependable and the earliest account of the occurrence;

(3) The fact that the victim was murdered within the four corners of her matrimonial home with the cause of death established being asphyxia due to strangulation, besides there being as many as six other injuries on her body clearly showing ante-mortem violence;

(4) The fact that the superficially narrated story of some miscreants entering the deceased's home and murdering her, that has figured in the evidence of PW-1 and PW-9, the deceased's father and brother, both hostile witnesses, is utterly unbelievable because neither is there any evidence of a robbery being committed in the deceased's matrimonial home nor have the other inmates received any injuries, which all or some of them would certainly have received, if some miscreants had intruded in the house to commit any offence or depredation; and,

(5) the fact that assuming that the victim suffered at the hands of some intruders in her matrimonial home a violent death, the appellants who are her close relatives would have reported the matter to the Police and called them, but after all it was PW-1, who called the Police and lodged the FIR.

34. Now, all these circumstances put together, which point a very definitive finger towards the appellants committing the crime, the clincher or the last link in the chain of evidence comes from the fact that what actually happened in the four corners of the appellants home, where the deceased was murdered, is a fact especially within the appellants knowledge. The appellants having not come forward with an explanation about the circumstances in which the victim met an unnatural death or was violently murdered in her matrimonial home, leads to the inescapable conclusion taken together with the other circumstances in their entirety that it was the appellants, who did her to death.

35. In the totality of circumstances, we are not inclined to interfere with the impugned judgment and order of conviction or the sentences passed upon the appellants by the learned Additional Sessions Judge.

36. In the result, these appeals fail and are hereby **dismissed**. The appellants in Criminal Appeal No. 4605 of 2017, Gauri Shankar and Smt. Munni Devi are bail. They will surrender before the learned Chief Judicial Magistrate, Etawah in order to serve out the sentences awarded to them. In case they do not surrender, the Chief Judicial Magistrate, Etawah will take coercive steps to secure their presence and commit them to prison. The appellant in Criminal Appeal No.4606 of 2017, Sudhakar is in jail. This order will be communicated to him through the Jail Superintendent concerned, wherever he is serving, by the Chief Judicial Magistrate, Etawah.

37. This judgment and order shall be communicated to the Chief Judicial Magistrate, Etawah by the Registrar (Compliance).

38. Let the lower court records be returned.

(2026) 7 ILRA 416
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 6307 of 2022

Pradeep @ Aman Chaurasaiya ...Appellant
Versus
State of U.P. ...Respondent

Issue for consideration

The matter pertains to a criminal appeal challenging the conviction and life imprisonment under section 302 IPC for the murder of a two-year-old stepson by strangulation in their rented room out of resentment over the child being from his wife's previous marriage.

Headnotes

Criminal law- Indian Penal Code,1860-Section 302-Criminal Procedure Code,1973-Section 374(2)-Murder of two-year-old child by step-father-Sole eye witness testimony-Reliability-Mother of deceased child testifying as sole eye-witness to the murder committed by her second husband-Minor discrepancies and contradictions in her cross-examination held not fatal to the prosecution case-Natural demeanor and emotional state of mother noted by Trial court-Corroboration by post-mortem report establishing cause of death as asphyxia due to ante-mortem neck injury and fractured hyoid bone-Turning hostile of other prosecution witnesses including landlord, co-tenants, and scribe of FIR held to be a deliberate attempt to aid the accused-Sole testimony of a natural witness (mother) found fully trustworthy, inspiring confidence, and sufficient to sustain conviction despite family/landlord witnesses defecting-Prompt FIR excluding possibility of deliberation or false implication-Conviction affirmed.(Para 22 to 36) (E-6)

Held

The court held that a conviction under section 302 IPC can be legitimately sustained on the sole, credible testimony of the victim's mother, as a mother would not falsely screen the real offender to falsely implicate her spouse. Further, hostility of independent witnesses and the scribe of the FIR-acting to favor the accused cannot erode the evidentiary value of a natural eye-witness whose account is fully corroborated by medical evidence of homicidal strangulation. **Appeal dismissed.**

Case law Cited

Shyam Sunder Vs State of Chhattisgarh (2002)8 SCC 39, State of Rajasthan Vs Smt. Kalki & Anr. (1981) 2 SCC 752, Sucha Singh & Anr Vs State of Punjab (2003) 7 SCC 643-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973

List of Keywords

Murder, Step-son, Prompt FIR, Hostile witnesses, Sole Eye-witness, Testimony of Deceased's mother, Credibility and reliability.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 6307 of 2022 01.07.2026

Pradeep @ Aman Chaurasaiya Vs. State of U.P.

From the judgment and order dated 01.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):-

Rajeev Chaddha

Adv. for Respondent(s):-

G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been preferred by accused-appellant Pradeep @ Aman Chaurasaiya, against the judgment and order of the learned Additional District and Sessions Judge, (FTC-II), under 14th Finance Commission, Gorakhpur, delivered in Sessions Trial No. 40 of 2016 State Vs. Pradeep @ Aman Chaurasaiya in Crime No. 431 of 2015, under Section 302 IPC., Police Station Chiluwatal, District Gorakhpur. The learned trial Court has held guilty to accused-appellant under Section 302 IPC for rigorous life imprisonment and a fine of Rs. 20,000/-. In default of payment of fine, six months additional simple imprisonment was imposed.

2. Brief fact of the case is that informant Munni Devi PW-1 has got ascribed a written report Exhibit Ka-1 from Subhash Dhar Dubey PW-5 and lodged the written report at Police Station Chiluwatal, District Gorakhpur. The informant Munni Devi PW-1 has stated that applicant Munni Devi wife of Pradeep @ Aman Chaurasaiya is a resident of Nakha No.1 as tenant in the house of Gheesey Yadav, near Scholars School. She is original resident of Village Laxmipur Ekdanga, P.S. Kothibhar, district Maharajganj; my husband name is Pradeep @ Aman Chaurasaiya; often my husband had beaten my elder son Abhimanyu; Abhimanyu was born from my ex-husband, due to this reason, he regarded enmity with him; Today on 28.10.2015 about 11:00 am., he was beating Abhimanyu in the room; On hearing the voice of weeping of Abhimanyu, I reached and saw that my husband is beating him; Blood was oosing from the mouth of my son and he was lying on the bed; On seeing me, my husband ran away. I have seen that Abhimanyu has died; I began to weeping and crying then people of the house, people of the nearby place have come and seen him to ran away. Dead body of my son is lying on spot.

3. After lodging of the written report Exhibit Ka-1, by informant Munni Devi PW-1, and on the basis of it, the First Information Report Exhibit Ka-3 was registered against the accused-appellant by Head Muharir Dinesh Kumar Mishra, PW-6 on 28.10.2015 at 12:15 PM under Section 302 IPC at Police Station Chiluwatal, District Gorakhpur against accused-appellant Pradeep @ Aman Chaurasaiya. Inspector Ram Pal Yadav, PW-8, who was posted at Police Station Chiluwatal, District Gorakhpur at the time of the incident, took the investigation of the case into his hands. He visited the place of occurrence. He got prepared Panchayatnama from his companion Govind Ji Singh PW-8, of deceased Abhimanyu. The Investigating Officer also prepared other necessary

police papers and prepared site plan of the place of occurrence. The Investigating Officer taken the statement of the witnesses under Section 161 Cr.P.C.; The Investigating Officer sent the dead body of the deceased Abhimanyu for postmortem examination. After completing all the formalities of the investigation, the Investigating Officer submitted charge-sheet Exhibit Ka-7, against accused-appellant Pradeep @ Aman Chaurasaiya in the concerned Magistrate Court having jurisdiction.

4. Since the case was exclusively triable by the Sessions Court, the learned Magistrate committed the case to the Court of Sessions for trial. The learned trial Court has framed charge on 15.07.2016 against accused-appellant Pradeep @ Aman Chaurasaiya under Section 302 IPC. The accused-appellant Pradeep @ Aman Chaurasaiya denied from the charge and claimed for trial.

5. To substantiate its case, prosecution adduced in total nine witnesses in the Court, such as, informant Munni Devi PW-1, Anita PW-2, Dharmendra Yadav PW-3, Gulecha PW-4, Subhash Dhar Dubey PW-5, Dinesh Kumar Mishra PW-6, Dr. Ghanshyam Raman PW-7, Ram Pal Yadav PW-8, and Govind Ji Singh PW-9.

6. Apart from oral evidence, prosecution has also relied as documentary evidence from Exhibit Ka-1 to Exhibit Ka-11 in support of its case.

7. After recording of the prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. In his statement under Section 313 Cr.P.C., accused-appellant Pradeep @ Aman Chaurasaiya has stated that wrong case has been registered against him. He is innocent. The police has not investigated the case on true facts. Wrong charge-sheet has been filed in the wrong way and investigation has been done in a cavalier manner. He also stated that due to enmity the case was registered against him and he is totally innocent. He submitted that he has to adduce defence evidence. In his defence accused-appellant Pradeep @ Aman Chaurasaiya has adduced Ram Awadh Pandey as DW-1 in his defence.

8. After recording the evidence of the prosecution and defence, the trial Court heard arguments of both sides. The trial Court found guilty to accused-appellant Pradeep @ Aman Chaurasaiya under Section 302 IPC and convicted and sentenced to accused-appellant Pradeep @ Aman Chaurasaiya under Section 302 IPC for rigorous life imprisonment and a fine of Rs.20,000/-. In case of default of payment of fine, six months additional simple imprisonment was also imposed upon the accused-appellant Pradeep @ Aman Chaurasaiya. Aggrieved by the judgment and order of the trial Court dated 27.05.2022, the accused-appellant Pradeep @ Aman Chaurasaiya has preferred this criminal appeal in this Court challenging the judgment and order of the learned trial Court passed in S.T. No.40 of 2016 State Vs. Pradeep @ Aman Chaurasaiya in Crime No. 431 of 2015 under Section 302 IPC, Police Station Chiluwatal, District Gorakhpur.

9. We have heard arguments of learned counsel for accused-appellant and the learned AGA on behalf of the State-respondents.

10. It is submitted on behalf of the learned counsel for accused-appellant that the judgment and order of the trial Court dated 27.05.2022 is against the facts and circumstances of the case. The first information report of the alleged incident was got lodged after inordinate delay without giving

any satisfactory explanation of delay occurred in lodging the same, which itself goes to show that the same was got lodged afterthought on the basis of the concocted and false story. From the evidence, it is very much clear that the F.I.R. was written on the dictation of the police personnel which also goes to prove that the appellant has been falsely implicated in the present case. It is also submitted that during investigation, prosecution got examined nine witnesses out of which five witnesses of the facts during deposition of the aforesaid witnesses, four have turned hostile, but while passing the impugned judgment and order, the learned trial Court has failed to consider and appreciate their evidence in its true perspective. It is also submitted that informant Munni Devi PW-1, who claims herself to be the wife of appellant, no other witness has supported the prosecution story. There are material contradiction in the statements of the witnesses which also goes to prove that appellant has been falsely implicated in this present case, but while passing the impugned judgment the learned trial Court has failed to consider the same.

11. It is also submitted on behalf of the accused-appellant that even the medical evidence is not in consonance with the alleged allegations made in the FIR, and the statements of the witnesses. From the evidence of the Investigating Officer, who has been examined as PW-8, it is very much clear that he had not prepared any site plan. This fact has also create doubt with regard to the place of occurrence. From the entire evidence recorded during trial, it is very much clear that appellant had no motive for committing such a heinous crime. However, while passing the impugned judgment convicted the appellant, the learned trial Judge only on conjectures and surmises scrutinized the evidence, which is against the law. Conviction of the appellant is against the evidence on record, as the prosecution has failed to prove its case beyond reasonable doubt. Thus, it is submitted on behalf of the learned counsel for the accused-appellant that there is no cogent and reliable evidence against the accused-appellant Pradeep @ Aman Chaurasaiya. Prosecution is totally unsuccessful to prove its case beyond reasonable doubt. In view of the above, the present criminal appeal filed by the accused-appellant deserves to be allowed and the judgment and order of the learned trial Judge dated 27.05.2022 deserves to be set-aside.

12. Against the above arguments of the learned counsel for the accused-appellant, learned AGA on behalf of the State-respondents has submitted that there is no delay in lodging the FIR at police station. The first information report has been lodged promptly and without any afterthought or concoction by informant Munni Devi PW-1. The informant Munni Devi PW-1, who is helpless lady, whose son deceased Abhimanyu was itself killed by her husband accused-appellant Pradeep @ Aman Chaurasaiya. None was ready to ascribe a written report Exhibit Ka-1, due to this reason, got ascribed written report Exhibit Ka-1 from Subhash Dhar Dubey PW-5. The informant Munni Devi PW-1, who is the mother of the deceased Abhimanyu and she is also the wife of the accused-appellant Pradeep @ Aman Chaurasaiya, has fully supported the prosecution story by her evidence in the Court. Only on the ground of turning hostile of other prosecution witnesses of the fact, the evidence of the sole reliable eye-witness informant Munni Devi PW-1 could not be rejected and doubted on any other ground. The informant Munni Devi PW-1 was living in her room with her husband Pradeep @ Aman Chaurasaiya in the house of Gheesey Yadav as a tenant. At the time of happening of the incident, informant Munni Devi PW-1, was present, she has seen with her own eyes the commission of the crime by accused-appellant Pradeep @ Aman Chaurasaiya. The learned Trial Court has appreciated the prosecution evidence in a very right perspective without any perversity and illegality and found guilty to accused-appellant and convicted him accordingly. The

trial Court convicted and held guilty to accused-appellant Pradeep @ Aman Chaurasaiya on the basis of cogent and reliable evidence. There is no conjecture and surmises in the impugned judgment of the learned trial Court. In this way, the learned AGA for the State respondents has submitted that there is no illegality, perversity in the impugned judgment as delivered by trial Court. Prosecution has successfully proved its case by its evidence beyond reasonable doubt. Hence, there is no merit in the criminal appeal as filed by the accused-appellant Pradeep @ Aman Chaurasaiya, therefore, the same is liable to be rejected.

13. In view of the above arguments and counter arguments advanced on behalf of the accused-appellant and the learned AGA for the State, we have gone through the whole evidence as available on records and we have also perused the finding and reasoning of the learned trial Court in this regard.

14. According to the postmortem report Exhibit Ka-4, which was prepared by Dr. Ghan Shyam Raman PW-7, following ante mortem injuries were found on the dead body of the deceased Abhimanyu:

1. The body was in a moderate condition; rigor mortis was present; eyes and mouth were closed. A ligature mark/swelling measuring about 12 cm * 4 cm was present on the front of the neck.

2. On internal examination, hematoma was found beneath the skin of the neck; the trachea was congested; and the hyoid bone was fractured.

3. The brain weighed about 300 grams. The lungs were congested (right 120g, left 100g). The heart weighed about 90g and contained blood in the right chamber. The stomach contained partially digested food; the small intestine was empty; the large intestine contained fecal matter and gases. The liver, spleen, and kidneys were congested. The urinary bladder was not opened.

4. The time since death was approximately one day prior to the post-mortem.

5. The cause of death was asphyxia due to ante-mortem neck injury. No other external injuries were found on the body. No injuries were found on the feet or head, and no external bleeding was present. No marks of fingernail pressure were found on the hands. The neck injury indicated pressure by a blunt object causing obstruction of breathing.

6. The injury could have been caused on 28.10.2015 at about 11:00 AM.

Thus, from the perusal of the postmortem report of the deceased Abhimanyu, Exhibit Ka-4, it reveals that Abhimanyu was of two years and his death was caused by asphyxia due to ante-mortem neck injury. Thus, from the perusal of the postmortem report Exhibit Ka-4, it is clear that death of the deceased Abhimanyu was homicidal and it was not a natural death.

15. From the perusal of the FIR, Exhibit Ka-3, it is clear that the incident happened on 28.10.2015 at 11:00 am and informant Munni Devi PW-1 has given information by written report

Exhibit Ka-1 immediately to the police station and a case was registered itself on 28.10.2015 at 12:15 PM. Thus, it is amply clear that within one hour and fifteen minutes, informant Munni Devi PW-1, who is the mother of deceased Abhimanyu has lodged the written report promptly at the police station Chiluwatal, District Gorakhpur. From the prompt lodging of the FIR, it is evident that informant Munni Devi PW-1, without any deliberation, consideration and afterthought, has lodged written report against accused-appellant. Thus, we find that there is no deliberation, afterthought, concoction and consideration in lodging the FIR by informant Munni Devi PW-1. In view of this, we find no force in the arguments of learned counsel for the accused-appellant in this respect.

16. The informant Munni Devi PW-1 has deposed in her examination-in-chief that she is the wife of Pradeep @ Aman Chaurasaiya. She is a resident of Village Laxmipur Ekdanga, Police Station Kothibhar, District Maharajganj and she and Pradeep @ Aman Chaurasaiya had been living as husband and wife before one year from the incident. This incident happened on 28.10.2015 at 11:00 am in the day. At the time of incident, we had been living in Nakah No.1, near Scholars School, in a rented house; she was washing the utensils at the home that then my son Abhimanyu who was two years old from the room loud voice of weeping has come, then I ran to the room and saw that my husband Pradeep @ Aman Chaurasaiya was beating my child. Blood was oosing from the mouth and head of my son Abhimanyu; on seeing blood, I began to weep then my husband Pradeep @ Aman Chaurasaiya had ran away from there; After that I weep, cried and seeing the condition of the child, became unconscious; after that on hearing cry, an unknown person of the locality has telephoned and call the police; the above examination-in-chief of the informant Munni Devi PW-1 was recorded on 29.06.2017, her examination-in-chief could not be completed because it has been written that witness become emotional and weeping, due to this, examination-in-chief was deferred for other day. Thus, the learned trial Court has noticed the demeanor of the informant Munni Devi PW-1.

17. Further in her examination-in-chief, informant Munni Devi PW-1 has stated that my son Abhimanyu was about two years of age. He was born from my first husband Mantu, due to this reason, Pradeep @ Aman Chaurasaiya, who is my second husband, had got enmity with my son and always he was beaten and assaulted by him. Even before me, he was assaulted and beating him; I requested him by falling down on his feet and prayed not to beat him, even upon this, he annoyed and beating him; I had got written application with police, who had written the application; I do not remember his name, who has written the application; then I have signed on the application.

18. In her cross-examination informant Munni Devi PW-1 has stated that my first marriage was solemnized with Mantu. I could not tell the name of his father. He was resident of Mahadeva Chhapra Hata, district Kushinagar. This marriage was solemnized eight years back from today. Mantu was working as a carpenter. This work he was doing in Surat (Gujarat); I had stayed with Mantu for eight years, again said that I stayed for five years; after one year of marriage, my son Abhimanyu was born. Name of this child was Abhimanyu. At the time of his death, he was two years old; I had two child, name of the second child is Krishna. Krishna was one year younger from Abhimanyu; my paternal home (Maika) is in Village Laxmipur Ekdanga, P.S. Kothibhar, district Maharajganj; my marriage with Pradeep @ Aman Chaurasaiya was solemnized in a temple. It was not according to the tradition and customs; at the time of marriage, mother and father of Pradeep @ Aman Chaurasaiya were present.

19. In her cross-examination, informant Munni Devi PW-1, has also stated that I had given tahreer of this case at police station. This thing, written in tahreer, is true that on 28.10.2015 at 11:00 am in day, Pradeep @ Aman Chaurasaiya was beating my son in the room; I told this thing to Daroga Ji; I told this thing of beating my son at 11:00 am in day in Court also. Pradeep @ Aman Chaurasaiya had assaulted on the leg of my child on 28.10.2015 at 8:00 am in the morning, due to this reason, he was not able to stand up; after that I went to wash the utensils and came back then Pradeep @ Aman Chaurasaiya was again beating Abhimanyu at 11:00 am. Further, during the course of cross-examination, she also stated that I have taken utensils at 9:00 am morning and went to wash them. When I was washing utensils, voice of weeping came, I rush to the room and saw that Pradeep @ Aman Chaurasaiya was beating my elder child; he dashed him to the floor, raised above and thrown my child, due to which back side of head of my child was injured. Blood was fallen on the floor and spread. Pradeep tried to press the neck of the child and while seeing all this, I became unconscious by weeping. At the time when I came with Pradeep @ Aman Chaurasaiya, the age of Abhimanyu was two years. Pradeep had taken me from the house of my ex-husband; after one year, Pradeep @ Aman Chaurasaiya has killed Abhimanyu; Abhimanyu lived with us for one year. Pradeep had not given food and cloths to him; I provide cloth for his own child; he was doing all things; I had complained to mother and father of Pradeep.

20. Thus, from the perusal of the evidence of informant Munni Devi PW-1, as deposed by her in Court, this fact emerged that firstly she was married with Mantu, who was a resident of Mahadeva Chhapra Hata, district Kushinagar. First marriage of the informant Munni Devi PW-1 was solemnized about eight years before; her ex-husband Mantu was doing carpenter work at Surat (Gujarat); thereafter, after about five years of her first marriage with Mantu, informant Munni Devi PW-1 left her husband Mantu; deceased Abhimanyu was born from wedlock of informant Munni Devi PW-1 with Mantu, by any means and circumstances, she became familiar with accused-appellant. After leaving house of her first husband Mantu, she came with appellant to the house of accused-appellant Pradeep @ Aman Chaurasaiya along with her deceased son Abhimanyu, who was born from her first husband. After leaving her first husband Mantu, informant Munni Devi began to live with accused-appellant. The accused-appellant had taken a rented room in the house of Gheesey Yadav at Nakha No.1, near Scholar School. Informant Munni Devi PW-1, got a second child from her second husband Pradeep @ Aman Chaurasaiya. According to this witness, since deceased Abhimanyu was born from her first husband Mantu, due to this reason, accused-appellant Pradeep @ Aman Chaurasaiya had kept jealousy and enmity with deceased Abhimanyu. According to informant Munni Devi PW-1, accused-appellant often beated and assaulted deceased Abhimanyu. He likes and loved his own second child, who was born from him with the informant Munni Devi PW-1. On the day of incident on 28.10.2015, at 11:00 am in day, informant Munni Devi PW-1, was living in her rented room with Abhimanyu, her first child and with her husband Pradeep @ Aman Chaurasaiya and also with her second child Krishna. At the time of incident, informant Munni Devi PW-1, was washing utensils out of room; when she heard voice of her son Abhimanyu, who was loudly weeping then, on hearing the loud weeping voice of her son, she came in the room and she saw that accused-appellant, Pradeep @ Aman Chaurasaiya was beating the deceased Abhimanyu. Before informant Munni Devi PW-1, accused-appellant pressed the neck of the deceased Abhimanyu, by which he died on the spot. Although, there is contradictions in respect of the time, manner of the incident committed by accused-appellant. However, in view of the above, the contradictions and discrepancies that crept into the cross-examination of the informant Munni Devi PW-1 and that was pointed out by the learned counsel for the accused-appellant, are not found to be major and material contradictions, by reason of which, evidence of this witness could be recorded as false and doubtful. This is a fact that informant Munni Devi PW-1 is mother of the deceased Abhimanyu and the accused-

appellant Pradeep @ Aman Chaurasaiya, was husband of the informant Munni Devi PW-1. For accused-appellant Pradeep @ Aman Chaurasaiya, informant Munni Devi PW-1 has deserted and left her first husband Mantu and began to live as wife after marrying with him at temple. A woman like informant Munni Devi PW-1, who deserted and left her first husband and came to live with the accused-appellant Pradeep @ Aman Chaurasaiya, how and why she falsely implicate her second husband for the murder of her elder child Abhimanyu, aged about two years. In Indian social framework and cultural, traditions of society, a mother would not exonerate and exculpate real culprit and falsely implicate her second husband for whom she had deserted and left her first husband Mantu. We also find that demeanor of informant Munni Devi PW-1 has been noted by the learned trial Court on 29.06.2017, when her examination-in-chief was being recorded in the Court, since by becoming very emotional, she was weeping due to this reason, trial Court adjourned the examination-in-chief of informant Munni Devi PW-1 for next date i.e. 25.01.2018.

21. It is very natural that when a witness states the same thing to different persons on different dates and occasions, a contradiction and inconsistency in the statement of the witness is likely to and naturally would crept into the statements. It is also a natural fact that a mother, like informant Munni Devi PW-1 in this case, whose two years old son Abhimanyu was killed by her own husband accused-appellant Pradeep @ Aman Chaurasaiya, why she falsely implicate her beloved second husband Pradeep @ Aman Chaurasaiya for whom she deserted and left her first husband Mantu.

22. Thus, from the perusal of the whole evidence of this witness, including cross-examination, we find no contradiction, inconsistency, exaggeration or embellishment in the evidence of informant Munni Devi PW-1 of this nature by reason of which, we could doubt the truthful and creditworthy evidence of this witness. Only on the ground of minor contradictions, inconsistencies, exaggeration and embellishment, reliable and trustworthy evidence of the informant Munni Devi PW-1, could not be doubted and rejected. We find that the evidence and testimony of the informant Munni Devi PW-1 as wholly reliable and creditworthy in respect of the prosecution story.

23. The Supreme Court in the case of ***Shyam Sunder Vs. State of Chhattisgarh reported in (2002) 8 SCC 39*** has held on the points of contradictions, inconsistencies, exaggerations or embellishments, that:

"when an incident is narrated by the same person to different persons, on different occasions, some difference in the mode of narrating the incident is bound to arise. However, such difference do not militate against the trustworthiness of the narration unless the variations can be held to be so abnormal or unnatural as would not occur if the witness would have really witnessed what he was narrating"

24. In the light of the legal principles, as laid down by the Supreme Court in **Shyam Sunder** *(supra),* from the perusal of the postmortem report Exhibit Ka-4, which was prepared by Dr. Ghanshyam Raman PW-7, we find that postmortem report of deceased Abhimanyu Exhibit Ka-4, hyoid bone of deceased Abhimanyu was found fractured, meaning thereby that due to heavy pressure by accused-appellant Pradeep @ Aman Chaurasaiya□s hands as informant Munni Devi PW-1, mother of deceased Abhimanyu has also clearly stated in her evidence that accused-appellant Pradeep @ Aman Chaurasaiya had pressed the neck of the deceased Abhimanyu, this fact was also corroborated by Dr. Ghanshyam Raman PW-7, who prepared the postmortem report Exhibit Ka-4 that deceased Abhimanyu□s hyoid bone was fractured, the cause of death was asphyxia due to ante-mortem neck injury. It was found that heavy pressure was applied on the neck, and due to this pressure, breathing had stopped. In this way, we find that in relation to the main incident

that accused-appellant Pradeep @ Aman Chaurasaiya has assaulted and beated the deceased-Abhimanyu, a child of two years of age and forcibly pressed the neck of the deceased, due to which his hyoid bone was fractured and breath was stopped and he died on the spot itself. Thus, we find no force in the arguments of the learned counsel for the accused-appellant in this regard.

25. Prosecution witness Smt. Anita PW-2, although becomes hostile and has not supported the prosecution story, however, from the evidence of this witness, this fact become clearly established that in the house of this witness in the year 2015, an incident happened, the accused-appellant Pradeep @ Aman Chaurasaiya son of Bechu Chaurasaiya was living with his wife Munni Devi and his children as tenant. Munni Devi had a child of two and half years, his name was Abhimanyu. Anita is wife of Dharmendra Yadav, daughter-in-law of Gheese Yadav in whose house accused-appellant was residing with informant Munni Devi PW-1 and his children at the time of the incident. The prosecution witness Dharmendra Yadav son of Gheese Yadav had also proved this fact that in the year 2015, accused-appellant Pradeep @ Aman Chaurasaiya son of Bechu Chaurasaiya was residing with his wife Munni Devi PW-1 and his children in his house and Munni Devi was wife of accused-appellant Pradeep @ Aman Chaurasaiya of whom, had a child of two and half years, whose name was Abhimanyu, suddenly one day he died. How he died, this witness do not know. Thus, from the evidence of hostile witness Dharmendra Yadav PW-3, this fact again being proved and established that in the year 2015 when this incident happened, accused-appellant Pradeep @ Aman Chaurasaiya was living as a tenant with his wife informant Munni Devi PW-1 and his children in a rented room in the house of this witness. From the evidence of hostile witness Gulecha PW-4, the fact of living of Munni Devi PW-1 wife of accused-appellant Pradeep @ Aman Chaurasaiya with her child in the rented room of the house of this witness, also proved.

26. From a perusal of the evidence of Subhash Dhar Dubey PW-5, who ascribed written report Exhibit Ka-1, we find that this witness has also became hostile in the Court and has not supported the prosecution story, but from the evidence of this hostile witness, we find that this witness was also living in a room in the house of same landlord Gheese Yadav and in the same house informant Munni Devi PW-1 wife of accused-appellant Pradeep @ Aman Chaurasaiya was also living with her child Abhimanyu. According to this witness, the incident happened on 28.10.2015 in the morning at 11:00 hours that Munni Devi suddenly began to weep and she began to knock the door thereafter we all people went there in the room and saw that Abhimanyu son of Munni Devi PW-1 was lying dead and Munni Devi was weeping. This witness has accepted in his examination-in-chief that tehreer/written report Exhibit Ka-1 was written by him and name of this witness was written as writer of the tehreer. Although, this witness has accepted in his cross-examination that tehreer was written by him and writing of tehreer is in his writing and name of this witness is written as a writer of the tehreer. However, this witness become hostile and has not supported the prosecution story. During the cross-examination by the defence, this witness has stated that Daroga Ji has as dictated and as told me, I have so and so written the application. On seeing tehreer/written report, Exhibit Ka-1, this witness has stated that I had written the tehreer on the dictation of Daroga Ji.

27. Learned counsel for the accused-appellant during his arguments in Court, heavily hammered on the statement of Subhash Dhar Dubey PW-5 and draw the attention of this Court towards the statement of Subhash Dhar Dubey PW-5. Learned counsel for the accused-appellant has submitted, on the above evidence as given by this hostile witness PW-5 Subhash Dhar Dubey in his cross-examination, that written report Exhibit Ka-1 was written on the dictation of Daroga Ji in the police station, hence whole prosecution story and truthfulness become highly doubtful and suspicious. However, when we see the whole facts and

circumstances of the case, in totality and also in view of the fact that informant Munni Devi PW-1 was a helpless lady when her second husband accused-appellant Pradeep @ Aman Chaurasaiya killed his son Abhimanyu, who is aged about two years and after killing, ran away from the place of incident then family members of the landlord and other tenants living in the same house, came to help and to give consolation to informant Munni Devi PW-1. On the dictation of informant Munni Devi PW-1, Subhash Dhar Dubey PW-5, who was a Purohit by profession performing pooja and other religious rituals at the houses of the peoples, Munni Devi PW-1 dictated and narrated the story to Subhash Dhar Dubey PW-5 and Subhash Dhar Dubey PW-5 had written the written report Exhibit Ka-1, thereafter Munni Devi PW-1, went to police station Chiluwatal and lodged the written report/FIR to the police station with Subhash Dhar Dubey PW-5. At the time of lodging of the FIR, Subhash Dhar Dubey PW-5 was also present at the police station with the informant Munni Devi PW-1. This fact finds corroboration from the prosecution witness Head Muharir Dinesh Kumar Mishra, PW-6 and who registered the FIR on the basis of the written report Exhibit Ka-1. During the cross-examination, Head Muharir Dinesh Kumar Mishra, PW-6 has stated that the complainant alone had not came at police station while with one person Subhash Dhar Dubey had also came, meaning thereby, that informant Munni Devi PW-1 was helpless lady, none came forward to help in this unfortunate incident. Subhash Dhar Dubey PW-5, who was also a tenant in the same house of Gheese Yadav came forward and has written the written report on the dictation of the informant Munni Devi PW-1 and both Munni Devi and Subhash Dhar Dubey PW-5 had went at police station to lodge the FIR.

28. However, when the trial began and evidence was recorded of the prosecution witnesses, all the witnesses of prosecution such as, Anita PW-2, Dharmendra Yadav PW-3, Gulecha PW-4, Subhash Dhar Dubey PW-5 became hostiles. Since informant Munni Devi PW-1 was a helpless lady, who was residing with her husband accused-appellant Pradeep @ Aman Chaurasaiya along with her children in a rented room in the house of Gheese Yadav. Anita PW-2, Dharmendra Yadav PW-3, Gulecha PW-4, were members of the landlord□s family. Subhash Dhar Dubey PW-5 was also a tenant in the same house of Gheese Yadav. All these above prosecution witnesses have not supported the prosecution story and became hostile. Reason for this was that when Munni Devi PW-1 was betrayed by her husband accused-appellant Pradeep @ Aman Chaurasaiya, then seeing this situation and circumstances, prosecution witnesses including the writer of the tehreer Subhash Dhar Dubey PW-5, all have become hostile. Munni Devi PW-1 was a resident of other district then none prosecution witness was desirous and willing to support her and all prosecution witnesses with a view to make a ground for the acquittal of accused-appellant Pradeep @ Aman Chaurasiya, have become hostile and not supported the prosecution case. Prosecution witness, Subhash Dhar Dubey PW-5, writer of the tehree/written report Exhibit Ka-1 also becomes hostile with a view to help the accused-appellant, purposely and intentionally stated in his cross-examination that in the police station on the dictation of Daroga Ji, he had written the tehreer. What was dictated and told by Daroga Ji, so and so was written by me. Subhash Dhar Dubey PW-5 has stated the above facts in his cross-examination falsely and with an intention to make acquittal of the accused-appellant sure and certain. Subhash Dhar Dubey PW-5 with an intention and planning to help accused-appellant Pradeep @ Aman Chaurasaiya, has stated this false statement in his cross-examination. Thus, Subhash Dhar Dubey PW-5 has stated the above statement in his evidence with a view that by his above statement, all prosecution story would become suspicious and doubtful and shall fall to the ground, but from a perusal of the above statement of hostile prosecution witness Subhash Dhar Dubey PW-5, we find that accused-appellant Pradeep @ Aman Chaurasaiya is not entitled and eligible for any benefit from the statement of Subhash Dhar Dubey PW-5 about the manner in which the tehreer Exhibit Ka-1 was written at police station. Thus, from the above discussions, we are of the considered opinion that only on the statement of Subhash Dhar Dubey PW-5 in respect of the written report Exhibit-Ka-

1 and few minor contradictions and inconsistencies in evidence of informant Munni Devi PW-1, it is not legal to reject the prosecution story and reliable, creditworthy evidence of informant Munni Devi PW-1.

29. In view of the above discussion, we find that accused-appellant would not get any benefit on this ground that Subhash Dhar Dubey PW-5 has stated that he has written tehreer Exhibit Ka-1 on the dictation of Daroga Ji because Subhash Dhar Dubey PW-5 has stated the above statement after becoming hostile and he has not supported the prosecution case. Thus, we find that when informant Munni Devi PW-1 was betrayed by her second husband accused-appellant Pradeep @ Aman Chaurasaiya, then the prosecution witnesses, such as Anita PW-2, Dharmendra Yadav PW-3, Gulecha PW-4, Subhash Dhar Dubey PW-5, all have also betrayed to Munni Devi and tried to ensure acquittal of the accused-appellant Pradeep @ Aman Chaurasaiya by becoming hostile. Thus, therefore, in the light of the above discussion, we find no force in the submissions advanced by learned counsel for the accused-appellant in this respect.

30. Although, no other prosecution witnesses have supported the prosecution story except informant Munni Devi PW-1. However, at the time of incident, Munni Devi was present with accused-appellant and her deceased child Abhimanyu in the room where incident happened, meaning thereby that Munni Devi is a helpless and sole witness, who testified and proved the prosecution story in respect of her deceased child Abhimanyu. A mother of deceased child, such as Munni Devi PW-1 would not spare real culprit of the crime and would not falsely implicate his second husband Pradeep @ Aman Chaurasaiya, for whom she has deserted and left her first husband Mantu and his family. We find that from the evidence of sole witness, informant Munni Devi PW-1, there is an ample reliable evidence against accused-appellant in respect of his alleged commission of the crime. The evidence of informant Munni Devi PW-1 is trustworthy, reliable that inspires confidence as credible and truthfulness.

31. In the case of ***State of Rajasthan Vs. Smt. Kalki and Another reported in (1981) 2 SCC 752,*** the Supreme Court has held on the point of interested witness in paragraphs 7 and 8, which are as under:

"7. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

8….. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected

of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1."

32. In the case of ***Sucha Singh and Another Vs. State of Punjab (2003) 7 SCC 643,*** the Supreme Court has held in paragraph-13 of the judgment that:

"Relation is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible"

33. Thus, in the light of the legal principles as laid down by the Supreme Court in the above cases, we find that although informant Munni Devi PW-1 is the sole and related witness in this case because she was mother of the deceased Abhimanyu, but this is also a fact that she is the wife of the accused-appellant Pradeep @ Aman Chaurasaiya, the evidence and testimony of informant are wholly reliable and trustworthy. She has fully supported and has given evidence against her husband Pradeep @ Aman Chaurasaiya, who killed her son Abhimanyu aged about two years, no woman of the Indian culture would falsely implicate her husband. Prosecution story has also find support and corroboration from the statements of Investigating Officer Ram Pal Yadav PW-8 in his cross-examination, he stated that evidence was found that in the room of incident, informant Munni Devi PW-1 and accused-appellant Pradeep @ Aman Chaurasaiya was residing. In the light of the above discussion, we find no force in the submissions advanced by learned counsel for the accused-appellant in this respect.

34. We have also gone through the finding and reasoning as given by the learned trial Court in its judgment and order dated 27.05.2022. The learned trial Court has given cogent and reliable findings and reasoning based on the prosecution evidence such as informant Munni Devi PW-1. We find no infirmity, illegality or perversity in the judgment and order of conviction and sentence of the trial Court dated 27.05.2022. In view of this, we find that the judgment and order of conviction and sentence passed by the trial Court requires no interference by this Court. We also find that the judgment and order dated 27.05.2022 of conviction and sentence of trial Court is liable to be affirmed.

35. In the light of the above discussion, we are of the view that criminal appeal as filed by the accused-appellant Pradeep @ Aman Chaurasaiya is devoid of merit and hence liable to be **rejected.** We, therefore, *affirmed* the judgment and order of the trial Court dated 27.05.2022 as passed in Sessions Trial No. 40 of 2016 State Vs. Pradeep @ Aman Chaurasaiya in Crime No. 431 of 2015, under Section 302 IPC., Police Station Chiluwatal, District Gorakhpur.

36. The criminal appeal filed by accused-appellant Pradeep @ Aman Chaurasaiya is **dismissed**, as being devoid of merit. The accused-appellant is in jail since 31.10.2015.

37. Let a copy of this judgment be transmitted to the learned Trial Court along with the lower Court records forthwith for necessary compliance.

(2026) 7 ILRA 428
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 07.07.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Application U/S 378 No. 196 of 2019

State of U.P. ...Applicant
Versus
Babloo @ Ashok Singh & Anr. ...Opposite Parties

Issue for Consideration

Matter pertains to an appeal against acquittal and the extent of power and jurisdiction of the High Court while considering an appeal against an order of acquittal, particularly where the trial Court has taken a possible view on appreciation of the entire evidence on record and whether such view can be substituted by another view merely because a different view is possible. (Paras 15-21).

Headnotes

Criminal Law - Code of Criminal Procedure, 1973 - S. 378 - Appeal against acquittal - Power and jurisdiction of High Court - Possible view taken by trial Court - Interference - Held, the power of scrutiny exercisable by the High Court under S. 378, CrPC should not be routinely invoked where the view formed by the trial Court was a possible view - Judgment of trial Court cannot be set aside merely because High Court finds its own view more probable, save where judgment suffers from perversity or conclusions drawn were impossible if there was a correct reading and analysis of evidence on record - Unless there is complete misreading of material evidence leading to miscarriage of justice, the view taken by trial Court which can also possibly be a correct view, need not be interfered with - Self-restraint doctrine does not denude High Court of its powers to re-appreciate evidence and arrive at a different firm finding of fact. (Paras 15-19).

Criminal Law - Code of Criminal Procedure, 1973 - S. 378 - Appeal against acquittal - Presumption of innocence - Double presumption - If two reasonable conclusions are possible on basis of evidence on record, appellate Court should not disturb finding of acquittal recorded by trial Court - Trial Court's acquittal bolsters presumption of innocence - Interference permissible in exceptional cases where there are compelling circumstances and judgment under appeal is found to be perverse - Routine interference where other view is possible should be avoided unless there are good reasons for interference. (Paras 18-19).

Criminal Law - Code of Criminal Procedure, 1973 - S. 378 - Appeal against acquittal - Appreciation of evidence - Material discrepancy in testimony - Absence of injury - Absence of independent witness - Trial Court having taken possible view on appreciation of entire evidence - High Court declining to substitute its own view - Leave to appeal rejected and government appeal dismissed. (Paras 20-21).

Held: The power of scrutiny exercisable by the High Court under S. 378, CrPC should not be routinely invoked where the view formed by the trial Court was a possible view - the judgment of the trial Court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial Court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading

and analysis of the evidence on record - unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial Court which can also possibly be a correct view, need not be interfered with - the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible - while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable - in case of acquittal, there is double presumption in favour of the accused - if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court - in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal - the appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence - on perusal of record, the trial Court had thoroughly analysed the testimony and specifically discussed the evidence, the absence of external or internal injury on the private part, the absence of independent witness and the material discrepancy in the statement regarding commission of rape - the trial Court had taken a possible view of the matter on appreciation of entire evidence on record, which could not be substituted by the High Court taking a different view - accordingly, it was not a case worth granting leave to appeal and the application for granting leave to appeal was rejected - consequently, the present government appeal was also dismissed. (Paras 15-21). (E-7)

Case Law Cited

Bannareddy and others vs. State of Karnataka and others, **(2018) 5 SCC 790***; Jayamma vs. State of Karnataka,* **2021 (6) SCC 213***; Virendra Singh vs. State of UP and others,* **2022 (3) ADJ 354 DB***; Babu vs. State of Kerala* **(2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179***; Balak Ram v. State of U.P.* **AIR 1974 SC 2165***; Shambhoo Missir & Anr. v. State of Bihar* **AIR 1991 SC 315***; Shailendra Pratap & Anr. v. State of U.P.* **AIR 2003 SC 1104***; Narendra Singh v. State of M.P.* **(2004) 10 SCC 699***; Budh Singh & Ors. v. State of U.P.* **AIR 2006 SC 2500***; State of U.P. v. Ramveer Singh* **AIR 2007 SC 3075***; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.* **AIR 2008 SC 2066***; Arulvelu & Anr. Vs. State* **(2009) 10 SCC 206***; Perla Somasekhara Reddy & Ors. v. State of A.P.* **(2009) 16 SCC 98***; Ram Singh alias Chhaju v. State of Himachal Pradesh* **(2010) 2 SCC 445***; Sheo Swarup and Ors. King Emperor* **AIR 1934 PC 227***; Tulsiram Kanu v. The State* **AIR 1954 SC 1***; Balbir Singh v. State of Punjab* **AIR 1957 SC 216***; M.G. Agarwal v. State of Maharashtra* **AIR 1963 SC 200***; Khedu Mohton & Ors. v. State of Bihar* **AIR 1970 SC 66***; Sambasivan and Ors. State of Kerala* **(1998) 5 SCC 412***; Bhagwan Singh and Ors. v. State of M.P.* **(2002) 4 SCC 85***; State of Goa v. Sanjay Thakran and Anr.* **(2007) 3 SCC 755***; Chandrappa and Ors. v. State of Karnataka* **(2007) 4 SCC 415***; Ghurey Lal v. State of Uttar Pradesh* **(2008) 10 SCC 450***; State of Rajasthan v. Naresh @ Ram Naresh* **(2009) 9 SCC 368***; State of Uttar Pradesh v. Banne alias Baijnath & Ors.* **(2009) 4 SCC 271***; Dhanapal v. State by Public Prosecutor, Madras* **(2009) 10 SCC 401***; Ramesh Babulal Doshi vs. State of Gujarat* **(1996) 9 SCC 225 : 1996 SCC (Cri) 972;** *Anwar Ali and another vs. State of Himachal Pradesh* **(2020) 10 SCC 166;** *Nagabhushan vs. State of Karnataka* **(2021) 5 SCC 222***; Achhar Singh vs. State of Himachal Pradesh* **(2021) 5 SCC 543***; Rajesh Prasad vs. State of Bihar and another,* **(2022) 3 SCC 471.**

List of Acts

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

List of Keywords

appeal against acquittal; power of scrutiny; High Court; possible view; perversity; complete misreading of material evidence; miscarriage of justice; re-appreciate the evidence; double presumption; presumption of innocence; compelling circumstances; appellate court; entire evidence on record; material discrepancy; independent witness; benefit of doubt; judgment of acquittal; leave to appeal; government appeal; possible view of the matter

Case Arising From

APPELLATE JURISDICTION: Government appeal preferred by the State against the judgment and order dated 23.07.2019 passed by the Additional Sessions Judge/Fast Track Court, Court No.1, Gonda in Sessions Trial No.

443 of 2016, arising out of Case Crime No. 87 of 2014, under Ss. 376, 323/34, 452 IPC, Police Station Umri Begumganj, District Gonda, whereby the accused were convicted under S. 323 IPC while acquittal was recorded in respect of the charges under Ss. 376 and 452 IPC and S. 452 IPC respectively.

Appearances for Parties

Advs. for the Appellant:
Sri Anurag Verma, learned AGA appearing for the appellant-State of UP.
Advs. for the Respondents:
No appearance for the opposite parties is recorded in the judgment.

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

Re: Criminal Misc. Application (Leave to Appeal)

1. Heard Sri Anurag Verma, learned AGA appearing for the appellant-State of UP and perused the record.

2. The present government appeal has been preferred by the State against the judgment and order dated 23.07.2019 passed by Additional Sessions Judge/Fast Track Court, Court No.1, Gonda in Sessions Trial No. 443 of 2016, arising out of Case Crime No. 87 of 2014, under Sections 376, 323/34, 452 of Indian Penal Code (herein after referred to as 'IPC' Police Station Umri Begumganj, District Gonda.

3. By the impugned judgment dated 23.07.2019 passed in Sessions Trial No. 443 of 2016, the accused Babloo @ Ashok Singh and Maksoodan were convicted for the offence under Section 323 of I.P.C. while the accused Babloo @ Ashok Singh was acquitted of the charge of Sections 376 and 452 of IPC and accused Maksoodan was also acquitted of the charge of Section 452 of IPC.

4. Being aggrieved and dissatisfied by the order of acquittal, the State has filed this appeal along with application under Section 378(3) of Cr.P.C. for grant of leave to appeal against the said judgment.

5. Prosecution story, in brief, is that on 12.04.2014 at about 7.00 p.m. in the evening accused/opposite party No.1-Babloo @ Ashok Singh entered into the house of the informant/victim and caught her hand, pulled her in the "kothri", where victim was undressed and accused molested her. Upon hue and cry, victim's husband and father-in-law rushed to save her, then accused/opposite party No.2-Maksoodan started to beat them. Victim□s husband and her father-in-law ran towards the room, then accused entered there and inflicted blows to them.

6. On the basis of written information given by the informant, First Information Report (herein after referred to as 'FIR') against accused persons Babloo @ Ashok Singh and Maksoodan had been lodged under Sections 376, 323 and 452 of IPC.

7. During the course of investigation, statement of victim and witnesses were recorded. The victim was medically examined and after concluding the investigation, the Investigating Officer filed the charge-sheet against the accused persons for the aforesaid offences.

8. After compliance of mandatory provision of Section 207 of Code of Criminal Procedure (herein after referred to as 'CrPC'), the said case was committed to the Court of Session Judge from where it is made over to the Additional Sessions Judge/Fast Track Court, Court No.1, Gonda for trial, who framed the charges against the accused Babloo @ Ashok Singh under Section 376, 323 and 452 IPC and against accused Maksoodan charge was framed under Sections 452, 323 of the IPC only for which the accused persons denied and claimed to be tried.

9. In order to prove its case, the prosecution has adduced ocular evidence of victim/informant PW-1, Radhe PW-2, Dr. Karuna Gupta PW-3, Investigating Officer Awadesh Singh PW-4, Dr. V.K.Gupta PW-5, Lady Constable Neha Singh PW-6 and Head Constable Sachhidanand Mishra PW-7.

10. After hearing the learned counsel for the parties and perusing the material available on record, the learned trial court found that the charges against the accused, Babloo @ Ashok Singh and Maksoodan for the offence under Section 323 of I.P.C. were proved. Therefore, they were held guilty of the offence under Section 323 of the IPC. Conversely, the charge under Section 376/452 against the accused Babloo @ Ashok Singh, and the charge under Section 452 against Maksoodan, were not proved. Consequently, the court acquitted Babloo @ Ashok Singh for the offences under Sections 376 and 452 of the IPC, and acquitted Maksoodan for the offence, under Section 452 of the IPC.

11. The judgment of acquittal was passed on the ground that prosecution version is not innocent since the alleged incident is stated to be happened in the evening at 7.00 p.m. while all family members of the victim were present there, therefore, it was not possible for accused to drag the victim and commit rape on her. Learned trial Court also observed that victim is a married lady having five children. She has stated that accused thrown her and thereafter dragged and then committed rape on her, but Dr. Karuna Gupta PW-3 did not find any external or internal injury on the person of the victim and no abrasion or marks of injury on the back of the victim was found. Learned trial Court also observed that there are major inconsistencies and discrepancies in the testimony of the witnesses, which is not corroborated by any cogent and reliable evidence. Learned trial Court also observed that a scuffle between the accused and informant/victim took place on some issue and accused persons inflicted blows with a piece of brick on her head and one injury was found on the head of the victim.

12. Learned trial Court also indicated that in the statement given by Dr. Karuna Gupta PW-3, no external or internal injury on the private parts of the victim was found and at the time to alleged incident in the evening all the family members were present on the spot, then it was un-believeable and impossible to commit rape on the victim. Learned trial court further found that there was material contradiction and shifting of stand in the statement of victim, her statement was not wroth belief. Under such circumstances, the trial Court found that the prosecution could not prove its case beyond reasonable doubt and the accused persons were given benefit of doubt and judgment of acquittal was passed.

13. Challenging to this impugned judgment, Sri Anurag Verma, learned AGA submits that the trial Court has erred in appreciating the evidence on record. He further submits that it is very

ridiculous that learned trial Court accepts partial evidence of the victim while disbelieved the remaining portion of the testimony of the victim. He also submitted that evidence of the victim must be read in totality and victim has categorically stated that accused Babloo has committed rape on her and both the accused persons after entering into the room made assault also. The victim has supported the prosecution version in her statement recorded under Section 164 of CrPC and testimony given before the trial Court. He further submits that the learned trial Court has given undue weightage to the evidence of defence evidence and has wrongly ignored the prosecution evidence. He further submits that the witnesses are intact and have corroborated the prosecution case and the findings recorded by the learned trial Court is not one of the possible view. Submission, therefore, is that the judgment and order of acquittal passed by the trial Court requires serious consideration and reversal and the accused persons herein are liable to be convicted.

14. We have considered the submissions and have perused the record.

15. Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

16. In the case of **Bannareddy and others vs. State of Karnataka and others**, (2018) 5 SCC 790, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities"

17. In **Jayamma vs. State of Karnataka**, 2021 (6) SCC 213, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against against an order of acquittal passed by a Trial Court in the following words:

"The power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a "possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact."

18. In a judgment of this Court in **Virendra Singh vs. State of UP and others**, 2022 (3) ADJ 354 DB, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

"10. In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court

were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; Shambhoo Missir & Anr. v. State of Bihar AIR 1991 SC 315; Shailendra Pratap & Anr. v. State of U.P. AIR 2003 SC 1104; Narendra Singh v. State of M.P. (2004) 10 SCC 699; Budh Singh & Ors. v. State of U.P. AIR 2006 SC 2500; State of U.P. v. Ramveer Singh AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors. AIR 2008 SC 2066; Arulvelu & Anr. Vs. State (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P. (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh (2010) 2 SCC 445).

13. In Sheo Swarup and Ors. King Emperor AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses…."

14. The aforesaid principle of law has consistently been followed by this Court. (See: Tulsiram Kanu v. The State AIR 1954 SC 1; Balbir Singh v. State of Punjab AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200; Khedu Mohton & Ors. v. State of Bihar AIR 1970 SC 66; Sambasivan and Ors. State of Kerala (1998) 5 SCC 412; Bhagwan Singh and Ors. v. State of M.P. (2002) 4 SCC 85; and State of Goa v. Sanjay Thakran and Anr. (2007) 3 SCC 755).

15. In Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, this Court re-iterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh @ Ram Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of Uttar Pradesh v. Banne alias Baijnath & Ors. (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in Dhanapal v. State by Public Prosecutor, Madras (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

11. Hon'ble Apex Court in the case of ***Ramesh Babulal Doshi vs. State of Gujarat*** *(1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.*

12. The aforesaid judgments were taken note of with approval by Supreme Court in the case of Anwar Ali and another vs. State of Himachal Pradesh (2020) 10 SCC 166, Nagabhushan vs. State of Karnataka (2021) 5 SCC 222, and Babu (supra) in Achhar Singh vs. State of Himachal Pradesh (2021) 5 SCC 543."

19. Similar view has been reiterated by Hon'ble Apex Court in **Rajesh Prasad vs. State of Bihar and another**, (2022) 3 SCC 471.

20. On perusal of record we find that the learned trial Court has thoroughly analyze the testimony of the victim and specifically discussed that the victim was married woman having five children and at the time of alleged incident kids of the victim and her other family member were present in the house, therefore, it was not possible in any manner to pull and drag the victim and thereafter commission of rape. We further find that it is not the statement of the victim that she raised any alarm to attract the attention of the family members and other neighbours. PW-3 Dr. Karuna Gupta has stated that no external or internal injury was found on the private part of the victim. It is noticiable that no independent witness has been examined in support of the prosecution case while defence witness Praveen Singh DW-1 and Ram Bahadur DW-2 has stated that due to village rivalry and election enmity accused persons were implicated in this false case while no such type of incident had taken place. On close scrutiny, we also find that there is material discrepancy in the statement of the victim with regard to commission of rape and she is not a sterling witness on this point. In such view of the matter, we, therefore, find that the trail Court has taken possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court taking a different view as per the law discussed above.

21. Accordingly, it is not a case worth granting leave to appeal. The application for granting leave to appeal is rejected.

Re: Government Appeal

1. Consequently, since the Criminal Misc. Application (Leave to Appeal) has been rejected by order of date, the present government appeal is also dismissed.

(2026) 7 ILRA 436
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.07.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ C No. 50467 of 2016 along with connected cases

Anil Verma **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether a Medical Representative would be considered a workman under the U.P. Industrial Disputes Act, 1947 read with the Sales Promotion Employees (Conditions of Services) Act, 1976. The Court was required to consider the correctness of the view taken by a coordinate Bench that a Medical Representative would be deemed to be a workman and to determine the effect of the authoritative decisions on the issue. (Paras 2, 6-13).

Headnotes

Industrial Disputes - U.P. Industrial Disputes Act, 1947 - S. 2(s) - Sales Promotion Employees (Conditions of Service) Act, 1976 - S. 6(2) - Medical Representative/Sales Promotion Officer - Workman - Definition - Medical Representatives engaged in promotion of sales do not perform work falling within the categories of manual, unskilled, skilled, technical, operational, clerical or supervisory work - Work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the definition - Held, Medical Representative/Sales Promotion Officer does not fall within the definition of workman. (Paras 2, 11-13).

Industrial Disputes - U.P. Industrial Disputes Act, 1947 - S. 2(s) - Test for determining workman - Nature of industry - Type of work - Organisational set up - Medical Representative - Primary duty of visiting doctors, chemists and stockists and promoting sale of products - Work cannot be said to be manual or clerical - Medical Representative cannot be treated to be a workman. (Para 14).

Industrial Disputes - Sales Promotion Employees (Conditions of Service) Act, 1976 - S. 6(2) - Applicability of Industrial Disputes Act, 1947 - Medical Representative - Deeming provision - Provisions of the Industrial Disputes Act apply to sales promotion employees as they apply to workmen within the meaning of that Act - Such provision does not enlarge the definition of workman under S. 2(s) - Medical Representative must independently satisfy the statutory categories of workman. (Paras 11-13).

Industrial Disputes - Medical Representative - Skilled or technical work - Ejusdem generis - Work of promotion of sales - Distinct from and independent of the types of work covered by the definition - Medical Representatives do not perform duties of skilled or technical nature - Contention that Medical Representatives are workmen rejected. (Paras 10, 13).

Industrial Disputes - Precedent - Article 142 of the Constitution - Medical Representative - Direction to treat complaint as industrial dispute - Exercise of powers under Article 142 - Direction does not constitute a precedent for holding Medical Representatives to be workmen. (Para 7).

Industrial Disputes - Judicial precedent - Coordinate Bench - Conflicting decisions - Correct reading of Supreme Court judgment - Authoritative decisions of Division Benches having more persuasive value - Coordinate Bench decision not followed where findings were not based on correct reading of the Supreme Court judgment. (Paras 6, 8, 9, 13).

Held: Medical Representative/Sales Promotion Officer do not fall within the definition of a Workman - the position in law is that a person to be a workman under the Industrial Disputes Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory and it is not enough that he is not covered by either of the four exceptions to the definition - the work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition - the contention that the medical representatives were employed to do skilled work within the meaning of the said definition has to be rejected - as regards the technical nature of their work, it has been expressly rejected - the finding returned by the coordinate Bench that medical representative would be deemed to be a workman was not based on correct reading of the authoritative judgment - the Supreme Court had held that medical representatives are not workmen within the meaning of the Maharashtra Act and the direction issued in exercise of Article 142 of the Constitution to treat the complaint as an industrial dispute does not hold that it would be treated as a precedence - directly authoritative decisions by Division Benches having more persuasive value supported the view that a Medical Representative is not a workman - the Court had no reason to take any other view or to follow the view taken by the coordinate Bench - accordingly, all writ petitions are devoid of merit, hence, dismissed. (Paras 2, 6-14). (E-7)

Case Law Cited

M/s Nicholas Piramal India Ltd. And others vs. Presiding Officer, Labour Court, Lko and others, **Writ C No. 1004529/2007***; H.R. Adyanthaya and others vs. Sandoz (India) Ltd. and others,* **(1994) 5 SCC 737***; M/S Pfizer Ltd. Vs. State of U.P. and Others ,***Writ C No. 68844 of 2009***; S.G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. vs. U.P. Pademwar and others,* **1992 Mh.L.J. 1333***; Novartis India Ltd. vs. Vipin Srivastava and others,* **2018 SCC Online MP 1931***; Sh. Samrendra Das vs. M/s Win Medicare Pvt. Ltd.,* **2025:DHC:8918***; Jyoti Kumar vs. M/s Zydus Healthcare Ltd and others,* **2026:MPHC-IND:1897***; D. S. Nagaraj vs. The Labour Officer, Kurnool,* **1972 (II) Andhra Weekly Reporter 126***; J. and J. Dechane Distributors vs. State of Kerala and others; John Wyeth and Brother Ltd. vs. Industrial Tribunal, Alleppey,* **177 L.I.C. 1997;** *N. J. Josheph vs. Labour Court,* **1987 (60) FLR 134***; Premier Irrigation Equipment (Pvt.) Ltd. vs. Labour Court, Delhi,* **1973 (Vol. I) L.L.N. 333***; Shalimar Paints Ltd. vs. Third Industrial Tribunal,* **1974 L.I.C. 213***; M/s. Kirloskar Brothers Ltd. vs. The Presiding Officer, Labour Court,* **1976 L.J.C. 918***; Jugal Kishore Mittal vs. The Management of Sasta Sahitya Mandal,* **1987 (1) LLJ 231***; Ford Motor Company of India Ltd. v. Ford Motors Staff Union,* **(1953) 2 LLJ 344 (LATI.-Bom.)***; All India Reserve Bank Employees' Association v. Reserve Bank of India,* **AIR 1966 SC 305***; Lloyds Bank Ltd. v. Pannalal Gupta,* **(1961) 1 LLJ 18 (SC)***; Samat Kumar v. Parke Davis India Ltd.,* **(1997) 2 JLJ 353;** *Miss A. Sundarambal v. Govt. of Goa, Daman & Diu,* **(1988) 4 SCC 42: AIR 1988 SC 1700***; German Remedies Limited's case, H.R. Adyanthaya v. Sandoz (India) Ltd.,* **(1994) 2 CLR 552 (S.C.): [(1994) 5 SCC 737];** *Dolphin Laboratories Ltd. v. Judge, Labour Court, Udaipur and Another,* **2001-II-LLJ-559 (Raj.)***; Ripu Daman Bhanot v. Presiding Officer, Labour Court, Ludhiana and Ors.,* **1997-I-LLJ-557 (P&H)***; Deepak Kumar v. State of Bihar,* **(2016) 149 FLR 528***; Petcare Division of Tetragon Chemie Pvt. Ltd. vs. M.P. Medical and Sales Representatives Association and another,* **W.A.No.922 of 2006***; Chauharya Tripathi & others Vs. Life Insurance Corporation of India & others,* **(2015) 7 SCC 263***; Nalin Sinha Vs. The State of Bihar,* **L.P.A. No. 1430/2009***; Rhone-Poulenc (India) Ltd. v. The State of U.P.,* **(2000) 7 SCC 675: AIR 2000 SC 3182.**

List of Acts

U.P. Industrial Disputes Act, 1947; Sales Promotion Employees (Conditions of Service) Act, 1976; Industrial Disputes Act, 1947; Industrial Disputes (Amendment) Act, 1982; Workmen's Compensation Act, 1923; Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971; Constitution of India.

List of Keywords

Medical Representative; Sales Promotion Officer; workman; Sales Promotion Employees; Industrial Disputes; promotion of sales; sales promotion employee; manual; unskilled; skilled; technical; operational; clerical; supervisory; managerial capacity; administrative capacity; workman; persuasive skills; sales target; ejusdem generis; Article 142; industrial dispute; Labour Court; Industrial Tribunal; authoritative decision; persuasive value; coordinate Bench; Constitution Bench; Division Bench; Medical Representatives; Sales Promotion Officer.

Case Arising From

ORIGINAL JURISDICTION: Writ petitions challenging the award of the Tribunal treating the Medical Representative as a workman.

Appearances for Parties

Advs. for the Appellant:

Sri Harshit Pathak along with Sri Abhijeet Chatterjee and Ms. Stuti Rai, learned advocates for petitioners in Writ-C No. 50467 of 2016; Petitioner-in-Person; Sri Akshat Sinha, learned advocate for petitioner in Writ C No. 27546/2025 and Writ C No. 42207/2019 respectively.

Advs. for the Respondents:

Sri Shyam Singh learned Standing Counsel for State; Sri Bidhan Chandra Rai, learned counsel for respondents in both writ petitions.

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

1. Heard Sri Harshit Pathak along with Sri Abhijeet Chatterjee and Ms. Stuti Rai, learned advocates for petitioner in Writ- C No. - 50467 of 2016, Petitioner-in-Person and Sri Akshat Sinha, learned advocate for petitioner in Writ C No. 27546/2025 and Writ C No. 42207/2019 respectively, Sri Shyam Singh, learned Standing Counsel for State and Sri Bidhan Chandra Rai, learned counsel for respondents in both writ petitions.

2. The issue for consideration in present matter is 'whether a medical representative would be considered a 'workman' under the provisions of U.P. Industrial Disputes Act, 1947 (hereinafter referred as 'Act of 1947') r/w provisions of Sales Promotion Employees (Conditions of Services) Act, 1976 (hereinafter referred as 'Act of 1976').

3. Learned advocates for parties have placed reliance upon various judgments passed by the Supreme Court, this Court as well as other High Courts on above issue.

4. Learned advocates for petitioners have placed reliance upon judgment passed by a Co-ordinate Bench in **M/s Nicholas Piramal India Ltd. And others vs. Presiding Officer, Labour Court, Lko and others, (Writ C No. 1004529/2007 decided on 23.11.2023)** a judgment passed by Supereme Court in **H.R. Adyanthaya and others vs. Sandoz (India) Ltd. and others, (1994) 5 SCC 737** and a judgment passed by a Co-ordinate Bench in **M/S Pfizer Ltd. Vs. State of U.P. and Others (Writ C No. 68844 of 2009, decided on 26.03.2010)** relevant parts of above judgments are quoted below :-

Nicholas Piramal India Ltd. (supra) :-

"31. We are in agreement with the view taken by the Bombay High Court in the case of S.G. Pharmaceuticals (supra) and it is thus clear that as per section 6(2) of Sales Promotion

Employees (Conditions of Service) Act, 1976, the medical representatives are 'workman' under the Industrial disputes Act, 1947. Further in the case of H.R. Adyanthaya v. Sandoz (India) Ltd, 1994 SCC (5) 737 it was further made clear that the 1976 Act after its amendment in the year 1986 by the Amending Act No. 48 of 1986 which came into effect w.e.f. 06.05.1987 expanded the definition of sales promotion employee to include all sales promotion employees without any ceiling on their wages, except those employed in supervisory capacity drawing wages exceeding Rs 1600 per men sem and those employed or engaged mainly in managerial or administrative capacity.

32. Thus, after 06.05.1987 all the medical representatives were declared to be workmen without limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

33. In light of the aforesaid discussion this Court is of the considered view that after coming into force of Sales Promotion Employees (conditions of service) Act, 1976 the medical representatives would be deemed to be workmen as per the provisions of Industrial Disputes act and accordingly the argument of the petitioners is rejected in this regard."

H.R. Adhyanthaya (supra) :-

"31. It also appears that Parliament has amended the definition of 'industry' by the Amending Act 46 of 1982 to include, in the definition of industry in Section 2(j) of the ID Act, among others, any activity relating to the promotion of sales or business, or both carried on by any establishment. However, that amendment has not yet come into force. But the amendment made by the very same Amending Act of 1982 to the definition of 'workman' in Section 2(s) to include those employed to do 'operational work', and to the definition of 'wages' in Section 2(rr) to include "any commission payable on the promotion of sales or business or both" has come into force w.e.f. 21-8-1984.

39. We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellant-workmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court.

40. Although we hold that the complaint filed by the workmen is not maintainable under the Maharashtra Act, we are of the view that taking into consideration the fact that a long time has lapsed since the filing of the complaint, it is necessary that we exercise our powers under Article 142 of the Constitution, which we do hereby and direct the State Government to treat the employee's said complaint as an industrial dispute under the ID Act and refer the same under Section 10(1)(d) of the said Act to the Industrial Tribunal, Bombay within four weeks from today. The Industrial Tribunal shall dispose of the reference within six months of the date of reference.

M/S Pfizer Ltd.(Supra)

The question is whether the said approach of the Tribunal, on the facts of the present case, is justified or is legally tenable and can be allowed to stand.

Admittedly, the respondent no. 3 was appointed as Area Sales Manager through the appointment letter dated 12-2-1997. The said appointment letter recites that he is being promoted to the post of 'Area Sales Manager in the Management Cadre of the Company'. It further recites that he is placed in 'Management Grade M-5'. Its clause 9(A) entitles him to join Parke-Davis (India)

Ltd. Management (Staff) Superannuation Scheme, the Gratuity Scheme for the Employees in Management Cadre and Group Hospitalization and Surgical Insurance Policy, applicable to the Management Staff in accordance with the Rules of these Schemes. The appointment letter itself, in the absence of anything to the contrary, shows that the respondent no. 3 was appointed in managerial capacity. The said appointment letter has been accepted by the respondent no. 3 with his wide open eyes. Even if it is accepted that he had no right to grant leave to the Medical Service Representatives or to initiate disciplinary action against them, the fact remains that the disciplinary action, promotion etc. of them were dependant and subject to the recommendations made by him. The said capacity cannot be disputed and is fully established from various documents, referred to above, which are on the record. The explanation that these letters were written under pressure is only a defence for the sake of defence. The Tribunal has misdirected itself and has not taken into consideration the appointment letter of the respondent no. 3 coupled with the other documents written by him (Ex. 22 to 25), referred to above, in right earnest .

At this stage, the contention of the learned counsel for the respondent no. 3 is that the definition of 'workman' as given under the U.P. Industrial Disputes Act is not at all relevant and if the respondent no. 3 is treated as 'Sales Promotion Employee' within the meaning of 1976 Act read with Section 6(2) thereof, the award of the Tribunal, impugned in the present writ petition, treating him as a 'workman' is perfectly justified.

The question whether the Medical Representatives are 'workman' within the meaning of U.P. Industrial Disputes Act , 1947 has been subject matter of consideration before the Apex Court from time to time. The earliest one is May & Baker (India) Ltd. Vs. Their Workmen, AIR 1967 SC 678. The said case arose under un-amended definition of 'workman' as contained under Industrial Disputes Act. The Apex Court found on the basis of undisputed nature of duty of such employees that the main work was that of "canvassing sales". Any clerical or manual work that he had to do was incidental to the said main work and could not take more than a small fraction of time for which he had to work. It may be noted that in the above case the dispute had arisen prior to 6-1-1956. The definition of 'workman' at the relevant point of time included only those persons who were employed to do any skilled or unskilled manual or clerical work, as a result thereof, the persons engaged in sales promotion do not come within the purview of definition of 'workman' under the Industrial Disputes Act and as such, they had no protection regarding security of their employment and other benefits under that Act. A demand was raised by such Medical Representatives to make necessary amendment in the Industrial Disputes Act. The Central Government considered it fit and proper to enact another 'Act' namely Sales Promotion Employees (Conditions of Service) Act 1976, instead. The aforesaid Act has been enacted with a view and object to protect the interest of the Medical Representatives engaged in sales promotion.

The amended provision came up for consideration before the Supreme Court and it has been held in H.R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. AIR 1994 Supreme Court 2608 that by the said amendment, among the other, the definition of 'sales promotion employees' was extended so as to include 'sales promotion employees' without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs.1,600/- per mensem and those employed or engaged mainly in managerial or administrative capacity. After taking into consideration Section 6(2) of 1976 Act, it observed that on and from 6-3-1976, the provisions of Industrial Disputes Act became applicable to the Medical Representatives depending upon their wages upto 6-5-1987 and without limitation of their wages thereafter and upon the capacity in which they were employed or engaged. In the said case, after making an analysis of

various amendments made in the definition of 'workman' as contained in Industrial Disputes Act as also taking into consideration the provisions of 1976 Act, it has been held that Medical Representatives do not fall within the definition of 'workman' under the Industrial Disputes Act."

5. Per contra, learned counsel for respondents have placed reliance upon S**.G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. vs. U.P. Pademwar and others, 1992 Mh.L.J. 1333, Novartis India Ltd. vs. Vipin Srivastava and others, 2018 SCC Online MP 1931, Sh. Samrendra Das vs. M/s Win Medicare Pvt. Ltd., 2025:DHC:8918** and **Jyoti Kumar vs. M/s Zydus Healthcare Ltd and others, 2026:MPHC-IND:1897** and relevant part thereof are quoted below :-

"S.G. Pharmaceuticals (supra) (By a Divison Bench) :-

12. There was another category which the Supreme Court was conside ring viz., that of District Sales Representatives and it was observed (p. 610) 1970 (II) LLJ 590:

"His main work is to do canvassing and obtain orders. In that connection, of course, he has to carry on some correspondence, but that correspondence is incidental to the main work of pushing sales of the Company. In connection with promotion of sales, he has to make recommendations for selection of agents and dealers, extension or curtailment of credit facilities to agents, dealers and customers, investments on capital and revenue in the shape of facilities at Agents' premises or retail outlets; and selection of suitable sites for retail outlets to maximise sales and negotiations for terms of new site".

After enumerating the other duties, it was pointed out:

"The case of District Sales Representative is clearly that of a person who cannot fall within any of the four classes, because his work cannot be held to be either manual, clerical, technical or supervisory. The work of canvassing and promoting sales cannot be included in any of these four classifications. He is, therefore, not a workman at all within the principal part of the definition".

13. We may refer to several other cases where the medical representative was held not to be a workman. They are D. S. Nagaraj vs. The Labour Officer, Kurnool, 1972 (II) Andhra Weekly Reporter 126; J. and J. Dechane Distributors vs. State of Kerala and others (supra); John Wyeth and Brother Ltd. vs. Industrial Tribunal, Alleppey, 177 L.I.C. 1997 and N. J. Josheph vs. Labour Court, 1987 (60) FLR 134. These are all cases in which it was found that the work of the Medical Representative was to do canvassing for promoting sales and therefore would not fall into any of the categories enumerated in the text of the definition 'workman' under section 2(s) of the Industrial Disputes Act. The same was the view taken in several other cases regarding salesman. In Premier Irrigation Equipment (Pvt.) Ltd. vs. Labour Court, Delhi, 1973 (Vol. I) L.L.N. 333 a sales representative giving technical demonstration and attending to after-sale service, was held not to be a workman within the meaning of section 2(s) of the Industrial Disputes Act. In Shalimar Paints Ltd. vs. Third Industrial Tribunal, 1974 L.I.C. 213 it was held that though a salesman is required to have some technical knowledge his principal duties will remain the promotion of sale; in absence of any supervisory or manual work, he must held not to be a 'workman' under the Act. M/s. Kirloskar Brothers Ltd. vs. The Presiding Officer, Labour Court, 1976 L.J.C. 918 and Jugal Kishore Mittal vs. The Management of Sasta Sahitya Mandal, 1987 (1) LLJ 231 are also the cases on the point."

Novartis India Ltd. (supra) (By a Divison Bench):-

11. Before we deal with the rival contentions of the learned counsel for the parties, it would be apt to quote the relevant provisions of the I.D. Act and the SPE Act, which read as under:-

"Industrial Disputes Act, 1947

2. Definitions In this Act, unless there is anything repugnant in the subject or context, -
XXX
XXX
XXX
XXX
XXX
XXX

(m) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person :

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding *(one thousand six hundred rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

'Substituted to "ten thousand rupees" by Act 24 of 2010, S. 2 (w.e.f. 15.9.2010)

The Sales Promotion Employees (Conditions of Service) Act, 1976

2. Definitions. In this Act, unless the context otherwise requires,
XXX
XXX
XXX
XXX
XXX
XXX

(d) "sales promotion employees" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, but does not include any such person-

(i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or

(ii) who is employed or engaged mainly in a managerial or administrative capacity.

Explanation. For the purpose of this clause, the wages per mensem of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of this service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service;"

12. The test to decide who is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, was explained by the Labour Appellate Tribunal of India in the case of Ford Motor Company of India Ltd. v. Ford Motors Staff Union, (1953) 2 LLJ 344 (LATI.-Bom.). The Court observed as under: -

"4.... Essentially the question whether a person is a workman or not will depend upon the nature of the work which he does; whether it is manual or clerical work skilled or unskilled; and the true question is Is his work in the main clerical or manual so that he falls within the definition of a "workman"; the question whether he is a supervisor or exercises directional or controlling power poses merely a negative test of a "workman" which cannot be conclusive. This is ultimately a question of fact, at best one of mixed fact and law, though what the true legal inference should be from the facts found or admitted will be a question of law. How far the circumstance that the employee has supervisory powers should be regarded as affecting the question will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factors."

13. The Supreme Court in its judgment in All India Reserve Bank Employees' Association v. Reserve Bank of India, AIR 1966 SC 305 has taken note of the aforesaid decision in Ford Motor Company (supra) and held as under:-

"(25) It may be mentioned here that Mr. Chari attempted to save the employees in Class II from the operation of the exceptions in CI. (iv) by referring to their duties which he said were in no sense 'supervisory' but. only clerical or of checkers. He also cited a number of cases, illustrative of this point of view. Those are cases dealing with foremen, technologists, engineers, chemists, shift engineers, Asstt. Superintendents, Depot Superintendents, godown-keepers etc. We have looked into all of them but do not find it necessary to refer to any except one. In Ford Motor Co. of India Ltd. v. Ford Motors Staff Union, (1953) 2 LLJ 444 (LATI-Bom), the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within or without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law" and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor". The Labour Appellate Tribunal pertinently gave the example that "the nature of the work in the banking industry is in many respects obviously different from the nature and type of work in a workshop department of an engineering or automobile concern." We agree that we cannot use analogies to find out whether Class II workers here were supervisors or doing mere clerical work. No doubt, as Mr. Chari stated the work in a Bank involves layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision. In Lloyds Bank Ltd. v. Pannalal Gupta, (1961) 1 LLJ 18 (SC), the finding of the Labour Appellate Tribunal was reversed because the legal inference from proved facts was wrongly drawn. It is pointed out there that before a clerk can claim a special allowance under para 164(b) of the Sastry Award open to Supervisors, he must prove that he supervises the work of some others who are in a sense below him. It is pointed out that mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision and the work done in the audit department of a bank is not supervision."

14. In view of the aforesaid judgment, the question as to whether a person is a workman within the meaning of S. 2(s) of the I.D. Act mainly depends upon the nature of the industry, type of work in which he is engaged, organizational set up of particular unit of industry and other factors. In the present case, the respondent was engaged as Sales Representative in a Pharmaceutical Company. His primary duty was to visit doctors, chemists as well as stockists. Meeting different professionals to promote sale of product of the appellant cannot be said to be manual or clerical work as it requires knowledge of product, its uses and also persuasive skills. The respondent may not be controlling any subordinate but he was master of the work assigned to him. The manner of performing the job was solely in the discretion of the respondent. The interest of the management was that the Medical Representative should achieve the sales target. The supervisory capacity necessarily has to be examined keeping in view the manual, unskilled, skilled, clerical work and the person performing such work is a workman. May be, he does not supervise any person but he is the master of his own affairs reporting to management only in respect of quantification of sales, therefore, a Medical Representative cannot be treated to be a workman within the meaning of Section 2(s) of the I.D. Act.

15. The judgment in H.R. Adyanthaya's case (supra) has come up for consideration before a Division Bench of this Court in Samat Kumar v. Parke Davis India Ltd., (1997) 2 JLJ 353 wherein the reference to Labour Court was subject matter of challenge on the part of the management. Though the workman was said to be working as Area Sales Manager in managerial capacity drawing salary of more than Rs. 1,600/-, therefore, he was not a workman but while examining the scope of Adhyanthaya's case (supra), the Court has held that the work of promotion

of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition under Section 2(s) of the I.D. Act. The relevant extract of the Division Bench judgment reads as under

"10. As against it, learned counsel for the respondent No. 1 has placed reliance on a case as reported in 1988 (II) MPWN 116, (1988) 4 SCC 42: AIR 1988 SC 1700 (Miss A. Sundarambal v. Govt. of Goa, Daman & Diu) whereby it was held that teacher employed in a school is not a workman. But, now dispute stands resolved with respect to the cases of Medical Representative as reported in (1994) 2 CLR 552 (S.C.) [H.R. Adyanthaya etc. etc. v. Sandoz (India) Ltd. etc. etc.) whereby it has been held that 'Workman' does not include all employees except those covered by four exceptions in said definition of section 2(s) of Industrial Disputes Act. Medical Representatives do not perform duties of 'skilled' or 'technical nature and therefore, they are not 'workmen'. The connotation of word 'skilled' in the context in which it is used, will not include work of a Sales Promotion Employees such as Medical Representative. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition."

After returning such finding it was held that the reference was not maintainable as Medical Representative would not fall within the definition of workman. We are not only bound by the aforesaid judgment but we find the same to be a correct enunciation of law.

16. Learned Single Bench of this Court in German Remedies Limited's case (supra) relying upon H.R. Adyanthaya's case (supra) held that the Medical Representative is a workman. The relevant extracts of the said decision in German Remedies Limited's case read as under:-

"14. With regard to meet out, the objections-the petitioners about the status of respondent No. 2, whether he would be a workman within the meaning of Section 2(s) of the Industrial Disputes. Act, 1947, has to be dealt with. The Apex Court had an occasion to consider a similar question in a judgment H.R. Adyanthaya v. Sandoz (India) Ltd., (1994) 2 CLR 552 (S.C.): [(1994) 5 SCC 737]. The Apex Court in the said case was considering the status of Medical Representatives and the Apex Court came to the conclusion that **since there had been an amendment in the provisions of the Industrial Disputes Act, 1947 and also by virtue of the provisions of Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976 makes application to the provisions of the Industrial Disputes Act, 1947 as in force for the time being, therefore, the Apex Court held that a Medical Representative shall be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.**

15. The aforesaid judgment passed by the Apex Court had also been considered by the Rajasthan High Court in Dolphin LaboratoriesLtd. v. Judge, Labour Court, Udaipur, (2001) 2 LLJ 559 (Raj.) and also by Punjab & Haryana High Court in Ripu Daman Bhanot v. Presiding Officer, Labour Court, Ludhiana, (1997) 1 LLJ 557 (P & H). The aforesaid two High Courts have also dealt with the similar questions and relying upon the ratio of Sandoz's case (supra) held that Medical Representative is a workman for the purpose of Section 2(s) of the Industrial Disputes Act, 1947.
16. In view of the aforesaid law laid down; by the two High Courts based upon the earlier judgment passed by the Apex Court in Sandoz's case (supra), this objection of the petitioners also cannot be accepted."

The Single Bench in German Remedies Limited's case (supra) has misread the judgment in H.R. Adyanthaya's case (supra) to hold that Medical Representatives are workmen within the meaning of Section 2 (s) of the I.D. Act. In fact, three categories were created by the Supreme Court. **In respect of the Medical Representatives engaged prior to. enactment of SPE Act w.e.f. 6.3.1976, they were held not governed either by I.D. Act or SPE Act. In respect of employees whose services were terminated after 6.3.1976, the appeals were dismissed for the reason that it is not the case of the employees that their wages were less than Rs. 750/- per month excluding commission, therefore, the SPE Act did not apply to them. The only dispute which was referred to Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 was in respect of transfer of the employees affected on 16.2.1988. The Supreme Court found that the definition of workman under I.D. Act will not cover the sales promotion employees within the meaning of SPE Act. The argument raised that the sales promotion employees are skilled or. operational employees was not accepted. Therefore, the order of the learned Single Bench is not the correct reading of H.R. Adyanthaya's case (supra) and is, thus, overruled."**

Sh. Samarendra Das (supra) (By a Single Bench):

"12. The issue of whether or not sales personnel are workman is no longer res integra. The Supreme Court in H.R. Adyanthaya case has held that the sales representatives who are involved in pharmaceuticals are not workmen and that to treat such persons as workmen would be contrary to the law, as a person to be qualified as a workman, must be doing the work which falls in a category, manual, clerical, supervisory or technical. It is apposite to set out the relevant extract below:

"33. It was contended by Shri Sharma, appearing for the workmen that the definition of workman under the ID Act includes all employees except those covered by the four exceptions to the said definition. **His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above.** The first contention was expressly negatived by two three-Judge Benches in May & Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594] and Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] cases as has been pointed out in detail above. **As regards the second contention, it really consists of two sub-contentions, viz., that the medical representatives are engaged in "skilled" and "technical" work. As regards the word "skilled", we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the technical nature of their work, it has been expressly rejected by this Court in Burmah Shell case [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590]. Hence that contention has also to be rejected.**

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37. We are afraid that these contentions are not well placed. **We have already pointed out as to why the word skilled would not include the kind of work done by the sales promotion employees. For the very same reason, the word operational would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workman would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant.** The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition. The interpretation was specifically rejected by this Court in May & Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594] , WIMCO [(1964) 3 SCR 560 : AIR 1964 SC 472 : (1963) 2 LLJ 459] , Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] and A. Sundarambal [(1988) 4 SCC 42 : 1988 SCC (L&S) 892] cases. Although such an interpretation was given in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510 : (1983) 3 SCR 799] , Delton Cable [(1984) 2 SCC 569 : 1984 SCC (L&S) 281 : (1984) 3 SCR 169] and Ciba Geigy [(1985) 3 SCC 371 : 1985 SCC (L&S) 808 : 1985 Supp (1) SCR 282] cases **the legislature impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of workman on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled and operational. The unskilled and skilled were divorced from manual and were made independent categories. If the interpretation suggested was accepted by the legislature, nothing would have been easier than to amend the definition of workman by stating that any person employed in connection with any operation of the establishment other than those specifically excepted is a workman. It must further be remembered that the independent categories of unskilled , skilled and operational were added to the main part of the definition after the SPE Act was placed on the statute book.**

[Emphasis Supplied]

12.1 In addition, the Supreme Court in Bharat Bhawan Trust v. Bharat Bhawan Artists Association & Anr.3, while relying on the T.P. Srivastava v. M/s National Tobacco Co. of India Limited4, has held that sales persons employed in canvassing for promotion of sales could not be held in the category of a workman. It is apposite to set out the relevant extract of the Bharat Bhawan Trust case below:

"4. Dr L.M. Singhvi, learned Senior Advocate appearing for the appellant, submitted that the appellant is a unique institute of its kind in the country set up by the Government of Madhya Pradesh where all forms of arts such as performing arts, fine arts, music, drama, poetry and tribal arts are preserved, promoted and developed. He submitted that although this Court in Bangalore Water Supply & Sewerage Board v. A. Rajappa [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] has given a very wide meaning to both the expressions of industry and workman , by no stretch of imagination the appellant could be characterised as an industry, which is engaged in an aesthetic activity. He also drew our attention to the decisions in Advertising Corpn. of India v. Barendra Chandra Nag [(1958) 2 LLJ 448 (LAT)] ; A. Sundarambal v. Govt. of Goa, Daman & Diu [(1988) 4 SCC 42 : 1988 SCC (L&S) 892] (in which teachers were held not to be workmen although the

educational institutions where they served may be industry) and **T.P. Srivastava v. National Tobacco Co. of India Ltd. [(1992) 1 SCC 281 : 1992 SCC (L&S) 263] wherein this Court held that duties of a salesman employed for canvassing and promoting sales of company's product in an area involves suggesting of ways and means to improve sales, study of type or status of the public to whom the product has to reach, study of market condition and supervising work of other local salesmen, cannot be termed to be either manual, skilled, unskilled or clerical in nature but requires an imaginative and creative mind and such a person cannot be termed as "workman".** He also submitted that the incidental activity entrusted to the respondent artists are all connected with the production of drama and theatre management and, therefore, cannot be taken to be a separate activity to class them as workmen. He submitted that the view taken by the Labour Court needs to be corrected at our hands.

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11. The work that the respondents perform is in the nature of a creative art and their work is neither subject to an order required from the Art Director nor from any of the artists. In performing their work, they have to bring to their work, their artistic ability, talent and a sense of perception for the purpose of production of drama involving in the course of such work, the application of the correct technique and the selection of the cast, the play, the manner of presentation, the light-and-shade effects and so on. In effect, the work they do is creative art which only a person with an artistic talent and requisite technique can manage. To call such a person, a skilled or a manual worker is altogether inappropriate. An artist must be distinguished from a skilled, manual worker by the inherent qualities, which are necessary in an artist, allied to training and technique. We derive support for this proposition from T.P. Srivastava v. National Tobacco Co. of India Ltd. case [(1992) 1 SCC 281 : 1992 SCC (L&S) 263] wherein section salesman employed for canvassing and promoting sales of company's products in an area could not be put under the category of a workman . There is no question of any work being given to them because the work of an artist is essentially creative, and freedom of expression is an integral part of it. In Hussainbhai v. Alath Factory Thezhilali Union [(1978) 4 SCC 257 : 1978 SCC (L&S) 506 : 1978 Lab IC 1264] this Court held as under: (SCC p. 259, para 5)

Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer.

In this case, firstly, no goods and services are being produced, secondly, the acting that is done is not for the business of another. There is a mere expression of creative talent, which is part of freedom of expression.

[Emphasis Supplied]"

Jyoti Kumar (supra) (By a Divison Bench):

12. The question for consideration is whether a Medical Representative falls within the definition of "workman" in terms of Section 2(s) of the Industrial Disputes Act, 1947.

13. A three-Judge Bench of the Hon'ble Supreme Court in the case of May and Baker (India) Limited vs. Workmen', reported in AIR 1967 SC 678 had an occasion to directly deal with the question as to whether the Medical Representatives of the company, who are discharged from

service, are the workman under the Industrial Disputes Act and the order of reinstatement passed by the Industrial Tribunal was, therefore, valid. The Hon′ble Supreme Court referred to the undisputed nature of the duties of the employees and found that his main work was of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not make more than a small fraction of time for which he had to work. In the circumstances, the Hon′ble Supreme Court held that the Tribunal′s conclusion that the employee was a workman under the Industrial Disputes Act was incorrect.

14. A similar issue was considered by a three-Judge Bench judgment of the Hon′ble Supreme Court in the case of Western India Match Company Limited vs. Workman reported in AIR 1964 SC 472. The question before the Court was whether the sales office was entirely independent of the factory or was a department of the one and the same unit of production, and whether Inspectors, Salesman and Retail Salesman of the sales office were workmen within the meaning of U.P. Industrial Disputes Act. The matter was referred by the State Government for adjudication to the Industrial Tribunal on 18.08.1961. After a detailed analysis of the matter, the Bench following the earlier decision in the case of May and Baker′s case (supra) has arrived at a similar finding that they cannot be termed as a workman in terms of the definition under the Act of 1947.

15. A similar issue was considered in the case of Burmah (Supra) and again the judgment passed in May and Baker′s case (supra) was taken into consideration and the Court has given the verdict in the light of May and Baker′s case. The three-Judge Bench in the case of May and Baker (supra) has taken a view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories viz. manual, supervisory, technical or clerical. If a person does not fall within the four exceptions to the aforesaid definition, he is a workman within the definition as provided under Section 2(s) of the Act of 1947. Therefore, the position is clarified by the Hon′ble Supreme Court in the aforesaid cases.

16. The Constitutional Bench of Hon'ble Supreme Court in the case of H.R. Adyanthaya and Ors Vs. Sandos (India) Ltd and Ors reported in (1994) 5 SCC 737 wherein the Hon'ble Supreme Court has held as under:

"24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two twoJudge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three threeJudge Bench decisions which have without referring to the decisions in May & Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594] , WIMCO [(1964) 3 SCR 560 : AIR 1964 SC 472 : (1963) 2 LLJ 459] and Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation. 33. It was contended by Shri Sharma, appearing for the workmen that the definition of workman under the ID Act includes all employees except those

covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the 3 meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negatived by two three-Judge Benches in May & Baker [(1961) 2 LLJ 94 : AIR 1967 SC 678 : (1961) 2 FLR 594] and Burmah Shell [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590] cases as has been pointed out in detail above. As regards the second contention, it really consists of two subcontentions, viz., that the medical representatives are engaged in 'skilled' and 'technical' work. As regards the word 'skilled', we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the 'technical' nature of their work, it has been expressly rejected by this Court in Burmah Shell case [(1970) 3 SCC 378 : (1971) 2 SCR 758 : AIR 1971 SC 922 : (1970) 2 LLJ 590]. Hence that contention has also to be rejected. 39. We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning, of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellantworkmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court."

17. The judgment in H.R. Adyanthaya's case (supra) has come up for consideration before a Division Bench of this Court in Samat Kumar (supra), wherein the reference to the Labour Court was subject matter of challenge on the part of the management. Though the workman was said to be working as 'Area Sales Manager' in managerial capacity drawing salary of more than Rs.1,600/-, therefore, he was not a workman but while examining the scope of Adhyanthaya's case (supra), the Court held that the work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition under Section 2(s) of the ID Act. The relevant extract of the Division Bench judgment reads as under:-

"10. As against it, learned counsel for the respondent No.1 has placed reliance on a case as reported in 1988 (II) MPWN 116 = AIR 1988 SC 1700 (Miss A. Sundarambal v. Govt. of Goa, Deman & Diu and others) whereby it was held that teacher employed in a school is not a workman. But, now the dispute stands resolved with respect to the cases of Medical Representative as reported in AIR 1994 SC 2608 [H.R. Adyanthya etc. v. Sandoz (India) Ltd. etc. etc.) whereby it has been held that 'Workman' does not include all employees except those covered by four exceptions in said definition of section 2(s) of Industrial Disputes Act. Medical Representatives do not perform duties of 'skilled' or 'technical' nature and therefore, they are not 'workmen'. The connotation of word 'skilled' in the context in which it is used, will not include work of a Sales Promotion Employees such as Medical Representative. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the

other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition."

After returning such finding, it was held that the reference was not maintainable as Medical Representative would not fall within the definition of workman.

18. In German Remedies Limited's case (supra) relying upon H.R. Adyanthaya's case (supra) held that the Medical Representative is a workman. The relevant extracts of the said decision in German Remedies Limited's case read as under:-

"14. With regard to meet out, the objections - the petitioner about the status of respondent No. 2, whether he would be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, has to be dealt with. The Apex Court had an occasion to consider a similar question in a judgment H.R. Adyanthaya v. Sandoz (India) Ltd. and others [(1994) 5 SCC 737]. The Apex Court in the said case was considering the status of Medical Representatives and the Apex Court came to the conclusion that since there had been an amendment in the provisions of the Industrial Disputes Act, 1947 and also by virtue of the provisions of Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976 makes application to the provisions of the Industrial Disputes Act, 1947 as in force for the time being, therefore, the Apex Court held that a Medical Representative shall be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. 15. The aforesaid judgment passed by the Apex Court had also been considered by the Rajasthan High Court in Dolphin Laboratories Ltd. v. Judge, Labour Court, Udaipur and Another 2001-II-LLJ-559 (Raj.) and also by Punjab & Haryana High Court in Ripu Daman Bhanot v. Presiding Officer, Labour Court, Ludhiana and Ors. 1997-I-LLJ-557 (P&H). The aforesaid two High Courts have also dealt with the similar questions and relying upon the ratio of Sandoz's case (supra) held that Medical Representative is a workman for the purpose of Section 2(s) of the Industrial Disputes Act, 1947. 16. In view of the aforesaid law laid down by the two High Courts based upon the earlier judgment passed by the Apex Court in Sandoz's case (supra), this objection of the petitioner also cannot be accepted."

19. In the case of Novertis India Ltd Vs Vipin Shrivastava 2018 SCC Online MP 1931, a Division Bench held that in the German Remedies Limited's case (supra), has misread the judgment in H.R. Adyanthaya's case (supra) to hold that Medical Representatives are workmen within the meaning of Section 2(s) of the ID Act. In fact, three categories were created by the Supreme Court. In respect of the Medical Representatives engaged prior to enactment of SPE Act w.e.f. 06.03.1976, they were held not governed either by ID Act or SPE Act. In respect of employees whose services were terminated after 06.03.1976, the appeals were dismissed for the reason that it is not the case of the employees that their wages were less than Rs.750/- per month excluding commission, therefore, the SPE Act did not apply to them. The only dispute which was referred to Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 was in respect of transfer of the employees affected on 16.02.1988. The Supreme Court found that the definition of workman under ID Act will not cover the sales promotion employees within the meaning of SPE Act. The Division Bench found that the judgment in the caes of German Remedies (supra) was not correct.

20. A Division Bench of Patna High Court in Deepak Kumar v. State of Bihar (2016) 149 FLR 528, held as under:-

"9. The Sales Promotion Employee as defined under the SPE Act as reproduced above includes any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both. The main provision is wide enough to include all categories of employees engaged for hire or reward to do any work relating to promotion of sale of business. The petitioner falls within such category. As admittedly, he was appointed as a person to promote sale of the pharmaceutical products, as is evident from Charge Sheet dated 13th December, 2002, which is to the effect that the appellant has failed to achieve the targets of sale of group of medicines. The notice (Annexure2 to the writ petition) itself recites the appellant as a Medical Representative. Therefore, he is a Sales Promotion Employee. But there is exclusion clause of Sales Promotion Employees and not all Sales Promotion Employees are the employees within the meaning of Section 2(d) of the SPE Act."

21. In the case of Petcare Division of Tetragon Chemie Pvt. Ltd. vs. M.P. Medical and Sales Representatives Association and another (W.A.No.922 of 2006) decided on 21.12.2022, the Division Bench categorically held that 'Medical Representative' does not fall under the definition of "workman" as defined under Section 2(s) of the 4 Industrial Disputes Act, 1947. The relevant extract is as under:-

"18. The Constitution Bench of the Hon'ble Supreme Court in H.R. Adyanthaya's (supra) has categorically held that the Medical Representatives are not the workman; therefore, the complaint made to the Industrial Court is not maintainable itself. The arguments raised by the appellant that even in the case of H.R. Adyanthaya's (supra), the benefits were extended and they were treated to be the complainant in the matter and the State Government was given directions but the fact remains that the powers were exercised under Article 142 of the Constitution of India by the Hon'ble Supreme Court. But the law which has been settled in the aforesaid case by the Constitution Bench is clear that the Medical Representatives or the Sales Promotion Of icer do not fall under the definition of workman. The learned Single Judge has followed the aforesaid judgment passed by the Hon'ble Supreme Court and has rightly set aside the order passed by the Labour Court. Under these circumstances, we do not have any hesitation to observe that no illegality is committed by the writ court in allowing the writ petition. In absence of any cogent material or a judgment to override the observations made by the writ court and the law settled by the Constitution Bench of the Hon'ble Supreme Court in H.R. Adyanthaya's (supra), no relief can be extended to the appellant."

22. Thus, it was held that the Medical Representative/Sales Promotion Office is not a workman in view of the decision of the Division Bench of this Court passed in Writ Appeal No.75/2017 parties being [Novartis India Limited Vs. Vipin Shrivastava & others], therefore, any dispute relating to a 'Medical Representative/Sales Promotion Officer' cannot be entertained by the Labour Court as they do not come within the definition of 'workman' under Section-2(s) of the Act.

23. In (2015) 7 SCC 263 parties being [Chauharya Tripathi & others Vs. Life Insurance Corporation of India & others] in which, the Apex Court had held that the Development Officer of the Life Insurance Corporation does not fall within the definition of workman. He further submits that the Apex Court has placed reliance on a case reported in 1994 (5) SCC 737 parties being [H.R. Adyanthaya Vs. Sandoz (India) Ltd.] and therefore, the order passed by the Division Bench in the case of Novartis India Limited (supra) also

placing reliance in the case of Adyanthaya (supra) has held that the Medical Representative does not fall within the definition of workman.

24. Against the view taken by the co-ordinate bench in the case of Petcare (supra) that the Medical Representative or the Sales Promotion Employee do not fall under the definition of Workman under section 2(S) of ID Act, an SLP No.15250/2023 was preferred. The said SLP was dismissed by order dated 10.07.2023.

25. In view of the aforesaid discussion and law, it is held that the Medical Representative/Sales Promotion Officer do not fall within the definition of a Workman."

6. Court has to first deal with a judgment passed by coordinate Bench at Lucknow in **Nicholas Piramal India (supra)**, however, Court finds that finding returned in paragraphs 31-33 of it that medical representative would be deemed to be a workman is not based on correct reading of **H.R. Adhyanthaya (supra)**.

7. The Supreme Court has held that medical representatives are not workmen within the meaning of Maharashtra Act, however, in exercise of Article 142 of Constitution, a direction was passed that complaint of concerned employee be treated as industrial dispute, therefore, it does not hold that it would be treated as a precedence.

8. In aforesaid circumstances, Court finds that there are authoritative decisions by a Single Bench of Delhi High Court in **Sh. Samarendra Das (Supra)** and **Division Bench of other High Courts in S.G. Pharmaceuticals (Supra)** and **Jyoti Kumar (Supra)**, which have more persuasive value and as referred above, issue concerned was considered in detail and a categorical finding was returned that 'Medical Representative' would not be workmen under the Act of 1947 r/w Act of 1952.

9. In **Novartis India Ltd. (supra)**, Division Bench of Madhya Pradesh High Court has also taken note of **H.R. Adyanthaya (supra)** and incorrect reading of said judgment by a Single Bench of said High Court was overruled.

10. Another Division Bench of High Court of Patna in **Nalin Sinha Vs. The State of Bihar (L.P.A. No. 1430/2009, decided on 19.01.2011)** has also followed the same ratio, Relevant part thereof is mentioned hereinafter:-

"17. From the reading of the aforementioned extract of judgment, it would be clear that while most of the cases of the medical representatives before the Apex Court were of the period prior to the Act coming-into-force or on the basis of the limits of salary as it existed prior to the amendment in the Act in the Year 1986, but then the Apex Court while dismissing all those cases either on the ground of non-applicability of the Act or on the basis of salary, had also dismissed one case, C.A. No. 818 of 1992, wherein the dispute had arisen out of the transfer of the employee, a medical representative effected on 16.2.1988 i.e., well after the Act was amended w.e.f. 6.5.1987, without limitation and ceiling of the wages of the sales promotion personnel. Thus the following factual analysis made by Division Bench of the Rajasthan High Court in the case of Dolphin Laboratories (supra) in the following terms:"

"8. It may be noticed that the dispute which was before Hon'ble the Supreme Court in H.R. Adyanthaya's case ((1994) 5 SCC 737 : AIR 1994 SC 2608) (supra) related to the period of termination that has been affected on 26.4.1976 and 9.12.1977 respectively and the employees case was not that they were drawing salary less than the fixed in the Act as prevailing then. It is after explaining the law stood at the relevant time governing the matters relating to medical representatives under the Industrial Disputes Act that the Court found in those cases the appellants before them were not workmen as a medical representative not falling in that category."

does not seem to be correct, inasmuch as, from a simultaneous reading of para graph-8 of the judgment of the Apex Court in the case of H.R. Adyanthaya (supra) it is manifest that the Division Bench of Rajasthan High Court in the case of Dolphin Laboratories Ltd. (supra) had failed to take into consideration paragraph-8 of the judgment of the Apex Court and went on to hold just contrary to the reasonings and findings of Apex Court. As a matter of fact, the Apex Court in the case of H.R. Adyanthaya (supra) did not lay down the law of medical representative being not a 'workman' only on the basis of limits of salary, rather had gone by the definition of the workman under the I.D. Act as also had closely examined the provisions of the Act before recording the following reasons for holding that the medical representative doing the work of pro motion of sales of the product or services of the establishment were not employee doing any skilled work or the technical nature of the work as would be apparent from the following portion of the same judgment of the Apex Court in the case of H.R. Adyanthaya (supra) :

"6. It was contended by Shri Sharma appearing for the workmen that the definition of workman under the I.D/Act includes all employees except those covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negatived by two three-Judge Benches in May & Baker (AIR 1967 SC 678) and Burmah Shell ((1970) 3 SCC 378 : AIR 1971 SC 922) cases (supra) as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions, viz. that the medical representatives are engaged in 'skilled' and 'technical' work. As regard the word 'skilled', we are of the view that the connotation of the said word in the context in which it is used will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether, manual or non manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the 'technical' nature of their work, it has been expressly rejected by this Court in Burmah Shell case (supra). Hence that contention has also to be rejected."

18. It has also to be taken into ac count, that the aforesaid view recorded in the judgment of the Apex Court in the case of H.R. Adyanthaya (supra) once again fell for consideration before the Apex Court in the case of Rhone-Poulenc (India) Ltd. v. The State of U.P. reported in (2000) 7 SCC 675 : AIR 2000 SC 3182, wherein it was held that:-

"5. The contention of the learned counsel is that assuming the aforesaid provision is applicable, it still does not extend to deeming fiction to any State enactment including the U.P. Industrial Disputes Act as it

is apparent on reading of the section that Sales Promotion Employees, within the meaning of Central enactment of the Industrial Disputes Act, 1947 (14 of 1947) have been treated as 'workman'. Reliance has been placed by the learned counsel on a Constitution Bench decision of this Court in H.R. Adyanthaya v. Sandoz India Ltd., (1994) 5 SCC 737 : (1994 AIR SCW 3678 : AIR 1994 SC 2608). The Bench has held that since the Medical representatives are not workmen within the meaning of the Maharashtra Act, the complaint made to the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was not maintainable."

11. The Section 6(2) of Act of 1976 provides that Provisions of the Industrial Disputes Act, 1947 as in force time being shall apply to sales promotion employees as they apply to or in relation to workmen with its meaning of that Act, for reference Section 6(1)&(2) of Act of 1976 is reproduced hereinafter :-

"6(1) The provisions of the Workmen's Compensation Act, 1923, as in force for the time being, shall apply to, or in relation to sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act.

6(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen, within the meaning of that Act and for the purpose of any proceeding under that Act in relation to an industrial dispute, a sale promotion employee shall be deemed to include a sale promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge, or retrenchment had led to that dispute."

12. Subsequently the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982) come into force but with a declaration that different provision of said Act will come into force on different dates as may be appointed. Section 2(j), Section 2(j)(rr) (iv) as amended are still not came into force, since no notification is issued till date. Similarly Section 24 also do not come into force till date. Said provisions are mentioned hereinafter:-

"2(C)(j) "Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not

2(j) in clause (rr), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

"(iv)any commission payable on the promotion of sales or business or both.

24. In Section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976, sub-section (2) shall be omitted."

13. In aforesaid circumstances, Court finds that since there are directly authoritative decision on the issue concerned by three Division Benches of two other High Courts, which has more persuasive value, therefore, this Court has no reason to take any other view from a view that a 'Medical Representative is not a workman' or to follow a view taken by coordinate Bench of this Court in case of **Nicholas Piramal India (supra)** since findings therein were not based on correct reading of **H.R. Adyanthaya (supra)**.

14. Accordingly, all writ petitions are devoid of merit, hence, **dismissed**.

(2026) 7 ILRA 456
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.07.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 20758 of 2026

Alok Dhangar & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(i) Whether, the Authorities are liable to give an opportunity to an individual, who has applied for issuance of caste certificate prior to taking any decision; and even when an administrative authority takes a decision affecting rights of parties, is it obligatory to give reasons in support of their decision?

(ii) Whether, in absence of any detailed 'speaking order', rejecting the application for issuance of caste certificate, the decision regarding the same being displayed on the official website of the Department, can be sustained in law?

Headnotes

Constitution of India – Caste Certificate – Issuance of caste certificate – Rejection of application – Non-speaking order – Principles of natural justice – Petitioners claimed to belong to the Scheduled Caste category 'Dhangar' – Petitioners moved an application for issuance of a caste certificate – Petitioners claimed the benefit of the G.O. dated 24.01.2019, issued by way of a clarification for issuance of caste certificate to individuals belonging to Scheduled Caste category 'Dhangar' – Application rejected vide rejection letter displayed on the official website – Rejection letter merely stated 'साक्ष्य अभाव', without assigning any reasons or making available any report on the basis of which the application was sought to be rejected – No opportunity given to the petitioners by way of personal hearing and the alleged report was also not provided to them so as to enable them to remove the deficiencies or file an objection – Justification:

Held : State cannot seek exemption from the requirement of giving reasons in administrative orders also. The display of the rejection letter on the official website cannot be said to be a 'speaking order'; the only reason reflected, namely, 'साक्ष्य अभाव', is as vague as it can be and does not meet the test for a 'speaking order'. No opportunity was given to the petitioners by way of personal hearing and the alleged report was not provided to them so as to enable them to remove the deficiencies or file an objection. Court further held: An order not communicated is the dead letter and cannot become effective unless communicated to the person concerned. The rejection order dated 23.02.2026, which merely stated insufficiency of evidence without specifying the deficit evidence, could not be sustained and was liable to be set aside.

Court issued following directions to the State Authorities – On an application being made by an individual for the issuance of caste certificate, the concerned authorities shall ensure that the report sought prior to consideration for the issuance of such certificate, should be submitted only after giving due opportunity to such an applicant, and strictly adhering to the principles of natural justice – The applicant must be given a reasonable opportunity to file his objection to the aforesaid report and be also permitted to remove the deficiency pointed out, if any, in the aforementioned report – It shall be incumbent upon the Authority to pass

a 'speaking order' either accepting or rejecting the said application; and a copy of the said order shall be made available to the applicant within a period of seven days of passing of such an order – The Authorities may consider, to give a link on the official website, of the 'rejection order' and the 'report' forming the basis of the rejection and upon being accessed one may be displayed with detailed reason and report to be downloaded. [Paras 27, 29-32, 34] (E-5)

Case Law Cited

Madhuri Patil v. Additional Commissioner, Tribal Development, 1994 SCC (6) 241; CCT v. Shukla and Brothers, (2010) 4 SCC 785; State Project Director U.P. Education for All Project Board and Others v. Saroj Maurya and Others, (2024) 12 SCC 609; Mahabir Prasad, Santosh Kumar v. State of U.P. and Others, (1970) 1 SCC 764; Travancore Rayon Ltd. v. Union of India, AIR 1971 SC 862; Woolcombers of India Ltd. v. Workers Union, AIR 1973 Supreme Court 2758; Union of India v. Mohan Lal Capoor, AIR 1974 Supreme Court 87; Gurdial Singh Fijji v. State of Punjab, (1979) 2 SCC 368; H. H. Shri Swamiji of Shri Amar Mutt v. Commissioner Hindu Religious and Charitable Endowments Department, AIR 1980 SC 1; Raj Kishore Jha v. State of Bihar and Others, (2003) 11 SCC 519; State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568; Kranti Associates Private Limited and Another v. Masood Ahmed Khan and Others, (2010) 9 SCC 496;State of Punjab v. Bandeep Singh and Others, (2016) 1 SCC 724; Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405;Sethi Auto Service Station v. Delhi Development Authority and Others, (2009) 1 SCC 180; Bachhittar Singh v. State of Punjab, AIR 1963 SC 395; Lakshminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413; Greater Mohali Area Development Authority v. Manju Jain, 2010 SCC OnLine SC 916.

List of Acts

Constitution of India ; Janhit Guarantee Adhiniyam, 2011

List of Keywords

Caste certificate; Scheduled Caste; 'Dhangar'; Rejection of caste certificate application; 'साक्ष्य अभाव'; Speaking order; Administrative order; Principles of natural justice; Personal hearing; Opportunity to file objection; Inspection report; Deficiency in evidence; Communication of order; Legitimate expectation; Reasoned order; Recording of reasons; Rule of Law; Arbitrary action; Fairness in decision-making; Judicial review; Efficacious remedy

Case Arising From

Petition under Article 226 of the Constitution challenging the order dated 23.02.2026 passed by the Tahsildar rejecting the petitioners' application for issuance of a caste certificate.

Appearances for Parties

Advs. for the Petitioners : Vivek Kumar Pal
Advs. for the Respondent : C.S.C.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Shri Vivek Kumar Pal, learned counsel for the petitioners and Shri P.K. Shahi, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of this petition filed under Article 226 of the Constitution, the petitioners have assailed the rejection order dated 23.02.2026, passed by the Tahsildar, rejecting the application of the petitioners for issuance of a caste certificate.

3. By the consent of the parties, the petition is being decided at admission stage itself, since purely a legal question is involved and there are no factual dispute.

Facts

4. The undisputed facts are that petitioners, who are brother and sister, are permanent resident of District Mathura, since their birth; and claims to belong to the Scheduled Caste category 'Dhangar'. The petitioners had moved an application for issuance of a caste certificate before the respondent no.3 under Rule 3, 4 and 10 of the Janhit Guarantee Adhiniyam, 2011; which includes the issuance of a caste certificate, income certificate and domicile certificate, as a part of its guaranteed public services, to the people of the State of U.P., within stipulated time limit; and along with the application they had submitted all the relevant documents including the Aadhaar card, family register, letter of the village Pradhan, school leaving certificate etc.

5. The petitioners also claim the benefit of the G.O. dated 24.01.2019, which has been issued by way of a clarification for the issuance of caste certificate to individuals who belongs to Scheduled Caste category 'Dhangar'.

Arguments of the Petitioners

6. The learned counsel for the petitioner, in the aforesaid background submits that without assigning any reasons or making available any report, based on which the application of the petitioners is sought to be rejected; by merely making available a rejection letter on the official website, which only states 'साक्ष्य अभाव'; the impugned order has been passed; and as such the same cannot be sustained in the eyes of law. It has further been submitted on behalf of the petitioners that no rejection order has been communicated to the petitioners and accordingly, there is no reasoned detailed order of rejection, in the eyes of law.

Contention of the Respondents

7. The learned Additional Chief Standing Counsel submits that in the impugned order, though no specific reason has been given; but from perusal of rejection letter dated 23.02.2026, it is evident that the evidence in support of the claim, that the petitioners belong to caste 'Dhangar', has not been provided. He further submits that the petitioners has an efficacious remedy to approach the district level committee, constituted in pursuance of the decision in the case of **Madhuri Patil Vs. Additional Commissioner Tribal Development** (decided on 02.09.1994) and the G.O. dated 28.02.2011.

8. He has further contended that though there is no requirement for making available reasons for the rejection but however the decision is based on a report, which is sought by the revenue department prior to taking decision on the application for issuance of a caste certificate.

Issues

(i) Whether, the Authorities are liable to give an opportunity to an individual, who has applied for issuance of caste certificate prior to taking any decision; and even when an administrative

authority takes a decision affecting rights of parties, is it obligatory to give reasons in support of their decision?

(ii) Whether, in absence of any detailed 'speaking order', rejecting the application for issuance of caste certificate, the decision regarding the same being displayed on the official website of the Department, can be sustained in law?

Discussion- Issue No.1

9. The undisputed facts of the present case are that the petitioners had made an application for issuance of a caste certificate, claiming benefit of the G.O. dated 24.01.2019 and had provided the documents which according to the petitioners were relevant and establishes their claim pertaining to them belonging to caste 'Dhangar', being residents of State of Uttar Pradesh.

10. It has not been disputed by the respondents that except for the reasons 'साक्ष्य अभाव' i.e. for lack of evidence, no other order has been made available to the petitioners nor the inspection report, which the petitioners claim to be the basis of the rejection.

11. In view of the aforesaid, this court has to examine as to whether State authorities in performance of an administrative duty, are also required to give reasons for the decision taken, which affects the parties and can be said to be prejudicial to their interest and State authorities are required also to adhere to the principles of natural justice?

12. It is no longer res integra that in absence of any reasoning, an order cannot be sustained. The Apex Court in the case of **CCT Vs Shukla and Brothers** made an observation that the litigant has a legitimate expectation of knowing reasons for rejection of his/her claim. The relevant paragraphs are reproduced herein below: -

"4. We are of the opinion that in the absence of any reasoning in the impugned judgment, the same cannot be sustained. In this regard, we are benefitted by the following observations made by this Court in CCT Vs. Shukla & Bros. The relevant paragraphs of the judgment are extracted hereinbelow: (SCC pp. 800-801, paras 23-27)

"23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions of exercise of judicial discretion by the courts.

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially

essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claims/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.

26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the court.

27. By practice adopted in all courts and by virtue of Judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove.

13. The aforesaid ratio has also been noted with approval recently in the case of **State Project Director U.P. Education for All Project Board and Others Vs Saroj Maurya and Others.**

14. The requirement for giving reasons by way of a 'speaking order' was subject matter of consideration on many occasions before this court as well as the Apex Court.

15. The expression 'speaking order' was first coined by Lord Chancellor, Earl Cairns; and while explaining the ambit of writ of certiorari, referred to orders with errors on the face of the record and pointed out that in order with errors on its face, is a 'speaking order'. The Courts had held that the face of an order passed by a quasi-judicial Authority and even an administrative authority affecting the rights of parties, must be a 'speaking order'.

16. In the case of **Mahabir Prasad, Santosh Kumar Vs. State of UP and Others**, the Apex Court also held that merely giving an opportunity of hearing is not enough, as whenever an order is

liable to be subjected to appeal before higher forum, the necessity to record reason is even greater, as it ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just.

17. In the case of **Travancore Rayon Ltd. Vs Union of India**, the Apex Court also while examining the exercise of judicial powers of the State, held that the requirement for giving reasons are of paramount importance for two reasons:-

i. The person aggrieved gets an opportunity to demonstrate that the reasons are erroneous; and

ii. The obligation to record reasons operate as a deterrent against possible arbitrary action by the Executive Authority invested with the judicial powers.

18. If we look at the aforesaid proposition from another angle, as to whether it being a judicial or the administrative Authority, both at different stages are Authorities, to which a citizen approaches for the redressal of his/her grievance or for the working of the mechanism, which may be required for furtherance of their interest or to seek enforcement of their rights as envisaged under various statutes and the Constitution of India, it becomes more imperative from the said point of view that the reasons must always be subscribed to demonstrate the fairness in the process and to show that there was no arbitrariness in arriving at a decision.

19. It is a cardinal principal of Rule of Law that justice should not only be done but it should always appear to be done as well. (**Ref: Woolcombers of India Ltd. Vs Workers Union**)

20. In the case of **Union of India Vs. Mohan Lal Capoor**, it was held that the reasons should not reflect that they are mere 'rubber-stamp reason', but it must disclose the application of mind on the subject matter, prior to the decision making and the fact whether the decision is purely administrative or quasi-judicial, is immaterial. There should clearly be a link between the material which was considered and the conclusion which was reached; for the 'reasons are the link between the material on which certain conclusions are based and the actual conclusions'. (**Ref: Gurdial Singh Fijji Vs. State of Punjab**)

21. The Constitution Bench in the case of **H. H. Shri Swamiji of Shri Amar Mutt Vs. Commissioner Hindu Religious and Charitable Endowments Department**, considered a latin maxim "*Cessante ratione legis, cessat ipsa lex*", which means that '*reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself*'.

22. The State cannot seek exemption from the aforesaid requirement of giving reasons in the administrative orders also. In Raj **Kishore Jha Vs. State of Bihar and Others**, it was held that the reasons are the heartbeat of every conclusion and without the same, it becomes lifeless.

23. The Supreme Court in the case of **State of Orissa Vs. Dhaniram Luhar** held as follows:

"8. Even in respect of administrative orders Lord Denning, M.R. In Breen v. Amalgamated Engg. Union, (1971)2 QB 175, observed:(QB p.191 C) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the

controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

24. We may further not dwell into the said question, as on the aforesaid issue, the Supreme Court in the case of **Kranti Associates Private Limited and Another Vs. Masood Ahmed Khan & Ors**. has summarized legal position in paragraph 47 as follows: -

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less

prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(0) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

25. However, we must hasten to clarify that Government does not have a *carte blanche* to take any decision it chooses; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons, which has already been discussed threadbare in several decisions of the Apex Court, including in *Sterling Computers Ltd. v. M & N Publications Ltd.13, Tata Cellular v. Union of India, Air India Ltd. v. Cochin International Airport Ltd., B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and Jagdish Mandal v. State of Orissa.*

26. In the case of **State of Punjab Vs. Bandeep Singh and Others**, while considering the celebrated decision in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner**, the Apex Court held that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official, taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action.

Conclusion- Issue No.1

27. In view of the aforesaid, we have no hesitation in holding that the display of the rejection letter on the official website of the Government, cannot be said to be a 'speaking order' and as such the only so called ‘reason’ which is reflected from the rejection order dated 23.02.2026 i.e. 'साक्ष्य अभाव' is as vague as it can be; and as such does not meet the test for ‘speaking order’, which is a prerequisite, even in case of an administrative order or a quasi-judicial order. The aforesaid order also fails on the principles of legitimate expectation, by applicant who is required to be given reasons for his rejection, to not only enable him to move an appeal to higher forum but also to indicate that the order has been passed with complete fairness and without any arbitrariness. It is writ large that no opportunity was also given to the petitioners by way of a personal hearing or the documents in the form of an alleged report was also not provided to them, so that they could have either removed the deficiencies or filed an objection.

Discussion- Issue No.2

28. It is an admitted fact that apart from the display of the rejection letter on the official website of the Government, no other order or report was made available to the petitioners; and as per the contention of the learned Learned Additional Chief Standing Counsel, there is no other requirement for communicating a separate reasoned order for rejection of the application for the issuance of caste certificate. However, he submits that prior to rejection or acceptance of the application for the issuance

of caste certificate, an internal report is sought; but however, neither the said report is in the public domain or made available to the applicant and as such the issue whether the rejection order can be construed as a decision in absence of the same being communicated to the person concerned, is now being considered.

29. It is a general practice in the departments that the Officers makes a note in the files, expressing their view point on the subject; but at times they are also containing reasons for acceptance or refusal of the file concerned; but even if the noting or the expression of opinion are contained in the file but not being communicated to the person concerned, it is again not res integra that such noting or expression of opinion on the subject cannot be considered as an executable right, affecting the rights of the parties. In the case of **Sethi Auto Service Station Vs. Delhi Development Authority and Others**, the Apex Court held that the order only when communicated to the concerned person, becomes a final order and prior to the same, it is only an expression of opinion of the concerned official, on the subject.

30. In the case of **Bachhittar Singh Vs. State of Punjab**, it was held that opinion becomes a decision of the Government only, when it is communicated to the persons concerned; and a right created under an order of a statutory Authority must be communicated to the person concerned, so as to confer an enforceable right. (*Ref: Lakshminarayan R Bhattad Vs. State of Maharashtra*)

31. In the case **of Greater Mohali Area Development Authority Vs. Manju Jain**, it was held that an order does not become effective unless it is communicated to a person concerned. For ready reference paragraph No. 22 to 24 of the said judgment is produced below.

"22. The Constitution Benches of this Court in Bachhittar Singh v. State of Punjab [AIR 1963 SC 395] and State of Punjab v. Amar Singh Harika [AIR 1966 SC 1313], have held that an order does not become effective unless it is published and communicated to the person concerned. Before the communication, the order cannot be regarded as anything more than provisional in character. A similar view has been reiterated in Union of India v. Dinanath Shantaram Karekar [(1998) 7 SCC 569: 1998 SCC (L&S) 1837: AIR 1998 SC 2722] and State of W.B. v. M.R. Mondal [(2001) 8 SCC 443].

23. In Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413] this Court held that the order of the authority must be communicated for conferring an enforceable right and in case the order has been passed and not communicated, it does not create any legal right in favour of the party.

24. Thus, in view of the above, it can be held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated."

Conclusion- Issue No.2

32. In view of the settled law that an order not communicated is the dead letter and the same cannot become effective unless it is communicated to the person concerned, we find that the impugned rejection order dated 23.02.2026, which only states that the application of the petitioners are being rejected, for the issuance of caste certificates, on the ground that there was insufficiency

of the evidence without specifying the deficit evidence; cannot be sustained and is liable to be set aside, and accordingly, the rejection letter/order dated 23.02.2026 is here by **set aside**.

33. This Court also finds that the roster is flooded with similar writ petitions on daily basis, and no reasons of whatsoever nature is reflected from the rejection letters/orders, which are only made available on the official website of the Department; and apart from the same, neither any 'speaking order' or any report is made available to the petitioners; and as such the petitioners are handicapped while filing an appeal, as they are neither having reasons for the rejection nor been given the grounds, based on which they could prefer the appeal; and as such the remedy of filing an appeal cannot be said to be an efficacious remedy in the given facts and circumstances.

34. In view of the aforesaid, we deem it appropriate to issue following directions to the State Authorities, to also curb the nature of litigation and to maintain fairness and unarbitrariness in the decision making process:-

(I) On an application being made by an individual for the issuance of caste certificate, the concerned authorities shall ensure that the report sought prior to consideration for the issuance of such certificate, should be submitted only after giving due opportunity to such an applicant, and strictly adhering to the principles of natural justice.

(II) The applicant must be given a reasonable opportunity to file his objection to the aforesaid report and be also permitted to remove the deficiency pointed out, if any, in the aforementioned report.

(III) It shall be incumbent upon the Authority to pass a 'speaking order' either accepting or rejecting the said application; and a copy of the said order shall be made available to the applicant within a period of seven days of passing of such an order.

(IV) The Authorities may consider, to give a link on the official website, of the ‘rejection order’ and the ‘report’ forming the basis of the rejection and upon being accessed one may be displayed with detailed reason and report to be downloaded.

(V) The aforesaid exercise shall be required to be completed within a period of two months from the date of filing of application.

35. The Chief Secretary, Government of UP is directed to circulate a copy of this order to all the Authorities in the Districts of Uttar Pradesh, including at the Tehsil level; and may also consider framing of an SOP, in the light of the observations and directions given by this court, within a period of three months from today.

36. The Registrar (Compliance) is directed to communicate the order for compliance, to the Chief Secretary, Government of UP, forthwith.

37. The writ petition stands ***allowed***.

(2026) 7 ILRA 466
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 4693 of 2026

Pushpa Devi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to the validity of the auction notice issued by the respondent-Bank in the year 2026 for recovery of Rs.3,24,550/- against a loan of Rs.80,000/- disbursed in the year 2015; and whether the auction notice could have been issued without first crystallizing the amount recoverable from the petitioner, without issuing notice to him or affording him an opportunity to exercise his right of redemption of the mortgaged property.

Headnotes

U.P. Sahkari Gram Vikas Bank – Loan – Auction notice – Loan of Rs.80,000/- at the rate of 14.25% per annum disbursed in the year 2015 for purchasing of buffaloes – Petitioner made no payments towards the installments due to immediate death of the buffaloes and her belief that the loan amount had been paid by the Insurance Company – Bank also not diligent in pursuing the payment of installment – Interest allowed to accrue to Rs.3,24,550/- – Bank thereafter published impugned auction notice in the year 2026, without issuing of notice or affording any opportunity to the petitioner a right of redemption of the mortgage property – Justification:

Held: Publishing of the impugned auction notice dated 19.03.2026 by the respondent-Bank without any crystallization of the recovery amount is arbitrary and against the principles established in law – Petitioner being ready to settle and make payments in installments to the Bank, the behavior of the respondent-Bank is contrary to the very object for which it was incorporated – Bank was formed for providing financial assistance to the farmers, villagers and the rural population so as to overcome the difficulties being faced from traditional money lenders in the rural area – Impugned auction notice dated 19.03.2026 stayed till disposal of the writ petition – It was provided pendency of the writ petition shall not be an impediment for offering of payments by the petitioner to the Bank for settlement of its loan. [Paras 3-10] (E-5)

Case Law Cited

NIL

List of Acts

U.P. Sahkari Gram Vikas Bank Act.

List of Keywords

Recovery of loan; Auction of agricultural land; Auction notice; Death of buffaloes; Right of redemption of mortgage property; Notice to borrower; Payment of loan in installments; Financial assistance to farmers;

Object of U.P. Sahkari Gram Vikas Bank Act; Usury; Arbitrary auction notice; Stay of auction notice; Settlement of loan.

Case Arising From

Writ petition challenging the auction notice dated 19.03.2026 published by the Land Sale Officer, Uttar Pradesh Sahkari Gramya Vikas Bank Limited, Branch Safipur, District Unnao.

Appearances for Parties

Advs. for the Petitioner : Ram Krishna Dubey
Advs. for the Respondents: C.S.C., Vinod Kumar Singh

(Delivered by Hon'ble Shekhar B. Saraf, J.

&

Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. The petitioner has prayed for the following substantial reliefs:-

"(i) To issue a writ, order or direction in the nature of the Certiorari quashing the serial no. 14 of publication dated 19.3.2026 published in daily news paper 'Dainik Jagran' by the respondent no.4 i.e. Land Sale Officer Uttar Pradesh Sahkari Gramya Vikas Bank Limited, Branch Safipur District-Unnao, as relates to the petitioner(as contained in the Annexure No. 1 to the affidavit in support of the instant writ petition).

(ii) To issue a writ, order or direction in the nature of Mandamus commanding and restraining the opposite parties from any interference in peaceful use and possession of the petitioner over the land situated at the Gata No. 66/89, Area-1.0050 Hectare, situated at Village Laukiyavadepur, Rajepur, District-Unnao;

(iii) To issue a writ, order or direction in the nature of Mandamus commanding to respondents especially the respondent no.3 to accept the loan amount in the easy installments after providing detailed statement of the account to the petitioner."

3. Apparently, a loan for an amount of Rs.80,000/- at the rate of 14.25% per annum had been disbursed in the year 2015 by the U.P. Sahkari Gram Vikas Bank Limited to the petitioner for purchasing of buffaloes. The tenure of the said loan was fixed for five years.

4. Admittedly, although the petitioner made no payments towards the installments because of reasons attributable due to immediate death of the said buffaloes and her belief that the loan amount has been paid by the Insurance

Company. However, surprisingly we find that even the Bank has also not been diligent in pursuing the payment of installment and has technically sat over the matter unnecessarily for a very long period. Resultantly, the Bank has allowed the interest to accrue unsurmountedly for an amount of Rs.3,24,550/- as on date to the detrimental of the petitioner and suddenly the Bank has resurrected from its deep slumber to publish the impugned auction notice in the year 2026, even without issuing of notice or affording any opportunity to the petitioner a right of redemption of the mortgage property.

5. Prima facie, we are of the view that the publishing of the impugned auction notice dated 19.03.2026 by the respondent-Bank without any crystallization of the recovery amount is arbitrary and against the principles established in law.

6. It has been further submitted by learned counsel for the petitioner that the family is basically into agriculture activity and the land which is sought to be auctioned is the only land, which is the basis of their livelihood. It is submitted that the activity of the auction of the land would force the farmer to vagrancy.

7. From a perusal of the petition, it appears that the petitioner is being forced to face auction of his agriculture land, although the petitioner is ready to settle and make payments in installments to the Bank, even though there is substantial fault on the part of the Bank. The behavior of the respondent-Bank is contrary to the very object for which it was incorporated. Effectively, the Bank was formed for providing financial assistance to the farmers, villagers and the rural population so as to overcome the difficulties being faced from traditional money lenders (Sahukar) in the rural area. However, it seems the Bank has traversed from its objective and wandered into the realms of usury, which was neither anticipated nor envisaged by any stretch of imagination by the U.P. Sahkari Gram Vikas Bank Act.

8. This matter requires consideration.

9. Let counter affidavit be filed within a period of six weeks. Rejoinder affidavit, if any, may be filed within a period of two weeks thereafter.

10. Keeping in view the totality of the facts and circumstances of this case, the impugned auction notice dated 19.03.2026 is stayed till the disposal of the present writ petition. However, the pendency of this writ petition shall not be an impediment for offering of payments by the petitioner to the Bank for settlement of its loan.

11. List this matter on 1st September, 2026.

(2026) 7 ILRA 469
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 12262 of 1981

Tilak Ram **...Petitioner**
Versus
D.D.C. & Ors. **...Respondents**

Issue for Consideration

(1) Relevance of date of deposit of land revenue to grant the Bhumidhari Sanad, and effect of death of Sirdar after the deposit of land revenue in treating the Sirdar as the Bhumidhar.

Headnotes

(A) Consolidation law – UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11(1), 45-A(2) and 48 – Grant of Bhumidhari Sanad – Date of deposit of land revenue – Relevancy – DDC held that mere non-issuance of Bhumidhari Sanad will not make any difference rather Jhinkoo will be treated as bhumidhar on the date of deposit of 20 times of the land revenue – DDC further held that Gyanmati is daughter of Jhinkoo and the gift deed dated 8.5.1973, which has been proved by the marginal witness, as such, claim of respondent no. 4, Gyanmati on the basis of gift deed dated 8.5.1973 cannot be refused in any manner – Validity challenged .

Held : Date of deposit of land revenue by the sirdar will be relevant and subsequent death of sirdar will not make any diference – The death of the tenure holder could not bar the issuance of the bhumidhari sanad in his favour from the date of the deposit – There is no illegality in the exercise of jurisdiction under Section 9A(2), 11(1) & 48(1) of U.P.C.H. Act by consolidation authorities. [Para 13, 14 and 16] (E-1)

Case Law Cited

Rakesh and Others vs. Board of Revenue U.P. and Others, 2019 (0) Supreme (SC) 267; Banshidhar vs. Dhirjadhari and Others, AIR 1971 Allahabad 526; Satendra Singh and Others vs. State of U.P. and Another, 2013 (10) ADJ 370 (DB); Civil Misc. Writ No. 619 of 1963, Meghu alias Mandu vs. State of Uttar Pradesh decided on 10.1.01968; Deo Nandan & another vs. Ram Saran & others, (2000) 3 SCC 440; Bindha Prasad and others vs. Bhan Datt(dead) by Lrs., (2008) 2 SCC 537 : 2008 (104) RD 70 **– referred to.**

List of Acts

UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11(1), 45-A(2) and 48.

List of Keywords

Co-tenure holder, Land revenue, Objection, Issueless, Gift deed, Bhumidhar Sanad, Date of deposit, Permission, Lifetime of Sirdar, Consolidation operation, Admissible evidence, Possession, Marginal witness, Finding of fact, Technical objection, Rent, Bar, Illegality, Exercise of jurisdiction.

Case Arising From

Impugned orders dated 09.07.1981 passed by the Deputy Director of Consolidation, Impugned order dated 23.10.1980 passed by the Settlement Officer of Consolidation and 06.06.1979 passed by the Consolidation Officer.

Appearances for Parties

Advs. for the Petitioner : B.S. Pandey, Kartikey Pandey, S.D. Pathak

Advs. for the Respondents : Hanuman Deen Verma; Mr. Anjani Kumar Chaurasia, ACSC; A.K. Yadav, Adya Prasad Tewari, Arun Kumar Patel, D.K.Srivastava, Hanuman Deen Verma, P.P. Chaudhary, Rahul Jain, Rajesh Kumar Chaudhary, Ravindra Prakash Srivastava.

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

1. Heard Mr. B.S. Pandey, learned Counsel assisted by Mr. Kartikey Pandey, learned Counsel for the petitioner, Mr. Hanuman Deen Verma, learned Counsel for respondent nos. 5/1, 6, 7/1, 7/2, 8 and Mr. Anjani Kumar Chaurasia, learned Additional Chief Standing Counsel for the State respondents.

2. Brief facts of the case are that one Jhinkoo was co-tenure holder of sirdari khata no.87 situated in Village Kaligarh, Tehsil Harraiya, District Basti. Jhinkoo deposited 20 times of land revenue and applied for bhumidhari sanad which was rejected by tahsildar vide order dated 21.11.1973 on the ground that tenure holder has died after deposit of 20 times of land revenue. The aforementioned Jhinkoo had died accordingly during consolidation operation an objection under section 9A(2) of U.P. Consolidation of Holding Act, 1953 hereinafter referred to as U.P.C.H. Act was filed by Raghunandan (petitioner's father) alleging that deceased was the brother of applicant/ Raghunandan, as such, he is entitled to inherit the property of Jhinkoo who had died issueless. Respondent no.4, Gyanmati filed an objection alleging that she is the daughter of deceased- Jhinkoo and a gift deed dated 8.5.1973 was executed by Jhinkoo in her favour, as such, she is entitled to be recorded in place of Jhinkoo. Gaon Sabha had also filed an objection alleging that Jhinkoo had died issuelss as such property should be vested in gaon sabha. Consolidation Officer vide order dated 6.6.1979 allowed the objection filed by respondent no.4, Gyanmati and rejected the objection of petitioner's father as well as Gaon Sabha. Appeal under Section 11 (1) of U.P.C.H. Act was filed by petitioner which was dismissed by Settlement Officer of Consolidation vide order dated 23.10.1980. Revision under Section 48 of U.P.C.H. Act filed by petitioner before Deputy Director of Consolidation was heard and dismissed vide order dated 9.7.1981. Hence this writ petition on behalf of petitioner for the following relief:-

"A writ, order or direction in the nature of certiorari quashing the orders dated 6.6.1979 passed by respondent no.3, 23.10.1980 passed by respondent no.2 and dated 9.7.1981 passed by respondent no.1."

3. This Court admitted the writ petition on 11.11.1981 and stayed the order dated 9.7.1981 passed by Deputy Director of Consolidation provided the petitioner has not already been dispossessed in pursuance of the impugned order.

4. In pursuance of the order of this Court dated 11.11.1981, the parties have exchanged their pleading.

5. Learned Counsel for the petitioner submitted that the claim of the petitioner's father under Section 9A (2) of U.P.C.H. Act being brother of deceased cannot be refused by consolidation authorities in any manner. He further submitted that on the deposit being made by Jhinkoo in obtaining the bhumidhari sanad under Section 134 of U.P. Zamindari Abolition & Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act, notice had been issued and petitioner's father had filed an objection therein but before passing any order for issuance of bhumidhari sanad, Jhinkoo had died, as such, application for issuance of bhumidhari sanad was rejected. He further submitted that Deputy Director of Consolidation had misinterpreted the provisions contained under Sections 134, 135, 137 of U.P.Z.A. and L.R. Act, as such, the impugned orders cannot be sustained in the eye of law. He further submitted that bhumidhari sanad shall be deemed to have been granted from the date of deposit in case the order for grant of bhumidhari sanad has been passed in the lifetime of sirdar consern but in the instant case, the order for grant of bhumidhari sanad was not passed in the life time of sirdar, as such, the order impugned cannot be sustained in the eye of law. He further submitted that there was no permission of Settlement Officer of Consolidation to execute the gift deed during consolidation operation in respect to chak no. 87 as required under Section 5 of the U.P.C.H. Act, as such, gift deed alleged to be executed in favour of respondent no.4 cannot be relied upon rather the gift deed should be treated as void in view of the provisions contained under Section 45-A (2) of U.P.C.H. Act. He submitted that Deputy Director of Consolidation has failed to take into consideration the admission made by respondent no.4/ Gyanmati that gift deed was executed after 4 or 5 months from the date of death of Jhinkoo. He further submitted that there was no admissible evidence on record that Smt. Gyanmati was the daughter of the deceased- Jhinkoo. He submitted that impugned orders should be set aside and the objection filed by petitioner under Section 9A (2) of U.P.C.H. Act in respect to the plot in question should be allowed. He placed reliance upon the following judgement of this Court as well as Apex Court in support of his arguments:-

(i) 2019 (0) Supreme (SC) 267 Rakesh and Others Vs. Board of Revenue U.P. and Others

(ii) AIR 1971 Allahabad 526 Banshidhar Vs. Dhirjadhari and Others

(iii) 2013 (10) ADJ 370 (DB) Satendra Singh and Others Vs. State of U.P. and Another

(iv) Civil Misc. Writ No. 619 of 1963 dated 10.1.1968 Meghu alias Mandu Vs. State of Uttar Pradesh

6. On the other hand, learned Counsel for private respondent submitted that respondent no.4/ Gyanmati was daughter of Jhinkoo and Jhinkoo had executed registered gift deed dated 8.5.1973 in favour of his daughter/ Gyanmati in respect to the disputed property. He submitted that objection filed by petitioner's father/ Raghunandan was rejected by the consolidation authorities and the claim of respondent no.4/ Gyanmati was accepted, as such, no interference is required against the concurrent judgement passed by all the three consolidation authorities. He further submitted that objection of Gaon Sabha that Jhinkoo had died issueless therefore property should be vested in Gaon Sabha was rejected by

consolidation authorities which requires no interference. He further submitted that one Ganga Deen (marginal witness of the gift deed) had appeared before the Consolidation Officer and prove the gift deed, as such, there is no illegality in the impugned orders passed by the consolidation authorities. He further submitted that marginal witness had also stated that Gyanmati is daughter of Jhinkoo. He further submitted that the evidence of the witness shall be read in whole rather in piece. He further submitted that respondent no.4 came in possession of the plot in dispute since execution of gift deed in her favour. He further submitted that petitioner is not in possession of the plot in dispute. He further submitted that Jhinkoo had deposited 20 times of the land revenue as such the bhumidhari sanad shall be deemed to be issued from the date of deposit, as such, there is no illegality in the exercise of jurisdiction by the consolidation authorities. He submitted that no interference is required and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

8. There is no dispute about the fact that objection under Section 9A (2) of U.P.C.H. Act filed by petitioner was rejected by the Consolidation Officer and objection filed by respondent no.4/ Gyanmati was allowed by Consolidation Officer vide order dated 6.6.1979 directing to record the name of respondent no.4/ Smt. Gyanmati over the plot in question. There is also no dispute about the fact that appeal under Section 11 (1) of U.P.C.H. Act filed by petitioner was dismissed by Settlement Officer of Consolidation vide order dated 23.10.1980. There is also no dispute about the fact that revision under Section 48 of the U.P.C.H. Act filed by petitioner has been dismissed by Deputy Director of Consolidation vide order dated 9.7.1981.

9. In order to appreciate the controversy involved in the matter, the perusal of the four issues framed before the Consolidation Officer will be relevant which are as under:-

"वाद बिन्दु"

1- "क्या झिनकू निः संतान मर गये तथा उनका अंश ग्राम सभा में निहित होना चाहिये ?

2- क्या श्रीमती ज्ञानमती पत्नी हंसराज तथा झिनकू को पुत्री तथा खाते के हिब्बेदार है तथा उनका नाम बतौर हिब्बेदार दर्ज होना चाहिये।

3- क्या हिब्बा नाम दिनांक 8-5-73 फरजी लिखे तथा फरजी आदमी को खड़ा करके लिखाया गया है?

4- क्या रघुनन्दन मृतक खातेदार झिनकू के एक मात्र वारिस तथा सगा भाई है?"

10. Consolidation Officer considering the evidence on record, recorded finding of fact that gift deed dated 8.5.1973 was executed in proper manner and the marginal witness of the gift deed namely Gangadeen had proved the gift deed, as such, respondent no.4/ Gyanmati is entitled to be recorded over the plot in question on the basis of will deed in place of deceased- Jhinkoo.

11. Settlement Officer of Consolidation has also recorded finding of fact that gift deed is registered deed and one of the marginal witness namely Gangadeen has proved the gift deed in question as well as no suit for cancellation of gift deed has been filed in the Civil Court, as such, gift deed in question executed in favour of Smt. Gyanmati cannot be ignored in any manner.

12. Deputy Director of Consolidation again examined the issues in detail and has recorded finding that Jhinkoo had died on 16.5.1973 and gift deed was executed on 8.5.1973. The finding of fact has also been recorded by the Deputy Director of Consolidation that permission was granted by Settlement Officer of Consolidation on 8.5.1973 under Section 5 of U.P.C.H. Act and the technical objection raised by the other side that no permission was granted for execution of gift deed was rejected. The finding of fact has also been recorded by Deputy Director of Consolidation that 20 times of the rent was deposited by Jhinkoo in his lifetime for granting bhumidhari sanad, as such, mere non-issuance of bhumidhari sanad will not make any difference rather Jhinkoo will be treated as bhumidhar on the date of deposit of 20 times of the land revenue. The finding of fact has also been recorded by Deputy Director of Consolidation that Gyanmati is daughter of Jhinkoo and the gift deed dated 8.5.1973 has been proved by the marginal witness of the gift deed in question, as such, claim of respondent no.4, Gyanmati on the basis of gift deed dated 8.5.1973 cannot be refused in any manner.

13. So for as grant of bhumidhari sanad is consern, it is well settled principle of law that date of deposit of land revenue by the sirdar will be relevant and subsequent death of sirdar will not make any diference as held by Apex Court in the case reported in **(2000) 3 SCC 440 Deo Nandan & another versus Ram Saran & others.** Paragraph No. 7&9 of the judgment rendered in **Deo Nandan(Supra)** will be relevant for perusal which are as under:-

"7. Section 134, from its plain language, indicates and shows that on the application being made and 10 times the land revenue being paid, the sirdar becomes entitled "with effect from the date on which the amount had been deposited" to a declaration that he has acquired the rights mentioned in Section 137 of the Act. The section clearly specifies the date with effect from which the rights would stand acquired: the date is the one on which the amount contemplated by Section 134 is deposited. This clearly obviates the uncertainty of the point of time when the title is transferred by fixing the date as being the one when the amount is deposited. It would be immaterial as to when the declaration under Section 137 is made because that declaration must necessarily take effect from the date when the amount is deposited.

9. It is no doubt true that in the Full Bench decision in Banshidhar v. Dhirajadhari-, in the Single Judge decision in Mobin Khan v. Chunnu Khan? and in the decision in Raghunandan Singh v. Vashwant Singh? a different view has been expressed by the Allahabad High Court. In the Full Bench decision, the view taken is that it is from the date when the order is passed under Section 137 that the sirdar becomes a bhumidhar. In the latter two cases, it has been held that if after filing of the application and making payment of the land revenue the applicant dies, then certificate in his name cannot be granted. In our opinion, the said decisions run counter to the plain language and meaning of Sections 134 and 137 as they stood at the relevant point of time. When a certificate is issued under Section 137, it in fact recognises the position as on the date when the application was made and the payment contemplated under Section 134(1) was deposited. The certificate, in other words, will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the Revenue Authorities from allowing the application filed under Section 134(1) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application is accepted and order is passed under Section 137, it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr Prem Prasad Juneja, learned counsel for the appellants, as an analogy, has drawn our attention to Order 22 Rule 6 CPC which provides that if any of the parties to a suit dies after the hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act."

14. Apex Court in another case reported in **(2008) 2 SCC 537= 2008 (104) RD 70 Bindha Prasad and others versus Bhan Datt(dead) by Lrs**. has held that the death of the tenure holder could not bar the issuance of the bhumidhari sanad in his favour from the date of the deposit. Paragraph no. 8 of the judgment rendered in **Bindha Prasad(Supra)** will be relevant for perusal which is as under:-

"8. On the application being made and the stipulated times of land revenue being paid, the sirdari becomes entitled "with effect from the date on which the amount had been deposited" to a declaration that he has acquired rights mentioned in Section 137 of the Act. The Section clearly specifies the date with effect from which the rights would stand acquired i.e. the date on which the amount contemplated by Section 134 is deposited. This clearly alleviates the uncertainty of the point of time when the title is transferred by fixing the date as being the date on which the amount is deposited. It would be immaterial as to when the declaration under Section 137 is made because that declaration must necessarily take effect from the date when the amount is deposited. Prior to the amendment of Sub section (2) of Section 137 of the Act the position was that it is only the grant of certificate under Sub section (1) of Section 137 that the Sirdar from the date thereof became or is to be deemed to be a Bhumidhar of the holding or the share in respect of which the certificate has been granted. The amendment of Sub section (2) of Section 137 by Amendment Act 21 of 1962 with effect from 13.12.1962 brought Section 137 (2) in line with Section 134. The two provisions read together clearly provide that as and when the certificate under Section 137 is granted, it must

relate back and be effective from the date on which the amount referred to in Sub section (1) of Section 134 was deposited. In this context the observation of this Court in para 9 of Deo Nandan and Anr. v. Ram Saran and Ors. MANU/SC/0177/2000MANU/SC/0177/2000 : [2000]2SCR209 is worth being quoted. So far relevant, it was observed as follows:

In our opinion, the said decisions run counter to the plain language and meaning of Sections 134 and 137 as they stood at the relevant point of time. When a certificate is issued under Section 137 it in fact recognises the position as on the date when the application was made and the payment contemplated under Section 134(1) was deposited. The certificate, In other words, will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed under Section 134(1) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application Is accepted and order is passed under Section 137 it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr. Prem Prasad Juneja, learned Counsel for the appellants, as an analogy, has drawn our attention to Order 22 Rule 6, C.P.C. which provides that if any of the parties to a suit dies after the hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act."

15. Apex Court in the case of **Rakesh(Supra)** decided on 8.3.2019 has followed the principle of law laid down in **Deo Nandan(Supra)** and held as under in paragraph no. 12 of the Judgment:-

"12. In view of law as laid down above, the judgment of Allahabad High Court in Ram Sabodh(Supra) cannot help the Appellant. The judgment of this Court in Deo Nandan and Anr. (supra) fully covers the claim of the Plaintiff-Respondent with regard to Suit No. 31 of 1978 relating to Plot No. 521, with regard to which Sanad was granted after death of Pursottam. We are of the view that Additional Commissioner, Board of Revenue and High Court committed no error in decreeing Suit No. 31 of 1978."

16. Considering the ratio of law laid down in respect to grant of bhumidhari sanad, provision relating to transfer made during consolidation operation and other evidence on record, there is no illegality in the exercise of jurisdiction under Section -9A(2), 11(1) & 48(1) of U.P.C.H.Act by consolidation authorities as such no interference is required against the impugned judgments/ orders passed by consolidation authorities.

17. The writ petition is **dismissed**.

18. No order as to costs.

(2026) 7 ILRA 476
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.07.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 3498 of 2011

Chhotey Lal Jaiswal **...Petitioner**
Versus
State of U.P. **...Respondent**

Issue for Consideration

(1) Validity of the order holding that appointment was made beyond sanctioned posts as there were only five posts, though admittedly there were eight sanctioned posts in the institution.
(2) Permissibility of supplementing or improving the impugned order by asserting different averments in the counter affidavit.

Headnotes

(A) Service law – Arrears of salary – Entitlement – Grant-in-aid – Eight posts were sanctioned – The petitioner was appointed against one of these post – However, the impugned order was passed holding that the petitioner was appointed beyond sanctioned posts as there were only 5 posts in the institution – Validity challenged .

Held : On perusal of impugned order, it is evident that it has been recorded in paragraph 3 that there were 8 duly sanctioned posts by the Regional Assistant Director of Education Basic, 7th Region, Lucknow, therefore, finding recorded in the impugned order that appointment of the petitioner is beyond sanctioned posts as there were only 5 posts in the institution, is erroneous in nature and against the order of sanctioned posts **–** Finding recorded is perverse in nature and without any rational basis, therefore, the impugned order being illegal is liable to be set aside. [Para 14 and 16]

(B) Practice and procedure – Averment made in counter affidavit tending to supplement or improve the impugned order – Permissibility .

Held : The assertion made in the counter-affidavit that the petitioner does not have qualification cannot be supplement the impugned order holding that B.Ed is not a good qualification for appointment on the post of Assistant Teacher. The averments made in counter-affidavit is not acceptable in the eyes of law as well as nothing can be supplemented in the impugned order by giving averments in the counter affidavit as has been held in the case of M.S. Gill's case – No reason can be supplemented to the impugned order by asserting averments in the counter affidavit. [8 and 13] (E-1)

Case Law Cited

M.S. Gill and another vs. Chief Election Commissioner, New Delhi and others, AIR 1978 SC 1978 **– referred to.**

List of Acts

U.P. Basic Education Act, 1972; U.P. Recruitment and Service Conditions of Teachers Rules, 1978; Payment of Salaries to Teachers Act, 1978.

List of Keywords

Arrears of salary, Sanctioned strength, Speaking and reasoned order, Appointment, Sanctioned post, Misconceived, Erroneous, Not sustainable in the eyes of law, Cursory manner, Without application of mind,

Supplement, Infirmity, Illegality, Just, Valid, Divergence, Abolition of post, Devoid of merit, Perverse, Rational basis, Superannuates.

Case Arising From

Impugned order dated 29.03.2011 passed by respondent No. 4 holding that the appointment of the petitioner has not been made against sanctioned post.

Appearances for Parties

Advs. for the Petitioner : A. K. Pandey, A. K. Mishra, Gangeshwar Pandey, Mrs. Suniti Sachan, Sanjay Kumar Singh, Sidhant Rathour

Advs. for the Respondents : Gauri Shanker Maurya, Prashant Arora, Shailendra Singh Rajawat

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Sanjai Kumar Singh, learned counsel for the petitioner, Sri S.S. Rajawat, learned counsel for respondent No.4 and learned Standing Counsel for respondent Nos.1 to 3.

2. By means of present writ petition, the petitioner is challenging the order dated 29.03.2011 passed by respondent No.4 contained as Annexure-1 to the writ petition with a further prayer to issue writ of mandamus commanding and directing the respondents to make payment of arrears of salary to petitioner from the date from which the other employees of School are getting salary from 01.12.2006.

3. Factual matrix of the case in a nutshell is that the committee of management of the institution known as Asht Bhuja Vidyalaya, Shahmau, Chhatrapati Sahuji Maharaj Nagar (now Amethi), which is recognized under U.P. Basic Education Act, 1972. The provisions of U.P. Recruitment and Service Conditions of Teachers Rules, 1978 as well as Payment of Salaries to Teachers Act, 1978 are also applicable to the said institution.

4. A vacancy came into existence on sanctioned strength of 8 posts. Against the sanctioned post, the petitioner was granted appointment on the post of Assistant Teacher on 10.7.1977 before promulgation of 1978 Rules. District Basic Education Officer (DBEO) accorded approval on 12.7.1985.

5. At the time of granting appointment to the petitioner, the petitioner's institution was not receiving grant in aid from the State Government. The State Government issued a Government Order on 02.12.2006 taking the institution on the grant in aid list. Respondent No.3 sanctioned 13 posts in the school; one Head Master, 8 Assistant Teachers, 1 Clerk, and 3 Class-IV employees vide order dated 27.10.1986.

6. The petitioner filed Writ Petition No.6522 (S/S) of 2010 before this Court, wherein this Court was pleased to pass an order on 15.09.2010 directing the respondents to decide the representation of the petitioner by passing speaking

and reasoned order. The order of this Court was not complied with, the petitioner filed Contempt petition before this Court, wherein notice was issued to respondent No.4. Thereafter, an order was passed on 29.03.2001 holding that the appointment of the petitioner has not been made against sanctioned post. Assailing the impugned order dated 29.03.2001, the present writ petition has been filed.

7. Submission of learned counsel for the petitioner is that there were 8 sanctioned posts of Assistant Teachers excluding one post of Head Master in the institution on bare perusal of first page of the impugned order, therefore, the impugned order passed ignoring this fact is wholly misconceived and erroneous in nature, therefore is not sustainable in the eyes of law.

8. His submission is that the impugned order has been passed ignoring the material on record in a very cursory manner and without application of mind. The assertion made in the counter-affidavit that the petitioner does not have qualification cannot be supplement the impugned order holding that B.Ed is not a good qualification for appointment on the post of Assistant Teacher. The averments made in counter-affidavit is not acceptable in the eyes of law as well as nothing can be supplemented in the impugned order by giving averments in the counter affidavit as has been held in the case of **M.S. Gill and another v. Chief Election Commissioner, New Delhi and others reported in AIR 1978 Supreme Court 1978.**

9. On the other hand, learned counsel for the respondents submitted that the impugned order passed on 29.03.2011 does not suffer from any infirmity or illegality and is just and valid. They submitted that there are 5 posts sanctioned of Assistant Teachers and 5 persons appointed on the post of Assistant Teachers and working therefore, appointment of the petitioner is beyond sanctioned post.

11. I have considered the submissions advanced by learned counsel for the parties and perused the material on record and the law reports cited by learned counsel for the petitioner.

12. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a) Ms. Gill and another (Supra):

"8. 8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional

grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16]:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.?

Orders are not like old wine becoming better as they grow older.

17. 17. We now enter the constitutional zone relating to the controversy in this case. Although both sides have formulated the plural problems with some divergence, we may compress them into three cardinal questions:

(1) Is Article 329(b) a blanket ban on all manner of questions which may have impact on the ultimate result of the election, arising between two temporal termini viz. the notification by the President calling for the election and the declaration of the result by the returning officer? Is Article 226 also covered by this embargo and, if so, is Section 100 broad enough to accommodate every kind of objection, constitutional, legal or factual, which may have the result of invalidation of an election and the declaration of the petitioner as the returned candidate and direct the organisation of any steps necessary to give full relief?

(2) Can the Election Commission, clothed with the comprehensive functions under Article 324 of the Constitution, cancel the whole poll of a constituency after it has been held, but before the formal declaration of the result has been made, and direct a fresh poll without reference to the guidelines under Sections 58 and 64(A) of the Act, or other legal prescription or legislative backing? If such plenary power exists, is it exercisable on the basis of his inscrutable ?subjective satisfaction? or only on a reviewable objective assessment reached on the basis of circumstances vitiating a free and fair election and warranting the stoppage of declaration of the result and directions of a fresh poll not merely of particular polling stations but of the total constituency?

(3) Assuming a constitutionally vested capacity under Article 324 to direct re-poll, is it exercisable only in conformity with natural justice and geared to the sole goal of a free, popular verdict if frustrated on the first occasion? Or, is the Election Commission immune to the observance of the doctrine of natural justice on account of any recognised exceptions to the application of the said principle and unaccountable for his action even before the Election Court??"

13. On perusal of the relevant extract of the judgment, it is evident that no reason can be supplemented to the impugned order by asserting averments in the counter affidavit, therefore, the impugned order being un-reasoned is liable to be set aside.

14. On perusal of impugned order, it is evident that it has been recorded in paragraph 3 that there were 8 duly sanctioned posts by the Regional Assistant Director of Education Basic, 7th Region, Lucknow, therefore, finding recorded in the impugned order that appointment of the petitioner is beyond sanctioned posts as there were only 5 posts in the institution, is erroneous in nature and against the order of sanctioned posts, as has been noticed in the impugned order.

15. There is no order abolishing the sanctioned posts strength from 8 to 5, therefore, in absence of any order of abolition of post, the impugned order suffers from apparent illegality holding that there are 5 sanctioned posts only, therefore, the order impugned is per se illegal and devoid of merit.

16. The other grounds taken in the impugned order are not sustainable in the eyes of law and the finding recorded is perverse in nature and without any rational basis, therefore, the impugned order being illegal is liable to be set aside.

17. The objection raised by learned counsel for the respondents that there are only 5 sanctioned posts is not sustainable in the eyes of law as para 3 of the impugned order itself takes notice of the fact that there were 8 sanctioned posts in the institution. Both counsels failed to produce any order of abolition of posts from 8 to 5, therefore, the arguments advanced by them have no merit and are hereby rejected.

18. In view of reasons recorded above and facts and circumstances of the case, I am satisfied that the impugned order is illegal and without any rational basis. The order impugned is against factual aspect of the matter, therefore, it is liable to be quashed.

19. In view of reasons given above, the impugned order dated 29.03.2011 passed by respondent No.4 contained as Annexure-1 to the writ petition is hereby quashed.

20. The writ petition succeeds and is **allowed**.

21. However, the respondents are directed to pay arrears of salary with effect from the date when institution was taken under grant-in-aid list upto 30.6.2011 when the petitioner superannuates within a period of three months from the date of production of a certified copy of this order.

(2026) 7 ILRA 481
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.07.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 4665 of 2011

Vishwanath Patel **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Competence of DIOS to decide the appeal, when the statutory appeal against the dismissal order of the Principal was pending before the Committee of Management.

Headnotes

(A) Service law – Regulations framed under U.P. Intermediate Education Act, 1921 – Chapter III, Regulation 31 – Class IV post – Dismissal – Appeal against the dismissal order of Principal was pending before the Committee of Management – However, the DIOS passed the impugned order entertaining the appeal – Competence of DIOS felt into consideration .

Held : There is specific provision that Principal of the institution is authorized to pass the order of dismissal, termination or removal against a Class IV employee and against the order passed by the Principal of the Institution appeal lies to the Committee of Management, which is to be decided within a period of six months **–** The order passed by the DIOS is wholly without jurisdiction in view of provisions contained under Regulation 31 Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 and is liable to be set aside. [Para 10 and 14] (E-1)

List of Acts

U.P. Intermediate Education Act, 1921; Regulations framed under U.P. Intermediate Education Act, 1921 **–** Chapter III, Regulation 31.

List of Keywords

Compassionate basis, Sudden death, Joining, Salary, Grievance, Attendance register, Dismissal of service, Illegal, Arbitrary, Jurisdiction, Reinstate, Justification.

Case Arising From

Impugned order dated 08.06.2011 passed by the District Inspector of Schools Pratapgarh.

Appearances for Parties

Advs. for the Petitioner : Harsha Yadav, Sanjay Misra, Km. Shilpi, Vinod Mishra.
Advs. for the Respondents : Rajiv Srivastava, ACSC; H.G.S.Parihar.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Ms. Harsha Yadav, learned counsel for the petitioner and Sri Rajiv Srivastava, learned Additional CSC for the respondent Nos.1 to 4 - State.

2. Factual matrix of the case is that the petitioner was appointed on Class-IV post on compassionate basis due to sudden death of his father Sri Ram Sunder Patel. Since the date of appointment, the petitioner was working in the college and in the month of July 2005, he was directed to perform his duties at the residence of the Manger of the College at 'Vijaypur Kothi, Mutthiganj, Allahabad. On 30.09.2010, all of sudden, when the petitioner was directed to leave the Vijaypur Kothi, then the petitioner approached to the Principal of the College to allow him to work in the college but the Principal of the college did not allow him to work in the college under the pressure of the Manager.

3. The petitioner ultimately written a letter to the Principal of the College and on 22.09.2010 to the District Inspector of Schools requesting them to join in the college and pay him salary but no one take any action nor allowed him to work. When no action was taken by the authorities concerned, then the petitioner moved an application to the District Magistrate on 23.09.2010 requesting him to interfere in the matter and on the basis of his application, the District Magistrate directed to District Inspector of Schools to take necessary action after verifying the facts.

4. When the District Inspector of Schools did not take any action, then the petitioner appeared before the Joint Director of Education on 04.10.2010 by stating his grievance and he assured that he will take necessary action. On 29.10.2010, the District Inspector of Schools sent a letter to the Principal of the College with a direction to allow the petitioner to work and put his signature on the attendance register and informed him accordingly, so that he may inform to the higher authorities.

5. On 01.11.2010, the Principal of the college sent a letter to the District Inspector of Schools by stating therein that the petitioner did not appear before the inquiry committee as information was sent to him and a notice was also published in the daily newspaper "Jan Morcha" and further stated that the decision is required to be taken by him himself.

6. On 02.11.2010, the District Inspector of Schools sent a letter to the Principal of the college by stating therein that why the petitioner is not being allowed to work and photocopy of the attendance register is not being provided to him. On 16.11.2010, the Principal of the college passed the impugned order of dismissal of services of the petitioner on 16.11.2010 by stating therein that the petitioner did not cooperate in the inquiry as he is absent since 01.05.2010.

7. On 06.12.2010, the petitioner filed an appeal before the Committee of Management. On 23.03.2011, the petitioner sent a letter to the Joint Director of Education by stating therein to interfere in the matter. On 18.04.2011, the District Inspector of Schools issued a notice to the Principal and to the petitioner on 18.04.2011 to appear before him on 30.04.2011 for hearing, so that decision may be taken.

8. On 13.05.2011, the petitioner appeared before the District Magistrate at the time of "JANTA DARSHAN" on 02.05.2011 and made a complaint that the copy of the attendance register is not being provided to him and requested to direct the authorities to provide the same and in pursuance thereof, the District Inspector of Schools sent a letter to the Principal of the College on 13.05.2011 to provide the copy of the attendance register.

9. On 18.05.2011, the petitioner vide his letter dated 18.05.2011 requested to the District Inspector of Schools (DIOS) to summon the attendance register and it can be verified that the signatures have been done on one day with one pen. On 08.06.2011, the District Inspector of Schools Pratapgarh in a very illegal and arbitrary manner and under the pressure of the Principal and Manager of P.B. Inter College, Pratapgarh City, Pratapgarh passed the impugned order, whereby the services of the petitioner has been dismissed. Hence, the present writ petition has been preferred before this Court.

10. The DIOS has passed the order in appeal for which he has no jurisdiction. That no appeal lies before the DIOS under Regulation 31 Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921, wherein there is specific provision that Principal of the institution is authorized to pass the order of dismissal, termination or removal against a Class-IV employee and against the order passed by the Principal of the Institution appeal lies to the Committee of Management, which is to be decided within a period of six months. In case, no decision has been taken by the Committee of Management within six months, the employee has authority to move a representation to the DIOS ventilating his grievances and the DIOS is then empowered to pass an order.

11. In the present case, the DIOS has entertained the appeal and has passed the impugned order, which is wholly without jurisdiction, therefore, there is no hesitation to hold that the order is without wholly jurisdiction and not tenable in law.

12. The Principal of the institution has also passed an order on 28.03.2023, whereby decision has been taken not to terminate the services of the petitioner and he was reinstated in service on the basis of enquiry report dated 31.10.2010, by rejecting his order dated 16.11.2010 by leveling rider that with the order of DIOS, payment of salary shall be made.

13. Once, there was an order of the Principal of the institution, which is the appointing authority and decision taking authority in regard to disciplinary proceeding initiated against Class-IV employee of the institution, there was no justification on the part of DIOS to entertain the appeal and to pass the order.

14. The order passed by the DIOS is wholly without jurisdiction in view of provisions contained under Regulation 31 Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 and is liable to be set aside.

15. In view of reasons assigned above and totality of facts and circumstances of the case, this Court is of the considered opinion that the order passed by the DIOS dated 08.06.2011 is wholly without jurisdiction, therefore, it is hereby quashed.

16. The writ petition succeeds and is **allowed**.

17. Respondents are directed to permit the petitioner to discharge his duties on Class - IV post and to pay him regular monthly salary month by month in as much as arrears of salary due to be paid to him within a period of three months from the date of production of a certified copy of this order.

18. No order as to costs.

(2026) 7 ILRA 484
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 6103 of 2021

Smt. Dharmwati Devi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Competence of authority to reopen the issue, which was settled by the Division Bench of High Court in Special Appeal.
(2) Validity of the impugned order of making an observation that petitioner should suffer because of alleged procedural lapses attributable either to the Committee of Management or to the educational authorities.
(3) Scope of Article 21 of the Constitution of India including in it the fundamental right to get salary after grant of approval to the compassionate appointment.
(4) Application of the principle of natural justice and effect of not supplying the copy of the report, relied upon in the impugned order.
(5) Application of purposive construction of interpretation to the beneficial legislation.

Headnotes

(A) Service law – Constitution of India – Article 14 and 21 – Fundamental right to get salary – Compassionate appointment – Withholding of salary – Petitioner was appointed on the demise of her husband followed by grant of approval – Earlier, Special Appeal was allowed by the Division Bench with observation in favour of availability of vacant Class IV post at the time of appointment and further non-revocation of the approval granted to the petitioner's appointment – Binding effect – Ignoring the observation of DB, the authority passed the impugned order of denying payment of salary – Authority, while passing the impugned order, observed that petitioner should suffer because of alleged procedural lapses attributable either to the Committee of Management or to the educational authorities – Permissibility .

Held : Judicial discipline demanded faithful compliance with the directions issued by the appellate Court. Instead, the authority has reopened issues that stood concluded and has virtually sat in appeal over the judgment of the Division Bench. Such an exercise is wholly impermissible and strikes at the very foundation of the rule of law. Equally unacceptable is the procedure adopted while passing the impugned orders. [Para 27]

Further held : The respondents have also proceeded on the erroneous premise that the petitioner should suffer because of alleged procedural lapses attributable either to the Committee of Management or to the educational authorities. Such reasoning overlooks a settled principle of public law that a citizen cannot be penalised for the negligence or inaction of the State or its instrumentalities. Once the petitioner had submitted all requisite documents and the competent authority itself granted approval, any subsequent administrative lapse cannot extinguish her accrued rights – The respondents have acted in complete disregard of binding judicial directions, have violated the principles of natural justice, have proceeded upon an erroneous understanding of the applicable Government Orders and have arbitrarily deprived the petitioner of salary despite a subsisting order approving her appointment. Such action is plainly violative of Articles 14 and 21 of the Constitution of India.[Para 29 and 34]

(B) Service law – Constitution of India – Article 14 – Principle of natural justice – Application – No copy of report, relied upon in the impugned order, was supplied – No opportunity to rebut the report was given – Effect .

Held : Respondent no. 2 relied upon reports and communications submitted by respondent nos. 3 and 4 after the matter had already been heard, without furnishing copies thereof to the petitioner and without affording any opportunity to rebut the same. The impugned decision has thus been founded upon materials collected behind the back of the petitioner. Such a course of action is in the teeth of the cardinal principles of natural justice. Fairness in administrative action is not an empty formality but an indispensable facet of Article 14 of the Constitution. [Para 27]

(C) Service law – Compassionate appointment – Objects – Authorities failed to take the object into consideration – Effect .

Held : The respondents have completely failed to appreciate the true object of compassionate appointment. Such appointments are conceived not as a source of largesse but as a measure of immediate social welfare intended to rescue the bereaved family of a deceased employee from financial destitution. [Para 31]

(D) Interpretation of statute – Beneficial statute – Purposive construction – Application :

Held : The beneficial object underlying the Government Orders governing compassionate appointment deserves a purposive and liberal construction rather than a hyper-technical interpretation which defeats the very object sought to be achieved. [Para 31] (E-1)

Case Law Cited

Mohinder Singh Gill vs. Chief Election Commissioner, (1978) 1 SCC 405; Commissioner of Police Bombay vs. Gordhandas Bhanji, AIR 1952 SC 16; Asha Kaul (MRS) & Anr. vs. State of Jammu & Kashmir & Ors., (1993) 2 SCC 573; Kranti Associates (P) Ltd. vs. Masood Ahmed Khan, (2010) 9 SCC 496 **– referred to.**

List of Acts

Constitution of India – Article 14 and 21; U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978; U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978; U. P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984; Government Orders dated 01.01.1991 and 31.01.1997.

List of Keywords

Payment of salary, Died in harness, Termination of service, Approval, Withheld, Procedure prescribed under law, Grant-in-aid list, Legal right, Vitiated in law, Principle of natural justice, Opportunity of hearing, Non application of mind, Administrative inaction, Negligence, Appointment made on compassionate ground, Fundamentally erroneous interpretation of the applicable legal provisions, State Exchequer, Devoid of merit, Foundational premise, Legally unsustainable, Administrative order, Operate in the eyes of law, Otiose, Consequential benefits, Cancellation of the approval, Binding framework, Judicial discipline, Faithful compliance, Sat in appeal over the judgment of the Division Bench, Strikes at the very foundation of the rule of law, Rebut, Principle of natural justice, Procedural lapses, Negligence, Inaction of the State or its instrumentalities, Administrative lapse, Equitable principle, Source of largesse, Purposive interpretation, Arbitrariness, Procedural impropriety, Manifest perversity, Complete disregard of binding judicial directions.

Case Arising From

Impugned orders dated 23.02.2021 and 08.03.2021 passed by the respondent no. 2.

Appearances for Parties

Advs. for the Petitioner : Bajrang Bahadur Singh, Satya Prakash Singh.

Advs. for the Respondents : Shailendra Singh, S.C.; Ajay Kumar Sharma, Arun Kumar, Sanjay Yadav, Shashi Prakash Rai.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard learned counsel for the petitioner, Mr. Shailendra Singh, learned Standing Counsel for the State and perused the record.

2. The writ petition has been filed to quash the impugned orders dated 23.02.2021 and 08.03.2021 passed by respondent no.2, whereby the claim for payment of salary to the petitioner on a Class-IV post has been rejected.

3. Learned counsel for the petitioner submits that the petitioner's husband was working as an Assistant Teacher in Kisan Vaidik Junior High School, Latifpur, District- Gautam Buddh Nagar, died in harness on 15.06.2001, therefore, the petitioner was given compassionate appointment on a Class-IV post in the institution on 01.08.2006 which was rendered vacant on account of termination of service of one Gajendra Singh, Class-IV employee working in the institution, by order dated 03.07.1999. The appointment of the petitioner was duly approved by the Basic Shiksha Adhikari, Gautam Buddha Nagar, vide letter dated 06.09.2006.

4. The institution in question was brought within the purview of the U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978. However, an objection was raised by the Assistant Director of Education (Basic), Meerut/Saharanpur Division, vide his letter dated 16.03.2007, with regard to the appointment of Teachers and Ministerial staff and the specific objection was raised against the petitioner's appointment on the ground that although her appointment was approved as a Class-IV employee but the same was made without following the procedure prescribed under law.

5. On the basis of the aforesaid communication issued by the Assistant Director of Education (Basic), an opinion was sought from the Director of Education regarding the petitioner's appointment. However, no opinion or decision has been communicated by the Director of Education (Basic). Nevertheless, solely on the basis of the aforesaid objection, the salary of the petitioner has been withheld. Thereafter, the petitioner filed Civil Misc. Writ Petition No.58845 of 2008 before this Court, which was dismissed by order dated 22.04.2011. The said order was passed by a learned Single Judge and was challenged by means of Special Appeal No. 898 of 2011 and the Division Bench of this Court, by order dated 18.01.2020, observed that there was no material on record to show that at the time of appointment of the petitioner in the institution in question no vacant Class-IV post was available. It was further observed that no records were provided indicating that the approval granted to the petitioner for the Class-IV post by the Basic Shiksha Adhikari was revoked at any point of time. Hence, a direction was issued to the competent authority to look into the matter and pass appropriate orders after examining the entire material on record.

6. The impugned order rejecting the petitioner's representation for payment of salary proceeds on three principal grounds.

(a) Firstly, it records a categorical finding that the appointment of the petitioner, Smt. Dharmavati Devi, to the Class-IV post in the institution was not made in accordance with the statutory provisions governing such appointments. Consequently, payment of salary to the petitioner from the State Exchequer could not be sanctioned in accordance with law.

(b) Secondly, it holds that the provisions of the Government Order dated 31.01.1997 governing engagement on an honorarium basis ceased to have any application with effect from 02.12.2006, the date on which the institution was brought on the grant-in-aid list.

(c) Thirdly, it records that no sanctioned Class-IV post was available in the institution after its inclusion in the grant-in-aid list and, therefore, the petitioner's appointment could not confer any legal right to claim salary from the State Exchequer.

7. Learned counsel for the petitioner submits that the impugned order passed by respondent no.2 is founded upon a report and certain statements submitted by respondent nos. 3 and 4 subsequent to the date on which the matter was heard, without affording any opportunity to the petitioner to controvert the same. It is, therefore, contended that the impugned order is vitiated in law and is liable to be set aside.

8. It is further submitted that the impugned order has been passed in gross violation of the principles of natural justice, as no opportunity of hearing was afforded to the petitioner by respondent no. 2 before passing the said order. It is also urged that the order suffers from complete non-application of mind.

9. Learned counsel further contends that respondent no.2 has erroneously recorded that the provisions of the Government Orders dated 01.01.1991 and 31.01.1997 governing appointments on compassionate grounds were not complied with while considering the petitioner's claim. According to the petitioner, all requisite papers relating to the appointment were duly forwarded by the Committee of Management, and thereafter it was incumbent upon the concerned authorities to process the proposal and pass appropriate orders in accordance with the prescribed procedure. Consequently, the petitioner cannot be made to suffer for any lapse or omission attributable to the respondent authorities.

10. It is further submitted that respondent no. 4 had already granted approval to the proposal for the petitioner's appointment, and, therefore, no further obligation remained to be discharged either by the petitioner or by the institution. This material aspect has been completely overlooked while passing the impugned order.

11. Lastly, learned counsel submits that it is an admitted position that the proposal for appointment was forwarded by the competent authority well within the prescribed period of five years. Merely because the respondents delayed the process of granting approval beyond the said period, the petitioner's claim cannot be defeated. The delay, if any, is wholly attributable to the respondent authorities, and the petitioner cannot be penalized for their administrative inaction or negligence.

12. Learned counsel for the petitioner further submits that the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 (hereinafter referred as 'Rule of 1984') are inapplicable to appointments made on compassionate grounds, as such appointments are exclusively governed by the Government Order dated 31.01.1997.

13. It is contended that respondent no. 2 has erroneously held that the Government Order dated 31.01.1997 is inapplicable to unaided recognised institutions. According to the learned counsel, the said finding is contrary to the settled position of law, inasmuch as this Court, in a catena of decisions, has consistently held that the aforesaid Government Order is equally applicable to unaided recognised institutions. It is, therefore, submitted that the impugned order proceeds on a fundamentally erroneous interpretation of the applicable legal provisions and is liable to be set aside. Consequently, the petitioner is entitled to the reliefs claimed in the present writ petition.

14. Per contra, learned Standing Counsel submits that the impugned order suffers from no illegality and has been passed strictly in accordance with law. It is contended that the petitioner was never appointed to the Class-IV post in the institution in accordance with the statutory provisions governing such appointments. Consequently, no salary can legally be sanctioned from the State Exchequer in respect of such an appointment.

15. It is further submitted that the Government Order dated 31.01.1997, governing compassionate appointments on the death of an employee, became applicable to the institution only with effect from 02.12.2006, when the institution was brought on the grant-in-aid list. Since the petitioner's appointment is stated to have been made prior to the said date, the same cannot derive any legal sanction under the aforesaid Government Order.

16. Learned Standing Counsel further submits that the mandatory selection procedure prescribed under the Rules of 1984 was admittedly not followed while appointing the petitioner. Consequently, the approval purportedly granted by the then District Basic Education Officer, Gautam Buddh Nagar, vide letter dated 06.09.2006, did not confer any legal validity upon an otherwise illegal appointment. It is submitted that, after examining the entire matter, the Director of Basic Education, Uttar Pradesh, rightly rejected the petitioner's representation dated 10.06.2020 by order dated 08.03.2021, holding the claim to be devoid of merit.

17. It is further submitted that the institution in question is a recognised Junior High School governed by the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 as well as Rules of 1984. The institution was included in the grant-in-aid list by Government Order dated 02.12.2006. Thereafter, the Divisional Recognition Committee convened its meeting on 21.02.2007 for considering approval of appointments and release of salary to duly selected teaching and non-teaching staff in accordance with the applicable statutory provisions. In the said meeting, the petitioner's appointment to the Class-IV post was not approved, as the appointment had been made under the compassionate appointment quota without following the prescribed statutory procedure applicable to Class-IV appointments. Consequently, no pay sanction could be issued in favour of the petitioner.

18. It is also submitted that, aggrieved by the refusal to grant pay sanction, the petitioner had earlier approached this Court by filing Writ Petition No.58845 of 2008, which came to be dismissed by judgment and order dated 22.04.2011. The petitioner thereafter preferred Special Appeal No.898 of 2011, which was finally disposed of by the Division Bench vide judgment dated 18.01.2020.

19. Elaborating the factual background, learned Standing Counsel submits that late Shri Vijay Pal Singh was working as an Assistant Teacher in the institution and died in harness on 03.06.2001. On the date of his death, the institution was an unaided recognised Junior High School. Thereafter, the Manager of the institution issued an appointment letter dated 18.08.2001 appointing the petitioner, Smt. Dharmavati Devi, to a Class-IV post on compassionate grounds as the dependent of the deceased employee. However, the petitioner did not assume charge pursuant to the said appointment.

20. It is further submitted that, shortly before the institution was brought on the grant-in-aid list, the Manager, by letter dated 15.06.2006, directed the petitioner to join her duties. In pursuance thereof, the petitioner joined the institution on 01.08.2006, nearly five years after the issuance of the original appointment letter dated 18.08.2001. Thereafter, on the basis of the Manager's recommendation and with reference to the appointment letter dated 18.08.2001, the then District Basic Education Officer, Gautam Buddh Nagar, issued a communication dated 06.09.2006 purporting to accord approval to the petitioner's appointment on the Class-IV post under the compassionate appointment quota.

21. Learned Standing Counsel further submits that the scheme governing compassionate appointments in recognized non-government aided Junior High Schools was introduced by Government Order dated 27.09.1991, made effective from 01.01.1992, whereby, in the event of the death of a teacher or a non-teaching employee during service, one eligible dependent family member possessing the requisite qualifications could be considered for appointment to a non-teaching post. It is further submitted that Clause 7 of the Government Order dated 31.01.1997 also regulates appointments on compassionate grounds.

22. According to the respondents, on the date when the petitioner was purportedly appointed, i.e., 18.08.2001, the institution in question was an unaided recognised Junior High School. Consequently, the Government Orders dated 27.09.1991 and 31.01.1997 were not applicable to the institution at the relevant point of time. Despite the aforesaid legal position, the Committee of Management forwarded a proposal for the petitioner's appointment to the Class-IV post before the District Basic Education Officer and, during the pendency of the matter, proceeded to issue the appointment letters dated 18.08.2001 and 15.06.2006. It is, therefore, contended that the said appointments were made in clear contravention of the applicable Government Orders and are wholly without legal sanction.

23. Learned Standing Counsel further submits that the mandatory selection procedure prescribed under the Rules of 1984 was also not followed while making the petitioner's appointment on compassionate grounds. Since the petitioner was not appointed to the Class-IV post in accordance with the statutory provisions, no salary can legally be released from the State Exchequer in her favour.

24. It is further contended that the provisions of the Government Order dated 31.01.1997 concerning compassionate appointments became applicable to the institution only with effect from 02.12.2006, the date on which the institution was brought on the grant-in-aid list. As the petitioner's appointment admittedly preceded the said date, the same cannot be sustained in law. On these

premises, learned Standing Counsel submits that the impugned order is perfectly legal and calls for no interference under Article 226 of the Constitution of India. Accordingly, the writ petition is liable to be dismissed.

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

26. The foundational premise on which the respondents have rejected the petitioner's claim is itself legally unsustainable. It is an admitted position that the petitioner was appointed on compassionate grounds after the demise of her husband, who died in harness while serving the institution. The proposal for appointment was duly processed by the competent authorities and culminated in an order dated 06.09.2006 whereby the District Basic Education Officer granted approval to the petitioner's appointment. Significantly, the said approval has never been withdrawn, recalled or annulled by any competent authority in accordance with law. An administrative order which continues to operate in the eyes of law cannot be rendered otiose by the simple expedient of refusing its consequential benefits. So long as the approval subsists, the respondents are estopped from questioning its efficacy indirectly while simultaneously declining the salary flowing therefrom.

27. The Division Bench, while deciding Special Appeal No. 898 of 2011, had already noticed that there existed no material to demonstrate either the absence of a vacant Class-IV post or the cancellation of the approval accorded to the petitioner. Those findings constituted the binding framework within which the competent authority was required to reconsider the matter. Judicial discipline demanded faithful compliance with the directions issued by the appellate Court. Instead, the authority has reopened issues that stood concluded and has virtually sat in appeal over the judgment of the Division Bench. Such an exercise is wholly impermissible and strikes at the very foundation of the rule of law. Equally unacceptable is the procedure adopted while passing the impugned orders. The record unmistakably reveals that respondent no.2 relied upon reports and communications submitted by respondent nos.3 and 4 after the matter had already been heard, without furnishing copies thereof to the petitioner and without affording any opportunity to rebut the same. The impugned decision has thus been founded upon materials collected behind the back of the petitioner. Such a course of action is in the teeth of the cardinal principles of natural justice. Fairness in administrative action is not an empty formality but an indispensable facet of Article 14 of the Constitution.

28. The Constitution Bench of the Hon'ble Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405**, authoritatively declared that an administrative order must stand or fall on the reasons recorded therein and cannot subsequently be supplemented by fresh reasons through affidavits or otherwise. Likewise, in **Commissioner of Police Bombay v. Gordhandas Bhanji, AIR 1952 SC 16**, it was held that public orders publicly made cannot be construed in the light of subsequent explanations. The impugned orders, therefore, cannot be sustained on reasons subsequently sought to be introduced during the course of litigation.

29. The respondents have also proceeded on the erroneous premise that the petitioner should suffer because of alleged procedural lapses attributable either to the Committee of Management or to the educational authorities. Such reasoning overlooks a settled principle of public law that a

citizen cannot be penalised for the negligence or inaction of the State or its instrumentalities. Once the petitioner had submitted all requisite documents and the competent authority itself granted approval, any subsequent administrative lapse cannot extinguish her accrued rights.

30. The Hon'ble Supreme Court in **Asha Kaul (MRS) & Anr. v. State of Jammu & Kashmir & Ors., (1993) 2 SCC 573**, observed that where delay or procedural default is attributable to the authorities, an otherwise eligible candidate cannot be deprived of the benefits flowing from law. The same equitable principle has consistently been reiterated by the Supreme Court that an individual cannot be made to suffer because of administrative inaction or official negligence.

31. This Court further finds that the respondents have completely failed to appreciate the true object of compassionate appointment. Such appointments are conceived not as a source of largesse but as a measure of immediate social welfare intended to rescue the bereaved family of a deceased employee from financial destitution. The beneficial object underlying the Government Orders governing compassionate appointment deserves a purposive and liberal construction rather than a hyper-technical interpretation which defeats the very object sought to be achieved.

32. The impugned orders further disclose complete non-application of mind to the material observations recorded by the Division Bench and proceed on assumptions unsupported by the record. The findings regarding non-applicability of the Government Orders and absence of entitlement have been recorded without considering the subsisting approval order, the factual matrix already noticed by the appellate Court and the legal consequences flowing therefrom. The decision-making process is, therefore, vitiated by arbitrariness, procedural impropriety and manifest perversity.

33. The Supreme Court in **Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496**, has held that recording of cogent reasons is an indispensable component of fairness in administrative and quasi-judicial decision-making and constitutes an integral part of the principles of natural justice. The reasons assigned in the impugned orders neither disclose proper application of mind nor demonstrate consideration of the binding directions issued by the Division Bench. Consequently, the impugned orders fail to satisfy the constitutional requirement of reasoned decision-making.

34. This Court is, therefore, satisfied that the respondents have acted in complete disregard of binding judicial directions, have violated the principles of natural justice, have proceeded upon an erroneous understanding of the applicable Government Orders and have arbitrarily deprived the petitioner of salary despite a subsisting order approving her appointment. Such action is plainly violative of Articles 14 and 21 of the Constitution of India and cannot receive the imprimatur of this Court in exercise of its writ jurisdiction.

35. The impugned orders dated 23.02.2021 and 08.03.2021 are hereby quashed.

36. Accordingly, the writ petition succeeds and is **allowed**.

(2026) 7 ILRA 492
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 15420 of 2018

Hanuman Prasad Yadav **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Validity of the impugned order, denying the payment of gratuity and leave encashment due to pendency of the criminal case.
(2) Application of the provision of Reg. 351, 351-A, 351-AA and 919-A of the Civil Services Regulation.

Headnotes

(A) Service law – Civil Services Regulation – Regulations 351, 351-A, 351-AA and 919-A – Post retirement benefits – Gratuity and leave encashment – Entitlement – Punishment order of reverting the petitioner on minimum pay scale for a period of one year was passed – Criminal proceeding was pending, on the basis of which the authorities denied payment of gratuity and leave encashment – Validity challenged – Seriousness of the offence – Relevancy – Application of the provision of Reg. 351, 351-A, 351-AA and 919-A felt into consideration :

Held : Admittedly the criminal proceedings are still pending against the petitioner with regard to the act of the petitioner i.e. due to negligence on the part of the petitioner, an accused of Gangster Act has absconded from the custody of the petitioner. The said offence may be of deliberate in nature on the part of the petitioner or an act of negligence on the part of the petitioner but the same is a very as it impacts the efficient administration of justice as a whole and such negligence may paralise the entire judicial as well as police administration. [Para 23]

Further held : In the instant case, therefore, Regulations-351 and 351-A would not apply. Regulation 351-AA and Regulation 919-A would apply in the instant case which categorically provide that once criminal proceedings or judicial proceedings are pending against a government servant, during the pendency of such proceedings, only provisional pension shall be accorded to such government servant and gratuity and death-cum-retirement benefits cannot be released to such government servant against whom judicial proceedings are pending **–** In view of the categorical prohibition made in Clause-(3) of the Regulation 919-A, the petitioner is not entitled for the release of the gratuity and final retirement dues and seriousness of the offence is an irrelevant fact with regard to the applicability of Regulation 919-A as well as Regulation 351-AA. [Para 24 and 25] (E-1)

Case Law Cited

Writ A No. 15093 of 2020, Devendra Kumar Sharma vs. State of U.P. and others; Writ A No. 10536 of 2021, Arun Kumar Singh vs. State of U.P. and others; Writ A No. 8039 of 2018, Udai Veer Singh vs. State of U.P. and others; Writ A No. 17141 of 2012, Deo Narain Singh vs. State of U.P. and others; Writ A No. 26972 of 2013, Santosh Kumar Singh vs. State of U.P. and others; Special Appeal Defective No. 440 of 2014, State of U.P. and others vs. Bal Kishan Tiwari; Special Appeal Defective No. 687 of 2014, State of U.P. and others vs. Santosh Kumar Singh; Writ A No. 30100 of 2015, Sukh Sagar Shukla vs. State of U.P. and others; Writ A No. 24624 of 2017, Krishna Chandra Pandey vs. State of U.P., 2018 Law Suit (All.) 3834; Shivagopal and others

vs. State of U.P. and others, 2019 (5) ADJ 441 (FB); Writ A No. 67791 of 2014, Shiv Sewak Prasad vs. State of U.P. and others – **referred to.**

List of Acts

Civil Services Regulation – Regulations 351, 351-A, 351-AA and 919-A.

List of Keywords

Age of superannuation, Retirement, Pendency of criminal case, Gratuity, Leave encashment, Pension, Departmental proceeding, Judicial proceeding, Pecuniary loss, Punishment, Dismissal, Withhold, Disciplinary proceeding, Misconduct, Negligence, Provisional pension, Duty of escort, Show cause notice, Punishment of reversion, Administration of justice, Paralise the entire judicial as well as police administration.

Case Arising From

Impugned order dated 08.06.2016 passed by the respondent denying the gratuity and leave encashment due to pendency of the criminal case.

Appearances for Parties

Advs. for the Petitioner : Bramh Narayan Singh.
Advs. for the Respondents : Dilip Kesarwani, ACSC.

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

1. Heard Sri Bramh Narayan Singh, learned counsel for the petitioner and Sri Dilip Kesarwani, learned Addl. Chief Standing Counsel for the State.

2. Briefly stated facts of the case are that the petitioner was working on the post of Constable in U.P. Police department and has attained the age of superannuation on 31.3.2016. After his retirement, he was granted only the provisional pension but gratuity and leave encashment etc. was not granted to the petitioner due to the pendency of the Criminal Case being Case Crime No. 446 of 2008 under Sections 223/224 IPC, Police Station Wazeerganj, District Lucknow. It is stated by the learned counsel for the petitioner that the proceedings pursuant to the said criminal case are still pending before the criminal court for trial. The instant petition has been filed by the petitioner challenging the order dated 8.6.2016 whereby the gratuity and leave encashment has been denied to the petitioner due to pendency of the aforesaid criminal case.

3. Learned counsel for the petitioner has relied upon various judgments of Coordinate Benches of this Court as well as of Division Bench of this Court and has argued that unless there is a serious crime involved, the regular pension, gratuity and other retiral dues cannot be withheld by the respondents. In support of his case, petitioner has relied upon the following judgments:-

(i) Writ-A No. 15093 of 2020 (Devendra Kumar Sharma Vs. State of U.P. and others).
(ii) Writ-A No. 10536 of 2021 (Arun Kumar Singh Vs. State of U.P. and others).
(iii) Writ-A No. 8039 of 2018 (Udai Veer Singh Vs. State of U.P. and others).
(iv) Writ-A No. 17141 of 2012 (Ap Deo Narain Singh Vs. State of U.P. and others).
(v) Writ-A No. 26972 of 2013 (Santosh Kumar Singh Vs. State of U.P. and others).
(vi) Special Appeal Defective No. 440 of 2014 (State of U.P. and others Vs. Bal Kishan Tiwari).

(vii) Special Appeal Defective No. 687 of 2014 (State of U.P. and others Vs. Santosh Kumar Singh).

(viii) Writ-A No. 30100 of 2015 (Sukh Sagar Shukla Vs. State of U.P. and others).

4. Per contra, learned Addl. Chief Standing Counsel for the State has relied upon Regulations 351-AA and 919-A of the Civil Services Regulation as applicable in the State of U.P. and has submitted that Regulation 919-A (3) which categorically prohibits in categorical terms that no death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

5. Learned Addl. Chief Standing Counsel for the State has relied upon the judgment of this Court in **Writ-A No. 24624 of 2017 (Krishna Chandra Pandey Vs. State of U.P.)**, 2018 Law Suit (All.) 3834 and submits that relying upon the aforesaid regulation, this Court has held that the gratuity and regular pension cannot be accorded to the government servant till the pendency of the criminal proceedings. He has further relied upon the Full Bench judgment of this Court in **Shivagopal and others Vs. State of U.P. and others**, reported in 2019 (5) ADJ 441 (FB) and submits that the Full Bench of this Court has categorically gone through the provisions of the aforesaid regulation and has concluded that the government servant/ pensioner would have to wait until final order is passed in judicial proceedings before claiming full pension and gratuity. In other words the cause to the government servant of taking remedy would arise after order of the competent authority is passed upon conclusion of the proceedings/ enquiry.

6. Having heard the rival submissions of the learned counsel for the parties and perused the relevant materials available on record. The relevant issue involved in this case is whether the government servant can claim release of gratuity and other retiral dues and the regular pension during the pendency of the criminal proceedings against him.

7. In Writ-A No. 15093 of 2020 (Devendra Kumar Sharma Vs. State of U.P. and others), considering the Full Bench of this Court in **Shivagopal and others (supra)**, the Coordinate Bench of this Court has relied upon the observation made in para-39 of the Full Bench that only at the cost of serious crime, Regulation 919-A would apply and issued the directions to grant the gratuity etc. to the petitioner.

8. In Writ-A No. 10536 of 2021 (Arun Kumar Singh Vs. State of U.P. and others), another Coordinate Bench of this Court has relied upon the judgment in **Writ-A No. 67791 of 2014** (Shiv Sewak Prasad Vs. State of U.P. and others) and has held that since no percuniary loss has been alleged in the criminal case, in such circumstances, the directions were issued to release the gratuity and other pensionary benefits to the petitioner, therein.

9. Writ-A No. 8039 of 2018 (Udai Veer Singh Vs. State of U.P. and others), Coordinate Bench of this Court has taken a view that due to long pendency of the criminal proceedings before the criminal court and since the petitioner was suffering from cancer and it was concluded that due to non conclusion of the criminal proceedings, petitioner cannot be made to suffer. Thus, the directions were issued to extent all retiral dues to the petitioner therein. However, it was further

provided that in case of conviction in criminal case, authorities may recover the amount so paid to the petitioner. Against which Special Appeal Defective No. 859 of 2020 was filed which was dismissed vide order dated 24.11.2020. Against which Special Leave Petition was also filed which was dismissing inlimine.The judgment in Udai Veer Singh (supra) was passed in peculiar facts of the case and do not lay down any law.

10. Likewise, in Writ-A No. 17141 of 2012 (Deo Narain Singh Vs. State of U.P. and others), Coordinate Bench of this Court has held that since the petitioner was not an accused in the pending criminal proceedings, he was allowed to grant him pensionary benefits. Against the aforesaid judgment in Deo Narain Singh (supra), Special Appeal Defective No. 84 of 2013 was filed which was also dismissed vide order dated 24.1.2013.

11. Likewise, in Special Appeal Defective No. 440 of 2014 (State of U.P. and others Vs. Bal Kishan Tiwari), the Division Bench of this Court, having noted that since the criminal proceedings for the same allegations were also pending and the departmental proceedings were concluded and minor punishment was awarded to the petitioner and once for the same allegation, two proceedings are pending and the department ought to have waited for the final outcome of the proceedings, the decision thereafter to await the judgment of the trial on the same allegations, which may at best result into punishment to be awarded to the petitioner cannot be a ground on which pension and death-cum-retirement gratuity may be withheld.

12. Likewise, in Writ-A No. 26972 of 2013 (Santosh Kumar Singh Vs. State of U.P. and others), Coordinate Bench of this Court has allowed the writ petition despite the pendency of the criminal case and has directed that the gratuity amount to be released in favour of the petitioner alongwith interest. However, it is noteworthy that in the said judgment, the Coordinate Bench has not dealt with the provisions of Regulation 919-A of the Civil Services Regulation and the Special Appeal filed against the said judgment was also dismissed vide order dated 24.5.2016, without noticing the provisions of Regulation-919-A.

13. Likewise, in Writ-A No. 30100 of 2015 (Sukh Sagar Shukla Vs. State of U.P. and others), the Coordinate Bench of this Court has held that mere pendency of the criminal case before the trial court, does not entitled the authority to withhold the gratuity and leave encashment of the employee. In this case also the Division Bench has not noticed the provisions of Regulation 919-A.

14. In **Shivagopal (supra)**, the Full Bench of this Court has observed as under:-

*"31. On plain reading, **Article 351** confers power upon the State Government of withholding or withdrawing pension or any part of it, if the pensioner be convicted of 'serious crime' or be guilty of grave misconduct. In other words the State Government can withhold or withdraw pension on two grounds: (i) convicted of serious crime; (ii) guilty of grave misconduct; but not otherwise. In other words mere pendency of criminal case or disciplinary proceedings is not sufficient to withhold/or withdraw pension under Article 351.*

36. Expression 'serious crime' would include offences having dangerous possible consequences. Black Law Dictionary defines serious offence as violation of law that is significant in effect and carries more than a six months punishment.

37. Section 2 (54) of Juvenile Justice Act, 2015, defines 'serious offence':

*"**serious offences**" includes the offences for which the punishment under the India Penal Code or any other law for the time being in force, is imprisonment between three to seven years."*

38. The expression 'judicial proceedings' includes civil cases, plausible civil cases where pension can be withheld/withdrawn would include matrimonial disputes, succession cases, right and entitlement of spouses and their children, domestic violence, civil death etc. involving the government servant.

*39. The expression 'serious crime' has to be understood in the context of service jurisprudence involving the government servant. It may be any act or omission which in the opinion of the competent authority is serious enough and calls for punitive action in terms of **Article 351**. It has no bearing with the quantum of sentence but with the nature of the offence and the degree of involvement of the government servant in the commission/omission of the crime.*

*40. **Article 351**-A empowers the Governor to withhold or withdraw pension or a part of it permanently or for specified period and order recovery from pension for pecuniary loss caused to the Government if the pensioner in departmental proceedings or in judicial proceedings, has been found: (i) guilty of grave misconduct or (ii) to have caused pecuniary loss to Government by misconduct or negligence during his service. The proviso to the Article spells out the circumstances/ conditions in which the departmental proceedings/judicial proceedings is required to be instituted for the purpose of withholding/withdrawing pension. Article 351-A reads thus:-*

"351-A [substituted vide notification dated 6 September 1961]. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment-

(i) shall not be instituted save with the sanction of the Governor. (ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

[Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings,(Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission].

Explanation-For the purposes of this article-

(a) Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal Court ; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil Court.

Note- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

"66. The question that arises is whether the government servant/pensioner can seek intervention at a stage before the competent authority has had the occasion to pass appropriate order upon conclusion of the disciplinary/ judicial proceedings/or enquiry by Administrative Tribunal. We are of the opinion that such a course is not available to the pensioner and if allowed would entail serious consequences, otherwise not mandated by the Regulations. It is not open to the government servant/pensioner, in view of the conjoint reading of the Articles to preempt the pending proceedings/enquiry by walking away with pension/gratuity without awaiting the outcome/conclusion of the disciplinary/judicial proceedings/enquiry. The competent authority upon conclusion of the proceedings would be in a position to apply its mind on the outcome of the proceedings/enquiry and pass order thereon either withholding/withdrawing/ reduction of pension or directing recovery of pecuniary loss from pension under Articles 351/ 351-A of the Civil Service Regulations.

67. Article 351-AA/919-A came to be incorporated later (1980), the rule making authority was fully aware of the existing provisions, in particular, Article 351/351-A, but the rule making authority, in view of the plain and unambiguous language used therein (Article 351-A), while incorporating Article 351-AA/919-A, did not consider it appropriate to mandate the release of full pension/gratuity to the government servant until conclusion of the proceedings. The entitlement to provisional pension and deferment of gratuity during pendency of the proceedings was not made subject to any further conditions at that stage. The stage was deferred until orders thereon was required to be passed by the competent authority recording satisfaction or otherwise upon conclusion of proceedings/enquiry.

69. It, therefore, follows that the stage of passing appropriate order under Article 351/351-A by the competent authority is mandated at the conclusion of the proceedings and certainly not at the stage during pendency of the disciplinary/judicial proceedings.The cause to the pensioner would arise after the order is passed by the competent authority upon conclusion of the proceedings and findings returned thereon. In the opinion of the competent authority if the pensioner is guilty of grave misconduct, or convicted of serious crime, or caused pecuniary loss, the consequence under Article 351/351-A would follow. The government servant/ pensioner would have to wait until such an order is passed before claiming full pension and gratuity. In other words the cause to the government servant of taking remedy would arise after order of the competent authority is passed upon conclusion of the proceedings/enquiry and not during pendency of the proceedings/enquiry."

15. The Full Bench of this Court has categorically dealt with the Regulations 351-A, 351-AA as well as Regulation -919 A and has finally concluded that the cause of action for passing the

appropriate orders under Regulations-351 and **351-A** would arise only after the conclusion of the proceedings before the criminal court or the judicial proceedings or the disciplinary proceedings and if the aforesaid proceedings are pending, the Government Servant would have to wait unless such an order is passed before claiming pension and gratuity in view of Regulations351-AA and 919-A .

16. In Krishna Chandra Pandey (supra) the Coordinate Bench of this Court has also dealt with the provisions of Regulations 351-AA and 919-A and has observed as under:-

[17] Firstly, the mere reference of a decision to a larger Bench for considering a perceived conflict does not detract from the dictum laid down therein. The principle, in law, as enunciated in the said decision continues to operate and bind this Court so long as it is not overruled. This was also the position propounded by the Supreme Court in Manager. National Insurance Company Ltd. Vs. Saju P. Paul 2013 2 SCC 41. Secondly, this Court notes that Bangali Babu Misra, Bal Krishna Tewari and Dr. Chandra Prakash perhaps, inadvertently, failed to notice the provisions of Regulations 351AA and 919A, which existed on the statute book at the time when these decisions were rendered. Thirdly and with respect to the view expressed in Kalika Prasad Yadav, this Court finds no conflict as such between Jai Prakash and Faini Singh. While Jai Prakash noticed the existence of the power vesting in the State to detain the release of gratuity and authorise payment of a provisional pension by virtue of the Regulations, noted above, Faini Singh only expanded upon the scope and the exercise of power thereunder. Faini Singh is not an authority for the proposition that gratuity cannot be withheld. It only elucidates the legal position that the power conferred by Regulations 351AA and 919A cannot be invoked mechanically or irrationally without adverting to circumstances, such as, the seriousness of the crime or charge levelled against the employee. It, principally, underlines the need for the power to be exercised bona fide, with due circumspection and application of mind. This is evident when the Division Bench observes, "The discretion given should not consume the power for which such discretion is to be exercised."

[18] It would also be relevant to note that the decisions in Jai Prakash and Faini Singh have also been followed by two learned Judges of the Court in two separate decisions, namely, Narendra Pratap Singh Vs. State of U.P. 2015 11 ADJ 237 and Surendra Pal Vs. State of U.P., 2016 1 ADJ 370 [LB].

[19] Having recognized the basic principles, which would govern the invocation of Regulation 919-A, this Court reverts to the facts of the present case. As noted above, the petitioner is charged of commission of serious offenses under the IPC. The provisions of the Prevention of Corruption Act have also been invoked against him. The petitioner has failed to establish from the material on record that the commission of these crimes is unrelated to the discharge of his duties as a government servant. Tested of the anvil of the principles enunciated in Jai Prakash and Faini Singh, this Court finds no ground to hold that the view taken by the respondents, to deny disbursal of complete benefits, merits interference. Bearing in mind the seriousness of the allegations and the nature of the criminal charges which the petitioner is facing, this Court finds that the action of the respondents, duly authorized by Regulations 351AA and 919-A, is justified and valid.

17. From the cumulative reading of the aforesaid judgments, it is apparent that the most of the judgments relied upon by the learned counsel for the petitioner do not deal with Regulations 351-

AA and 919-A of Civil Services Regulation and those orders were passed on the peculiar facts and circumstances of the case, though there is a reference of Regulation 919-A in the judgment of Arun Kumar Singh but the impact thereof has not been categorically dealt with in the said judgment. Thus, it is relevant to take note of the Regulations-351, 351-A and 351-AA and Regulation -919, which reads as under:-

*"**Regulation 351**. Future good conduct is an implied condition of every grant of a pension. The State Government reserve to themselves the right of with holding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave mis-conduct.*

The decision of the State Government on any question of witholding or withdrawing the whole or any part of pension under this regulation shall be final and conclusive.

NOTE-This rule is applicable to all the officers enumerated in Article 349 except Army Veterinary officers of the Civil Veterinary Department.

***Regulation 351-A** The Governor reserves to himself the right of witholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused. Recuniary loss to government by misconduct or Negligence, during his service, including service rendered on re-employment after retirement;*

Provided that-

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) shall not be instituted save with the sanction of the Governor,

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and

(c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Explanation-For the purposes of this article-

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted :

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

NOTE-As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned.

***Regulation 351-AA**. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or Judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Regulation 919-A may be sanctioned.*

***Regulation 919-A.** (1) In case referred to in Regulation 351-AA the Head of Department may authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.*

(2) The provisional pension shall be authorised for the period commencing from the date of retirement upto and including the date on which after conclusion of departmental or judicial proceeding or the enquiry by the administrative Tribunal; as the case may be, final orders are passed by the competent authority.

(3) No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon. (4) Payment of provisional pension made under clause (1) above shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceedings or enquiry referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or withheld either permanently or for special period."

18. On plain reading of Regulation 351, it appears that Regulation-351 confers power on State Government for withholding or withdrawing the pension or any part of it, if the petitioner has committed serious crime or guilty of grave misconduct but not otherwise. Regulation 351 deals with the circumstances where the government servant has already been convicted or held guilty of grave misconduct.

19. Regulation 351-A empowers the Governor to withhold or withdraw pension or a part of it permanently or for specified period and order recovery from pension for pecuniary loss caused to the Government if the pensioner in departmental proceedings or in judicial proceedings, has been found: (i) guilty of grave misconduct or (ii) to have caused pecuniary loss to Government by

misconduct or negligence during his service. The proviso to Regulation 351-A spells out the circumstances/ conditions in which the departmental proceedings/judicial proceedings is required to be instituted for the purpose of withholding/withdrawing pension.

20. Regulation 351-AA provides whether any departmental or Judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Regulation 919-A may be sanctioned. Regulation 919-A sub clause (1) enables the head of the department to provide the provisional pension to be released. Sub clause (2) provides that the provisional pension shall be authorised from the date of retirement till conclusion of the departmental or judicial proceedings as the case may be. Clause (3) of the Regulation 919-A provides that no Death-cum- retirement gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings or the inquiry by the administrative tribunal. Clause-(4) provides that an amount of the provisional pension shall be adjusted against the final retirement benefits on conclusion of the proceedings or inquiry. Thus, from the aforesaid reading of the provisions of Regulations 919-A and 351-AA, it is apparent that the provision for grant of provisional pension has already been made pending the judicial proceedings, departmental proceedings or the proceedings before the Tribunal, if any.

21. The facts of the instant case is that in the year 2008, petitioner was assigned the duty to escort the accused of the Gangster Court at Lucknow and the said accused had escaped from the custody of the petitioner and for the said action of the petitioner, a first information report being Case Crime No. 446 of 2008 under Sections 223/224 IPC, Police Station Wazeerganj, District Lucknow was lodged against the petitioner. Proceedings with regard to said criminal case is stated to be pending. However, for the said act of the petitioner, departmental proceedings were also initiated against the petitioner under Rule 14 (i) of 1991 Rules and finally the punishment order was passed on 5.10.2010, dismissing the petitioner from service.

22. Being aggrieved by the same, petitioner has approached the High Court and the writ petition filed by the petitioner was allowed vide judgment and order dated 10.4.2013 with liberty to the respondents to pass a fresh order after giving show cause notice to the petitioner with regard to the proposed punishment awarded to the petitioner. Pursuant to the aforesaid order, a show cause notice was issued to the petitioner and thereafter punishment order was passed on 26.9.2013 against the petitioner reverting him on minimum pay scale for a period of one year and thereafter vide Government Order dated 25.11.2013, petitioner was communicated that he is not entitled for the salary for the period between 5.10.2010 till 14.7.2013, during which period he has not performed any duty. Regulation 351-AA of the Civil Services Regulation provides that if any departmental or judicial proceedings are pending after the retirement of a government servant, only provisional pension as provided in Regulation 919-A may be sanctioned to such a government servant. Regulation 919-A categorically provides that no death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the

departmental or judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

23. In the instant case, though for the same allegations, the disciplinary proceedings as well as the criminal proceedings both were initiated against the petitioner and since the criminal proceedings could not be concluded for a long period, the disciplinary proceedings were concluded by the department and punishment order was passed which was initially set aside by the learned Single Judge on the ground that no show cause notice was issued to the petitioner after completion of inquiry and before passing the punishment order and the learned Single Judge has already given the liberty to issue show cause notice to the petitioner and pass a fresh order of punishment consequently, after giving show cause notice to the petitioner, therefore, the order of punishment has been passed whereby the punishment of reversion of minimum pay scale for a period of one year was awarded to the petitioner. However, undisputedly and admittedly the criminal proceedings are still pending against the petitioner with regard to the act of the petitioner i.e. due to negligence on the part of the petitioner, an accused of Gangster Act has absconded from the custody of the petitioner. The said offence may be of deliberate in nature on the part of the petitioner or an act of negligence on the part of the petitioner but the same is a very as it impacts the efficient administration of justice as a whole and such negligence may paralise the entire judicial as well as police administration. Thus the allegation against the petitioner is of very serious in nature and cannot be curtailed only to the negligence on the part of the petitioner and with regard to which criminal proceedings are still pending against the petitioner.

24. In the instant case, therefore, Regulations-351 and 351-A would not apply. Regulation 351-AA and Regulation 919-A would apply in the instant case which categorically provide that once criminal proceedings or judicial proceedings are pending against a government servant, during the pendency of such proceedings, only provisional pension shall be accorded to such government servant and gratuity and death-cum-retirement benefits cannot be released to such government servant against whom judicial proceedings are pending.

25. In the instant case, petitioner has already been released provisional pension and other benefits, however, the final retirement dues and gratuity etc. has not been paid to the petitioner for which the instant petition has been filed. In view of the categorical prohibition made in Clause-(3) of the Regulation 919-A, the petitioner, in the considered opinion of this Court, is not entitled for the release of the gratuity and final retirement dues and seriousness of the offence is an irrelevant fact with regard to the applicability of Regulation 919-A as well as Regulation 351-AA. Hence, the petitioner is not entitled for any relief, at this stage, till the conclusion of the proceedings in the pending criminal case against hence.

26. Accordingly, the instant writ petition fails and is hereby **dismissed**. However, the petitioner is at liberty to approach the respondents for release of the gratuity, subject to his acquittal in the said criminal case. In case of his acquittal, petitioner would be entitled for all retiral dues including gratuity etc.

(2026) 7 ILRA 503
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 9029 of 1981

Ram Gopal **...Petitioner**
Versus
A.D.C. **...Respondent**

Issue for Consideration

(1) Scope of interference in the finding of facts recorded by the consolidation authorities in respect of determination of share of parties.
(2) Effect of dismissal of earlier suit against the petitioner.

Headnotes

(A) Consolidation law – UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11(1), 48 – Determination of share of parties – Finding of facts was recorded by the consolidation authorities – Scope of interference – Earlier the suit was dismissed against the petitioner vide order dated 20.12.1971, which has attained finality – Effect.

Held : The case of the petitioners-Ram Gopal Singh and others was considered by Deputy Director of Consolidation, recording finding of fact that order dated 20.12.1971 passed against the petitioners has attained finality against the petitioners, as such the claim of the petitioners cannot be allowed. The Consolidation Officer as well as Settlement Officer of Consolidation have also examined the case of petitioners while deciding the dispute relating to share between the parties – Considering the findings of fact recorded by consolidation authorities, there is no scope for interference by this Court against the impugned orders passed by consolidation authorities in the proceeding under Section 9-A(2) of U.P.C.H. Act. [Para 15 and 16] (E-1)

List of Acts

UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11(1), 48.

List of Keywords

Share of parties, Objection, Issues, Personal law, Documentary evidence, Oral evidence, Merit, Illegal, Arbitrary, Exercise of jurisdiction, Pedigree of parties, Finding of facts, Scope for interference.

Case Arising From

Impugned orders dated 20.04.1981 passed by the Deputy Director of Consolidation, Impugned order dated 02.09.1974 passed by the Settlement Officer of Consolidation and 13.12.1973 passed by the Consolidation Officer.

Appearances for Parties

Advs. for the Petitioner : Shashi Kant Shukla, Sr. Adv.; Rajeev Trivedi, R.K. Pandey.
Advs. for the Respondents : Ram Raj Prajapati, Harihar Prasad Tripathi, N. B. Nigam, R. Dwivedi, SC, V. S. Dwivedi.

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

1. Heard Sri Shashi Kant Shukla, learned Senior Counsel assisted by Sri Rajeev Trivedi, learned Counsel for the petitioners, Sri Ram Raj Prajapati, learned Counsel for private respondents and learned Standing Counsel for the State respondents.

2. Brief facts of the case are that dispute relates to share of the parties in respect to plots of khata nos. 20, 24, 39, 40, situated in village Kumhaupur, Pergana- Sumerpur, District Hamirpur. The particulars of plots in respect to aforementioned khata nos. 20, 24, 39, 40, basic year entry and objection/claim filed by the parties under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") for their share, are mentioned in paragraph nos. 2 to 8 of the writ petition. On the basis of the objection/claim filed by the parties, Consolidation Officer registered four cases which are as under:-

"(a) Case No.500 (Girand Singh vs. Balbir Singh)
(b) Case No.559 (Girand Singh vs. Balram Singh)
(c) Case No.503 (Ram Narain Singh vs. Ram Pyari)
(d) Case No.504 (Chandrabhan Singh vs. Sukhdeo)"

Consolidation Officer framed issues in the aforementioned cases and parties have adduced evidences in support of their cases. Consolidation Officer vide order dated 13.12.1973 decided the objection/case, deciding share of the parties. Against the order of the Consolidation Officer dated 13.12.1973 five appeals under Section 11(1) of the U.P. C.H. Act were filed before the Settlement Officer of Consolidation which were registered as under:-

"(a) Appeal No.330 filed by Ram Pyari
(b) Appeal No.332 filed by Girand Singh
(c) Appeal No.360 filed by Sheo Prasad
(d) Appeal No.361 filed by Sheo Prasad
(e) Appeal No.363 filed by Sheo Prasad"

Assistant Settlement Officer of Consolidation heard the aforementioned appeals and vide order dated 2.9.1974, allowed the appeals of Sheo Prasad and Ram Pyari and dismissed the appeal filed by Girand Singh and Others. Against the appellate order dated 2.9.1974, 9 revisions under Section 48 of the U.P. C.H. Act were filed before the Director of Consolidation which are as under:-

"(i) Revision No.1369/23 (Ram Gopal Singh and Others vs. Sukhdeo Singh and Others)
(ii) Revision No.1379/26 (Subedar Singh and Others vs. Mst. Ram Pyari and Others)
(iii) Revision No.1380/27 (Subedar Singh and Others vs. Mst. Ram Pyari and Others)
(iv) Revision No.1381/28 (Subedar Singh and Others vs. Mst. Ram Pyari and Others)
(v) Revision No.1382/29 (Mst Ram Pyari vs. Balbir Singh and Others)

(vi) Revision No.1545/37 (Balbir Singh and Others vs. Mst. Ram Pyari and Others)
(vii) Revision No.1633/42 (Mst Ram Pyari vs. Subedar Singh and Others)
(viii) Revision No.2322/121 (Maharaj Singh vs. Mst Ram Pyari Devi and Others
(ix) Revision No.2323/122 (Smt. Ghassi Kunwar vs. Shiv Prasad and Others)″

The aforementioned revisions were clubbed and heard together. The Assistant Director of Consolidation vide order dated 20.4.1981 dismissed the Revision Nos. 1369/23, 1382/29, 1633/42, 1545/37 and allowed the Revision Nos.1379/26, 1980/27, 1381/28, 2322/121 and 2323/122.

Hence, Writ B No.10204 of 1981 has been filed for the following relief:-

"(a) Issue a writ, order or direction in the nature of writ of certiorari, quashing the judgments and orders passed by respondent nos. 1, 2 and 3 (Annexure Nos. 3, 2 & 1 respectively.

(b) Issue a writ, order or direction in the nature of writ of mandamus, directing the respondent nos. 1, 2 & 3 to allot the petitioner, 1/3rd share or such other share which this Hon′ble Court deems fit and proper.″

Writ B No.9029 of 1981 has been filed for following relief:-

"Issue a writ, order or direction in the nature of writ of certiorari, quashing the orders dated 2.9.1974 (Annexure 5) and 20.4.1981 (Annexure 6) passed by respondent nos. 2 and 1 respectively and the order dated 13.12.1973 (Annexure 4), passed by the respondent no.3 so far as it relates to khata Nos. 39 & 40.″

Writ B No.9020 of 1981 has been filed for following relief:-

"Issue a writ, order or direction in the nature of writ of certiorari, quashing the orders dated 2.9.1974 (Annexure 5) and 20.4.1981 (Annexure 6) passed by respondent nos. 1 and 2 respectively and the order dated 13.12.1973 (Annexure 3), passed by the respondent no.3 so far as it relates to khata Nos. 20.″

Writ B No.9019 of 1981 has been filed for following relief:-

"Issue a writ, order or direction in the nature of writ of certiorari, quashing the impugned orders dated 2.9.1974 (Annexure 2, passed by respondent no.2) and 20.4.1981 (Annexure 3, passed by respondent no.1).″

3. This Court admitted all the abovementioned four writ petitions and granted interim orders.

4. The parties have exchanged their pleading.

5. Writ-B No. 10204 of 1981 was heard on merit and same was dismissed by judgment dated 30.01.2026.

6. The instant petition was dismissed for non-prosecution on 30.01.2026 but on the restoration application, the instant petition has been restored to its original number and heard afresh.

7. Learned Senior Counsel for the petitioners submitted that Rukiya inherited the land belonging to Shri Bhawani Deen Singh in her lifetime as limited owner, as such she could surrender her interest in favour of her sons namely, Sultan Singh and Girand Singh, her nearest reversions under the personal law applicable on the relevant point of time. He further submitted that contesting respondents have admitted the share and possession of Sultan Singh and Girand Singh, but Assistant Director of Consolidation has failed to consider the admission of contesting respondents, which was neither withdrawn nor explained. He further submitted that the case of will was neither raised nor argued before the Assistant Director of Consolidation or any other Consolidation authority as such, the impugned order cannot be sustained in the eye of law. He further submitted that oral and documentary evidence on record fully demonstrate that Sultan Singh and Girand Singh were sons of Bhawani Deen Singh, as such they were entitled to inherit the land belonging to them but the Revisional Court has failed to consider the oral and documentary evidence in accordance with law. He submitted that the name of Sultan Singh and Girand Singh were ordered to be recorded in place of Bhawani Deen Singh vide order dated 15.05.1947 passed by Sub Divisional Officer, as such the same cannot be ignored by the consolidation authorities while deciding the title dispute under the U.P.C.H. Act. He further submitted that petitioner's claim under Section 9-A(2) of U.P.C.H. Act cannot be refused on the ground that earlier suits were dismissed vide order dated 20.12.1971, as the suits were not dismissed on merit. He further submitted that in the objection filed before Consolidation Officer against the basic year entry, all plots were mentioned in proper manner, but impugned orders have been passed by Revisional Court as well as Appellate Court in an illegal and arbitrary manner. He submitted that all the impugned orders should be set aside and claim of petitioner under Section 9-A(2) of U.P.C.H. Act should be allowed.

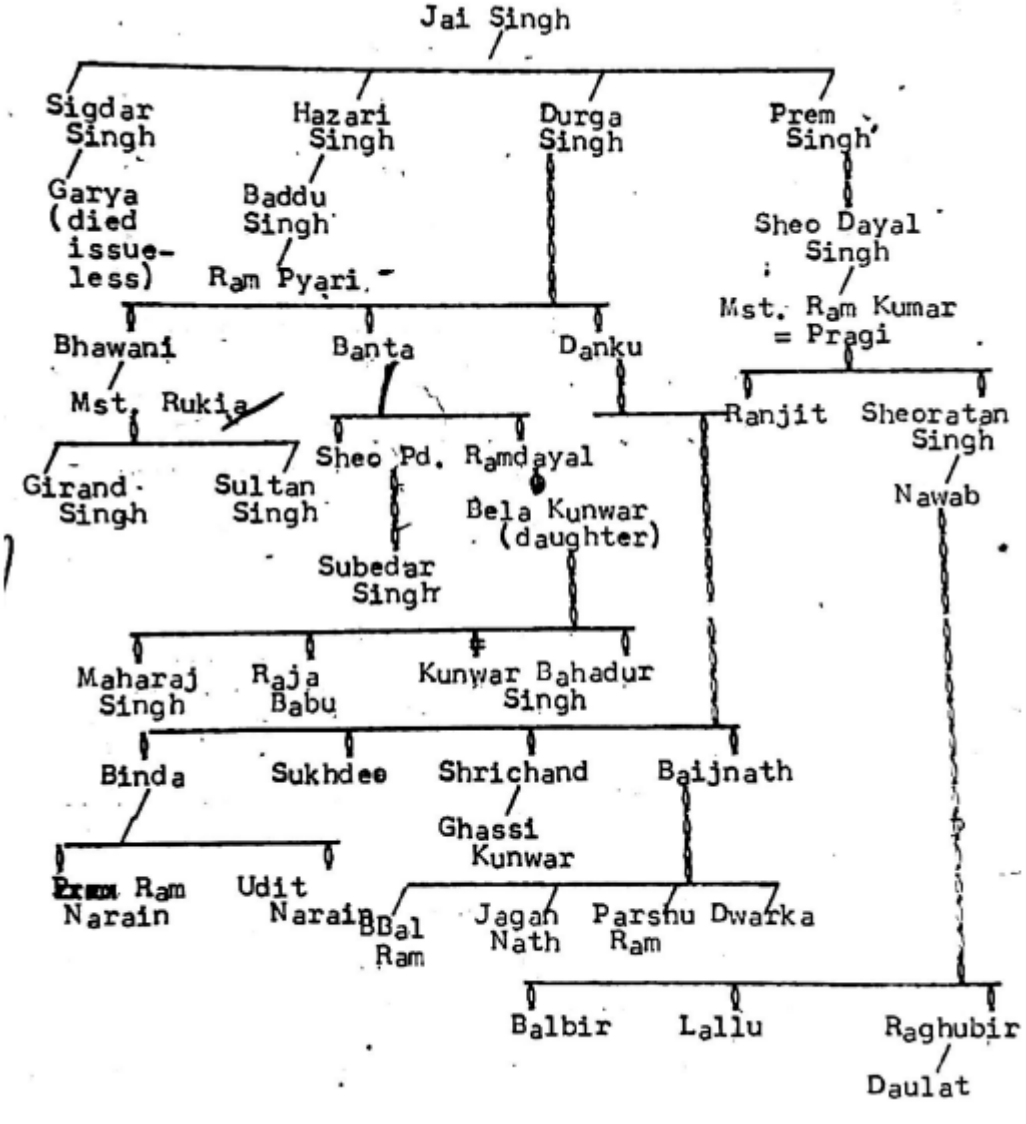
8. On the other hand, Learned Counsel for private respondents submitted that there is no illegality in the exercise of jurisdiction by the consolidation authorities so far as the claim of the petitioner is concerned. He submitted that finding of fact has been recorded by the Deputy Director of Consolidation while passing the impugned orders, as such no interference is required in the matter.

9. Learned Standing Counsel for the State respondents submitted that in view of the findings recorded by consolidation authorities, no interference is required and the instant writ petition is liable to be dismissed.

10. I have considered the arguments advanced by Learned Counsel for the parties and perused the record.

11. There is no dispute about the fact that title objections under Section 9-A(2) of the U.P. C.H. Act, title appeals under Section 11(1) of the U.P.C.H. Act and title revisions under Section 48 of the U.P. C.H. Act have been decided under the impugned orders, determining the share of the parties in respect to khata in dispute.

12. In order to appreciate the controversy involved in the matter, the pedigree of the parties as mentioned in the order of Consolidation Officer will be relevant which is as under:-



13. The perusal of relevant portion of order of Deputy Director of Consolidation will be necessary, which is as under:

" निगरानी संख्या 1369 / 23, राम गोपाल सिंह आदि बनाम सुखदेव सिंह आदि जो कि स०च०अ०च० अपील संख्या 332 के विरुद्ध खाता संख्या 20, 24 और 40 के विषय में दायर की गई है। जिसमें इनका मुख्यतम कथन है कि स०च०अ०च० ने कोई संकेत अपने आदेश में वसीयतनामा का नहीं

किया और न ही उसका विवेचन किया है, यद्यपि पूर्व निर्णित वादों में पक्षकारों द्वारा वसीयतनामे को स्वीकार भी किया गया था। वसीयतनामे के अनुसार निगरानीकर्तागण वारिस हुए हैं। यह भी कहा गया कि बंटवारे से संबंधित आदेश अंतिम नहीं है तथा सह-खातेदारों के अधिकार समाप्त नहीं हुए हैं। उनका आराजी निजाई 1/3 भाग है तथा वे सह-खातेदार हैं। पत्रावली का अवलोकन करने के पश्चात यह स्पष्ट है कि ना तो च०अ० के समक्ष और न तो स०च०अ०च० के ही समक्ष वसीयतनामा पर कोई बहस या सबूत अदालत में दी गयी। कोई ऐसा सबूत अदालत में नहीं है जिससे यह सिद्ध हो सके कि भवानीदीन सिंह को लड़की के लड़के तथा भवानीदीन की लड़की श्रीमती रूकिया भवानीदीन की मृत्यु के बाद जीवित थी। यह भी पता चलता है कि भवानीदीन सिंह की मृत्यु के बाद श्रीमती रूकिया ने हिस्सा लेने से इंकार कर दिया जबकि यह एक मात्र वारिस थी। यह सिद्ध है कि फरीकैन के बीच वसीयतनामा हुआ जो कि दिनांक 25.02.1927 का है। इससे यह सिद्ध है कि श्रीमती रूकिया ने हिस्सा लेने से इंकार किया है। वसीयतनामे के अवलोकन से यह सिद्ध है कि संबंधित ग्राम कुम्भपुर में कोई जमीन नहीं दी गयी और ना ही उसका कोई उल्लेख है। यहाँ तक कि क्षण भर को भी यह मान के चला जाए कि इस ग्राम में जमीन लड़कों को देने के लिए लिखी भी गयी, उल्लेखनीय है कि इसका इंद्राज कभी भी अभिलेखों में नहीं हुआ। यही कारण है कि रजिस्टर मलकाना में इसका उल्लेख नहीं है यहाँ यह भी उल्लेखनीय है कि संबंधित ग्राम कुम्भपुर कई मोहाल है। इसी मुहाल जवाहर में जिससे संबंधित विवादित खाता संख्या 20 भी है। वही अन्य खाते भी हैं जिसमें भगवानदीन सिंह का नाम दर्ज है जिसकी पुष्टि खाता खेवट 1, 2, 3, 4, 5 में होता है। हर दशा में यह सिद्ध है कि इसका कोई इंदराज अभिलेखों में नहीं है। पत्रावली से यह भी स्पष्ट है कि सबूत का अभाव इस बिंदु पर रहा है, क्योंकि दिनांक 20.12.1971 को खारिज होने के बाद सक्षम अधिकारी के समक्ष कोई चाराजोही नहीं की गयी। अतएव कोई सबूत बाकी नहीं रहते है। हर दृष्टिकोण से पुनः परीक्षा करने के पश्चात निगरानी खारिज होने योग्य है।"

14. Perusal of revisional order as quoted above fully demonstrates that the case of the petitioners-Ram Gopal Singh and others was considered by Deputy Director of Consolidation, recording finding of fact that order dated 20.12.1971 passed against the petitioners has attained finality against the petitioners, as such the claim of the petitioners cannot be allowed. The Consolidation Officer as well as Settlement Officer of Consolidation have also examined the case of petitioners while deciding the dispute relating to share between the parties.

15 Considering the findings of fact recorded by consolidation authorities, there is no scope for interference by this Court against the impugned orders passed by consolidation authorities in the proceeding under Section 9-A(2) of U.P.C.H. Act.

16 No interference is required in the matter.

17. The instant writ petition is dismissed.

18. No order as to costs.

(2026) 7 ILRA 509
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.07.2026
BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Special Appeal No. 282 of 2026

Harikesh Verma **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Validity of imposing surcharge after three years from the date of demitting the office of Pradhan.
(2) Overriding effect of the provision of Act to the provision of the Rules, if there is a conflict between the both.

Headnotes

(A) Recovery law – U.P. Panchayat Raj Act, 1947 – S. 27, proviso – U.P. Panchayat Raj Rules, 1947 – Rules 256 and 257 – Pradhan – Surcharge – Imposition – Surcharge was challenged on the ground that it was not permissible after 3 years from the date of demitting the office – Applicability of IIIrd proviso to Rule 257(2) in the light of fact that it is in conflict with the proviso to Section 27 of the Act, felt in question .

Held : Of course, the provision in the 3rd proviso to Rule 257(2) is different and, according to it, no Pradhan, Up-Pradhan, Member, Officer or servant, shall be liable for any loss, waste or misuse after the expiry of four years from the occurrence of such loss, waste or misuse or after expiry of three years from the date of his ceasing to be Pradhan, Up-Pradhan, Member, Officer or Servant of the Gram Panchayat, whichever is later **–** Apparently, the 3rd proviso to Rule 257 or the U.P. Panchayat Raj Rules 1947 is in conflict with the proviso to Section 27, which is the substantive provision governing the subject. [Para 5]

(B) Interpretation of law – Provision of Rules in conflict with the provision of Act – Overriding effect : (E-1)

Held : A Rule cannot supplant, supersede or be in conflict with the Act under which it has been framed. [Para 5]

Case Law Cited

Writ C No. 1000219 of 2006, Ram Lakhan Harshit vs. D.M. Lucknow and ors decided on 12.09.2024 **– referred to.**

List of Acts

U.P. Panchayat Raj Act, 1947 **–** S. 27; U.P. Panchayat Raj Rules, 1947 **–** Rules 256 and 257.

List of Keywords

Recovery, Surcharge, Occurrence of loss, Supplant, Supersede, Conflict, Substantive provision, Discrepancy, Unnecessary litigation.

Case Arising From

Interim order dated 17.06.2026 passed by Single Judge Bench in Writ C No. 6350/2026.

Appearances for Parties

Advs. for the Appellant : Chanchal Kumar Pandey; Parijat Mishra Belaura.
Advs. for the Respondents : Badrish Tripathi, ACSC.

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Manjive Shukla, J.)

1. This Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules 1952 has been filed challenging an interim order dated 17.06.2026 passed in Writ-C No. 6350/2026, by which while granting interim relief till the next date of listing and staying recovery of Rs. 4,38,104.00 in pursuance to the impugned order dated 16.01.2026, it has been further provided that the petitioner will deposit Rs. 2 lacs, within a period of 15 days.

2. Heard Sri Chanchal Kumar Pandey, Advocate, assisted by Sri Parijat Mishra Belaura, for the appellant, and Sri Badrish Tripathi, learned Addl. C.S.C. for the State.

3. The contention of the learned counsel for the appellant is that the appellant-Gram Pradhan demitted office in March 2026, therefore, in view of Rule 256, Read with Rule 257 of the U.P. Panchayat Raj Rules 1947 such surcharge cannot be imposed after a period of 3 years from demitting office. In this regard reliance has been placed upon a Single Judge Bench decision dated 12.09.2024 passed in Writ-C No. 1000219 of 2006, Ram Lakhan Harshit v. D.M. Lucknow and ors., however, we find that the provision of surcharge is contained in Section 27 of the U.P. Panchayat Raj Act, 1947, which is the substantive provision and it reads as under:

"27. Surcharge. –

(1)Every Pradhan or [* *] [Omitted by U.P. Act No. 44 of 2007 (w.e.f. 20.08.2007).] of a [Gram Panchayat] [Substituted by ibid.], every member of a [Gram Panchayat] [Substituted by U.P Act No. 9 of 1994.] or of a Joint Committee or any other committee constituted under this Act [shall be liable to surcharge for the loss, waste or misapplication of money or property belonging to the Gram Panchayat, if such loss, waste or misapplication is direct consequence of his neglect or misconduct while he was such Pradhan or Member] [Substituted 'and every Sarpanch, Sahayak Sarpanch or Panch of a Nyaya Panchayat shall be liable to surcharge for the loss, waste or misapplication of money or property belonging to the Gram Panchayat or Nyaya Panchayat as the case may be, if such loss, waste or misapplication is direct consequence of his neglect or misconduct while he was such Pradhan, Member, Sarpanch, Sahayak Sarpanch or Panch:' by U.P. Act No. 6 of 2017.]Provided that* ***such liability shall cease to exist after the expiration of ten years from the occurrence of such loss, waste or misapplication, or five years from***

the date on which the person liable ceases to hold his office, whichever is later*.(2)The prescribed authority shall fix the amount of the surcharge according to the procedure that may be prescribed and shall certify the amount to the collector who shall, on being satisfied that the amount is due, realise it as if it were an arrear of land revenue.(3)Any person aggrieved by the order of the prescribed authority fixing the amount of surcharge may, within thirty days of such order, appeal against the order of the State Government or such other appellate authority as may be prescribed.(4)Where no proceeding for fixation and realisation of surcharge as specified in sub-section (2) is taken the State Government may institute suit for compensation for such loss, waste or misapplication, against the person liable for the same."*

4. Under the proviso to Section 27, such liability to surcharge for loss, waste or misapplication of money or property belonging to the Gram Panchayat, as is referred in sub-Section (1) of Section 27, shall cease to exist after the expiration of a period of ten years from the occurrence of such loss, waste or misapplication, or five years from the date on which the person liable ceases to hold his office, whichever is later.

5. Of course, the provision in the 3rd proviso to Rule 257(2) is different and, according to it, no Pradhan, Up-Pradhan, Member, Officer or servant, shall be liable for any loss, waste or misuse after the expiry of four years from the occurrence of such loss, waste or misuse or after expiry of three years from the date of his ceasing to be Pradhan, Up-Pradhan, Member, Officer or Servant of the Gram Panchayat, whichever is later, however, the law is settled that a Rule cannot supplant, supersede or be in conflict with the Act under which it has been framed. Apparently, the 3rd proviso to Rule 257 or the U.P. Panchayat Raj Rules 1947 is in conflict with the proviso to Section 27, which is the substantive provision governing the subject.

6. We have gone through the judgment of learned Single Judge passed in Writ-C No. 1000219 of 2006, Ram Lakhan Harshit v. D.M. Lucknow & ors., dated 12.09.2024, but find that the issue with which we are concerned, was not involved in the said case. In fact, the learned Single Judge while passing the impugned order did not notice the proviso to Section 27 of the U.P. Panchayati Raj Rules 1947. The State Government should look into the matter and remove this discrepancy as this may lead to unnecessary litigation.

7. In view of the aforesaid, we do not find merit in the submission of the appellant. The appeal is **dismissed**.

8. Sri Badrish Tripathi shall communicate our judgment to the A.C.S./Principal Secretary, Panchayat Raj, as the Rules cannot be in conflict with the substantive provision contained in the Act.

(2026) 7 ILRA 512
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE VIVEK SARAN, J.

Special Appeal No. 301 of 2014

State of U.P. & Ors. **...Appellants**
Versus
Ranveer Singh **...Respondent**

Issue for Consideration

(1) Validity of an appointment obtained by using a forged caste certificate to get the benefit of reservation.
(2) Effect of causing delay of about 15 years in holding the verification of genuineness of caste certificate.
(3) Jurisdiction of Single Judge Bench of 'Service matter' to decide the issue of classification of Caste.

Headnotes

(A) Service law – Constitution of India – Article 311 – Dismissal from service – Charge of using the forged Caste Certificate – On verification, the employee was found belonging to 'Lodhi' by caste, however Caste Certificate of 'Lodh' was used to obtain appointment of the 'Bandi Rakshak' under Scheduled Tribe category – Result of the verification of caste certificate had attained finality as not being challenged before any forum – Effect – Writ Bench held that it was not a misconduct during his service and the action of the State was contrary to law as it failed to follow proper procedure like issuance of chargesheet and disciplinary proceedings – Validity challenged – Effect of causing delay of 15 years in getting verification also felt into consideration.

Held : Fraud vitiates all solemn acts and therefore, the appointment so sought by the petitioner on the basis of fraud becomes *void ab initio* and *non-est*. Any order which is *de-hors* the constitutional provision is an illegal order – Once a post is held by playing fraud then the incumbent would not be said to be holding a post within the meaning of Article 311 of the Constitution of India – Limitation in the event of fraud do not run and moreover when the fraud itself is surfaced, only then the action can be initiated against the incumbent. [Para 15, 17 and 22]

(B) Practice and procedure – Single Bench having been allotted the matter relating to the 'Service matter' – How far have jurisdiction to decide the issue of classification of caste and issuance of caste certificate : (E-1)

Held : The learned Single Judge who was having jurisdiction of 'service matters' has exceeded his jurisdiction by entering into the classification of caste *vis-a-vis* 'Lodhi' and 'Lodh' and thereafter holding both as synonyms and entitling the petitioner to seek benefit of reservation. [Para 26] (E-1)

Case Law Cited

United India Insurance Co. Ltd. v. Rajendra Singh, 2000(3) SCC 581; Union of India and others v. Prohlad Guha, 2024 SCC OnLine SC 1865; Vishwanatha Pillai v. State of Kerala & Ors, (2004) 2 SCC 105; State of Chhattisgarh and others vs. Dhirjo Kumar Sengar, (2009) 13 SCC 600; State of Bihar v. Devendra Sharma, MANU/SC/1441/2019 – **referred to.**

List of Acts

Constitution of India – Article 311; Indian Penal Code – Ss. 420, 468, 467 and 471.

List of Keywords

Reserved category, Scheduled Tribe, Physical verification, Caste certificate, Scheduled caste, Forged and fabricated document, Opportunity of personal hearing, Dismissal, Chargesheet, Disciplinary proceeding, Benefit of reservation, Delay, Jurisdiction in service matter, Outcome of enquiry, Correctness, Public employment, Void ab initio, De hors the constitutional provision, Illegal order, Limitation.

Case Arising From

Judgment and order dated 01.07.2008 passed by Single Judge Bench in Civil Misc. Writ Petition No. 585 of 2008.

Appearances for Parties

Advs. for the Appellant : Abhishek Kumar Srivastava, ACSC; Pankaj Rai.
Advs. for the Respondents : V.K. Singh, Sr. Adv.; Narendra Kumar Maurya; P.K. Chauhan, R.A. Verma, Yogendra Kumar.

(Delivered by Hon'ble Vivek Saran, J.)

1. Heard Sri Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the appellant and Sri V.K. Singh, learned Senior Counsel assisted by Sri Narendra Kumar Maurya, Advocate for the respondent.

2. The instant intra-court special appeal is directed against the judgment and order dated 01.07.2008 passed in Civil Misc. Writ Petition No.585 of 2008 (Ranveer Singh v. State of U.P. and others) by which the learned Single Judge has quashed the termination order dated 28.11.2007 of the petitioner and has directed the respondent/appellant to give him continuity in service alongwith all other benefits including the seniority and arrears of salary.

3. Brief facts of the case are that the petitioner was appointed as *Bandi Rakshak* on 08.08.1992 under the reserved category of 'Scheduled Tribe' and thereafter he worked till the year 2007 when certain incumbents on strength of forged orders sought change of their Division. The then Director General, Jail Administration and Services, U.P. vide his letter dated 02.07.2007 directed physical verification of all the documents which had been submitted by the incumbents in Bandi Rakshak category at the time of entering into services to be verified. Thereafter the documents including the caste certificate of the petitioner by which reservation to the post was claimed were verified. The District Magistrate, Lucknow vide his communication dated 11.07.2007 informed that no such caste certificate was issued by the concerned officer to the petitioner but inadvertently in the said letter it was mentioned as 'Scheduled Caste' instead of 'Scheduled Tribe' which was corrected vide corrigendum letter dated 19.07.2007. Thereafter, the caste of petitioner as belonging to 'Lodh' caste was also verified from the office of District Magistrate, Mainpuri, where the petitioner was a permanent resident of and vide his letter dated 19.07.2007 the then District Magistrate informed on the basis of the report of the Tehsildar, Bhogaon dated 13.08.2007 that in the aforesaid village no person belonging to 'Lodh' caste resided and the petitioner was 'Lodhi' by caste. Once it was ascertained that the caste certificate was a forged and fabricated document then the respondent no.3 vide notice dated 01.08.2007 called upon the petitioner explaining his conduct of entering in services by playing fraud. The petitioner, however vide reply dated 12.08.2007 sought further time but thereafter did not appeared in the proceeding inspite of opportunity of personal hearing being afforded vide letter dated 28.11.2007 and publication of notice in the daily newspaper '*Dainik*

Jagran' finally by order dated 28.11.007 passed by Senior Superintendent, Mandal Karagar, Moradabad, the petitioner was dismissed from service. And the appellant/respondent also lodged an FIR dated 25.07.2007 being Case Crime No.1289 of 2007 under Sections 420, 468, 467, 471 IPC at Police Station Civil Lines Sadar, District Moradabad. The petitioner/respondent approached this Court by filing a writ petition with following relief(s):

"*a) issue a writ, order or direction in the nature of certiorari quashing the order dated 28.11.2007 passed by the Senior Superintendent, Mandal Karagar, Moradabad/Appointing Authority/Respondent No.3.*

b)issue any other writ, order or direction which this Hon'ble Court may deem to be fit and proper in the facts and circumstances of the case.

c) award costs of the petition in favour of the petitioner."

4. The learned Single Judge in his judgment has proceeded to hold that as the petitioner was appointed as '*Bandi Rakshak*' vide order dated 08.08.1992 and therefore, proceeding being taken up after 15-16 years were unwarranted. The learned Single Judge further held that the alleged misconduct of the petitioner was while entering into the service, therefore, it was not a misconduct during his service and the action of the State without following proper procedure like issuance of chargesheet and disciplinary proceedings was contrary to law and no action against him could have been taken only on a show cause notice dated 01.08.2007. Learned Single Judge has further proceeded to hold that the petitioner belong to 'Lodhi' caste and 'Lodh' and 'Lodhi' are synonyms to each other as there was nothing on record to demonstrate otherwise, therefore the petitioner belonged to 'Scheduled Tribe' thereby was entitled of benefit of reservation.

5. Submission of the learned counsel for the appellant before this Court in appeal is that the petitioner was appointed as *Bandi Rakshak* vide order dated 08.08.1992 by a special drive taken up for the Scheduled Castes and Scheduled Tribes. He submits that for claiming the benefit of reservation in employment, the petitioner had submitted a caste certificate issued by the Tehsildar Sadar, Kaisar Bagh, Lucknow, certifying as belonging to 'Lodh' caste and was member of 'Scheduled Tribe', it was this certificate which on verification was found to be forged and fabricated, as not been issued by any Authority. He further submitted that once the caste certificate of the petitioner was found to be forged then the petitioner had no right to hold the post of *Bandi Rakshak* as he has sought appointment by playing fraud and it is settled law that fraud vitiates all solemn acts. He further submitted that the petitioner has not challenged the order/report by which caste certificate of the petitioner/respondent was found to be forged and fabricated before any court and is had attained finality and under such circumstances the dismissal order, impugned by the petitioner was absolutely justified. He further submits that neither the delay in getting the verification of records will not ipso facto extinguish the right of the respondents to verify the records submitted by the petitioners/respondents for procuring the appointment nor would operate as an estopple. He further submitted even otherwise, limitation would run from the time fraud played by the petitioners came to be known. He further submitted that the learned Single Judge had traveled beyond its jurisdiction by adjudicating the issue of caste and holding that 'Lodhi' and 'Lodh' caste are synonyms and were a scheduled tribe, as the learned Single Judge while hearing the matter was having a jurisdiction in 'service matters' alone and not other misc. matters.

6. *Per contra*, the learned Senior Court representing the petitioner/respondent had with vehemence submitted that the finding returned by the learned Single Judge are based on cogent reasons and do not require any inference in appeal. He further submits that the petitioner had already worked for a substantial length and any action would be determined in his interest.

7. Heard the rival contentions of the learned counsel for the parties and perused the record.

8. The sole issue before this Court in the appeal is as to whether a detailed disciplinary enquiry was required to be conducted prior to passing of the order of dismissal of the petitioner from service?

9. It is not in dispute that the petitioner was appointed on 08.08.1992 under the 'Scheduled Tribe' category by the respondents. The petitioner thus in order to seek benefit of reservation must establish that he belonged to scheduled tribe or otherwise would be ineligible for the post.

10. It is also not in dispute that the outcome of verification of the caste certificate of the petitioner as communicated vide letter dated 11.07.2007 of the District Magistrate, Lucknow and the corrigendum letter dated 19.07.2007 and also the outcome of enquiry conducted by the Tehsildar Bhogaon, District Mainpuri, as communicated vide letter dated 19.09.2007 of the SDM, Mainpuri was never challenged by the petitioner and thus their correctness have became final. In the writ petition the only relief prayed was for quashing of the order dated 28.11.2007 by which the petitioner was dismissed from service.

11. Before this Court in the writ petition, the petitioner/respondent had denied submission of the caste certificate. This stand before this Court may have been taken by the writ petition in order to nullify the effect of the verification of his caste certificate. From the record this Court finds that the petitioner/respondent by letter dated 22.06.2007 to the Senior Superintendent, District Jail, Moradabad had stated that he belonged to 'Lodh' caste, also called as 'Lodhi' and which is scheduled tribe and requested the Authority to consider it and to ignore the caste certificate issued by Tehsildar, Lucknow. The relevant extract of letter of petitioner/respondent is reproduced below:

"अतः श्रीमान जी से निवेदन है कि प्रार्थी के द्वारा भेजे गये तहसील भोगॉव जिला मैनपुरी द्वारा जारी प्रमाण पत्र को ही मान्यता दी जाये ***और पूर्व मे जारी नगर लखनऊ तहसील द्वारा प्रमाण पत्र को मान्यता न दी जाये*** *तथा यदि प्रार्थी के विरूद्ध कोई कार्यवाही की जाये तो उसे प्रार्थी को पूर्व में लिखित रूप में सूचित करने की कृपा करें।"*

12. And even in reply dated 12.08.2007 of the petitioner there is no categorical denial of the submission of the caste certificate by the petitioner.

13. We find force in the submission of the learned Standing Counsel for the State/Appellant that unless a caste certificate was furnished by the petition, no benefit of reservation could have been claimed or given in public employment. Learned counsel for the petitioner/respondent has not been able to show any such rule or authority to the effect that the petitioner/respondent could have

claimed the benefit of reservation in public employment without submitting a caste certificate. Thus, the denial by the petitioner before this Court of not having submitted the caste certificate cannot be accepted.

14. The inevitable consequence on finding the caste certificate as forged and fabricated document (as not being issued by the authority) would be that the petitioner had played fraud in securing the appointment under the reserved category and he would be ineligible to the post and the appointment order dated 08.08.1992 would be an illegal order.

15. It is settled law that fraud vitiates all solemn acts and therefore, the appointment so sought by the petitioner on the basis of fraud becomes *void ab initio* and *non-est*. Any order which is de-hors the constitutional provision is an illegal order.

16. Hon'ble Supreme Court inre: **United India Insurance Co. Ltd. v. Rajendra Singh** reiterated that fraud unravels everything and has observed as follows:-

"3. Fraud and justice never dwell together (Fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything……"

17. The Hon'ble Supreme Court inre: **Union of India and others v. Prohlad Guha** has held that fraud is established by the conduct of the person committing it, which may be evidenced through words. It has been further held by the Hon'ble Supreme Court in **Union of India (Supra)** that once a post is held by playing fraud then the incumbent would not be said to be holding a post within the meaning of Article 311 of the Constitution of India. Relevant paragraph of the judgment is as follows:

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. .....From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the

representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

"....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised."

13.1 The words of Denning L.J. in Lazarus Estates Ltd. v. Beasley are of importance qua the impact of fraud. He wrote – "....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgment, contract and all transactions whatsoever…."

13.2 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; Derry v. Peek; Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education]

13.3 In R. Vishwanatha Pillai v. State of Kerala & Ors., a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.

14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (supra) answers the question. The respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in Devendra Kumar v. State of Uttaranchal18. In paragraph 25 thereof it was observed-

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592 : AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] .) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur).

(Emphasis supplied)

18. The Hon'ble Supreme Court inre:**Vishwanatha Pillai v. State of Kerala & Ors**. (2004) 2 SCC 105 has held that once a post is held by playing fraud then the incumbent would not be said to be holding a

post within the meaning of Article 311 of the Constitution of India. Relevant paragraph no.15 of the judgment is quoted hereunder:

"This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India……

19. A similar view was also taken by the Hon'ble Supreme Court inre: **State of Chhattisgarh and others vs. Dhirjo Kumar Sengar**. The relevant observations are in paragraph 19 of the judgment which is as follows:

"19. The respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with."

20. In the case in hand the petitioner has not obtained a valid certificate by furnishing incorrect information but he has altogether furnished a forged and fabricated certificate which was never issued.

21. The respondents issued notice dated 01.08.2007 to the petitioner to submit his explanation. The petitioner/respondent in response to the same submitted his reply dated 12.08.2007 wherein he stated to belong to 'Lodhi' caste which in Mainpuri is a scheduled tribe and requested to drop the proceedings and also stated that a full fledged inquiry be conducted and he be given all documents but did not categorically replied to the show cause notice. Thereafter again by notice dated 19.10.2007 another notice was issued attending personal hearing to the petitioner fixing 06.11.2007, this letter was issued on 24.10.2007 but he did not come. Thus given a last opportunity to the petitioner/respondent a notice was got published in the local daily Dainik Jagran, in its Moradabad and Agra Editions on 17.11.2007 and 18.11.2007 respectively indicating the date fixed as 23.11.2007 at 11 AM. However, the petitioner did not respond and consequently on 23.11.2007 the order impugned was passed. There was no requirement to initiate any departmental disciplinary proceedings prior to passing of the order as the appointment order dated 08.08.1992 being an illegal order.

22. Further the question regarding delay in getting the verification itself cannot be detrimental or have not an impact on the issue of fraud as it is settled day that limitation in the event of fraud do not run and moreover when the fraud itself is surfaced, only then the action can be initiated against the incumbent. In the instant case although no verification of records of the petitioner were not conducted in the year 1992 that is while entering into service but subsequently in the year 2007 when other forged documents regarding transfer were furnished, the Director General directed verification of the records and such a verification of records belatedly cannot validate a fraud committed by the petitioner.

23. Hon'ble Supreme Court inre: **State of Bihar v. Devendra Sharma** while dealing with issue of entitlement of salary and other benefits to an incumbent whose appointment is found to be obtained by fraud approving the Full Bench decision of Patna High Court vide its paragraph no.37 has held that:

"*37) Such judgment of the Full Bench was approved by three Judge Bench of this Court in a Judgment reported R. Vishwanatha Pillai v. State of Kerala & Ors.((2004) 2 SCC 105: 2004 SCC (L & S) 350. This Court held as under:*

"17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education (1987 SCC OnLine Pat 159). The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held:

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

24. In view of the aforesaid discussion this Court is of the considerate opinion that as the petitioner had practiced fraud in seeking his appointment under the reserved category and as the result of the verification of his caste certificate had attained finality as not being challenged before any forum. The order of appointment dated 08.08.1992 is illegal and non-nest and the respondent/appellant have rightly adopted the procedure of issuing notice to the petitioner/respondent to show cause, prior to passing the order impugned. The issue is thus decided accordingly.

25. We find force in the submission of the learned Standing Counsel that the learned Single Judge who was having jurisdiction of 'service matters' has exceeded his jurisdiction by entering into the classification of caste vis-a-vis 'Lodhi' and 'Lodh' and thereafter holding both as synonyms and entitling the petitioner to seek benefit of reservation.

26. With due regards we find that the judgments relied up by the learned Single Judge are not applicable in the facts of case of the petitioner/respondent, as his appointment was obtained by practicing fraud.

27. Thus in view of the aforesaid discussions, appeal succeeds and is **allowed**. The judgment and order 01.07.2008 passed by the learned Single Judge in Civil Misc. Writ Petition No.585 of 2008 (Ranveer Singh v. State of U.P. and others) is hereby set aside and the writ petition is accordingly, dismissed. The order impugned dated 28.11.2007 is affirmed.

28. Since the petitioner has worked during the pendency of the appeal before this Court without there being any interim order therefore the salary and other emoluments already paid to the petitioner, pursuant to his working, shall not be recovered.

(2026) 7 ILRA 520
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Special Appeal No. 400 of 2026

Sanjay Agrawal **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Maintainability of Special Appeal against the non-speaking Judgment of the Single Bench, passed in violation of principle of natural justice.

Headnotes

(A) Practice and Procedure – Allahabad High Court Rules, 1952 – Ch. VIII, R. 5 – Special Appeal – Maintainability – Bar under the Rules, when not applies – Judgment of the Single Bench was a non-speaking judgment – Principle of natural justice – Facet and application.

Held : The bar created by Rule 5 must yield to the foundational principles of 'natural justice', namely the right to be heard and right to a fair hearing and that Rule 5 has to be read and understood in a manner that advances the cause of 'access to justice' and not thwart it **–** Passing of a speaking order or the necessity to record reasons has been held to be a facet of natural justice – The order passed by learned Single Judge is *ex facie* non-speaking, inasmuch as there is absolutely no discussion worth the name either on the facts or orders impugned or the judgement relied upon or as to how the impugned orders were contrary to the judgement cited and even the aspect as to whether the writ petition has been allowed or disposed of, has not been indicated. [Para 11, 12 and 13] (E-1)

Case Law Cited

Laljimal Dharamshala Society and another vs. The Commissioner Agra Division Agra and others, 2020:AHC:12586; Vajara Yojna Seed Farm, Kalyanpur (M/s.) and others vs. Presiding Officer, Labour Court II, U.P., Kanpur and another, (2003) 1 UPLBEC 496; Committee of Management and another vs. State of U.P. and others, 2025 (10) ADJ 218 (DB); Subhanti Rai and others vs. C/M Van Awadh Gram Shiksha Mandal District Mau and others, 2025:AHC:29061-DB; Abhishek Gupta vs. Dinesh Kumar and others : 2025 INSC 1406; Sheet Gupta vs. State of U.P. and others, AIR 2010 All. 46 (FB); Kranti Associates Private Limited and another vs. Masood Ahmed
Khan and others, (2010) 9 SCC 496 – **referred to.**

List of Acts

Constitution of India – Article 14, 226 and 227; Allahabad High Court Rules, 1952 – Ch. VIII, R. 5.

List of Keywords

Registration of Society, Cancellation, Preliminary objection, Maintainable, Reasons, Unjustified, Appellate jurisdiction, Bar, Principle of natural justice, Fair hearing, Access to justice, Non-speaking order, Speaking order, Judicial order, Quasi judicial order, Administrative order.

Case Arising From

Judgment and order dated 24.02.2026 passed by Single Judge Bench in Writ C No. 140 of 2026.

Appearances for Parties

Advs. for the Appellant : Aklank Kumar Jain
Advs. for the Respondents : J.P. Singh, Ratnesh Pratap Singh

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

1. This appeal is directed against order dated 24.02.2026 passed by learned Single Judge in Writ-C No. 140 of 2026, whereby the learned Single Judge, on finding that the appellate authority did not consider the position of law correctly, set aside the orders dated 18.09.2025 and 09.10.2025 passed by Commissioner, Agra Division, Agra and remitted the matter back to the appellate authority to decide afresh.

2. The writ petition was filed by the respondent-Committee of Management through its President Shri Niwas questioning the validity of the order dated 12.03.2019 passed by Deputy Registrar, Agra and orders dated 18.09.2025 and 09.10.2025 passed by the Commissioner, Agra Division, Agra. By order dated 12.03.2019, the Deputy Registrar has passed the order cancelling the registration of the Society under Section 12-D(1)(c) of the Societies Registration Act, 1860, the appellate authority, by order dated 18.09.2025, dismissed the appeal and by order dated 09.10.2025, it dismissed the review application.

3. When the matter came up before the learned Single Judge, after hearing the counsel for the respondent-Committee of Management through its President as well as the appellant herein, the learned Single Judge came to the conclusion that position of law as laid down in **Laljimal Dharamshala Society and another Vs. The Commissioner Agra Division Agra and others: 2020:AHC:12586** was not considered correctly by the appellate authority and consequently, passed the order impugned setting aside the order passed on appeal as well as review petition and remitted the matter back to the appellate authority to decide afresh. Feeling aggrieved, the present appeal has been filed.

4. At the outset, counsel for the respondent raised preliminary objection that the appeal is not maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 ('Rules, 1952') inasmuch as the writ petition was filed against the order passed by the appellate authority and provisions of Rule 5 clearly bar special appeal against orders passed by learned Single Judge in such matters and therefore, the appeal deserves to be dismissed. Reliance was placed on judgement in **Vajara Yojna Seed Farm, Kalyanpur (M/s.) and others Vs. Presiding Officer, Labour Court II, U.P., Kanpur and another : (2003) 1 UPLBEC 496, Committee of Management and another Vs. State of U.P. and others : 2025 (10) ADJ 218 (DB) and Subhanti Rai and 5 others Vs. Committee of Management of Van Awadh Gram Shiksha Mandal District Mau and 19 others : 2025:AHC:29061-DB**.

5. Counsel for the appellant made vehement submissions that a bare look at the order impugned would reveal that learned Single Judge has failed to record any reasons for setting aside the orders impugned in the writ petition and even the fact as to whether the petition has been allowed or disposed of, has not been indicated and therefore, to contend that against order of

present nature, special appeal would not be maintainable, is wholly unjustified. Attempts were made to make submissions with reference to the facts of the case by contending that the orders passed by the appellate authority on appeal as well as review petition were justified and that the judgement in the case of **Laljimal (supra)** relied on by learned Single Judge had no application to the facts of the case. Strong reliance was placed on Supreme Court judgement in **Abhishek Gupta Vs. Dinesh Kumar and others : 2025 INSC 1406.**

6. The parties were heard on the maintainability of the appeal. It would be appropriate to quote the order passed by learned Single Judge, which reads as under:-

"1. Heard Sri J.P. Singh, learned counsel for petitioners and Sri V. Singh, Advocate for Respondent-4.

2. At this stage, I find that Appellate Authority has not considered the position of law correctly while deciding appeal of petitioners (See, **Laljimal Dharamshala Society and another vs. The Commissioner Agra Division Agra and others, 2020:AHC:12586).**

3. Therefore, orders dated 18.09.2025 and 09.10.2025 passed by Commissioner, Agra Division, Agra are hereby set aside and the matter is remitted back to Appellate Authority to decide afresh. Petitioners are granted liberty to raise supplementary grounds on fact as well as on law so that Appellate Authority may decide appeal afresh expeditiously."

7. A perusal of the order passed by learned Single Judge reveals that not a word has been indicated regarding the facts of the case, the orders impugned before the learned Single Judge and as to what law had been laid down in the case of **Laljimal (supra)** and how the orders passed by the appellate authority on appeal and review petition were contrary to the said judgement. Further, as to whether the petition has been allowed or disposed of, has not even been indicated. The only indication made is that the orders dated 18.09.2025 and 09.10.2025 passed by the Commissioner, Agra Division, Agra are set aside and the matter is remitted back to the appellate authority to decide afresh.

8. Rule 5 of Chapter VIII of the Rules, 1952 reads as under:-

"**5. Special appeal** :- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

9. On a first blush and settled legal position as reflected in judgements in the case of **Vajara Yojna Seed Farm (supra) and Sheet Gupta Vs. State of U.P. and others : AIR 2010 All. 46**

(FB) and plain reading of the provisions, the appeal having been filed against the order passed by learned Single Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of judgement of the authority made in exercise of appellate jurisdiction under any State Act, the same would be barred.

10. However, Supreme Court in the case of **Abhishek Gupta (Supra)**, after taking into consideration the provisions of Chapter VIII Rule 5 of the Rules, 1952 and Full Bench judgement in the case of **Sheet Gupta (supra)**, inter alia, came to the following conclusion:-

"15. Although Rule 5, inter alia, ordains that no Special Appeal shall lie from an order passed by a Single Judge of the High Court in writ proceedings under Article 226 of the Constitution where an appellate/revisional order of the Government or any officer or authority under any of the specified enactments is under challenge, **in our considered opinion, Rule 5 has to be read and understood in a manner that advances the cause of "access to justice" and not thwart it.** The object and purpose behind enactment of Rule 5 have to be borne in mind while embarking on its interpretation. The object seems to be that when two tiers of adjudication - quasi-judicial and judicial - are available, i.e., (i) a determination by the appellate/ revisional forum under a specified Central/State legislation on a particular lis raised by a party and defended by the adversary at the first instance, is (ii) followed by an adjudication by a Single Judge on a writ petition under Article 226 of the Constitution as to whether such appellate/revisional order is legal, valid or proper, a third tier for ruling on the same lis in the shape of a special appeal before the Division Bench ought not to be made available to the aggrieved party. The purpose is clear: to achieve a sort of finality at the level of the High Court and not to add to the agony of the concerned litigant. The unwritten rule is that any party aggrieved by the adjudication made by the Single Judge will have to seek remedy under Article 136 of the Constitution before this Court or seek a review under the High Court's inherent jurisdiction.

16. In the circumstances before us, the bar created by Rule 5 must yield to the foundational principles of natural justice, namely, the right to be heard and the right to a fair hearing. It is trite law that the principle of non-joinder, though originating from the Code of Civil Procedure, 1908, applies with equal force to writ proceedings. An order passed in writ jurisdiction without impleading an affected or necessary party is liable to be invalidated on that ground alone. Since the courts exist to administer justice, the rigours of Rule 5 would not apply and stand relaxed in a case of the present nature where the order under challenge is one, passed by a Single Judge on a petition under Article 226 of the Constitution, adversely affecting the rights of a party who was not a party-respondent before the Single Judge."

(emphasis supplied)

11. Supreme Court observed that the bar created by Rule 5 must yield to the foundational principles of "natural justice", namely the right to be heard and right to a fair hearing and that Rule 5 has to be read and understood in a manner that advances the cause of "access to justice" and not thwart it.

12. As noticed herein before, the order passed by learned Single Judge is ex facie non-speaking, inasmuch as there is absolutely no discussion worth the name either on the facts

or orders impugned or the judgement relied upon or as to how the impugned orders were contrary to the judgement cited and even the aspect as to whether the writ petition has been allowed or disposed of, has not been indicated.

13. Passing of a speaking order or the necessity to record reasons has been held to be a facet of natural justice. Hon'ble Supreme Court in **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others : (2010) 9 SCC 496** has laid down the parameters with regard to the requirement of a reasoned or speaking judicial, quasi judicial or even administrative order, which read as under:-

"47. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and

decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija Vs. Spain (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".”

(emphasis supplied)

14. As noticed herein before, Supreme Court in the case of **Abhishek Gupta (supra)** has laid down that the bar created by ‘Rule 5 of the Rules, 1952 must yield to the foundational principles of natural justice’, the very fact that the order impugned is non-speaking and does not contain any reasons, in the light of the observations made by Supreme Court, the present appeal against such an order would be maintainable and the preliminary objection raised in this regard cannot be sustained.

15. So far as the judgements in the case of **Vajara Yojna Seed Farm (supra), Committee of Management (supra)** and **Subhanti Rai (supra)** cited by counsel for the respondent are concerned, the said judgements did not deal with the aspect of a non-speaking order passed by learned Single Judge and as Supreme Court in the case of **Abhishek Gupta (supra)** has taken into consideration the Full Bench judgement in the case of **Sheet Gupta (supra)**, and has categorically carved out an exception despite plain reading of the provisions of Rule 5 of Chapter VIII of the Rules, 1952, the said judgements would have no application to the facts of the present case.

16. Once it is found that the order is non-speaking and the necessity for a speaking order by learned Single Judge cannot be over emphasised in terms of what has been laid down by Supreme Court in the case of **Kranti Associates (supra)**, the order passed by learned Single Judge cannot be sustained.

17. Consequently, the appeal is **allowed**. The order dated 24.02.2026 passed by learned Single Judge in Writ-C No. 140 of 2026 is set aside. The writ petition is restored to its original file and number, the same shall now be heard and decided by learned Single Judge in accordance with law.

18. Accordingly, Writ-C No.140 of 2026 shall be listed before the appropriate Bench on 14.07.2026 as a fresh case.

(2026) 7 ILRA 526
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

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

Special Appeal No. 524 of 2014

State of U.P. & Ors. ...Appellants
Versus
Raj Narain Yadav Constable ...Respondent

Issue for Consideration

(1) Relevancy of sufficient cause in deciding the issue relating to laches occurred in instituting the writ petition under Article 226 of the Constitution of India.
(2) Validity of dismissal order passed by the disciplinary authority merely on the basis of conviction on criminal charge without considering the conduct of the employee.

Headnotes

(A) Constitution of India – Article 226 – Writ – Delay in instituting the writ petition – Condonation – Sufficiency of cause – Petitioner was incarcerated throughout the period while serving his sentence in a criminal case, leading him to prevent from approaching the Court – Relevance .

Held : It is no more res integra that irrespective of the length of delay, the sufficiency of the cause of delay is to be tested **–** Delay of a few days cannot be condoned if sufficient cause is not disclosed explaining it, but even a massive delay may be condoned if reasons pass the muster of sufficiency of cause **–** If a litigant was prevented from approaching the Court of law for reasons beyond his control, such reasons and explanations are definitely sufficient cause for condoning delay and laches **–** We find no infirmity in the view taken by the learned Single Judge in condoning the delay and laches and entertaining the writ petition on the merits. [Para 7, 10, 13 and 14]

(B) Service law – U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 – Rule 8(2)(a) – Dismissal from service – Delinquent employee was convicted u/s 304B, 201, 498-A IPC and 3/4 DP Act – Disciplinary authority failed to consider the conduct before passing the dismissal order – Effect .

Held : The disciplinary authority, while dismissing the respondent from service, was obliged to first consider the conduct that had led to his conviction in the Sessions trial. Such consideration was a condition precedent to the competent authority acquiring jurisdiction to impose the punishment of dismissal **–** As this exercise was admittedly never undertaken, we concur with the learned Single Judge that the impugned order dated 25.07.2006 deserves to be set aside and cannot be sustained. [Para 19]

(C) **Constitution of India – Article 226 – Allahabad High Court Rules, 1952 – Ch. VIII, R. 5 – Special Appeal – Scope of interference .**

Held : The powers of the learned Single Judge and those available to the Bench on appeal are co-extensive, and errors on principles alone can be examined by the appellate court in our corrective jurisdiction – The Single Bench and Division Bench of High Court exercise same jurisdiction under Article 226 of the Constitution of India. Thus, in the intra-Court appellate jurisdiction interference is only warranted where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not be invoked merely because another view is possible on the same set of facts, particularly, when the view adopted by the Single Judge is a plausible and reasonable one. [Para 21 and 22] (E-1)

Case Law Cited

Union of India vs. Tulsiram Patel, AIR 1985 SC 1416; Shyam Narayan Shukla v. State of U.P., (1988) 6 LCD 530; Sadanand Mishra v. State of U.P., 1993 LCD 70; HD Bora vs. the State of Maharashtra, (1984) 2 SCC 337; Mool Chandra vs Union of India and another, 2024 INSC 577; Ganga Singh vs. State of UP. (Neutral Citation – 2018:AHC143164-DB); Shankar Dass v. Union of India, 1985 (2) SCR 358; Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52 **– referred to.**

List of Acts

Constitution of India – Article 226; Allahabad High Court Rules, 1952 – Ch. VIII, R. 5; U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 – Rule 8(2)(a).

List of Keywords

Reinstate, Dismissal, Conviction, Conduct, Removal, Termination, Criminal charge, Quantum of punishment, Delay, Cause of delay, Question of delay, Lack of bona fide, Gross negligence, Sufficient cause, Condonation of delay, Consideration, Disciplinary authority, Reduction to a lower scale, Major penalty, Proportionality, Co-extensive, Corrective jurisdiction, Erroneous, Plausible, Reasonable, Interference, Consequential benefits.

Case Arising From

Judgment and order dated 03.10.2013 passed by Single Judge Bench on writ petition filed by the private respondent.

Appearances for Parties

Advs. for the Appellant : A.K. Roy, S.C.
Advs. for the Respondents : Atipriya Gautam, Vijay Gautam, Vinod Kumar Mishra

(Delivered by Hon'ble J.J. Munir, J.
&
Hon'ble Indrajeet Shukla, J.)

1. This Special Appeal is directed against the judgment and order dated 03.10.2013 passed by Hon'ble Mr. Justice Sudhir Agarwal, whereby the writ petition filed by the respondent was allowed, the order dated 25.07.2006 impugned therein set aside, and the respondent directed to be reinstated in service with consequential benefits; liberty was granted to the appellants to pass a fresh order in accordance with law.

2. The crux of the matter is that the respondent was dismissed from service by the disciplinary authority in exercise of power under Rule 8(2)(a) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 ('the Rules of 1991'), on the ground that he stood convicted in Sessions Trial No. 202/1999 under Sections 304-B,201,498-A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, where the maximum term awarded was ten years rigorous imprisonment. The learned Single Judge, while allowing the writ petition, proceeded on the principle that where a disciplinary authority passes an order of dismissal, removal or termination from service on the ground of the conduct which has led to conviction of the employee on a criminal charge, without itself having considered that conduct, such an order cannot be sustained.

3. The learned Single Judge placed particular reliance on the decision of the Supreme Court in the case of **Union of India v. Tulsiram Patel, AIR 1985 SC 1416**, and, more pointedly, on the

Division Bench decision of this Court in **Shyam Narayan Shukla v. State of U.P., (1988) 6 LCD 530.**

4. In *Shyam Narayan Shukla* (**supra**), it was held that a government servant convicted of an offence cannot be dismissed from service *ipso facto* merely on the ground of such conviction. The disciplinary authority is under obligation to consider the conduct of the employee which led to the conviction. It was further held that, in considering such conduct and the quantum of punishment, the employee need not be heard, but the decision has to be arrived at by the disciplinary authority independently, without participation of the employee, as laid down by the Supreme Court. The learned Single Judge also placed reliance upon the Division Bench decision of this Court in **Sadanand Mishra v. State of U.P., 1993 LCD 70**.

5. Learned counsel for the appellants urged, firstly, that Criminal Appeal No. 1954 of 2005, preferred against the respondent's conviction, is still pending and, therefore, the conviction recorded by the trial court subsists; and, secondly, that the writ petition came to be filed after a delay of about seven years from the date of the order of dismissal dated 25.07.2006, and was, therefore, barred by laches.

6. The learned Single Judge allowed the writ petition after condoning the delay, on the ground that the respondent had been prevented from approaching this Court earlier, as he remained continuously incarcerated, suffering the sentence of ten years rigorous imprisonment, and that he instituted the writ petition immediately upon his release.

7. The issue of delay and laches in instituting the writ petition are being examined in the peculiar facts of this case that the respondent-writ petitioner was prevented from challenging the order impugned therein within a reasonable time. It is no more *res integra* that irrespective of the length of delay, the sufficiency of the cause of delay is to be tested.

8. In the case of **HD Bora vs. the State of Maharashtra, (1984) 2 SCC 337**, the Supreme Court condoned a massive delay of 30 years by ruling that technical pleas, like laches, cannot be utilized to defeat substantive rights. There is no such assertion on behalf of the State that the respondent-writ petitioner is right. The cardinal principle of condonation of delay is that the cause of delay is to be examined and not the duration of delay. Said differently, the delay can be condoned regardless of duration if the cause of delay inspires confidence.

9. In the case of **Mool Chandra vs Union of India and another, 2024 INSC 577**, the Supreme Court emphasised the cause rather than the period of delay for deciding the question of delay. The relevant excerpt is extracted as under:

"No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned."

10. Delay of a few days cannot be condoned if sufficient cause is not disclosed explaining it, but even a massive delay may be condoned if reasons pass the muster of sufficiency of cause.

11. A Bench of this Court in the case of **Ganga Singh vs. State of UP. (Neutral Citation - 2018:AHC143164-DB)** has succinctly summarised the principles of law qua laches and delay in institution of writ proceedings, where the relevant remarks of their Lordships read:

"30. The principle of law laid down in the aforesaid judgements of Hon'ble Supreme Court can be summarized as follows :-

(a) There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution of India.

(b) No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. In any case, the test is not to physical running of time.

(c) The discretion of the Courts under Article 226 of the Constitution of India must be exercised fairly and justly so as to promote justice and not to defeat it.

(d) The validity of the party's defence must be tried upon principles substantially equitable and if the claim made by the applicant is legally sustainable and the illegality is manifest the petitioner cannot be denied relief on the sole ground of laches as power under Article 226 of the Constitution of India is exercised to effectuate the rule of law and not to abrogate it.

(e) Delay in filing the writ petition would be relevant where the delay can be treated as equivalent to a waiver of the right by the petitioner or by his conduct, the petitioner has done that which might fairly be regarded as equivalent to a waiver of it.

(f) Delay would be important and relevant in refusing a remedy to the petitioner if because of delay the opposite parties in the case had altered their possession to their detriment so as to make any interference to the grant in favour of the petitioner inequitable or unreasonable. The Courts would also refuse to interfere under Article 226 of the Constitution of India in favour of the petitioner where parallel third party rights are created due to delay in filing the writ petition.

(g) If the matter in issue before the Courts shocks the judicial conscience, the Court should exercise the discretion more so, when no third party interest is involved.

(h) The petitioner cannot be denied relief under Article 226 of the Constitution of India on the sole ground of delay in filing the writ petition if, for the relief prayed by them, they are relying on a previous judgement of the Court given in similar circumstances which is a judgement in-rem obliging the State Authorities to act in a particular manner in a particular given situation and the grievance of the petitioners in the writ petition, in effect is, that the State Authorities are not acting in the manner stated in the aforesaid judgement. The aforesaid is not a complete exposition of law relating to laches and the circumstances in which a relief may be granted or refused by the Courts under Article 226 of the Constitution of India when a defence of delay in fling a writ petition is raised but a summary of law only to the extent it is relevant for a decision of the present cases."

12. It is the duty of Constitutional Courts to remove injustice and overlook delay and laches where they are not attributable to a lack of bona fides or gross negligence on the part of the litigant.

13. Since the respondent-writ petitioner remained incarcerated throughout the period while serving his sentence in a criminal case, he was definitely prevented from approaching this Court during that period. If a litigant was prevented from approaching the Court of law for reasons beyond his control, such reasons and explanations are definitely sufficient cause for condoning delay and laches.

14. We find no infirmity in the view taken by the learned Single Judge in condoning the delay and laches and entertaining the writ petition on the merits; no error of principle is shown to have crept into the exercise of discretion. Thus, we would refrain from taking a different view insofar as condonation of delay and laches by the learned Single Judge is concerned.

15. The order impugned in the writ petition, dismissing the respondent from the post of Constable, was passed in exercise of the power conferred by Rule 8(2)(a) of the Rules of 1991. Rule 8 of the Rules of 1991 is reproduced below:

*"**8. Dismissal and removal**.-(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.*

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or

(c) where the Government is satisfied that, in the interest of the security of the State, it is not expedient to hold such enquiry.

(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector General concerned for orders.

(4)(a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal, unless the punishing authority, for reasons to be recorded in writing, awards a lesser punishment.

(b) Every officer convicted by a Court for an offence involving moral turpitude shall be dismissed, unless the punishing authority, for reasons to be recorded in writing, considers it otherwise."

16. The provision contained in Rule 8(2)(a) of the Rules of 1991 is pari-materia with the second proviso appended to Article 311(2) of the Constitution of India, which is reproduced below:

"311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: Provided that where it is proposed, after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry, and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that, in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

16. The expression "on the ground of conduct which has led to his conviction on a criminal charge" fell for interpretation before the Supreme Court in Tulsiram Patel (**supra**), where it was held as follows:

".....The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable, and the government servant is not entitled to an enquiry…"

17. The issue as to whether conviction in a criminal case would automatically lead to dismissal of the employee from service has been examined in the case of *Tulsiram Patel* (**supra**) while interpreting clause (a) to the second proviso of Article 311 (2) of the Constitution of India in following words:-

"127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order."

18. In **Shankar Dass v. Union of India, 1985 (2) SCR 358**, the Supreme Court, while considering the scope of the power conferred under clause (a) of the second proviso to Article 311(2) of the Constitution of India, observed as follows:

"Be that as it may, that power, like every other power, has to be exercised fairly, justly and reasonably."

19. Having regard to the law laid down by the Supreme Court in **Tulsiram Patel (supra), T.R. Chellappan (supra) and Shankar Dass (supra)**, the disciplinary authority, while dismissing the respondent from service, was obliged to first consider the conduct that had led to his conviction in the Sessions trial. Such consideration was a condition precedent to the competent authority acquiring jurisdiction to impose the punishment of

dismissal. The order impugned in the writ petition, however, is conspicuously silent on this aspect and nowhere reflects any application of mind to the respondent's conduct underlying his conviction. Before passing the order of dismissal, the disciplinary authority was required to weigh such conduct and only thereafter settle upon the appropriate punishment. As this exercise was admittedly never undertaken, we concur with the learned Single Judge that the impugned order dated 25.07.2006 deserves to be set aside and cannot be sustained.

20. It may be noted that the major penalties which may be imposed under the Rules of 1991 are: (i) removal from service, (ii) dismissal from service, and (iii) reduction in rank, including reduction to a lower scale. Where more than one major penalty is available, conduct that has led to conviction on a criminal charge, even where terminal in character, requires scrutiny by the disciplinary authority in order to reasonably and fairly choose between the penalties available, having regard to considerations of proportionality. The liberty already granted by the learned Single Judge to the appellants to pass a fresh order in accordance with law shall accordingly remain available to them.

21. The powers of the learned Single Judge and those available to the Bench on appeal are co-extensive, and errors on principles alone can be examined by the appellate court in our corrective jurisdiction. In **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52**, the Supreme Court held that *"it is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the letters patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench."*

22. It is now well settled law, that the Single Bench and Division Bench of High Court exercise same jurisdiction under Article 226 of the Constitution of India. Thus, in the intra-Court appellate jurisdiction interference is only warranted where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not be invoked merely because another view is possible on the same set of facts, particularly, when the view adopted by the Single Judge is a plausible and reasonable one. In other words, an intra-court appellate bench ought not substitute its own view merely because the Bench considers its view to be better than the one taken by the Single Judge. So long as the view taken by the Single Judge is a plausible one, interference should be eschewed.

23. For the reasons recorded above, we find no merit in this Special Appeal. It is, accordingly, **dismissed**. There shall be no order as to costs.

24. Needless to say that consequential benefits payable to the respondent shall abide by the fresh decision to be taken by the disciplinary authority upon due consideration of the conduct of the respondent which led to his convi ction.

25. Registrar (Compliance) is directed to communicate this order to the parties.

(2026) 7 ILRA 534
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.07.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Special Appeal No. 650 of 2012

Vidya Dhar Shukla **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of adverse remark made for a particular period to the entitlement to get promotional pay scale and selection grade on the basis of remaining period of unblemished services.
(2) Scope of Special Appeal to grant relief.

Headnotes

(A) Service law – Promotional Pay Scale and Selection grade – Entitlement – Adverse remark made for the period from 1977 to 1994-95 – Effect – After unblemished service of 10 years (from 1 July 1995 to 30 June 2005) the petitioner was retired on 30.06.2005 – Selection grade was claimed on the basis of the period of unblemished service – Single Bench dismissed the writ petition approving the order of authority denying the selection grade – Validity challenged .

Held : Petitioner had rendered unblemished service of 10 years (from 01 July 1995 to 30 June 2005) and his increment/selection grade having been due on 01.07.2005 would be admissible to petitioner despite his superannuation on 30.06.2005 – The completion of 10 years unblemished service from 01.07.1995 till 30.06.2005 went unnoticed by Hon'ble Writ Court and resultantly, error crept in the order impugned. Accordingly, the impugned order dated 8.02.2012 passed by Writ Court is hereby set aside. The molded relief for consideration of selection grade/financial upgradation on account of computation of 10 years of service w.e.f. 01.07.1995 in the light of relevant government orders is hereby extended to the appellant-writ petitioner. [Para 24 and 25]

(B) Allahabad High Court Rules, 1952 – Ch. VIII, R. 5 – Special Appeal – Scope – Coextensive with the writ power – Molding the relief, extent of .

Held : Intra court appeal as well as Writ Court exercises one and same jurisdiction as such we are vested with the power to modify the relief if it may not be granted in the manner it has been prayed for **–** While deciding an intra court appeal under Rules 1952, the power of the Division Bench are coextensive with the powers of Hon'ble Single Judge while deciding the writ petition. [Para 17 and 18] (E-1)

Case Law Cited

Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52; The Director (Admn. And Hr) Kptcl vs C.P. Mundinamani (2023) 14 SCC 411 **– referred to.**

List of Acts

Allahabad High Court Rules, 1952 – Ch. VIII, R. 5; Government orders dated 09.05.1984, 08.03.1995, 02.12.2000 and 05.11.2014.

List of Keywords

Acquittal, Absent from service, Grant of selection grade, Promotional pay scale, Excerpt, Pension, Warning, Substantial justice, 10 years satisfactory services, Jurisdiction, Coextensive, Superannuation, Financial upgradation, Unblemished service.

Case Arising From

Judgment and order dated 08.02.2012 passed by Single Judge Bench in Civil Misc. Writ Petition No. 6984 of 2012.

Appearances for Parties

Advs. for the Appellant : N. K. Chaturvedi, Manoj Kumar Tiwari, Adya Prasad Tiwari, B.M. Pandey, Meni Madhav Pandey, Mithilesh Kumar Tiwari, Pradeep Kumar Jain, S.S. Tripathi, Sheo Shankar Tripathi, Vikram D. Chauhan.

Advs. for the Respondents : Pradeep Singh.

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Shri N.K. Chaturvedi, learned Counsel along with Shri Manoj Kumar Tiwari, learned Counsel appearing for the petitioner and Shri Pradeep Singh, learned Standing Counsel for the State-respondents.

Facts

2. Present intra-court appeal has been filed by writ petitioner/appellant, inter-alia challenging the order dated 08.02.2012 passed by Writ Court in Civil Misc. Writ Petition No.6984 of 2012 titled as Vidyadhar Shukla Vs. State of U.P. and others dismissing the writ petition with following observation:

"Heard learned counsel for the parties.

Vidyadhar Shukla, the petitioner, can Assistant Clerk Working in the U.P. Board of High School and Intermediate, Allahabad has again approached this Court by filing this writ petition in the same series of litigation claiming certain service benefits admissible to him. Criminal as well as Departmental enquiries were initiated against the petitioner. In the criminal trial the petitioner was acquitted giving benefit of doubt by the competent Court vide judgment dated 1.6.1994. During Certain period, that is from 27.12.1977 to 28.7.1981, the petitioner has remained absent from duty. Further, on submitting representations and approaching this Court, this issues was dealt with by the aforementioned Board and the petitioner was granted extraordinary leave without pay vide order dated 4.12.2004. As far as departmental enquiry is concerned, the petitioner was given a serious warning and an adverse entry was also recorded in his Character Role after assessment of his work, conduct and performance from the period 1977 to 1994-95, However, the period of absence from duty (later on regularised by granting leave without pay) was ordered to be counted for the purposes of allowing pension to the petitioner. It was also indicated in the order dated 4.12.2004 that "Sewa Sambandhi Anumanya Sabhi Labh Ukt Nirnay ke Ashin Niyamausar Dai Honge". The order dated 4.12.2004 has been passed in furtherence of a judgment rendered by this Court on 16.7.2004 while disposing of the Writ Selection Grade as claimed by the petitioner from the year 1982 to 1992 and take an appropriate decision in accordance with law by passing a reasoned and speaking order within three months from the date of presentation of a certified copy

of this order after taking into consideration judgement and order passed by the Court as well as the order dated 4.12.2004 passed by the Board.

Pursuant to the said order in question, claim of the petitioner has been considered and it has been found that as his work and conduct has not been found to be satisfactory, as such he is not entitled for Selection Grade and Promotional pay scale. Opinion formed cannot be said to be incorrect opinion for the simple reason that at point of time when the punishment order has been passed, petitioner has given warning not to repeat such activity and further precise mention was that his work and conduct was not at all befitting conduct of government servant and same forms part of the Character Roll of the petitioner. One such was the factual situation in respect of the petitioner wherein petitioner's record has not at all been found to be satisfactory, then in view of this, refusal to accord selection grade and promotional pay scale suffers from to infirmity whatsoever as pre requisite terms and conditions for getting said benefit is satisfactory service, which admittedly is lacking and missing in the fact of the case.

(Emphasis supplied)

Consequently, present writ petition is dismissed.″

3. Facts in brief relevant for adjudication of instant appeal are recapitulated as under:

Undoubtedly, the writ petitioner/appellant was appointed as a Routine Grade Clerk in the office of second respondent/Madhyamik Shiksha Parishad Uttar Pradesh, Allahabad, on 14.06.1969. The Petitioner was charged with offences punishable under Section 420, 467, 468, 471 of IPC with the imputation that petitioner manipulated/forged certain mark sheets. The two trials conducted by virtue of Criminal Case No.4/1981 and 635/1987 ended in acquittal vide judgments dated 18.05.1984 and 01.06.1994. The judgments of acquittal have been brought on record along with the writ petition. It is an admitted position between the parties that the said judgments of acquittal have attained finality. The appellant/writ petitioner remained absent from duty for the period of 27.12.1977 till 28.07.1981. The case set up by appellant as writ petitioner is that the mental trauma faced by him compelled his absence. On the basis of medical certificate, appellant was permitted to resume his duties with effect from 1981. Appellant/writ petitioner thereafter claimed salary for the period of his absence i.e., from 27.12.1977 to 28.07.1981 as well as promotion to the next higher post but the claim for promotion and salary set up by writ petitioner was rejected. Thereafter, he filed successive writ petitions and ultimately, this Court, vide order dated 16.07.2004 passed in Writ Petition No.18773/2000 directed second respondent to pass a fresh order pertaining to grant of selection grade and promotional pay scale.

4. Pursuant to the aforesaid directions, the Respondent-Board considered the merits of claim set up by appellant-writ petitioner, in detail and refused the same vide order dated 04.12.2004. The conclusions drawn by Additional Secretary (Administration) Madhyamik Shiksha Parishad refusing claim of Selection Grade and promotional pay scale are extracted as under:

"(4) यह क़ि स्पष्ट किया जाता है कि उनका आचारण वर्ष 1977 से 1994-95 तक सरकारी सेवक के अनुकूल नहीं पायी गयी है। अतः: यह प्रविष्टि उनकी गोपनीय आख्या में रखी जाय।

(5) उक्त सम्पूर्ण अवधि दिनांक 27/12/77 से 28/07/81 तक को पेंशन हेतु सेवा से जोडने के लिए नियमों के अनुसार माना जायेगा

(6) सेवा सम्बन्धी अनुमन्य सभी लाभउक्त निर्णय के अधीन निमानुसार देय होंगें

उच्च न्यायालय के आदेश दिनांक 16-7-2004 के समादर में श्री शुक्ल के प्रत्यावेदन दिनांक 31/7/2004 को निस्तारित किया गया।"

5. It is strange enough that despite the rejection of claim of petitioner to accord promotional pay scale and selection grade by virtue of order dated 4.12.2004, the same was not challenged by appellant-writ petitioner, in any manner.

6. The appellant/writ petitioner was admittedly issued warning and his conduct was not found to be befitting the Government servant for the period from 1977 to 1994-95. The said entry was directed to be kept in confidential record of petitioner.

7. In absence of any challenge to the order dated 04.12.2004, the issue of warning, the entry qua period from 1977 to 1994-95 holding petitioner not at all befitting the conduct of Government servant attained finality and as such petitioner is precluded to claim any benefit for aforesaid period so long the order dated 04.12.2004 passed by third respondent/Additional Secretary (Administration) Madhyamik Shiksha Parishad, Allahabad remains intact. Without challenging the order dated 04.12.2004 passed by Additional Secretary (Administration) Madhyamik Shiksha Parishad, Allahabad, petitioner instituted another writ petition bearing number 76756 of 2005, which was disposed of by this Court with following observations:

"The petitioner has filed this writ petition seeking relief for allowing him promotional grade from the year 1982 and the Selection Grade from the year 2000. The main thrust of the submission of the learned counsel for the petitioner during the course of the argument is that criminal trial and departmental enquiry both have came to an end. Criminal trial has resulted in acquittal and the departmental enquiry has also concluded by awarding an adverse entry and issuance of a warning to the petitioner. The Board has overlooked these reliefs which were sought by the petitioner, that is, Promotional Grade and the Selection Grade with effect from the aforementioned years. Since in Clause (6) the Secretary of the U.P. Madhyamik Shiksha Parishad, Allahabad has already indicated that the other benefits may be admissible to the petitioner in the light of the decision taken on 4.12.2004, it would be appropriate that the matter may be reconsidered as far as grant of promotional grade and Selection Grade to the petitioner is concerned.

Accordingly, the writ petition is disposed of finally with a direction to the Secretary, U.P. Board of High School and Intermediate, Allahabad to reconsider the matter of the petitioner in respect of grant of Promotional Grade and Selection, Grade as claimed by the petitioner from the year (illegible) and 1997 and take an appropriate decision in accordance with law by passing a reasoned and speaking order within three months from the date of presentation of a certified copy of this order after taking into consideration judgment and order passed by the Court as well as the order dated 4.12.2004 passed by the Board."

8. In compliance of order dated 18.05.2009 passed in Writ Petition No.76756 of 2005, respondent authority decided the claim of petitioner afresh vide order dated 30.11.2009. The relevant excerpt of order dated 30.11.2009 passed by Secretary Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad is being reproduced as under:

"इस विषय में उल्लेखनीय है कि माननीय उच्च न्यायालय, इलाहाबाद द्वारा पारित निर्णय दिनांक 15-05-2009 में याची के सेलेक्शन ग्रेड एवं प्रमोशनल ग्रेड पर विचार किया गया। इस सम्बन्ध में यह अनुपालन पाया गया है कि माननीय उच्च न्यायालय इलाहाबाद द्वारा पारित निर्णय दिनांक 16-07-2004 के अनुपालन में पुष्ठांकन संख्याः मा०शि०प०/ नियक्ति / अ०स० (प्र०) / 3765-4 दिनांक 04-12-2004 द्वारा याची के प्रकरण में विचारोपरान्त लिये गये निर्णय के अनुसार इनकी सेवायें सेलेक्शन ग्रेड एवं पदोन्नति ग्रेड सम्बन्धी निर्गत शासनादेशों में निहित प्राविधानों के अन्तर्गत संतोषजनक नही बन रही है. जिस कारण समयमान वेतनमान एवं पदोन्नति वेतनमान की देयता पर विचार किया जाना सम्भव नही हो पा रहा है। याची श्री विद्याधर शुक्ल जिस रूप में कार्य किये है, उस सेवा अवधि के लिये उन्हें देय वेतन आदि का भुगतान किया जा चुका है।"

9. The appellant/writ petitioner challenged the order dated 30.11.2009 before the Writ Court and, inter alia, claimed the benefit of the promotional pay scale and selection grade. The reliefs claimed by the appellant/writ petitioner are extracted hereunder:

"(i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 30.11.2009 passed by the respondent no.2.

(ii) Issue a writ order or direction in the nature of mandamus commanding the respondent no.2 to ensure the payment of promotional grade to the petitioner since 1982 and the selection grade since 1992 till the date of his retirement and the pension may be paid accordingly. "

10. The Learned Single Judge dismissed the writ petition, affirming the twin-fold reasoning set out in the order challenged in the writ petition i.e. adverse order dated 16.07.2004 passed under the mandate of this Court. The said order specifically records that "सेवा सम्बंधित अनुमन्य सभी लाभ उक्त निर्णय के अधीन नियमानुसार देय होंगे".

11. There being order dated 4.12.2004 intact, writ court refused to exercise discretion vested in it. Consequently, the writ petition was dismissed vide judgment and order dated 08.02.2012.

12. Being embittered with the order dated 08.02.2012 passed by Writ Court, the petitioner invoked the intra court appellate jurisdiction of this Court.

Submission Advanced on behalf of Appellant

13. Learned counsel for the appellant vehemently argued that though he failed to challenge the order dated 04.12.2004 passed by the respondent authority, concluding that the period of absence is to be treated as leave without pay for the purpose of pension and the serious warning with an

adverse entry recorded in his character roll after assessment of his work, conduct and performance for the period from 1977 to 1994-95 would not be an impediment for grant of promotional pay scale and selection grade since with effect from 1982 and 1992, respectively as despite the order dated 04.12.2004 subsisting this Court directed for consideration of the claim afresh as such the order dated 04.12.2004 was not found to be impediment in the grant of service benefit claimed by appellant/writ petitioner.

14. The aforesaid submission is completely misplaced as this Court while passing the order dated 18.05.2009 in writ petition no.76756 of 2005 has not mandated the authorities to ignore the order dated 04.12.2004, rather same remained intact for want of interference by Writ Court in earlier round of litigation.

15. Further, contention raised by learned counsel for the appellant that the adverse entries recorded vide order dated 04.12.2004, were never communicated to the appellant-writ petitioner appears to be prima facie, falicious on the face of the record as while instituting fresh writ petition by virtue of Writ A No.76756 of 2005 it was always open to the Appellant to lay challenge against order dated 4.12.2004, which itself records about adverse entry but counsel for appellant had fairly conceded that the order dated 4.12.2004 was not challenged, as such we failed to understand that the relief claimed by petitioner for grant of promotional pay scale and selection grade with effect from 1982 and 1992 respectively can be accorded in absence of any challenge to the order dated 04.12.2004, but at this stage appellant/writ petitioner submits that relief as prayed for, before Writ Court, may be modified by this Court for substantial justice and Respondent State may be directed to grant Selection grade by calculating 10 years satisfactory service after 1995, as the adverse entry in terms of order dated 4.12.2004 was limited only for the period of 1977 to 1994-95 (which ended on 30th June, 1995).

16. If service rendered by the appellant from 1 July 1995 to 30th June 2005 is calculated for purposes of grant of selection grade it would be 10 years satisfactory service since petitioner demitted office on 30th June 2005 and by that time has completed 10 years satisfactory service.

17. We cannot lose sight of the admitted position of law that intra court appeal as well as Writ Court exercises one and same jurisdiction as such we are vested with the power to modify the relief if it may not be granted in the manner it has been prayed for.

18. While deciding an intra court appeal under Rules 1952, the power of the Division Bench are coextensive with the powers of Hon'ble Single Judge while deciding the writ petition. In **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52**, the Supreme Court held that *"it is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the letters patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench."*

19. Now the only question survives for consideration in the shape of moulded relief is, whether the benefit of the selection grade to the appellant-writ petitioner is permissible on conjoint

reading of Government orders dated 09.05.1984, 08.03.1995 & 02.12.2000 or not by computing unblemished services rendered from 01 july 1995 to 30 june 2005, which would amount to 10 years satisfactory service.

20. The Government Order dated 09.05.1984 and its translated version reads as under:

'"मुझे यह कहने का निर्देश हुआ है कि उपरोक्त विषयक शासनादेश सं०-वे०आ०-2-210/दस- सं०व्य० (सा०)-82, दिनांक 4 फरवरी, 1983 का आंशिक संशोधन करते हुए राज्यपाल महोदय ने आदेश प्रदान किया है कि उसके संलग्नक-1 के क्र०सं० 1, 2(1), 2(3), 3, 4(1), 4(3), 5(1), 6(1), 6(3), 7(1), 8, 9(1 से 4) तथा 10 तक उल्लिखित पदों पर मौलिक नियुक्त की दशा में 10 वर्ष की नियमित सेवा के बाद सेलेक्शन ग्रेड अनुमन्य होगा। यदि कोई पद पदोन्नति से भरा जाता है तो उस पर यह आदेश लागू नहीं होगा और उस पर शासनादेश दिनांक 4 फरवरी, 1983 की व्यवस्था के अनुसार ही सेलेक्शन ग्रेड अनुमन्य होगा। यह संशोधन दिनांक 1 मई, 1984 से प्रभावी होगा और उक्त शासनादेश में उल्लिखित अन्य शर्तें पूर्ववत् लागू रहेंगी।

I am directed to say that, in partial amendment to the Government Order No. वे०आ०-2-210/दस-सं०व्य० (सा०)-82, dated February 4, 1983, on the subject cited above, the Governor has been pleased to order that in the case of substantive appointment to the posts mentioned under Sl. Nos. 1, 2(1), 2(3), 3, 4(1), 4(3), 5(1), 6(1), 6(3), 7(1), 8, 9(1 to 4), and up to 10 of Annexure-I thereof, the selection grade shall be admissible after completing 10 years of regular service. If any post is filled by promotion, this order shall not apply to it, and the selection grade shall remain admissible on such post strictly in accordance with the provisions of the Government Order dated February 4, 1983. This amendment shall come into force with effect from May 1, 1984, and all other terms and conditions specified in the aforementioned Government Order shall remain applicable as heretofore."

(translation by Court)

21. The relevant portion of Government Order dated 08.03.1995 and its translated version reads as under:

"2. ऐसे कर्मचारी जिनके पुनरीक्षित वेतनमान का अधिकतम रु० 03500/-तक है और जो संबंधित पद पर नियमित हो चुके हैं, उनकी जब 6 वर्ष की संतोषजनक सेवा सेलेक्शन ग्रेड के लाभ की तिथि को संम्मिलित करते हुए कुल 14 वर्ष की पूर्ण हो जाती है, प्रोन्नति का अगला वेतनमान वैयक्तिक रूप से अनुमन्य किया जाये। वैयक्तिक प्रोन्नत वेतनमान देने के लिये सेलेक्शन ग्रेड के लाभ के अंतर्गत देय एक वेतनवृद्धि की 6 वर्ष का संतोषजनक सेवा अनिवार्य है। किन्तु सेलेक्शन ग्रेड के लाभ को सेवा गणना हेतु पूर्व में इसके अंतर्गत यदि एक वेतन वृद्धि मिल चुकी है तो उस वास्तविक दिनांक से गिनी जायेगी। उदाहरण के लिये यदि किसी पदधारक को 10 वर्ष की संतोषजनक सेवा के आधार पर एक वेतन वृद्धि का लाभ 1-4-89 को मिल चुका था और उसकी सेवा इसके बाद संतोषजनक अनवरत रही है और वह नियमति है। हो जाता है तो 1-4-95 को वैयक्तिक प्रोन्नत वेतनमान मिलेगा। ऐसे संवर्ग पद जिनके लिये प्रोन्नति का कोई पद नहीं है, उनको उस वेतनमान से अगला वेतनमान देय होगा। उदाहरण स्वरूप ऐसा पदधारक जो

पुनरीक्षित वेतनमान रु० 1200-2040 में है, उसे रु० 1350-2200 का पुनरीक्षित वेतनमान वैयक्तिक वेतमान के रूप में देय होगा।

3. ऐसे कर्मचारी, जिनके पुनरीक्षित वेतनमान का अधिकतम रु० 3500/- तक है जब वैयक्तिक रूप से अनुमन्य प्रोन्नत/अगले वेतनमान में 6 वर्ष की निरन्तर संतोषजनक सेवा तथा कुल 20 वर्ष की सेवा पूरी कर लेते हैं, को प्रोन्नति/अगले वेतनमान में वेतन उस तिथि को अगले प्रक्रम पर निर्धारित कर दिया जाये अर्थात उसे एक वेतन वृद्धि का लाभ उसी वेतनमान में अनुमन्य होगा। किन्तु यदि किसी नियमित पदधारक को पूर्व व्यवस्था के अंतर्गत 16 वर्ष की सेवा के आधार पर वैयक्तिक रूप से प्रोन्नत वेतनमान अगला वेतनमान पहले मिल चुका है तो 6 वर्ष की निरन्तर संतोषजनक सेवा की गणना में पूर्व में जिस दिनांक से यह लाभ मिला है उसे संज्ञान में लिया जायेगा। उदाहरण स्वरूप यदि पदधारक को वैयक्तिक प्रोन्नत वेतनमान / अगला वेतनमान 1-2-89 को मिल चुका था तो 1-3-95 कोउक्त व्यवस्था के अधीनं एक अतिरिक्त वेतन वृद्धि अनुमन्य होगी।"

"2. In respect of such employees whose maximum of the revised pay scale is up to Rs. 03500/- and who have been regularized on the concerned post, upon completion of a total of 14 years of satisfactory service, inclusive of 6 years of satisfactory service calculated from the date of grant of selection grade, the next personal promotional pay scale shall be admissible to them. For granting the personal promotional pay scale, a 6-year satisfactory service from the grant of one increment under the selection grade benefit is mandatory. However, for the purpose of service calculation, if an increment under the selection grade benefit has been granted earlier, it shall be counted from that actual date. For example: If an incumbent was granted the benefit of one increment on 01-04-89 on the basis of 10 years of satisfactory service, and his service thereafter has remained continuously satisfactory and he is regular/ gets regularized, then the personal promotional pay scale shall be admissible to him with effect from 01-04-95. For such cadres/posts where no promotional post is available, the pay scale next to the current pay scale shall be admissible. For example, an incumbent who is in the revised pay scale of Rs. 1200-2040 shall be granted the pay scale of Rs. 1350-2200 as a revised personal pay scale."

"3. In respect of such employees whose maximum of the revised pay scale is up to Rs. 3500/-, upon completing 6 years of continuous satisfactory service in the personally admissible promotional/next pay scale and a total of 20 years of service, their pay in the promotional/next pay scale shall be fixed at the next level with effect from that date; that is to say, the benefit of one increment shall be admissible to them in the same pay scale. Provided that if a regular incumbent has already been granted the personal promotional pay scale / next pay scale on the basis of 16 years of service under the earlier provision, the date from which such benefit was previously granted shall be taken into account for calculating the 6 years of continuous satisfactory service. For example, If an incumbent was granted the personal promotional pay scale / next pay scale on 01-02-89, then an additional increment under the said provision shall be admissible to him with effect from 01-03-95."

(translation by Court)

22. Similarly, Government Order dated 02.12.2000 and its translated version provides for extension of benefit of selection grade reads as under:

"2) प्रथम वैयक्तिक प्रोन्नतीय/अगला वेतनमान - उपर्युक्त श्रेणी के ऐसे अधिकारी/कर्मचारी जिन्होंने सेलेक्शन ग्रेड के लाभ की तिथि से 6 वर्ष की अनवरत संतोषजनक सेवा सहित कुल 14 वर्ष की अनवरत संतोषजनक सेवा पूर्ण कर ली हो और सम्बन्धित पद पर नियमित हो चुके हों, को प्रोन्नति का अगला वेतनमान वैयक्तिक रूप से अनुमन्य किया जाय। ऐसे संवर्ग पद जिनके लिए प्रोन्नति का कोई पद नहीं है, उनको उस वेतनमान से अगला वेतनमान वैयक्तिक रूप से देय होगा। उपर्युक्त वैयक्तिक प्रोन्नतीय अगला वेतनमान देने के लिये सेलेक्शन ग्रेड के लाभ के अन्तर्गत देय एक वेतनवृद्धि की तिथि से 6 वर्ष की संतोषजनक सेवा अनिवार्य हैं, किन्तु यदि किसी कर्मचारी को सेलेक्शन ग्रेड. का लाभ पूर्व में 10 वर्ष की सेवा के आधार पर मिला होतोउक्त प्रयोजनार्थ सेलेक्शन ग्रेड के लाभ की अवधि का प्रतिबन्ध 4 वर्ष रखा जायेगा। उपर्युक्त वैयक्तिक प्रोन्नतीय/अगले वेतनमान की अनुमन्यता हेतु अधिकारी/कर्मचारी का सम्बन्धित पद पर नियमित होना आवश्यक है। अन्य शर्तों की पूर्ति पर भी सम्बन्धित पद पर नियमित न होने की दशा में पदधारक को यह लाभ उस तिथि से ही अनुमन्य होगा, जिस तिथि से सम्बन्धित पद पर वह नियमित किया जायेगा।"

"2) First Personal Promotional / Next Pay Scale- Such officers/employees of the aforementioned category who have completed a total of 14 years of continuous satisfactory service, inclusive of 6 years of continuous satisfactory service calculated from the date of grant of selection grade benefit, and have been regularized on the post concerned, shall be granted the next personal promotional pay scale. For such cadres/posts where no promotional post is available, the pay scale next to that pay scale shall be admissible personally. For granting the aforesaid personal promotional/next pay scale, a 6-year satisfactory service calculated from the date of grant of one increment under the selection grade benefit is mandatory; provided that if an employee was granted the benefit of selection grade earlier on the basis of 10 years of service, the restriction on the period of selection grade benefit for the said purpose shall be kept at 4 years. For the admissibility of the aforesaid personal promotional/next pay scale, it is essential for the officer/employee to be regularized on the post concerned. Even upon fulfilling other conditions, in the event of not being regularized on the post concerned, this benefit shall be admissible to the incumbent only with effect from the date on which he/she is regularized on the post concerned."

(translation by Court)

23. Further Government Order dated 05.11.2014 provides that the period of unsatisfactory service is to be excluded for grant of financial upgradation. Since the petitioner attained the age of superannuation in the year 2005, thus, aforesaid Government Order is hardly of any assistance directly of any consequence but the practice consistently being followed by the State Government is, where an employee is granted a financial upgradation after a delay on account of not having rendered satisfactory service, such delay shall have a corresponding effect on all subsequent financial upgradations. In other words, for the purpose of determining eligibility for the next financial upgradation, the prescribed qualifying period shall stand extended by the period that was excluded while computing the employee's entitlement to the previous financial upgradation. The relevant extract of the said Government Order and its translated version is extracted as under:

"(4) सन्तोषजनक सेवा पूर्ण न होने के कारण यदि किसी कार्मिक को वित्तीय स्तरोन्नयन विलम्ब से प्राप्त होता है तो उसका प्रभाव आने वाले अगले सभी वित्तीय स्तरोन्नयन पर भी पडेगा। अर्थात अगले वित्तीय स्तरोन्नयन की अनुमन्यता हेतु निर्धारित अवधि की गणना में उतनी अवधि बढा दी जायेगी जितनी अवधि पूर्व वित्तीय स्तरोन्नयन प्राप्त होने की गणना में नहीं ली गयी है।"

"(4) If an employee receives a financial upgradation with delay on account of non-completion of satisfactory service, its effect shall also fall upon all subsequent financial upgradations. That is to say, for determining the admissibility of the next financial upgradation, the prescribed period of service shall be extended by such period as was not taken into account for the calculation of the grant of the preceding financial upgradation."

(translation by Court)

Analysis

24. Undisputed fact is the petitioner was enrolled in service on 14 June, 1977 and attained the age of superannuation on 30.06.2005. The adverse remark as per order dated 04.12.2004 was for the specific period from 1977 to 1994-95, meaning thereby since 01.07.1995 till 30.06.2005, petitioner had rendered unblemished service of 10 years(from 1 july 1995 to 30 june 2005) and his increment/selection grade having been due on 01.07.2005 would be admissible to petitioner despite his superannuation on 30.06.2005, in the light of judgment of Hon'ble Supreme Court rendered in the case of **The Director (Admn. And Hr) Kptcl vs C.P. Mundinamani** reported in **(2023) 14 SCC 411.** The Relevant excerpt are extracted as under:

6. The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same despite the fact that he has retired on the very next day of earning the increment?

6.6 The Allahabad High Court in the case of Nand Vijay Singh (supra) while dealing with the same issue has observed and held in paragraph 24 as under: -

"24. Law is settled that where entitlement to receive a benefit crystallises in law its denial would be arbitrary unless it is for a valid reason. The only reason for denying benefit of increment, culled out from the scheme is that the central government servant is not holding the post on the day when the increment becomes payable. This cannot be a valid ground for denying increment since the day following the date on which increment is earned only serves the purpose of ensuring completion of a year's service with good conduct and no other purpose can be culled out for it. The concept of day following which the increment is earned has otherwise no purpose to achieve. In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central

government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable looses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that if offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to a fortuitous circumstance."

6.7 Similar view has also been expressed by different High Courts, namely, the Gujarat High Court, the Madhya Pradesh High Court, the Orissa High Court and the Madras High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpretated would lead to arbitrariness and denying a government servant the benefit of annual increment which he has already earned while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently.

Conclusion

25. The completion of 10 years unblemished service from 01.07.1995 till 30.06.2005 went unnoticed by Hon'ble Writ Court and resultantly, error crept in the order impugned. Accordingly, the impugned order dated 8.02.2012 passed by Writ Court is hereby set aside. The molded relief for consideration of selection grade/financial upgradation on account of computation of 10 years of service w.e.f. 01.07.1995 in the light of relevant government orders is hereby extended to the appellant-writ petitioner.

26. This intra court appeal is being disposed of directing the state-respondent to accord selection grade/requisite financial upgradation treating 10 years service rendered by petitioner since 01.07.1995 till 30.06.2005 as and when it is due strictly in the light of relevant government orders. The necessary exercise shall be undertaken and appropriate orders shall be passed within four weeks from the date of production of certified copy of this order.

27. The writ petition as well as instant intra court appeal is **disposed of** accordingly.

28. No order as to costs.

(2026) 7 ILRA 545
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

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

Criminal Appeal No. 1952 of 2022

Babu **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Headnotes

Indian Evidence Act, 1872Ss. 27, 101 and 106; Indian Penal Code, 1860-sec.302-Circumstantial evidence-Murder of wife and two sons- circumstantial evidence-circumstances brought on record must put together to form complete chain -that it is consistent alone with guilt of accused beyond all reasonable doubt-mere fact that a family of four, out of whom three were found murdered, when fourth was not around, not a circumstance in itself-recovery of blood-stained clothes-evidence of recovery utterly unreliable-no independent witness-recovery belied possible and plausible behaviour of any man-recovery from open place-apparently accessible to public and visible to all-recovery does not satisfy requirements of S. 27-absence of motive-discarding defence evidence-neither principle of law nor prudence-chain of circumstances far from complete-conviction under S. 302 IPC set aside-Appellant acquitted.
Appeal allowed. (E-9)

Case Law Cited

1. Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116.
2. Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783.
3. Ramanand v. State of U.P., (2023) 16 SCC 510.
4. Subhash Aggarwal v. State (NCT of Delhi), (2025) 8 SCC 440.
5. Nandu Singh v. State of M.P., (2022) 19 SCC 301.
6. State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182.
7. Jan Mohammad v. State of Bihar, (1953) 1 SCC 5.
8. Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60.
9. Sukhpal Singh v. State of Punjab, (2019) 15 SCC 622 : (2020) 1 SCC (Cri) 460.

List of Acts

1. Indian Penal Code, 1860 — Section 302.
2. Indian Evidence Act, 1872 — Sections 8, 27, 101 and 106.
3. Code of Criminal Procedure, 1973 — Sections 161, 207, 302 and 437-A.
4. Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Circumstantial evidence; complete chain of circumstances; murder of wife and two sons; Section 27 Evidence Act; recovery of blood-stained clothes; Recovery of murder weapon; disclosure statement; Independent witnesses; Burden of proof; Absence of motive; Defence evidence.

Appearances of parties

For the Appellant: Abhishek Mayank, Apsara, Arbaz Danish, Kartikey Singh, Shashikala Mani Tripathi, Upendra Kumar Pushkar, Advocates.
For the Respondent: G.A.

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

1. This is an appeal by the convict Babu, who has been tried and convicted by Mr. Anil Kumar Pandey, the then Additional Sessions Judge, Court No.01, Mathura vide judgment and order dated 25.01.2022 passed in Sessions Trial No. 817 of 2017 on a charge of murder punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and sentenced vide order dated 27.01.2022 to imprisonment for life together with a fine in the sum of Rs.30,000/-. In default, the convict has been ordered to suffer six months of additional imprisonment.

2. Proceedings leading to the appellant′s arraignment and trial commenced on the basis of a written report dated 03.09.2017 lodged with Police Station Sadar Bazar, District Mathura at 9.15 a.m. by Smt. Sarvesh wife of Radhey Shyam, an aunt of the appellant, saying that she was a resident of the place near Radha Kishan Dham, Mathura and that her nephew, Babu son of Dwarka Prasad was a resident of Ganeshpuram Colony, P.S. Sadar Bazar (the appellant). She had gone over to the appellant′s house on 03.09.2017 in the morning hours in connection with some personal work, when she saw that the appellant Babu′s wife Shashi and both his sons were lying dead in their house. The appellant was not there. It was also reported that all three had been done to death with some sharp edged weapon. The informant requested investigation and necessary action in the matter. A copy of the written report is on record and marked as Ex. Ka-1.

3. On the basis of the aforesaid written report, a check First Information Report (for short, 'FIR') was registered on 03.09.2017 at 9.15 a.m. vide G.D. Entry No. 21, giving rise to Crime No.403 of 2017, under Section 302 IPC, P.S. Sadar Bazar, District Mathura. The check FIR is on record and marked as Ex. Ka-2. A copy of the relevant G.D. Entry No.21 is also on record and marked as Ex. Ka-3.

4. Here, it must be noted that during trial, apart from the original written report, marked as Ex. Ka-1, two photostat copies of the written information dated 03.09.2017 were also placed on record and mistakenly marked as Exhibits Ka-19 and Ka-28. Likewise, two photostat copies of the check FIR, in addition to the one already marked as Ex. Ka-2, were also placed on record and marked as Ex. Ka-18 and Ka-27. In addition to the extract of the G.D. Entry, that was proved and marked as Ex. Ka-3, three photostat copies of the same were placed on record and marked as Ex. Ka-13, Ka-20 and Ka-29. These Exhibits Ka-19, Ka-28, Ka-18, Ka-27, Ka-13, Ka-20 and Ka-29 are duplication of documents, which the learned Sessions Judge too has noticed to be superfluous documents, that were mistakenly marked as Exhibits. These were, therefore, ignored by the learned Trial Judge. We have also looked into the record and find that indeed these documents, which are duplicates and superfluous, were marked as exhibits by mistake. We also, therefore, ignore them.

5. Consequent upon registration of the crime, the Police proceeded with the investigation and inquest for the deceased Smt. Shashi commenced on 03.07.2017 at 10 a.m. ending at 12.15 p.m. Likewise, inquest for the deceased Jay Kishan also commenced on the same day at 10 a.m. ending at 12.15 p.m. Inquest for the deceased Neeraj commenced on 03.09.2017 at 10 a.m. ending at 1.00 p.m. The inquest report relating to Smt. Shashi is on record as Ex. Ka-4, that relating to Jay Kishan as Ex. Ka-5 and the one relating to the deceased Neeraj as Ex. Ka-6.

6. Autopsy on the cadavers of the three deceaseds was held on 03.09.2017 at 6 p.m. Smt. Shashi sustained six incised wounds and an abrasion. The cause of death opined was shock and haemorrhage as a result of ante-mortem injuries. The autopsy report is on record as Ex. Ka-7. The autopsy report relating to the deceased Jay Kishan shows that the deceased sustained as many as fourteen incised wounds and the cause of death indicated is shock and haemorrhage as a result of ante-mortem injuries. This autopsy report is also marked, surprisingly as Ex. Ka-7. The marking of exhibits before the learned Trial Judge for some reason, apparently attributable to lack of acumen of the ministerial staff assisting the learned Judge, has gone haywire at least in two instances. The third autopsy report relating to the deceased Neeraj, also dated 03.09.2017, shows that the deceased sustained seven incised wounds and the cause of death is shock and haemorrhage as a result of ante-mortem injuries. This deceased is noted to be aged 10 years. The autopsy report is on record and marked as Ex. Ka-21.

7. The appellant was arrested on 03.09.2017 from his brother′s home in Delhi by the Police and the arrest memo says that he was wearing a shirt, that had blood stains on it, and a Sando vest (baniyan), which too had blood stains. The appellant is said to have made a confession to the Police about the crime at the time of his arrest. The memo of his arrest-cum-recovery of blood-stained clothes from him, which also carries a reference to his confession, is on record and marked as Ex. Ka-33. The appellant was brought back to Mathura by the Investigating Officer, the S.H.O. of P.S. Sadar Bazar, Mathura and taken at 7.20 p.m. on 03.09.2017 to the appellant′s house, situate in Mohalla Ganeshpuram, and near the said house on a pucca road, the party alighted from the police jeep. The appellant, who was hand-cuffed, is reported to have moved ahead and crossed a culvert on a drain adjacent to his house and into a vacant plot. There, from the foliage of small babool trees and shrubs, with the aid of a torch, he recovered a banka (farsa) at 7.58 p.m. The recovery memo describes the banka in graphic detail and says that on its handle and the blade, there were blood stains and dried earth. The appellant is said to have told the Police that this was the banka that he had employed to kill all the three victims. He said that he had hid it here before leaving for Delhi. The murder weapon was secured and sealed. The Investigating Officer also took samples of plain earth and blood-stained earth, which were separately secured and sealed in two plastic containers, both placed in a white cloth before affixing the seal. The memo regarding these earth samples collected is on record as Ex. Ka-13.

8. After investigation, the Police submitted a charge-sheet dated 18.09.2017. The learned Chief Judicial Magistrate, Mathura took cognizance and furnished copies of the relevant prosecution papers to the appellant as provided under Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Thereafter, the learned Magistrate vide order dated 05.12.2017 committed the case to the Court of Sessions for trial.

9. Before the Court of Sessions, the case was assigned to the learned Additional Sessions Judge, Court No.01, Mathura for trial. It came up before Mr. Amar Nath Singh, the Additional Sessions Judge, Court No.1, Mathura on 06.01.2018 for the purpose of framing charges. The learned Judge framed a solitary charge, rather oddly, under Section 302/34 IPC. The appellant was read over and explained the charge, who denied it and claimed trial.

10. The prosecution examined the following witnesses in support of their case:

1. PW-1 - Smt. Sarvesh, the first informant,

2. PW-2 - Tejveer, a neighbour of the appellant,

3. PW-3 - CC 2439 Shekhar Chauhan, who got registered the check FIR,

4. PW-4 - Raj Kumar Nohwar, an inquest witness,

5. PW-5 - Dr. Harsh Vardhan, who conducted postmortem of the deceaseds,

6. PW-6 - HC 796 Naresh Sharma, who proved the signatures of IO/ SHO Subodh Kumar Singh on various documents and proved the charge-sheet,

7. PW-7 - Constable 372 Sonu Bhati, who proved the material exhibits.

11. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1.	Ex. Ka-1	Written report dated 03.09.2017 lodged with Police Station Sadar Bazar, District Mathura, proved by PW-1, Smt. Sarvesh
2.	Ex. Ka-2	Check FIR dated 03.09.2017, proved by PW-3 CC Shekhar Chauhan
3.	Ex. Ka-3	GD Entry No. 21 dated 03.09.2017 Time 09:15 hours, proved by PW-3 CC Shekhar Chauhan
4.	Ex. Ka-4	Inquest report of the deceased Shashi dated 03.09.2017, proved by PW-4, Raj Kumar Nohwar
5.	Ex. Ka-5	Inquest report of the deceased Jay Kishan dated 03.09.2017, proved by PW-4, Raj Kumar Nohwar
6.	Ex. Ka-6	Inquest report of the deceased Neeraj dated 03.09.2017, proved by PW-4, Raj Kumar Nohwar
7.	Ex. Ka-7	Postmortem report of the deceased Jay Kishan dated 03.09.2017, proved by PW-4, Dr. Harsh Vardhan
8.	Ex. Ka-7	Postmortem report of the deceased Shashi dated 03.09.2017, proved by PW-4, Dr. Harsh Vardhan
9.	Ex. Ka-8	Postmortem Requisition Letter (Police Form No.33) sent to the Civil Surgeon relating to the deceased Jay Kishan dated 03.09.2017
10.	Ex. Ka-9	Police Form, bearing No. 4A/37
11.	Ex. Ka-10	Challan Lash of the deceased Jay Kishan dated 03.09.2017
12.	Ex. Ka-11	Letter to the C.M.O. dated 03.09.2017 for conducting postmortem of the deceased Jay Kishan
13.	Ex. Ka-12	Photo Lash of the deceased Jay Kishan dated 03.09.2017
14.	Ex. Ka-14	Postmortem Requisition Letter (Police Form No.33) sent to the Civil Surgeon relating to the deceased Neeraj dated 03.09.2017
15.	Ex. Ka-15	Challan Lash of the deceased Neeraj dated 03.09.2017

16.	Ex. Ka-16	Letter to the C.M.O. dated 03.09.2017 for conducting postmortem of the deceased Neeraj
17.	Ex. Ka-17	Photo Lash of the deceased Neeraj dated 03.09.2017
18.	Ex. Ka-21	Postmortem report of the deceased Neeraj dated 03.09.2017, proved by PW-4, Dr. Harsh Vardhan
19.	Ex. Ka-22	Postmortem Requisition Letter (Police Form No.33) sent to the Civil Surgeon relating to the deceased Shashi dated 03.09.2017
20.	Ex. Ka-23	Challan Lash of the deceased Shashi dated 03.09.2017
21.	Ex. Ka-24	Photo Lash of the deceased Shashi dated 03.09.2017
22.	Ex. Ka-25	Letter to the C.M.O. dated 03.09.2017 for conducting postmortem of the deceased Shashi
23.	Ex. Ka-26	Letter to the RI relating to the deceased Shashi dated 03.09.2017
24.	Ex. Ka-30	Site-plan of the place of occurrence dated 03.09.2017, proved by PW-6, HC Naresh Sharma
25.	Ex. Ka-31	GD Entry No. 39 dated 03.09.2017 Time 19.00 hours regarding arrest of the accused, proved by PW-6, HC Naresh Sharma
26.	Ex. Ka-32	GD Entry No. 40 dated 03.09.2017 Time 19.20 hours, entering disclosure made by the accused, proved by PW-6, HC Naresh Sharma
27.	Ex. Ka-33	Recovery memo of the clothes of the accused dated 03.09.2017, proved by PW-6, HC Naresh Sharma
28.	Ex. Ka-34	Recovery memo of the weapon of assault dated 03.09.2017, proved by PW-6, HC Naresh Sharma
29.	Ex. Ka-35	Memo taking into possession plain earth and blood stained earth dated 03.09.2017, proved by PW-6, HC Naresh Sharma
30.	Ex. Ka-36	Charge-sheet dated 18.09.2017, proved by PW-6, HC Naresh Sharma

12. After the prosecution evidence was over, the statement of the appellant was recorded under Section 313 Cr.P.C.

13. The appellant entered defence and produced Sanju @ Sanjay as DW-1 in support of his case.

14. The learned Trial Judge, after hearing learned Counsel for the parties, by means of the impugned judgment and order dated 25.01.2022 convicted the appellant of the offence punishable under Section 302 IPC, and sentenced him to imprisonment for life vide order dated 27.01.2022, besides imposing a fine of Rs.30,000/-, as already detailed.

15. Aggrieved, the appellant has preferred the present appeal.

16. Heard Mr. Abhishek Mayank, learned Counsel for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of the State.

17. It must be remarked at the outset that this is a case, which rests entirely on circumstantial evidence. The two witnesses of fact, who have been examined by the prosecution, have not seen the occurrence, or so to speak, the fact in issue: Whether it was the appellant, who murdered the three victims? The witnesses of fact can at best be said to be witnesses of some relevant facts. The standard, by which the prosecution have to prove a case of circumstantial evidence, is well established. It is the duty of the prosecution, firstly to prove all the circumstances, on which they rely beyond doubt. It is then their burden to ensure that the circumstances brought on record put together form such a complete chain that it is consistent alone with the guilt of the accused beyond all reasonable doubt. There should be no other possibility or probability, of course realistic, on the

foot of the circumstances established other than the one which leads to an inference of guilt for the accused. In this connection, reference may be made to **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, which is a locus classicus on the standards by which the prosecution have to establish their case, where it rests on circumstantial evidence entirely. In **Sharad Birdhichand Sarda** (*supra*), it was observed by the Supreme Court:

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

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

18. There are two witnesses of fact, or so to speak of circumstances, that the prosecution have examined. The first is the first informant, Smt. Sarvesh wife of Radhey Shyam. In her examination-in-chief, which is as short as the written report that she lodged, she has stated that at the time of occurrence, she would reside near the Radha Kishan Dham, Mathura. On 03.09.2017 in the morning hours, she went to her nephew's place, that is to say, the appellant Babu's home, situate in Ganeshpuram Colony. She had gone there in connection with some personal work. Upon reaching, her nephew's home, she saw that his wife Shashi and two sons of Shashi were lying dead. The appellant was not present. All three had been done to death with a sharp edged weapon. She also said that she had dictated the written report before signing it and handed it over to the police station. She proved the written report, which was then exhibited as Ex. Ka-1.

19. This witness was cross-examined some weeks after her examination-in-chief on 17.08.2018. She has said in her cross-examination that the Police took down her statement on the 3rd between 10-10.30 of the clock. She said that she did not say in her examination-in-chief that she is not much educated. She has said further on in her cross-examination that she had gone for a stroll, when she was told of the fact by a neighbour. She does not remember the neighbour's name

and address. She also stated that she had written the fact in her report as well and said so in her statement under Section 161 Cr.P.C. that she was told of the fact by a neighbour. She did not know what the Police have written. She also said that she cannot say why it was not mentioned in her written report. It is also said that she does not know if the fact about her going for a stroll was mentioned in the written report or in her statement to the Police. It is then said that the witness did not know, who had scribed the written report, Ex. Ka-1. She did not know the scribe's address. It is also testified that the paper on which the written report was given was provided to her at the police station and she signed it also at the police station. It is next said that before the written report was lodged, she had spoken to the Police and while she was talking to the Police, the report was written. Of course, she adds as a redeeming feature that whatever is written in her report is based upon her information.

20. The next witness of fact is Tejveer son of Ramesh Chandra, who has been produced by the prosecution as PW-2. He has said in his examination-in-chief that he is a resident of Ganeshpuram Colony for the past three years. He carries on practice in medicine as his source of livelihood. On 03.09.2017 at about 7 o'clock in the morning hours, he heard a commotion, in response to which he went over to Babu's house located in the colony. He saw a big congregation of people there. The appellant Babu's house is located in the colony just behind this witness's. He has testified to the fact that in Babu's home, his wife Shashi and the two children were lying dead. All three of them had been brutally done to death. The appellant Babu was not present. A big crowd had gathered there. The door of the appellant's house was locked and the dead bodies could be seen from the window. Some persons from the crowd suggested of breaking open the main door, but this witness stopped them saying that the Police had to be informed. It is also said by this witness that upon the suggestion of others, who were there, it was he who gave information to the Police at the Chowki, which is located within the township. The Police arrived at the scene of crime upon his information. They broke open the door and were into the process of taking necessary steps when this witness came away. In his cross-examination, which is very brief, this witness has said that he had not seen the appellant Babu at his house over the past many days. The weapon of crime was lying by the side to the dead bodies. To a suggestion, he said that he was not deliberately hiding the fact that the deceaseds were done to death by unknown men.

21. Shekhar Chauhan, a Constable in the Police, then posted at P.S. Sadar Bazar, is PW-3. He has testified to the fact that on the fateful day, Head Constable Suresh Chand was on duty along with him at the police station, when Smt. Sarvesh, the informant, had handed over a written report to Suresh Chand Sharma. The Head Moharrir Suresh Chand Sharma had dictated the check FIR to the computer typist, which was registered against unknown offenders. Some part of it was typed by this witness as well. He has testified that he had typed out G.D. Entry No. 21, on the basis of which the case was registered at 9.10 a.m. at the police station. He had brought along the original G.D. from the police office. He had another typed written copy of the G.D. on him, which he proved. He proved the check FIR as well and the copy of the G.D. registering the crime. There is nothing remarkable in the testimony of this witness.

22. Raj Kumar Nohwar, PW-4, is a panch witness and has affirmed the fact that he signed the inquest reports relating to the deceaseds.

23. Dr. Harsh Vardhan, PW-5, is the autopsy doctor. He has said in his examination-in-chief that on 03.09.2017, he was posted at the Combined Hospital, Vrindavan. He affirmed the fact that he had carried out the autopsy on the cadavers of Smt. Shashi, Jay Kishan and Neeraj. He has affirmed the respective injuries on their dead bodies, all of which are multiple incised wounds. He has said in his cross-examination that the incised wounds on Smt. Shashi's dead body had varying width, which may lead to the possibility that more than one weapons were used. He also said that for the same reason, the assailants could be more than one. The same holds true for the deceased Jay Kishan and Neeraj as well. He has further on in his cross-examination commented upon the possible time of death with reference to the contents and condition of food found in the stomach or the alimentary canal, as also the presence and extent of the rigor mortis. The doctor has said that he was never shown any weapon.

24. Naresh Sharma is a Head Constable in the Police, who was produced as PW-6. He has said in his examination-in-chief that on 03.09.2017, he was posted at P.S. Sadar Bazar, Mathura as a pairokar. He has stated that investigation in the case was undertaken by S.H.O. Subodh Kumar Singh, whose writing he was acquainted with. He has proved the S.H.O.'s signatures on various documents, including recovery memos etc. and the G.D.s. He has testified towards the end of his examination-in-chief that S.H.O. Subodh Kumar Singh had been murdered. In his cross-examination, there is nothing remarkable.

25. The last witness examined on behalf of the prosecution is Sonu Bhati, a Constable, who was posted at P.S. Sadar Bazar on 03.09.2017. He had accompanied S.H.O. Subodh Kumar Singh and Senior Sub-Inspector Ravindra Yadav to the place of occurrence. He has proved the collection of blood-stained and plain earth and his signatures on the memorandum as also those on the material exhibits carrying the two kinds of earth. He had also accompanied the police party to Sonia Vihar, Delhi and to the residence of the appellant's brother Tulsi Prasad. He has testified to the recovery of the blood-stained shirt and vest that the appellant was wearing. This witness has also witnessed the recovery of the murder weapon, which the prosecution allege from the foliage in an open plot of land near the appellant's house. The statement that the appellant made at the time of recovery has also been testified to. The witness has also proved material exhibits of the recovery as also the recovery memorandum. In his cross-examination, he has testified to a few matters that are relevant, and in our opinion, must be quoted in his own words:

"जब अभियुक्त को देहली से पकड़ा तो दिल्ली किसी मजिस्ट्रेट के समक्ष पेश नहीं किया। कोई भी स्वतंत्र व्यक्ति किसी भी रिकवरी का गवाह नहीं बनाया गया था। और न ही कोई स्वतंत्र व्यक्ति मुलजिम का ब्यान लेने से पूर्व बुलाया गया। किसी स्वतंत्र साक्षी की मौजूदगी में मुलजिम का ब्यान नहीं लिया गया था। मुलजिम को कोई चेतावनी नहीं दी गयी कि वह अपने विरूद्ध कुछ भी कहने को बाध्य नहीं है। इस सम्बन्ध में मुलजिम से कोई सहमति (Acknowledge) नहीं ली गयी। मेरी जानकारी में नहीं है कि बरामद शुदा बंका किसी डाक्टर को दिखाकर पूछा गया कि इस हथियार से मृतकों को चोट आई या नहीं। मुलजिम का Discloser statement लेने से पहले किसी स्वतंत्र गवाह को बुलाया अथवा नहीं मुझे याद नहीं है। दिल्ली में मुलजिम का कोई ब्यान भी नहीं लिया था। जिस जगह से बांक बरामद हुआ वह स्थान खुला हुआ स्थान था वह सभी को दिखाई देता था। दिन में बांक को देखा जा सकता था। कपड़ों पर कितने स्थानों पर खून था यह फर्द में नहीं लिखा हुआ है। न उनके साइज लिखे हुए है। मुझे नहीं पता कि घटना स्थल से पाया

गया ब्लड व बांक व कपड़ों पर पाये गये ब्लड को टेली करने भेजा गया या नहीं। फर्द बरामदगी में गणेश पुरम के किसी व्यक्ति को गवाह नहीं बनाया गया। बरामदगी स्थल का कोई नक्शा नहीं बनाया गया। फर्द बरामदगी में बरामदगी के समय पर ओवर राइटिंग है। बरामदगी का पहले समय क्या लिखा गया था मैं नहीं बता सकता। जो बांक मैं बरामद होना बताता हूं इस तरह के बांक बाजार में मिल जाते हैं। बांक के फल पर किस क्षेत्र में कितनी लम्बाई मैं कितनी चौड़ाई मैं कितने धब्बे थे यह नहीं लिखा हुआ है। बांक की धार पर खून के धब्बे थे यह भी नहीं लिखा है। यह बात सही है कि हस्ताक्षरों से पहले फर्द मे यह लिखा हुआ है कि हमराहियान कर्मचारियों के हस्ताक्षर बनवाये गये। पहले फर्द लिखी गयी फिर सील किया गया।

यह कहना गलत है कि सारी कार्यवाही थाने पर बैठकर फर्जी रूप से की गयी हो।

यह सही है कि यह बांक मजिस्ट्रेट महोदय के समक्ष प्रस्तुत नहीं किया गया। बांक के हैडिंल की मोटाई फर्द में अंकित नहीं है। हैंडिल के किस हिस्से पर खून लगा है फर्द में नहीं लिखा है।

प्रदर्श क- 20 जो कपड़ों की फर्द है उसमें हस्ताक्षरों से पहले यह लिखा है कि हमराही कर्मचारीगण के हस्ताक्षर बनवाये गये।

कपड़ों की फर्द बनायी गयी उसके बाद सील मौहर किया गया। फर्द में उल्लेख नहीं है कि कपड़ो पर किस किस साइज के व कहां -कहां खून लगा है। इस फर्द पर किसी स्वतंत्र गवाह के हस्ताक्षर नहीं है न ही किसी गवाह को बुलाया गया। जहां फर्द समाप्त हुई है उससे काफी नीचे कर्मचारियों के हस्ताक्षर है। कपड़ों की फर्द पर अभियुक्त के हस्ताक्षर नहीं है।"

(emphasis by Court)

26. In the last question, that was put to the appellant under Section 313 Cr.P.C., which is to the effect if he had anything else to say, the appellant has stated:

"मै घटना वाले दिन व समय घटनास्थल पर न होकर दिल्ली में रह रहा था। पुलिस ने मेरे विरुद्ध फर्जी व झूठी कार्यवाही की है तथा गलत समय व दिनांक पर घटना होना दर्शाया है। घटना से संबंधित आलाकतल मेरे निशानदेही पर बरामद नहीं हुआ है। फर्जी बरामदगी दिखाया है। मैं निर्दोष हूं। झूठा फंसाया गया है।"

27. The appellant produced in his defence, Sanju @ Sanjay son of Dwarka Prasad as DW-1. DW-1 in his examination-in-chief has said that he is a shop-keeper by profession and lives in Gali No.4, House No.166, Sonia Vihar, P.S. Sonia Vihar, District Kirawal Nagar, Delhi-94. He is apparently a brother of the appellant of full blood. He has testified that his brother Babu lives with him in Delhi and the two together sell their wares on the footpath. The appellant's wife and children live in Mathura. The appellant would visit his family once a month and provide them with money, whenever he would visit them. Fifteen days antedating the occurrence, the appellant had to come back to Delhi after providing for his wife and children, and on the fateful night, the appellant was with this witness in Delhi. After his wife and children died, on 03.09.2017, the Police from P.S. Sadar Bazar came over to his house at 12 noon. The other family members, upon inquiry by the Police, told them that the appellant would be present with the witness at his shop. On 03.09.2017, the two brothers were transacting business on the footpath of the 25 feet wide road, located at Sonia

Vihar, when the Sadar Bazar Police came over and took the appellant away. His brother was wearing clean and untainted clothes with no blood spots on them.

28. The witness also says that the appellant had cordial relations with his wife and children and there were no bickerings between them. The witness has also said that the Police on the following day, when the witness came over to Mathura, kept assuring him that they would release the appellant by evening, but they did not. Therefore, the witness on 05.09.2017 addressed an application to the S.S.P., Mathura in this regard, a copy whereof is on record. In his cross-examination by the prosecution, the witness (DW-1) says that he lives in Delhi with his wife and children. The appellant's children would study at Mathura and for the said reason, he would not bring them over to Delhi. The appellant would frequent his family at Mathura. The appellant and this witness were five brothers. The eldest of them Tulsi Das lived in Delhi; the second is the appellant; the third in order of age was the witness; the fourth was Vinod; and, the fifth Narendra. Vinod and Narendra stayed in the village and all the other three at Delhi.

29. The witness has further on said in his cross-examination that it was true that the incident happened in the night intervening 02/03.09.2017. The appellant had gone over to Mathura 7-8 days earlier. On 03.09.2017, the appellant was arrested from their shop. It was then that all of them came to know that the appellant's wife and children had been murdered at Mathura. He moved the S.S.P. in the matter, but did not know of the outcome. The witness also says that he sells ladies' wares on the footpath. There is a school across the footpath, called Hardang Public School. The first information was lodged by their aunt against unknown offenders.

30. The foremost circumstance that has been propounded by the prosecution to establish the case is the fact that the appellant and the three deceaseds were a family of husband, wife and two children, and the fact that three of the family were found dead at their residence with the appellant, the fourth family member absent, throws the burden upon him under Section 106 of the Indian Evidence Act to disclose facts specially within his knowledge relating to the circumstances in which three others of the family died. We must remark at the outset that the prosecution have to establish their case even in a case of circumstantial evidence and cannot rely upon the special knowledge of the accused alone to relieve them of the overall burden under Section 101 of the Evidence Act. It is after the prosecution have established the necessary incriminating circumstances, with only some facts remaining unexplained, which possibly the prosecution cannot know of, that the burden under Section 106 of the Evidence Act can be invoked. In that case too, the failure to discharge the burden would not ipso facto lead to a discharge of the prosecution′s burden of proof under Section 101 of the Evidence Act. The failure of the accused to explain a special fact within his knowledge may add one link to the chain of circumstances, which in any case has to be completed by the prosecution in order to discharge their burden under Section 101.

31. The mere fact that a family of four, that stayed together, out of whom three were found murdered, when the fourth was not around, is not a circumstance in itself to hold it as a circumstance in itself against him as one link in his complicity. There could be many possibilities compatible with the murder of the other family members and yet consistent with the surviving member's innocence. Therefore, the prosecution would have to show some conduct on the surviving family member's part to indicate his complicity in the crime that would serve as a

circumstance in the chain to be completed before the charge against him can be brought home. Here, it is not that the prosecution have not produced any evidence to show that the appellant's complicity could be there, apart from his mere absence from the party's family home. The prosecution have allegedly recovered blood-stained clothes from the person of the appellant, which he wore at the time when they arrested him from his brother's house in Delhi, and then, also produced evidence of recovery of the weapon of offence at his pointing, which may be admissible under Section 27 of the Evidence. Act.

32. The fact, therefore, if the absence of the appellant from his home while his family were found murdered within the four-walls of their house, is an incriminating circumstance to form a link in the chain, would depend upon the fact if the recovery of blood-stained clothes from the appellant's person and recovery of the weapon of crime at his pointing out are established by the prosecution. So far as recovery of the blood-stained shirt and the vest that he wore at the time when the appellant was arrested from his brother's home or may be from their place of business, as the appellant's brother, DW-1, says, depends if this recovery can be said to be established by any cogent or reliable evidence. According to the prosecution, the Police went to the deceased's brother's home at Delhi and found him there wearing the blood-stained clothes, which were taken away from his person at the time of his arrest. There does not appear to be much cavil about the fact that the appellant was indeed arrested from Delhi, though there is an issue about the fact if he was arrested from his elder brother Tulsi Das's home or the footpath shop, where he would work along with his younger brother Sanju @ Sanjay, DW-1. That matter, for the time being, can be kept aside as the foremost to determine is the fact if the appellant was indeed arrested wearing blood-stained clothes at Delhi, wherever he was. A perusal of the recovery memo, Ex. Ka-33, shows that it is signed by the two inspectors and the two constables Sonu Bhati and Pramod, who were part of the police party, that had gone to Delhi to arrest the appellant. The recovery memo is not signed by the appellant. There are no signatures of any independent or public witness as well. It also appears from the testimony of PW-7, Constable Sonu Bhati, that no public witness was asked to witness the recovery. In this connection, reference may be made to the following part of the cross-examination of PW-7, Constable Sonu Bhati:

"कपड़ों की फर्द बनायी गयी उसके बाद सील मौहर किया गया। फर्द में उल्लेख नहीं है कि कपड़ो पर किस किस साइज के व कहां -कहां खून लगा है। इस फर्द पर किसी स्वतंत्र गवाह के हस्ताक्षर नहीं है न ही किसी गवाह को बुलाया गया। जहां फर्द समाप्त हुई है उससे काफी नीचे कर्मचारियों के हस्ताक्षर है। कपड़ों की फर्द पर अभियुक्त के हस्ताक्षर नहीं है।"

33. What we find is that the evidence of recovery of these blood-stained clothes from the person of the appellant is utterly unreliable for three reasons: firstly, the fact that the appellant himself did not sign the recovery memo and there is no endorsement on the recovery memo that he was asked to sign it but refused. The document is signed by the police party alone and in the absence of the appellant signing it, or their being an endorsement of his declination, the recovery memo becomes utterly suspect and looses almost all its fidelity; secondly, the fact that admittedly no effort was made to secure the presence of an independent witness for witnessing the recovery of blood-stained clothes found on the appellant's person when he was arrested, adds to the suspicion about the fact itself; and, thirdly, it belies the possible and plausible behaviour of any man, much

less a murderer, who has escaped from home and gone to his brother that hours after the evil deed he would still wear blood-stained clothes, almost carrying damning evidence wrapped about his person. In the normal conduct of human affairs, after commission of a gruesome crime, like murder, it is not only the expected behaviour of an accused, but something borne by testimony of crime etched in judicial records that the first thing that a murderer does is to wash away the blood-stains; or at least attempt to do so.

34. This takes us to the question of the incriminating recovery of the murder weapon at the pointing out of the appellant. The recovery of the weapon of offence is recorded in a memo of recovery dated 03.09.2017, which is on record as Ex. Ka-34. The material part of the recovery memo reads:

"फर्द बरामदगी आलाकत्ल बांका (फरसा) सम्बन्धित मु०अ०सं० 403/17 धारा 302 IPC थाना सदर बाजार मथुरा।

आज दिनांक 03.09.17 को मै SHO सुबोध कुमार सिंह मय व० उ०नि० श्री रविन्द्र सिंह व हमराह कां0 1234 प्रमोद कुमार व कां० 1944 सोनू भाटी मय चालक जीप सरकारी कां० सुनील कुमार के मु0अ0सं0 403/17 धारा 302 IPC थाना सदर बाजार मथुरा से सम्बन्धित अभियुक्त बाबू S/० श्री द्वारिका प्रसाद R/० गणेशपुरम कालोनी थाना सदर बाजार के साथ वाउम्मीदगी बरामदगी आलाकत्ल सम्बन्धित मुकददमा उपरोक्त के बहवाले रपट संख्या 40 समय 19.20 बजे तारीखी इमरोजा रो०आम थाना हाजा से रवाना होकर मोहल्ला गणेशपुरम स्थित मकान प्रतिवादी के पास वाले पक्के रास्ते पर जीप को रोका। अभियुक्त बाबू उपरोक्त जो हथकड़ी लगाकर हमराह कां० सोनू भाटी के सुपर्द है जीप से उतरकर पैदल-पैदल आगे चलने लगा तथा मकान से सटे नाले की पुलिया से पारकर नाले की दूसरी तरफ स्थित खाली प्लॉट पर पहुँचा। खाली प्लॉट में स्थित बबूल के छोटे पेड़ व झॉड़ियो मे से टार्च की रोशनी की सहायता से चुपाकर रखा हुआ लोहे का बँका (फरसा) समय करीब 19.58 बजे निकाल कर दिया।..... बाँका पर बेटा व फल पर खून के धब्बे तथा मिट्टी लगी हुयी है। अभि० बाबू ने बताया कि साहब यही वह बँका है जिससे मैने तीनो की हत्या की है। दिल्ली जाने से पहले मै इसे यहाँ पर छिपा गया था बरामदा बँका को सूत की रूई मे रखकर कपड़े मे रखकर सिलकर सर्वशील मोहर कर नमूना मोहर तैयार किया गया। फर्द मौके पर मुझ एस.एच.ओ द्वारा बोल बोल कर टार्च की रोशनी मे एस.एस.आई से लिखवायी गयी। हमराहीगण के हस्ताक्षर बनवाये गये।"

This memo of recovery is also signed by the appellant.

35. What we notice about this memo of recovery is that there is no prior disclosure statement recorded by the Police, which would relate distinctly to the fact likely to be discovered so as to make the appellant's statement to that extent admissible in evidence. The Police apparently in some surreptitious manner recorded the fact that the appellant would lead them to the place where he had hidden the weapon of crime and set about the task of getting the weapon recovered. How this was precisely done and how much in breach of the law it was, is evident from the following part of examination-in-chief of PW-7 Constable Sonu Bhati:

"इसके उपरान्त हम सभी हमराहीजन अभियुक्त बाबू को दिल्ली से लेकर उसी दिन थाना सदर बाजार आये तथा थाना सदर बाजार से नये सरकारी जीप से चालक सुनील कुमार को मैं, कांस्टेबल प्रमोद कुमार, SSI रविन्द्र यादव व थानाध्यक्ष सुबोध कुमार सिंह, अभियुक्त बाबू द्वारा बतायी गयी आला - कतल की बरामदगी हेतु समय 19-20 बजे अभियुक्त के घर के पास पहुँचे, जहां से अभियुक्त के निशान देही पर मकान से सटे नाले की पुलिया से पार नाले की दूसरी तरफ खाली प्लाट पर पहुंचे। खाली प्लाट पर स्थित बबूल के छोटे पेड़ व झाड़ियों में से टार्च की रोशनी की सहायता से समय करीब 19:58 बजे छुपाकर रखा गया लोहे का बांक अभियुक्त ने निकाल कर अभियुक्त ने दिया। बांक का फल लोहे का, बेता लकड़ी का गोलाकार बना हुआ था। बेंते की ऊपर से फल का लम्बा भाग लकड़ी का बना हुआ है। बेंते में लोहे का छल्ला फंसा हुआ है। बांक की लम्बाई 1 बलिस्त 10 अंगुल है जिसमें फल की नुकीली हिस्से की लम्बाई करीब 4 अंगुल है। मुख्य फल की लम्बाई करीब 10 अंगुल, चौड़ाई 5 अंगुल है। लकड़ी के बेते की कुल लम्बाई 7 अंगुल है। बांक व बेते पर खून के धब्बे व मिट्टी लगी हुयी है। अभियुक्त बाबू ने बांक बरामद करते हुये बताया था कि यह वही बांक है, जिससे मैंने अपनी पत्नी व दोनों बच्चों की हत्या की है। इसको मैं दिल्ली जाने से पहले छुपा गया था। आज ये बांक मेरे सामने है। जिस पर वस्तु प्रदर्श-4 डाला गया। बरामद बांक को सूत की रूई में रखकर, कपड़े में रखकर सील कर सर्वे मोहर नमूना टार्च की रोशनी में तैयार किया गया था। फर्द थानाध्यक्ष महोदय द्वारा बोल बोलकर SSI रविन्द्र यादव से टार्च की रोशनी में लिखवायी गयी थी जिस पर मेरे अलावा कांस्टेबल प्रमोद, थानाध्यक्ष सुबोध कुमार सिंह और SSI रबिन्द्र यादव तथा अभियुक्त बाबू के मौके पर हस्ताक्षर कराये गये थे।"

36. In his cross-examination, this witness has testified:

"जब अभियुक्त को देहली से पकड़ा तो दिल्ली किसी मजिस्ट्रेट के समक्ष पेश नहीं किया। कोई भी स्वतंत्र व्यक्ति किसी भी रिकवरी का गवाह नहीं बनाया गया था। और न ही कोई स्वतंत्र व्यक्ति मुलजिम का ब्यान लेने से पूर्व बुलाया गया। किसी स्वतंत्र साक्षी की मौजूदगी में मुलजिम का ब्यान नहीं लिया गया था।..... मुलजिम का Discloser statement लेने से पहले किसी स्वतंत्र गवाह को बुलाया अथवा नहीं मुझे याद नहीं है। दिल्ली में मुलजिम का कोई ब्यान भी नहीं लिया था। जिस जगह से बांक बरामद हुआ वह स्थान खुला हुआ स्थान था वह सभी को दिखाई देता था। दिन में बांक को देखा जा सकता था।"

37. To our understanding, this kind of a recovery does not satisfy the requirements of Section 27 of the Evidence Act nor can the information, as distinctly relates to the fact discovered thereby, the fact being the discovery of the weapon of murder and the information obviously being that the appellant had hidden the weapon of murder at the place, wherefrom he got it recovered. These cannot be read in evidence. The reason why it cannot be read in evidence is that the first part of the memorandum or panchayatnama under Section 27 of the Evidence Act has not been drawn up, as the law requires it. It has not been drawn up at the police station after calling two independent witnesses to witness the disclosure made. The requirement is to record the disclosure in the presence of witnesses, and thereafter, follow the accused to the place about which he has made the disclosure, along with the two independent witnesses. It is only if the appellant had recovered the weapon of crime in the presence of such panch witnesses, before whom he had made the disclosure, would the evidence be admissible under Section 27. Else not. If

no independent witness was available to witness the disclosure, the fact had to be recorded in the panchnama. In that event, the evidence of the Investigating Officer would have to be considered. Here, that is not the case. It is a case of utter breach where no independent witness was summoned at the time of recording the disclosure statement by the Investigating Officer at all. Otherwise as well, in this case, the Investigating Officer, who could have proved the recovery under Section 27, subject to fulfillment of conditions which have not been adhered to here, has not been produced to prove the fact because Subodh Kumar Singh, the Investigating Officer, died shortly afterwards. The only witness of the recovery made purportedly under Section 27 is PW-7, who has been produced. This witness by his own evidence renders the recovery suspect and surely one in breach of the salutary requirement. He has clearly said that no independent witness was called at the time when the disclosure statement was recorded. He has described the steps leading to the recovery, which is sought to be admitted in evidence by the prosecution, that clearly show that it was just a hurried act of hustling the appellant to the place wherefrom recovery was alleged and then attributing the recovery at his pointing from the bushes in an open piece of land. This kind of a recovery, which the prosecution want us to act upon by resort to Section 27 of the Evidence Act far from satisfies the requirements of the law. The law in this connection has been laid down by the Supreme Court in **Ramanand v. State of U.P., (2023) 16 SCC 510**. The facts and the issue involved, relevant to the question here, can best be recapitulated in the words of their Lordships in **Ramanand** (*supra*). In **Ramanand**, the relevant facts were:

"***Discovery of weapon of offence and bloodstained clothes***

54. It is the case of the prosecution that on 24-1-2010 the appellant-accused was picked up by the investigating officer from nearby a bus stand and was arrested in connection with the alleged crime. After the arrest of the appellant-accused and while he being in the custody at the police station, he is said to have on his own free will and volition made a statement that he would like to point out the place where he had hidden the weapon of offence (banka) and his bloodstained clothes after the commission of the alleged crime. According to him, after such statement was made by the appellant-accused, he along with his subordinates set forth for the place as led by the accused. There is something very unusual, that we have noticed in the oral evidence of the investigating officer. According to him while the police party along with the accused were on their way, all of a sudden, the investigating officer realised that he should have two independent witnesses with him for the purpose of drawing the panchnama of discovery. In such circumstances, while on the way the investigating officer picked up PW 2 Chhatarpal Raidas and Pratap to act as the panch witnesses. According to the investigating officer the accused led them to a coriander field and from a bush he took out the weapon of offence (banka) and the bloodstained clothes. The weapon of offence and the bloodstained clothes were collected in the presence of the two panch witnesses and the panchnama, Ext. 5 was accordingly drawn. The weapon of offence and the bloodstained clothes thereafter were sent for the serological test to the forensic science laboratory. We are of the view that the courts below committed a serious error in relying upon this piece of evidence of discovery of a fact i.e. the weapon and

clothes at the instance of the accused as one of the incriminating circumstances in the chain of other circumstances. We shall explain here below why we are saying so."

38. Now, the manner in which a recovery under Section 27 of the Evidence Act is to be effected in order to make it admissible in evidence has been laid down by the Supreme Court in **Ramanand**, where it is observed:

"56. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2 Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness, namely, Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious

of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

58. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence."

39. We have already noticed the manner in which a surreptitious recovery, without recording a disclosure statement in the presence of two independent witnesses, was effected by the Police from an open piece of land. The manner in which the recovery of the murder weapon was done, for all the reasons that we have indicated hereinbefore and the principles laid down by the Supreme Court in **Ramanand**, does not render either the statement of the appellant or the fact discovered distinctly in consequence thereof, admissible under Section 27 of the Evidence Act. In our considered opinion, therefore, this incriminating circumstance of recovery of the weapon of murder at the pointing out of the appellant has to be discarded.

40. There is another facet to the issue of recovery in this case. PW-7 in his cross-examination has very candidly acknowledged the fact that the place from where the banka was recovered is an open place, visible to all. During day time, the banka could be seen. The recovery of the weapon of crime from an open place, apparently accessible to the public and where it was visible too, does not inspire confidence with us, even otherwise to accept the evidence of recovery. To add to this is the testimony of PW-2, an independent witness and a neighbour of the appellant, who has said in his cross-examination that when he visited the appellant's house, he saw the weapon of murder lying close-by to the dead bodies. This witness was never cross-examined by the prosecution about this assertion of his. This renders the recovery at the pointing out of the appellant highly suspect.

41. There is yet another angle to the matter. In a case of circumstantial evidence, the assailant would have some reasonable motive to commit the crime, which it is always safe to consider and look into in such cases. Here, the testimony, that has been offered by the prosecution, does not attribute any motive to the appellant to commit such a gruesome crime. There is some mention of a motive in the statement of the appellant recorded by the Police under Section 161 Cr.P.C., bot no evidence thereof could be produced in Court by the prosecution. In the absence of some reasonable and potent motive in a case of circumstantial evidence, like the present one, it would be unsafe to convict the appellant. We are aware of the well settled principle that the absence of motive alone will not be a ground to throw out a prosecution based entirely on circumstantial evidence, where it establishes the guilt beyond reasonable doubt, but in a case where the circumstances otherwise do not establish the case, the absence of motive, as in the present case, would certainly weigh in favour of the appellant. In this connection, reference may be made to

Subhash Aggarwal v. State (NCT of Delhi), (2025) 8 SCC 440. In **Subhash Aggarwal** (supra), it was held:

"26. Nandu Singh v. State of M.P. [Nandu Singh v. State of M.P., (2022) 19 SCC 301] was a case in which the deceased was found missing and later his body recovered. One of the witnesses deposed that the deceased was seen going out with the accused from a hotel which was the sole circumstance connecting the accused with the deceased which according to the learned Judges could not even be brought under the theory of last seen together, since there was nothing to indicate that they were seen together proximate to the crime. The total absence of motive also weighed with the Court in acquitting the accused.

27. Reliance was placed on State of U.P. v. Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] wherein it was held that motive is something which is primarily known to the accused themselves and it is not possible for the prosecution to always explain what prompted or excited them to commit a particular crime. Motive is a very important link in the circumstances which could prove the guilt of the accused, and it loses its importance only when there is direct evidence of eyewitnesses, which is convincing and conclusive as to the guilt of the accused.

28. However, it was also noticed in Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.

29. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.

30. We extract para 17 from a three-Judge Bench decision, Jan Mohammad v. State of Bihar [Jan Mohammad v. State of Bihar, (1953) 1 SCC 5] ; which also is of vintage flavour, succinctly putting forth the proposition: (SCC p. 12)

"17. Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed. [sic]"

31. Suresh Chandra Bahri v. State of Bihar [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] held that in a case based on circumstantial evidence, proof of motive would "supply a link in the chain of circumstances" but all the same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 reads as follows: (SCC p. 95)

"21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

(emphasis supplied)

32. Sukhpal Singh v. State of Punjab [Sukhpal Singh v. State of Punjab, (2019) 15 SCC 622 : (2020) 1 SCC (Cri) 460] found that if prosecution establishes motive, it will undoubtedly strengthen the prosecution case, but to say that absence of motive will be fatal to the prosecution, irrespective of other material before the court in the form of circumstantial evidence is far-fetched. Para 15 reads as follows: (SCC p. 627)

"15. The last submission which we are called upon to deal with is that there is no motive established against the appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case. We would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the court by way of circumstantial evidence be fatal to the prosecution. In such circumstances, on account of the circumstances which stand established by evidence as discussed above, we find no merit in the appeal and same shall stand dismissed."

(emphasis supplied)

33. Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that,

in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted."

42. In this case, we have relied on the absence of motive as weakening one link in the chain of circumstances, which otherwise is far from complete. It is not that on ground of absence of motive alone, we opine in favour of the appellant.

43. There is yet another aspect of the matter. There is evidence on behalf of the defence, that is to say, the testimony of DW-1, the appellant's brother, who has said that the appellant would stay at Delhi with him and work for a period of one month or 15 days and periodically visit his family to provide for them. The brothers would sell small time wares on the footpath of a particular road in order to earn their livelihood. This witness has said that on the fateful night, the appellant was with him and had come back from Mathura after his last visit more than a week ago. This testimony of DW-1 has to be read in conjunction with the evidence of PW-2, who is a neighbour of the appellant's at Mathura. He has said in his cross-examination that he had not seen the appellant at his home for the past many days. This testimony of PW-2, while it may not entirely support the stand of DW-1 that the two brothers worked at Delhi with the appellant, visiting his family periodically at Mathura because his children were studying there, appears to support the fact that the appellant was not at Mathura for the past few days and on the day of the crime. We emphasize that discarding defence evidence and treating it always as second grade or unreliable testimony, is neither a principle of law nor one of prudence. The quality, character, origin and truthfulness of defence evidence must be judged with an even scale, just as the case is with the prosecution evidence. Here, both the evidence strongly support the likelihood of the appellant, indeed staying with his brother at Delhi and in all likelihood not being the present during some days past at his home in Mathura before and at time of the crime. It is a matter, which certainly weakens the prosecution case about completing that infallible chain of circumstances, which alone can lead to conviction in a case based entirely on circumstantial evidence.

44. Upon consideration of all the circumstances, we find and hold that the chain of circumstances is far from complete so as to support a conviction for the appellant on the charge of murder of his wife and two sons.

45. In the result, we **allow** this appeal, **set aside** the impugned judgment and order dated 25/ 27.01.2022 passed by the Additional Sessions Judge, Court No.01, Mathura in Sessions Trial No. 817 of 2017 and **acquit** the appellant. The appellant is in jail. He will be released forthwith unless wanted in connection with some other case.

46. The appellant shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

47. Let the lower court records be returned.

(2026) 7 ILRA 564
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 2570 of 1987

Virendra Singh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the present case is a case of culpable homicide not amounting to murder?

Headnotes

Indian Penal Code, 1860-Ss. 302, 304 Part II-Murder or culpable homicide not amounting to murder-Single blow with wooden plank on head-Incident occurred in a spur of moment- with no prior bad intention or planning-No previous enmity between accused and deceased-accused- in a state of anger-assaulted deceased when deceased intervened and tried to save accused's wife and informant's wife-only a single blow inflicted and accused immediately ran away from spot leaving wooden plank-accused had knowledge that act of assaulting deceased was likely to cause death- but lacking knowledge that his act was so immensely dangerous- that it must in all probability could cause death or such bodily injury as was likely to cause death-death caused by was not premeditated-none of clauses of S. 300 attracted-case falls under clause (c) of S. 299-Offence committed falls under Part II of S. 304-Conviction under S. 302 converted .
Appeal partly allowed. (E-9)

Case Law Cited

1. K.P. Tamilmaran v. The State Rep. by Deputy Superintendent, 2025 INSC 576 : 2025 SCC OnLine SC 958.
2. Sat Paul v. Delhi Administration, (1976) 1 SCC 727.
3. Anbazhagan v. State Represented by the Inspector of Police, (2024) 20 SCC 500.
4. Phulia Tudu, (2007) 14 SCC 588.
5. Rajwant Singh v. State of Kerala, AIR 1966 SC 1874.
6. Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770.

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

List of Keywords

Culpable homicide – Murder- Single blow -spur of moment -No intention to cause death - Knowledge that act was likely to cause death.

Appearances of parties

For the Appellant(s): Narendra Kumar Singh, Jitendra Pal Singh and P.K. Bisariya, Advocates.
For the Respondent: Ms. Archana Singh, learned A.G.A. for the State.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. The instant Criminal Appeal has been directed against the judgment and order dated 30.10.1987 passed by IIIrd Additional Sessions Judge, Etah in Sessions Trial No.497 of 1986 (State Vs. Virendra Singh) arising out of Case Crime No.12 of 1986, under Section 302 IPC, Police Station - Awagarh, District Etah convicting and sentencing the appellant under Section 302 I.P.C. for life imprisonment.

2. Prosecution story, in nutshell, as unfolded in written report (Ex.Ka.-1), is as follows:

The informant of this case Narsingh Pal got solemnized the marriage of Baby, daughter of his brother-in-law with his cousin brother Virendra Singh about six months back. Virendra Singh used to torture and harass his wife. In the morning of 16.02.1986, Baby came to his wife (Reshma Devi) and told her about the harassment and torture extended by her husband Virendra Singh, on which the informant's wife tried to convince and subside the matter, but she did not agree to go to her husband's house. At about 2:00 P.M., her (Baby's) husband Virendra having wooden plank (flat piece of wood) in his hand came to the house of the informant, while hurling abuses and started beating the wife of the informant and his own wife Baby. At this moment, son of the informant namely, Ravikant objected and tried to save Baby. On being rescued, Virendra, in a state of anger, hurled abuses to Ravikant and made an assault with wooden plank upon the head of Ravikant, who fell down on the ground. Thereafter, Virendra leaving the wooden plank, fled away from the spot. Ravikant sustained injury on his head. When they (informant's side) rushed the injured on a bullock cart, Ravikant succumbed to his injuries just coming out of the village. The informant returned to his house and kept the dead body of the deceased at his platform (chabootra). The incident was witnessed by the wife of the informant and the villagers Tejpal s/o Jhunni, Raghunath s/o Man Singh, Hodal and Hattarpal, who belonged to the village of the informant.

3. On the basis of written report (Ex.Ka.-1), on 16.02.1986 at 04:10 P.M., Chik First Information Report (Ex.Ka-3) as Case Crime No.12 of 1986, under Section 304 IPC was registered against the accused at Police Station - Awagarh, District Etah.

4. On 17.02.1986 at 2:00 P.M., the autopsy of the deceased Ravikant was performed by Dr. B.V. Verma, who found following ante-mortem injuries on his person :

(i) Lacerated wound 3.5 cm. x .5 cm x bone deep on right side of skull 13.5 cm. above right ear and longitudinally placed.

On internal examination, the doctor found right parietal bone fractured, membranes were congested and haematoma was present above and below the membranes. Brain was deeply congested and haematoma was present. The duration of death was about one day old.

As per opinion of the doctor, the cause of death was coma as a result of ante-mortem injuries. The postmortem report is Ex. Ka.-2.

5. Sub Inspector Mahipal Singh P.W.6 started the investigation. He reached the village, where the dead body of the deceased was kept at the *chabootra*. He prepared the inquest report (Ex.Ka.5) before the witnesses and also prepared other relevant papers i.e. photo lash (Ex.Ka.-6), letter to C.M.O. (Ex.Ka.-7), letter to R.I. (Ex.Ka.-8), sample seal (Ex.Ka.-9), challan lash (Ex.Ka.-10), letter to C.M.O. for conducting autopsy (Ex.Ka.-11) and after sealing the dead body of the deceased sent it through constables Prahlad Singh and Ram Sewak for conducting autopsy at the District Hospital Mortuary, Etah. Thereafter he recovered blood stained and plain soil from the place of incident and prepared its memo (Ex.Ka.-12). He also recovered wooden plank used by the accused and prepared its memo (Ex.Ka.-13). After inspecting the spot, site plan of the place of occurrence was prepared by him as Ex.Ka.-14. This Investigating Officer also recorded the statement of witnesses and after completion of the investigation, he submitted charge-sheet (Ex.Ka.-15) under Section 304 IPC against the accused. Thereafter, cognizance was taken upon the said charge-sheet and the case was committed to the Court of Sessions.

6. Accused appeared before the Court and after hearing both the parties, charge was framed under Section 302 IPC against the accused. The accused pleaded not guilty and claimed to be tried.

7. Trial started and in order to prove it′s case, the prosecution adduced informant Narsingh Pal, (father of the deceased) as P.W.1, Tej Pal Singh (neighbour of the informant) as P.W.2, Reshma Devi (wife of the informant) as P.W.3, Dr. B.V. Verma (who conducted the post-mortem of the deceased) as P.W.4, Head Constable Surendra Singh (Head Moharrir, P.S. Awagarh, who prepared the chik F.I.R. and made G.D. entry) as P.W.5 and S.I. Mahipal Singh (Investigating Officer, who inspected the spot, prepared site plan and recorded the statements of the witness and prepared other papers) as P.W.6.

8. In support of oral version, following documents were filed and proved on behalf of the prosecution:

Written report / tehrir dated 16.02.1986 (Ex.Ka.-1), postmortem report (Ex.Ka.-2), chik first information report (Ex.Ka.-3), copy of the G.D. Entry (Ex.Ka.-4), inquest report dated 16.02.1986 (Ex.Ka.-5), photo lash (Ex.Ka.-6), letter to C.M.O. (Ex.Ka.-7), letter to R.I. (Ex.Ka.-8), sample seal (Ex.Ka.-9), challan lash (Ex.Ka.-10), letter to C.M.O. for conducting autopsy (Ex.Ka.-11), memo in respect of blood stained and plain soil (Ex.Ka.-12), memo of recovered wooden plank (Ex.Ka.-13), Site Plan (Ex.Ka.-14) and charge sheet (Ex.Ka.-15).

9. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for his version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to him and said that the prosecution case is false, he is innocent and falsely implicated on account of animosity.

10. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellant as above. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal.

11. Heard Sri Narendra Kumar Singh, learned counsel for the appellant and Ms. Archana Singh, learned A.G.A. for the State.

12. Learned counsel for the appellant argued that that the prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. It was further argued that the learned trial Court has misinterpreted the evidence available on record. P.W.1 and P.W.-2 were cross-examined by the State, therefore, both these witnesses are hostile witnesses and their depositions cannot be relied upon. P.W.-3 has not established the place of incident and therefore, her deposition also does not inspire confidence. No ingredient to bring home the guilt of the accused under Section 302 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial Court misread the evidence and convicted and sentenced the appellant. It was further argued that this appeal pertains to the year 1987. The sentence for life imprisonment awarded to the appellant by the trial court is very harsh and excessive.

13. Learned counsel for the appellant further submitted that the incident took place suddenly and thus, there is no question of any pre-meditated plan by the appellant and thus the appellant can not be convicted under Section 302 IPC as there is nothing on record to show the intention to cause murder of deceased. It was further submitted that, even if the prosecution evidence is accepted as such, no case under Section 302 IPC is made out. The alleged incident took place all of a sudden without any premeditation in the heat of passion. Accused-appellant had given single blow of wooden plank at the deceased. It was further submitted that, even if the prosecution evidence is accepted as such, at the most only a case under Section 304 IPC is made out against the appellant. It was also submitted that the alleged incident took place on 16.02.1986 and a period of 39 years have already elapsed.

14. Learned A.G.A. for the State vehemently opposing the submissions made on behalf of the appellant and supporting the impugned judgment and order submitted that PW-1, the father of the deceased and P.W.-3, the mother of the deceased have fully supported the prosecution case in their testimony. There is clear and cogent evidence of PW-1 and PW-3, which unerringly point out the guilt of accused-appellant. As the alleged incident took place just outside their house thus, PW-1 and P.W.-3 are natural witnesses. Other witness of fact i.e. P.W.2 has also corroborated the prosecution version, who is a neighbour of the informant. Severe head injury was found on the person of the deceased in the form of lacerated wound. Hence, while going through the evidence on record, it cannot be said that the offence under Section 302 IPC is not made out against the appellant. The learned trial Court has not committed any error in convicting and sentencing the accused - appellant under Section 302 IPC. However, it was fairly admitted by the learned State counsel that the alleged incident took place suddenly at spur of moment. There is no merit in the appeal and the same is liable to be dismissed.

15. We have considered the rival submissions and gone through the entire record.

Analysis

16. In the light of above, following questions arise for consideration in present appeal :

(i) Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

(ii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

Oral Evidence on Record.

17. Informant Narsingh Pal, who is the father of the deceased Ravikant, has been examined by the prosecution as P.W.1. In his examination-in-chief recorded on 01.07.1987, he has stated that his house is situated in Bada Bhodela. In front of the house, there is a *chabootra* and a flour mill and in between these, there is a passage. He got married Baby, who is daughter of his brother-in-law, with his cousin brother Virendra on 10.06.1985. Virendra used to torture his wife Baby, due to which, she used to complain to him and his wife Reshma Devi (P.W.3). On the day of incident, Baby came to his house in the morning and complained about the cruelty and torture made upon her, by her husband and refused to go to her husband's place, upon which they (informant and his wife) tried to convince and subside the matter, but she did not agree to go to her husband's house. On the very same day at about 2:00 P.M., Virendra having wooden plank in his hand came to his house and started hurling abuses to his wife and Baby and when his son Ravikant objected and tried to save them,Virendra struck a blow with wooden plank upon the head of Ravikant, who fell down on the ground. Thereafter, Virendra leaving the wooden plank over there, fled away from the spot. When he proceeded taking Ravikant in an injured condition to the police station, Ravikant took his last breath on the way at some distance from the village. Thereafter, he returned to the village and kept the dead body and wooden plank on the chabootra. He got scribed the wittten report (Ex.Ka.-1) of this incident by one Sugriv Prasad, went to police station Awagarh, lodged the report and registered the case. This witness has proved the written report (Ex.Ka.-1).

18. This witness (P.W.1) was cross-examined on next date i.e. 20.07.1987 wherein he has stated that when Virendra was hurling abuses, his wife was inside the house and from there he (Virendra) was not visible. When Ravikant came, he objected not to hurl abuses, on which he did not stop, then Ravikant weilded lathi upon his head but he saved himself. When Ravikant again tried to wield lathi upon him, then Virendra picked up the wooden plank and hit Ravikant, which struck on his head and he fell down and Virendra ran away. Wife of this witness reached there after 2 - 4 minutes of falling down of Ravikant. Witness Tejpal also came there after 5 - 6 minutes when Ravikant had fallen down. He was not asked by the Investigating Officer that Ravikant wielded lathi or not, therefore, he has not told the same to the Investigating Officer. This witness was also cross-examined by State and in his cross-examination on behalf of the State, this witness stated that the fact when Ravikant wielded lathi, then accused Virendra picked up the wooden plank and gave a blow on the head of Ravikant, was not written in his tehrir, because at that time, he did not consider it appropriate and he also did not inform this to the Investigating Officer. This witness admitted that accused is his cousin. He denied the suggestion that he is changing his statement to save the accused.

19. P.W.2 Tej Pal Singh, corroborating the facts of the prosecution case, has stated that while he was sitting in front of his baithak, accused Virendra Singh armed with wooden plank came at the house of Narsingh Pal and began assaulting Reshma Devi and Baby. Reshma Devi, wife of Narsingh Pal, asked accused, not to abuse, but he did not stop, upon which when Ravikant, son of Narsingh Pal, objected and prevented him, he stated to Ravikant that he is taking great favour and made an assault upon the head of Ravikant with wooden plank and leaving the plank, fled away to northern side. Later on, Ravikant died. This witness was cross-examined on 20.07.1987. In his cross-examination on behalf of the accused, this witness stated that he saw the dead body of the deceased when Ravikant was lying on the chabootra outside his house and accused Virendra was running towards northern direction. He denied the defence suggestion that he has not seen the incident. This witness was also cross-examined by learned A.D.G.C. and he, in his cross-examination on behalf of the State, stated that the statement given by this witness on the previous date was that accused Virendra Singh while carrying wooden plank in his hand, came at the house of Narsingh Pal and started assaulting the informant′s wife and his (accused) wife. Wife of Narsingh Pal asked him (accused) not to abuse, but he did not stop. Then Ravikant son of Narsingh Pal objected and prevented her, on this Virendra said you are taking great favour and made an assault on the head of Ravikant with a wooden plank. Ravikant fell down and Virendra fled away to northern side by leaving the plank on the spot. He has given this statement. He had seen the complete incident and when he went there, he saw the deceased fallen. After this, the defence again cross-examined this witness and in this cross-examination, he stated that he has given a statement that he saw the deceased lying on the ground. The defence also asked a particular question regarding the assault made by the accused on his wife and wife of Narsingh Pal. This witness in answer to this specific question clearly stated that the accused was assaulting both of them on the chabootra, which was situated outside their house. **He was assaulting with hands and the assault continued for about two minutes.** Ravikant came from outside. He denied the defence suggestion that he has not seen the incident.

20. Smt. Reshma Devi P.W.3 in her deposition has corroborated the facts of the prosecution case and has stated that on the day of incident, in the morning hours, Baby, wife of accused Virendra Singh came at her house as her husband has tortured her. Despite being advised, she refused to go to her husband's house. At about 2:00 P.M., Virendra having wooden plank in his hand, came at her house hurling abuses and started beating her and Baby. Her son asked Virendra not to use filthy language and tried to prevent Baby. At this, Virendra said to his son that as you are taking a great favour, therefore let a lesson be taught to you and struck a blow by wooden plank on his head, as a result of which his son (Ravikant) fell down on the ground and later on died. Virendra after leaving the wooden plank, fled away from the spot. The husband of this witness lodged the report about the incident at the police station concerned. This witness has proved the clothes of her son as Material Exbs.-2 to 5. In her cross-examination, this witness stated that her son Ramakant was also called as Ravikant. She further stated that her cousin, who was married to accused Virendra, was sitting with her inside their room. Accused Virendra came inside and Ravikant also came inside the room. Ravikant, after sustaining injuries, came out of the room and fell down.

21. P.W.4 Dr. B.V. Verma, who conducted autopsy on the dead body of the deceased, has stated that on 17.02.1986 at 2:00 P.M., he conducted autopsy on the dead body of the deceased

Ravikant, brought by constables Prahlad Singh and Ram Sewak of P.S. Awagarh in a sealed condition. Deceased was aged about 20 years. On external examination, he found rigor mortis in upper and lower extremities and no sign of decomposition was present on the body. This witness found following ante-mortem injuries on the person of the deceased :

(i) Lacerated wound 3.5 cm. x .5 cm x bone deep on right side of skull 13.5 cm. above right ear and longitudinally placed.

On internal examination, he found right parietal bone fractured, membranes were congested and haematoma was present above and below the membranes. The duration of death was about one day old. The cause of death of the deceased was coma as a result of ante-mortem injuries. Thus, the deceased is likely to have died due to injuries on 16.02.1986 at about 2 P.M. The injury could have been caused by a blunt object i.e. wooden plank. This witness (P.W.4) has proved postmortem report Ex. Ka.-2. This witness was not cross-examined by the defence. From the oral as well as documentary medical evidence, it is clear that the death of the deceased was homicidal in nature.

22. P.W.5 Head Moharrir Surendra Singh, who prepared chik F.I.R. and G.D. on 16.02.1986 on the basis of written report (Ex.Ka.-1), has proved chik F.I.R. (Ex.Ka.-3) and copy of G.D. at Serial No. 26 dtd. 16.02.1986 (Ex.Ka.-4). This witness was also not cross-examined by the defence.

23. The Investigating Officer Sub Inspector Mahipal Singh P.W.6 in his deposition has stated that the investigation of this case was handed over to him on the fateful day. He reached at the place of occurrence and prepared inquest report Ex.Ka.-5 of the dead body of the deceased. He also prepared other relevant papers i.e. photo lash (Ex.Ka.-6), letter to C.M.O. (Ex.Ka.-7), letter to R.I. (Ex.Ka.-8), sample seal (Ex.Ka.-9), challan lash (Ex.Ka.-10), letter to C.M.O. for conducting autopsy (Ex.Ka.-11) and after sealing the dead body of the deceased sent it to mortuary for post-mortem. He took blood stained and plain soil in two separate containers and prepared its recovery memo Ex.Ka.-12. He also proved the two separate containers of blood stained soil and plain soil as Material Exb. Ka-6 & Ka-7 respectively. He also recovered the wooden plank (Material Exb.-1) and prepared its recovery memo Ex.Ka.-13. He prepared site plan Ex.Ka.-4 of the crime scene and recorded the statement of the witnesses. After receipt of post-mortem report (Ex.Ka.-2), he submitted the charge sheet (Ex.Ka.-15) against the accused.

(i) Whether the prosecution could be said to have proved it′s case against the appellant - convict beyond reasonable doubt ?

24. In the instant case, the prosecution charge in brief is that accused Virendra Singh, who is the cousin brother of informant Narsingh Pal, came at the house of the informant having wooden plank in his hand to take back his wife Baby from the house of the informant, who was there since morning, owing to torture and cruelty extended by his husband. While hurling abuses upon the wife of informant and his wife Baby, the appellant - convict has beaten them both. When Ravikant intervened and tried to save Baby, the accused gave a blow by wooden plank on his head, resulting into his death.

25. As per written report / tehrir (Ex.Ka.-1), the occurrence took place on 16.02.1986 at 2:00 P.M. The first information report (Ex.Ka.-3) was registered in Police Station Awagarh, Sub-District Jalesar, District Etah at 16:10 hours on 16.02.1986. The concerned police station was at a distance of about 5 Kms. from the place of incident. The informant Narsingh Pal P.W.1 in his oral deposition as well as in his written report / tehrir (Ex.Ka.-1), has clearly stated that after the incident, they tried to take injured Ravikant to hospital on a bullock-cart. Thus, an attempt was made to take the injured on a bullock-cart, however, just coming out of the village, the injured succumbed to his injuries. Thereafter, the dead body of deceased was taken back to the house of the informant and his dead body was placed on chabootra. The written report was scribed. It is only thereafter the informant approached concerned police station with his written report / tehrir. The aforesaid first information report has been lodged within 2 hours and 10 minutes of the incident and from the above facts, it is crystal clear that there is no unnecessary delay in registration of the first information report. Therefore, there is no delay in lodging of the F.I.R.

26. In our considered opinion, the first information report has been lodged promptly without any unnecessary delay with brief description of the incident as well as names of the eyewitnesses of the incident and, therefore, this promptly lodged first information report is a valuable piece of evidence for the prosecution, in the present case.

27. It was argued by the learned counsel for the appellant that both P.W.1 and P.W.2 were cross-examined by the prosecution, therefore, these two witnesses are hostile witnesses and their deposition cannot be relied upon. It is pertinent to mention here that examination-in-chief of P.W.1, P.W.2 and P.W.3 were recorded on 01.07.1987, however, none of these witnesses was cross-examined on 01.07.1987 and all these witnesses have been cross-examined on 20.07.1987. Therefore, some contradictions are bound to occur in their depositions.

28. The word 'hostile' or 'hostile witness' has not been used in the Evidence Act. The word 'hostile witness' carries a specific significance under the English Law, but the position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of hostility. Hon'ble Apex Court in **K.P. Tamilmaran Vs. The State Rep. by Deputy Superintendent, 2025 INSC 576 / 2025 SCC OnLine SC 958** in para 31 has observed that :

"The phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross- examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of

'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence."

29. Hon'ble Apex Court in **Sat Paul V. Delhi Administration (1976) 1 SCC 727 in para 52** has observed that :

"52. ***From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether.*** *It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto."*

30. Thus, the law can be summarized to the effect that evidence of a hostile witness cannot be discarded as a whole, and relevant part thereof, which are admissible in law, can be used by prosecution or the defence. The maxim "falsus in uno, falsus in omnibus" i.e. "false in one thing, false in everything", is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the deposition of a hostile witness. A witness may be allowed to be cross-examined by the party who calls him under Section 154 (1) of the Evidence Act and sub-section 2 of this section makes it clear that nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness. Law is well settled that the evidence of a witness, who has been cross-examined by the side which produced him, cannot be totally discarded. It is also settled law that the evidence of hostile witness can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witness cannot be treated as washed off the records; it remains admissible in trial and there is no legal bar to even base the conviction of the accused upon such testimony, if corroborated with other reliable evidence. There can be several reasons for a witness to turn hostile and the Court must look into these factors while evaluating the evidence given by a hostile witness. Therefore, we will be evaluating the depositions of P.W.1 and P.W.2 in the light of above noted well settled position of law regarding admissibility and reliability of witnesses cross-examined by the prosecution.

31. A perusal of the written report / tehrir (Ex.Ka.-1) makes it clear that the informant is not an eyewitness of the incident. Informant Narsingh Pal P.W.1 although in his examination-in-chief has supported the prosecution story, however, in our opinion, he is not an eyewitness of the incident. Examination-in-chief of this witness was conducted on 01.07.1987, but he was not cross-examined on this date, but was cross-examined on 20.07.1987. In his cross-examination, he (informant P.W.1) narrated another version that the deceased wielded lathi on the accused and when he tried to wield another blow of lathi, then the accused struck a blow by wooden plank on the head of the

deceased. Admittedly, the appellant - convict Virendra is his cousin brother. Therefore, in our considered opinion, this witness toed with the line of defence that the accused struck the deceased to save himself from the blow of lathi / stick. This witness was also cross-examined by A.D.G.C. and he, in his cross-examination, has stated that the aforesaid fact of wielding lathi was neither got written by him in written report / tehrir nor stated to the Investigating Officer, finding the same not necessary.

32. In our considered opinion, the aforesaid statement given by P.W.1 in his cross-examination is not helpful to the defence for the reason that he (P.W.1) is firstly not an eyewitness and secondly, this witness was not cross-examined with respect to specific statement given by him in his examination-in-chief regarding the manner of incident. The deposition of this witness is relevant and material firstly for proving the written report / tehrir as Ex.Ka.-1, secondly for proving the fact of torture of Baby by appellant - convict and her visit to P.W.1′s house on 16.02.1986 on account of her torture at the hands of accused and lastly regarding the fact that his son died on the fateful day as a result of assault made upon him from wooden plank. The deposition of this witness is also material as far as the fact of fleeing away of the accused from the place of incident is concerned.

33. The prosecution has examined Tejpal Singh and Reshma Devi as P.W.2 and P.W.3 respectively regarding the incident in question. Tejpal Singh P.W.2 is the neighbour of the informant, who as per site plan Ex.Ka.-14 was at place 'D′ from where he has seen the incident, which is shown by point 'A′. The deposition of Tejpal Singh P.W.2 is consistent so far as date, time, place and manner of incident is concerned, both in his examination-in-chief and in his several cross-examinations both by defence and State. However, P.W.2, in his cross-examination, stated that when he first saw the dead body, the same was lying on the chabootra outside the house of Ravikant. Thereafter, this witness was cross-examined on behalf of the State. However, he affirmed that whatsoever has been stated by him in his examination-in-chief is true. In his examination-in-chief as well as in his cross-examinations, he has clearly stated that the accused ran away towards northern direction after committing the incident. This witness has again confirmed the assault on both the ladies in the incident in his cross-examination by the defence. It is, thus, clear that this witness was present on spot and has seen the incident. The deposition of this witness as far as date, time, place and manner of incident is concerned, is consistent. Although this witness has been cross-examined by the defence, but nothing suspicious has come in his testimony, which either makes his presence doubtful on the spot at the time of incident or makes his deposition unworthy of credit. Therefore, the deposition of this witness, being consistent, is reliable.

34. Reshma Devi P.W.3, who is the mother of the deceased, in his deposition, has also clearly stated that when Ravikant intervened and tried to stop the accused from abusing and when he (her son) tried to save Baby, then the accused assaulted her son with wooden plank. Even in her cross-examination, nothing contrary has come in her statement as far as aforesaid manner of incident is concerned. However, she has stated in her cross-examination that the accused had entered inside their room and, therefore, learned counsel for the appellant vehemently argued that from the deposition of this witness, the place of incident is not established. However, one has to keep in mind that P.W.3 is a poor illiterate lady, who resides in a village and has lost his son, that too at the hands of her near relative and she was not cross-examined on the day when her examination-in-

chief was recorded. Therefore, when her statement is evaluated keeping aside the aforesaid contradiction regarding the place of incident, then her remaining testimony is found to be trustworthy and reliable.

35. On behalf of the accused, though no defence is adduced, however, suggestion was made that first of all the deceased tried to wield lathi upon the accused and thereafter the accused struck a blow by wooden plank on the head of the deceased. In this regard, no defence is adduced and not a single question was asked to the occular witnesses P.W.2 and P.W.3. This suggestion appears to be an afterthought, which was asked to P.W.1 the informant, who is not an eyewitness and is the cousin brother of the accused Virendra. From the statement of ocular witnesses P.W.2 and P.W.3, which finds corroboration from medical evidence of P.W.4 Dr. B.V. Verma, who conducted post-mortem of the deceased, it is apparent that due to head injury caused by accused with a wooden plank, the death of the deceased occurred.

36. P.W.2 Tejpal Singh and P.W.3 Reshma Devi, wife of the informant have consistently deposed that the accused struck a blow with a wooden plank on the head of the deceased Ravikant, son of the informant. The accused Virendra is the cousin brother of the informant and his (accused′s) wife Baby is the daughter of brother-in-law of the informant. Accused Virendra used to torture his wife Baby on account of his quarrelsome nature. In the morning of the fateful day i.e. 16.02.1986, when Baby came at the house of her Aunt (bua) P.W.3 Reshma Devi, the wife of the informant, P.W.3 tried to pacify and subside the matter and advised Baby to go at her in-laws′ house but owing to his husband′s quarrelsome tendency she refused to go at his house. At about 2:00 P.M., accused Virendra came at the house of the informant having wooden plank in his hand, started abusing P.W.3 Reshma Devi and his wife Baby and made an assault upon them with his hands. When Ravikant, the son of the informant P.W.1 and P.W.3, intervened, objected and tried to save Baby, accused gave a blow on the head of Ravikant with a wooden plank, as a result of which, he succumbed to his injury on the way while taking him to the police station.

37. The ocular as well as documentary medical evidence is clear to the effect that the deceased Ravikant sustained a lacerated wound on his right side of skull and below this lacerated wound, his right parietal bone was found fractured, membranes were also found congested and haematoma was found above and below the membranes and in the opinion of autopsy surgeon, the ante-mortem injuries found on the head of the deceased could have been caused by blunt object and the duration of death was about one day old. Therefore, in the light of medical evidence available on record, the deceased is likely to have died on account of his ante-mortem injuries on 16.02.1986 at about 2:00 P.M. and his death was a homicidal death. P.W.2 and P.W.3 both have consistently stated that it was the accused Virendra, who had struck a blow by a wooden plank on the head of the deceased, therefore, the prosecution has been able to prove that the accused struck a blow by a wooden plank on the head of the deceased at the date, time and place of incident, resulting into ante-mortem head injuries to the deceased and the deceased had died because of coma, which was a result of his ante-mortem injuries. The weapon of offence i.e. wooden plank was recovered by the Investigating Officer from the spot, which has been proved in evidence as Material Exb.-1. The clothes of the deceased has been proved by P.W.3 in evidence as Material Exbs.-2 to 5. There is no delay in registration of the F.I.R. and lastly, the prosecution has been successfully able to prove its case

against the accused / appellant - convict beyond reasonable doubt. **Question No.1 is, therefore, answered in affirmative.**

38. In the present case, the Investigating Officer had recovered wooden plank from the spot but the same was not sent to Forensic Science Laboratory for examination. However, this is merely a lapse on the part of the Investigating Officer and in the light of reliable evidence given by P.W.2 and P.W.3, which finds full corroboration from the oral as well as documentary medical evidence available on record, the present appellant - convict cannot claim any benefit of lapse on part of the Investigating Officer.

Question No.2 : Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

39. The accused Virendra is the cousin brother of the informant and deceased Ravi Kant is the son of the informant. The incident occurred in a broad daylight. It is not disputed that the death of the deceased occurred on 16.02.1986 at the house of the informant at the hands of accused Virendra Singh.

40. The Supreme Court while analyzing difference between culpable homicide amounting to murder and culpable homicide not amounting to murder in **Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500** in paras 39-44 has held that-

"39" This Court in Phulia Tudu (2007) 14 SCC 588 has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which death is caused is done- Intention
	(1)with the intention of causing death; or
(a)with the intention of causing death; or (b)with the intention of causing injury as is likely to cause death; or	(2)with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3)with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or Knowledge
	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to

(c) with the knowledge that the act is likely to cause death	cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above

"40"Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the of ender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the of ender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

"41" Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

"42" For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of Rajwant Singh v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

"43" The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

"44"Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

"15. First, it must establish, quite objectively, that a bodily injury is present;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended"

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is suficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the of ender."

It was further observed as under:-

"20. .... If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."(Emphasis supplied)

The Apex court also observed in para 66 that

"66"Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

"66.1"When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

"66.2"Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. ***It would be offence under Part II of Section 304 if the case is such as to fall within Clause***

(4) of Section 300 of the IPC. *Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC****. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC***.

"66.3" To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

"66.4" Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

"66.5" Section 304 of the IPC will apply to the following classes of cases:

(i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC,

(iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

"66.6" To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

"66.7" The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

"66.8" The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under

any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC

"66.9" The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

"66.10" Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

"66.11" When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

"66.12" Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the of ence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

"66.13" In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

41. In the present case, in the statement recorded under section 313 Cr.P.C. in the year 1987, the accused has stated his age to be about 26 years. Therefore, at the time of commission of offence i.e. 16.02.1986, the appellant was about 25 years of age.

42. Now the question remains that whether homicidal death of the deceased would fall within the four corners of murder or culpable homicide not amounting to murder.

43. We have carefully gone through the entire evidence including the impugned judgment and order of the learned trial Court. It is an admitted position that the deceased was the nephew of appellant - convict. The wife of appellant - convict namely, Baby is the niece of mother of the deceased. P.W.3 Reshma Devi is the wife of informant and mother of the deceased, she is also the Bua of Baby. Baby is the daughter of brother of P.W.3. The appellant - convict is the cousin brother of the informant. Therefore, appellant - convict is a close relative not only of the deceased, but of father and mother of the deceased also. The germane of the incident was the alleged torture and harassment of Baby at the hands of his husband / appellant - convict Virendra Singh, because of which Baby came to the house of informant and complained about this harassment. It has come on evidence that the informant's wife tried to convince and subside the matter, however, her effort was

futile and about 2:00 P.M., the appellant - convict came to the house of the informant while hurling abuses. When he allegedly started beating with his hands his bhabhi Reshma Devi and wife Baby, then this unfortunate incident had happened. The deceased Ravikant when objected and tried to save, then in a state of anger, the appellant - convict assaulted the deceased with wooden plank. Admittedly, there was no enmity of the accused with the deceased or vice versa. It is also an admitted fact that there is only a single blow inflicted on the person of the deceased and the accused immediately ran away from the spot by leaving the wooden plank on the spot itself. Meaning thereby that there was no intention to cause death of the deceased. As there was no intention of causing death or causing injury as is likely to cause death, therefore whether the appellant - convict can be said to have the knowledge that the act of assault upon the deceased by wooden plank was likely to cause death or not. The accused was carrying a wooden plank and he was in a fit of rage because of his strained relationship with his wife. No one can be permitted to take refuge that he was lacking knowledge of impact of his assault because of his particular state of mind (i.e. in a fit of anger in the present case). Therefore, we are of the opinion that although the accused was having the knowledge that the act of assaulting the deceased with a wooden plank is likely to cause death, but he was lacking the knowledge that his act was so immensely dangerous that it must in all probability could cause death or such bodily injury as was likely to cause death. As a result, we are of the opinion that that the incident had happened in a spur of moment, with no prior bad intention or planning. As the death caused by the appellant - convict was not a premeditated and there being no previous enmity, therefore, the present case falls under clause (c) of Section 299 I.P.C. We have carefully gone through the entire evidence and thus are of opinion that in the present case none of clause of Section 300 I.P.C. is attracted in the peculiar facts of the present case, therefore the offence committed by the appellant - convict falls under Part-II of Section 304 I.P.C. Resultantly, we are of the view that present appeal is liable to be partly allowed and the conviction of the appellant under Section 302 I.P.C. is liable to be converted into conviction under Section 304 Part-II I.P.C. In **Ankush Shivaji Gaikwad Vs. State of Maharashtra (2013) 6 SCC 770**, it was held that victim compensation is an integral component of the criminal justice administration; Section 357 Cr.P.C. confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. Informant and his wife have lost their son and no amount of compensation can compensate their loss. However, the appellant was about 25 years of age at the time of incident and was agriculturist by profession. Therefore, for awarding compensation to the parents of the deceased, we are of the opinion that an amount of Rs.2,00,000/- as fine is liable to be imposed on the appellant under Section 304 Part-II I.P.C.

44. Accordingly, present Appeal is **partly allowed** and the appellant is convicted for the offence under Section 304 Part-II I.P.C. and is sentenced to undergo 7 years rigorous imprisonment with a fine of Rs.2,00,000/-. In case of failure to deposit the aforesaid fine, the appellant shall further undergo 1 year simple imprisonment. Parents of the deceased - Ravikant namely, Narsingh Pal and Smt. Reshma Devi shall receive an amount of Rs.1,80,000/- as compensation, out of the total amount of fine so deposited by the appellant. The period for which the appellant was in jail shall be adjusted in the sentence imposed. In the event of death of any of the parents of the deceased, the other parent shall receive the full amount of compensation so awarded.

45. The appellant is on bail. His bail bonds and sureties shall stand cancelled and he is directed to be taken back to the custody forthwith to serve the remaining part of the sentence.

46. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

(2026) 7 ILRA 581
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 31.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 3471 of 2024

Ankur Tandon **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order for abetment of suicide?

Headnotes

Indian Penal Code, 1860-Ss. 498-A and 306;Indian Evidence Act, 1872-S. 113-Abetment of suicide-Conviction-Deceased committed suicide after matrimonial discord and living separately from appellant for more than five months-Prosecution failed to prove charge under S. 498-A IPC-serious discrepancies in version of deceased in FIR and statements of prosecution witnesses regarding demand of dowry and harassment-appellant cannot be convicted under S. 306 IPC by straightway invoking S. 113-A Evidence Act-Abetment involves mental process of instigating- must be proof of direct or indirect acts of incitement to commission of suicide-mere allegation of harassment would not suffice unless there be such action on part of accused which compels person to commit suicide- no contact between appellant and deceased for more than five months- appellant did not commit any act during this period which may amount to instigating deceased to commit suicide- not proved that deceased committed suicide because of abetment caused by appellant-conviction and sentence set aside-Appellant acquitted.

Appeal allowed. (E-9)

Case Law Cited

1. Anand Ramachandra Chougule v. Sidarai Laxman Chougala, (2019) 8 SCC 50
2. Vaibhav v. State of Maharashtra, (2025) 8 SCC 315
3. State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73
4. Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605
5. Ude Singh v. State of Haryana, (2019) 17 SCC 301
6. Prakash v. State of Maharashtra, (2026) 6 SCC 251
7. Balaji Jaiswal v. State of Chattisgarh, 2026 SCC OnLine SC 602
8. Ram Pyarey v. State of U.P., (2025) 6 SCC 820
9. State of H.P. v. Madan Gopal, 2025 SCC OnLine SC 191
10. Nipun Aneja v. State of U.P., 2024 SCC OnLine SC 4091

List of Acts

1. Indian Penal Code, 1860
2. Dowry Prohibition Act, 1961
3. Indian Evidence Act, 1872
4. Code of Criminal Procedure, 1973
5. Hindu Marriage Act, 1955

List of Keywords

Abetment of suicide; Direct or indirect acts of incitement; Instigation; Mens rea; Close proximity; Reasonable defence; Preponderance of probabilities.

Appearances of parties

Counsel for Appellant(s) : Vivek Kumar Rai, Ajai Kumar
Counsel for Respondent(s) : G.A.,

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

1. Heard Shri Vivek Kumar Rai, the learned counsel for the appellant and Smt. Shikha Sinha, the learned AGA for the State of U.P.

2. By means of the instant appeal, the appellant has challenged the validity of a judgment and order dated 21.09.2024 passed by Sri. Rohit Singh, the learned Special Judge, Ayurveda Scam/CBI, Lucknow in Session Trial No.747 of 2012 arising out of Case Crime No.386 of 2010 under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act 1961 registered at Police Station Alambagh, District Lucknow, whereby the appellant has been convicted for the offences under Sections 498-A and 306 IPC and Sections ¾ of the Dowry Prohibition Act while he has been acquitted for the offence under Section 304-B IPC. The appellant has been sentenced to undergo two years rigorous imprisonment and Rs.10,000/- fine for the offence under Section 498-A IPC, 7 years′ rigorous imprisonment and Rs.50,000/- fine for the offence under Section 306 IPC and 5 years′ rigorous imprisonment and Rs.15,000/- fine for the offence under Section 4 of the Dowry Prohibition Act along with stipulations for additional imprisonment in case of default in payment of fine.

3. The aforesaid case was instituted on the basis of an FIR lodged on the basis of a written complaint given on 02.10.2010, stating that the complainant′s sister Monika had got married to the appellant on 14.12.2004. The appellant, his mother Shashi Tandon, younger brother Aman Tandon and younger brother′s wife Shweta Tandon used to harass the complainant′s sister for demanding Rs.10,00,000/- as dowry for purchasing a flat. Under compulsion, the complainant's father had sold away a plot of land of the complainant and her sister and had paid Rs.6,00,000/- in cash to the appellant. However, the accused persons kept on harassing the complainant′s sister for demanding the balance amount of Rs.4 lakh. They had turned the complainant′s sister out of her matrimonial home after beating her. Thereafter, the appellant filed a suit for divorce on false allegations. The FIR alleged that even while the complainant's sister was residing in her parents′ home, she was threatened and harassed by the accused persons and for this reason she committed suicide by hanging herself in the night of 02.10.2010.

4. The postmortem examination report mentions an oblique ligature mark of 27 cm X 2.5 cm present all around her neck going obliquely upwards and backwards and it was interrupted by 6 cm on the right side. Besides the ligature mark, there was no other mark of injury on the dead body. The cause of death has been opined to be asphyxia due to antemortem hanging.

5. Initially, a charge-sheet was submitted against the appellant only and thereafter, a supplementary charge-sheet was submitted against other family members of the appellant and they have been tried separately.

6. The deceased had left two suicide notes, which were marked as Exhibit A-3 and A-4. The first note is addressed to the mother of the deceased, wherein she expressed her agony due to ill treatment meted out to her by the appellant and stated that misbehaviour on part of the appellant had broken her heart and thereafter, her body was also not able to bear it. She had lost the desire to live. Every single day of her life passed with difficulty. The other suicide note was addressed to the appellant wherein the deceased blamed him for his misbehaviour and ill treatment and for having turned her out of her matrimonial home. She alleged that the appellant had had given her place to a prostitute, that he and his friend Abhijeet Trivedi had insulted her for that girl (whom the deceased referred to as a prostitute), he used her emotions for making complaints and preparing false records. She further wrote that the appellant felt that relations could be severed by merely signing some documents but she would not divorce him during her life time. The deceased wrote that the appellant ought to have been an Advocate, as he had prepared false record to such an extent as can normally not be thought of even by an Advocate. She wrote that the appellant was making preparations for obtaining divorce for the last several years and he might win the false case by paying bribe. But God will do justice with her, where cunningness, deceit and bribe will have no role to play. She also wrote that the appellant had compelled her to commit suicide, he, his family and friend Abhijeet Trivedi were responsible for her death and some day. a similar stage will come in the appellant′s life also and that she would wait for the appellant in the other world.

7. The complainant was examined as PW-1. She reiterated the FIR version. She stated that her sister came to her parents′ home on 02.10.2010 and she committed suicide by hanging because of cruelty and harassment meted out to her by the accused persons. She stated that the deceased had come to her maika from her marital home 2-3 months prior to the incident. During cross examination, PW-1 stated that the deceased lived with her husband till two months before her death. She further stated that the deceased had gone to the court in connection with another case between herself and the appellant. When she went from the court to her matrimonial home, the lock put by her in the apartment had been broken open and had been replaced by the appellant. When the deceased contacted the appellant telephonically, he reached there along with 2-3 other persons and assaulted her. The deceased had lodged an FIR against the appellant and his family members in this regard. She alleged that when her father could not pay Rs.4,00,000/-, the appellant had filed the suit for divorce.

8. During cross-examination, PW-1 stated that the deceased was four years older to her. The deceased and the appellant used to work together and both of them had developed an acquaintance. She stated that the appellant′s mother had brought his marriage proposal. PW-1 further stated that prior to her marriage with the appellant, the deceased did not disclose that she used to date the appellant. She admitted that their relationship got converted into marriage on 14.12.2004. PW-1 admitted that the deceased had not made any mention of demand of dowry in any of the two suicide notes (Exhibit A-3 and A-4) and she did not level this allegation in any of the pending litigations. PW-1 stated that the deceased had come back from her matrimonial home 3 months prior to her death. The notice of the suit for divorce had been received by her mother and thereafter the

deceased had appeared in the family court. She stated that the deceased had said that she did not want to divorce the appellant. PW-1 also had stated that the deceased was living at her residence for the past 3 months and she committed suicide in her house.

9. The father of the deceased was examined as PW-2. He stated that he had got his daughter married to the appellant on 14.12.2004. He had spent Rs.9 to 10 lakhs in the marriage. After 2-3 months of the marriage, the appellant and his family started harassing his daughter for demanding dowry. His daughter used to tell about it to him but PW-2 used to say to her that as she had got married, she had to live in her matrimonial home only.

10. PW-2 further stated that his daughter was beaten up on 18.04.2010. Her medico-legal examination was conducted on 20.04.2010 and she had lodged a first information report against her husband, her mother-in-law, younger brother of the husband and wife of the younger brother. When his daughter had gone to her matrimonial home along with him on 22.04.2010, the lock of her room had been broken open and replaced by another lock and thereafter on 23.04.2010, wife of PW-2 had lodged an FIR. PW-2 stated that the appellant had sent a notice for divorce wherein he had assailed the character of the deceased. It caused so much mental agony to the deceased that she committed suicide by hanging on 02.10.2010.

11. Sunny Kapoor, the younger brother of the deceased, was examined as PW-3. He stated that his sister was ill-treated after her marriage for demanding dowry. On 20.04.2010, his sister had lodged a first information report in Mahila Thana and after that she had gone to her matrimonial home along with her mother in the night of 20.04.2010 but she was turned away after being ill-treated and the deceased had lodged a report of this incident in the police station. After that, the appellant had sent a notice for divorce. For this reason, the deceased committed suicide.

12. A neighbour of the complainant was examined as PW-9 and he also proved the demand of dowry and ill-treatment therefor and he stated that the deceased committed suicide because of ill-treatment meted out to her by her husband and his family members.

13. In the statement recorded under Section 313 Cr.P.C., the appellant denied all the charges and he stated that he will file his written statement. The appellant filed a written statement of his defence wherein he stated that he and the deceased were in service. Both of them developed a liking towards each other and decided to get married. Their love marriage was converted into an arranged marriage with the consent of their family members. The marriage ceremony was performed without any dowry. Immediately after their marriage, they started living in a separate house no. C-457, Indira Nagar. His wife and sister-in-law (the complainant) had executed a sale deed in the year 2005 in the interest of their career and they themselves received the sale consideration amount and he had no knowledge about it at that time. This amount was not deposited in his bank account.

14. The appellant further stated that after sale of the plot and receipt of the sale consideration, the behaviour of the deceased started getting worse, she wanted to shift to National Capital Region to struggle for upliftment of her career and she also wanted the appellant to leave his stable job as a Manager in ICICI Prudential Life Insurance Co. Ltd. She started threatening the appellant by

writing false suicide letters and she moved out of his house at Indira Nagar along with all her goods and shifted to her house at Alambagh. She did not return to his home thereafter.

15. The appellant stated that he filed a complaint against the deceased in the Court of C.J.M. (Custom) Lucknow. On 06.04.2010, the C.J.M. took cognizance of the offences under Sections 504 and 506 IPC on the basis of the complaint filed by him against his wife and a summon was issued to her for 05.05.2010. However, afterwards he filed a suit for restitution of conjugal rights for reviving his relation with his wife. His wife withdrew Rs.50,000/- and Rs.10,000/- on 21.07.2008 and 22.07.2008 from his salary account from a branch of the Bank at NOIDA. Thereafter, he came to know that his wife was working as an Executive - Business Support in Max New York Life Insurance at Delhi - NCR. He lost an opportunity to go on the company's business trip to South Africa even after getting a Visa clearance because of the mental cruelty inflicted by his wife.

16. The appellant further stated that on 13.11.2009, he had sent a letter to the police complaining against his wife. The appellant also stated that because of the continuous mental cruelty, he withdrew the suit for restitution of conjugal rights and on 21.11.2009 he filed a suit for divorce. Upon receipt of its summon, she appeared in the Family Court and filed a vakalatnama.

17. It was also stated in the written statement of the appellant that his office had issued him warning letters dated 10.12.2009 and 19.04.2010 as his wife had come to the office of his employer Kotak Life Insurance Co. Ltd. and had created nuisance there. Thereafter, he sent a complaint to the police through speed post on 19.04.2010 for lodging a first information report against his wife.

18. The appellant stated that his wife or her family members had not lodged any complaint alleging demand of dowry till that date and even in the suicide note, the deceased did not allege any demand of dowry. On 23.04.2010 the deceased lodged a FIR against the appellant and a security guard of his apartment wherein a charge-sheet was filed against the security guard only. He stated that the appellant and his wife were working and living in separate cities since August 2007.

19. The appellant filed a copy of the complaint filed in the Court of the Chief Judicial Magistrate Custom, a copy of the letter dated 16.12.2007 sent to the S.H.O. Ghazipur, a copy of the statement of the appellant recorded under Section 200 Cr.P.C., a copy of the statements of witnesses recorded under Section 202 Cr.P.C., a copy of the order dated 01.03.2008 passed by the Principal Judge, Family Court, a copy of the plaint filed under Section 9 of the Hindu Marriage Act, a copy of the letter sent to the Manager ICICI Bank, Lucknow, copies of cheques for Rs.50,000/- and Rs.10,000/-, a copy of TDS, a copy of the letter dated 13.11.2009 sent to SHO Ghazipur, a copy of the plaint in Regular Suit No. 2253 of 2009 in the Family Court for divorce, a copy of the order dated 06.04.2010 passed by the C.J.M (Custom) in Complaint No. 9194 of 2007, a copy of the letter dated 19.04.2010 sent by the appellant to SHO Alambagh requesting for lodging a first information report, a copy of the police documents and charge-sheet relating to Case Crime No. 301 of 2010 under Section 323, 504 IPC, Police Station Ghazipur and a copy of the letter dated 27.04.2010 given by the residents of C-455 and C-457, Ganapati Apartments to SHO Ghazipur. The appellant requested the trial Court to obtain admission / denial of the documents by the prosecution.

20. The trial Court held that the documents filed by the appellant included her Form 26-AS containing entries for the period April 2009 to June 2009, which merely proved that the deceased was in a private service for the aforesaid three months. The other documents filed by the appellant proved that the deceased was at Delhi NCR on 21.07.2008 and 22.07.2008 and that she withdrew Rs.50,000/- and Rs.10,000/- from their joint account. The documents do not prove that the deceased lived at Delhi-NCR during the entire period of 2007 to 2010.

21. The trial Court further held that the statements of the prosecution witnesses proved that the appellant had started harassing the deceased for demanding Rs.10,00,000/- as dowry 1 - 1 ½ months after her marriage. Her father had paid him Rs.6,00,000/- after selling away a plot of the deceased and her sister but the appellant continued to harass the deceased for demanding the balance amount of Rs.4,00,000/-. The trial Court disbelieved the defence of the appellant that no amount from the sale consideration of the plot was deposited in his bank account stating that he is an educated person and his mother is a gazetted officer and it cannot be expected that they would deposit the amount in their bank account.

22. The trial Court disbelieved the appellant′s contention that the allegation of demand of dowry was not levelled till 19.04.2010 and this allegation was levelled for the first time in the FIR No. 34 of 2010 lodged on 20.04.2010.

23. The trial Court held that the charge under Section 304-B IPC was not proved as the deceased and her husband were not in contact with each other since 20.04.2010 when the FIR bearing Case Crime No. 34 of 2010 under Section 498A, 323, 406, 506 of IPC and 3/4 Dowry Prohibition Act was registered in Mahila Thana and therefore, it was not possible to harass the deceased soon before her death. However, the trial Court held that the deceased had committed suicide because of the ill-treatment meted out to her by the appellant and his family members and held the appellant guilty of the offence under Section 306 IPC as also under Section 498-A IPC and Section 4 of the Dowry Prohibition Act.

24. The learned counsel for the appellant has submitted that there was a matrimonial discord between the parties due to which the deceased was living separate from the appellant with her father and siblings.

25. The complainant PW-1 stated that the deceased was harassed for demanding dowry, an air conditioner was demanded and by demanding small amounts, Rs.1.5 Lakh had been taken away from her father. Thereafter, the accused persons demanded Rs.10 Lakhs for purchasing a flat. Her father gave Rs.6,00,000/- after selling a plot in the name of the complainant and the deceased but he could not give the balance amount of Rs.4,00,000/- for which she was harassed. PW-1 stated that the deceased committed suicide after coming to her father′s house on 02.10.2010.

26. During cross-examination, PW-1 stated (at page 7 of her cross examination) that the sale consideration of the plot sold by herself and the deceased, was received in cash and her father had purchased a property in the year 2011 by paying the entire sale consideration in cash. She also stated that she was a housewife whereas the deceased remained in service. She further stated (at page 15) that appellant wanted to get his marriage with the deceased dissolved by divorce but the

deceased did not want it. She stated that the deceased stopped living with the appellant since the year 2008. PW-1 stated that it was not that the deceased was depressed because of her separation from the appellant or that she was mentally upset because of the divorce suit filed by the appellant.

27. Gulshan Kapoor, the father of the deceased, was examined as PW-2. He stated that he had spent Rs.9-10 lakh Rupees in his daughter's marriage with the appellant. 2-3 months after the marriage, she started telling him while crying that all the accused persons used to harass her for demanding dowry, but PW-2 used to tell her that as she had got married she had to live in her matrimonial home. Thereafter, the appellant and his family members started demanding Rs. 10 lakhs for purchasing a flat and she was threatened to be killed. He gave Rs.6,00,000/- after selling a plot and he had promised to give the balance Rs.4,00,000/-. The accused persons used to harass her and the appellant's friend Abhijeet used to ask them to kill the deceased and also used to state that he would get the appellant married to a rich and beautiful girl. He stated that the appellant had sent a notice for divorce in which he had levelled allegations assailing her character, this caused so much mental agony to his daughter that she committed suicide.

28. Sunny Kapoor, younger brother of the deceased was examined as PW-3 and he gave a statement similar to that of his father (PW-2).

29. The aforesaid statements reveal that the deceased and the appellant used to work together, a loving relationship developed between them due to which the appellant's mother went to the father of the deceased with a proposal of their marriage. Their marriage was solemnised on 04.12.2004. It is alleged that she was harassed for demanding dowry since 2-3 months after her marriage. The complainant PW-1 alleged in her testimony that small amounts and things like an air conditioner were demanded as dowry and her father gave Rs.1.5 Lakhs in pursuance of the demands but the deceased's father PW-2 did not say so.

30. It is alleged that a plot of land in the name of the deceased and the complainant was sold by their father. They did not disclose the particulars of the plot, the date of execution of its sale deed and the amount of sale consideration but they stated that the entire sale consideration was received in cash and out of that Rs.6,00,000/- were given in cash to the appellant without disclosing the date when this amount was given. It is also stated that the father of the deceased had purchased some property in the year 2011 and that transaction was also done in cash.

31. The first time the allegation of demand of dowry was levelled in writing in FIR bearing Case Crime No. 34 of 2010 in Mahila Thana, Lucknow on 20.04.2010 against the appellant, his mother, younger brother and wife of his younger brother, under Sections 498-A, 323, 406, 504, 506 IPC and 3/4 Dowry Prohibition Act. Prior to it, the appellant had filed Complaint No. 9194 of 2007 in the Court of C.J.M (Custom) against his wife Monika Tandon, mother-in-law Shanta Rani Kapoor, sister-in-law Neha Kapoor (the complainant) and brother-in-law Sunny Kapoor stating that he had married Monika Tandon out of love on 14.12.2004; that soon after the marriage, she had started pressurizing him to live separate from his mother and brother and under her pressure he started living separate from his mother and brother under a written agreement dated 06.01.2007 but she went away along with all her documents and valuable articles on 27.07.2007. The appellant wrote in the complaint that his wife used to mentally harass him by showing him a suicide note and

by threatening that she would commit suicide at his home and would get the appellant and his family members implicated in a dowry death case due to which he was afraid and these actions of her made out offences under Sections 384, 504, 506 IPC. On 06.04.2010, the C.J.M. (Custom) Lucknow passed an order on the appellant's complaint summoning the appellant's wife for facing trial for the offences under Sections 504 and 506 IPC.

32. The appellant had filed Regular Suit No. 2253 of 2009 in the Court of Principal Judge, Family Court, Lucknow under Section 13 of the Hindu Marriage Act, wherein he pleaded that he got married to the deceased on 14.12.2004 and they resided in his widow mother's apartment, along with his mother and brother, for one year. He pleaded that his wife used to oppose the appellant spending time with his mother and she even alleged that he had illicit relations with his mother. Thereafter, he moved out of his mother's house and on 01.04.2006, he and his wife had shifted to a rented apartment in Indira Nagar. On 27.08.2006, the appellant's wife went away to her father's home and she took with her all her documents and jewellery items. When the appellant went to her, she and her parents abused and humiliated him.

33. The appellant also pleaded in the suit for divorce that the deceased came to his office on 08.11.2009, abused him and demanded Rs.20,000/- and he gave her Rs.7,000/-. She also called him from Rohini, New Delhi through her mobile No. 9958952442, which was a Delhi number issued in her name, and demanded Rs.50,000/- and she threatened to get him incarcerated. The appellant's company was sending him abroad on 09.08.2009 but on 06.08.2009, the deceased took away the appellant's documents and threatened that in case he went abroad, he would be sent behind the bars. The appellant pleaded that the aforesaid facts constituted cruelty and sought divorce on this ground.

34. Although PW-2 had stated in his cross examination that the appellant had sent a notice for divorce wherein he had assailed the character of the deceased and it caused so much mental agony to the deceased that she committed suicide by hanging on 02.10.2010 but the appellant had not made any pleading in the suit for divorce assailing the character of the deceased. On the contrary, he had pleaded that the deceased had assailed the character of the appellant and his mother by falsely alleging that the appellant had illicit relations with his mother.

35. The deceased had lodged FIR bearing Case Crime No. 34 of 2010 in Mahila Thana, Lucknow on 20.04.2010 against the appellant, his mother, younger brother and the wife of his younger brother, under Sections 498-A, 323, 406, 504, 506 IPC and 3/4 Dowry Prohibition Act wherein she alleged for the first time that the accused persons used to harass her for demanding dowry. She also alleged that the appellant had deceitfully given her some medicine which caused her miscarriage but there is no material to substantiate this allegation and although PW-1, PW-2 and PW-3 have alleged that the appellant used to harass his deceased wife, none of them have alleged that he had caused her miscarriage. The deceased had alleged in the FIR that her mother-in-law had asked her to bring her Rs.2,00,000/- to enable the appellant to do some business and her father had fulfilled the demand by borrowing the money but her father has not said so when he was examined as PW-2.

36. The deceased also alleged in the FIR that her father used to keep on paying dowry amounts in cash day in and day out and the appellant used to deposit the same in his bank account and the

bank account of his mother and thus the appellant had extracted Rs.1.5 Lakhs from her father but her father PW-1 has not said so in his deposition.

37. The trial Court has rejected the appellant′s contention that although the prosecution case is that the father of the deceased had given Rs.6,00,000/- to him as dowry whereas no such amount has been deposited in his bank account or in the account of his mother, by stating that such amounts are not deposited in Bank accounts, whereas the deceased herself had alleged that the amount extracted from her father was deposited in the bank accounts of the appellant and his mother.

38. The deceased further alleged in the FIR that she had appeared before the Family Court in the suit for divorce filed by the appellant but thereafter she again went back to her matrimonial home. The appellant used to drop her at her parents′ home for demanding Rs.10,00,000/- for purchasing a flat which allegation appears to be highly unnatural and improbable. She alleged that the appellant badly assaulted her on 18.04.2010 and the police intervened in the matter. There is no material to establish that the deceased cohabited with the appellant as his wife after lodging of the FIR No. 34 of 2010 dated 20.04.2010.

39. The trial Court has not taken into consideration the defence set up by the appellant and the documentary evidence filed by him. The appellant had requested the trial Court to call upon the prosecution to admit or deny the documents filed by him. The prosecution did not deny the documents filed by the appellant.

40. In **Anand Ramachandra Chougule v. Sidarai Laxman Chougala**: (2019) 8 SCC 50, the Hon′ble Supreme Court held that: -

"10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.″

41. In **Vaibhav v. State of Maharashtra**: (2025) 8 SCC 315, the Hon′ble Supreme Court held that: -

"31. In law, there is a significant difference in the evidentiary burden to be discharged by the prosecution and the accused. Whereas, the former is expected to discharge its burden beyond reasonable doubt, the latter is only required to prove a defence on the anvil of preponderance of probabilities. If the accused leads defence evidence in the course of a criminal trial, the same ought to be tested as probable or improbable in the facts and circumstances of the case.″

42. In the present case, there are serious discrepancies in the version of the deceased in the FIR lodged by her on 20.04.2010 and the statements of the prosecution witnesses, which raise a serious doubt against the prosecution case alleging demand of dowry and harassment for this

reason. The complainant and her father have alleged having given Rs.6,00,000/- in cash to the appellant as dowry. Besides the fact that this Court has come to a conclusion that they have failed to prove this allegation beyond reasonable doubt, if found true, this allegation would amount to a confession regarding commission of under Section 3 of the Dowry Prohibition Act, which provides as follows: -

*"**3. Penalty for giving or taking dowry.** - (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:*

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given."

43. Thus, not only taking dowry, but also giving dowry is an offence under Section 3 of the Dowry Prohibition Act. However, as I have come to a conclusion that the allegation that the father of the deceased had given Rs.6,00,000/- to the appellant as dowry, has not been proved, neither the offence of taking dowry nor the offence of taking dowry is made out. The allegation of harassment for demand of dowry levelled for the first time in FIR No. 34 of 2010 lodged on 20.04.2010 and, as has been mentioned above, there are serious discrepancies in the statements of the witness regarding the demand of dowry and harassment therefor. The appellant has set up a reasonable defence that there were serious disputes between the appellant and his deceased wife since the year 2007 when he had filed a criminal complaint against her on which the trial Court had summoned the deceased. There are allegations and counter allegations. The prosecution was required to prove the allegations beyond reasonable doubt, which it failed to do, whereas the appellant was not required to prove the correctness of his allegations beyond reasonable doubt, he was merely required to raise a doubt against the prosecution case on the basis of mere preponderance of

probabilities, which he has succeeded to do. Therefore, I am of the considered view that the prosecution has failed to establish the ingredients of Section 498-A IPC and Section 4 of the Dowry Prohibition Act.

44. Now I proceed to examine the validity of the appellant's conviction for the offence under Section 306 IPC, which reads as under: -

*"**306. Abetment of suicide**.-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

45. "Abetment of a thing" has been defined under Section 107 of the Code in the following words: -

*"**107. Abetment of a thing**.-A person abets the doing of a thing, who-*

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.'

Explanation 2 which has been inserted along with Section 107 reads as under:

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

46. In **State of W.B. v. Orilal Jaiswal**: (1994) 1 SCC 73, the Hon'ble Supreme Court has cautioned that: -

*"17.....the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. **If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty…"***

(Emphasis added)

47. In **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**: (2009) 16 SCC 605, the Hon′ble Supreme Court held that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

48. In **Ude Singh v. State of Haryana**: (2019) 17 SCC 301, the Hon′ble Supreme Court held that: -

*"**15.** Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:*

(i) he instigates any person to do that thing; or

(ii) he engages with one or more persons in any conspiracy for the doing of that thing; or

(iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide.** It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. **In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

***16.1.** For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. **If the persons who committed suicide had been hypersensitive and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306 IPC.** If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted*

or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. *We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set-ups, education, etc. Even the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.*"

49. In **Prakash v. State of Maharashtra**: (2026) 6 SCC 251, the Hon'ble Supreme Court held that: -

"18. Section 306 IPC has two basic ingredients-first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107IPC has to be satisfied.

19. Section 306 read with Section 107 IPC, has been interpreted, time and again, and its principles are well established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

20. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide.

* * *

33. This Court in Mohit Singhal [Mohit Singhal v. State of Uttarakhand, (2024) 1 SCC 417] reiterated that the act of instigation must be of such intensity and in such close proximity that it intends to push the deceased to such a position under which the person has no choice but to commit suicide. This Court held that the incident which had allegedly driven the deceased to commit suicide had occurred two weeks prior and even the suicide note had been written three days prior to the date on which the deceased committed suicide and further, there was no

allegation that any act had been done by the accused-appellant therein in close proximity to the date of suicide. This Court observed as follows:

"11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. ***The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide.*** *The deceased has blamed the third respondent for landing in trouble due to her bad habits.*

12. Therefore, in our considered view, the offence punishable under Section 306IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law."

(emphasis supplied by the Supreme Court)

34. This Court in Naresh Kumar v. State of Haryana [(2024) 3 SCC 573], observed as follows:

"20. This Court in Mariano Anto Bruno v. State [(2023) 15 SCC 560], after referring to the above referred decisions rendered in context of culpability under Section 306 IPC observed as under:

"45. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. ***Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306IPC is not sustainable."***

(emphasis supplied by the Supreme Court)

50. In **Balaji Jaiswal v. State of Chattisgarh**: 2026 SCC OnLine SC 602, the Hon'ble Supreme Court referred to some precedents on the point in issue and held that: -

"11. From the aforesaid decision, it becomes clear that for sustaining a charge under Section 306 of the Penal Code, it has to be shown that the accused persons had contributed to the suicide by the deceased through some direct or indirect act. Section 107 of the Penal Code has thereafter been referred to hold that there ought to be some instigation or incitement that would reveal a clear mens rea to abet the commission of suicide, thus, leading the victim to such a position that he/she would have no other option but to commit suicide. ***There ought to be some material to indicate a positive act of instigation, which is a crucial component of abetment. Instigation or incitement on the part of the accused person has been held to be the gravamen of the offence of abetment to suicide. The act of instigation also has to be in close proximity to the act of suicide so as to form the nexus or a chain to indicate that the act of suicide was the direct result of the act of instigation by the accused person...."***

51. In the present case, the trial Court has acquitted the appellant as well as all the accused persons of the charge under Section 304-B IPC as the deceased and her husband were not in contact with each other since 20.04.2010, when the FIR bearing Case Crime No. 34 of 2010 under Section 498-A, 323, 406, 506 of IPC and 3/4 Dowry Prohibition Act was registered in Mahila Thana and, therefore, it was not possible to harass the deceased soon before her death. The deceased committed suicide on 02.10.2010, i.e. 5 months and 12 days since she had lodged an FIR against the appellant and his family members. When the trial Court has held that the appellant had no contact with the deceased for the past 5 months and 12 days before the incident it cannot be said that the appellant abetted the deceased to commit suicide even without there having been any contact or communication between them.

52. The trial Court has relied upon the provision contained in Section 113-A of the Evidence Act, which provides as follows: -

*"**113-A. Presumption as to abetment of suicide by a married woman**. -When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*

Explanation.-For the purposes of this section, "cruelty" shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860)."

53. Section 498-A of the Evidence Act provides that: -

***"498-A. Husband or relative of husband of a woman subjecting her to cruelty.** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation.-For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

54. In **Ram Pyarey v. State of U.P.:** (2025) 6 SCC 820, the Hon'ble Supreme Court held that: -

"14. It is relevant to note that under Section 113-B, the court shall presume dowry death unlike Section 113-A where the provision says that court may presume abetment of suicide. This is the vital difference between the two provisions which raises presumption as regards abetment of suicide.

15. When the courts below want to apply Section 113-A of the Evidence Act, the condition precedent is that there has to be first some cogent evidence as regards cruelty and harassment. In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the court cannot straightway invoke Section 113-A and presume that the accused abetted the commission of suicide."

55. The aforesaid ratio laid down in **Ram Pyarey v. State of U.P.** (supra) has been followed in **State of H.P. v. Madan Gopal**: 2025 SCC OnLine SC 191.

56. This Court has already held that the prosecution has failed to prove the charge under Section 498-A I.P.C. that the appellant had harassed the deceased for demanding dowry. In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the appellant cannot be convicted for the offence under Section 306 I.P.C. by straightway invoking Section 113-A so as to presume that he has abetted the commission of suicide.

57. In **Nipun Aneja v. State of U.P.**: 2024 SCC OnLine SC 4091, the Hon'ble Supreme Court referred to numerous precedents on the point of what would constitute abetment to commit suicide and concluded that: -

*"21. The ingredients to constitute an offence under Section 306 IPC (abetment of suicide) would stand fulfilled if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide….**The problem is that the courts just look into the factum of suicide and nothing more. We believe that such understanding on the part of the courts is wrong.** It all depends on the nature of the offence & accusation. …."*

58. The aforesaid observation squarely applies to the facts of the present case, where the trial Court has convicted the appellant for the offence under Section 306 IPC merely because the relations between the appellant and his wife had turned sour, both of them had levelled allegations and counter allegations against each other and the deceased committed suicide after writing that she could not tolerate the ill-treatment meted out to her by the appellant and his family members. While holding the appellant guilty of abetment of suicide of his wife, the trial Court has merely looked into the factum of suicide and has ignored the fact that when the trial Court has itself found that there was no contact between the appellant and his wife for more than five months, the appellant did not commit any act during this period of more than five months which may amount to instigating the deceased to commit suicide. Therefore, it is not proved that the deceased committed suicide because of abetment caused by the appellant and the prosecution has failed to prove the charge of offence under Section 306 IPC.

59. Accordingly, the appeal is **allowed**. The judgment and order dated 21.09.2024 passed by Sri. Rohit Singh, the learned Special Judge, Ayurveda Scam/CBI, Lucknow in Session Trial No.747 of 2012 arising out of Case Crime No.386 of 2010 under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act registered at Police Station Alambagh, District Lucknow, whereby the appellant has been convicted and sentenced for the offences under Sections 498-A and 306 IPC and Sections 3/4, Dowry Prohibition Act, is **set aside**. The appellant is **acquitted** of all the charges.

60. Consequently, the appellant shall be released from custody in connection with the present case upon his furnishing a personal bond and two sureties for his appearance before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal to the appellant, as per the provision contained in Section 437-A Cr.P.C. The amount of fine deposited by the appellant will be refunded to him.

(2026) 7 ILRA 597
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.07.2026

BEFORE

THE HON'BLE AJAY BHANOT, J.
THE HON'BLE DIVESH CHANDRA SAMANT, J.

Criminal Appeal No. 4273 of 2022
with Criminal Appeal Nos. 10 of 2022, 637 2022 & 5089 of 2022

Mahnaz & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the dying declaration could be relied upon as the sole basis for convicting the accused under Section 302/149 IPC?

Headnotes

Indian Penal Code, 1860-Ss. 302/149, 304-B and 498-A;Dowry Prohibition Act, 1961-Ss. 3 and ;Indian Evidence Act - S.114(g) -Dying declaration-All material witnesses repudiated the prosecution case-only incriminating evidence was dying declaration - postmortem report did not depict percentage of burn injuries-actual medical condition of deceased remained vague-conditions precedent for treating statement as dying declaration not established-deceased implicated husband and all members of his family by broad and sweeping allegations-generalized description-motive ascribed in dying declaration weak, vague and an afterthought- mother-in-law and sister-in-law not named in FIR but introduced in dying declaration-afterthought-presence of doctor at time of recording dying declaration inconsistent with testimony of Naib Tehsildar-second dying declaration recorded by Investigating Officer suppressed by prosecution-preconditions for drawing adverse inference under S.114(g) of Evidence Act fully satisfied-possibility of death due to medical negligence or inadequate medical care also could not be ruled out-conduct of husband and family members in rushing deceased to hospital and informing in-laws with promptitude appeared bona fide-trial court erred in law by relying on unreliable dying declaration-conviction set aside-prosecution failed to prove charges beyond reasonable doubt-Accused/appellants acquitted.

Appeals allowed. (E-9)

Case Law Cited

1. Laxman v. State of Maharashtra, (2002) 6 SCC 710.
2. Irfan @ Naka v. State of Uttar Pradesh, 2023 SCC OnLine SC 1060.

List of Acts

1. Indian Penal Code, 1860—Ss. 302/149, 304-B and 498-A.
2. Dowry Prohibition Act, 1961—Ss. 3 and 4.
3. Indian Evidence Act, 1872—S. 114(g).

List of Keywords

Dying declaration; bedhead ticket; medical case sheet; percentage of burn injuries; generalized description; afterthought; contradiction with FIR; suppression of second dying declaration; suicidal tendencies; medical negligence; matrimonial differences; vindictiveness; dying declaration lacks reliability; bona fide conduct; dowry demand; harassment for dowry.

Appearances of parties

Counsel for Appellant(s): Achchhey Lal Tiwari, Vinay Kumar Tripathi; Chandra Kumar; Devendra Singh.
Counsel for Respondent(s): G.A.; Ghan Shyam Yadav.

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

1. The instant appeals arise out of a common judgment dated 06.09.2021 rendered by the learned Sessions Court in Sessions Trial No.- 419 of 2019, State vs. Khalid and Ors.

2. The learned trial court by the impugned judgment has found the appellants guilty of the offences under Section 302/149 I.P.C. and has imposed a punishment of life imprisonment and fine of Rs. 10,000/-, and in default of payment of fine additional 3 months simple imprisonment has been imposed. The period spent in jail by the accused during the trial shall be merged against the sentence.

3. All four appeals are being heard and decided together. The following appellants in the respective appeals are before this Court:

(a). Mahnaz and Jayara @ Shayara Bano are appellants in Criminal Appeal No.- 4273 of 2022.

(b). Rashid is the appellant in Criminal Appeal No.- 10 of 2022.

(c). Khalid is the appellant in Criminal Appeal No.- 5089 of 2022.

(d). Shabnam is the appellant in Criminal Appeal No.- 637 of 2022.

F.I.R- Prosecution Case

4. Briefly put the prosecution case set out in the F.I.R. is that about four years ago the first informant's daughter had got married to Khalid as per Muslim rites. Sometime after the marriage, her husband and in-laws started demanding Rs. 1 lakh and a motor cycle. Since the first informant could not make good the dowry demands due to financial incapacity her daughter was constantly harassed by her in-laws. She continued to endure the torture. Zubia's husband and in-laws threatened to murder her in case the dowry demands were not fulfilled. Her husband would then solemnize another marriage.

5. On 19.02.2017 when she was assaulted by her in-laws she confessed the inability of her family to satisfy their demands. In the morning her brother-in-law Rashid flung her to the ground and her husband's sisters Mahnaz and Shehnaz bound down her hands. Her husband poured the kerosene oil on her and set her on fire.

6. The FIR further states that the accused persons locked the door from outside and left the victim to burn. After sometime, in the certain belief that the deceased would have died and in order to create an alibi for themselves they rushed her to the hospital and informed the first informant. The first informant on reaching the district hospital dialed the emergency police number. Police

authorities reached the site in response to the call. The statement of the victim was taken down by the City Magistrate in the presence of the police personnel. After the recording of the statement the victim was referred to Bareilly. However due to paucity of funds proper medical aid could not be given to her and the condition of the victim deteriorated. The victim in that condition was again threatened by her husband that in case any action was taken, her whole family would be burnt to death. The first informant was informed by the victim about the aforesaid threat in presence of the police personnel.

7. Pursuant to the FIR police investigations were set on foot. A charge sheet was filed against the accused persons under Sections 498A and 304B I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, 1961 on 23.07.2017. Cognizance of the offences was taken by the learned trial court on 22.10.2019.

Charge:

8. Charges were framed against the accused persons on 18.11.2019 which read as under:

"आरोप

मैं राम बाबू शर्मा, सत्र न्यायाधीश, शाहजहाँपुर, आप-खालिद, राशिद, महनाज, शबनम तथा जायरा उर्फ सायरा बानो के विरूद्ध निम्नलिखित आरोप विरचित करती हूँः-

प्रथम- यह कि वादी श्रीमती शमा परवीन की पुत्री जुबिया की शादी खालिद के साथ चार वर्ष पूर्व होने के बाद से लेकर दिनांक 07-03-2017 को जुबिया की मृत्यु होने तक विभिन्न देनांकों व समय पर आप सभी ने अपने निवास स्थान मो० अलीजई, थाना सदर बाजार, जिला शाहजहाँपुर में जुबिया से दहेज की माँग की एवं उक्त मॉग पूरी न होने पर आप सभी के द्वारा उसके साथ मारपीट कर उसे शारीरिक व मानसिक रूप से परेशान किया गया। इस प्रकार आप लोगों द्वारा ऐसा अपराध कारित किया गया, जो कि भा०दं०सं० की धारा 498-ए के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उपरोक्त दिनांक, समय व स्थान पर आप सभी के द्वारा अपने सामान्य आशय के अग्रसर में जुबिया से दहेज की मॉग करने व उस मॉग के पूरी न होने पर उसे शारीरिक व मानसिक रूप से प्रताड़ित करके विवाह के चार वर्ष के अन्दर दिनांक 07-03-2017 को मिटटी का तेल डालकर आग लगाकर किसी समय अपने निवास उपरोक्त पर जुबिया की हत्या कारित कर दी गयी। इस प्रकार आप लोगों द्वारा ऐसा अपराध कारित किया गया, जो कि भा०दं०सं० की धारा 304-बी के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

विकल्प में

यह कि उपरोक्त दिनांक 07-03-2017 को समय अदम तहरीर स्थान अपने निवास उपरोक्त पर आप लोगों द्वारा सामान्य आशय के अग्रसर में वादी की पुत्री जुबिया की दहेज की मांग के कारण अथवा अन्यथा साशय हत्या कारित कर

दी गयी। इस प्रकार आप लोगों द्वारा ऐसा अपराध किया गया, जो कि भा०दं०सं० की धारा 302 **सपठित धारा** 34 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

तृतीय- यह कि वादी श्री श्रीमती शमा परवीन की पुत्री जुबिया की शादी खालिद के साथ चार वर्ष पूर्व होने के बाद से लेकर दिनांक 07-03-2017 को जुबिया की मृत्यु होने तक विभिन्न दिनांकों व समय पर आप सभी ने अपने निवास स्थान मो० अलीजई, थाना सदर बाजार, जिला शाहजहाँपुर में जुबिया से दहेज में एक लाख रूपये व मोटर साइकिल की माँग की। इस प्रकार आप लोगों द्वारा ऐसा अपराध कारित किया गया, जो कि धारा 3/4 **दहेज प्रतिषेध अधिनियम** के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा मैं आप लोगों को निर्देश देता हूँ कि न्यायालय द्वारा किया जायेगा। उक्त आरोपों में आपका परीक्षण इसी न्यायालय द्वारा किया जाएगा। "

9. The following accused persons were charged by the learned trial court on 18.11.2019:

(a) Mahnaz, sister-in-law and Jayara @ Shayara Bano, mother-in-law of the deceased who are the appellants in Criminal Appeal No.- 4273 of 2022.

(b) Shabnam, sister-in-law of the deceased who is the appellant in Criminal Appeal No.- 637 of 2022.

(c) Khalid, husband of the deceased who is the appellant in Criminal Appeal No.- 5089 of 2022.

(d) Rashid, brother-in-law of the deceased who is the appellant in Criminal Appeal No.- 10 of 2022.

10. The accused persons pleaded not guilty to the charges and the case went to trial.

Tabular form of evidences

11. Tabular charts depicting evidences adduced by prosecution during the trial are as under:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

Sr. No.	Witness No.	Witness Name	Nature of Witness
1.	PW-1	Shama Parveen	First Informant (Hostile)
2.	PW-2	Manzoor	Father of deceased (Hostile)
3.	PW-3	Shaanu	Sister of deceased (Hostile)
4.	PW-4	Yameen	Brother in law of deceased

5.	PW-5	Israr@Nanhe	Maternal Uncle of the deceased (Hostile)
6.	PW-6	Sanjay Kumar	Naib Tehsildar who recorded the dying declaration of the deceased.
7.	PW-7	Dr. Anurag Parashar	Doctor who evaluated the victim for her fitness to give dying declaration
8.	PW-8	Latesh Verma	Ist Investigating Officer
9.	PW-9	Avanishchar Chand Srivastav	IInd Investigating Officer-STF
10.	PW-10	Jabar Singh	Head Constable who narrated the Chik FIR
11.	PW-11	Dr Devendra Singh	Doctor who conducted the post-mortem
12.	. PW-12	Sumit Shukla	Circle Officer who arrested the accused Shabnam and Mahnaz

Documentary evidences:

Sr. No.	Documents	Proved by	Date	Exhibit No.
1.	Written Report	PW-1	20.02.2017	Exh Ka-1
2.	Panchayatnama of deceased	PW-2	07.03.2017	Exh Ka-2
3.	Dying Declaration	PW-6	19.02.2017	Exh Ka-3
4.	Site Plan made by PW-8	PW-8	02.03.2017	Exh Ka-4
5.	Site Plan made by PW-9	PW-9	11.04.2017	Exh Ka-5
6.	Carbon Copy of GD No. 21	PW-10	20.02.2017	Exh Ka-6
7.	Chik FIR	PW-10	20.02.2017	Exh Ka-7
8.	postmortem Report	PW-11	07.03.2017	Exh Ka-8
9.	Chargesheet	PW-12	23.07.2017	Exh Ka-9

FIR:

12. The FIR was got registered on 20.02.2017 at 13.10 hours as Case Crime No. 1060 of 2017 at P.S. Sadar Bazar District Shahjahanpur under Section 498-A, 307 I.P.C. and Section 3/4 D.P. Act. The tehrir tendered by the first informant before the police was proved by her and marked as Exh. Ka 1. On the basis of the tehrir which was received at the police station on 20.02.2017 at 13:10 hours Head constable Jabar Singh /P.W. 10 had dictated the chik to Constable 1484 Manish Kumar who reduced the same to writing. PW-10 proved the F.I.R which was marked as Exh. Ka 7. P.W. 10 also stated that he had made G.D. entry no.21 consequent to the lodgement of the FIR in his hand writing. P.W. 10 identified his handwriting and signatures on the carbon copy of G.D. entry no.21 in the trial court record and proved the same. Carbon Copy of the G.D. entry no.21 was marked as Exh. Ka 6.

Hospitalization of the victim at District Hospital, Shahjahanpur:

13. After the incident, the victim was rushed to the district hospital Shahjahanpur by her husband. This fact is recorded in the FIR and also stated in the deposition of P.W. 6 Sanjay Kumar, Naib Tehsildar. P.W. 1-Shama Parveen, P.W. 2-Manjoor, and P.W. 3-Shaanu testified that the deceased's husband and in-laws had rushed her to District Hospital, Shahjahanpur after she sustained burn injuries.

14. However, it is noteworthy, that no records pertaining to the hospitalization and treatment of the victim including her bed head ticket, medical sheet drawn up by the attending doctor have been produced by the prosecution. Absence of the bed head ticket was also admitted by P.W. 7/Dr. Anurag Parashar under cross-examination. The statement of the doctor who had attended to the victim and provided her medical aid and had drawn up the medical case sheet was also never recorded. The said doctor was not produced as the prosecution witness during the trial.

Hospitalization at the Civil Hospital Lucknow:

15. Later on the victim was shifted to the Civil Hospital, Lucknow where she died at 6:45 am on 07.03.2017. The documents or evidence referring the deceased to Civil Hospital, Hazratganj, Lucknow are not part of prosecution evidence. Medical case sheet or treatment details and statements of doctors treating the deceased at Civil Hospital, Lucknow have also not been adduced as evidence by the prosecution. The doctors who attended the victim at Civil Hospital Lucknow also did not enter the witness box as prosecution witnesses.

Inquest Report:

16. Information regarding death of the deceased was sent by ward boy, Jaggu working at Civil Hospital, Lucknow at 7:30 am on 07.03.2017 to the police station. Recitals in the inquest report disclose that ward boy-Jaggu had also informed the police authorities that the victim was under treatment for burn injuries at the Civil Hospital, Hazratganj, Lucknow. The inquest proceedings commenced on 07.03.2017 at 13:05 hours and concluded at 13:45 hours. The inquest was conducted by V.P. Verma, Additional City Magistrate-V, Lucknow at Civil Hospital, Hazratganj, Lucknow. The inquest report was proved by Manjoor father of the deceased and a witness to inquest report. The inquest report was then marked as Exh. Ka 2.

17. Witnesses to inquest report include P.W. 2-Manjoor, the father of the deceased, P.W. 3-Shaanu, brother of the deceased, P.W. 4-Yameen, brother-in-law of the deceased and P.W. 5-Israr @ Nanhe, maternal uncle of the deceased.

18. P.W. 5 in his deposition before the trial court has baldly stated that he had signed some documents at the time of inquest proceedings. The opinion of the Panchas in the inquest report have not been proved by the prosecution.

Site Plan

19. S.I. Latesh Verma/ I.O./P.W.8 has stated that he has drawn up the site plan which was then proved by him and marked as Exh. Ka-4

20. P.W.8 does not disclose at whose pointing out the site plan was drawn up. The second site plan was drawn up by S.I. Abhinash Chandra Srivastava/P.W.9. also proved the site plan which was marked as Exh. Ka-5. P.W. 9 also did not state the name of the person at whose pointing out the site plan was drawn up. Both documents do not add value to the prosecution case and no reliance can be placed on them.

Postmortem Report:

21. The inquest report records that documentations like letter to C.M.O, Challan Nash, Photo Nash, Sample Seal, death memo were finalized and the body was stitched wrapped, sealed and made over to Constable 2521 C.P. Ram Kishore Singh Chandel and M.H.G No. 1811 Suman Lata and H.G. No. 1174 Nirupam Mishra. The latter police personnel took the body to the hospital for postmortem.

22. The postmortem proceedings commenced on 07.03.2017 at 03:45 PM and concluded on 07.03.2017 at 04:10 PM. The postmortem was conducted by Dr. Devendra Singh and Dr. G.P. Gupta. The postmortem report and its contents were proved by Dr. Devendra Singh/P.W.11. The postmortem report was then marked as Ex. Ka-8. The relevant extracts of the postmortem report depicting the antemortem injuries, cause of death and time of death are extracted hereinunder:-

"Ante mortem Injuries:

Superficial to deep septic burn on all over the body except top of the head, whole of the back. Both buttock and back of both lower limb, both feet and sole. Pus slough, debris present in the wound

On opening and section cutting of both lungs, liver, spleen and both kidney multiple pus foci seen.

Cause of Death: Septicimia due Ante mortem burn injury as noted

Time of death : 6:45 am on 07.03.2017"

First Dying Declaration:

23. The first statement of the victim (later treated as the dying declaration) was recorded on 19.02.2017 at 12:20 PM by the P.W. 6/Sanjay Kumar who was posted as Naib Tehsildar, Sadar, District Shahjahanpur at the relevant time. P.W. 6 stated that he was nominated to record the statement of the deceased. P.W. 6 then testified that he recorded the victim's statement made before him at District Hospital, Shahjahanpur on 19.02.2017. P.W. 6 proved the dying declaration and its contents. The document was marked as Exh. Ka 3.

24. Dr. Anurag Parashar who had endorsed his medical opinion on the dying declaration regarding the fitness of the victim/later deceased to give a statement deposed as P.W.-7. P.W.-7 testified that the victim had burn injuries when she was brought to the District Hospital. After he had conducted a full mental and medical examination of the victim, he found her to be in a fit condition to give her statement. She was fully conscious when her statement was recorded. P.W. 6 identified the medical certificates given by him in the records of the trial court.

25. P.W. 7 has identified his signatures on the two certificates of fitness recorded by him in the dying declaration. The aforesaid two certificates at the beginning and at the conclusion of the dying declaration were proved by PW 7 which was marked as Exh. Ka 3.

Second Dying Declaration:

26. P.W. 8-S.I. Latesh Verma/I.O. had deposed that he had recorded that statement of the victim (later deceased) on 04.03.2017. The said statement of the victim (later deceased) was in fact the second dying declaration but was never produced before the trial court by the prosecution.

Oral Testimonies:-

27. The prosecution witnesses namely Shama Parveen mother of the deceased/informant/PW-1, Manjoor father of the deceased/PW-2, Shaanu brother of the deceased/PW-3 have repudiated the prosecution case in their testimonies before the trial court. The aforesaid witnesses were declared hostile at the instance of the prosecution. PW-4, Yameen, who is brother in law of the deceased refuted the prosecution case in his testimony while under cross-examination.

Submissions from the Bar:

Arguments on behalf of appellants:

28. Shri I.K. Chaturvedi, learned Senior Counsel and Amicus Curiae assisted by Shri Ali Jamal Khan, learned counsel for the appellants and Amicus Curiae made the following submissions:

I. All material prosecution witnesses have repudiated the prosecution case. The witnesses of fact have thus not supported the prosecution case during the trial.

II. The dying declaration is unreliable.

III. The prosecution deliberately suppressed the second dying declaration made by the deceased before the Investigating Officer. An adverse inference is liable to be drawn against the prosecution for suppressing the material evidence since it would have been adverse to the prosecution.

IV. The prosecution has failed to prove its case beyond reasonable doubt.

V. The prosecution does not disclose commission of any offence under the alternative charge under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act.

Arguments on behalf of State:

29. Shri Rishi Chaddha, learned AGA have vehemently opposed the submissions of learned Senior Counsel and has made following submissions:

I. The dying declaration is reliable and can be the sole basis of the convicting the appellants.

II. The second dying declaration was not produced since the first one was of impeccable credibility.

III. The dying declaration is relevant and was duly proved by the prosecution.

IV. The prosecution has proved its case beyond reasonable doubt.

V. Even if the appellants are found to be innocent of the charges under Section 302 IPC, they can still be convicted under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act. The evidence in the record is sufficient to bring home the charges under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act.

Appraisal of Evidence:

30. All material witnesses of fact have repudiated the prosecution case against the appellants. Hence the said witnesses do not lend any support to the prosecution case. The only piece of incriminating evidence is the dying declaration of the deceased recorded on 19.02.2017 at 12:20 P.M. by PW-6/Sanjay Kumar/Nayab Tehsildar. The prosecution case turns entirely on the credibility of the dying declaration.

Dying Declaration:

31. The contents of the dying declaration are as under:

"मृत्यु पूर्व बयान

श्रीमती जूबिया डब्लू ओ खालिद, उम्र 22 वर्ष, निवासी -अलीजई, पीएस - सदर बाजार, जिला शाहजहांपुर।

प्रश्नः- कैसे जली?

उत्तर- मेरे ससुराल वाले जिनमें मेरा पति खालिद, उनके भाई राशिद, मेरी सास, सायरा, मेरी ननद शबनम व मयनाज ने मिलकर मिट्टी के तेल डालकर आग लगा दी।

प्रश्न- कौन बचाया?

उत्तर- किसी ने नही बचाया।

प्रश्न- अस्पताल में कौन भर्ती कराया?

उत्तर- मुझे पता नही।

प्रश्न- तुम्हे यह लोग क्यों जलाये? व परेशान करते थे?

उत्तर- क्यों जलाया यह पता नही। लेकिन यह लोग परेशान करते थे।

प्रश्न- इस घटना का कौन जिम्मेदार है?

उत्तर- इस घटना का मेरे पति खालिद, उनका भाई राशिद, मेरी सास सायरा, मेरी ननद शबनम व दूसरी ननद मयनाज ने मिलकर जलाया। इसीलिए यह लोग जिम्मेदार है।

बयान बिना जोर दबाव के स्वीकार किया।"

32. The dying declaration is predicated by an endorsement made by Dr. Anurag Parashar/PW-7 that the deceased Jubia aged about 22 years was in a fit condition to give her statements. In her dying declaration the deceased stated that her in-laws including her husband Khalid, her brother-in-law Rashid, her mother-in-law Saayra, her sister-in-laws Shabnam and Mahnaz had poured kerosene oil on her and set her on fire. No one attempted to save her. She did not remember who brought her to the hospital. She did not know why she was set on fire, however she later added that the accused persons used to harass her. According to the victim's dying declaration all accused persons had set her on fire and they were responsible for the act. She did not give the statement under threat or coercion.

33. Dying declarations have been accorded acceptability by statute and judicial pronouncements alike. The consistent jurisprudential rationale for accepting dying declarations is that a declaration is made at the point of imminent death and the expectation of impending death inspires a person to speak only the truth. The solemnity of the occasion on death bed provides the assurance of veracity of the statement thus precludes possibilities of falsity.

34. A Constitution Bench of the Supreme Court in **Laxman vs. State of Maharashtra** while reiterating the aforesaid time honoured principles for accepting dying declarations also emphasized the cautions to be exercised by Courts while appraising a dying declaration for its veracity and set forth the following proposition of law:

"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate

absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

35. More recently, **Laxman (supra)** was cited with approval by the Supreme Court in **Irfan @ Naka vs. State of Uttar Pradesh** .

36. The broad acceptance of dying declarations are thus caveated by strong cautions that are to be observed while determining the truth of such statements. Expectation of imminent death and extinguishment of hopes to survive induced by the grievous nature of injuries or parlous medical condition of the person are the prerequisites of bringing the statement of such person within the fold of a dying declaration. Imaginary fears of death which do not have any medical basis cannot be invoked to qualify a statement as a dying declaration.

37. There are some inherent limitations of dying declarations. The facts that the author of the dying declaration is never subjected to cross-examination is an aspect which cannot be neglected while appraising such a statement.

38. The proposition that solemnity of the near death experience is most conducive to telling the truth is a judicial principle which is tempered by judicial experience. The serenity of human mind facing fast approaching end of human life is not an iron clad guarantor of truth. While anticipating death moments of serenity can also be times of turmoil. Petty emotions of vindictiveness, imaginary fears, faults of subjectivity may make insistent demands on vulnerable minds and lead to falsehoods. A searching scrutiny of evidences in the records has to be made before finding on the reliability of the dying declaration is made.

39. The question now arises as to whether the aforesaid dying declaration in the facts and circumstances of this case can be the sole basis for convicting the accused persons.

40. Determination of credibility of the dying declaration has to be predicated by an examination of the medical condition of the deceased. More specifically it has to be established whether the deceased was in expectation of imminent death when she gave her statement. The prosecution has not produced any evidences documentary regarding hospitalization of the deceased including the bedhead ticket after she was rushed to the hospital on sustaining burn injuries. Medical case sheet of the deceased depicting the line of treatment has not been tendered in prosecution evidence. The doctors who had administered the medical aid too were not produced as witnesses. It is noteworthy that even the postmortem report does not depict the percentage of burn injuries. In such a situation the actual medical condition of the deceased remains vague.

41. From the available evidence, no accurate finding can be recorded regarding the medical condition of the victim prior to her death. In absence of evidence pertaining to the gravity of the victim's medical condition this Court is unable to find whether the injuries were fatal enough to foreclose possibilities of survival and grave enough to induce the expectation of imminent death. The conditions precedent for treating statement of the deceased as a dying declaration have not been established by the prosecution.

42. Moreover, in the dying declaration the deceased implicated her husband and all members of his family by making broad and sweeping allegations. The failure to provide relevant details and assign particular roles to accused persons dents the credibility of the dying declaration. It appears that the intent of the dying declaration is more to wreak vengeance on the husband and his family than to state the truth. The generalized description of the incident given in the dying declaration makes it unsafe for the Court to rely on the same to convict the appellants.

43. The victim's denial in the dying declaration about knowledge of the person who brought her to the hospital lacks credibility. The incident occurred in the morning of 19.02.2017. The victim's family including her mother spoke to the victim before lodgement of the FIR and recording of the dying declaration. The FIR clearly discloses that the victim was brought to the hospital by her husband and his family members. The victim's version as given to her mother is depicted in the FIR. The victim's mother/PW-1 and other members of her family including PW-2, PW-3 have consistently testified before the trial court that the victim's husband and his family has brought her to the hospital. P.W. 7-Dr. Anurag Parashar had testified that the victim (later deceased) was fully conscious and alert while giving the statement. In these circumstances it cannot be believed that the victim was unaware that her husband brought her to the hospital.

44. The victim in the dying declaration initially states that she was not aware of the motive of accused persons to commit the offence. The statement was later qualified to same the failing prosecution case, when the victim added that she was harassed by all the accused. The motive ascribed in the dying declaration is weak, vague and an afterthought. The said motive depicted in the dying declaration is not sufficiently strong to commit a heinous crime and is not worthy of any credence.

45. Prosecution case set out in the F.I.R. itself contradicts the dying declaration inasmuch as the two accused persons namely mother in law Shayara and sister in law Shabnam who are not named in the F.I.R. were introduced by the deceased in her dying declaration. The contradiction gains importance in view of the fact that the first informant had spoken to the deceased prior to lodgement of FIR. The mother in law has been assigned the role of pouring kerosene in the dying declaration. The first informant could not have missed the fact of such importance while lodging the F.I.R. The mother-in-law was evidently nominated as an afterthought.

46. The presence of P.W. 7 at the time of recording of the dying declaration is inconsistent with the testimony of P.W. 6. P.W. 6 under cross-examination testified that he had asked all the people to leave the room at the time he was recording the dying declaration. Hence presence of P.W. 7 at the time of recording of the dying declaration and his testimony that the victim was awake and conscious at the time of her statement become doubtful.

47. Another fault line in the prosecution case is that the second dying declaration of the deceased was recorded on 04.03.2017 by the Investigating Officer/P.W.8. The prosecution has however chose to suppress

the aforesaid dying declaration and has not produced the same as evidence before the trial court. No cogent reason has been given by the prosecution regarding the failure to produce the said statement. The aforesaid dying declaration was a material piece of evidence and prosecution cannot escape the consequences of suppressing the same.

48. In the wake of the preceding discussions, the pre-conditions for drawing an adverse inference against the prosecution as contemplated under Section 114(g) of the Indian Evidence Act are fully satisfied. This Court hence draws an adverse inference against the prosecution by holding that in the event such dying declaration would have been adverse to the case of the prosecution.

49. Furthermore, the contents of the dying declaration that the harassment by the in laws are clearly contradicted by the testimonies of P.W.1, P.W.2, P.W.3 and P.W.5 i.e. all material prosecution witnesses of fact. The critical and incriminating aspects of the dying declaration are completely negated by the testimonies of P.W.1, P.W.2, P.W.3 and P.W.5 as regards the harassment of the deceased by her in laws.

50. It is equally noteworthy that the P.W.1, P.W.2, P.W.3 and P.W.5 have also testified that the deceased was a person of extreme temperamental behavior and was prone to suicidal tendencies. The veracity of the dying declaration is also required to be seen in the context of the testimonies of the aforesaid material witnesses of fact. Apart from the burns or injuries from forceful assault or resistance no other ante-mortem injuries are depicted in the postmortem report. A composite reading of the aforesaid evidences negatives the prosecution case which hinges only the dying declaration.

51. The testimonies of PW 1, PW 2, PW 3 and PW 5 do not rule out the possibility of the deceased committing suicide or the death being caused in an accident resulting from aggravated behaviour of the deceased.

52. The first informant/PW-1 in the FIR has admitted that the deceased's condition deteriorated due to lack of sources and inability to access quality medical care. The possibility of the death due to septicemia from ante-mortem burns being caused by medical negligence or inadequate medical care cannot be ruled out. In fact the percentage of burn injuries is not recorded in the postmortem report.

53. In the wake of the preceding discussion it cannot be ruled out that the victim had nominated all the accused persons out of vindictiveness arising from matrimonial differences. The dying declaration has been repeatedly impeached by inherent contradictions, vague generalizations, testimonies of material prosecution witnesses. The other attending facts and circumstances of the case which are exculpatory in nature further impair the credit of the dying declaration discussed in the preceding part of the narrative. In such circumstances the dying declaration lacks reliability and is completely disbelieved. They dying declaration is the sole pivot of the prosecution case. After the dying declaration is discarded, the prosecution case has no legs to stand on.

54. Last but not the least the conduct of the appellants is of utmost importance in the facts of this case. It is admitted in the F.I.R. as well as the testimonies of all prosecution witness that the deceased was rushed to the hospital by her husband-Khalid and his family members for urgent medical treatment. The husband of the deceased also informed the in-laws about the incident with promptitude. Conduct of the husband of the deceased-Khalid as well his family members appears to be bonafide.

55. In the wake of the preceding discussion this court finds that the dying declaration of the deceased is unreliable. Further, in light of other attending facts and evidences which are exculpatory in nature the dying declaration is liable to be discarded.

Judgement of trial court

56. The learned trial court erred in law by relying on the said dying declaration (which has been found to be unreliable) to enter a verdict of conviction under Section 302/149 IPC against the appellants.

57. The judgment rendered by the learned trial court is perverse and contrary to the evidences in the record. The impugned order dated 06.09.2021 in Sessions Trial No. 419 of 2019 (State Vs. Khalid and others) is liable to be set aside and is set aside.

Alternative Charges:

58. Allegations of dowry demand and harassment due to failure to make good the demand could not be established by the prosecution. All prosecution witnesses refuted the case of dowry demands set out in the F.I.R. Furthermore, the deceased in her dying declaration too did not assert that any dowry demand was made upon her and that she was tortured for the same.

59. Demands of dowry and harassment of deceased for dowry by accused at a time immediately preceding her death have not been proved by the prosecution. There is complete absence of prosecution evidence to establish the said foundational facts to draw the presumption of a dowry death under Section 304-B, 498-A IPC read with Section $^{3/4}$ of Dowry Prohibition Act. The evidence in the record does not support the prosecution case under Section 304B IPC and the charge under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act is liable to fail.

Conclusions:

60. This Court finds that the prosecution has failed to prove the charges under Sections 302/34 and 304 IPC beyond reasonable doubt. The accused/appellants are acquitted of the charges which were laid against them before the trial court and which are the subject matter of this appeal.

61. The accused persons namely Mahnaz and Jayara @ Shayara Bano, Rashid, Khalid and Shabnam are honourably acquitted.

62. Bail bonds and sureties of the appellants are discharged.

63. All the Criminal Appeals are **allowed**.

64. A copy of this judgment translated in Hindi to be served upon the appellants by the Secretary, District Legal Services Authority.

(2026) 7 ILRA 611
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Criminal Appeal No. 1768 of 2016

Dinesh Kumar & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether, once the foundational facts under Section 304-B IPC were proved, the presumption under Section 113-B of the Indian Evidence Act arose and whether the sentence of life imprisonment warranted interference?

Headnotes

Indian Penal Code, 1860-Ss. 304-B and 498-A-Indian Evidence Act, 1872-Ss. 8, 106, 108 and 113-B-Dowry death-Conviction-Deceased wife found dead in matrimonial home within seven years of marriage-Evidence regarding persistent demand of dowry and physical and mental harassment and cruelty-demand within 10 days of death well construed as "soon before her death"-foundational facts proved-presumption in law arises and burden to prove otherwise lies entirely on defence-Appellants failed to furnish plausible explanation as to circumstances in which deceased met with unnatural death-testimony of hostile witness not washed off the records - remains admissible to the extent it supports prosecution version-general and omnibus allegations and absence of specific role not fatal where statutory requirements and presumption under S. 113-B are satisfied-conviction -life imprisonment-no automatic award of life imprisonment after conviction-courts could award sentence in exercise of discretion between seven years to life imprisonment depending on facts of each case-Extreme punishment of life term should be awarded in "rare cases" -Trial Court assigning no plausible reason for maximum punishment-no prior criminal history- probability of reformation-life imprisonment reduced to period already undergone- sentences under S. 498-A IPC and S. 4 Dowry Prohibition Act and fines unaltered.

Appeals partly allowed. (E-9)

Case Law Cited

1. In Re: Enforcement and Implementation of Dowry Prohibition Act, 1961, (2005) 4 SCC 565
2. Kashmir Kaur v. State of Punjab, (2012) 13 SCC 627
3. V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 588
4. Hem Chand v. State of Haryana, (1994) 6 SCC 727
5. State of Karnataka v. M.V. Manjunathegowda, (2003) 2 SCC 188
6. G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152
7. Paulmeli v. State of T.N., (2014) 13 SCC 90
8. Ramesh Harijan v. State of U.P., (2012) 5 SCC 777
9. Bhajju v. State of M.P., (2012) 4 SCC 327
10. Hari Om v. State of Haryana, (2014) 10 SCC 577
11. Navas v. State of Kerala, (2024) 14 SCC 82

List of Acts

1. Indian Penal Code, 1860

2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872
4. Dowry Prohibition Act, 1961
5. Constitution of India
6. Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Dowry death; "Soon before her death"; Unnatural death; Matrimonial home; Hostile witness; Life imprisonment; Rare cases; Long incarceration; Probability of reformation.

Appearances of parties

Counsel for Appellants: Deepshikha Singh, Dhananjay Kumar Singh, Ghulam Mohammad Kamil, Kunwer Dhananjay Singh, Piyush Kumar Singh, Vyas Narayan Shukla.
Counsel for Respondent: Government Advocate; S.P. Singh, learned Additional Government Advocate.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Criminal Appeals arises out of a Dowry Death. The two Appeals have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') by the Appellants in the following manner:

Criminal Appeal No. 1768 of 2016	Has been filed by • Dinesh Kumar (Husband of the deceased) • Sheshraj (Brother-in-law/ Devar) • Nan Babu (Brother-in-law/ Devar)
Criminal Appeal No. 1773 of 2016	Has been filed by • Smt. Bitta Devi (Mother-in-law) • Bade Lal Kori (Father-in-law)

2. Both these Appeals arises out of a common judgment of conviction and order of sentence dated 19.10.2016, passed by the learned Additional Sessions Judge (F.T.C.), Shravasti in Sessions Trial No. 137 of 2011 (*State Vs. Dinesh Kumar and 4 others), arising out of Case Crime No. 665 of 2011*, relating to Police Station - Gilaula, District - Shravasti, wherein all these Appellants have been convicted and sentenced for offence (i) under Section 304 B I.P.C. for life imprisonment, along with fine of Rs. 5,000/-, and in default of payment of a fine to undergo an additional imprisonment for 5 months; (ii) under Section 498-A I.P.C. for two years' imprisonment, along with fine of Rs. 1,000/-, and in default of payment of fine, to undergo an additional a month's imprisonment; and (iii) under Section 4 of the Dowry Prohibition Act for six months' imprisonment, along with fine of Rs. 500/- and in default of payment of the fine, to undergo an additional a month's imprisonment.

3. Notably, all these appellants have been acquitted under Sections 147, 148, 302 I.P.C. read with Section 149 I.P.C.

4. The case of the prosecution, as delineated by the learned Trial Court in the impugned judgment, is briefly enumerated in the succeeding paragraphs.

5. Vijay Karan (P.W.-1) is the informant, who has made a complaint that his sister, Meena Devi, aged about 25 years, was married according to Hindu customs, since the last about six years to the Appellant-Dinesh Kumar, son of Bade Lal, village- Barova Bhadauli, police station Gilaula, District Shravasti.

6. His sister's father-in-law, Bade Lal, Husband-Dinesh Kumar, brother-in-law's Sheshraj and Nanbabu, and mother-in-law, Bitta Devi, kept demanding a motorbike and one lakh rupees in cash as dowry. According to the complainant the dowry was given as per their status of Rs. 2,26,000/- in cash and other items during the marriage. According to him, these people while demanding a motorcycle and one lakh rupees in cash, tortured his sister physically and mentally in various ways. His sister was beaten up several times, about which his sister told him, as well as to his father and brother, on several occasions. Due to non-fulfillment of demand of the said dowry, his sister Meena was beaten every off and on.

7. On 11-08-2011, at around 7 pm, all the aforesaid five persons together killed his sister (Meena Devi) and her daughter about 13 months old, by slitting their neck and throat with a sharp-edged weapon.

8. On the basis of the written complaint, a Chik F.I.R., as *Exhibit Ka-1*, was registered against the five accused/ appellants on 12-6-2011 at 00-30 hrs in Police Station- Gilaula under Section 498-A, 304B, 302 I.P.C. and 3/4 Dowry Prohibition Act. The copy of the said written complaint is the First Information Report, as *Exhibit-Ka-22*.

9. The case was investigated by Circle Officer, ASP Swaminath. The Naib Tehsildar prepared the *Panchayatnama* of the complainant's sister Meena Devi and her daughter (Soni), as *Exhibit-Ka-2* and *Exhibit-Ka-3* respectively. The Investigating Officer recorded the statement of various witnesses under Section 161 of the Cr.P.C. and also prepared the map of the place of the incident as *Exhibit-Ka-20*; Fard recovery report of the place of murder as Exhibit-Ka-4; recovery of blood-stained soil as *Exhibit-Ka-5* and *Exhibit-Ka-6*. Police seized the broken glass bangles as Exhibit-Ka-7. Sample Seal as Exhibit-Ka-8. Photo lash as *Exhibit-Ka-9* and *Exhibit-Ka-10*; sample seal as *Exhibit-Ka-11*; letter sent by Naib Tehsildar to Inspector of Records as *Exhibit-Ka-12*; and letter sent to Medical Officer in Charge as *Exhibit-Ka-13* and *Exhibit-Ka-14*; Police Form No. 13 as *Exhibit-Ka-15*; letter sent by Naib Tehsildar to Inspector of records as *Exhibit-Ka-16* and *Exhibit-Ka-17*. Postmortem report as *Exhibit-Ka-18* and *Exhibit-Ka-19*; and copy G.D. as *Exhibit-Ka-23* were prepared and received. After investigation, charge sheet Exhibit as *Exhibit-Ka-21* was presented against all the accused in the Court.

PROCEEDINGS BEFORE THE TRIAL COURT

10. After the completion of investigation, charge-sheet was filed against all the Appellants and committed to the Sessions Court for Trial. On being committed to the Sessions Court charges were framed against the accused under Sections 498A, 304B of the Indian Penal Code and 3/4 of the Dowry Prohibition Act and, alternatively, charges were framed under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code. The charges were read out and explained to the accused, to which they pleaded not guilty and accordingly the Trial commenced.

11. In order to substantiate its case, the prosecution examined the following witnesses, the details whereof are as under:

P.W.-1	**Vijay Karan**	*Complainant/ brother of the deceased- Meena*
P.W.-2	**Saroj Devi**	*The relationship between the P.W.-2 and the deceased is 'Bhabhi' and 'Nanad'.*
P.W.-3	**Ram Milan**	*Mediator of marriage between the Appellant and her deceased wife. Father-in-law of Kishore (brother of the complainant-Vijay Karan)*
P.W.-4	**Suresh Singh**	*Witness of the recovery of crime weapon, who was subsequently declared hostile by the prosecution.*
P.W.-5	**Smt. Lakhna Devi**	*Mother of the deceased- Meena/ Mother-in-law of the Appellant.*
P.W.-6	**Sudama Verma**	*Naib Tehsildar, Prosecution witnesses, who proved the Inquest report.*
P.W.-7	**Dr. Sarvesh Kumar Shukla**	*The doctor, who conducted the postmortem and prepared the report. Exhibit-Ka-4 and Exhibit-Ka-29.*
P.W.-8	**Swaminathan**	*The Additional Superintendent of Police/Circle Officer, who is Investigating Officer of the present case.*
P.W.-9	**Constable 140 - Hazari Prasad Bhaskar**	*The constable who has proved Chik First Information Report Exhibit-Ka-22 and copy GD Exhibit-Ka-23*

12. Apart from the oral testimonies tendered by the prosecution witnesses, a series of documentary exhibits, were duly marked and proved as *Exhibit Ka-1* to *Exhibit Ka-23*, which have been placed on record to substantiate the case of the prosecution.

13. ***Prosecution witness/P.W.-1, Vijay Karan*** deposed that his sister Meena was married to Dinesh Kumar, son of Bade Lal, resident of Barauwa Bhadauli, Gilaula police station, Shravasti, six years prior to the incident, according to Hindu customs. The marriage was performed as per the satisfaction of the groom side and they gave a dowry for an amount of ₹2,26,000/- in cash and other household goods at her sister's wedding, as per their family status. Within a year of the wedding, he performed his sister's *Gauna* ceremony. After his sister's *Gauna* ceremony, her husband Dinesh Kumar, her father-in-law Bade Lal, her brother-in-law's Sheshraj and Nanbabu and her mother-in-law-Bitta Devi were unhappy with the dowry given. They further demanded a motorcycle and ₹1,00,000/- in cash. However, when his family was unable to meet the dowry demand of in-laws of his sister, they subjected her to physical and mental harassment. Whenever his sister visited her parental home, she informed him about the demand of motorcycle and ₹1,00,000/- in cash. Whenever he visited his sister at her matrimonial home, she would inform him of the dowry demands from the Appellants.

Meanwhile, his sister gave birth to a baby girl (Soni). During this period, his sister again told his wife (P.W.-2) over the phone that her in-laws were harassing for dowry and that they would one day kill her and her daughter for the sake of dowry. P.W-1 also deposed that his wife over the phone explained his sister (deceased -Meena) that Nand Kishore, their younger brother was ill and was undergoing treatment in Lucknow and as such persuaded and reasoned Meena to somehow manage during this period. The said information was given to P.W-1 over phone as he was at Lucknow at that point of time for the treatment of his younger brother. Subsequently, when he visited his sister's matrimonial home at Barauwa Bhadauli, on meeting his sister, she started crying and complaining that her in-law's would kill her for dowry someday. P.W-1 has deposed further that she thereafter persuaded and explained her Husband -Dinesh Kumar and his family that his brother was unwell presently and that after his recovery, he would fulfill their dowry demands. The witness further deposed that his sister has visited her parental home 5-10 days before the incident

and has again cried and told him that her in-laws were harassing her for dowry and has threatened to kill her and her daughter, and her husband - Dinesh would marry another woman. P.W-1 deposed further that on that visit, he had counselled his sister and Dinesh and somehow persuaded Dinesh Kumar and sent his sister along with Dinesh Kumar on that day.

14. The said P.W-1 further deposed that on 13.6.2011, at around 8-9 PM, he received a call from someone in Barauwa village stating that his sister and niece had been murdered with sharp weapons by Dinesh Kumar, Bade Lal Kori, Sheshraj, Nanbabu, and Mrs. Bitta Devi at around 7 pm. On receiving this information, he and his entire family went to his sister's in-laws' house in Barauwa Bhadauli by tractor trolley at 8-9 pm and found the bodies of his sister and her daughter lying in a pool of blood near the dehri/ dahleej/threshold of the thatched house. His sister's throat was slit and there were two injuries on her body and the niece's throat and temple were slit. Her sister's bangles were lying broken nearby and her hair was cut. The police had arrived and many people have gathered and the men of the house were hiding somewhere in the village. P.W.-1 proved the complaint as *Exhibit-Ka-1* and the *Panchayatnama as Exhibit-Ka-2* and *Exhibit-Ka-3*. He is a witness of the Inquest/*Panchayatnama* report prepared by Tehsildar.

15. The said witness in his cross-examination deposed that he had two siblings one brothers and one sister- deceased Meena. His brother- Nand Kishore has also died. He also deposed that on hearing the death of his sister and niece, he along with his mother, father, brother and other 20-30 people of his village had gone to the matrimonial village of his sister. He reached his sister′s matrimonial village after 2 hours of the information and found that there were 40-50 people at the crime-site. He admits that he accompanied the dead bodies for post mortem. He also deposed that there was a quarrel between his family and the in-law of his sister on the very day of marriage for dowry and it was only when Rs. 2,26,000/- was paid that a settlement was arrived. He says that thereafter his sister and his brother-in-law has been visiting his house of and on. He also reiterates that he had visited his sister′s matrimonial home some 8-9 days prior to the unfortunate incident. The witness remained unpreached in his cross-examination and nothing useful was elicited from him during his cross-examination, which could be in favour of the Appellant.

16. ***Prosecution Witness No. 2/P.W.-2, Smt. Saroj Devi***, deposed that the deceased Meena was her sister-in-law (Nanad) and had been married to accused Dinesh, son of Bade Lal, resident of Village Barauwa Bhadauli, Police Station Gilaula, approximately six years prior to the occurrence. She stated that she had attended the marriage and that, at the time of the wedding, the bride's family had provided household articles, clothes, jewellery, furniture and other customary gifts, besides an amount of ₹2,26,000/- in cash towards dowry. P.W.-2 further stated that within one year of the marriage, the customary *Gauna* ceremony was performed and thereafter, Meena started residing at her matrimonial home. Whenever Meena visited her parental home, she informed that her husband Dinesh, father-in-law Bade Lal, mother-in-law Bitta Devi and brothers-in-law Nanbabu and Sheshraj were persistently demanding an additional dowry consisting of ₹1,00,000/- and a motorcycle. According to the witness, the family members advised Meena to maintain peace and, whenever her in-laws came to take her back, they counselled them not to harass or torture her and thereafter sent Meena along-with them.

17. P.W.-2 further deposed that Meena had given birth to a female child, namely Soni, who was about fifteen months old at the time of the incident. According to the witness, Meena frequently telephoned her while weeping and complained that her in-laws continued to press for the demand of ₹1,00,000/- and a motorcycle and subjected her to cruelty on account of non-fulfillment of the said demand. At the relevant time, the witness's brother-in-law was undergoing treatment at Lucknow and the family members were preoccupied with his medical care. Consequently, whenever Meena complained over the telephone, she was advised to somehow tolerate the harassment for the time being, and the witness informed her husband so that he could visit Meena after returning from Lucknow.

18. P.W.-2 further deposed that about eight to ten days prior to the occurrence of the incident, Meena telephoned her in a distressed condition and informed her that the accused persons were threatening that if the demand for ₹1,00,000/- and a motorcycle was not fulfilled, both she and her daughter would be killed. According to the witness, on the date of occurrence, at about 8.00-9.00 P.M., she received a telephone call from the matrimonial home of Meena, although she could not identify the caller. She was informed that accused Dinesh, Bade Lal, Sheshraj, Nanbabu and Bitta Devi had murdered Meena and her daughter Soni by slitting their throats. Upon receiving the said information, she along with other family members immediately proceeded to the matrimonial home of the deceased, where they found the dead bodies of Meena and her minor daughter lying in a grievously mutilated condition.

In her cross-examination, she withstood her deposition relating to the marriage of the deceased with the Appellant-Husband to have performed six years ago on her own accord. She admits that her husband has a Mobile and she gave a call to him on that Mobile phone. She clarified that deceased Meena called her on the phone of a co-villager named Keshav., who came and told that Meena was being harassed in her matrimonial home. After talking to Meena from the mobile of Keshav, she had also informed P.W.-1, her husband stationed at Lucknow about the harassment of Meena from the Mobile of Keshav. She also clarified that the dowry of Rs. 2,26,000/- was paid after making arrangement of the same from different people. The said amount was collected after selling domestic animals and raising a loan from some people; however, she was not able to name these people. She also deposed that her husband was a farmer and did not know his income. She also has admitted that some time an amount of Rs. 50,000/- is given to her for keeping safely by her husband and sometimes no money comes from him. She remained uncontroverted relating to her going to the deceased′s matrimonial home after hearing of her death, or not having visited the crime scene.

19. ***Prosecution Witness No. 3/P.W.-3, Rammilan***, deposed that his niece was married to Kishore, the real brother of VijayKaran (P.W.-1), and the sister of Kishore had been married to Dinesh. He stated that he had arranged the marriage of Meena with accused Dinesh and was present at the marriage ceremony solemnized about six years before the incident. According to him, he was fully aware of the dowry articles and cash of ₹2,26,000/- given by Chhotey Lal at the time of marriage. The P.W.-3 further deposed that Meena's Gauna was performed within one year of the marriage. Thereafter, her in-laws began demanding an additional dowry of ₹1,00,000/- and a motorcycle and subjected her to harassment on account of non-fulfilment of the said demand. Meena used to complain that quarrels frequently took place in her matrimonial home over the said

demand. The witness stated that the family members attempted to pacify Meena by informing her that her brother was undergoing treatment at Lucknow and, after his recovery, they would make efforts to arrange the demanded amount.

20. P.W.-3 further stated that Meena had an infant daughter, aged about one year at the time of occurrence. According to him, on the date of occurrence at about 8.00 P.M., while he was present at his brother-in-law's house, some villagers informed him that Bade Lal and his sons, namely Dinesh, Sheshraj and Nanbabu, had murdered Meena and her daughter. Upon receiving the information, he immediately went to the house of Bade Lal, where he found the dead bodies of Meena and her daughter lying inside the house. Thereafter, he telephonically informed Meena's brother, Vijay Karan, regarding the incident and requested him to reach the spot immediately.

In his cross-examination, the witness clarified that after visiting Bade Lal′s house, where he saw the dead body of deceased Meena and her 15 months old Baby, he had called Vijay Karan from his own Mobile on the said fateful night. However, he did not go to Bade Lal′s house after informing Vijay Karan about the said incident on the said night. He deposed that on the morning about 8 AM he went for some work of his co-villager- Jay Chand Singh and did no visit the crime-scene. He deposed that there were several villagers present on the crime-spot, but he was not present and as such did not know as to who brought the photographer. He also deposed that the marriage between the deceased Meena and the Appellant- Dinesh Kumar was performed some six years ago. He also confirmed that Meena had informed to him some two months ago, about the dowry demand of the Appellants for rupees one lakh and a motor cycle. The said information was given to him while Meena had gone to her parental home, on which he had told Meena to talk to her father and brother about the said dowry demand.

21. ***Prosecution Witness No. 4/P.W.-4, Suresh Singh***, did not support the prosecution case. In his examination-in-chief, he denied that the Investigating Officer had taken accused Bade Lal, Dinesh Kumar, Sheshraj and Nanbabu to Village Barauwa Bhadauli, in his presence or that any blood-stained sickle had been recovered beneath the threshold of the house of accused Sheshraj at his instance. He further stated that the Investigating Officer had merely obtained his signatures on three or four blank papers.

The P.W.-4, however, admitted that the signatures appearing on documents marked as *Paper Nos. A-8/1 to A-8/4* were his signatures, which were exhibited as *Exhibits Ka-4, Ka-5* and *Ka-6*. In view of his departure from his previous statement, he was declared hostile and was cross-examined by the prosecution. During such cross-examination, the witness admitted that the blood-stained sickle had in fact been recovered from beneath the threshold.

In his cross-examination, the said witness although stated that he did not see the recovery of "hasiya", but admitted that the said "hasiya" was lying at a little distance from the dead body. He also deposed that the police had got his signature and that of one Jitendra Singh on a blank paper, but also admits that he had not made any complaint regarding the same to any higher officer of police. He also deposed that he could not see, if the "hasiya" was blood strained or not. He admits that the police had collected the blood strained soil and plain soil from the crime-scene. He also

admits his presence on the crime spot after the incident at about 7:30 in the evening and staying there till the parents and other family members of the deceased Meena arrived at the crime-spot.

22. ***Prosecution Witness No. 5/P.W.-5, Smt. Lakhna Devi***, the mother of the deceased Meena, deposed that she had two sons, namely Vijay Karan (P.W.-1) and Nand Kishore, and one daughter, Meena. She stated that Meena had been married to accused Dinesh Kumar, son of Bade Lal, resident of Village Barauwa Bhadauli. According to the witness, whenever Meena visited her parental home after the marriage, she complained that her husband Dinesh, father-in-law Bade Lal, brothers-in-law Sheshraj and Nanbabu, and other members of the matrimonial family were demanding ₹1,00,000/- and a motorcycle as additional dowry. P.W.-5 stated that at the time of marriage, the family had provided household articles, ornaments and cash amounting to ₹2,26,000/- according to their financial capacity. She further deposed that whenever her son Vijay Karan visited Meena at her matrimonial home, he returned and informed the family that Meena was being subjected to physical assault and harassment by the accused persons on account of non-fulfillment of the dowry demand. P.W.-5 further stated that Meena had a daughter named Soni, who was approximately fifteen months old at the time of the incident. According to P.W.-5, accused Dinesh occasionally visited the parental home of Meena and whenever he visited, P.W.-5 used to repeatedly request Dinesh to take proper care of her daughter and maintain cordial relations in view of the fact that they already had a child. She stated that on one occasion Meena telephoned and complained that the accused persons were persistently demanding ₹1,00,000/- and a motorcycle. As the witness herself could not speak to Meena, her daughter-in-law attended the call and advised Meena to somehow continue living in her matrimonial home. At the relevant time, her son was at Lucknow in connection with medical treatment of her other son, and after his return he visited Meena's matrimonial home, brought her to the parental house and found her weeping inconsolably. Thereafter, after counselling both Meena and accused Dinesh, she was again sent back to her matrimonial home.

P.W.-5 further deposed that on the date of occurrence, at about 8.00 P.M., she received telephonic information that both her daughter Meena and granddaughter Soni had been murdered. Upon receiving the information, she, along with her family members, travelled by tractor-trolley to Village Barauwa Bhadauli. On reaching the spot, she found that Meena had sustained deep incised injuries on her neck, armpit and back, while Soni had suffered grievous cut injuries on her neck and cheek, with flesh hanging from the wounds. Thereafter, she proceeded to Police Station Gilaula, along with her son Vijay Karan, where the First Information Report was lodged. Subsequently, they returned to the place of occurrence, where the police had already reached, and the dead bodies were thereafter sent to Bahraich for post-mortem examination on the following morning.

In her cross-examination, the said witness supported the prosecution case and the factum of phone call having received by her daughter-in-law by deceased Meena about demand of dowry. She also confirmed that her daughter-in-law has accordingly called her son Vijay Karan and informed about the dowry demand. She although has stated that both deceased Meena and Dinesh used to visit her house of and on and there was no fight between Dinesh and Vijay Karan or her other son, but she also deposed that the dowry demand of Rs. One lakh and a motorcycle was told to her by her deceased daughter Meena. She also confirmed her visit at the crime-spot along with

other family members. She also told that at the spot, she was told by the appellant-Dinesh that he killed Meena because of dowry.

23. ***Prosecution witness / P.W.-6, Sudama Verma*** is a formal witness and has proved Panchayatnama, sample seal, letter to R.I., letter of C.M.O and Police Form, which are Exhibit-Ka-8 and Exhibit-Ka-17. The deposition of the said witness remained intact during his cross-examination.

24. ***Prosecution witness / P.W.-7, Dr. Sarvesh Kumar Shukla*** stated in his evidence that the post-mortem of the deceased Meena Devi, aged about 25 years, wife of Dinesh Kumar, resident of Barkhya Bhadauli, Police Station Gilaula, District Shravasti, which was brought by Constable Shobh Singh and Constable Ram Prakash Singh, was conducted by him on 12-6-2011 at 12:45 PM. The body was of normal height, with Rigor Mortis present in both hands and feet, eyes closed, and mouth half open. The body had the following injuries:

"1. Incised wound of 19 cm x 3.6 cm upto bone deep present over back of Neck extending Rt Ear to left Ear under bone (Cervical vertebra) 2nd and 3rd cut margin clean cut

2. Multiple Incised wound present over back of Neck just below Injury No 1 of varying size 7 cm x 0.5 cm to 3 cm x 0.2 cm Skin and muscle deep Margin clean cut and everted."

P.W.-7 deposed that the body was of average height, with Rigor Mortis present in the hands and feet. The eyes were slightly open. The post-mortem surgeon opined that the cause of death of the deceased Meena Devi was ***coma resulting from the ante-mortem injuries*** sustained by her. According to the medical opinion, the death had occurred approximately one day prior to the post-mortem examination, placing the probable time of death at about **7:00 p.m. on 11.06.2011**, which was consistent with the prosecution case regarding the time of occurrence. The P.W.-7 further deposed that all the injuries found on the body of the deceased had been caused by a **sharp-edged weapon**. P.W.-7 clarified that a **sickle**, being a sharp-edged cutting instrument, was capable of causing the injuries noticed during the post-mortem examination and, therefore, the possibility of the injuries having been inflicted by such a weapon could not be ruled out.

25. P.W.-7 further deposed that on the same day, at about 1:15 p.m., the post-mortem examination of the body of the deceased Soni, a female child aged about 15 months, was conducted by him. The body had been brought for post-mortem examination by the aforesaid police constables. During the external examination, P.W.-7 found that the body was of average build. Rigor mortis was present in both the upper and lower limbs, and the eyes were found to be partially open. On examination, the following ante-mortem injuries were noted on the body of the deceased:

"1. Incised wound of 11 cm x 2 cm x bone deep present on Right face Neck extremities from 2 cm lateral to angle of mouth upto mid line on back of Neck underlying Vertebra muscle and vessel exposed.

2. Three Incised wound of each size varrying from 4 cm x 5 cm bone deep present on top of Rt Shoulder."

The Medical Officer opined that the deceased had died due to shock and haemorrhage resulting from the ante-mortem injuries sustained on her body. The doctor further stated that the injuries were consistent with those caused by a sharp-edged weapon, and the possibility of having been inflicted by a sickle could not be ruled out. The post-mortem reports pertaining to the deceased Meena Devi and the deceased Soni were duly proved and exhibited as ***Exhibits Ka-18*** and ***Ka-19***, respectively.

The deposition of the said witness remained intact during his cross-examination.

26. ***Prosecution witness/P.W.-8, Additional Superintendent of Police Swaminath***, who is the Investigating Officer of the present case, has proved the site map Exhibit-Ka-20 and charge sheet Exhibit-Ka-21. The deposition of the said witness remained intact during his cross-examination, except that he stated that the complainant did not give any definite date of marriage, all the statements recorded in the charge-sheet are not in his hand-writing and that the recovery of the weapon was not made in his presence.

27. ***Prosecution witness / P.W.-9, Constable Hazari Prasad Bhaskar*** is a formal witness, who has proved the Chik First Information Report as *Exhibit-Ka-22* and copy G.D. as *Exhibit-Ka-23*. The deposition of the said witness remained intact during his cross-examination.

28. After recording the statement of the Prosecution Witnesses, the statement of the Accused-husband was recorded under Section 313 of the Cr.P.C., wherein all the circumstances were put to them, to which he denied. The Accused-husband, when asked the axiomatic question as to why the present case has been filed against him, he claimed innocence and having been falsely implicated. He also stated that there was no demand of dowry at the time of marriage. According to him, the murder of his wife and child had been done by unknown person, while trying to sexually assault the deceased, which was duly informed by him to his wife′s parents, for which they had arrived immediately after the incident on that very day. He stated that his brother-in-law- Vijay Karam demanded Rs. 5 lakhs, however, due to his poverty he could not pay the said amount and as such a false case was lodged against him by the said Vijay Karan. He had also informed the police, but however due to greed of money, they also did not help him. As far as the other Appellants are concerned, all of them claimed that they have been falsely implicated and that they are innocent. Although, the Appellants were permitted to produce evidence in defence, however, it seems none of the accused/appellants produced any defence witnesses in their support.

29. After considering the submissions advanced on behalf of the prosecution and the defence, and upon a comprehensive appraisal of the oral as well as documentary evidence available on record, the learned Trial Court recorded a finding that the prosecution had succeeded in establishing its case beyond reasonable doubt. The Trial Court held that the testimonies of the prosecution witnesses were cogent, reliable and duly corroborated by the documentary and medical evidence, thereby completing the entire chain of circumstances in a consistent and unbroken manner. The medical opinion tendered by the doctor was also found to be trustworthy and in consonance with the prosecution case.

30. The learned Trial Court further examined the evidence, in the light of the essential ingredients required to constitute an offence punishable under Section 304-B of the Indian Penal Code. It observed that three foundational facts were required to be established by the prosecution, namely:

(i) that the death of the deceased had occurred within seven years of her marriage;

(ii) that the death was otherwise than under normal circumstances; and

(iii) that soon before her death, the deceased had been subjected to cruelty or harassment in connection with a demand for dowry.

31. Upon an analysis of the evidence on record, the learned Trial Court concluded that all the aforesaid ingredients stood duly established. It recorded a finding that the deceased had died within seven years of her marriage and that her death had occurred under unnatural circumstances. The Trial Court further held that the prosecution had successfully proved that the deceased was subjected to cruelty and harassment in connection with the demand for dowry soon before her death. Consequently, the statutory presumption under Section 113-B of the Indian Evidence Act became applicable. The learned Trial Court further observed that the appellants had failed to furnish any plausible explanation regarding the circumstances in which the deceased met with her unnatural death within the privacy of her matrimonial home. In the absence of any satisfactory explanation, the burden cast upon the appellants under Section 106 of the Indian Evidence Act remained undischarged.

32. In view of the aforesaid findings, the learned Trial Court held that the prosecution had proved the guilt of the appellants beyond reasonable doubt and, accordingly, recorded their conviction and sentenced all the Appellants in the following manner:

(i) under Section 304 B I.P.C. for life imprisonment, along with fine of Rs. 5,000/-, and in default of payment of a fine to undergo an additional imprisonment for 5 months;

(ii) under Section 498-A I.P.C. for two years′ imprisonment, along with fine of Rs. 1,000/-, and in default of payment of fine, to undergo an additional a month′s imprisonment; and

(iii) under Section 4 of the Dowry Prohibition Act for six months′ imprisonment, along with fine of Rs. 500/- and in default of payment of the fine, to undergo an additional a month′s imprisonment.

33. However, all these appellants have been acquitted under Sections 147, 148, 302 I.P.C. read with Section 149 I.P.C.

PROCEEDINGS BEFORE THIS COURT

34. Challenging the aforesaid impugned Judgment and order of conviction and sentence dated 19.10.2016, the present appeals being *Criminal Appeal Nos. 1768 of 2016* and *1773 of 2016* came to be filed by the appellants.

35. With respect to the bail applications filed in the ***Criminal Appeal No. 1768 of 2016***, the first bail application filed by the appellants was rejected by this Court vide an order dated 30.01.2018, passed in *Criminal Misc. Bail Application No. 108505 of 2016*.

Subsequently, the second bail application filed by the appellants also came to be rejected by this Court vide an order dated 25.01.2023, passed in *Criminal Misc. Application No. (I.A.) 05 of 2023.*

The *third* bail application, on behalf of the appellants came to be filed on 12.04.2024, in *Criminal Misc. Application No. (I.A.) 06 of 2024*. However, while arguing the third bail application, learned Counsel for the appellants submitted that he is not willing to address the bail application on merits and rather wishes to address his arguments on the appeals and, therefore, the bail application may be dismissed as not pressed. Resultantly, the third bail application of the appellants came to be dismissed being not pressed, vide an order dated 08.12.2025.

36. Similarly, in ***Criminal Appeal No. 1773 of 2016***, the first bail application filed by the appellants was *dismissed being not pressed* by this Court vide an order dated 30.01.2018, passed in *Criminal Misc. Case No.108517 of 2016*.

Subsequently, the second bail application filed by the appellants also came to be *dismissed for want of prosecution* by this Court vide an order dated 29.09.2022, passed in *Criminal Misc. Application No.143124 of 2018.*

Thereafter, the *third* bail application, on behalf of the appellants came to be filed on 17.01.2023, in *Criminal Misc. Application No. 10 of 2023*. The third bail application filed on behalf of the appellants - Bitta Devi and Bade Lal Kori was *allowed* by a Co-ordinate bench of this Court vide an order dated 25.01.2023 and therefore, both the Appellants of the Criminal Appeal No. 1773 of 2016 are presently on bail.

37. It is also pertinent to mention at this point that taking into account the Custody Certificate dated 08.11.2025 filed the prosecution, the total period of sentence served including remission, by the appellants can be depicted in the following tabular chart:

Appellant	Actual years of custody	Year of Custody **including remission**
Dinesh Kumar (Husband)	15 Years 1 Month	Above 18 Years (17 Years 11 Months 21 Days)
Sheshraj (Brother-in-law)	15 Years 1 Month	Above 18 Years (17 Years 11 Months 21 Days)
NanBabu (Brother-in-law)	11 Years 5 Months 13 Days	14 Years 3 Months 19 Days
Bade Lal Kori	11 Years 8 Months	13 Years 3 Months

(Father-in-law)	5 Days	17 Days
Bitta Devi (Mother-in-law)	8 Years 1 Months 3 Days	9 Years 8 Months 15 Days

SUBMISSION ON BEHALF OF THE PARTIES

38. At the very outset, the learned Counsel for the appellants highlighted the long incarceration of the appellants namely, Dinesh Kumar and Sheshraj. who have undergone more than 17 years of custody (including remission), Nanbabu more than 14 years, Bitta Devi more than 8 years and Badey Lal more than 11 years, as well as to the fact that the parents-in-law are aged about 62 years and are suffering from various old-age ailments. According to the learned Counsel, even if the conviction of the appellants are upheld, it is available from the records that each of the appellants have already suffered a sentence of more than seven years, which is the minimum sentence prescribed under Section 304 I.P.C. and there is no reasoning by the learned Trial Court for imposing the gravest punishment of life, which according to the learned Counsel can be given in a rarest of the rare case. Thus, it has been submitted that the present appeals may be partly allowed for the ends of justice. In order to buttress his arguments, reliance has been placed on the dictum of the hon'ble Supreme Court, rendered in the cases of ***V.K. Mishra v. State of Uttarakhand***, reported in ***(2015) 9 SCC 588***; and ***Hem Chand v. State of Haryana***, reported in ***(1994) 6 SCC 727***; ***State of Karnataka v. M.V. Manjunathegowda***, reported in ***(2003) 2 SCC 188***; and ***G.V. Siddaramesh v. State of Karnataka***, reported in ***(2010) 3 SCC 152***; to contend that maximum sentence of life imprisonment was not warranted in the facts of the present case.

39. On the merits of the present case, the Learned Counsel for the appellants has strenuously argued that the prosecution has miserably failed to prove the ingredients of Section 304- B I.P.C., particularly the crucial requirement of cruelty or harassment "soon before death" in connection with dowry demand. It has been submitted that there are only general and omnibus allegations of demand of dowry and cruelty in the F.I.R. and in the depositions of the prosecution witnesses, with no specific allegation or role attributed to any individual appellant. It has been further contended that there is no cogent and reliable evidence establishing any demand of dowry or cruelty meted out to the deceased immediately preceding her death. The evidence of all the fact witnesses (P.W.-1, P.W.-2, P.W.-3 and P.W.-5) is replete with improvements, contradictions and is largely hearsay, as none of them had witnessed any direct demand of dowry.

40. Learned Counsel for the appellants has also highlighted that the exact date of marriage has not been disclosed with precision and as such the same has to be to the advantage of the defence. It is next submitted that the F.I.R. is ante-timed and manipulated. P.W.-1 has admitted in his cross-examination that they reached the spot at about 11:00 PM on 11.06.2011, whereas the F.I.R. was lodged at 00:30 hrs on 12.06.2011. The distance between the police station and the place of occurrence being 15 kms, the timing raises serious doubt about the promptness and genuineness of the F.I.R.

41. Learned Counsel for the appellants has also submitted that the name of the person who allegedly informed the informant's family about the incident through telephone has not been disclosed by any witness. Keshav, on whose mobile phone the deceased had allegedly complained of cruelty, has also not been examined. There are contradictions regarding the financial

arrangements of the Rs. 2,26,000/- made at the time of marriage between P.W.-1 and P.W.-2. Furthermore, the recovery of the 'Hasiya' at the instance of appellant Sheshraj is highly doubtful because P.W.-4 (Suresh Singh), the recovery witness, has turned hostile and has not supported the prosecution case. Moreover, the weapon was never shown to the doctor (P.W.-7, Dr. Sarvesh Kumar Shukla), who categorically stated in his cross-examination that he could not opine whether the injuries were caused by the recovered 'Hasiya' or any particular sharp weapon.

42. Learned Counsel for the appellants has argued that P.W.-5 (Smt. Lakhna Devi, mother of the deceased) has deposed about a cordial relationship between the parties and has denied any demand of dowry. The medical evidence does not fully support the prosecution story regarding the weapon used. The entire case rests on circumstantial evidence with no direct evidence of the appellants' involvement in the crime.

43. It has been lastly argued that the findings of the learned Trial Court are perverse, based on assumptions, and suffer from misreading of evidence. The prosecution has failed to prove its case beyond reasonable doubt and the appellants deserve to be acquitted.

44. Per contra, learned Additional Government Advocate appearing for the State has submitted that the impugned judgment is well-reasoned and based on proper appreciation of evidence. The prosecution has successfully established that the death of the deceased Smt. Meena Devi and her minor daughter Kumari Soni occurred within seven years of marriage under unnatural circumstances in the matrimonial home. It has been submitted that the consistent oral evidence of P.W.-1 (brother), P.W.-2 (bhabhi), P.W.-3 (relative) and P.W.-5 (mother) clearly establishes persistent demand of dowry and cruelty by all the appellants soon before the death. Minor contradictions and improvements in the testimony of interested witnesses, who are natural witnesses, do not demolish the core of the prosecution case.

45. It has been further argued that with respect to the date of marriage, the Trial Court has correctly relied upon the statements made during the examination-in-chief and other attending circumstances to hold that the marriage took place within seven years. Any minor discrepancy in cross-examination does not outweigh the overall evidence.

46. It has been further contented that the F.I.R. was lodged promptly after the informant reached the spot and received information about the incident. The slight variation in timing is natural and does not render the F.I.R ante-timed, especially when the distance to the police station is 15 kms. Non-examination of the informant's source or Keshav is not fatal, as the deceased's complaints to her family members have been consistently proved. Also, the recovery of the blood-stained crime weapon 'Hasiya' at the instance of appellant Sheshraj, even if P.W.-4 turned hostile, is supported by other circumstances and the Investigating Officer. The doctor (P.W.-7) has confirmed the injuries to be incised wounds caused by a sharp-edged weapon, consistent with the use of a 'Hasiya'.

47. Learned A.G.A. has further submitted that the presumption under Section 113-B of the Indian Evidence Act has been rightly drawn against the appellants, in view of the death occurring in the matrimonial home within seven years of marriage coupled with evidence of cruelty and

dowry demand soon before the incident. The medical evidence fully supports the prosecution case regarding the homicidal nature of the deaths of the deceased.

48. Lastly, it has been argued that the appellants have been rightly convicted on the basis of the material available on record. The sentences awarded to the appellants are commensurate with the gravity of the offence i.e. a brutal double murder, involving a young mother and her infant daughter, in a dowry-related crime. The long custody period and age of the appellants do not justify interference with the conviction of the appellants.

DISCUSSION AND FINDINGS

49. Heard Shri Dhananjay Kumar Singh, learned Counsel appearing for and on behalf of the accused/appellants, as well as Shri S.P. Singh, learned Additional Government Advocate appearing for and on behalf of the State- respondent. This Court has given its anxious thoughts to the facts and the submissions made by both the parties and perused the material available on records.

50. Admittedly, the present case is related to dowry death, of a young lady of 25 years and her infant daughter of 15 months, who had been done to death in their own home, wherein they ought to have thought of being fully secured and protected. The greed of dowry knows no limits and turns human being to beast and they can go to any extent. The Hon'ble Supreme Court in its Judgment titled ***In Re: Enforcement and Implementation of Dowry Prohibition Act, 1961***, reported in ***(2005) 4 SCC 565***; made the following observation relevant to the context:

"10. When there is failure on the part of the Executive to strictly implement a law like the one in question, enacted to tackle a social problem which has assumed menacing proportions, the Court has a duty to step in with a mandamus to direct its implementation rigorously and effectively. In that context, we find that it is necessary to step in and issue some more directions to the respondents in addition to incorporating the directions already issued by this Court by way of interim measure as part of this final judgment.

11. Therefore, in addition to directing the respondents to implement all the interim directions which were issued in this case thus far, we further direct the Union of India and the States to take more effective steps to implement the provisions of the Dowry Prohibition Act, 1961 with particular reference to Sections 3 and 4 thereof and the various rules framed thereunder. In that process, they are also directed to activate the Dowry Prohibition Officers. We also direct the Central Government to frame rules under Section 9(2)(b) of the Act if it has not already been framed. We direct the respondents to take steps to ensure that submitting of the list as contemplated by the Act and the Rules is strictly implemented. We direct the Union of India and the State Governments to consider whether appropriate rules cannot be framed for compelling males, seeking govt. employment, to furnish information on whether they had taken dowry and if taken, whether the same has been made over to the wife as contemplated by Section 6 of the Act, calling for such information also from those already in employment. Since, it is also necessary to arouse the conscience of the people against the demand and acceptance of dowry, we also direct the Union of India and the State Governments to take steps for the effective stepping up of Anti Dowry Literacy among the people through Lok Adalats, Radio Broadcasts, Television, and Newspapers.

These directions will be implemented and continue to be implemented rigorously by the respondents.

12. The conscience of the society needs to be fully awakened to the evils of the dowry system so that the demand for dowry itself should lead to loss of face in the society for those who demand it. We have no doubt that our young and enlightened women would rise to the occasion to fight the evil which tends to make them articles of commerce. We also hope that our educated young males would refuse to be sold in the marriage market and come forward to choose their partners in life in a fair manner.

13. The establishment of a committed and sincere machinery to implement the Act and the Rules can hasten the eradication of the evil. The Union of India and the State Governments are directed to devise means to create honest, efficient and committed machinery for the purpose of implementation of the Dowry Prohibition Act, 1961 and the various Rules framed thereunder.″

51. Even after lapse of more than 21 years, since the aforesaid Judgment has been passed by the Hon′ble Supreme Court, the social and cultural menace of dowry has refused to recede from our society. The so called cultural practice of dowry, which was to ordinarily support the newly wedded couple, has now resulted in assigning a secondary status to women leading to various social ills, which often forces a woman to continue in abusive marriages either due to family or peer pressure or at times due to her own accord, resulting sometime to grave results of death.

52. This Court finds that the aforesaid Dowry Prohibition Act, 1961, which made the offering or accepting of dowry illegal, remained ineffective as the practice of dowry thrived unabated with some expedition, however, during the supervening period Section 498A I.P.C. came to be inserted in the year 1983, which made the ill-treatment of women by her husband or in-laws, a punishable offence. Apparently, the said insertion also did not make much wonders, leaving the legislature to enact more stringent and heavier provision for curbing the said menace of dowry, leading to the insertion of Section 304B in the Indian Penal Code, which made dowry death punishable for a minimum sentence of 7 years and also a maximum punishment for life and raised a presumption against the person for all kinds of unnatural deaths, if the same has been occasioned within seven years of marriage, under Section 113-B of the Indian Evidence Act. Both these Sections were inserted in the year 1986 and ever since then, contrary to the ordinary fundamental cannon of criminal jurisprudence of 'presumption of innocence′ that prosecution ought to proof the case beyond reasonable doubt stands transformed to 'presumption of guilt,′ if certain conditions are fulfilled as per Section 304B of the I.P.C. for culpability of the accused person. The law states that a foundational fact has to be merely proved against the accused person and by virtue of the legal presumption, the burden of proof stands shifted to the accused to prove his innocence by explanation and evidentiary proof, in view of Section 113 B of the Indian Evidence Act.

53. The landmark case on this issue is the judgment of the Hon′ble Supreme Court in the case of ***Kashmir Kaur v. State of Punjab***, reported in ***(2012) 13 SCC 627***; wherein the Apex Court after tracing the law and various judgments on dowry death, culled out the following principles at paragraph 17 of the said judgment as follows:

"17. From the above decisions the following principles can be culled out:

17.1. To attract the provisions of Section 304-B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

17.2. The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

17.3. Such death occurs within seven years from the date of her marriage.

17.4. That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

17.5. Such cruelty or harassment should be for or in connection with demand of dowry.

17.6. It should be established that such cruelty and harassment was made soon before her death.

17.7. The expression "soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence.

17.8. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act.

17.9. Therefore, the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate or live link between the effect of cruelty based on dowry demand and the death concerned. In other words, it should not be remote in point of time and thereby make it a stale one.

17.10. However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

17.11. Section 304-B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304-B.

17.12. Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304-B were not satisfied.

17.13. The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients are satisfied it will be called "dowry death" and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence."

54. Keeping the above principles in mind, this Court proceeds to marshal the evidence and material brought on record by the prosecution, so as to examine the culpability of the appellants under Section 304B I.P.C., 498A I.P.C. read with Section 4 of the Dowry Prohibition Act, 1961.

55. Having already noted the Evidence brought on records of the present case, we find that P.W.-1 (Vijay Karan) is the brother of the deceased, P.W.-2 (Saroj Devi) is the sister-in-law/Bhabi,

P.W.-3(Ram Milan) is the mediator of the marriage between the deceased and Appellant/Dinesh (Husband), who is also the co-villager of the Appellants, P.W.-5 (Lakhna Devi) is the mother of the deceased. These are the fact witness of the case and a meaningful reading of their statement does not show any kind of inconsistency.

P.W.-1 is the de-facto complainant of the F.I.R. and has stated that he got his sister (deceased-Meena) married to Dinesh (Appellant No.1 of Criminal Appeal No. 1768 of 2016) about six years prior to the incident. He stated that dowry amount of Rs. 2,26,000/- was arranged and made during the marriage of the deceased as per his family's capability. He has further deposed that thereafter additional dowry demand of Rs. 1,00,000/- and a Motorcycle was made by the Appellants and the said dowry not having been paid by him due to the ongoing medical expenses of his brother being carried at Lucknow, his sister was killed. According to P.W.-1, he had visited his sister's matrimonial home and it was with great pampering and effort that he sought some time from the Appellants and the Husband of the deceased namely, Dinesh Kumar for fulfilling the demand of dowry. According to P.W.-1, his sister was harassed and beaten at her matrimonial home for not bringing the said dowry of Rs. 1,00,000/- and a motor cycle, which was told to him by his sister and even his wife (P.W.-2) over mobile phone, when he was at Lucknow. The said witness has also stated that his deceased-sister was done to death along with her daughter of 15 months brutally with a Sickle in the night of 11.06.2011. He has exhibited the written *Tehrir* (*Exhibit- Ka-1*) and confirmed the date of incident and place of incident being the matrimonial home of the deceased. The version of this witness remained intact, although, he has been put to extensive cross-examination. There appears to be no inconsistency in the statement made by the said witness.

Similarly, P.W.-2 (Saroj Devi) is the sister-in-law/ Bhabi of the deceased. She has stated that her sister-in-law/Nanad was married to convict-Dinesh Six years before the incident. She also supported the version of demand of dowry of Rs. 100000/- and a Motor cycle and deposed that the deceased have been continuously harassed by her in-laws for that said reason. She stated that her deceased Nanad had told her that she was being beaten for not brining the said dowry.

In her cross-examination, P.W.-2 states :

"मीना के मृत्यु के आठ-दस दिन पहले मेरे यहां फोन आया था। मीना रो-रो कर कह रही थी कि मेरे ससुराल वाले, मेरे पति कह रहे है कि मां-बेटी को काट डालेगें नही तो एक लाख रूपये व एक मोटर साइकिल अपने मयके वालों से मगवाओ।)"

P.W.-3 (Ram Milan) is the mediator of marriage between the deceased-Meena and Dinesh. The said witness is also the relative of the P.W.-1 and a co-villager of the Appellants. He has supported the case of the prosecution and deposed in his examination-in-chief:

"मीना के ससुराल वाले मीना के मायके वालों से एक गाड़ी व एक लाख रूपये मांग रहे थे। अतिरिक्त दान दहेज न देने पर उसे प्रताड़ित करते थे। मीना बताती थी कि दहेज के वावत लड़ाई झगड़ा करते है। हम लोगों ने मीना को समझाया कि तुम्हारे भाई की तबीयत खराब चल रहा है और उनका दवा

लखनऊ चल रहा है, हो सकता है कि जब वो ठीक हो जाय तो इधर उधर से रूपये का इन्तजाम करके तुम्हारे ससुराल वालों को दे दें।"

P.W.-5 (Lakhna Devi) is the mother of the deceased -Meena Devi. She has supported the case of the prosecution and deposed in her cross-examination:

"एक लाख रूपये व एक मोटर साइकिल मांगने की बात मुझसे मीना ने बताई थी। यह बात मुझसे मीना ने गौने से विदा होने के बाद जब तीसरे दिन अपने ससुराल से मेरे यहाँ आई तब बताई थी। इसके पहले इस बात की जानकारी हम लोगों को नही थी। तभी दिनेश को समझा बुझा दिया था। जब छः साल बाद मरने की सूचना आई तब दिनेश कुमार ने कहा इसी वजह से मीना को मार डाला है।)"

56. The statements of all these four fact-witness appears to be natural and their statement remained intact, although they were subjected to extensive cross-examination. This witness stood the test of veracity and this Court does not find any reason to disbelieve the version of the brother, sister-in-law and Mother, who had lost their beloved 25 years old married sister/daughter, in the hands of menace of dowry.

57. Further, P.W.-6 (Sudama Verma) is the Naib Thesildar, who has proved the Inquest report of deceased Meena Devi as Exhibit- Ka-2 and that of 15 months old daughter (Soni) of deceased as Exhibit- Ka-3, to have been written in his own hand-writing. The said witness along with other witnesses, visited the crime spot and on his instruction recovery memo was prepared by the concerned Police station and the dead bodies were was sent for post-mortem. The said report mentions the date, time and place of dead bodies recovered at the matrimonial village. It also mentions that pieces of broken bangles and hair and lot of blood was also found at the crime site. As far as the status of the body is concerned, the said report mentioned that the body was found lying inside a *khapral*/thatched house at the very threshold. P.W.-6 gathered information to the effect that the in-laws have killed the deceased and her innocent daughter due to non-fulfillment of dowry demand. Body had large incised wound on the neck. Altogether five panchas have signed the *panchayatnama* and all of them opined that the deceased had been killed with a sharp weapon by her in-laws for nonfulfillment of dowry demand. Therefore, there is no dispute relating to the place of recovery of the dead bodies.

58. On the conspectus of the aforesaid evidence, the following uncontroverted facts evolve from the aforesaid version of the fact witness, P.W.-1, P.W.-2, P.W.-3 P.W.-5 and P.W.-6:

(a) The marriage of deceased with the convict- Dinesh was solemnized six years before the incident and as such the incident of death was within seven years of marriage;

(b) The dead body of the deceased was found at her matrimonial home, as proved by the Inquest report (*Exhibit Ka-2 and Ka-3*) and Site plan (*Exhibit- Ka-20*).

(c) There was demand of dowry immediately (9-10 days) before the incident of death. The demand of dowry of Rs. 1,00,000/- and motor cycle existed even before 9-10 days of death of the deceased i.e. soon before her death.

59. Before proceeding any further, this Court is conscious that the usage of the word "soon" in Section 304B I.P.C. ought not to be interpreted in terms of days or months or years, but as necessarily should indicate that the demand of dowry should not be stale or an aberration of the past, but rather should be a continuing cause for the death under Section 304B of the I.P.C. However, on an appreciation of the evidence of P.W.-2, P.W.-3 and P.W.-5, it is apparent that the demand of dowry was within 10 days of the death of the deceased and as such it can be well construed that the demand of dowry was "soon before her death".

60. The next question which falls for our consideration is the cause of death because Section 304B of the I.P.C. prescribed that death should be otherwise than under normal circumstances. It would be profitable to quote Section 304 B I.P.C., which inter-alia states:

*"**304B. Dowry death.-- (1)** Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

***Explanation**. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

61. As far as the cause of death of the deceased persons are concerned, there is no dispute that the injuries sustained by them were not natural. The injuries recorded by the doctor, who conducted and proved the post mortem report (Exhibits Ka-18 and Ka-19) i.e. P.W.-7 (Dr. Sarvesh Kumar Shukla) deposed as follows:

*"**Injuries of deceased- Meena:***

***1.** Incised wound of 19 cm x 3.6 cm upto bone deep present over back of Neck extending Rt Ear to left Ear under bone (Cervical vertebra) 2nd and 3rd cut margin clean cut*

***2.** Multiple Incised wound present over back of Neck just below Injury No 1 of varying size 7 cm x 0.5 cm to 3 cm x 0.2 cm Skin and muscle deep Margin clean cut and everted."*

The post-mortem surgeon opined that the cause of death of the deceased Meena Devi was ***coma resulting from the ante-mortem injuries*** sustained by her. The P.W.-7 further deposed that all the injuries found on the body of the deceased had been caused by a **sharp-edged weapon**. P.W.-7 clarified that a **sickle**, being a sharp-edged cutting instrument, was capable of causing the injuries noticed during the post-mortem examination and, therefore, the possibility of the injuries having been inflicted by such a weapon could not be ruled out.

As far as injuries sustained by the 15-month-old baby (Soni) is concerned, the said P.W.-7 enumerated the following injuries:

*"**1.** Incised wound of 11 cm x 2 cm x bone deep present on Right face Neck extremities from 2 cm lateral to angle of mouth upto mid line on back of Neck underlying Vertebra muscle and vessel exposed.*

***2.** Three Incised wound of each size varrying from 4 cm x 5 cm bone deep present on top of Rt Shoulder."*

The doctor further stated that the injuries were consistent with those caused by a sharp-edged weapon, and the possibility of having been inflicted by a Sickle could not be ruled out.

Further, the said injuries also find support from the Inquest report proved by P.W.-6 (Sudama Verma), Naib Tehsildar, who exhibited and proved the same as Exhibit- Ka-2 and Ka-3. The P.W.-6 along with other witnesses of the *Panchayatnama* (Inquest), visited the crime spot and on his instruction recovery memo was prepared by the concerned Police station and the dead bodies were sent for post-mortem. The said report mentions the date, time and place of dead bodies recovered at the matrimonial house. It also mentions that pieces of broken bangles and hair and lot of blood at the crime scene. As far as the status of the body is concerned, the said report mentioned that the body was found lying inside a khapral/ thatched house at the very threshold. He gathered information to the effect that the in-laws have killed the deceased and her innocent daughter due to non-fulfillment of dowry demand. Body had large incised wound on the neck. Even, the five panchas have signed the *panchayatnama* and all of them opined that the deceased had been killed with a sharp weapon by her in-laws for nonfulfillment of dowry demand.

62. In view of the above, for the cause of death, we find that the death having been caused otherwise than under normal circumstances, an important ingredient to attract the penal provision of Section 304B of the I.P.C is proved against the Appellants.

63. The moment, we arrive at a proposition that the death of the deceased- Meena Devi has occurred otherwise than under normal circumstances, within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and therefore, such husband or relative shall be deemed to have caused her death.

64. Once the presence of this concomitants are established or shown or proved by the prosecution even to their foundational effect by preponderance of possibility, the initial presumption of innocence is faded and replaced by an assumption of guilt by the deeming provision of law, thereby shifting the burden of proof upon the guilty to dislodge his guilt beyond reasonable doubt as per Section 113B of the Indian Evidence Act, which inter-alia states as herein under:

***"113B. Presumption as to dowry death.**-- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.*

Explanation: For the purposes of this section, dowry death shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."

65. As far as the explanation and evidence led by the convict to dispel the presumption raised against them under Section 113B of the Indian Evidence Act is concerned, this Court does not find any witness has been produced by the Appellants in defence. The Accused-husband, when asked in his statement recorded under Section 313 of the Criminal Procedure Code, as to why the present case has been filed against him, he claimed innocence and having been falsely implicated. The Appellant-Husband claimed that, when he married the deceased there was no demand of dowry. According to him, the murder of his wife and child had been done by unknown person, while trying to sexually assault the deceased, which was duly informed by him to his wife's parents, for which they had arrived immediately after the incident on that very day. He further stated that his brother-in-law- Vijay Karan demanded Rs. 5 lakhs, however, due to his poverty he could not pay the said amount and as such a false case was lodged against the said Vijay Karan after advice. The Accused-husband had also stated in his statement that although he had informed the police, but however due to greed of money, the police also did not helped him. As far as the other Appellants are concerned, all of them claimed that they have been falsely implicated and that they are innocent.

66. Although, the Appellants were permitted to produce evidence in defence, however, none of the accused/appellants produced any defence witnesses. There is absolutely no material on record to substantiate the aforesaid assertion of the Appellants as stated by the convict-Husband in his statement recorded under Section 313 Cr.P.C. Neither, the husband has lodged any complaint/F.I.R. relating to the alleged sexual assault of his wife and his 15 months old, nor he was able to explain as to how can the said incident take place at about 7 PM in the evening, when the entire village was awake. It is not the case of the Appellants that their house was located in a secluded place or that they were leaving in a Jungle. The said theory is also unbelievable as a person, whose wife and 15-month-old daughter has been murdered would in the first instance try to save them. There is no word from the husband or any of the Appellants, five in number, as to where were they when the alleged attack had happened, wherein the wife and 15-month-old baby was brutally killed by a "hasiya". There is no evidence or any endevour on the part of the husband to save his wife and baby nor any prove as to what steps he had taken after the discovery of two dead bodies in his house. These subsequent conduct of the Husband and the other Appellants is a relevant fact in view of Section 8 of the Indian Evidence Act. Further, this Court cannot be oblivious to the fact that there is afresh injury sustained by one of the *Devar* (Shesh Raj), who got recovered the "Hasiya" on his pointing. There is absolutely no evidence led to explain the said injury.

67. Moreover, it was quite strange that even the noise of the deceased persons while their throat was being cut was not heard by any of its neighbour, although it has come in the site-plan that there are many houses adjoining to the crime spot. There appears to be something amiss and flawed in the statement of the Husband built around the dead body and most importantly, if the story of sexual assault had been, the doctor (P.W.-7), who conducted the post-mortem would have reported of any external struggle or any injury caused. Further, certain provocative question still remains to be answered as to why the assaulter would had cut the hair and why he would have

killed the baby? According to this Court, the threshold of presumption under dowry death having been met and the basic foundational fact proved against the appellants. It was incumbent on the Appellants to prove that the death had been caused due to other reasons and not any reason connecting their culpability.

68. Further, this Court also could not shut its eyes to the fact that the Husband ought to be the protector of his wife and 15 months old girl child. It is he who is responsible for their safety and well-being. Further, we cannot be oblivious to the fact that two dead bodies were found at the house of the Appellants and they were unable to give any plausible explanation as is required under Section 108 of the Indian Evidence Act from them.

69. The contention of the learned Counsel for the Appellants that the ingredients of Section 304B I.P.C. have not been proved against the Appellants is misconceived. Once, the foundational facts are proved by the prosecution, there is a presumption in law and as such the burden to prove otherwise lies entirely on the defence i.e. the Appellants herein. Admittedly, no evidence has been led to discharge their burden of proof. As far as the date of marriage is concerned, no doubt no specific dates were available of marriage, but the fact witnesses, namely P.W.-1, P.W.-2, P.W.-3 and P.W.-5 have stated that the marriage was six years old. It has also been proved that there was a demand of dowry soon before the death. It was also proved by P.W.-7 that the death was caused not in normal circumstances, therefore this Court does not find any ground as to why the provision of Section 304B I.P.C. cannot be invoked to avail the presumption against the Accused/Appellants, who all are husband and relatives of the husband of the deceased-Meena Devi.

70. The contention of the Appellants that Keshav, on who′s mobile the P.W.-2 was informed by the deceased- Meena, about the dowry demand having been not examined is also not fatal, as we find that besides the said evidence, there are other evidence on record to substantiate that there was a dowry demand by the Appellants. The deposition of P.W.-1 and P.W.-3 as far as the dowry is concerned remained unchallenged. The contradiction relating to the financial arrangement of Rs. 2,26,000/- at the time of marriage, some six years ago amongst the witnesses is not crucial as the law provides to examine as to whether there was any dowry demand soon before the death of the victim or not. Since, it has come in the evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-5 that the demand for dowry was 9-10 days before the said incident, the same has to be construed to be soon before the death of the deceased. As far as the witness of recovery of "Hasiya" i.e. P.W.-4 is concerned, no doubt he has been declared hostile by the prosecution. However, the same is also not fatal as the said witness has himself also told that the 'hasiya′ was lying at "*Thodi dur*" (little distance) from the dead body, in his cross-examination. As far as the consideration of the evidence/deposition of a hostile witness is concerned, the rejection of the entire testimony of a prosecution witness, who has been cross- examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [**See: Paulmeli v. State of T.N. (2014) 13 SCC 90, Ramesh Harijan v. State of U.P. (2012) 5 SCC 777]**. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

The Hon'ble Supreme Court in the case of ***Bhajju v. State of M.P.***, reported in ***(2012) 4 SCC 327***; discussed the worth of the evidence of a hostile witness in the following words:

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party."

In the present case, we find that P.W.-4, has deposed in his cross-examination that the crime weapon 'hasiya' was lying at "*Thodi dur*", which means near the body, which can be simply construed to be a recovered crime weapon, especially when it has also come in evidence that P.W.-4 has been at the crime-spot immediately after the death of the deceased at 7:30 P.M.

71. One of the contentions raised by the learned Counsel for the Appellants that there are only general and omnibus allegations of demand of dowry and cruelty in the F.I.R. and in the depositions of the prosecution witnesses, with no specific allegation or role attributed to any individual appellant. This Court finds that a plain reading of Section 304-B I.P.C. would envisage that when a question arises whether a person has committed an offence of dowry death of a woman, what all that is necessary is, it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the Court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise, there is a presumption under Section 113-B of the Indian Evidence Act as to the dowry death. It lays down that the Court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically, this is the presumption that has been incorporated in Section 304-B I.P.C. also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. Therefore, the argument of learned Counsel that the allegations are general and no specific role has been assigned to the individual appellant is also without any basis and as such the same is rejected.

72. For all the aforesaid reasons and taking into account all the above supervening factors, the evidence brought on records clearly established the legal requirements for an offence falling under Sections 304B and 498A of the I.P.C. with the aid of Section 113B of the Indian Evidence Act to be conclusively proved against the appellant and the conviction, therefore, do not call for any interference.

73. Further, nothing was pointed out to hold that the conclusion arrived by the learned Trial Court was perverse or was there any illegality or irregularity in the impugned judgment. Thus, the judgment as far as the conviction by the learned Trial Court under Section 304-B I.P.C., 498-A I.P.C. and Section 4 of the Dowry Prohibition Act is concerned the same are *upheld*.

74. Now, the question arises as to whether this Court can reduce the appellant's sentence and if so, to what extent, as urged by the learned Counsel for the appellant, keeping in view the rule of proportionality of sentencing, prayer of leniency and the Evidence brought on record.

75. The learned Counsel for the Appellants has relied on various judgments to buttress his submission that the sentence under Section 304B I.P.C. merits interference by this Court. The learned Counsel has submitted that in the case of ***Hem Chand*** (*supra*), the Trial Court had awarded life term to the accused under Sections 304B read with 498A I.P.C., however, the Supreme Court reduced the sentence to 10 years and held that Section 304-B I.P.C. only raises presumption and lays down that minimum sentence should be seven years and it may extend to imprisonment for life. Therefore, awarding extreme punishment of imprisonment for life should be in rare cases and not in every case. The said proposition of law was consistently followed by the Hon'ble Supreme Court in the case of ***M.V. Manjunathegowda*** *(supra)* and ***G.V. Siddaramesh*** *(supra)*, wherein in both the cases the life term was reduced to 10 years.

76. This issue has engaged the attention of this Court, as well as the Hon'ble Supreme Court in several cases, which arose out of Section 304B read with 498A I.P.C. and wherein the Hon'ble Supreme Court while interpreting the expression 'may' mentioned in Section 304B I.P.C. held that it is not mandatory for the Courts in every case to award life imprisonment to the accused, once he is found guilty of offence under the said provision. It was held that the Courts could award sentence in exercise of its discretion between seven years to life imprisonment, depending on the facts of each case, which must not be less than 7 years and the extreme punishment of life terms should be awarded in 'rare cases' but not in all cases as a routine. The Hon'ble Supreme Court in the case of ***Hari Om v. State of Haryana***, reported in ***(2014) 10 SCC 577***; after tracking the various precedents holding the ground reduced the life term awarded by the Trial Court and the High Court to a term of 10 years, while recording that Courts below did not assign any reasons as to why the case was found to be a rare case for conviction under Section 304B I.P.C.

77. This Court is also unable to find any reason in the impugned judgment as to when the prescription under law is that punishment under Section 304B I.P.C. cannot be less than 7 years and may extend to Life Imprisonment, as to why all the Appellants have been placed in the same bracket and awarded the maximum punishment of life under Section 304B I.P.C. There is no automatic award of life imprisonment under Section 304B I.P.C after conviction. Some finding and/or reasoning ought to be given by the learned Trial Court for arriving at such a belief for awarding a life imprisonment under the provisions of Section 304B I.P.C. This Court does not find any plausible reason appended by the learned Trial Court as to why the maximum punishment of life imprisonment had been awarded to the appellants in this present case.

78. Once, we come to the conclusion that the sentence of life imprisonment is not proper by the learned Trial Court, the next course of action would be to examine and test the case on the various mitigating factors, which has been evolved in various judgments of the Hon'ble Supreme Court. As far as the present case is concerned, considering the aforesaid proposition of law and the overall facts and circumstances, keeping in view the evidence brought on record, by virtue of which the appellants were convicted, we in our considered

view need to set a chord of balance between the culpability of the convict on the basis of evidence collected and brought on record on the one hand with the amount of punishment inflicted due to the said culpability. In this regard, it would be profitable to quote the ratio of the judgment of the Hon'ble Apex Court in the case of ***Navas v. State of Kerala***, reported in ***(2024) 14 SCC 82***; wherein an illustrative list of mitigating circumstances have been enumerated in the following words; relevant to the context:

"78. A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the Swamy Shraddananda [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in V. Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] .

79. Illustratively, in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:

(a) the number of deceased who are victims of that crime and their age and gender;
(b) the nature of injuries including sexual assault if any;
(c) the motive for which the offence was committed;
(d) whether the offence was committed when the convict was on bail in another case;
(e) the premeditated nature of the offence;
(f) the relationship between the offender and the victim;
(g) the abuse of trust if any;
(h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.

Some of the positive factors have been:
(1) age of the convict;
(2) the probability of reformation of convict;
(3) the convict not being a professional killer;
(4) the socio-economic condition of the accused;
(5) the composition of the family of the accused; and
(6) conduct expressing remorse.

80. These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein."

79. From the conspectus of the matter, we find that the appellants have no prior history of engaging in any criminal activities. The Custody Certificate itself exhibits long incarceration. There is no untoward conduct and/or activities reported against any of the Appellants. The entire male members of the family of the Appellant along with the mother is reported to be involved in the present case. We also find that at the relevant time of incident in 2011, the Dinesh Kumar (Husband) was 25 years; Shesh raj (Brother-in-law) was 21 years; Nan Babu (Brother-in-law) was 20 years; Bade Lal (father-in-law) and Bitta Devi (Mother-in-law) were 46 years.

80. No doubt, the age by itself is not a determinative factor, however, it remains that the Apex Court has held that age at the time of crime is also a mitigating factor for consideration while assessing the possibility of reformation and reintegration of the convict into society. The probability of the accused being reformed and rehabilitated, and the likelihood of his and/or her not indulging in criminal conduct again, are equally important considerations while evaluating whether continued incarceration for the remainder of natural life would serve the ends of justice.

It has come on record that the Appellants have been in Jail for term spanning more than seven years, which is the minimum prescribed under Section 304B I.P.C. Their conduct in jail does not indicate any adverse remarks, may be demonstrating remorse and reflecting a genuine possibility of reformation. The socio-economic condition of the Appellants also deserves consideration. The material on record reflects that the family of the accused belonged to a financially weak background and are villagers engaged in agricultural activities.

81. Thus, keeping in view the totality of the facts and considering the balance sheet of aggravating and mitigating circumstances and there being no criminal background and adverse history against the convict/appellants, we consider that the ends of justice would be met in this case, if the maximum sentence of life under Section 304B of the I.P.C is reduced to the period already undergone, by the appellants. However, the sentence under Section 498A I.P.C., and Section 4 of the Dowry Prohibition Act, 1961 including the fine amount imposed shall remain unaltered.

82. As a sequel to the above, the present appeal as far as the conviction of the Appellants under Sections 304B, 498A of the I.P.C. read with Section 4 of the Dowry Prohibition Act, 1961 are concerned, the same is dismissed and the Judgment of the Trial Court is *upheld*; however, on the point of sentence, both the Appeals are ***partly allowed*** to the extent of sentence of the period already undergone by the appellants. However, the entire amount of fine awarded by the Trial Court shall be deposited by the appellants, within four weeks from the date of their release, in default, they shall be liable to undergo the same punishment of imprisonment, as the learned Trial Court has awarded.

83. Having said so, it is directed that the appellant- Dinesh Kumar, Sheshraj, Nan Babu, may be released forthwith, having already undergone the sentence of punishment under the present *Sessions Trial No. 137 of 2011 (State Vs. Dinesh Kumar and 4 others)*, arising out of Case Crime No. 665 of 2011, relating to Police Station - Gilaula, District - Shravasti, if they are not required in any other case(s). Appellant- Bitta Devi and Bade Lal Kori are already on Bail. Their Bail bonds are discharged.

All the Appellants shall be subject to compliance of Section 437-A Cr.P.C./481 BNSS.-2023.

84. Let the Trial Court record, along with copy of this judgment and order, be transmitted to the Court concerned for compliance.

85. There shall be no order as to cost(s).

86. All pending application(s) shall stand *disposed of.*

EPILOGUE

87. The present case is one such case wherein the deceased, on several occasions, communicated to her family members, particularly her brother, sister-in-law and mother, the persistent dowry demands and the cruelty to which she was being subjected by her in-laws. According to this Court, such repeated complaints ought not to have been treated as ordinary matrimonial disagreements; rather, they must have been recognized as genuine cries for help, protection and timely intervention. This Court is of the view that the facts of the present case serves as a reminder that whenever a daughter repeatedly approaches her family seeking assistance and expresses the harassment, fear and humiliation she is facing in her matrimonial home, her concerns deserve to be heard with empathy, seriousness and urgency. It is the moral as well as the social responsibility of the family to support her, believe her version and take all necessary steps to ensure her safety and dignity. According to this Court the safety, well-being and welfare of the married daughter should be of paramount concern for her family.

88. This Court cannot be oblivious to the fact and as is also available from the present case that, quite often a victim of dowry-related harassment is advised to adjust, compromise or save the marriage, despite repeatedly informing their families about the cruelty being inflicted upon her. This Court is of the view that seldom such advice may unintentionally embolden the perpetrators and expose the victim to continued abuse, ultimately resulting in tragic and irreversible consequences of even death of the victim. The present case highlights the unfortunate reality that meaningful action is frequently initiated only after the death of the victim. No doubt, the pursuit of justice through legal proceedings is both necessary and commendable, but it cannot substitute the timely intervention that might have prevented the loss of life.

89. The legislative intent behind provisions such as Sections 498A and 304B of the Indian Penal Code was not merely to punish offenders after the commission of the offence, but also to deter such conduct and provide effective legal protection to married women. The present case is not merely about holding the accused accountable and convicting them as per law, rather it conveys a larger message that every plea for help made by a daughter must be treated with compassion, seriousness and prompt action. Timely intervention can prevent irreparable loss, whereas delayed remorse and litigation cannot bring back a life that has already been lost.

90. Ultimately, this case reminds us that combating the social evil of dowry extends beyond the courtroom. It is a shared responsibility of families, communities and society to ensure that no woman is compelled to suffer in silence and that every call for help is answered before it culminates in tragedy of death of the victim. No judicial pronouncement, however just, can restore a life once it has been lost. This case also reflects the broader societal responsibility of responding to a woman's plea for help. Families, relatives and society at large must recognize that every complaint of dowry harassment or domestic cruelty deserves immediate attention, so as to have meaningful and effective resolution, before it is too late.

(2026) 7 ILRA 639
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1800 of 2012
along with Criminal Appeal No. 67 of 2013

K.D. Trivedi Krishna Dutt Trivedi ...Appellant
Versus
C.B.I., Lucknow ...Respondent

Issue for consideration

Whether the original record of a concluded criminal trial is required to be sent to the High Court when a criminal appeal is filed against an order of conviction or acquittal and notices of the appeal have been issued.

Headnotes

Allahabad High Court Rules, 1952-Chapter XVIII, Part III, Rule 9-Criminal Appeals-Original record-after notices have been issued in an appeal or revision the record shall be sent for unless otherwise ordered-directions in *Asian Resurfacing case* for preventing stay of proceedings before the trial Court-trial courts misunderstood the direction so as to mean that the trial Court's record is not to be transmitted to the High Court in any situation-directions were that the record of the trial Court should not be called for so as to create an unwarranted obstacle in continuance of proceedings pending in the trial Court-Hon'ble Supreme Court did not direct that even when the matter before the trial Court stands decided finally- the trial Court will not send its record upon being called for by the High Court-directions in *Prem Chand and Ors. v. Charat Kumar Bansal*, 2025 (3) ADJ 86, for preventing stay of proceedings before the trial Court-aforesaid directions would not apply to Criminal Appeals filed against final order of acquittal or conviction- regarding which there is a specific provision in Rule 9 of Chapter XVIII of Part III of the Allahabad High Court Rules-after conclusion of trial and conviction or acquittal - nothing remains to be done by the trial Court which may need the record of the trial-sending the original records of a concluded criminal trial would not hold up any proceeding before the trial Court-trial court directed to forward its original record without any further delay. **Appeal pending.** . (E-9)

Case Law Cited

1. Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299
2. Prem Chand and Ors. v. Charat Kumar Bansal, 2025 (3) ADJ 86

List of Acts

1. Allahabad High Court Rules, 1952 — Chapter XVIII, Part III, Rule 9
2. Code of Criminal Procedure, 1973 — Section 341
3. Code of Civil Procedure, 1908 — Section 100
4. Prevention of Corruption Act, 1988 — Sections 13(1)(d) and 13(2)
5. Indian Penal Code, 1860 — Sections 120-B, 420, 467 and 471

List of Keywords

Original record; trial Court's record Rule 9; concluded trial; final order of acquittal or conviction; stay of proceedings; Allahabad High Court Rules, 1952.

Appearances of parties

Counsel for Appellant(s): Amar Singh, Amit Kumar Gaur, Brijesh Kumar Shukla, Digvijai Nath Dubey, Neelam Shukla, Rakesh Srivastava, Siddharth Sinha, Aishwarya Shukla.

Counsel for Respondent(s): Anurag Kumar Singh, K.D. Trivedi, Krishna Dutt Trivedi.

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

1. Heard Shri Brijesh Kumar Shukla, Senior Advocate assisted by Ms. Aishwarya Shukla, the learned counsel for the appellant and Shri Anurag Kumar Singh, the learned counsel for the respondent-CBI.

2. The instant criminal appeal has been filed challenging the validity of a judgment and order dated 19.12.2012 passed by the learned Sessions Judge, Prevention of Corruption (Central), Lucknow in Case No.12 of 1998 whereby the appellant has been convicted under Sections 120B, 420, 467, 471 I.P.C. and Section 13(2) read with Section 13(1)(d) Prevention of Corruption Act, 1988 and sentenced to a maximum term of five years rigorous imprisonment with fine and a default stipulation. The appeal was admitted by means of an order dated 17.01.2013 and the trial Court's record was summoned. Instead of sending the record in compliance of the order dated 17.01.2013, the office merely sent a certified copy of the record to this Court.

3. Before proceeding any further, it would be appropriate to take a look at the relevant provisions contained in the Allahabad High Court Rules, 1952. Chapter XVIII falling in Part III of the Rules deals with "Proceedings Other Than Original Trials". Rule 9 of Chapter XVIII of the Allahabad High Court Rules provides as follows: -

*"**9. Issue of Notice** - If an appeal is not dismissed summarily a day shall be fixed for its hearing and notices in the prescribed form shall be issued.*

If an application for revision or other application is not rejected and an order directing the issue of notice is made, a day shall be fixed for its hearing and notices in the prescribed form shall be issued.

***After notices have been issued in an appeal or revision the record shall be sent for unless otherwise ordered**.*

In the case of an appeal under Section 341 of the Code of Criminal Procedure, 1973, the record of the case out of which the proceedings under appeal arose shall also be sent for unless otherwise ordered."

4. When this Court had passed an order summoning the trial Court's record, the trial Court ought to have sent the original record and not its certified copy. As the trial Court did send the original record and has forwarded merely a certified copy of its record, the office cannot provide copies of the trial Court's record to the learned counsel for the parties, because the Rules prohibit providing copies of a copy of a document. In absence of a copy of the trial Court's record being provided to them, the learned Counsel for the parties cannot provide effective assistance to the Court in deciding the appeal.

5. It appears that the practice of not sending the original records of cases to the High Court came into being after the judgment passed in the case of **Asian Resurfacing of Road Agency (P)**

Ltd. v. CBI: (2018) 16 SCC 299 (decided on 28.03.2018). That case arose from an order passed by the trial Court rejecting an application seeking discharge of the accused and framing charges against him. The challenge to the order framing charges reached the Hon'ble Supreme Court. Hon'ble Mr. Justice A. K. Goel delivered the majority judgment for himself and Hon'ble Mr. Justice Navin Sinha and Hon'ble Rohinton Nariman J. concurred with it. It was held in the majority judgment that: -

"37. Thus, ***we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution.*** *However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter.* ***Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be.*** *In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.*

(emphasis added)

6. Thereafter in **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**: (2018) 16 SCC 340, the Hon'ble Supreme Court issued the following directions on 25.04.2018: -

"3. To give effect to the directions in the judgment of this Court dated 28-3-2018 [Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299], noted above, we direct that wherever original record has been summoned by an appellate/Revisional Court, photocopy/scanned copy of the same may be kept for its reference and original returned to the trial courts forthwith.

4. We also direct that if in future the trial court record is summoned, ***the trial courts may send photocopy/scanned copy of the record and retain the original so that the proceedings are not held up.*** *In cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate/Revisional*

Court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same."

(emphasis added)

7. The direction issued in **Asian Resurfacing of Road Agency (P) Ltd.** (supra), that all interim orders will stand vacated automatically after expiry of six months, was set aside by a Constitution Bench consisting of five Hon'ble Judges in the case of **Allahabad High Court Bar Assn. v. State of U.P.:,** (2024) 6 SCC 267, wherein it was held that: -

"57. Sometimes, in quest of justice we end up doing injustice. Asian Resurfacing [Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299] is a clear example of the same. Such a situation created ought to be avoided in the normal course or if at all it arises be remedied at the earliest. In doing so, we have to adopt a practical and a more pragmatic approach rather than a technical one which may create more problems burdening the courts with superfluous or useless work. It is well said that useless work drives out the useful work. Accordingly, it is expedient in the interest of justice to provide that ***a reasoned stay order once granted in any civil or criminal proceedings, if not specified to be time-bound, would remain in operation till the decision of the main matter or until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying or vacating the same."***

(emphasis added)

8. In **Prem Chand and Ors. Vs. Charat Kumar Bansal**: 2025 (3) ADJ 86, a coordinate Bench of this Court was dealing with a mention made in a Second Appeal under Section 100 CPC, for returning the original record of the first Appellate Court and the trial court, which had been summoned without admitting the appeal. The High Court had summoned the original record seven years ago. Although an order was passed on 07.03.2019 to the effect that mere pendency of the appeal would not mean passing of any interim order staying execution of the decree, since the original record was lying before this Court for hearing on admission, the execution proceedings were held up. The coordinate Bench referred to the order dated 25.04.2018 passed by the Hon'ble Supreme Court in **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**: (2018) 16 SCC 340 and noted that: -

"The said directions were, later on, set aside by the Constitution Bench of the Supreme Court in High Court Bar Association, Allahabad vs. State of Uttar Pradesh and others: (2024) 6 SCC 267. This Court finds that reversal of previous decision in Asian Resurfacing by the subsequent decision in High Court Bar Association (supra) is an authority on the issue as to whether stay order granted by the High Court would automatically lapse after expiry of six months period. The judgment of the Supreme Court, with great respect, would not affect the directions contained in the order dated 25.04.2018 insofar as summoning of the photostat/scanned copy of the record of subordinate court is

concerned nor did the said issue form subject matter of deliberations or consideration before the Apex Court."

9. Keeping in view the fact that by summoning the record of the trial Court without admission of the Second Appeal, which had resulted in a stay of the execution proceedings without admission of the second appeal, the coordinate Bench issued the following directions: -

"10. In view of the above, since, even after reversal of the decision in Asian Resurfacing (supra), the Registry is summoning the photostat/scanned copy of the records of the courts subordinate to this Court, following directions are issued to the office of this Court:-

(a) Henceforth, the original record shall not be summoned by the office, unless otherwise specifically directed by this Court in a particular case and only photostat/scanned copy of the same shall be summoned.

(b) Whenever, in the past, original record has been summoned by this Court, office shall remit back the same to the concerned District Judgeship with a direction to the concerned District Judgeship to immediately send photostat/scanned copy of the said record to this Court and, thereafter, it is the said photostat/scanned copy that shall be kept for the purpose of consideration of the matter by this Court pursuant to previous directions issued by it."

10. It is to be noted that the Hon'ble Supreme Court had issued the directions in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. & Anr.** (supra) in proceedings arising out of an order passed by the trial Court framing charges against the accused and keeping in view the fact that summoning of the trial Court's record in such a situation results in stay of the proceedings of trial and it may continue for a very long period. Moreover, the scope of scrutiny at the stage of framing charges is very limited and the Court is not required to hold a mini trial so as to record a satisfaction of guilt of the accused or otherwise.

11. The directions in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. & Anr.** (supra) were that the trial courts may send photocopy/scanned copy of the record and retain the original **so that the proceedings are not held up**, but in some cases, the trial Courts misunderstood the direction so as to mean that the trial Court's record is not to be transmitted to the High Court in any situation, even where there are no proceedings pending / no proceedings might be instituted in the trial Court which might be held up by sending the records to the High Court. The directions were in fact that the record of the trial Court should not be called for so as to create an unwarranted obstacle in continuance of proceedings pending in the trial Court. The Hon'ble Supreme Court did not direct that even when the matter before the trial Court stands decided finally, the trial Court will not send its record upon being called for by the High Court.

12. In **Prem Chand and Ors. Vs. Charat Kumar Bansal** (supra) also, the coordinate Bench was dealing with a situation where the records of a trial Court had

been summoned in a Second Civil Appeal filed under Section 100 C.P.C., even without admission of the appeal. The decree under challenge in the Second Appeal had to be executed by the trial Court in Execution proceedings, in which the original record of the suit is needed. Although an order was passed on 07.03.2019 to the effect that mere pendency of the appeal would not mean passing of any interim order staying execution of decree, since the original record was lying before this Court for hearing on admission, the execution proceedings were held up. This direction would also apply in the factual background in which it was issued, i.e., the original record of the trial Court would not be summoned without admission of a second appeal so as to hold up the execution proceedings without a stay order having been passed by this Court.

13. The aforesaid directions would not apply to Criminal Appeals filed against final order of acquittal or conviction, regarding which there is a specific provision in Rule 9 of Chapter XVIII of Part III of the Allahabad High Court Rules that after notices have been issued in an appeal or revision the record shall be sent for unless otherwise ordered.

14. Moreover, after conclusion of trial and conviction or acquittal of an accused, nothing remains to be done by the trial Court which may need the record of the trial, unlike a civil appeal against a decree, in which case the trial Court has to execute the decree. Sending the original records of a concluded criminal trial would not hold up any proceeding before the trial Court. Therefore, the directions which were issued by the Hon'ble Supreme Court in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. & Anr**. (supra) and by a coordinate Bench of this Court in the case of **Prem Chand and Ors. Vs. Charat Kumar Bansal** (supra) for preventing stay of proceedings before the trial Court, will not apply to sending records of a concluded trial of a criminal case.

15. The Rules are meant to be obeyed by everyone, more so, by all the Courts of law. When a criminal appeal is filed against an order of conviction or acquittal or a Criminal Revision is filed against an order passed by a Sessions Judge in a Criminal Appeal filed against an order of conviction or acquittal and this Court issues notices of the appeal or revision, the original records of the trial Court / appellate Court, as the case may be, will be sent to this Court, unless otherwise ordered, as per the mandate contained in Rule 9 of Chapter XVIII of Part III of the Allahabad High Court Rules, 1952.

16. The trial Court is directed to forward its original record of the case in compliance of the order dated 17.01.2013 without any further delay.

17. Upon the record being received, the office shall provide its copy to the learned counsel for the parties on payment of usual charges.

18. List the appeal for hearing on **17.08.2026**.

19. Let this order be circulated among all the judicial officers of the State.

(2026) 7 ILRA 645
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Appeal No. 1080 of 2020
along with Criminal Appeal No. 856 2020

Abrar Ahmad **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the charge under Section 302 IPC should be the main charge and Section 304-B IPC an alternative charge?

Headnotes

Indian Penal Code, 1860-Ss. 302, 304-B- Indian Evidence Act - S.113-B Dowry death-Both offences involve unnatural death but have different ingredients-charge under S.302 IPC should be the main charge and S.304-B IPC should be the alternate or next charge-Where charge under S.302 IPC is not proved-evidence can be considered to decide whether alternative charge under S.304-B IPC is established -deceased died an unnatural death on account of strangulation within seven years of marriage-evidence showed that Appellant- husband of deceased- treated his wife with cruelty in connection with demand of dowry immediately before her death-presumption under S.113-B would attach- Appellant hardly discharged the burden of proof cast upon him-conviction under S.304-B IPC affirmed-no reliable evidence that Lal Babu and Shabana Khatoon treated deceased with cruelty in connection with demand for dowry immediately before her unnatural death-conviction of Abrar Ahmad under S.304-B IPC affirmed-Conviction of Lal Babu and Shabana Khatoon set aside.

Appeal of Abrar Ahmad dismissed and appeal of Lal Babu and Shabana Khatoon allowed. . (E-9)

Case Law Cited

1. Jasvinder Saini v. State (Govt. of NCT of Delhi, (2013) 7 SCC 256.
2. Sachin v. State of Maharashtra, (2025) 9 SCC 507.
3. Baijnath v. State of M.P., (2017) 1 SCC 101.
4. Charan Singh v. State of Uttarakhand, (2024) 13 SCC 649.
5. Hem Chand v. State of Haryana, (1994) 6 SCC 727.
6. Rajbir v. State of Haryana, (2010) 15 SCC 116.
7. Shindo v. State of Punjab, (2011) 11 SCC 517.
8. Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640.
9. K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217.
10. Jyoti Plastic Works (P) Ltd. v. Union of India, 2020 SCC OnLine Bom 2276.

List of Acts

1. Indian Penal Code, 1860—Ss. 302, 304-B, 498-A and 34.
2. Code of Criminal Procedure, 1973—Ss. 161, 207, 302, 313, 386(b), 386(c), 401 and 437-A.
3. Indian Evidence Act, 1872—S. 113-B.

4. Dowry Prohibition Act, 1961—Ss. 3 and 4.
5. Bharatiya Nagarik Suraksha Sanhita, 2023—S. 481.

List of Keywords

Dowry death; unnatural death; main charge; alternate charge; presumption; burden of proof; seven years of marriage; immediately before death; matrimonial home; strangulation; separate living.

Appearances of parties

Counsel for the Appellant(s): Abrar Ahmad, Arvind Kumar Singh, Deepesh Kumar Ojha, Prashant Tripathi, Rahul Misra, Sumit Kumar Gupta.
Counsel for the Respondent: G.A.

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

1. These two connected criminal appeals have been preferred by Abrar Ahmad, Lal Babu and Shabana Khatoon, who stood their trial before Mr. Abhimanyu Singh, the then Additional District and Sessions Judge, Court No.4, Kushinagar at Padrauna in connection with Crime No.648 of 2013, under Sections 498-A, 304-B of the Indian Penal Code, 1860 (for short, 'IPC') and Section 3/4 of the Dowry Prohibition Act, 1961 (for short, 'DP Act'), Police Station Vishunpura, District Kushinagar and were convicted of offences punishable under Sections 304-B/ 34, 498-A/ 34 IPC and Section 4 of the DP Act. The appellants were, however, acquitted of the offence under Sectio 3 of the DP Act.

2. The learned Judge passed sentences of imprisonment for life upon each of the appellants for the offence under Section 304-B IPC and for the offence under Section 4 DP Act, each of the appellants received a two year term of simple imprisonment together with fine in the sum of Rs.5000/-. In the event of default in payment of fine, an additional term of two months simple imprisonment was directed to be suffered by the appellants. No sentence has been passed under Section 498-A IPC, notwithstanding the conviction on the aforesaid charge.

3. An information was given to the Station House Officer, Police Station Vishunpura, District Kushinagar in the form of a written report by Nurul Huda son of Idrish Ansari, a resident of Village Nonia Patti, Post and P.S. Padrauna, District Kushinagar, saying that the informant had married his daughter Tajrun Khatoon on 29.06.2013 to Abrar Ahmad son of Amiruddin, a resident of Jama Masjid, Post Dudahi, P.S. Vishunpura, District Kushinagar. After his daughter went to her matrimonial home and a month had passed by, he received a phone call from his daughter that her in-laws were demanding a motorcycle, a chain, a ring, apparently of gold. To this, the informant reported that he told his daughter that he had given cash and all necessaries in her marriage and that he could not fulfill the aforesaid demand. His daughter in answer told the informant, as he reports, that her in-laws say that if she did not listen to them and get a motorcycle, chain and ring from her family, she would be done to death. The informant has narrated that at the time of marriage, he had given away Rs.1 lac in cash, a chain, a ring, a *nathia, jhumka* and *payal*, besides all necessaries for the household. On 06.10.2013, which fell on a Sunday in the evening hours, at about 6.00 p.m., the informant received a phone call from his daughter that her in-laws were beating her up, telling her that if within a week, their demands were not fulfilled, she would be killed. Today, on 10.10.2013, which was a Thursday, he received a phone call late in the night from his son-in-law, Abrar Ahmad, that his daughter was seriously unwell. Upon receiving this information, it is said by the

informant that he immediately left for Dudahi, that is to say, his son-in-law's home and found there that his daughter was dead. Nurul Huda said in his report to the Police that he was convinced that his daughter had been murdered by throttling her and in this murder, his son-in-law Abrar Ahmad, elder brother Lal Babu and Lal Babu's wife Shabana Khatoon, besides others in the family, were involved. This written information dated 10.10.2013 is on record as Ex. Ka-1.

4. On the basis of the written information, the Police at P.S. Vishunpura registered a First Information Report (for short, 'FIR') and the check FIR shows that the crime was registered on 10.10.2013 at 9.35 p.m. The crime occurred in the night intervening 09/10.10.2013. The check FIR shows that the crime was registered as Crime No. 648 of 2013, under Sections 498-A, 304-B IPC and Section 3/4 DP Act, P.S. Vishunpura, District Kushinagar. The check FIR is on record and marked as Ex. Ka-7. Inquest for the deceased was held on 10.10.2013, commencing at 10.00 a.m. and ending at 11.30 a.m. The inquest report dated 10.10.2013 is on record as Ex. Ka-3. According to the autopsy report dated 10.10.2013, Ex. Ka-2, the cause of death is asphyxia as a result of strangulation. The ante-mortem injury, that is noticed, is a contused ligature mark of size 18 cm x 2.5 cm on the anterior part of the neck, extending from right mastoid to mid of anterior part of left side neck. The external examination reveals that both eyes and mouth were closed, hyoid bone was fractured and subcutaneous haemorrhage was present. The time of death was opined to be about one day before the examination.

5. The investigation was handed over to Police Station Tarya Sujan, District Kushinagar and assigned to a Deputy Superintendent of Police, one Dinesh Kumar Singh, PW-7. He commenced investigation recording statements under Section 161 Cr.P.C. and visiting the scene of crime, whereof a site-plan was drawn up. The site-plan is on record as Ex. Ka-9. The Investigating Officer filed a charge-sheet, bearing No. 48 dated 26.12.2013 against the appellant Abrar Ahmad and Lal Babu together. This charge-sheet is marked as Ex. Ka-10. A separate charge-sheet dated 02.01.2014 was filed against the appellant Shabana Khatoon, which is marked as Ex. Ka-11.

6. The learned Chief Judicial Magistrate, Kushinagar took cognizance, the appellants were furnished relevant prosecution papers as provided under Section 207 Cr.P.C. and vide order dated 25.06.2015, the case was committed to the Court of Sessions for trial.

7. Before the learned Sessions Judge, two sessions trials were registered, to wit, Sessions Trial No.331 of 2015, where the appellant Abrar Ahmad was the sole accused, and Sessions Trial No.501 of 2015, where Lal Babu and Shabana Khatoon were the accused. Both the trials came up before Mr. Rajeev Kamal Pandey, Additional Sessions Judge/ F.T.C. Kushinagar at Padrauna for framing of charge. In S.T. No.331 of 2015, on 07.08.2015 four charges were framed against the appellant Abrar Ahmad, viz: the first charge was for the offence punishable under Section 498-A IPC, the second under Section 3 DP Act, the third under Section 4 DP Act and the fourth under Section 304-B IPC. Here, there was an alternate charge under Section 302 IPC as well. Likewise, in S.T. No.501 of 2015, on 07.10.2015 four charges were also framed against the appellants Lal Babu and Shabana Khatoon, i.e., the first under Section 498-A/ 34 IPC, the second under Section 3 DP Act, the third under Section 4 DP Act, and the fourth under Section 304-B/34 IPC; alternatively, under Section 302/34 IPC. In both the trials, the accused-appellants, who are the appellants here, pleaded not guilty and claimed trial.

8. Both the cases, being ones arising out of the same crime, were tried together.

9. The prosecution examined the following witnesses in support of their case:

1. PW-1 - Nurul Huda, the first informant and father of the deceased,

2. PW-2 - Najrun Khatun, sister of the deceased,

3. PW-3 - Naim Ansari, brother of the deceased,

4. PW-4 - Dr. Anoop Kumar, who conducted postmortem of the deceased,

5. PW-5 - D.D. Sharma, Deputy Superintendent of Police, in whose presence inquest and other related documents were prepared,

6. PW-6 - SI Amar Nath Srivastava, the then Head Moharrir, who drew up the check FIR and made other G.D. entries,

7. PW-7 - Addl. Superintendent of Police Dinesh Kumar Singh, who investigated the case and submitted the charge-sheet,

8. S.H.O. Gopal Tripathi, the then S.H.O., P.S. Bishunpura, District Kushi Nagar.

10. The prosecution produced the following documentary evidence:

Sr. No.	**Exhibit No.**	**Exhibited documents with brief particulars**
1.	Ex. Ka-1	Written report dated 10.10.2013 lodged with Police Station Padrauna, District Kushi Nagar, proved by PW-1, Nurul Huda,
2.	Ex. Ka-2	Postmortem report dated 10.10.2013, proved by PW-4, Dr. Anoop Kumar
3.	Ex. Ka-3	Inquest report dated 10.10.2013, proved by PW-5, D.D. Sharma
4.	Ex. Ka-4	Sample seal dated 10.10.2023, proved by PW-5, D.D. Sharma
5.	Ex. Ka-5	Police Form No.13 (Challan Lash) dated 10.10.2013, proved by PW-5, D.D. Sharma
6.	Ex. Ka-6	Police Form No. 379 (Photo Lash) dated 10.10.2013, proved by PW-5, D.D. Sharma
7.	Ex. Ka-7	Check FIR dated 10.10.2013, proved by S.I. Amar Nath Srivastava
8.	Ex. Ka-8	Carbon Copy of GD Entry dated 10.10.2013, proved by S.I. Amar Nath Srivastava
9.	Ex. Ka-9	Site-plan of the place of occurrence dated 11.10.2013, proved by PW-7, Addl. S.P. Dinesh Kumar Singh
10.	Ex. Ka-10	Charge sheet dated 26.12.2013 submitted against Abrar Ahmad and Lal Babu, proved by PW-7, Addl. S.P. Dinesh Kumar Singh

11.	Ex. Ka-11	Charge sheet dated 02.01.2014 submitted against Shabana Khatun, proved by PW-7, Addl. S.P. Dinesh Kumar Singh
12	Ex. Ka-12	Recovery memo taking into possession of the belongings of the deceased dated 11.10.2013, proved by PW-8, S.H.O. Gopal Tripathi
13.	Ex. Ka-13	Arrest memo dated 12.10.2013, proved by PW-8, S.H.O. Gopal Tripathi
14.	Ex. Ka-14	Carbon Copy of GD Entry dated 12.10.2013, proved by PW-8, S.H.O. Gopal Tripathi
15.	Material Ex. 1	Marriage Card
16.	Material Ex. 2	Envelop of Marriage Card

11. After the prosecution evidence was over, the statements of the appellants under Section 313 Cr.P.C. were recorded, all on 08.08.2018. In their statements under Section 313 Cr.P.C., in answer to the last question, if the accused had anything to say, all the three appellants have come up with substantial explanations, which would be noticed later on in the course of this judgment.

12. The accused-appellants entered defence and three witnesses were produced, to wit: Istiyak Alam, DW-1, Husain Ansari, DW-2, and Amir Hasan, DW-3.

13. After holding trial and hearing parties, the learned Additional Sessions Judge convicted and sentenced each of the appellants by means of the impugned judgment and order.

14. Aggrieved, these appeals have been preferred.

15. Heard Mr. Arvind Kumar Singh, learned Counsel for the appellants and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate along with Mr. Kamlesh Kumar Nishad, learned State Law Officer appearing on behalf of the State in both the appeals.

16. Mr. Arvind Kumar Singh, learned Counsel for the appellants has urged that the FIR is ante-timed. The inquest shows that information to the police station was given on 10.10.2013 at 6.15 a.m. Amar Nath Srivastava, PW-6, was the Moharrir at the police station who has said in his testimony that the written information was received on 10.10.2013 at 12.35 p.m. It was, however, lodged at 9.35 p.m. with a delay of eight hours from receiving it and twenty hours after the incident. The exact date and time of incident are not mentioned in the G.D. The medical report, in the submission of the learned Counsel for the appellants, does not support the prosecution. It is next submitted that the Call Detail Record (CDR) was not collected during course of investigation. No complaint about cruelty in connection with dowry demand was made prior to the incident. There is no evidence that the deceased was subjected to cruelty in connection with demand for dowry soon before her death. The prosecution have failed to prove that the appellants had subjected the deceased to cruelty in connection with demand of dowry soon before her death. This is an essential ingredient, which the prosecution have to prove beyond reasonable doubt in order to raise the presumption under Section 113-B of the Evidence Act. The appellant Abrar Ahmad, who is the husband of the deceased, informed the deceased's father about the incident. Abrar Ahmad, Lal Babu and Shabana were present at the spot on 10.10.2013. The last fact shows the absence of a

guilty mind and honourable behaviour. Abrar Ahmad and Lal Babu were arrested on 10.10.2013, but the arrest memo was prepared on 12.10.2013. It is submitted that the testimonies of PW-1, PW-2, PW-3 and PW-4 are not reliable and do not inspire confidence. It is a case of suicide and not homicide. The deceased committed suicide by hanging herself to death, not on account of any harassment in connection with dowry, but for reason of other bickerings between the husband and wife and their circumstances. It is emphasized that Lal Babu and Smt. Shabana lived separately in the same house and they were not on good terms. There is absolutely no involvement of these two appellants in the affairs of the deceased's family. Learned Counsel for the appellants submits that the explanation offered about the victim's unnatural death and the circumstances that figure in the statements of Abrar Ahmad, Lal Babu and Smt. Shabana under Section 313 Cr.P.C. have not been considered by the learned Trial Judge. It is particularly emphasized that the Investigating Officer has neither collected the CDR nor an FIR has been lodged about cruelty in connection with dowry demand prior to the incident, which would show that the ingredients of the offence under Section 304-B IPC are not attracted. The learned Counsel for the appellants has placed reliance upon the authority of the Supreme Court in **Charan Singh v. State of Uttarakhand, (2024) 13 SCC 649.** It is lastly submitted that the extreme punishment of life imprisonment has been awarded for the offence under Section 304-B IPC without assigning any cogent reasons. It should not be awarded in every case as held by the Supreme Court in **Hem Chand v. State of Haryana, (1994) 6 SCC 727**. The learned Counsel for the appellants brings it to our notice that Abrar Ahmad has already served more than 13 years in jail in the aforesaid case.

17. Mr. Shashi Shekhar Tiwari, learned A.G.A. along with Mr. Kamlesh Kumar Nishad, learned State Law Officer have supported the impugned judgment and said that it is a case of a young women's death within seven years of marriage in her matrimonial home with a background of cruelty in connection with demand of dowry shortly before her death. In the learned A.G.A.'s submission, presumption under Section 113-B of the Evidence Act would, therefore, arise and burden would lie upon the appellants to prove their innocence.

18. Upon hearing learned Counsel for the parties, we are of opinion that the case in the appeal of Abrar Ahmad, on one hand, and that in the appeal of Smt. Shabana Khatoon and Lal Babu, on the other, have very different facts and evidence, vis-a-vis the charge involved. We also find that though the Trial Court was right in framing a charge under Section 302 IPC, but as the legal position would have it, the charge under Section 302 IPC could not have been the alternate charge. Rather, the charge under section 304-B IPC should have been the alternate or just the next charge to be considered, if the charge under Section 302 IPC was not substantiated by the prosecution evidence. The law, that is crystallized in this regard, is clear and it is not that, that the murder of a woman within seven years of marriage within the four-walls of her matrimonial home, where soon before her death, there was cruelty inflicted upon her in connection with dowry, would become a case punishable under section 304-B alone. In both offences, that is to say, Sections 302 and 304-B IPC, there is essentially an unnatural death involved. Both the charges have different ingredients. Whereas the charge under Section 302 IPC requires the intention to do another to death followed up by the necessary action, a case under Section 304-B includes any kind of unnatural death of a woman in her matrimonial home within seven years of marriage, if immediately before her death, she was subjected to cruelty in connection with demand of dowry. Thus, a purely suicidal death, where ingredients of Section 304-B are attracted, would lead to proof of the charge with burden

shifted upon the accused to establish his/ her innocence, provided the prosecution discharge its burden regarding commission of acts of cruelty in connection with dowry demand immediately before the unnatural death of the woman in her matrimonial home, the period of marriage not having exceeded seven years. Therefore, where the Court finds that there is material to frame a charge under Section 302 IPC, the Court must consider evidence to see if the charge under Section 302 IPC is proved. If it is not proved, the Court can then consider evidence to decide whether the alternative charge of dowry death punishable under Section 304-B is established. In this connection, reference may be made to **Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256**. In **Jasvinder Saini** (supra), it was held:

"15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir case [Rajbir v. State of Haryana, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] . The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in Rajbir case [Rajbir v. State of Haryana, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] , but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court."

19. In this case, what we find is that the husband and wife were staying together in one part of the house belonging to the husband's father, who would stay at Lucknow with his wife, whereas in another part, his brother and sister-in-law, the appellants in the connected appeal, Shabana Khatoon and Lal Babu had their living quarters. There is evidence adduced in defence on behalf of all the appellants that Abrar Ahmad had soured relations with his brother Lal Babu, after the latter's marriage, on account of which their father had put them up in separate accommodation within the same premises. This stand has come in the explanation given by the appellants to the incriminating circumstances appearing against them, in their statements under Section 313 Cr.P.C. and the defence evidence led. Of course, this does not figure in the prosecution evidence and nothing on the point could be elicited during the cross-examination as well. However, the cross-examination of the three witnesses for the prosecution, who are the father, brother and sister of the deceased, and for that matter, their examinations-in-chief as well, show that they were strangers to Abrar's household after all. In the short life of the parties' marriage, PW-1, the deceased's father, had visited the deceased's matrimonial home on one occasion alone. All his information about the affairs in his daughter's life were based on three telephonic conversations that he had with his daughter. In this

kind of an interaction between the two families, after matrimony, if it can at all be called any kind of interaction, it is difficult to infer or hold that PW-1 would have known that the two brothers were estranged and living in separate quarters, albeit in the same house.

20. So far as PW-2, the deceased's sister, is concerned, she never went to her sister's matrimonial home and her interaction with the deceased after the latter's marriage was limited to a telephonic contact, which too, from the evidence, appears to be brief and infrequent. PW-3, the deceased's brother, appears to have visited his sister, but again not any more than his father, PW-1. None of the witnesses for the prosecution would know that the deceased and her brother-in-law were living apart. To the contrary, the defence witnesses, who have no axe to grind or reason to speak falsehood, have spoken about the estrangement of the two brothers and their separate households within the same premises, separated by their father on account of the soured relationship between the two brothers. The circumstances, in which the relations had soured, have also been spoken about by the defence witnesses. The Trial Court has not paid any attention to the defence evidence. It is not fair to condemn defence evidence or look upon it with suspicion as second grade evidence, inferior to that of the prosecution. As regards the awareness that PW-1 had about his son-in-law's household and the limited contact that he had with his daughter, would be evident from the following part of his cross-examination:

"अबरार के पास मोबाइल था। मेरी बेटी ने अपनी शादी के बाद अबरार के मोबाइल से मुझसे 3 बार बात की थी। एक बार घटना के एक महिना पहले बात किया था। बात मुझसे हुई थी। तारीख व समय नहीं बता सकता। मुझे मेरे मोबाइल का नम्बर याद नही है। मैं पढ़ा लिखा नही हूँ। फिर इस घटना के पहले भी मेरी बेटी ने मुझसे फोन किया था। कब किया था समय याद नही है। तीसरी बार छः रोज पहले फोन किया था। यकिन के साथ समय याद नही आ रहा है। शादी के बाद मैं एक ही बार उसकी ससुराल गया हूँ। मैं शादी के बाद पहली बार अपनी लड़की के ससुराल हाल चाल लेने गया था। मेरी लड़की ने जब पहली बार मुझसे फोन किया तो हाल चाल लेने के संबंध में की थी।

अबरार कुल कितने भाई है इस समय मुझे याद नही है। अबरार का सबसे बड़ा भाई लालबाबू है। और अबरार के कितने भाई है मुझे नहीं मालूम है। मेरी बेटी के लिए ससुराल में अलग से कोई कमरा मिला था कि नहीं इसकी जानकारी मुझे नही है।"

21. Likewise, PW-2, Smt. Najroon, who was the deceased's sister, had no contact with the deceased nor had she visited her matrimonial home. This fact would be evident from the following part of her cross-examination:

"मैं हमेशा अपनी बहन का हाल चाल फोन करके पूछती थी। मैं किस नम्बर से अपनी बहन से बात करती थी नम्बर मुझे याद नहीं है। फोन खराब हो गया था। इसलिये फेंक दिया। मैं अबरार के नम्बर पर ताजरुन से बात करती थी। मैं जब अबरार के फोन पर फोन करती थी तथा कहती थी कि ताजरुन से बात कराइये तो वह ताजरुन से बात करा देते थे। फोन में दिन में ही करती थी।

ताजरुन किस नं. से बात करती थी मुझे मालूम नहीं। मैं कभी ताजरुन के घर नहीं गयी थी। मेरे शौहर भी कभी ताजरुन के घर नहीं गये थे। मुझे इस बात की जानकारी नहीं है कि शादी के बाद मेरे पिता जी ताजरुन के घर गये थे कि नहीं मैंने अपने पिता जी से ताजरुन के सम्बन्ध में कोई बात नहीं किया था।

शबाना खातून और लाल बाबू से कभी नहीं मिली हूँ।"

22. PW-3, Naeem Ansari, who is the deceased's brother, also had scanty contact with the deceased and her matrimonial household, as would appear from the following part of his cross-examination:

"शादी के बाद से मेरी बहन से मुलाकात नहीं हुई। केवल मोबाइल से बात हुई। ताजरुन को शादी में गिफ्ट के रूप में मोबाइल नहीं दिया गया था ताजरुन से बात उसके पति अबरार के मोबाइल से ही होती थी ताजरुन से मेरी बात तीन चार बार हुई।

अबरार ने मुझे कभी फोन नहीं किया किस तारीख को ताजरुन से बात हुई तारीख नहीं बता सकता। ताजरुन से जितने बार बात हुई दिनांक व समय याद नहीं है। ताजरुन के निकाह से 1 माह तक मेरी ताजरुन से कोई बात नहीं हुई। उस समय मैं पडरौना में ही था। मैंने बहन का हाल चाल लेने के लिए फोन नहीं किया वही फोन करती थी।"

23. All this evidence would show the scanty nature of interaction that the deceased's family had with her husband's family. They would possibly not know, therefore, that the two brothers were living separately.

24. In his statement under Section 313 Cr.P.C., the appellant Lal Babu, Abrar's brother, has stated:

"मैं और अबरार दोनो बेरोजगार थे। दोनो लोगो के खर्चे का पैसा मेरे पिता अमीरूद्दीन भेजा करते थे। इसकी वजह से अबरार के साथ मेरे तालमेल बहुत खराब हो गए थे इसलिए हमारे पिता ने घर का बटवारा करके मुझे व मेरी पत्नी को अलग कर दिया था। मैं अपनी पत्नी के साथ अलग रहता था तथा अलग खाना बनता था।

अलग हो जाने के कारण अबरार से मेरी कोई बातचीत नहीं होती थी। दादी के जागने के कारण इस घटना की जानकारी हुई। अबरार और उसकी पत्नी के बीच किस प्रकार के संबंध थे तालमेल न होने के कारण नहीं जान पाया। अबरार की ग्रहस्थी में मेरा व मेरी पत्नी का कोई हस्तक्षेप नहीं था अबरार ने अपनी पत्नी को हम लोगो से बात करने से मना किया था।"

25. DW-1 is a brother-in-law of sorts to Lal Babu. He stated in his examination-in-chief:

"लाल बाबू व अबरार के पिता अमीरुद्दीन लखनऊ में ठेकेदारी का काम करते हैं। लाल बाबू व अबरार की माँ व अन्य भाई बहन लखनऊ में रहते हैं, लालबाबू व अबरार दुदही में अपने पैतृक घर पर रहते हैं, लालबाबू व अबरार के खर्च के लिए उनके पिता पैसा भेजते थे, अमीरुद्दीन ने लालबाबू के पास पैसा खर्च के लिए भेजते थे, लालबाबू की शादी के बाद से लालबाबू व अबरार में खर्च को लेकर झगड़े होते थे इस झगड़े को देखकर सन् 2012 में अमीरुद्दीन ने अपने दोनों लड़को को अलग कर दिया तब से लालबाबू अपनी पत्नि के साथ उसी घर में अलग रहते थे वह अपना अलग भोजन बनाते थे अलग खाते पीते थे। इन लोगों के पास खेतीवारी नही है उसके बाद दिनांक 29.06.2013 को अबरार की शादी ताजरुन के साथ हुई शादी व ताजरुन की मृत्यु के समय लालबाबू अलग रहता था। लालबाबू व अवरार के बीच कोई सम्बन्ध नही था,"

26. In his cross-examination, he has stated:

"मेरी जानकारी मे ताजरुन के शादी के लगभग एक-डेढ़ साल पहले से लालबाबू व शबाना अलग बनाते खाते थे लेकिन लालबाबू अबरार आदि सब लोग एक ही घर में रहते थे लालबाबू व अबरार में सम्बन्ध अच्छे नही थे और कोई विवाद नही था, उन लोगों में कोई बात चीत नहीं होती थी,"

27. DW-2, Husain Ansari, is some kind of a medical man, who runs a pathology centre for the testing of blood, urine etc. Abrar would work with him before his marriage. Abrar worked with Husain Ansari (DW-2) for a period of one and a half years before his marriage and about a month and two afterwards. He is otherwise an independent witness, not connected to either the deceased's family or the appellants' family. However, he knew their affairs well because Abrar would work for him. He has said in his examination-in-chief:

"लालबाबू अबरार के बड़े भाई है अबरार की शादी के पूर्व से ही लालबाबू और उसकी पत्नी शबाना खातुन को अबरार के पिता ने अबरार के शादी के पहले से अलग कर दिया था, लालबाबू अपनी शादी के पहले अबरार के साथ रहता था इनके पिता शेष परिवार के साथ लखनऊ रहते हैं वे लालबाबू व अबरार के खर्ज के लिए पैसा लालबाबू के पास भेजते थे लालबाबू की शादी के बाद दोनों भाइयों मे टकरार होती थी जिसके कारण पिता अमरुद्दीन ने लालबाबू के शादी के बाद लालबाबू व उसकी शबाना खातुन को उसी मकान में अलग कमरा दे दिया और वह अलग रहने लगे यह बात सन् 2011 की है। लालबाबू अपनी पत्नी शबाना खातुन व अपनी दादी के साथ अलग रहते थे अलग खाना खाते पीते थे लालबाबू की दादी मर गयी है।"

28. This witness in his cross-examination has testified:

"मैं MLC दिल्ली होल्डर हूँ हमारा घर मुल्जिमान लालबाबू व अबरार के घर से 500 मीटर की दूरी पर है मैं अभियुक्त लालबाबू व अबरार के घर रोज नही जाता रहा हूँ जब कोई अवसर पर काम पड़ता था तो मैं उनके घर जाता हूँ

लालबाबू के शादी होने के कुछ दिन समय बाद जब अबरार अविवाहित था उसी समय से अमीरुद्दीन ने दोनों को अलग कर दिया था अबरार अकेले बनाता खाता था।"

29. DW-3, Amir Husain, is a neighbour of the deceased's in-laws. He has said in his examination-in-chief:

"लालबाबू, अबरार को जानता हूँ लालबाबू व अबरार का घर मेरे घर के एक घर के बाद है लालबाबू के पिता लखनऊ में रहकर ठीकेदारी करते हैं लालबाबू और अबरार के अलावे उनके परिवार के लोग लखनउ रहते है लालबाबू व अबरार का खर्च अमरुद्दीन भेजते थे अबरार की शादी से पूर्व ही लालबाबू अलग रहते थे अमरुद्दीन ने लालबाबू की शादी के बाद से लालबाबू को अलग कर दिया था लालबाबू व अबरार का खाना अलग-अलग बनाते खाते है घर एक ही कोठरी अलग अलग बटवारा हुआ है अबरार की शादी हुई तो लालबाबू अलग रहते थे और लालबाबू की दादी नगैतुन लालबाबू के साथ रहती थी लालबाबू अबरार के बीच अबरार की शादी से पहले से बोल चालू बन्द था लालबाबू अपनी पत्नी शबाना के साथ अलग रहते हैं।"

30. He has said in his cross-examination:

"अबरार के पिता लखनऊ रहते थे बाकी लालबाबू अबरार व उनकी पत्नियां एक ही घर मे रहती थी उस घर का मुख्य एक ही दरवाजा है।"

31. The explanation offered by Lal Babu in his statement under Section 313 Cr.P.C. and the preponderant evidence of three defence witnesses, one of whom is related to the appellants' family, though apparently not a blood-relative and the two other independent witnesses, DW-2 and DW-3, who have broadly spoken about the strained relations between the two brothers, both of whom were supported in their livelihood by their father's exertions and the fact that upon Lal Babu's marriage, their father had placed them in separate living quarters in the same house with no hearth to share, shows that two brothers hardly had any interaction as a family. There is consistent evidence that the two brothers did not speak to each other.

32. Now, in this background, whatever happened on the fateful night, was a matter between the appellant Abrar and the deceased. It is true that the marriage was a very short live one, and in that short period, there is testimony of PW-1 in his examination-in-chief that one month after marriage, the deceased had called him up to say that her in-laws Abrar and Lal Babu @ Ajmeri and Shabana Khatoon were demanding in dowry a gold chain, a gold ring and a motorcycle. The witness has testified that he told his daughter that whatever he had, he had given away in her marriage and now his circumstances did not permit him to give anything more. A week after this call, the deceased again called up PW-1, her father, and informed him that Abrar, Lal Babu and Shabana were threatening her that in the event the chain, the ring and the motorcycle were not given, they would not let her live. On 06.10.2013, there was yet another phone call from the deceased, where she told PW-1 that the three of her named in-laws were torturing her and demanding the dowry to be made good within a week, and else, they would do her to death. On 10.10.2013, the fateful phone call came from the appellant Abrar to PW-1 that he should immediately come over as Tajroon was very ill. PW-1 then went over to Tajroon's place, located in Dudahi only to find that her dead body was lying there. There was a ligature mark on her neck, a fact which convinced PW-1 that her in-laws had murdered her.

33. This witness in his cross-examination has testified to the effect that when he first spoke to his daughter over telephone to know about her welfare, she had told him that her in-laws were troubling her. He has said that he never informed the Police about his daughter being ill-treated or troubled by her in-laws. As regards, the appellants, Lal Babu and Shabana Khatoon, PW-1 has stated that none of them ever called him up on phone. He has further said that Shabana Khatoon had greeted him, but both of them did not say anything else. The relevant part of PW-1's cross-examination reads:

"लालबाबू ने कभी मुझे फोन नही किया। शवाना ने भी कभी हमे फोन नहीं किया। मैं जब अपनी बेटी से मिलने गया था तो शवाना ने मुझे सलाम किया। उन लोगों ने मुझसे और कोई बात नहीं किया। मैंने भी उनका हाल चाल नही पूछा था।"

34. So far as PW-2, Smt. Nazroon, the deceased's sister is concerned, she has testified in her examination-in-chief that her younger sister was treated with cruelty and violence by her husband, brother-in-law Lal Babu and sister-in-law Shabana Khatoon in connection with their demand of a motorcycle, a gold chain and a gold ring that they wanted in dowry. This information was given to her by the deceased Tajroon over mobile phone, during conversation the two had. In her cross-examination, in one part of it, that is reproduced hereinabove, this witness has expressed her lack of acquaintance with the deceased's husband and in-laws and acknowledged having never visited her sister. In her cross-examination, she has asserted that the deceased had told her that the appellants Shabana Khatoon and Lal Babu would demand a motorcycle, gold chain and a gold ring in dowry. This information, the witness had acquired during a telephonic conversation with the deceased, as the cross-examination would show. She had never been to their households or knew any of the appellants personally, much less intimately. In her cross-examination, this witness has further said in answer to a question by the Court that she knew about violence and cruelty for the purpose of demand of dowry, but did not know how Tajroon died.

35. PW-3, Naeem Ansari, in his examination-in-chief has said that a month after her marriage, his sister called him up on phone to say that her husband Abrar, brother-in-law Lal Babu and his wife Shabana Khatoon would beat her up and torture her demanding in dowry a motorcycle and they had further said that in the event the demand was not made good, they would not spare her life. In his cross-examination, this witness has said about the demand for dowry that when his sister called his father, she had told the latter about the dowry demand by her in-laws, but they did not lodge any complaint with the Police. It is also said in the cross-examination by this witness that his sister had told them, which means her parents' family, that the appellants are greedy in nature and it is for that reason that they were demanding a motorcycle, a chain and a ring. About the motorcycle, that was already given at the time of marriage, the witness has said, he does not remember in whose name it was purchased. It is further on said that it was Abrar, who would repeatedly come up with the demand for dowry. The witness also says in his cross-examination that notwithstanding the information about cruelty in connection with demand of dowry, they did not lodge any complaint with the Police nor did they seek the intervention of their close relatives or friends in order to resolve the matter through a panchayat.

36. Now, so far as cruelty and the demand of dowry is concerned, there are consistent allegations by the three prosecution witnesses against the appellant Abrar, who was the deceased's husband, with convincing reasons why this kind of a demand would have been made. After all, it was Abrar, who was the deceased's husband, and for small gains to be made, like a motorcycle, a gold chain or gold ring, it is natural that these would be considerations for the appellant Abrar to act in the manner he appears to have done. There is convincing evidence on record to show that Abrar and his brother Lal Babu had separate households within the same premises with a partition being brought about by their father, who appears to be the earning member of the family, living in Lucknow. The separate households for the two sons were set up by their father, when Lal Babu was married, and it has come in evidence of the defence witnesses that the two brothers did not see eye-to-eye and were hardly on speaking terms. In our opinion, therefore, the fact that there was cruelty inflicted upon the deceased in connection with demand for dowry has to be limited to the appellant Abrar, the deceased's husband. We say so because Lal Babu and wife Shabana lived in a separate household and Lal Babu apparently was not on good terms with his brother. The two hardly spoke

to each other. In these circumstances, to infer that Lal Babu and his wife Shabana would join cause with Abrar, the appellant, in subjecting the deceased to cruelty in connection with demand for dowry, is rather illogical. The gainer would be the husband and so the perpetrator.

37. The evidence against Lal Babu and Shabana, indulging in violence or treating the deceased with cruelty in connection with demand for dowry along with Abrar, is based mostly on telephonic conversations, that PW-1, PW-2 and PW-3 had with the deceased. The evidence shows that post marriage, the deceased had never come back home to her parents nor the parents or siblings had opportunity to interact with her. The information that the witnesses had from the deceased was, therefore, scanty and one which cannot be mechanically accepted for all the appellants. Abrar, being the husband, would of course take the blame for any cruelty that was inflicted in connection with the demand for dowry, but there is no reason to accept this part of the evidence against Abrar′s brother and sister-in-law, who are already estranged with him. In our opinion, the learned Trial Judge has not given due weightage to the defence witnesses or the explanation by the appellants Lal Babu and Shabana and gone mostly by the prosecution evidence and almost a presumption to find against them on the fact of infliction of cruelty in connection with demand for dowry upon the deceased.

38. Coming to the homicide or the unnatural death that the deceased met, it again happened in the room where Abrar and his wife stayed. Apparently, it happened by night and there was no reason at that hour for the appellants Lal Babu and Shabana to be there. The two were living in separate households, albeit in the same house and premises. It is true that the cause of death is asphyxia on account of strangulation and the hyoid bone is fractured, as the doctor reports. Abrar, who was presumed to be with his wife by night, could have the charge under Section 302 IPC considered against him on the basis of circumstantial evidence. The Trial Court logically should have first considered evidence on the charge under Section 302 IPC and tested it, if the charge could be proved by the exacting standards required in a case of circumstantial evidence. If the said charge was not proved, then the case under Section 304-B IPC could have been examined on a presumption under Section 113-B of the Evidence Act, because the prosecution has after all proved cruelty in connection with dowry demand, at least by Abrar, immediately before the unnatural death. The marriage, of course, was well within seven years. Thus, the Trial Court did not do, and instead, proceeded straight away to consider the charge under Section 304-B IPC with reference to the evidence on record. This charge, it held proved against the appellant Abrar, besides the two other appellants.

39. Even if this Court were to feel that there is a case where the Court should consider circumstantial evidence against Abrar on the charge under Section 302 IPC, we cannot do that in view of the provisions of Section 386(b) Cr.P.C. in the absence of an appeal for enhancement of sentence under Section 386(c) Cr.P.C. There is neither an appeal for enhancement of sentence by the State nor by the complainant nor a revision by either of them. The only other option available with the Court is to order a retrial. This is not a case of ordering a retrial because that is a course which has to be treaded with much caution. The reason is that retrial wipes out all evidence that has hither to been recorded and with passage of time, it may not be possible for good and sound evidence to be led again. Therefore, this Court has to exercise powers in accordance with Section 386(b) Cr.P.C., either reversing the finding and sentence and acquitting the appellant, alter the

finding, maintaining the sentence, or with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but without enhancing the same, to borrow almost the phraseology of the statute. Reference in this connection, on the limitation of our powers to convict the appellant on a different charge and enhance the sentence, is well elucidated in **Sachin v. State of Maharashtra, (2025) 9 SCC 507**, where it has been held:

"57. However, in this case, our focus of attention is whether, in the absence of any appeal or revision filed by the State, a complainant or a victim in a particular case and when the appeal has been filed only by the accused assailing the judgment of conviction and sentence, the High Court can exercise its revisional jurisdiction while dealing with an appeal filed by the accused/convict. In other words, when an accused is seeking setting aside of a judgment of conviction and sentence, can the High Court, in the absence of there being any challenge to the same from any other quarter, suo motu exercise its revisional power and thereby condemn the accused by awarding an enhancement in his sentence. Even if an opportunity of hearing is given to such an accused/convict, we do not think that the High Court can exercise its revisional jurisdiction under Section 401CrPC while exercising its appellate jurisdiction in an appeal filed by the accused/convict in the High Court. All that the High Court can do is to set aside the judgment of conviction and sentence and acquit the accused, or while doing so, order for a retrial or, in the alternative, while maintaining the conviction, reduce the sentence. In other words, in an appeal filed by the accused/convict, the High Court cannot suo motu exercise its revisional jurisdiction and enhance the sentence against the accused while maintaining the conviction.

58. In this regard, we find that the expression "but not so as to enhance the same" in sub-clause (iii) of clause (b) of Section 386CrPC throws some light on the view we have taken, which reads as under:

"386. Powers of the appellate court.-

***

(b) in an appeal from a conviction-

***

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"

Although the said expression "but not so as to enhance the same" is in the context of sub-clause (iii) of clause (b) of Section 386, the spirit of the said provision must be understood, inasmuch as while maintaining the finding of conviction, the High Court cannot exercise its suo motu revisional jurisdiction under Section 401CrPC and enhance sentence awarded to the appellant-accused.

61. In this regard, it must be noted that for exercise of powers of the appellate court for enhancement of sentence in an appeal filed either by the State or the complainant or the victim, CrPC provides that the appellate court can reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court competent to try the offence or alter the finding by maintaining the sentence or with or without altering the finding, alter the nature or the

extent, of the sentence but not so as to enhance the same. Thus, the power to enhance the sentence can be exercised by the appellate court only in an appeal filed by the State, victim or complainant provided the accused has had an opportunity of showing cause against such enhancement. It is further provided that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order of sentence under appeal. Therefore, even in an appeal for enhancement of sentence, unless the conditions prescribed in the form of provisos are complied with by the appellate court, there cannot be an enhancement of sentence. Obviously in such an appeal for enhancement of sentence, the convict or the accused is the respondent and therefore there cannot be enhancement of sentence unless the accused or convict has been heard.

62. However, under the scheme of Section 386 vis-a-vis in an appeal for enhancement of sentence there can also be an acquittal of the accused as per sub-clause (i) of clause (c) of Section 386. But, on the other hand, in an appeal from a conviction, it has been expressly stated that there cannot be enhancement of the sentence. Therefore, while in an appeal for enhancement of sentence filed by the State, the accused can make out a case for acquittal or discharge or retrial, in the case of an appeal from conviction, the respondent in such an appeal, namely, the State or the victim or the complainant cannot seek enhancement of the sentence than what has been awarded by the trial court. The above distinction can be explained by way of a Latin maxim which has been discussed by Ujjal Bhuyan, J., while in the Bombay High Court [Jyoti Plastic Works (P) Ltd. v. Union of India, (2021) 15 GSTR-OL 453 : 2020 SCC OnLine Bom 2276] , in the following words: (Jyoti Plastic Works case [Jyoti Plastic Works (P) Ltd. v. Union of India, (2021) 15 GSTR-OL 453 : 2020 SCC OnLine Bom 2276] , SCC OnLine Bom para 40)

"40. In this connection we may refer to the maxim reformatio in peius. It is a Latin phrase meaning a change towards the worse i.e. a change for the worse. As a legal expression it means that a lower court judgment is amended by a higher court into a worse one for those appealing it. In many jurisdictions, this practice is forbidden ensuring that an appellant cannot be placed in a worse position as a result of filing an appeal. When the above phrase is prefixed by the words "no" or "prohibition", which would render the maxim as no reformatio in peius or prohibition of reformatio in peius, it would denote a principle of procedure as per which using a remedy available in law should not aggravate the situation of the person who avails the remedy. In other words, a person should not be placed in a worse position as a result of filing an appeal. No reformatio in peius or prohibition of reformatio in peius is a part of fair procedure and thus by extension can also be construed as part of natural justice. It is not only a procedural guarantee but is also a principle of equity."

(emphasis supplied)

63. The rationale of the above can be explained in simple language by stating that no appellant by filing an appeal can be worse off than what he was. That is exactly what we are seeking to reiterate in our judgment having regard to the facts of the present case.

40. Now, that the Trial Court has not considered the charge under Section 302 IPC, and instead, the charge under Section 304-B IPC alone has been tested vis-a-vis the appellant Abrar, besides the two other appellants, pragmatically, we can either affirm the finding and sentence or acquit the appellant, or alter the finding and alter the nature or the extent, or the nature and extent

of the sentence. The evidence against Abrar, that appears, surely shows, as already found, that it was he who would treat his wife with cruelty in connection with demand of dowry immediately before her death, so much so that a distress call was given by the deceased to her father earlier in the evening and in the night died an unnatural death on account of strangulation. The presumption under section 113-B of the Evidence Act would attach. Abrar, the appellant, has hardly discharged the burden of proof cast upon him under Section 113-B of the Evidence Act to show that he had not caused the dowry death charged against him.

41. Considering the nature of evidence, which is about strangulation and Abrar being the husband, we are of opinion that no interference with the impugned judgment, vis-a-vis Abrar is called for. We would, therefore, in the case of Abrar affirm both the conviction and the sentence. So far as the appellants, Smt. Shabana Khatoon and Lal Babu are concerned, we have already held that there is not much reliable evidence against them that they too treated the deceased with cruelty in connection with demand for dowry immediately before her unnatural death. There is no scope to delve into the feasibility of considering if the charge under Section 302 IPC is proved against these appellants, in the absence of an appeal by the State for enhancement of sentence or a revision or appeal by the complainant. Even otherwise, circumstantially the evidence against Lal Babu and his wife does not inspire confidence about their involvement in the deceased′s unnatural death in any manner. We have expressed our reasons for so concluding and need not recapitulate. In a conviction under Section 304-B IPC unless it is established by evidence that soon before the victim′s unnatural death, she was subjected to cruelty in connection with demand for dowry, the presumption under Section 113-B of the Evidence Act cannot be raised. This is precisely the case here. Reference in this connection may be made to **Baijnath v. State of M.P., (2017) 1 SCC 101**. In Baijnath (supra), it was held by the Supreme Court:

"29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overeased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty.

32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment" in connection with the demand for dowry"."

42. In this case, we have already held that on the evidence led by the prosecution, a case of cruelty in connection with dowry demand is not at all established against Smt. Shabana Khatoon and Lal Babu, the two appellants in Criminal Appeal No. 856 of 2020. Once the presumption is not raised, conviction as ordered by the Trial Court on its basis under Section 304-B IPC cannot be sustained. No case under Section 4 of the DP Act and under Section 498-A IPC, for the selfsame reason, is also made out against these two appellants.

43. Therefore, so far as Criminal Appeal No.856 of 2020 is concerned, we would acquit the appellants, Smt. Shabana Khatoon and Lal Babu on all three counts, to wit, under Section 304-B/ 34, 498-A/ 34 IPC and Section 4 of the DP Act.

44. In the result, Criminal Appeal No.1080 of 2020 fails and is **dismissed**. Criminal Appeal No. 856 of 2020 succeeds and is **allowed**. The appellants, Smt. Shabana Khatoon and Lal Babu, are **acquitted**. They need not surrender. Their bail bonds are cancelled and sureties discharged.

45. The appellants, Smt. Shabana Khatoon and Lal Babu shall execute a personal bond each in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against their acquittal.

46. Let this order be communicated to the appellant Abrar Ahmad in Criminal Appeal No.1080 of 2020 through the Jail Superintendent of the Jail, where he is serving, by the Registrar (Compliance).

47. Let the lower court records be returned.

(2026) 7 ILRA 662
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 01.07.2026

BEFORE

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

Criminal Appeal No. 538 of 2011
connected with
Criminal Appeal No. 550 of 2011

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

Issue for consideration

Matter pertains to legality of the conviction order.

Headnotes

Indian Penal Code, 1860; The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1872-Sec. 3(2)(v); Indian Evidence Act-sec 57-Prosecution case is that 3-4 persons had come and started beating all members of the group of the complainant (P.W.2), victim (P.W.1) and the deceased - accused fired on him from country made pistol and the victim was raped-prosecution has failed to prove the involvement of the appellants in the crime beyond all reasonable doubt-trial Court has also failed to consider the contradictions and inconsistencies of the evidence of the prosecution witnesses- medical also does not support the prosecution case- Test Identification Parade -identification of the accused persons by the victim is not in accordance with law-admittedly, the victim, complainant and the deceased had come to place of incident on the date of incident and as admitted they did not know anybody of village and vicinity or the accused persons prior to incident-victim and the deceased were not member of SC/ST community-not been proved that they belong to SC/ST community,- crime on the ground of their caste does not arise.- medical also does not support the prosecution case-prosecution has failed to prove the involvement of the appellants in the crime beyond all reasonable doubt-trial Court has also failed to consider the contradictions and inconsistencies of the evidence of the prosecution witnesses.

Appeal allowed. (E-9)

Case Law Cited

1. Gireesan Nair Vs. State of Kerala; AIR OnLine 2022 SC 919
2. Dana Yadav @ Dahu & others Vs. State of Bihar; 2002 (7) SCC 295
3. Bhagwan Singh & others Vs. State of M.P.; 2003 (3) SCC 21
4. Allauddin Mian and others Sharif Mian and another Vs. State of Bihar; (1989) 3 SCC 5
5. Sukhbir Singh Vs. State of Haryana; (2002) 3 SCC 327
6. Bhimrao alias Ramesh Pandhari Bhade and others Vs. State of Maharashtra; (2003) 3 SCC 37
7. Vijay Padurang Thakre Vs. State of Maharashtra; AIR 2017 SC 897
8. Abraham John Vs. State; 1969 Cri.L.J. 1577 (Ker)
9. Ram Narain Vs. State of Punjab; AIR 1975 SC 1727
10. Piara Singh Vs. State of Punjab; AIR 1977 SC 2274
11. Sharad Birdhi Chand Sharda Vs. State of Maharashtra; (1984) 4 SCC 116
12. Ramanand Yadav Vs. Prabhu Nath Jha; (2003) 12 SC 606

13. Rudrappa Ramappa Jainpur and others Vs. State of Karnataka; (2004) 7 SCC 422
14. State of Punjab Vs. Hakam Singh; (2005) 7 SCC 408
15. Vaibhav Vs. State of Maharashtra; 2025 INSC 800
16. Nandlal Vs. State of Maharashtra; (2019) 5 SCC 224
17. Paul Vs. State of Kerala; (2020) 3 SCC 115
18. Balu Sudama Khalde Vs. State of Maharashtra; AIR 2023 SC 1736
19. Prabhat Kumar Mishra alias Prabhat Mishra Vs. State of U.P.; AIR 2024 SC (Criminal) 632
20. Shashikant Sharma Vs. State of Uttar Pradesh; 2024 (1) ALJ 579
21. Patan Jamal Vali vs. The State of Andhra Pradesh; AIR 2021 SC 2190
22. Ram Das and others Vs. State of Maharashtra; (2007) 2 SCC 170
23. Khuman Singh Vs. State of Madhya Pradesh; AIR 2019 SC 4030
24. Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari and Others; (2022) 15 SCC 228

List of Acts

1. Indian Penal Code, 1860
2. Indian Evidence Act
3. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act

List of Keywords

SC/ST community; Test Identification Parade; reasonable doubt; contradictions and inconsistencies.

Appearances of parties

Counsel for Appellant (s) : Shishir Pradhan, Alok Kumar Mishra, Ashok Kumar Singh, Ishika Srivastava, Jagdish Prasad Upadhyay, Jaikaran, Lalit Kumar Singh, Nagendra Mohan, Sangeeta Singh, Saurabh Srivastava, Sharda Verma, Shrawan Kumar, Simi Jha, Sushil Kumar, Sushil Kumar Dwivedi, Udai Prakash
Counsel for Respondent(s) : Govt. Advocate

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

(1) The aforesaid criminal appeals under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as '***Cr.P.C.***') have been filed against the judgment and order dated 03.02.2011 passed by Additional District and Sessions Judge/ F.T.C.-III, Raebareli, in Session Trial No. 01 of 2003; State Versus Anwar Ali and others, emanating from Case Crime No. 119 of 2002, under Sections 147, 148, 302, 376, 323 read with Section 149 of the Indian Penal Code, 1860 (here-in-after referred to as '***I.P.C.***') and Section 3(ii)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (here-in-after referred to as 'SC/ST Act'), Police Station Unchahar, District Raebareli, wherein the accused/appellants, Anwar Ali, Ramu alias Ram Kumar, Ram Sajivan Patel, Rati Pal Patel, Paras Nath Patel, Udai Raj and Shankar Nai, have been convicted and sentenced in the manner as stated here-in-below :-

Name of Accused Persons	Conviction	Sentence
Udai Raj Anwar Ali Shankar Nai Paras Nath Patel Ram Sajivan Patel Ratipal Patel Ramu alias Ram Kumar	Under Section 147 read with 149 I.P.C.	1 year's R.I.
	Under Section 148 read with 149 I.P.C.	2 year's R.I.
	Under Section 323 read with 149 I.P.C.	6 months' R.I.

Anwar Ali Shankar Nai Paras Nath Patel Ram Sajivan Patel Ratipal Patel	Under Section 376 (2) (g) I.P.C. read with Section 3 (ii) (v) of S.C./S.T. Act	Life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo additional one year′s simple imprisonment
	Under Section 302 read with Section 149 read with Section 3 (ii) (v) of S.C./S.T. Act	Life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo additional one year′s simple imprisonment
Udai Raj Ramu alias Ram Kumar	Under Section 376 (2)(g) I.P.C.	Life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo additional one year′s simple imprisonment
	Under Section 302 read with Section 149 I.P.C.	Life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo additional one year′s simple imprisonment

It has further been provided that half of the fine shall be disbursed to victim of the incident and the period already undergone would be adjusted in the period of sentence.

FACTS

(2) The prosecution case, in short, is that complainant, Banwari Lal son of Nazeer Lal, resident of village Mansa-Ka-Purwa, Police Station Salon, District Raebareli, had submitted written report (Ext. Ka.1) at police station Unchahar, district Raebareli on 25.05.2002, alleging therein that they (complainant and his companions) move from place to place and live by setting up temporary camps. On 24.05.2002, they had shifted from village Kakriha, police station Sangramgarh, district Pratapgarh to village Hariharpur, a hamlet of Nigoha, Police Station Unchahar and set up their camps at 03:00 p.m., in the field of Raja Ram Maurya, located to the south of Gram Pradhan Jagat Narayan's house. Due to storm and rains in night, their camp collapsed, on account of which, some people were sleeping in the verandah in front of the shop of Pradhan; some people were awake and some people were in camp. Meanwhile, 3-4 persons were seen coming from the southern side towards the village. They (assailants), upon reaching the camp, started beating with danda (sticks), then, they (complainant and others) ran shouting, upon which the assailants dragged the victim (wife of Sitaram) to some distance. Pokhai son of Nazeer Lal ran to rescue her, therefore, one of the assailant fired at him (Pokhai) with a country-made pistol (dV~Vk). Pokhai, shouting and running, fell down in a ditch ([kUrh) aside the road and died. Among them (complainant and his companions), Teerath Nath son of Pokhai, Bhungi son of Chattrapal, Shobnath son of Navrangi, Lalalu Navrangi and Jokhai son of Langad, resident of village Mansa-Ka-Purwa and Mithilesh Kumar son of Sitaram and Suresh Kumar son of Nandlal and Sanjay Kumar son of Rampher and others of Hariharpur etc., ran shouting and identified the assailants, but on account of fear, they (complainant and others) could not go ahead. They would identify the assailants, if came before them. After taking the victim to some distance and committing wrongful act with her, the assailants left her. This incident is of 25.05.2002 at about 01:30 in the night. Report may be registered and legal action may be taken.

(3) On the basis of the aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 119 of 2002, under Sections 302, 376 and 323 I.P.C., was registered at police station Unchahar, district Raibareli against 3-4 unknown persons on 25.05.2002, at 05:30 in the morning.

(4) The investigation of the case was conducted by Sub-Inspector R.P. Saroj. He started the investigation of the case on the date of F.I.R. itself i.e. on 25.05.2002. After collecting check F.I.R. and recording the statement of the complainant, he reached the place of occurrence along with police personnels. He inspected the place of occurrence and prepared recovery memos of blood stained soil and plain soil, blood stained and semen stained ghaghra (घाघरा) of the victim and one empty cartridge 12 bore and Rs.60/-. He, thereafter, prepared site plan on the pointing out of the complainant and the victim. On his dictation, S.I. Anil Kumar Pandey had prepared inquest (panchayatnama) of the dead body of the deceased Pokhai and sent it for post-mortem along with constable. He also sent the victim for medical examination along with constable.

(5) The medical examination of the victim was conducted by Dr. Vineeta Singh at District Female Hospital, Raebareli on 25.05.2002 at 05:20 p.m. In her medico-legal report dated 25.05.2002 (Ext. Ka.2), she noted as under :-

> MI-(1) Black mole on front of fore arm Rt. 3 cm below elbow joint.
> (2) Black mole on Left cheeck 6 cm in front of Left ear.
>
> General Exam- Ht. 4′ $10^{1/2}$″ Wt.-38 Kg. Teeth 14/14 Breast well developed Axillary hair present.
>
> Internal Exam- Pubic hair present hymen torn at 7 O′clock position .3 cm x .1 cm bleeds on toutch. Vagina admits 1 finger with difficulty. No discharge no bleed P/V.
> (1) Vaginal smear taken & sent to pathologist for exam of sperms and gonococci.
> (2) Case referred to Radiologist for x-ray both wrist & elbow for estimation of age.
> (3) Referred to EMO District Hospital for external injuries.
>
> Conclusion - (1) Examination is suggestive of penetration by some blunt object report of pathologist awaited.
>
> (2) Report of radiologist awaited for estimation of age.″

(6) On reference by Dr. Vineeta Singh, EMO, District Female Hospital, Raebareli, the external injuries on the body of the victim were examined by Dr. R.K. Mishra on 25.05.2002 at 06:00 p.m. at District Hospital, Raebareli. In the injury report (Ext. Ka.4), following injuries have been noted :-

> (1) Multiple linear scratches on the left forearm laterally and dorsally over the lower two third area. Pink to dark pinkish colour.
>
> (2) Multiple blotchy abraded contusion on the upper third both the sides of the back widely spread. Irregular patterned pink to darkish pink.
>
> (3) Linear patterned contusion 7 cm x 2 cm on the right upper and lateral rim far back. Pink to darkish pink.
> (4) Linear patterned contusion 11 cm x $1^{1/2}$ cm on the right lower thigh laterally and the knee antero laterally. Pink and dark pink.

Injury no. (1) through (4) are due to hard and blunt object. The duration is from three fourth of a day to one day and the nature is simple.

(7) On receipt of x-ray report and pathological report, Dr. Vineeta Singh had prepared supplementary report dated 28.05.2002(Ext. Ka.3), in which she noted as under :-

"X-ray report - (1) x-ray both elbow- epiphysis around the elbow joint are fused.

(2) x-ray both wrist ephiphysis of lower end of Radius and ulna are not fused.

Pathological report - Vaginal smear is negative for sperms and gonococci.

Conclusion - (1) exam and pathological report is suggestive of penetration of vagina by some blunt object.

(2) Age according to pathological report & by appearance is about 16 years.

(8) The post-mortem of the dead body of the deceased Pokhai son of Nazeer was conducted by Dr. Sanjay Kumar Pandey and Dr. C.H. Agarwal on 25.05.2002 at 04:00 p.m. at District Hospital, Raebareli. In the post-mortem report (Ext. Ka.5), the following ante-mortem injuries have been noted :-

(1) L.W. oval .5 cm x .5 cm medial & below Lt. side nipple depth is upto chest wall.

(2) L.W. oval .5 cm x .5 c.m. in midline below xiphisternum. 12 cm from umbilical. Singing present.

(3) L.W. oval .5 cm x .5 cm ċ singed margin over manubrium in midline.

(4) Abrasion of 2 cm x 2 cm ċ central location .5 cm x .5 cm on Right side in mid clavicular junction bone.

(5) Abrasion of 2 cm x .5 cm at base of neck Rt. side."

As per opinion of Dr. S.K. Pandey and Dr. C.H. Agarwal, the cause of death was shock and hemorrhage as a result of ante-mortem fire arm injury.

(9) The further investigation of the case was entrusted on 29.05.2002 to Circle Officer Sri Chiranjiv Nath Sinha on account of addition of offence under Section 3 (ii) (v) of S.C./S.T. Act against the accused persons. He, after collecting material evidences, recording statements of witnesses including previous Investigating Officer Sri R.P. Saroj, submitted the charge-sheet No. 18 of 2002 dated 08.06.2002 against accused Udai Raj son of Brijlal Dhobi, Shankar Nai son of Ramesh Nai, Ramu alias Ram Kumar son of Raghunath Dhobi, Paras Nath Patel son of Kallu Patel, Ram Sajivan Patel son of Budhuram Patel and Ratipal Patel son of Bhagwandeen Patel, under Sections 147, 148, 149, 302, 376 (G), 323 I.P.C. and Section 3 (ii)(v) of S.C./S.T. Act.

(10) Thereafter, further investigating was entrusted to Circle Officer Avadh Bihari Rakesh on 09.07.2002 against accused Anwar Ali. He, after collecting material evidences and recording statement of accused Anwar Ali at District Jail, Raibareli, submitted charge-sheet No. 18A/2002 dated 16.07.2002 against accused Anwar Ali under Sections 147, 148, 149, 302, 376 (G), 323 I.P.C. and Section 3 (ii)(v) of S.C./S.T. Act.

(11) The learned Chief Judicial Magistrate, Court No.9, Raebareli, took cognizance on the aforesaid charge-sheets and committed the case to the Court of Session on 02.01.2003, where the case was registered as Session Trial No. 1 of 2003; *State Versus Anwar Ali and others.*

(12) Learned Additional Session Judge-II, Raebareli, framed charges against accused Shanker Nai, Paras Nath, Ram Sajivan, Ratipal and Anwar Ali under Sections 147/149, 148/149, 302/149, 376, 323/149 I.P.C. and Section 3 (ii) (v) of S.C./S.T. Act and against accused Udai Raj, Ramu alias Ram Kumar under Sections 147, 148, 302, 376 and 323 I.P.C. by means of order dated 24.01.2003, respectively. All the aforesaid accused persons denied the charges framed against them and pleaded for trial. Hence the trial commenced.

(13) The prosecution, in support of its case, examined twelve witnesses, who are as under :-

P.W.1	Victim
P.W.2-Banwari	Complainant
P.W.3-Dr. Vineeta Singh	Examined the victim and proved medico-legal report and supplementary report prepared by her (Ext. Ka. 2 and Ext. Ka.3)
P.W.4-Teerath Raj alias Tirath Lal	Eye witness/Son of deceased Pokhai
P.W.5-Dr. R.K. Mishra	Examined the external injuries of the victim and proved injury report (Ext. Ka.4)
P.W.6-Dr. Sanjay Kumar Pandey	Conducted post-mortem of the deceased Pokhai and proved the post-mortem report (Ext. Ka. 5)
P.W.7-Dr. H.L. Sharma	Conducted x-ray of the victim and proved the x-ray report (Ext. Ka. 11) and x-ray plate (Material Ext.1).
P.W.8-S.I. Arun Kumar Pandey	Prepared panchayatnama of the dead body of the deceased Pokhai and also prepared photo lash, challan lash, letter to R.I., letter to C.M.O. and proved Ext. Ka. 6 to Ext. 10.
P.W.9-S.I. R.P. Saroj	1st Investigating Officer
P.W.10-Constable Moharrir Om Prakash Tripathi	Prepared check F.I.R. on the basis of written report submitted by the complainant and proved check F.I.R. (Ext. Ka. 14) and carbon copy of corresponding G.D. entry (Ext. Ka. 15)
P.W.11-Circle Officer Chiranjiv Nath Sinha	2nd Investigating Officer and proved charge sheet no. 18/2002
P.W.12-Avadh Bihari Rakesh	3rd Investigating Officer and proved charge-sheet no. 18A/2002

(14) In order to prove its case, the prosecution placed on record and proved the following documentary evidence :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Letter to the Chief Medical Superintendent for medical examination of the victim and submit report
Ext. Ka. 3	Medico-legal and supplementary medical report of victim by Dr. Vineeta Singh (P.W.3), District Woman Hospital, Raebareli
Ext. Ka. 4	External Injury Report of victim by Dr. R.K. Mishra (P.W.5), District Hospital, Raebareli.

Ext. Ka.5	Post-mortem Report of the deceased Pokhai
Ext. Ka.6	Inquest Report (panchayatnama) of the dead body of deceased Pokhai
Ext. Ka.7	Challan lash
Ext. Ka. 8	Photo lash
Ext. Ka. 9	Letter to C.M.O., Raebareli
Ext. Ka. 10	Letter to Reserve Inspector, Raebareli
Ext. Ka. 11	X-ray Report
Ext. Ka. 12	Recovery Memo of blood stained soil and plain soil and Ghaghra of victim with blood and semen.
Ext. Ka. 13	Recovery Memo of empty cartridge 12 bore
Ext. Ka. 14	Check F.I.R.
Ext. Ka. 15	Carbon Copy of G.D. entry
Ext. Ka. 16.	Charge-Sheet No. 18/2002 dated 08.06.2002
Ext. Ka. 17	Charge-sheet No. 18A/2002 dated 16.07.2002
Ext. Ka. 18	Site plan

(15) In addition to the aforesaid, the prosecution also placed on record x-ray plate of the victim as material exhibit-1 and proved it.

(16) After closure of evidence of prosecution, the statement of accused persons under Section 313 Cr.P.C. was recorded on 09.11.2010, in which they stated that the case has been instituted against them on account of enmity and conspiracy of police.

In addition, accused Udai Raj, in his statement, has stated that he is innocent. He has been implicated in the murder case of Rajendra Maurya, in which he was acquitted. After being acquitted in that case, he had written letter against the police officials, due to which the police bore a grudge against him.

Accused Ramu, in his statement, has stated that he was not involved in the incident. The police, on account of malice, have falsely challaned him.

Accused Anwar Ali, in his statement, has stated that he was not involved in any such incident.

Accused Shankar Nai, in his statement, has stated that he was falsely implicated in the murder case of Rajendra Maurya, in which he was acquitted and he had taken action against the police, on account of which he has been falsely implicated.

Accused Paras Nath, in his statement, has stated that he did not commit any incident. He was working at Kamlesh′s brick kiln and was staying there on that night. The police have falsely challaned him.

Accused Ram Sajeevan, in his statement, has stated that he did not commit any incident. Earlier, the police of Police Station Unchahar had implicated him in the murder of Rajendra Maurya and after being acquitted from that case, he had written letter against the police, on account of which, the police has falsely implicated him in this case.

Accused Rati Pal has also stated in his statement that in the murder case of Rajendra Maurya, the police of Police Station Unchahar had falsely implicated him after being acquitted in that case, he had taken action against the police, on account of which, the police has again falsely implicated him.

(17) In defence, one witness, namely, Mithilesh Kumar was examined as D.W.1 in oral evidence. In documentary evidence, a certified copy of the order passed in Case Crime No. 294 of 2004 of Police Station Unchahar, District Raebareli, was placed on record.

(18) The trial Court, after hearing learned Counsel for the parties and considering oral and documentary evidence on record, convicted and sentenced the accused persons by means of the impugned judgment and order dated 03.02.2011 in the manner as stated in paragraph-1 here-in-above in this judgment.

(19) Feeling aggrieved by the aforesaid judgment and order dated 03.02.2011, accused/convicts Anwar Ali, Ramu alias Ram Kumar and Ram Sajivan Patel have preferred Criminal Appeal No. 538 of 2011 and accused/convicts Rati Pal Patel, Paras Nath Patel, Udai Raj and Shanker Nai preferred Criminal Appeal No. 550 of 2011.

(20) Since both, Criminal Appeal No. 538 of 2011 and Criminal Appeal No. 550 of 2021, arising out of a common case crime number and common judgment and order dated 03.02.2011 and common facts, therefore, they have been clubbed, heard and are being decided together by means of this common judgment and order.

(21) It is pertinent to mention that appellant no.1-Rati Pal Patel in Criminal Appeal No. 550 of 2011 is on bail granted by Hon′ble Supreme Court vide order dated 04.02.2025 passed in Criminal Appeal No. 574 of 2025; *Rati Pal Patel Versus State of U.P.*, whereas other appellants in both the appeals are in jail.

Arguments :

(22) Heard Shri Jagdish Prasad Upadhyay, learned Counsel for the convicts/appellants and Shri Pawan Kumar Mishra, learned A.G.A. for the State.

Submissions on behalf of the appellants:

(23) Learned counsel for the appellants submitted that the impugned judgment and order has been passed by the trial Court against the law and facts as well as against the weight of evidence on record, recording perverse and erroneous findings on the basis of surmises and conjectures. The prosecution has failed to prove it′s case beyond all reasonable doubt and apparently no case, under which the conviction could be made, is made out against the appellants. He further submitted that the appellants were not named in the FIR, which was lodged against 3-4 unknown persons, but subsequently seven persons were implicated, without any identification parade from prosecutrix (name is not being given as she is victim), on account of police enmity with the connivance of police because the victim belonged to *Banjara* community and had come with the group on the

same day, therefore, she could not have personally known to the appellants and identified. She also could not personally identify the appellants in Court room. He further submitted that the victim was major in age and the medical report does not corroborate the prosecution story, therefore, the allegation of gang rape is false. It has also been submitted that the ghaghra of the victim was allegedly seized, but the petticoat was sent for forensic examination, which renders recovery doubtful and also bellies the prosecution case because the victim was not wearing anything under *ghaghra*.

(24) Learned counsel for the appellants further submitted that the prosecution witnesses of fact are interested witnesses and does not inspire any confidence and all other witnesses are formal witnesses. There is no corroborative evidence. The post- mortem report and medical of the victim does not support the prosecution case. Learned trial court has failed to consider and rely eye account of the defence witness. PW.1 and PW.2 have not assigned any role of firing to the appellants, hence the allegation under Section 302 I.P.C. is not corroborated by statement of witnesses. Even otherwise, it has been submitted that the prosecution witnesses have unequivocally deposed that assailant had fired on Pokhai, when he chased the culprit attempting to take away the victim, therefore, the murder was not premeditated so the conviction could not have been made under Section 302 IPC and it could have been made only under section 304 IPC, if the Court was of the view that the offence of murder proved all beyond reasonable doubt.

(25) Learned counsel for the appellants further submitted that there is no evidence on record to prove essential elements to constitute unlawful assembly as defined under Section 141 I.P.C. The FIR and the statements under section 161 Cr.P.C. shows involvement of only 3-4 persons and the purpose of unlawful assembly has not been proved, therefore, the provisions of section 149 I.P.C. are not attracted. It has further been submitted that the conviction could not have been made separately under Sections 147 and 148 I.P.C. together for the same offence, for the reason that if the accused is being convicted in an aggravated form of offence under section 148 I.P.C., he could not have been convicted separately under section 143 I.P.C. or 147 I.P.C.

(26) Learned counsel for the appellants further submitted that this Court may take judicial notice of certain universal, social, legal and behavioural facts for evaluating the prosecution case, such as the natural basic instinct of living and non-living being for sexual desire for which they involve themselves in all kinds of fear and foul play. It is also recognized by the international covenant on human rights. It has also been submitted that to fulfill the said desire the partners may go to any extent, even causing murder, if obstructed in any manner. The laws, relating gender equality and protection to weaker section and female are being misused instead of following in letter and spirit. The courts have already observed that the police is an organized group of dacoits in uniform. The witnesses may lie but circumstances do not. Thus, it has been submitted that victim may have been seen with her partner by her uncle, therefore, he would have killed her uncle and the appellants have falsely been implicated due to police enmity.

(27) Learned counsel for the appellants further submitted that the provisions of SC/ST Act are not attracted in the present case because neither deceased nor the victim belonged to any of the cast notified as SC or ST by the State Government. It has also not been proved that the crime was committed only because the victim or the complainant belonged to SC or ST community. It has

also been submitted that the charge-sheet was submitted under the provisions of S.C./S.T. Act also, therefore, the trial should have been held before the Special Court under the S.C./S.T. Act but it was held before a F.T.C. Court. Thus, the impugned judgment and order is liable to be set-aside only on the ground of without jurisdiction.

(28) Learned counsel for the appellants further submitted that the entire investigation was tainted and made in a very casual manner only to implicate the appellants only without following the due procedure, therefore, on the basis of said investigation neither the charge-sheet could have been filed nor the appellants would have been convicted. Thus, learned counsel for the appellants submitted that the impugned judgment and order is not sustainable in the eyes of law and liable to be set aside and the appellants are liable to be acquitted of all the charges.

(29) Learned Counsel for the appellants relies on **Gireesan Nair Vs. State of Kerala**; AIR OnLine 2022 SC 919, **Dana Yadav @ Dahu & others Vs. State of Bihar**; 2002 (7) SCC 295, **Bhagwan Singh & others Vs. State of M.P.;** 2003 (3) SCC 21, **Allauddin Mian and others Sharif Mian and another Vs. State of Bihar**; (1989) 3 SCC 5, **Sukhbir Singh Vs. State of Haryana**; (2002) 3 SCC 327, **Bhimrao alias Ramesh Pandhari Bhade and others Vs. State of Maharashtra**; (2003) 3 SCC 37, **Vijay Padurang Thakre Vs. State of Maharashtra;** AIR 2017 SC 897, **Abraham John Vs. State**; 1969 Cri.L.J. 1577 (Ker), **Ram Narain Vs. State of Punjab**; AIR 1975 SC 1727, **Piara Singh Vs. State of Punjab**; AIR 1977 SC 2274, **Sharad Birdhi Chand Sharda Vs. State of Maharashtra**; (1984) 4 SCC 116, **Ramanand Yadav Vs. Prabhu Nath Jha**; (2003) 12 SC 606, **Rudrappa Ramappa Jainpur and others Vs. State of Karnataka**; (2004) 7 SCC 422, **State of Punjab Vs. Hakam Singh**; (2005) 7 SCC 408, **Vaibhav Vs. State of Maharashtra**; 2025 INSC 800, **Nandlal Vs. State of Maharashtra**; (2019) 5 SCC 224, **Paul Vs. State of Kerala**; (2020) 3 SCC 115, **Balu Sudama Khalde Vs. State of Maharashtra**; AIR 2023 SC 1736, **Prabhat Kumar Mishra alias Prabhat Mishra Vs. State of U.P.**; AIR 2024 SC (Criminal) 632, **Shashikant Sharma Vs. State of Uttar Pradesh**; 2024 (1) ALJ 579, **Patan Jamal Vali vs. The State of Andhra Pradesh**; AIR 2021 SC 2190, **Ram Das and others Vs. State of Maharashtra**; (2007) 2 SCC 170 and **Khuman Singh Vs. State of Madhya Pradesh**; AIR 2019 SC 4030.

Submissions on behalf of the State:

(30) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellants. He submitted that the PW1, PW2 and PW4 have supported the prosecution case and the post-mortem report as well as medical report of the victim corroborates the prosecution case. Thus, the prosecution has proved the case beyond all reasonable doubt. The submissions advanced by learned counsel for the appellants in regard to the applicability of the legal provisions is totally misconceived and not tenable in the eyes of law. The contention that this Court may take judicial notice of certain facts, as stated by learned counsel for the appellants, is misconceived and not tenable; firstly because the same are based on unauthenticated documents and secondly judicial notice, if any, can be drawn only of the facts in terms of section 57 of the Evidence Act. Thus, the contentions raised by learned counsel for the appellants are highly misconceived and not tenable in the eyes of law. The learned trial court has passed the impugned judgment and order, considering and dealing the evidence and material on record appropriately by a reasoned and speaking order,

which does not suffer from any error or illegality. The appeals have been filed on misconceived and baseless grounds, having no merit, liable to be dismissed.

ANALYSIS

(31) We have cogitated on the submissions of learned counsel for the parties and examined the records.

(32) The facts, on which there seems no dispute on the basis of submissions of learned counsel for the parties and records, are that the victim and the complainant belonged to a nomadic (*Banjara*) community, which roam around place to place with their group for livelihood and live setting up their camps, which is called '*Dera*'. On 24.05.2002, they shifted from village Kakriha, Police Station Sangramgarh, Pratapgarh to Hariharpur, a hamlet of Nigoha. Police Station Unchahar, Raibareli. The camps were set up at about 3.00 PM in the field of Raja Ram Maurya, located in the South of Gram Pradhan Jagat Narayan's house. There was an storm and rains on that very night, on account of which the camps had collapsed, consequently some people were sleeping in the veranda in front of the shop of the Pradhan, some people were awake and some people were in their camps. An incident occurred in the intervening night of 24/25.05.2002, on account of which an FIR was came to be lodged by the complainant on the basis of a written complaint against 3-4 unknown persons. Thus, the first contention raised by learned Counsel for the appellants is that since FIR was lodged only against 3-4 persons, 7 persons have wrongly and illegally been implicated on account of enmity with the police and with their collusion, therefore, the prosecution case is not sustainable on this ground alone and impugned judgment and order is liable to be set aside.

(33) The aforesaid contention of learned counsel for the appellants is misconceived and not tenable only on the aforesaid ground of increase in numbers of the accused persons during investigation because it is settled in law that FIR is not an encyclopedia of the prosecution case. It is only the first information of the occurrence, as is apparent from the nomenclature FIR; First Information Report of the occurrence, meaning thereby it is only to inform to the police as to what kind of incident has taken place. Thus, it is neither expected nor required that the FIR would contain every minute detail of the occurrence and the number of the persons also, particularly where the occurrence had taken place under the darkness of night.

(34) The evidence on record shows that the complainant (P.W.2), the victim (P.W.1) and son of deceased Pokhai (P.W.4), who are witnesses of fact, were persons of a nomadic community residing temporarily in the camps along with their group, which roam around and had come to the place of occurrence only on the previous day of occurrence at about 03:00 in the afternoon and they were not previously acquainted with the persons of area and know them or the assailants. Thus, when the accused were unknown, it is natural that their names did not find place in the F.I.R. However, the prosecution is required to prove the involvement of all the accused persons in the alleged crime, surfaced during investigation, beyond all reasonable doubt with their identity on the basis of cogent evidence, particularly in the facts and circumstances of the case in which the FIR was lodged, promptly after the incident by the person, who was witness to the incident of crime of murder, kidnapping and rape and no description of any of the assailant was given. This Court is

also conscious of the fact that in such cases the Court is required to evaluate the evidence and material on record with due care and caution keeping in mind the settled principles governing appreciation of testimony of the victim as well as other witnesses.

(35) The FIR of the incident, at about 1.30 AM, in the intervening night of 24/25.05.2002, was lodged on the basis of written complaint at 5:30 AM on 25.05.2002. According to the prosecution version, 3-4 persons were seen coming from the south towards the village and upon reaching the 'Dera', they started beating by stick (danda), therefore, the complainant and other persons started shouting, upon which they dragged the victim wife of Sitaram to some distance. Pokhai son of Nazeer ran to get freed the victim, when a person from them fired on him by a country made pistol, on account of which he ran shouting and fell in a ditch near the road and died. Teerath Nath s/o Pokhai, Bhungi s/o Chhtrapal, Shobhnath s/o Navrangi, Lalau s/o Navrangi, Pokhai s/o Langad r/o Mansha ka Purwa and Mithilesh Kumar s/o Sitaram, Suresh Kumar s/o Nand Lal and Sanjay Kumar of Hariharpur etc. ran exhorting and identified, but on account of fear could not go behind them, however, they can recognise them on seeing. They took the victim to a long distance and after doing bad work left her.

(36) The victim appeared as PW1. She deposed that she is of *Mangta* caste. The Dera was set up at 3.00 in the noon. The storm and rain had come in the night after taking food. Some people went in Dera and some slept in the Verandah of Pradhan. She was in camp along with her uncle, aunt and son of her aunt and Pokhai, who was her grandfather, but subsequently referred him as uncle. At about 12:00-1:00 in the night, miscreants came and started beating. As she tried to ran, the accused, Anwar present in Court caught her. Pokhai ran to save her, then Anwar fired on him by country made pistol, on account of which he died. Anwar handed her over to his colleagues, who dragged her to the bed of canal. Five miscreants came and all the seven plundered her dignity against her wishes and forcibly raped. Firstly Anwar raped her and thereafter the remaining persons raped her one by one. Thereafter, Anwar gave her Rs. 60/- to get her treatment done. He also asked not to tell about it to anybody and the accused persons left her at some distance. She was medically examined. She further deposed that after three days of the incident the police personals had shown her the photographs first and thereafter caught certain persons and brought. She identified. They had committed rape with her.

(37) P.W.1 further deposed that the night was alight. She could identify the accused persons. She identified 6 out of 9 accused persons present in court and deposed that they had committed rape with her. The trial Court has recorded that there are seven accused persons out of which one has given an application for exemption. The remaining are standing in the cage. Their names were asked, upon which they told their names as Shankar, Ratipal, Udairaj, Parasnath, Ram Sajeevan and Anwar. The defence raised objection on this proceeding.

(38) P.W.1 further deposed that she could identify all the accused. The accused Anwar had given her Rs. 60/-. She had objected to it. He, after giving Rs. 60/-, asked to get the treatment done of all the places, wherever she had got injuries. He had also given four tablets but she had not taken. The medicine and Rs. 60/- were given by her to the Constable, but subsequently she said that she had given it to Banwari, who gave to police. On the next date also, she identified all the

accused persons, who were present in the trial Court. The trial Court recorded its observation that all the accused persons named in the charge-sheet are present.

(39) P.W.1 further deposed that on account of rape, her ghagra was blood stained, which was black, white, red, green and blue stripped. It was taken into custody by the police. Her medical examination was done in the District Hospital Raebareli and x-ray was also done.

(40) P.W.1 was extensively cross-examined. She deposed that she did not know the accused persons previously. They have no permanent residence. They had come in the village on the date of incident at 3:00 in the day. She further deposed that when the miscreants had come, they were sleeping. They had not made any robbery. She also deposed that they were beating by white lead. The miscreants had first started beating the people in camp. They had beaten all the persons in the camp but she could not tell as to how many persons were beaten. She had suffered injuries of stick over her whole body, which was shown by her to the doctor. She also deposed that on account of sudden attack many persons had left the place and ran away but she could not run because as soon as she tried to run she was caught by the miscreants. She also deposed that she does not have the knowledge of directions. She was taken out of the camps towards the canal and not towards the village. The canal is about one kilometer away and they did not took her across the canal. She was not taken dragging, rather the accused lifted her. Her uncle was shot by a country-made pistol, on account of which she could not cry.

(41) P.W.1 further deposed that there was no clothe on her body because the clothes were torn by the accused, however, the clothes were not thrown and given to her. She further deposed that she had told to the Inspector that when they took her lifting then she was naked. Her clothes were torn. If it was not written by the Inspector in her statement, she cannot tell the reason. She also deposed that she had handed over to the police. She further deposed that neither her shirt was torn nor she had given it to the police. She further deposed that she had given the statement on the last date by mistake that at that time clothes were not on her body, clothes were torn, the clothes were not thrown by the accused but given to her. She is stating it on the memory and not on tutoring.

(42) P.W.1 also deposed that while she was being taken by the accused persons, she was throwing her legs and hands. Her bangles were broken, on account of which she had suffered injuries in the hands and she had shown them to the doctor. She also deposed that the canal, where she was taken, had no water. She had not seen that she was taken across the canal. She again reiterated that the accused persons had came to some distance and the accused had given her Rs. 60/-. She also deposed that the ground, where the rape was committed was uneven. She does not recollect as to whether there was any water. She did not wear anything under the *ghaghra*. She also deposed that at the time of rape also, she was objecting and throwing hands and legs. Accused persons did bite on her cheeks. The marks of the teeth and scratches were left on her body. She had not made any objection to the rape with her. She had not kept her leg on leg. The bad work was done by all seven accused persons. She does not recollect as to how much time they had taken in rape. The blood had come from vagina, which spread in the clothes. She had shown the marks of blood and scratch of nails to the police personals. She also deposed that she had not taken bath between the incident and going with the police.

(43) P.W.1 further deposed that she also does not recollect as to how much time she remained with the police personals. The medical was conducted on the same day and she had not taken bath before medical. She further deposed that when she came back after the incident of rape, she came to know that her uncle has died. She, pointing out towards the accused Anwar, said that at the place of incident, he had asked not to flaunt, otherwise she would also be killed as her uncle has been killed. Before that she did not know that uncle has been killed. She further deposed that she had not told about the height, age, body etc. of the accused to the police. The identification of the accused persons was got done by the police in the police station Unchahar. At that time all the accused persons were lodged in police station Unchahar. Firstly, the photographs of the accused persons were shown to her but she could not identify. Secondly the police had got identified after 2-3 days, then she identified. She also deposed that she had gone with the Inspector at the place of incident of rape. The constable had also accompanied them. The place of incident of rape was at a distance of 10 - 15 steps from canal. A staple fibre (Phuchada) of Ghaghra was found at the place of incident. The police had taken it in custody. She denied the suggestion that any such incident had not happened and she has given false evidence on tutoring by the counsel. She also admitted that besides the government counsel, she has also engaged a private counsel.

(44) The victim, who appeared as P.W.1, is the star witness of the prosecution. However, there are contradictions and inconsistencies in her testimony, particularly in regard to identification of accused persons, place of incident of rape. It is apparent that she did not know the accused persons prior to the incident and she along with her group had come a day before the incident in the noon at the place of the incident. It is also reflected from her evidence that she was detained by the police for about three days and no test identification parade was conducted and she could not identify the accused persons in photographs and had identified the accused persons in lock up of police station and thereafter in Court, but there is no explanation by the prosecution as to why the victim was detained by police and where she was kept for such a long period and as to why Test Identification Parade was not got done. Thus, it is to be seen as to whether identification of accused persons by her is in accordance with law or not complicity of accused/appellants is otherwise proved or not and other evidence, medical and material corroborates the evidence of P.W.1 and the prosecution case or not and effect of the contradictions and inconsistencies in the evidence of the victim.

(45) The complainant Banwari appeared as PW2. He is the real brother of Pokhai; the deceased and uncle of the victim. However, initially the victim had referred the Pokhai as her grandfather but subsequently as uncle. He has stated that 6-7 persons had come from South. He along with others had shouted. The accused persons had dragged the victim for about 10 steps. She was not going, therefore, they lifted her. Pokhai tried to get her freed, therefore, they shot him dead. It was moonlight. Looking to the accused, Anwar, he said that he had shot fire on Pokhai. His name is Anwar. Pokhai went 10 steps and fell in ditch and died. He further deposed that the accused present in court took the victim towards the south near the canal. The defence raised objection on the identification of the accused persons in the Court.

(46) P.W.-2 further deposed that they chased the accused persons but due to fear, they could not proceed further and returned. After about 1 to $1^{1/2}$ hours, the victim (P.W.-1) returned and told weeping that all the seven accused persons had committed wrong act with her one by one near the canal. The accused persons had given Rs.60/- consisting of one note of Rs.50/- and another of

Rs.10/- asking her to get the treatment done and did not tell to anybody about it. He further deposed that the victim had injuries in her hand, back and leg and was complaining of pain. Her *ghaghra* was stained with blood and was also torn a little. Thereafter, when the dawn broke and it became alight, he went to the house of a villager and got the report written. The incident was got written in the same manner as it was from that person, who read it over to him. After hearing it, he affixed his thumb impression thereon. The said application was given at the police station in the morning. He went to the police station alongwith Shobhnath, Bhungi, Pokhai, the victim and Lallau. He proved the written report as Paper No.3d/2 (Ext. Ka-1). On being read over to him, P.W.2 proved that the same was got written by him. He further deposed that the victim was detained at the police station and they had returned. The Inspector had come on the *dera* and recovered the empty cartridges near the ditch, where the Pokhai was lying dead. He had also recovered the plain and blood stained mud and kept in different boxes and the seizure memo were prepared. He further deposed that the Inspector had also taken custody of the ghaghra of the victim and Rs.60/-, which was given by the accused persons to her, which was given by her to him. The same was kept in an envelope and recovery memo was also prepared. He further deposed that the accused persons had come to the dera after the incident and asked for the compromise. They had also met while he had come to the Court and asked for the compromise.

(47) P.W.2 further deposed that the night was alight and everything clearly visible. However, in the cross-examination, he deposed that he does not recollect as to whether the moon was full or not. He had also not written in the report that the night was alight. The Investigating Officer had not asked from him as to in which light he had identified the accused persons. He, on his own, had informed the Investigating Officer that he had identified in the moon light and if it is not written in statement, then he can not tell the reason for it. Thus, identification of accused persons by him at the time of incident is doubtful on account of contradictions in his evidence.

(48) P.W.2-Banwari further deposed that he knows the number and after counting, he stated that seven persons are standing in cage since he is coming from last many days in the case. He further deposed in his cross-examination that they used to keep their dera in the village of incident occasionally. He further deposed that they had made their *dera* at about 03:00 in the day on the date of incident. They had not gone to the populated area of village. They were keeping camps up to the night. Thereafter, they prepared food. He neither identifies anybody in the village Hariharpur nor knows the parentage of anybody. He does not know anybody named Mithlesh Kumar son of Sitaram. He also does not know Suresh Kumar son of Nand Lal and Sanjay Kumar son of Ram Pher. He also does not know from whom he got the report written. The person had met him near the shop, which was at a distance of 4 - 6 steps from dera, which was in a wooden gumti. It was night, lantern was alight and it was dark. He does not know as to what was kept and being sold in the shop. The shopkeeper was sitting in the shop alongwith alight lantern. The paper was given by the said shopkeeper. When the report was got written, it would have been 04:00 in the morning. The police had not come by that time. He had told to the person, who had written the report that 6 - 7 persons were involved. He had not got heard the report. He had got read over the written report by an outsider before four steps from the police station then he had heard that it was written in the report that 6 - 7 persons were involved. The witness was read over the Ext. Ka-1 and told that involvement of 3 -4 persons is written, upon which, he stated that he had got written that 6 - 7 persons were involved. He had left the report at the Police Station and the copy was not given to

him. Signatures were also not taken from him. He also deposed that he had told to the Inspector about involvement of 6 - 7 persons. Thus, the complainant could not tell as to from whom the F.I.R. was got written. He could also not tell properly about the source of light at the shop. He also could not tell the things sold in the shop. It all coupled with opening of shop at 04:00 in morning at a small place near village creates doubt about the place and person, who wrote the F.I.R., as he has also not been produced, particularly when a contrary defence evidence has been adduced, which could not be controverted.

(49) P.W.2-Banwari, on being pointed out towards the accused Anwar, stated that this man is of short, black coloured and double heavy body. However, he had not got written in the report that the person, who killed Pokhai by fire arm, was of short stature, black coloured and double heavy body. He had not got written the description of any accused and the clothes, which were worn by them. All the accused persons present in the Court are young. It was neither told to the Inspector nor got written in his statement. He further, in his cross-examination, denied the suggestion that he was demanding more money for the compromise from the accused persons, therefore, the compromise could not be made.

(50) P.W.2 also deposed that after the thunderstorm, 3 - 4 camps were again made. The dera was in the round shape and there was a distance of about a hand between two camps. Pokhai was lying in the verandah. The victim was in the dera of Shobhnath. The dera of Shobhnath was in the South of his dera at a distance of 10 steps. Two - Three persons, namely, Shobhnath, Pokhai and wife of Shobhnath were lying in the verandah. Firstly, all the 6 - 7 accused persons had came to his dera and started beating all. He was also beaten by 1 - 2 sticks but it was not told by him to the Munshi in the police station. Pokhai had suffered a lot of injuries. He has died. He had not gone to the police station with him. Nobody else had got the injuries. He was not medically examined. He further deposed that the road is not between the dera and the verandah rather it is adjacent on the north. Thereafter, he stated that the road is in between the dera and the verandah. The ditch is on both the sides of road and Pokhai had fell down in the ditch on the south and died there. His dead body was also found there. Pokhai was shot from a distance of 10 steps by one fire. The person, who had shot, had ran away towards the south. The person, who had shot the fire, was present outside the dera. Pokhai had chased him towards south, when he had shot fired. Pokahi had chased him for about 10 steps but it was not told by him to the Inspector. He also deposed that they had ran towards the south of dera. He further deposed that the accused persons had firstly dragged the victim and thereafter lifted and took her as a dead body. She had returned on the same night at about 2:30 - 3:00. The report was got written after she had returned. She had told about the incident to him and that 6 - 7 persons had done bad work with her, which was got written by him in the report. He further reiterated his evidence given in the examination-in-chief in the cross-examination. Thus, there are contradictions and inconsistencies not only in the evidence of P.W.2 but between evidence of P.W.1 and P.W.2 also.

(51) P.W.-4, who was also a member of the group of the complainant and the victim, also gave his evidence similar to the evidence of P.W.-1 and P.W.-2. He is son of Pokhai, who was killed in the incident. He deposed that the fire was shot from a distance of 4 - 5 steps and thereafter he went about 20 - 25 steps and fell down aside the road and died. They had chased the accused for about 2 - 4 steps but thereafter, on account of fear, they returned. They had gone lifting the victim near the

canal, which was about a kilometer away on the south of dera. The victim had returned after about two to two and half hours and told that accused persons have done bad work with her. She also gave Rs.60/-. The first information report was got written by her uncle and thereafter the Inspector had come. He further deposed that he had identified the accused persons in the lighted night and subsequently also he identified them. He identified the accused persons in the Court. Out of which, one was short statured and present in the Court, who has told his name as Anwar. He had shot fire on Pokhai. The defence objected about the identification of the accused persons in the Court.

(52) P.W.4, in the cross-examination, deposed that he could not tell as to who had beaten whom, however, all were being beaten by sticks. He further, in his cross-examination, deposed that when the thunderstorm and the rains had come, the camps had fallen and when it started raining, some persons had gone in the room of Jagat Narain and some persons were in the dera. The room of Jagat Narain was in the north of dera at a distance of about 40 - 50 steps. He was in dera. The thunderstorm had come at about 09:00 - 10:00 in the night and rains had come about 10:00 - 11:00 in the night. The dera was at a distance of 20 - 25 steps from the road in the field. He also deposed that the victim was in the dera of Shobhnath. He had not seen any accused in the dera. He further deposed that the accused had not shot fire on his father immediately after entering but when they lifted the victim and were going, his father had chased them to get her freed, then he was shot by fire and he fell down in the ditch at a distance of about 20 - 25 steps in the north. He further deposed that the victim was married at the time of incident. She was hale and hearty. She had returned at about 2:30 - 03:00 in the night and the police had come about 07:00 in the morning. The police had taken the dead body of his father to the police station. He further deposed that he does not recollect as to whether some police personnel had taken the dead body and some remained at the spot. He denied the suggestion that he was not on the spot, therefore, he is making an excuse of not knowing the things. He further deposed that when he had identified the accused persons during his evidence on that date, all the seven accused persons were present in the cage of the Court. Besides the said seven persons, one another accused was in the cage, who had no concern with the case. He also deposed that he does not recollect as to whether he had any talk with Banwari before the report was written or not and he had not told to the Banwari or the police that only 3 - 4 accused were involved in the incident. Thus, there are contradictions and inconsistencies not only in evidence of P.W.4, but with the evidence of P.W.1 and P.W.2.

(53) The aforesaid witnesses, on the one hand, have stated that all in the dera were beaten by stick (danda) and, on the other hand, that none other had received any injury. Except the victim and deceased, none other has been got examined medically. There is contradiction in distance, from which the fire was shot on the deceased and the distance, after which he fell and died. P.W.1 has also deposed in her cross-examination that she had not objected to rape and the accused had come to leave her near the dera, which could have been only if the alleged miscreant was known to her, otherwise it is highly improbable. It is also highly improbable that the unknown miscreants would give medicine and pay money for treatment. It is also apparent that there are contradictions not only in the evidence of aforesaid witnesses, but between the evidence of aforesaid witnesses also.

(54) On perusal of the evidence of aforesaid three witnesses of fact i.e. the victim; star witness (P.W.-1), complainant (P.W.-2) and son of deceased (P.W.-4), who claims themselves to be eye-witnesses, it emerges that they had come to the village, where incident occurred, with their group in

the previous afternoon of the intervening night of the incident at about 03:00, when they started making their camps and during that period they had not gone towards the populated area of the village. It also emerges from their evidence that they did not know the persons residing in the village or vicinity. P.W.-2 and P.W.-4 have identified the accused persons only in the Court during their evidence and from their evidence, it does not emerge that they had ever told the description of the accused persons or what was being worn by them at the time of incident to the police prior to that. Admittedly their evidence was recorded after about 5 - 7 years of the incident. The only identification of the accused persons, prior to that, has been made by the P.W.-1 i.e. the victim but not in the Test Identification Parade. Her testimony shows that firstly she was shown the photographs of the accused persons, when she could not identify them, thereafter, the accused persons were shown to her in the lock-up room of the police station, where she identified them. She has not deposed that the photographs, which were shown to her, were not of the accused persons, who got identified by her in the lock-up of the police station.

(55) The Test Identification Parade can be held under Section 9 of the Indian Evidence Act, 1872 for identification of the accused persons. The Test Identification Parade is required to establish the identity of an accused and it is relevant fact under Section 9 of the Indian Evidence Act, 1872. The purpose of Test Identification Parade is to test and strengthen trustworthiness of the substantive evidence of a witness in court, which belongs to the investigation stage and if it is done with adequate precaution and in proper manner, it may be used by Court as a corroborative evidence. However, if the identification of the accused, who was not caught at the time of the incident, is not made properly and in accordance with law and if there is doubt about the identification of the accused persons, the conviction cannot be made only on it′s basis. Similarly, if the accused persons were not identified by the victim in Test Identification Parade or otherwise, their identification in the Court may not be sufficient for their conviction.

(56) The Hon′ble Supreme Court, in the case of **Umesh Chandra v. State of Uttarakhand**; (2021) 17 SCC 616, has held that test identification parade under Section 9 of the Indian Evidence Act, 1872 is not substantive evidence in a criminal prosecution but is only a corroborative evidence. The relevant paragraphs 9 and 10 are extracted here-in-below :-

"9. A test identification parade under Section 9 of the Evidence Act is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is only to ensure that the investigating agency prima facie was proceeding in the right direction where the accused may be unknown or there was a fleeting glance of the accused. Mere identification in the test identification parade therefore cannot form the substantive basis for conviction unless there are other facts and circumstances corroborating the identification.

10. But more important than that, the test identification parade being a part of the investigation, has to be proved by the prosecution as having been held in accordance with law. The onus lies on the prosecution to establish that the TIP was held in accordance with law. It is only after the prosecution prima facie establishes a valid TIP having been held, the question of considering any objection to the same arises. If the prosecution has failed to establish that a TIP was properly held by examining the witnesses to the same, there is nothing for the accused to disprove. In the present case, a Magistrate is stated to have conducted the TIP. The Magistrate has

not been examined. No explanation is forthcoming why the Magistrate was not examined. The only evidence available is that of PW 4 the Station House Officer that during the investigation the TIP was held in the District Jail, Nainital and he identifies the proceedings in the court. The identification of the proceedings is irrelevant as obviously he could not have been present during the TIP. The TIP, a part of the investigation, therefore cannot be said to have been proved much less that it was held in accordance with the law. Secondly there cannot be repeated TIPs till such time that the prosecution is successful in obtaining identification of the accused.″

(57) The Hon′ble Supreme Court, in the case of **Gireesan Nair Vs. State of Kerala (Supra)**, has held that if identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless. The relevant paragraphs 25 to 29 are extracted here-in-below:-

"25. Analysis: Heard the learned counsel for the parties and perused the case records. We may, at the outset, note that the eyewitnesses questioned by the prosecution did not give out the names or identities of the Accused participating in the riot and involved in the destruction of public property. Therefore, the IO (PW84) had to necessarily conduct a TIP. The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. Second, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Third, to test the witnesses′ memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (Mulla and Anr. v. State of U.P.19).

26. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru alias Girish Chandra v. State of U.P.20; Mulla and Anr. v. State of U.P.21 and C. Muniappan and Ors. v. State of Tamil Nadu22). The evidence of a TIP is admissible under Section 9 of the Indian Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj and Anr.23; and C. Muniappan and Ors v. State of T.N.24). 19 (2010) 3 SCC 508 (Paras 44, 45 and 55) 20 (1971) 2 SCC 75 (Para 17) 22 (2010) 9 SCC 567 (Para 42) 23 (2000) 1 SCC 247 (Para 3).

27. It is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. But reasons should be given as to why there was a delay (Mulla and Anr. v. State of U.P.25 and Suresh Chandra Bahri v. State of Bihar26).

28. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form, i.e., physically, through photographs or via media (newspapers, television etc….), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh and Ors v. State of U.P.27 and Suryamoorthi and Anr. v. Govindaswamy and Ors.28).

29. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Shaikh Umar Ahmed Shaikh and Anr. v. State of Maharashtra 29). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh30 and Ramkishan Mithanlal Sharma v. State of Bombay31)."

(58) The Hon'ble Supreme Court, in the case of **Dana Yadav @ Dahu & Others Vs. State of Bihar (Supra)**, has held that failure to hold test identification parade, which should be held with reasonable despatch, does not make the evidence of identification in court inadmissible rather the same is very much admissible in law but ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous Identification in the test identification parade or in any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law. It has further been held that ordinarily, if an accused is not named in the first Information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police. The Hon'ble Supreme Court, in the case of **Bhagwan Singh & Others Vs. State of M.P. (Supra)**, has taken similar view.

(59) In view of above, the identification of the accused persons by the victim is not in accordance with law and in view of the allegations levelled on behalf of the appellants that they have been implicated on account of police enmity, it can not be ruled out in the facts and circumstances of the case and the manner, in which they have been got identified. The conduct of the Court in getting the accused persons identified in the Court is also not appreciable, which was also objected by the defence time and again. It has also not been clarified as to when none of the aforesaid witnesses of fact knew the accused persons and they have also not given any description of them and as to what clothes were worn by them at the time of incident, as to why and how the police got identified the appellants because the manner, in which the extra-judicial confession was recorded prior to identification is highly improbable. Even the statement of the victim (P.W.1) was not recorded for three days and only after getting the appellants identified in lock-up, her statement was recorded which is evident from evidence of the investigating officer, who appeared as P.W.9.

(60) The evidence of P.W.9, S.I. R.P. Saroj, the first Investigating Officer, shows that the statement of the victim was not recorded immediately after lodging of the F.I.R., though the place of incident was inspected and the site plan was prepared on her pointing out along with the

complainant (P.W.2) on the same date. The statement of the victim (P.W.1) was recorded on the third day of the incident i.e. on 27.05.2002 and that too after the statements of the accused persons and getting them identified in lock-up by her, wherein they allegedly admitted having committed the crime against the victim (P.W.1). No explanation for this delay in recording the statement of the victim (P.W.1) has been offered. He also failed to disclose as to where the victim was kept for three days. This witness was recalled and in his re-statement, he confirmed that he had recorded the statement of the victim (P.W.1) on the third day. The statement of the complainant (P.W.2) was recorded on the same day. He deposed that he had prepared the recovery memo of Rs. 60/- on the spot.

(61) P.W.9 has also deposed that on 25th and 26th May, the names of any accused persons involved in the crime had not surfaced. He further deposed that in Parcha No. 3 dated 27.05.2002, since the accused persons had admitted the crime after being arrested in another case vide Case Crime Nos. 123 of 2002 and 124 of 2002 under Section 3/25 of the Arms Act, on the basis of the recovery of country-made pistols from Udai Raj and Shanker, the accused persons were arrested, he implicated them in the present case and started the investigation against them and upon their alleged admission of having committed gang rape of the victim, Ramu alias Ram Kumar and Paras Nath were also arrested accordingly. However, P.W.9 admitted that there was no independent witness to the arrest. He further deposed that family members of the complainant (P.W.2) were grazing cattle there and were present at the spot, where they were arrested. He further deposed that the statements of the accused persons were recorded at the time of arrest, wherein the accused persons admitted their crime and their statements were recorded after their arrest. All four accused persons were arrested on 27.05.2002 at 17:00 hours. Before 17:30 hours, no evidence had been found against them. On the basis of the statement of the complainant (P.W.2) and those of other witnesses and at their pointing out, the remaining three accused persons were arrested while fleeing away. Their names were disclosed by the accused persons. He further deposed and admitted that no identification parade of any of the accused persons was conducted. The statements of the witnesses were recorded on the same day after the arrest of the accused persons. The victim had stated that accused Anwar had given her Rs. 60/-. However, Anwar had not been arrested by that time.

(62) It is very strange as to how the victim could have disclosed the name of accused Anwar at that time, when both the victim (P.W.1) and the complainant (P.W.2) have admitted that they did not know the persons of the village or nearby places nor had Anwar been arrested by that time. It is also evident from the evidence of P.W.9, the first Investigating Officer, that no identification parade was conducted for the identification of the accused persons. It is also not the case of prosecution that the family members, who were present at the place of arrest of some of accused, had identified them. Thus, it is highly improbable that the accused persons, while arrested in connection with recovery of arms, would admit of committing other heinous crime without any basis. Therefore, the possibility of false implication on account of police enmity or implication of appellants, to show good work, as they were arrested in some case, cannot be ruled out in the facts and circumstances of the case. Thus, they could not have been convicted on the basis of such identification.

(63) It is also very strange that the victim was withheld at the police station after lodging of the first information report and as per testimony of the P.W.-1 and P.W.-2, the victim had returned

after about 2 - 3 days and it has not been clarified as to why she was withheld and where she was kept, whereas her medico legal examination was got conducted in the evening of the date of lodging of the first information itself. In any case, evidence on record shows that the victim (P.W.1) was in custody of police during said period before identification in lock-up, therefore, identification of accused persons under influence of police can also not be ruled out.

(64) The first Investigating Officer; P.W.-9 also deposed that the F.I.R. was lodged under Section 302, 376 and 323 I.P.C. He has started the investigation on the same day. He went to the spot and inspected the place of incident and recovered blood stained and plain mud and ghaghra of the victim stained with blood and semen. He also recovered one empty cartridge 12 bore and Rs.60/- and prepared recovery memo of the same and got it signed by the witnesses. He inspected the place of incident on the pointing out of the victim and the complainant and prepared the site plan i.e. paper No. 6Ka/1 and 6Ka/2, which were marked as Ext. Ka-11, Ext. Ka-12 and Ext. Ka-13. He got the inquest report prepared dictating to Dr. Anil Kumar Pandey, which is Ext. Ka-6 and, thereafter, got prepared the Ext. Ka-7, Ext. Ka-8, Ext. Ka-9 and Ext. Ka-10 and signed them. He enquired for the accused persons on 26.05.2002 and got the statement of Gram Pradhan Jagat Narain on 27.05.2002. He recorded the statement of accused Udai Raj, Shankar Nai, Ramu alias Ram Kumar and Paras Nath Patel, in which they admitted for crime. On the very same date, he recorded the statement of the victim and finding her of SC/ST community, he converted the case under the SC/ST Act and provisions of Section 3(2)(v) of SC/ST Act were invoked and the trial held for the same and conviction has been made.

(65) One of the arguments of learned counsel for the appellants is that the provisions of SC/ST Act were wrongly and illegally invoked as the victim and deceased are not of any category of SC/ST. For convenience, Section 3(2)(v) of SC/ST Act is extracted here-in-below :-

*"**3. Punishments for offences atrocities.-***

(1)…...
(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i)…...
(ii)…….
(iii)……
(iv)……
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine"

(66) The aforesaid Section 3(2)(v) of SC/ST Act has been amended by Act 1 of 2016 and by Section 4 of the said amending Act "knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" has been substituted in place of "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" w.e.f. 26-1-2016 vide notification dated 18.01.2016. Thus, on

the date of incident i.e. 25.05.2002, the offence under the said provision could have been said to have been committed only if a persons not being a member of SC/ST commits any offence under the I.P.C. punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine, therefore, if the offence would have been committed on the ground that the victim is a member of SC/ST community or such property belongs to such member. Therefore, firstly the person, who has committed the crime, must know that the persons with whom he is committing the crime is a member of SC/ST community or the property, with which he is committing the crime, belongs to him/her and secondly, the crime should have been committed because the other party i.e. the victim is of SC/ST community or the property belongs to member of such community.

(67) In the present case, admittedly, the victim, complainant and the deceased had come to place of incident on the date of incident and as admitted they did not know anybody of village and vicinity or the accused persons prior to incident, therefore, the question of knowing about them by the accused persons also prior to incident is highly improbable. It has also not been proved that the accused persons knew the victim and the deceased and their group prior to the incident and that they are of SC/ST community, therefore, the question of committing crime on the ground of their caste does not arise. Even otherwise it has been argued by learned counsel for the appellants that the victim and the deceased do not belong to any of the SC/ST community of the State of Uttar Pradesh and have also placed reliance on the Government Order in this regard and nothing contrary could be pointed out by the other side. Thus, apparently, the victim and the deceased were not member of SC/ST community, therefore, the question of invocation of provisions of SC/ST Act itself is illegal and not tenable. The prosecution has also failed to disclose as to how the victim and the deceased come under the SC/ST community of the State of Uttar Pradesh. Learned Trial Court has also failed to consider it. Thus, this Court is of the view that the conviction under Section 3(2)(v) of SC/ST Act against the appellants is not sustainable in the eyes of law.

(68) The Hon'ble Supreme Court, in the case of **Prabhat Kumar Mishra alias Prabhat Mishra Vs. State of U.P. (Supra)**, has quashed the proceedings under Section 3(2)(v) of S.C./S.T. Act on the ground that it is nowhere the case of the prosecution in the entire charge-sheet that the offence under I.P.C. was committed by the appellant upon the deceased on the basis of his caste. The relevant paragraphs 16, 17 and 18 are extracted here-in-below:-

"16. At the outset, we may take note of the fact that the prosecution of the appellant herein for the offence under Section 3(2)(v) of the SC/ST Act is ex facie illegal and unwarranted because it is nowhere the case of the prosecution in the entire charge-sheet that the offence under IPC was committed by the appellant upon the deceased on the basis of his caste.

17. This Court in the case of Masumsha Hasanasha Musalman v. State of Maharashtra1 considered this issue and held as under:-

"9. Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is

no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside."

18. Thus, from the admitted allegations of the prosecution, the necessary ingredients of the offence under Section 3(2)(v) of the SC/ST Act are not made out so as to justify prosecution of the accused appellant for the said offence."

(69) The Hon'ble Supreme Court, in the cases of **Shashikant Sharma Vs. State of Uttar Pradesh (Supra)** and **Patan Jamal Vali Vs. The State of Andhra Pradesh (Supra)**, has taken similar view. Similar view has also been taken by the Hon'ble Supreme Court, in the case of **Ramdas and Others Vs. State of Maharashtra (Supra)**, in which it has been held that the mere fact that the victim happened to be a girl belonging to a scheduled caste does not attract the provisions of the Act. The Hon'ble Supreme Court, in the case of **Khuman Singh Vs. State of Madhya Pradesh (Supra)**, has also taken similar view in regard to Section 3(2)(v) of S.C./S.T. Act, however, on account of sudden fight, the Hon'ble Court converted offence under Section 302 I.P.C. to Section 304 Part II I.P.C. The relevant paragraphs 12 to 14 of **Khuman Singh Vs. State of Madhya Pradesh (Supra)** are extracted here-in-below:-

"12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to "Khangar" Caste and how he could drive away the cattle of the person belonging to "Thakur" Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:-

Section 3 - Punishments for offences of atrocities - (1)

.....

(2) Whoever, not being a member of a Scheduled Caste or a Schedule Tribe, -

…….

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine".

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten

years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

13. In Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771, the Supreme Court held as under:-

"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.

14. Insofar as the conviction under Section 302 IPC is concerned, as discussed earlier, the conviction of the appellant under Section 302 IPC is modified as conviction under Section 304 Part II IPC. The appellant-accused has been serving the sentence in jail for more than twelve years. As per the jail certificate issued by the Superintendent, Central Jail, Gwalior, the appellant has served the actual sentence in jail for more than twelve years (as on 04.07.2018) and as on date, he has served the sentence of more than thirteen years. Considering the facts and circumstances of the case, for the conviction under Section 304 Part II IPC, the appellant is sentenced to undergo imprisonment to the period already undergone.

(70) It would be appropriate at this stage to deal the argument of learned counsel for the appellants that since the trial has not been held by the Special Court under the SC/ST Act, therefore, the trial itself stands vitiated. There is no doubt that the offences under the trial held against the appellants are triable by Session. Section 14 of SC/ST Act provides for Special Court and Exclusive Special Court for the purpose of providing speedy trial. The present provision of Section 14 has been amended by means of Act 1 of 2016 and prior to amendment by the Amending Act w.e.f. 18.01.2016, Section 14 was as under:-

"**14. Special Court-** For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act."

(71) The aforesaid provision discloses that the Special Court was to be notified by the State Government with the concurrence of the Chief Justice of the High Court for the purpose of providing speedy trial to try the offences under this Act. Thus, the only purpose for notification of Special Court for the purpose of the SC/ST Act was for speedy trial and the Court, which was empowered to conduct the cases for the offences levelled against the accused, was to be notified for the aforesaid purposes, therefore, merely because the case has been tried in a Court, which was not notified, will vitiate the trial is highly misconceived and not tenable for the reason that otherwise it

was empowered to try the case. It is also not the allegation that the Court, which has tried the trial, was not having jurisdiction for the trial of the offences levelled against the appellants. Even otherwise, the offences of the I.P.C. were to be tried under Section 3(2)(v) of SC/ST Act and it is to be seen as to whether the said offences have been committed on the ground that the victim or the deceased or their property belong to the member of SC/ST, but in the present case, as recorded above, it has also not been proved that they belong to SC/ST community, therefore, the question of committing the crime on the said ground does not arise. In any case, when the Court was having jurisdiction to try the offences, merely because it was not notified by the Government as a Special Court for trying of offences under the SC/ST Act speedily, it could not be a ground to hold that the whole trial is vitiated, consequently, the impugned judgment and order.

(72) By the amending Act 1 of 2016, Section 14 of SC/ST Act has been amended and a proviso has also been added that the Courts so established or specified shall have power to directly take cognizance of offences under this Act. In a case, in which the cognizance was taken by the Magistrate prior to committal of case after amendment, the matter went up to the Hon′ble Supreme Court. The Hon′ble Supreme Court held that because of the restricted role assigned to the Magistrate at the stage of committal under the new Code, the non-compliance of the same and raising of any objection in that regard after conviction attracts the applicability of the principle of `failure of justice' and the convict-appellant becomes obliged in law to satisfy the appellate court that he has been prejudiced and deprived of a fair trial or there has been miscarriage of justice in the case of **Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari and Others**; (2022) 15 SCC 228 and the Hon′ble Supreme Court held that it would be totally inapposite and inappropriate to hold that such non-compliance vitiates the trial. The Hon′ble Supreme Court further held that if issue is considered from another angle, the accused is to be tried for the offences under the Atrocities Act by Special Court / Exclusive Special Court constituted under Section 14 of the Atrocities Act. Even those rights are also available to the victim for the offences under the Atrocities Act, in which the trial is by the Special Court/Exclusive Special Court constituted under Section 14 of the Atrocities Act. Therefore, unless and until those rights which flow from Section 14 of the Atrocities Act are affected, the accused cannot make any grievance. Even otherwise in view of the provisions of Section 460 of the Cr.P.C., it can be an irregularity and not an illegality, therefore, entire proceedings and conviction cannot be accepted to have vitiated and is unsustainable.

(73) Applying the ratio of the aforesaid judgment of the Hon′ble Supreme Court on the present case, we are also of the considered view that the appellants have failed to show any prejudice to have been caused to them on account of trial not being held before the Special Court under the SC/ST Act and that it resulted in failure of justice, therefore, the contention is misconceived and not tenable and liable to be repelled only and accordingly repelled, holding that the trial cannot be said to be vitiated on this ground and the impugned judgment and order cannot be set aside or quashed on this ground.

(74) P.W.9 i.e. the first investigating officer also denied the suggestion that the F.I.R. had not been lodged by the time of inquest and, therefore, Section 323 I.P.C. was not mentioned in the inquest report of the deceased and that only Sections 376 and 302 I.P.C. were mentioned and Section 323 I.P.C. was added subsequently. He further deposed that the inquest had been conducted

under his dictation by Shri Arun Kumar Pandey under Sections 323, 302, 376 I.P.C. and Section 3(ii)(v) of the S.C./S.T. Act. In his earlier statement as discussed above, P.W.9 had stated that on 27.05.2002, after the admission of the accused persons and the statement of the victim, the case was found to attract Section 3(ii)(v) of the S.C./S.T. Act and was accordingly converted, whereas the inquest of the deceased Pokhai had been conducted on 25.05.2002 between 7:15 a.m.-9:15 a.m.

(75) P.W.9, in response to a query by the Court, further deposed that after the case was converted under Section 3(ii)(v) of the S.C./S.T. Act and the investigation was taken over by the Circle Officer, he continued to conduct further investigation under the directions of the Circle Officer. He also deposed that the place of incident shown in the F.I.R. is not reflected in the inquest report. The distance of the place of incident mentioned in the F.I.R. is 10 kilometres towards the east, whereas in the inquest report it has been shown as 6 kilometres. According to him, the distance shown in the check F.I.R. was by road, whereas the distance of 6 kilometers was the direct distance.

(76) P.W.9 further deposed that the place of occurrence of the rape was shown by the victim and was situated across the canal after proceeding from the side of the "dera". The victim had stated that she was raped by seven persons. He further deposed that the victim had described herself as the wife of Sitaram, whereas the victim stated in her testimony that she was not married at that time. Thus, his evidence is also contrary to the evidence of P.W.1 (the victim), who has stated that she was not taken across the canal and that the rape was committed aside the canal before reaching it. She had specifically stated that the accused persons had not taken her across the canal. P.W.9 also deposed that the complainant had not stated anything about the involvement of six or seven persons and that all the persons had stated that only three or four persons were involved. They had also not provided any description of the accused persons.

(77) In view of above, there are major contradictions and inconsistencies in the testimony of the first Investigating Officer (P.W.9) and with the testimonies of P.W.1, P.W.2 and P.W.4. P.W.1 has deposed that she was not married and P.w.4 has deposed that P.W.1 was married. It also shows that the investigation was conducted in a very casual manner and was tainted.

(78) The Circle Officer, who conducted the subsequent investigation after the conversion of the case under the S.C./S.T. Act, appeared as P.W.11. His evidence discloses that he had not recorded the statements of any of the witnesses, whose statements had been recorded by the earlier Investigating Officer during the course of the investigation, owing to his busy schedule, and that he had merely filed the charge-sheet under the S.C./S.T. Act on the basis of the evidence and material collected during the investigation. The accused persons, who were arrested during his period of investigation were also examined by the earlier Investigating Officer. Thus, the evidence of P.W.11 does not throw any light on the case. Sri Avadh Bihari Rakesh, the then Circle Officer, who had filed the charge-sheet against Anwar Ali, appeared as P.W.12 and merely proved the filing of the charge-sheet. He admitted in cross-examination that he had not examined the witnesses who had been examined by his predecessors. Constable Om Prakash Tripathi; P.W.10 proved check F.I.R. and the corresponding G.D. Entry.

(79) It is not disputed that the deceased, Pokhai, was shot dead by a firearm injury. There were five ante-mortem injuries on the body of the deceased Pokhai, out of which two were abrasions and one was a firearm injury. One pellet was recovered from his body. The cause of death was shock and haemorrhage as a result of the ante-mortem firearm injury, which was proved by Dr. Sanjay Kumar Pandey, who appeared as P.W.6. The injury report of the victim (P.W.1) indicates four injuries. The first consisted of multiple linear scratches on the left forearm, laterally and dorsally, over the lower two-third area; the second consisted of multiple blotchy abraded contusions on the upper third of both sides of the back, widely spread; the third was a linear patterned contusion measuring 7 cm x 2 cm on the right upper lateral region of the back; and the fourth was a linear patterned contusion measuring 11 cm x $1^{1/2}$ cm on the right lower thigh laterally and extending to the anterolateral aspect of the knee. According to the opinion of doctor (P.W.6), all the injuries were caused by a hard and blunt object.

(80) According to the conclusion of the medico-legal report of Dr. Vineeta Singh (P.W.3), the examination was suggestive of penetration by some blunt object. The supplementary report (Ext. Ka.3) further indicates that the vaginal smear was negative for spermatozoa and gonococci and that the age of victim was 16 years. The ghaghra of the victim was taken into custody by the Investigating Officer. However, the FSL Report dated 12.07.2002 (Paper No. 32 Ka-1) indicates that a petticoat was found in the sealed packet and that human blood and human semen were detected on it. This is not only contrary to the recovery memo relating to the ghaghra, as ghaghra was not found in the sealed packet sent for F.S.L. and a petticoat was found but inconsistent also with the medico-legal examination and pathological report of the victim. These discrepancies raises serious doubts not only about the prosecution story but also the investigation in the matter.

(81) P.W.3, Dr. Vineeta Singh, Senior Consultant, District Women Hospital, Raebareli, conducted the medical examination of the victim and deposed that she can not give any opinion regarding the allegation of gang rape. She further deposed that the injuries sustained by the victim could not have been caused by an accident, although no injury was found on the private parts of the victim.

(82) Dr. R.K. Mishra, Medical Officer, District Hospital, Raebareli, who conducted the medical examination of the external injuries of the victim (P.W.1), appeared as P.W.5. In his cross-examination, he deposed that there was no lacerated wound on the wrist of the victim. No injury caused by broken bangles was found on her wrist, whereas the victim (P.W.1), in her testimony, deposed that while she was being forcibly taken away by the accused persons, her bangles had broken and she had sustained injuries in her hand, whereas the medical was conducted on the very same date of incident. Similarly, no injury attributable to broken bangles was found by Dr. H.L. Sharma (P.W.7), who proved the X-ray report of the victim. He also opined that the victim (P.W.1) was more than 16 years of age.

(83) In view of above, the medical also does not support the prosecution case. The Hon'ble Supreme Court, in the case of **Ramanand Yadav Vs. Prabhu Nath Jha and Others (Supra)**, has held that it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw

adverse inference. However, it may be of no relevance, if the case is otherwise proved by cogent evidence as the medical evidence is only an expert opinion.

(84) The Hon'ble Supreme Court, in the case of **Awadhesh and Another Vs. State of Madhya Pradesh (Supra)**, has held that though medical expert's opinion is not always final and binding, but in the said case it corroborates other circumstances, which indicate that the eye-witnesses had not seen the actual occurrence.

(85) The Hon'ble Supreme Court, in the case of **Piara Singh & Others Vs. State of Punjab (Supra)**, has held that evidence of a medical man or an expert is merely an opinion which lends corroboration to the direct evidence in the case. Where there is a glaring inconsistency between direct evidence and the medical evidence in respect of the entire prosecution story, that is undoubtedly a manifest, defect in the prosecution case. The Hon'ble Supreme Court, in the case of **Ram Narain Singh Vs. The State of Punjab (Supra)**, has taken similar view.

(86) In view of above, in criminal law, the case is to be proved by the prosecution by standing on it's own legs, primarily on the basis of ocular or circumstantial evidence as the case may be. The instant case is a case of ocular evidence as P.W.1, P.W.2 and P.W.4, the witnesses of facts, are the eye-witnesses. The Hon'ble Supreme Court, in the case of **Balu Sudam Khalde Vs. State of Maharashtra (Supra)**, has observed that the appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case have been enumerated in paragraphs 25 to 27, which are extracted here-in-below:-

"25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence,

attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

(87) The Hon'ble Supreme Court, in the aforesaid case, has also held that it is a cardinal principle of criminal jurisprudence that the initial burden to establish the case against the accused beyond all reasonable doubt rests on the prosecution. It is also an elementary principle of law that the prosecution has to prove its case on its own legs and cannot derive advantage or benefit from the weakness of the defence. However, on reaching to the conclusion that the evidence of the eyewitnesses inspires confidence and there is nothing in their evidence on the basis of which it could be said that they are unreliable witnesses, to fortify the view, the Court can definitely look into the suggestions made by the defence counsel to the eyewitnesses, the reply to those establishing the presence of the accused persons as well as the eyewitnesses. The main object of cross-examination is to find out the truth on record and to help the Court in knowing the truth of the case.

(88) Adverting to the facts of the present cast and upon considering the ocular evidence of P.W.1, P.W.2 and P.W.4 with the other evidence and material on record, as discussed above, the evidence of aforesaid witnesses does not inspire confidence, in as much as there is no proper identification of the accused persons i.e. the appellants, who were not previously known to the complainant and victim.

(89) The complainant, Banwari (P.W.2), gave an application (Paper No. 134 Ka) for discharge of ten witnesses from tendering evidence on the ground that they had colluded with the accused persons and would not depose the truth before the Court. The said ten persons include Shobnath and Lallau, who had accompanied the complainant (P.W.2) with him for lodging the F.I.R. along with Bhungi, Pokhai, and the victim, whereas Pokhai had already died and the victim appeared as P.W.1. Bhungi has also not been produced.

(90) The defence produced Mithilesh Kumar, son of Sitaram, as D.W.1, who was a prosecution witness but was got discharged by the complainant. He deposed that about 60-70 "Mangta" had set up a dera in the field of Raja Ram Maurya. On the said night, there was a severe storm and rain, due to which the dera had collapsed. Some persons were inside the dera, some of whom were saved, while others were in the verandah of his house. He further deposed that he heard noise and cries near the dera of the Mangta at about 1:00 a.m. He came out and saw 3-4 persons dragging the Mangta. When a Mangta objected, he was shot dead. He further deposed that he saw 3-4 persons and in the light of a torch, he could see their faces and the accused persons present in Court were not those persons. He further deposed that he went along with 3-4 villagers and informed the police, whereupon the police came, by which time it was morning. On perusal of Ext. Ka.1, he deposed that it was written by him. In cross-examination, he deposed that Ext. Ka.1 was written on the dictation of some police personnel and not Banwari (complainant). He denied the suggestion that to save the accused persons, who were residents of his village, he had deposed in their favour. He also proved his signature on the inquest report of the deceased Pokhai (Ext. Ka.6). Ext. Ka.15, which is the corresponding G.D. Entry No. 6 of the F.I.R. dated 25.05.2002, indicates the presence of Mithilesh Kumar, son of Sitaram, along with others at the police station for lodging the F.I.R. Thus, the presence of D.W.1 Mithilesh Kumar at the police station at the time of lodging of the F.I.R., and the lodging of the F.I.R. against 3-4 unknown persons, cannot be disputed in the absence of any cogent and reliable evidence because the complainant (P.W.2) has given contrary and inconsistent evidence in regard to F.I.R. and the accused persons mentioned therein, which was given by him after it was read over to him, as deposed by him.

(91) One of the arguments advanced by learned counsel for the appellants is that this Court may take judicial notice of certain universal social, legal, and behavioural facts for evaluating the prosecution case, such as the natural and basic instinct of living beings for sexual desire, for which they may involve themselves in all kinds of fear and foul play. Thus, submission is that the victim, who was young, must have been indulged in satisfying her sexual desire with her friend and her uncle would have seen them together and on being objected by him, he must have been killed by friend of the victim. This argument has been advanced on the basis of certain unauthenticated documents from some research article and extract of journal without any evidence on the factual aspect as argued. It is vehemently been opposed by learned A.G.A.

(92) Section 56 of the Indian Evidence Act, 1872 (here-in-after referred to as "**Act, 1872**") provides that the fact judicially noticeable need not be proved. Section 57 of Act, 1872 provides the facts of which Court must take judicial notice, which is extracted here-in-below :-

"**57. Facts of which Court must take judicial notice**.-The Court shall take judicial notice of the following facts :-

(1) All laws in force in the territory of India;

(2) All public Acts passed or hereafter to be passed by Parliament of the United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed;

(3) Articles of War for the Indian Army, Navy or Air Force;

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States;

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice: the seals of all the Courts in India and of all Courts out of India established by the authority of the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in India;

(7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette;

(8) The existence, title, and national flag of every State or Sovereign recognized by the Government of India:

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion of the Government of India;

(11) The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons;

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

(13) The rule of the road on land or at sea.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so."

(93) The aforesaid provision enumerates the facts of which judicial notice can be taken by the Court. It further provides that in all the said cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. Thus, judicial notice of the facts enumerated above can be taken on the basis of appropriate books or documents of reference. It further provides that if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

(94) In the present case, learned Counsel for the appellants has failed to produce any appropriate and authentic book or documents of reference and only photocopy of the research article and the extract of journal has been produced without disclosing it's authenticity. Thus, the contention of learned Counsel for the appellants is misconceived and not tenable. Even otherwise, if judicial notice of the said facts are taken by this Court, the necessary facts, for which Court is being called upon to take judicial notice were required to be proved by cogent evidence, which the

appellants have failed to prove. Thus, the contention is misconceived and not tenable and accordingly rejected.

(95) One of the arguments of learned Counsel for the appellants is that there was no evidence on record to prove essential elements to constitute 'unlawful assembly' as defined under Section 141 I.P.C. and in view of the allegations in the F.I.R. and the statements under Section 161 Cr.P.C., the involvement of only 3-4 persons have been shown, therefore, the provisions of Section 149 I.P.C. are not attracted and once conviction under Section 148 I.P.C. was made, appellants could not have been convicted separately under Sections 147 and 148 I.P.C.

(96) In the present case, all the appellants have been convicted separately under Section 147 read with Section 149 I.P.C., Section 148 read with 149 I.P.C. and Section 323 read with 149 I.P.C., whereas appellants, Anwar Ali, Shankar Nai, Paras Nath Patel, Ram Sajivan Patel and Ratipal Patel, under Section 302 read with Section 149 read with Section 3 (ii) (v) of S.C./S.T.Act and appellants, Udai Raj and Ramu alias Ram Kumar, under Section 302 read with Section 149 I.P.C.

(97) Section 141 I.P.C. provides that an assembly of five or more persons is designated as "unlawful assembly", if the common object of the persons composing that assembly for committing the offences provided from first to fifth provided therein. Section 141 I.P.C. is extracted here-in-below :-

"**141. Unlawful assembly.-**An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, 11[the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain

possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

(98) Section 147 I.P.C. provides punishment for rioting, which may extend to two years, or with fine, or both. Section 148 I.P.C. provides rioting, armed with deadly weapon, which may extend to three years, or with fine, or with both, which is aggravated form of Section 147 I.P.C. and the punishment is awarded with the aid of Section 149 I.P.C. As per Section 141 I.P.C. for constituting the 'unlawful assembly' five or more persons are required to have been assembled for the common object in committing the crime referred in Section 141 I.P.C.

(99) The record indicates that initially the F.I.R. was lodged under Sections 302, 376, and 323 I.P.C., but subsequently Sections 147, 148, and 149 I.P.C. were added during investigation, upon surfacing of 6-7 accused persons alleged to have been involved in the crime and assembled at the place of occurrence with common object, therefore, the contention of learned counsel for the appellants regarding the invocation of Section 149 I.P.C. is misconceived and not tenable, for the reason that during investigation, it can be done on the basis of evidence and material collected. However, it would have to be proved during trial, which the prosecution has failed to do. In any case, the contention regarding conviction and sentence separately under Sections 147 and 148 I.P.C. appears to be just and correct, because once the appellants are found to have committed the offence under Section 148 I.P.C., which is an aggravated form of Section 147 I.P.C., separate conviction and punishment under Section 147 I.P.C. for the same act could not have been made and that too without recording any specific finding.

(100) The Hon'ble Supreme Court, in the case of **Vijay Pandurang Thakre Vs. State of Maharashtra (Supra)**, has enumerated ingredients required to be essentially established for invocation of Section 149 I.P.C. and also held that unless a person present in an unlawful assembly actively participates in the rioting or does some overt act with the necessary criminal intention or shares the common object of the unlawful assembly, Sections 147, 148 and 149 I.P.C. will not apply. The relevant paragraphs 14 and 15 are extracted here-in-below:-

"14. As is clear from the plain language, in order to attract the provision of the Section, following ingredients are to be essentially established.

(i) There must be an unlawful assembly.

(ii) Commission of an offence by any member of an unlawful assembly.

(iii) Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed.

If these three elements are satisfied, then only a conviction under Section 149, I.P.C., may be substantiated, and not otherwise. None of the Sections 147, 148 and 149 applies to a person who is merely present in any unlawful assembly, unless he actively participates in the rioting or does some overt act with the necessary criminal intention or shares the common object of the unlawful assembly.

15. In the facts of the present case, we find that common object of the assembly, even if it is presumed that there was an unlawful assembly, has not been proved. The expression 'in prosecution of the common object' occurring in this Section postulates that the act must be one which have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. This expression is to be strictly construed as equivalent to in order to attain common object. It must be immediately connected with common object by virtue of nature of object. In the instant case, even the evidence is not laid on this aspect. As pointed out above, the courts below were influenced by the fact that one of the injuries on the person of Ashok was on his head which became the cause of death and from this, common object is inferred."

(101) The Hon'ble Supreme Court, in the case of **Rudrappa Ramappa Jainpur and Others Vs. State of Karnataka (Supra)**, has taken similar view in regard to Section 143, 147, 148 and 149 I.P.C. in the facts and circumstances of the said case.

(102) The Hon'ble Supreme Court, in the case of **Sukhbir Singh Vs. State of Haryana (Supra)**, has held that accused is vicariously guilty of the offence committed by other accused persons only if he is proved to be a member of an unlawful assembly sharing its common object. There is no dispute to the legal provision that once the existence of common object of unlawful assembly is proved, each member of such an assembly shall be liable for the main offence notwithstanding his actual participation in the commission of the offence. It is not necessary that each of the accused, forming the unlawful assembly, must have committed the offence with his own hands.

(103) The Hon'ble Supreme Court, in the case of **Allauddin Mian and Others Sharif Mian and Another Vs. State of Bihar (Supra)**, has held that in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. In regard to Section 149 I.P.C., it has been held that this Section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object. It has further been held that what is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed, there must be ingredients of the offence committed.

(104) The Hon'ble Supreme Court, in the case of **Bhimrao alias Ramesh Pandhari Bhade and Others Vs. State of Maharashtra (Supra)**, has held that in absence of any material to the contrary, it should be presumed that those members of the original unlawful assembly, who only shared the common object of assaulting deceased cannot be attributed with the subsequent change in the common object of some of the members of the assembly, who entered the house and caused grievous injuries to him and converted the offence under Section 326 I.P.C. read with Section 149 I.P.C. to Section 352 I.P.C. read with Section 149 I.P.C.

(105) Adverting to the facts of the present case, the prosecution case is that 3-4 persons had come at about 01:00 in the intervening night of 24/25.05.2002, who started beating all members of the group of the complainant (P.W.2), victim (P.W.1) and the deceased by sticks and one of the accused started dragging the victim (P.W.1). When her uncle Pokhai (deceased) chased them to get her freed, the said accused fired on him from country-made pistol and handed over the victim (P.W.1) to other accused persons, who took her towards canal and 7 persons in all committed rape with her, therefore, it could not be said that there was no common intention for unlawful assembly and charge sheet could not have been filed, but it could not be proved during trial, as discussed above. It also shows that the deceased was killed only because he chased the accused persons and tried to get the victim freed. Thus, the argument of learned Counsel for the appellants that conviction of the appellants under Section 302 I.P.C. is not sustainable as it could have been a case falling under Exception 4 of Section 300 I.P.C. Consequently, the said accused persons could have been convicted under Section 304 I.P.C. for culpable homicide not amounting to murder and not under Section 302 I.P.C. This contention of learned Counsel for the appellants carries weight, when considered in the facts and circumstances of the case and evidence adduced and this Court is of the view that the conviction under Section 302 I.P.C. read with Section 149 I.P.C. could have been under Section 304 I.P.C. in view of the

statutory provisions as well as law laid down by the Hon'ble Supreme Court, in the cases of **Sukhbir Singh Vs. State of Haryana (Supra), Balu Sudam Khalde Vs. State of Maharashtra (Supra), Paul Vs. State of Kerala (supra) and Nandlal Vs. State of Maharashtra (supra)** relied by learned Counsel for the appellants.

(106) However, as discussed above, the prosecution has failed to prove the involvement of the appellants in the crime beyond all reasonable doubt but learned trial Court, without considering the evidence and material on record properly and dealing with the evidence and material in a cursory manner, has convicted the appellants, which is apparent from the facts that though complainant (P.W.2) has deposed that he does not know the person, who had written the F.I.R. and D.W.1 also but learned trial Court has recorded finding that this is the same witness, who had written the F.I.R. on the dictation of the complainant (P.W.2), whereas he has admitted that he had written the F.I.R. as dictated by some police personnel and not complainant, but without considering it, the learned trial Court has discarded the evidence of D.W.1, whereas his presence in the police station at the time of lodging of F.I.R. with the complainant cannot be doubted as per the proved G.D. Entry and it has been accepted by learned trial Court also but the prosecution witnesses have denied any acquaintance with him. The learned trial Court has also failed to consider that the investigating officer had recovered ghaghra of the victim but in the sealed packet, which was opened by F.S.L., the petticoat was found and report was submitted on the said basis. The money, medicine and phuchda seized by Investigating Officer have not been produced and proved. Learned trial Court has also failed to consider the contradictions and inconsistencies of the evidence of the prosecution witnesses, as discussed above, on the basis of the evidence and material on record. Thus, this Court is of the view that learned trial Court has passed the impugned judgment and order without considering the evidence and material on record and dealing it appropriately in cursory manner, which is not sustainable in the eyes of law and the appellants are liable to be acquitted on the basis of the benefit of doubt.

(107) In view of above, both the appeals are **allowed**. The impugned judgment and order dated 03.02.2011 passed by learned trial Court is hereby set-aside. All the appellants are acquitted from the charges framed against them.

(108) Appellant No. 1-Rati Pal Patel in Criminal Appeal No. 550 of 2011 is on bail. He needs not surrender in the instant case. His bail bonds are cancelled and sureties discharged.

(109) The other appellants, namely, Anwar Ali, Ramu alias Ram Kumar and Ram Sajivan Patel in Criminal Appeal No. 538 of 2011 and Paras Nath Patel, Udai Raj and Shankar Nai in Criminal Appeal No. 550 of 2011 are in jail. They shall be released forthwith in the instant case, in case they are not wanted in any other case. Their bail bonds are cancelled and sureties discharged.

(110) Pending application(s), if any, stands disposed of, accordingly.

(111) Appellants are directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure, 1973, corresponding to Section 481 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023.

(112) Let a copy of this judgment and original records be transmitted to the Trial Court concerned forthwith and in any case within a period of one week from today for information and compliance.

(2026) 7 ILRA 699
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 701 of 2011

Lal Babu **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the appellant could be convicted on the basis of the statement of the victim recorded under Section 164 CrPC from which she had resiled during her examination on oath in the Court?

Headnotes

Code of Criminal Procedure, 1973-Ss. 164, 273 and 299-Indian Penal Code, 1860-S. 366- Prosecution witnesses turned hostile-Complainant, victim, alleged eyewitness and all other witnesses turned hostile-absolutely no evidence to prove prosecution case-trial Court convicted appellant solely on basis of victim's statement recorded under S.164 CrPC-Victim categorically stated before Trial Court that she had given statement under S.164 CrPC under pressure of police -and that no offence had been committed against her-all evidence taken in course of trial or other proceeding shall be taken in presence of accused or his pleader-trial Court cannot rely upon evidence recorded in absence of accused, even before commencement of trial-S.299 CrPC-Exception-Preconditions must be established before statements of witnesses recorded in absence of accused can be utilised in evidence-S.164 CrPC-Statement not recorded during trial-not recorded by Court-not given under oath and not recorded in presence of accused-accused has no opportunity to cross-examine person at time of recording of statement-appellant convicted only on basis of material collected during investigation- behind back of accused-Impugned order -patent illegal-Conviction and sentence under S.366 IPC set aside-Appellant acquitted.

Appeal allowed. (E-9)

Case Law Cited

1. Nirmal Singh v. State of Haryana, (2000) 4 SCC 41
2. Jayendra Vishnu Thakur v. State of Maharashtra, (2009) 7 SCC 104
3. State of Rajasthan v. Bhawani, (2003) 7 SCC 291
4. Jayantibhai Chaturbhai Patel v. State of Gujarat, 2025 SCC OnLine SC 2822
5. Paramjeet Singh v. State of Uttarakhand, (2010) 10 SCC 439
6. Sadiq & Ors. v. State of U.P., 1981 Crl.LJ. 379

List of Acts

1. Code of Criminal Procedure, 1973
2. Indian Evidence Act, 1872
3. Indian Penal Code, 1860

List of Keywords

Section 164 CrPC; prosecution witnesses turned hostile; victim resiled; examination on oath; statement under pressure of police; Section 273 CrPC; presence of accused; opportunity to cross-examine; Section 299 CrPC; exceptional circumstances; behind the back of accused.

Appearances of parties

Counsel for Appellant(s): Shiv Shanker Singh, Anand Kumar Srivastava
Counsel for Respondent(s): Government Advocate

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

1. Heard Sri Anand Kumar Srivastava, the learned counsel for the applicant and Sri Ganesh Dutt Bhatt, the learned AGA-I.

2. By means of the instant appeal, the appellant has challenged the validity of the judgment and order dated 30.03.2011 passed by the learned Additional Sessions Judge / Fast Track Court No. 30, Barabanki in Session Trial No. 1082 of 2010, arising out of Case Crime No. 75 of 2009, under Sections 363, 366, 376, 368, 147, 323, 504, 506, Police Station, Jahangirabad, District Barabanki, whereby although the appellant has been acquitted of all other charges, he has been convicted and sentenced for the offence under Section 366 IPC.

3. The aforesaid case was instituted on the basis of an F.I.R. lodged at 10:30 a.m. on 11.03.2009 against 11 accused persons, including the applicant, stating that the complainant's daughter aged 14 years had gone towards east of the village to attend the nature?s call, at about 8:30 p.m. on 08.03.2009 along with her younger sister. Lal Babu (the appellant) and his brother Sanjay took her away in their Maruti car. The complainant's younger daughter raised a hue and cry and told about the incident. The informant, his family members and villagers were searching for his daughter. Ramsagar, his wife, Pramod Kumar and Kuldeep Kumar, sons of Ramsagar and Pramod Kumar's wife came to the complainant's house at 7:30 a.m. on 11.03.2009 and they abused and beat up the complainant. When he cried, several persons came there and the accused persons ran away while threatening him. The complainant suffered injuries in the incident.

4. The victim was recovered on 12.03.2009 from Satrikh Naka while she was with the appellant. The medico-legal examination report of the victim revealed no mark of injury on any part of her body, including her private parts. The pathological examination report of vaginal smear was negative for presence of spermatozoa or gonococci. As per X-ray examination report, age of the victim was opined to be about 16 years. The report stated that no definite opinion could be given about commission of rape. After investigation, the Investigating Officer submitted a charge-sheet dated 10.05.2009 against all 11 accused persons.

5. The complainant was examined as PW-1. He stated that some altercation had taken place between him and the accused persons. A large crowd had gathered there. During the incident, he got pushed, fell down and suffered injuries. He had lodged the FIR against accused persons because they had entered into an altercation with him. Nobody had seen

the accused persons taken away the complainant's daughter and none of them had beaten up the complainant or abused him. PW-1 was declared hostile. A question was put to him regarding the statement given by him under Section 161 Cr.P.C. to the Investigating Officer and he denied the statement. He categorically stated that the appellant and his brother Sanjay had not taken away the complainant's daughter or that they had beaten him up with sticks. He further stated that at the time of the incident, age of the victim was about 19 years.

6. The victim was examined as PW-2. She stated that being angry for some reason, she had gone to the house of a relative without informing her family members and she came back after two - three days. She stated that she had given the statement before the Magistrate under pressure of the Police. The victim denied all the prosecution allegations. She was also declared hostile. During cross-examination she denied her statement recorded under Section 161 Cr.P.C.

7. The Headmistress of the school in which the victim had studied, was examined as PW-3. She stated that as per the school records, the victim's date of birth is 28.06.1996. During cross-examination she stated that she could not tell whether the date of birth informed by the guardian at the time of the admission was correct or not.

8. Asha Ram, a relative of the complainant/victim, was a witness of the Supurdaginama and he was examined as PW-4. During cross-examination he stated that the victim had gone away to the house of some relative and nobody had enticed her away. He also stated that the victim was not recovered in his presence.

9. The younger sister of the victim alleged to be accompanying her at the time of the incident, was examined as PW-5 and she was also declared to be hostile.

10. In the statement recorded under section 313 Cr.P.C., all the accused persons denied all the allegations against them.

11. The trial court held that although all the prosecution witnesses had turned hostile, the prosecution documents namely the charge-sheet, the FIR, the site plan and the medico-legal examination report will be admissible in evidence as per the law laid down by the High Court in the case of **Sadiq & Ors. v. State of U.P.:**1981 Crl.LJ. 379. As per these documents, the victim was more than 16 years of age but less than 18 years of age. In the statement under Section 164 Cr.P.C., she stated that the appellant had taken her away and had made physical relations with her. The accused persons and the victim belonged to the same family and the offences alleged are non-compoundable. The trial court held on its own that the accused persons had not supported the prosecution version under social pressure and to save adverse effects on the family repute, family relations and future of the victim. The trial court held that the statement of the victim recorded under Section 164 CrPC proves that the appellant had enticed her away.

12. Accordingly, the trial court convicted the appellant for the offence under Section 366 IPC. No other charge was established against the applicant and no charge was proved against any other accused person. The trial court sentenced the appellant to undergo imprisonment for five years and payment of Rs. 10,000/- as fine.

13. It is settled law that the prosecution has to establish its case beyond reasonable doubt. In the present case, the complainant, the victim, the alleged eyewitness accompanying the victim at the time of the incident and all other witnesses of fact have turned hostile. There was absolutely no evidence to prove the prosecution case. The learned trial court has convicted the appellant solely on the basis of the victim's statement recorded under Section 164 Cr.P.C. regarding which a question was put to her during her examination in the Court and she stated that she had given the statement under Section 164 Cr.P.C. under pressure of the police. In these circumstances, when in her statement recorded before the trial court on oath, the victim categorically stated that no offence had been committed against her, the trial court has committed a patent error of law in convicting the appellant solely on the basis of statement of the victim recorded under Section 164 CrPC from which she had resiled during her examination on oath in the Court.

14. Section 273 Cr.P.C. reads as follows: -

*"**273. Evidence to be taken in presence of accused**.-Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.*

***

Explanation.-In this section "accused" "includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code."

15. Section 273 CrPC provides that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in presence of the accused, or when his attendance is dispensed with, in the presence of his pleader. The trial Court cannot rely upon the evidence recorded in absence of the accused, even before commencement of the trial.

16. Section 299 CrPC provides an exception where the evidence of a witness recorded in absence of an accused person can be read against him and this section reads as follows:

*"**299. Record of evidence in absence of accused**.-(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is*

charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India."

17. Section 33 of the Evidence Act reads as follows: -

*"**33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.-** Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:*

Provided-

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.-A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

18. Section 33 of the Evidence Act, 1872, provides relevancy of certain evidence for proving the truth of the facts stated therein, in any subsequent proceeding, according to which evidence given by a witness is treated to be relevant in a subsequent proceeding or at a later stage in the same proceeding under certain eventualities.

19. In **Nirmal Singh v. State of Haryana**: (2000) 4 SCC 41, the Hon'ble Supreme Court discussed the scope and requirements of Section 33 and Section 299 CrPC and observed as follows: -

"4. - On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the preconditions in both the sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the

persons are dead or would not be available or any other condition enumerated in the second part of Section 299(1) of the Code of Criminal Procedure is established."

20. Section 278 Cr.P.C. provides that as soon as the evidence of each witness in a criminal trial is taken under Section 275 or 276, it shall be read over to him in the presence of the accused, if in attendance, or in presence of his pleader, if he appears by pleader, and shall, if necessary, be corrected. Section 279 Cr.P.C. provides for interpretation of evidence to the accused in open court, in case he is present and such evidence is given in a language not understood by him.

21. In **Jayendra Vishnu Thakur v. State of Maharashtra**: (2009) 7 SCC 104, the Hon?ble Supreme Court held that: -

"*18.* ***The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right. ….***

***

23. An accused is, however, always entitled to a fair trial. He is also entitled to a speedy trial but then he cannot interfere with the governmental priority to proceed with the trial which would be defeated by conduct of the accused that prevents it from going forward. In such an event several options are open to courts. What, however, is necessary is to maintain judicial dignity and decorum. The question which arises for consideration is whether the same will take within its umbrage the said principle. We will examine the said question a little later. We will proceed on the premise that ***for invocation of the provisions of Section 299 of the Code the principle of natural justice is inbuilt in the right of an accused.***

24. A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and reexamination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion.

(See- Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417]).

25. It is also beyond any cavil that the provisions of Section 299 of the Code must receive strict interpretation, and, thus, scrupulous compliance therewith is imperative in character. It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. Under Section 3 of the Evidence Act like any other fact, the prosecution must prove by leading evidence and a definite categorical finding must be arrived at by the court in regard to the fact required to

be proved by a statute. Existence of an evidence is not enough but application of mind by the court thereupon as also the analysis of the materials and/or appreciation thereof for the purpose of placing reliance upon that part of the evidence is imperative in character."

(Emphasis added)

22. Therefore, the legal position is well settled beyond any doubt that the prosecution witnesses have to be examined in the presence of the accused or his pleader, except under certain exceptional circumstances, which do not exist in the present case. The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right. The statement under Section 164 Cr.P.C. is not recorded during the trial, it is not recorded by the Court, it is not given under oath and it is not recorded in presence of the accused. The accused has no opportunity to cross examine the person at the time of recording of his/her statement under Section 164 Cr.P.C. Therefore, no person can be convicted on the basis of a statement recorded under Section 164 Cr.P.C.

23. In **State of Rajasthan v. Bhawani**, (2003) 7 SCC 291, the Hon'ble Supreme Court held that: -

"10. The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting en bloc the evidence of the witness. But the court has at least to be aware that prima facie, ***a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence.*** *The High Court has accepted the testimony of the hostile witnesses as gospel truth for throwing overboard the prosecution case which had been fully established by the testimony of several eyewitnesses, which was of unimpeachable character. The approach of the High Court in dealing with the case, to say the least, is wholly fallacious."*

(emphasis added)

24. The aforesaid reasoning has been followed in **Jayantibhai Chaturbhai Patel v. State of Gujarat**, 2025 SCC OnLine SC 2822, wherein the victim had levelled allegation of commission of rape during investigation, but she and her husband both turned hostile during her examination before the Court. The Hon'ble Supreme Court allowed the appeal and set aside the order of conviction passed by the trial Court and affirmed by the High Court.

25. In **Paramjeet Singh v. State of Uttarakhand**, (2010) 10 SCC 439, also, the Hon'ble Supreme Court followed the law laid down in **State of Rajasthan v. Bhawani**, (supra) and further held that: -

"10. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that ?human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions?. Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. ?The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.? In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinising the evidence more closely, lest the shocking nature of the crime induces an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide Kashmira Singh v. State of M.P. [AIR 1952 SC 159], State of Punjab v. Jagir Singh [(1974) 3 SCC 277], Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35], Mousam Singha Roy v. State of W.B. [(2003) 12 SCC 377] and Aloke Nath Dutta v. State of W.B. [(2007) 12 SCC 230])"

26. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the above mentioned cases, it appears that the prosecution witnesses did not support the prosecution case before the trial Court and the trial Court has convicted the appellant - accused only on the basis of the material collected during investigation, behind the back of the accused. Therefore, the impugned order suffers from a patent illegality and is liable to be set aside.

27. Accordingly, the appeal is ***allowed***. The judgment and order dated 30.03.2011 passed by the learned Additional Sessions Judge / Fast Track Court No. 30, Barabanki in Session Trial No. 1082 of 2010, arising out of Case Crime No. 75 of 2009, under Sections 363, 366, 376, 368, 147, 323, 504, 506, Police Station, Jahangirabad, District Barabanki, whereby the appellant has been convicted and sentenced for the offence under Section 366 I.P.C., is set aside and the appellant is acquitted of the charge of offence under Section 366 IPC.

28. The appellant shall furnish a personal bond and two sureties to the satisfaction of the trial Court within two weeks from today in compliance with Section 446 of the Code of Criminal Procedure for his appearance before the Hon'ble Supreme Court in case an appeal against this judgment/order is filed and the Hon'ble Supreme Court issues notice for appearance of the appellant.

(2026) 7 ILRA 707
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.07.2026

BEFORE

THE HON'BLE AJAY BHANOT, J.
THE HON'BLE TARUN SAXENA, J.

Capital Cases No. 16 of 2021

Ashok Sharma **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the prosecution has failed to prove the charges under Section 302 against the appellant-accused beyond reasonable doubt?

Headnotes

Indian Penal Code, 1860- Ss. 302, 201- Murder -prosecution evidence-eye witnesses - P.W.2 and P.W.4 -their testimonies not worthy of belief - inconsistencies, improvements and unnatural conduct-medical opinion completely negating contrary version of P.W.2 and P.W.4 that both deceased persons were strangulated to death by a saree -no other evidence to establish presence of accused-appellant at the time of incident or at any stage proximate to the incident- ocular testimony of P.W.2 and P.W.4 were the sole pivots of prosecution case -no other incriminating evidence to implicate appellant-accused trial court entirely erred in law - prosecution failed to prove charges beyond reasonable doubt- appellant-accused acquitted of charges for which he was tried **Capital Appeal allowed.** . (E-9)

Case Law Cited

Nil

List of Acts

1. Indian Penal Code, 1860

List of Keywords

Inconsistencies; improvements; unnatural conduct; wholly unreliable witnesses; medical opinion; presence of accused-appellant.

Appearances of parties

For Appellant(s): Anil Kumar, Atul Pandey, Rajeev Giri
For Respondent(s): G.A

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

1. The instant Capital Case arises out of a judgment rendered by the learned Sessions Court in Session Trial No.- 67 of 2011 (State Vs. Ashok Sharma) along with Session Trial No.- 53 of 2011 (State Vs. Geeta Devi) arising out of Case Crime No. 911 of 2010 under Sections 302, 201 I.P.C., P.S.- Chopan, District- Sonbhadra. The learned Sessions Court by the impugned judgment dated 16.09.2021 has found the appellant guilty of the offence under Section 302 I.P.C. and sentenced

him to death along with fine of Rs.50,000/- (in case of default of payment appellant is to serve one year of additional rigorous imprisonment) . The learned trial court has also convicted the appellant for the offence under Section 201 I.P.C. and has accordingly sentenced him to 7 years of imprisonment along with fine of Rs. 20,000/- (in case of default of payment appellant is to serve one year of additional imprisonment).

2. Briefly put the prosecution case set out in the FIR is that on 21.12.2010 at about 04:00 a.m. Shravan Sharma son-in-law of the first informant informed him that Gram Pradhan Chopan had told the former by phone that Sunita and her daughter Jhalak aged about three years had been done to death and burnt. Both the victims had a saree tied in knots′ round their necks′. The first informant then left for Chopan from his house at Mirzapur. On reaching Chopan along with other family members he saw his daughter Sunita and grand daughter Jhalak lay dead in the room. A saree was tied round their necks′ and upper parts of the bodies′ were burnt. Charpoy and mattresses in the room were also burnt. The first informant had a firm belief that Geeta (mother-in-law of Sunita) and Ashok Sharma had murdered the victims and thereafter burnt them. People in the vicinity had earlier informed him that Ashok Sharma frequented Geeta′s house and the two had illicit relations. Sunita came in the way of the said relationship, which became the cause of her murder.

3. On a tehrir submitted by the first informant an FIR was registered. Police investigations set in motion after the FIR culminated in a chargesheet being filed against Geeta Devi and Ashok Sharma on 27.01.2011 and 11.03.2011 respectively under Sections 302 and 201 I.P.C. Cognizance of the offences was taken by the learned trial court on 11.03.2011.

4. Charges were framed against both the appellants by the learned trial court on 06.01.2012 as under :

"प्रथम- यह कि दिनाँक 20/21.12.2010 की रात्रि में बहद स्थान ग्राम चोपन अन्तर्गत थाना चोपन जिला सोनभद्र में आपने सह अभियुक्त गीता देवी के सहयोग से अपने सामान्य आशय की पूर्ति में वादी मुकदमा की पुत्री सुनीता तथा उसकी नातिन झलक दोनों का गला साड़ी के फन्दा से कस कर उनकी हत्या कर दिया। इस प्रकार आपने ऐसा कार्य करके धारा-302 सपठित धारा-34 भा०दं०सं० के तहत दण्डनीय अपराध किया है। जो इस न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उपरोक्त दिनाँक, समय व स्थान पर आपने वादी मुकदमा की पुत्री सुनीता तथा उसकी नातिन झलक की साड़ी के फन्दा से गला कस कर हत्या करने के उपरान्त साक्ष्य मिटाने के उद्देश्य से दोनों के शव को जला दिया था। इस प्रकार ऐसा कार्य करके आपने 201 भा०दं०सं० के तहत दण्डनीय अपराध किया है। जो इस न्यायालय के प्रसंज्ञान में है।"

5. Evidences adduced by the prosecution to bring home the charges are extracted below in tabular form:

Prosecution Witnesses

S. No.	Witness	Witness No.	Nature of Witness
1.	Satish Kumar Sharma	P.W. 1	First Informant
2.	Reeta Devi	P.W. 2	Eye Witness/Niece of deceased Sunita
3.	Manorama Devi	P.W. 3	Neighbour
4.	Sunil Sharma	P.W. 4	Eye Witness and Panch Witness
5.	Shivanand Mishra	P.W. 5	IO
6.	Chandrabali	P.W. 6	Head Moharrir
7.	Dr Saurabh Rawat	P.W. 7	Doctor who conducted the Post Mortem

Documentary Evidences			
Exhibit	**Documents′**	**Proved by**	**Date**
Ex Ka-1	Written Report	P.W.-1 Satish Kumar Sharma	31.03.2012
Ex Ka-2	Panchayatnama of Jhalak	P.W.-1 Satish Kumar Sharma	31.03.2012
Ex Ka-3	Panchayatnama of Sunita Sharma	P.W.-1 Satish Kumar Sharma	31.03.2012
Ex Ka-4	Site Plan	P.W.-5 Shiva Nand Mishra	21.08.2017
Ex Ka-5	Recovery Memo of Saree, Burnt Cloth with Ash and One Bottle Kerosene Oil	P.W.-5 Shiva Nand Mishra	31.03.2012
Ex Ka-6	Charge Sheet	P.W.-5 Shiva Nand Mishra	21.08.2017
Ex Ka-8	chick F.I.R	P.W.-6 Head Moharrir	16.04.2018
Ex Ka-9	G.D. Entry No. 14	P.W.-6 Head Moharrir	16.04.2018
Ex Ka-10	Post-mortem of Jhalak	P.W.-7 Dr Saurabh Rawat	16.04.2018
Ex Ka-11	Post-mortem of Sunita Sharma	P.W.-7 Dr Saurabh Rawat	16.04.2018

Material Evidence		
S. No	**Material**	**Exhibit**
1.	Recovered Saree	Material Exhibit Ka-1
2.	Burnt Cloth	Material Exhibit Ka-1
3.	Bottle of Kerosene Oil	Material Exhibit Ka-1

6. The evidences shall be appraised in light of the fundamental aspects of the prosecution story and in the following sequence.

I. FIR.

7. P.W.1 deposed that information regarding the incident was received by him on 21.12.2010 at about 04:00 a.m. He immediately set out for Chopan along with his wife and two persons from the neighbourhood.

8. P.W. 1 further testified that he arrived with his party at the site of incident between 6:45 AM to 7 AM. The tehrir was dictated by him at the site of the incident to a scribe who took it down in writing. After affixing his signatures to the tehrir he got the criminal case registered at the police station. P.W. 1 identified his signatures and proved the tehrir which was marked as Ex. Ka 1.

9. On the footing of the aforesaid tehrir the FIR was got registered at 7:25 AM on 21.12.2010 as Case Crime No. 911 of 2010, P.S. Chopan, District Sonbhadra under Section 302, 201 I.P.C. Head Constable Chandrabali, Head Moharrir/P.W. 6 had recorded the chick and proved the FIR which was marked as Ex. Ka-8. P.W. 6 also proved the G.D. entry relating to the FI.R., which was marked as Exh. Ka 9.

Inquest Report:

10. P.W. 1 testified that after lodgement of F.I.R. the police party came to the spot. The relevant documents were also drawn up by the officials and police party after reaching the site of the incident.

11. Recitals in the inquest report disclose that the I.O. Shivanand Mishra (P.W. 5) constituted a police team and reached the site of incident. The inquest proceedings were conducted till about 11:15 AM on 21.12.2010. The first informant Satish Sharma (P.W.1) as well as Sunil Sharma (P.W. 4) were witnesses to the inquest report.

12. The inquest report records that the bodies of the deceased Jhalak and Sunita were lying at the doorstep of the middle room and the center of the room respectively. Presence of family members of the deceased and persons residing in the locality find mention in the inquest report. In the opinion of the inquest witnesses the deceased were murdered. A saree was tied in knots′ round the necks′ of the deceased persons. An attempt to burn the bodies was also visible. The inquest reports of both the deceased was proved by Satish Kumar Sharma-P.W.1, and marked as Exhs. Ka 2 and Ka 3 respectively. Sunil Sharma-P.W.4, was present during the inquest proceedings and identified his signatures on the inquest report.

Recovery Memo:

13. Various articles were recovered from the incident site by the investigation officer. Recovery Memo drawn up at the place of the incident investigation officer on 21.12.2010 depicts recovery of the following articles:

(a). A saree, entangled around the bodies of the deceased. (As per the recovery memo the saree was tied round the necks′ of both the deceased persons.)

(b). One bottle, which was smelling of kerosene oil, and one burnt piece of cloth.

14. The recovery memo was proved by the Investigation Officer, P.W.-5 Shivanand Mishra and marked as Exhibit Ka 5. P.W.-1, Satish Kumar Sharma and P.W.-4, Sunil Sharma were witnesses to the recovery.

Site Plan:

15. IO/P.W. 5 has deposed that the site plan was drawn up by him after reaching the site on 21.12.2010, at the pointing out of the first informant Satish Kumar Sharma/P.W..1. The site plan records that the house where the incident occurred belongs to Geeta Devi.

16. The site plan indicates the following points:

(a). Place of incident.

(b). Place from where the burnt cloth and bottle of kerosene oil were respectively found.

17. The site plan was proved by its author IO/P.W. 5.

18. It is noteworthy that the site plan does not depict the following:

(a) Position of the bodies,

(b) Place from where the eye witness had seen the incident,

(c) Place of recovery of saree, which was tied round the necks of the deceased persons.

Material Exhibits:

19. Recovered articles namely saree, burnt cloth/saree, bottle of kerosene oil was produced in sealed condition in court. The said articles were then identified and proved by P.W. 5 and marked collectively as Material Exhibit Ka-1

Bodies sealed and sent for PM

20. After the inquest report and other proceedings at the site of the incident were complete, the bodies were sealed and were made over to C.P. 713 Manoj Kumar and C.P. 676 Krishna Mohan. The said persons took the bodies to the hospital for postmortem on 21.12.2010.

Cause of Death: PM Report

21. The postmortem of both the deceased was conducted by a panel of doctors comprising Dr. Saurabh Rawat and Dr. D.K. Singh. Post-mortem of Jhalak Sharma was conducted on 21.12.2010 at 4:00 P.M. Post-mortem of Sunita Sharma was conducted on 21.12.2010 at about 04:25 P.M.

22. The post-mortem report of the deceased, Jhalak Sharma (Exhibit Ka-10), records ante-mortem injuries, cause of death, and time of death as follows:

"**Ante-mortem injuries-**

1. Dermal, epidermal burn injury all over head, forehead, in front of right arm and shoulder, upper part of right fore arm front side.

2. Dermal, epidermal burn injury over lateral right chest, and upper part of lateral thigh.

3. Upon examination of neck, Trachea was found contused and Larynx, Trachea and Bronchi were found congested.

External Examination:

Rigor Mortis present all over the body. Right eye partially open and left eye closed.

Cause of Death- Asphyxia as a result of ante-mortem throttling.

Time of Death- Approx 12 hours before the Post-Mortem.

23. Post Mortem report of deceased Sunita Devi:

The relevant extracts of post mortem report of Sunita Devi depicting the ante-mortem injuries, cause of death and time of death are as under :

"**External injuries (ante-mortem):**

1. Abraided contusion 4 X 5 cm over upper lip right side lower lip.
2. Abraided contusion 04 X 03 cm over chin.
3. Abraided contusion 09 X 0.5 cm over right side neck in upper part below 04 cm of right ear.
4. Burns were present over the entire forehead, the right side of the face, the upper part of the left side of the face, and the right forearm(including the hand).

External examination :

Rigor Mortis present all over the body.

The uterus was bulky, containing a female child of 26-30 weeks approximately. The face was cyanosed (bluish) and the mouth was open. Urethral discharge was present which had dried. No bone joints were fractured.

Upon examination of neck, Trachea was found contused and Larynx, Trachea and Bronchi were found congested.

Cause of death- Death due to Asphyxia as a result of ante-mortem throttling.

Time of Death- Approx 12 hours before the Post-Mortem.

24. Dr. Saurabh Rawat, who had conducted the post mortem report entered the witness box as P.W.7. P.W.7 proved the postmortem reports and their contents. The postmortem of two deceased persons namely Jhalak Sharma and Sunita Sharma were then marked as Exhs. Ka-.10 and Ka-11 respectively.

25.Under cross-examination P.W.-7, Dr. Saurabh Rawat stated that the burn injuries were postmortem and no carbon articles were found in trachea.

ORAL TESTIMONIES:

P.W. 1 Satish Kumar Sharma

26. Satish Kumar Sharma-first informant while deposing as P.W. 1 stated that Sunita Sharma was married to Shravan Kumar for 12 years. Shravan Kumar was employed in the Railways and was posted in Rajasthan at the relevant point in time. Sunita and her daughter Jhalak were residing with Geeta Devi (mother-in-law of Sunita) in Chopan. P.W.-1 stated that he was informed on phone by his son-in-law of the murders. P.W.-1 immediately reached Geeta Devi′s house at Chopan with his wife and two neighbours. Geeta Devi was present at the house. Describing the condition of the bodies, P.W.-1 deposed that the bodies of Sunita and Jhalak were at the doorstep, a saree was tied in knots′ round their necks′. Sunita′s face had some injury and burn marks.

27. P.W.-1 testified that he often visited Sunita′s house. During those visits he came to know about the illicit relations of the accused persons. P.W.-1 further deposed that Sunita had also informed him about the same. Sunita had found Geeta and Ashok in a compromising position and after upbraiding them had asked Ashok not to visit them again. The accused persons killed Sunita for being a hurdle in the relationship.

P.W. 2 Reeta Devi

28. Before the learned trial court P.W. 2 claimed to be an eye witness to the incident, and that Sunita was her niece. P.W. 2 in her deposition stated that on the fateful day she had gone to Vaishno Devi Temple, Dala. While returning she decided to spend the night at Sunita′s house as it had become dark. Sunita, her mother-in-law, Geeta and Jhalak were present when she reached their house. Later Ashok also arrived. There was an altercation between Sunita and Ashok regarding his visits to their house. After having dinner Sunita, Jhalak, Geeta Devi and Ashok retired to one room; while she went to sleep in the adjacent room.

29. P.W. 2 testified that she was awakened at about 2-3 AM by some commotion. She went to Sunita′s room and found it locked (from inside). She peered into the room through a crack in the door. P.W.2 deposed that she saw Geeta Devi had muffled Sunita′s face, while Ashok was strangulating Sunita with a saree. Jhalak was strangulated to death by the same saree after she was woken up by the noise.

30. According to P.W. 2, she was petrified after seeing the incident and fled to the fields for safety and hid herself. In the morning she went to the neighbour Manorama′s (P.W. 3) house and narrated the incident to her. Later she described the incident to Sunita′s maternal family and the police party who had reached the site.

P.W. 3 Manorama Devi

31. Manorama Devi who is a neighbour of the deceased Sunita entered the witness box as P.W. 3. P.W.-3 in her testimony stated that the incident occurred in winter month at about 03-04 A.M. P.W. -3 deposed that she went to Geeta's house on hearing her cries, and found her alone. The deceased Sunita and her daughter were lying on the bed. The cot in the room was in flames. Some persons were trying to douse the fire.

32. Under cross-examination P.W. 3 testified that Geeta was crying out loud that her house was on fire. P.W.-3 also stated that she did not see Geeta at her house then quickly clarified that she had not seen the occurrence.

P.W. 4 Sunil Sharma

33. Sunil Sharma, while deposing as P.W. 4 stated that on the fateful day he and his wife were returning from Vaishno Devi, Dala. The couple decided to spend the night at Geeta Devi's house as it had become late. When they reached Geeta Devi's house they met Geeta Devi, Sunita, her daughter Jhalak. Later Ashok @ Babaji also came to the house. Sunita admonished Babaji and told him not to visit the house in future. Thereafter, P.W. 4 and his wife/P.W. 2 went to sleep in one room. Sunita, Jhalak Geeta Devi and Babaji retired to the adjacent room.

34. P.W. 4 then states that he and his wife/P.W. 2 woke up on hearing some noise at about 2 AM. They peeped through a gap in the door of the adjacent room. A light was glowing in the room. They saw Geeta Devi had bound down Sunita's feet with her hands while Ashok @ Babaji was strangulating Sunita with a saree. At that moment Sunita's three year old daughter woke up. Ashok and Geeta strangulated the little girl to death with the same saree.

35. P.W. 4 then deposed that he and his wife/P.W. 2 got scared by what they saw and escaped to the fields and hid there. Later they narrated the whole incident to Manorama Devi/P.W. 3. They used Manorama Devi's mobile to call Sunita's family members in the morning.

36. According to P.W. 4 Ashok and Geeta Devi had set the cot on fire to burn the two bodies. People from the neighbourhood doused the fire.

P.W. 5 Shivanand Mishra, the Investigating Officer

37. Shivanand Mishra- Investigating Officer entered the witness box as P.W.5. P.W.5 in his testimony described the procedure of the investigation. According to P.W.5, he recorded the statement of Manorama Devi on 21.12.2010. On the same day, in parcha no. 1-B, he recorded the statement of eye witness Reeta Devi and thereafter recorded the statements of other witnesses. He arrested Geeta Devi on 23.12.2010, as depicted in parcha no. 3. The accused/appellant Ashok Sharma was absconding and was thereafter arrested on 11.03.2011 after taking out proceedings under Section 82 CrPC. According to P.W.5 as per the investigation there was only one eye witness to the incident, namely Reeta Devi/ P.W. 2

Submissions on behalf of the Accused-Appellant:

38. Shri Vinay Saran, learned Senior Counsel and Amicus Curiae assisted by Shri Pradeep Kumar Mishra, learned counsel and Amicus curiae and Shri Atul Kumar Pandey, learned counsel and Amicus Curiae have made the following submissions on behalf of the accused-appellant:

I. The appellant Ashok Sharma has been nominated solely on the basis of suspicion and hearsay.

II. The eye-witnesses are not reliable. The testimonies of the eye-witnesses are beset with contradictions and their conduct was unnatural. The testimonies of the eye-witnesses are not worthy of belief.

IV. P.W. 5 stated that only P.W. 2 was the eyewitness, while P.W. 1 testified that there was no eyewitness to the incident.

V. There are material contradictions in the testimonies of P.W. 2 and P.W. 4 as regards the incident. P.W. 2 and P.W. 4 were also contradicted by P.W. 3.

VI. Medical evidence squarely negates the statements of P.W. 2 and P.W. 4.

VII. The motive of the appellant to commit the offence was not proved by applicable standards of evidence. There is no evidence to establish the presence of the appellant at the site of the incident.

VIII. The prosecution could not prove the case beyond reasonable doubt.

IX. The case did not fall in the category of rarest of rare cases and the death penalty was imposed without due consideration of relevant factors.

Submissions of the learned AGA on behalf of the State:

39. Shri Amit Sinha, learned AGA, made the following submissions:

I. The prosecution case is supported by reliable eye-witnesses.

II. The FIR was promptly registered and the prosecution case stated therein inspires confidence.

III. The prosecution case is supported by reliable testimonies of two eye-witnesses.

IV. The recovery made at the site corroborates the prosecution case.

V. The prosecution proved the case beyond reasonable doubt.

VI. The offence comes in the category of the ‘rarest of rare cases’ inasmuch as a pregnant mother and her minor daughter were done to death by the accused-appellant and his accomplice.

Appraisal of Evidence

I. F.I.R.

40. The FIR was got registered by the father of the deceased Sunita. The timeline in the FIR matches other prosecution evidence including the inquest report, recovery memo, and post-mortem report. There is no inordinate delay in the lodging of the FIR. However, the veracity of the prosecution case set out therein needs to be determined after a composite appraisal of evidence.

II. Date, Time and Place of Incident

41. Various evidences including the FIR, inquest report, recovery memo, post-mortem report and statements of P.W. 1 and P.W. 3 show that the incident occurred at the house of Geeta Devi in the intervening night of 20/21.12.2010 or small hours of 21.12.2010.

III. Culpability of the appellant in light of the prosecution evidence and reliability of P.W. 2 and P.W. 4 as eye witnesses

42. Credibility of P.W.2 and P.W. 4 as eye witnesses will now be examined.

43. P.W.2 claims to be a close relative of the deceased as well as first informant. P.W.2 in her testimony under cross-examination admitted that the fact of light bulb glowing in the room when the incident occurred was stated by her for the first time before the Court, and that she had never disclosed the aforesaid fact to the I.O. The said statement is clearly an afterthought and improvement in the prosecution case made by the P.W.2.

44. The P.W.2 watched her niece and grand niece being strangulated to death as a silent spectator. She did not raise a hue and cry to call for help from the neighbours. The house where the incident occurred is located in a densely inhabited area as there are number houses in the neighbourhood. This is borne out from the testimony of P.W. 1. P.W. 2 also failed to call the police authorities or inform P.W.1 about the incident in the first instance. P.W. 2 was present at the time of the inquest proceedings. However, she failed to tell the investigation officer about the incident even at that point in time. The conduct of P.W. 2 is unnatural.

45. P.W.2 further claims to have informed P.W.3 in the early hours of morning. However, testimony of P.W.3 does not support the aforesaid fact.

46. The examination-in-chief of P.W.-2 does not indicate the presence of P.W.-4 at the time of the incident. P.W.2 introduced her husband as an eye witness for the first time while under cross examination. Under cross-examination P.W. 2 deposed that her husband

had accompanied her to Sunita's house, and the couple were sleeping in the room adjacent to the place of incident. The belated disclosure of P.W.4's presence as an eye witness also contradicts her testimony in the examination in chief and raises grave doubts about her reliability as a witness.

47. In fact presence of P.W. 4 as an eye witness further impeaches the credit of P.W. 2. There was no reason for the couple for not raising an alarm to call for help from the neighbourhood or for failing to alert the police. The testimony of P.W.2 in her examination in chief that she became scared after watching the incident and rushed to the fields for safety becomes further suspect. The presence of her husband should have been reassuring and a source of strength for her. Particularly, when the two accused persons are much more aged persons and none of them was armed.

48. There is another fault line in the testimony and conduct of P.W. 2. As per the statement of P.W. 1, Geeta Devi was present when he reached the site of incident. P.W. 2 claims to have been present at all relevant times. She did not inform the police authorities about Geeta Devi and the appellant even when they arrived at the site after the lodgement of the FIR.

49. Most importantly under further cross-examination P.W. 2 stated that she came to know about the incident in the morning and informed her husband about it.

50. In the wake of preceding discussion in view of the aforesaid inconsistencies, improvements and unnatural conduct, the credit of P.W.2 as an eye witness stands fully impeached and her testimony in respect of the incident is liable to be discarded in its entirety.

51. The P.W.-4 claims to have watched the incident with his wife silently and thereafter fled to the fields for safety. P.W.-4 also did not raise an alarm to alert the neighbours and call for help as seen earlier. The incident occurred in Geeta Devi's house which was in a densely populated neighbourhood. P.W.-4 also failed to inform the police at any time during or after the incident.

52. The deceased persons were being attacked by two elderly persons who were unarmed. This not only makes the silence of P.W.-4 and P.W.2 inexplicable, but also raises questions as to why they did not physically come to the rescue of the victims. There is no cogent reason why P.W.-4 and P.W.-2 avoided physical intervention to save the victims.

53. P.W. 1 testified that Geeta Devi was present when he reached the site of the incident. P.W. 4 has deposed that he was present throughout the episode and P.W.1 had arrived at 4:00 a.m. However he did not inform P.W. 1 about his witnessing the incident and complicity of Geeta Devi and Ashok Kumar at any point in time.

54. P.W.-4 was also present when P.W.-1 arrived with the police party at the site. P.W.-4 was a witness to the inquest and recovery proceedings along with P.W.-1. However,

he remained silent at all relevant times. Had P.W.4 informed the police party on their arrival Geeta Devi would have been arrested at the spot. The aforesaid conduct of P.W.-4 is wholly unnatural considering the fact that he is a close relative of P.W.-1.

55. P.W.-4 claims to have informed P.W.-3 about the incident in the morning. The aforesaid statement is falsified by the testimony of P.W.-3.

56. Under cross-examination P.W.-4 testified that Geeta Devi was arrested at the spot. The aforesaid statement was contradicted by the testimony of P.W.5 who had effected the arrest. P.W.-5 deposed that Geeta Devi was arrested at the Chopan Bus Stand on 23.12.2010. The arrest memo drawn up by P.W. 5 which depicts the said facts pertaining to the arrest is paper No. 42Kha/7 in the records of the trial court.

57. P.W.-5 has also deposed that P.W.-4 did not inform him that Reeta Devi was his wife. In fact, P.W.5 under cross-examination has stated that Reeta Devi was present when he reached the site. This conduct of P.W.-4 of keeping the said information from the I.O. also creates a suspicion about the veracity of his deposition.

58. Under further cross-examination P.W. 4 stated that he was first informed about the incident by P.W.3, and that his statement regarding the incident is based on what P.W. 3 had narrated to him.

59. P.W. 1 has testified that there was no eyewitness to the incident. Furthermore, the I.O./P.W.-5 has deposed that P.W.-2 was the only eye witness and further categorically stated that P.W.-4 was not an eye witness to the incident.

60. In the light of the preceding discussion and considering the contradictions and the unnatural conduct of P.W. 4, the credit of P.W. 4 is wholly unreliable and his testimony as a witness is completely discarded.

61. The absence of ligature marks on the necks of both the deceased persons, and the opinion of the doctor that the cause of death was asphyxia as a result of ante mortem throttling are undisputed. The post mortem reports (Exh Ka-10 and Exh Ka-11) and testimony of the doctor/P.W. 7 are medical evidences of high credibility. The medical opinion completely negates the contrary version of P.W. 2 and P.W. 4 that both the deceased persons were strangulated to death by a saree.

62. There are material contradictions regarding the manner in which the deceased Sunita was murdered, in the testimonies of P.W. 2 and P.W. 4. P.W.2 has testified that Geeta Devi had muffled Sunita′s face while P.W.2 has deposed that Geeta Devi had bound down Sunita′s feet with her hands.

63. The aforesaid inconsistencies, improvements and unnatural conduct of P.W.-2 and P.W.-4 raises doubts about their presence at the time of incident. In the wake of the

preceding discussion, this Court finds that the credit of P.W.-2 and P.W.-4 as eye witnesses was successfully impeached in the trial.

64. P.W.-2 and P.W.-4 are wholly unreliable witnesses and their testimonies claiming to be eye witness are not worthy of belief and are discarded in entirety.

Presence of the Appellant-accused Ashok Sharma

65. There is no other evidence to establish the presence of the accused-appellant Ashok Sharma at the time of the incident or at any stage proximate to the incident. The appellant Ashok Sharma does not ordinarily reside at Hargarh, P.S. Jigna, District Mirzapur. He is a resident of another village.

66. The ocular testimony of P.W. 2 and P.W. 4 were the sole pivots of prosecution case against the accused-appellant Ashok Sharma minus the testimonies of P.W. 2 and P.W. 4 there is no other incriminating evidence to implicate the appellant-accused in the instant case is in the record.

Impugned Judgement:

67. The learned trial court in the impugned judgment has entirely erred in law by upholding the credibility of two witnesses, namely P.W.2 and P.W.4 while returning the conviction against the appellant Ashok Sharma. The learned trial court thus erred in fact and in law by rendering the impugned judgment in respect of the appellant- Ashok Sharma.

68. This Court finds that the impugned judgment rendered by the learned trial court is liable to be set aside and is accordingly set aside only to the extent it finds the appellant guilty of offence under Section 302 read with Section 201 I.P.C. and imposes punishment of life imprisonment upon the appellant-Ashok Sharma.

Conclusions

69. In light of the preceding discussions, this Court finds that the prosecution has failed to prove the charges under Section 302 read with Section 201 IPC against the appellant-accused Ashok Sharma beyond reasonable doubt. The appellant-accused Ashok Sharma is hereby acquitted of the charges for which he was tried and which are subject matter of this appeal.

70. The appellant-accused Ashok Sharma shall be released forthwith from prison, unless wanted in any other criminal case.

71. The Capital Appeal No. 16 of 2021 is accordingly allowed.

72. A copy of this judgement translated in Hindi to be served upon the appellant by the Secretary, District Legal Services Authority.

(2026) 7 ILRA 720
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE PADAM NARAIN MISHRA, J.

Criminal Appeal No. 108 of 1989

Raj Deo & Anr. **...Appellants**
Versus
State **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order.

Headnotes

Indian Penal Code, 1860-Ss. 302, 34; Indian Evidence Act-sec 25, 27-Murder-Common intention-Conviction-Testimony of PW-1 and PW-2 marked by material inconsistencies and improvements-serious doubt-PW-2's deposition inconsistent with statement under S.161 CrPC-Pistol recovered from possession of appellant No.2 at time of arrest and not in consequence of any information supplied by appellants-such recovery not amounting to discovery within meaning of S.27 Evidence Act-confessional statements made in police custody inadmissible under S.25 Evidence Act-previous enmity -no overt act attributed to appellant No.1-examination under S.313 CrPC remarkably cryptic and causing serious prejudice to defence-prosecution wholly failed to establish guilt of appellant No.1-conviction and sentence set aside-acquitted.
Appeal allowed. (E-9)

Case Law Cited

Nil

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

List of Keywords

Common intention; Constructive liability; Ocular evidence; Material inconsistencies; Previous enmity; Double-edged circumstance; Confession in police custody; Prejudice to defence;Legally admissible evidence; Benefit of doubt.

Appearances of parties

Counsel for Appellant(s) : P.N. Lal, Priya Ranjan Rai
Counsel for Respondent(s) : A.G.A., Dga

(Delivered by Hon'ble Salil Kumar Rai, J.
&
Hon'ble Padam Narain Mishra, J.)

Order on Criminal Misc. Bail Application No. 02 of 2026

1. In view of the judgment rendered in the Appeal acquitting the applicant, Raj Deo, no further orders are required to be passed on the present bail application.

2. The bail application is, accordingly, disposed of.

Order on Appeal

1. The appeal, insofar as it related to appellant no. 2, stood abated by order dated 22.01.2026 passed by a Coordinate Bench of this Court. Consequently, the present appeal survives for adjudication only in respect of appellant no. 1, Raj Deo.

2. Heard Shri Priya Ranjan Rai, the counsel for appellant no. 1, Raj Deo, and Ms. Archana Singh, the AGA for the State.

3. The present appeal is directed against the judgment and order dated 11.01.1989 passed by the Additional Sessions Judge/Special Judge, Azamgarh, in Sessions Trial No. 320 of 1986 (State v. Raj Deo & Others), arising out of Case Crime No. 23 of 1986, Police Station Raunapar, District Azamgarh, registered under Section 302 read with Section 34 IPC. By the impugned judgment, appellant nos. 1 and 2 were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life.

4. The prosecution case is that the appellants, along with two other persons, namely Bhola and Dhanni, committed the murder of Surali (hereinafter referred to as "the deceased") while he was sleeping at his tubewell.

5. Briefly stated, the prosecution version, as disclosed in the first information report, is that during the intervening night of 14/15.02.1986, the deceased was sleeping at his tubewell. At about 3:00 a.m., the wife and mother of the deceased were awakened by the sound of a gunshot. On rushing towards the tubewell, they allegedly saw Raj Deo (appellant no. 1), Bharat (appellant no. 2), as well as, Bhola and Dhanni, fleeing from the spot. Bharat was stated to be carrying a pistol. Hearing the cries of the wife and mother of the deceased and the sound of the gunshot, Lalji, Dhanni, son of Lautu, Banshu, and certain other villagers also reached the tubewell. According to the prosecution, they too witnessed the appellants and the two co-accused fleeing from the scene. By the time the wife and mother of the deceased, along with the other villagers, entered the room at the tubewell, the deceased had succumbed to the gunshot injury sustained near his ear. On the basis of the written report lodged by Komali, the wife of the deceased, at 7:30 a.m. on 15.02.1986, Case Crime No. 23 of 1986 was registered under Section 302 IPC against the appellants as well as Bhola and Dhanni.

6. During the course of the investigation, an empty cartridge was recovered on 15.02.1986 from an agricultural field situated near the tubewell. The recovery memo in respect thereof was exhibited as Exhibit Ka-17. On the same day, the Investigating Officer also collected plain soil and blood-stained soil from the place of occurrence, and the corresponding recovery memo was marked

as Exhibit Ka-16. The supurdaginama prepared by the Investigating Officer, recording the articles found on the person of the deceased and their delivery to the first informant, was proved as Exhibit Ka-2.

7. Upon completion of the inquest proceedings, the body of the deceased was sent for post-mortem examination. The autopsy was conducted on 16.02.1986 at 1:30 p.m. The post-mortem report recorded the following ante-mortem injuries:

1. A gunshot wound of entry measuring 2 cm x 1 cm, brain cavity deep, situated behind the right ear, approximately 1 cm from its posterior aspect. The margins were inverted. There was no blackening, charring, or tattooing.

2. A gunshot wound of exit measuring 2.5 cm x 1.5 cm on the right side of the face, communicating with Injury No. 1.

3. A gunshot wound of exit measuring 10 cm x 7 cm involving the entire left eye region and communicating with Injury No. 1.

8. The doctor who conducted the post-mortem examination was not examined during the trial. However, since the defence did not dispute the post-mortem report, the trial court dispensed with its formal proof in exercise of its powers under Section 294 Cr.P.C., and the report was accordingly read in evidence.

9. The appellants were arrested on 17.02.1986. At the time of arrest, a pistol along with two live cartridges was recovered from the possession of Bharat, appellant no. 2. The arrest-cum-recovery memo records that Bharat disclosed that the recovered pistol was the weapon used in the commission of the offence and further stated that he had fired the shot which caused the death of the deceased. It also records that the appellants, along with Bhola and Dhanni, had participated in the incident. The arrest-cum-recovery memo was proved by the Investigating Officer and exhibited as Exhibit Ka-5.

10. Upon completion of the investigation, a charge-sheet was submitted against the appellants as well as against Bhola, and Dhanni under Section 302 IPC. The case was committed to the Court of Session, where Sessions Trial No. 320 of 1986 was registered. All four accused were charged under Section 302 read with Section 34 IPC for the murder of the deceased.

11. To establish its case, the prosecution examined five witnesses. PW-1, Smt. Komali, the wife of the deceased and the first informant, and PW-2, Mewati, the mother of the deceased, were examined as witnesses of fact. PW-3 was the Investigating Officer who submitted the charge-sheet. PW-4 was the police official who carried the dead body for post-mortem examination, while PW-5 was the Investigating Officer who conducted the investigation.

12. PW-1 and PW-2 substantially reiterated the prosecution version as set out in the first information report. It is, therefore, unnecessary to reproduce their testimony in detail.

13. According to their depositions, the accused were closely related. Bhola was the brother of Bharat (appellant no. 2), Dhanni was Bharat's cousin, and Raj Deo (appellant no. 1) was also Bharat's cousin, being the son of Bharat's paternal aunt (Bua). The prosecution further alleged that Bharat was involved in an illicit relationship with the wife of the first informant's brother and had also attempted to abduct her. The deceased had thwarted Bharat's designs, which, according to the prosecution, created hostility between Bharat and the deceased. It was further alleged that Dashrath, another brother of Bharat, had stolen a bicycle which was subsequently repaired by the deceased. The deceased later disclosed Dashrath's identity to the owner of the bicycle, who recovered it after paying the repair charges. Thereafter, the deceased demanded the repair charges from Dashrath, whereas Bharat and Dashrath demanded the value of the bicycle from the deceased. According to the prosecution, these incidents further aggravated the existing enmity between the parties and constituted the motive for the offence. Both PW-1 and PW-2 claimed that they had seen the accused fleeing from the place of occurrence. PW-1 specifically deposed that Bharat was carrying a pistol, while the remaining three accused were unarmed.

14. However, certain inconsistencies emerge from the testimony of PW-1 and PW-2 which bear directly upon the credibility of their claim that they had witnessed the accused fleeing from the tubewell. These inconsistencies require careful examination.

15. In her examination-in-chief, PW-1 stated that on entering the room at the tubewell, she found her husband writhing in pain. However, during cross-examination, she admitted that by the time she reached the spot, her husband had already died. The site plan indicates that the residence of the witness was approximately fifty paces from the tubewell. Having regard to the distance and the fact that the incident occurred at about 3:00 a.m., a serious doubt arises whether the witness could have reached the tubewell before the assailants had fled. This doubt is further reinforced by the circumstance that only a single gunshot appears to have been fired and there is no evidence of any scuffle between the deceased and his assailants, a fact which also finds support from the post-mortem report. The manner in which the crime has been alleged to have been committed does not disclose that the assailants had stayed back for any time before escaping from the spot.

16. The testimony of PW-2, the mother of the deceased, is likewise marked by material inconsistencies and improvements. PW-2 was sleeping in the same house as PW-1 and was about fifty years of age at the relevant time. In these circumstances, her claim that she reached the place of occurrence immediately upon hearing the gunshot, before the assailants could escape, also appears doubtful.

17. A further inconsistency emerges from her cross-examination, wherein she stated that the door of the room at the tubewell was bolted from inside. This version is at variance with her examination-in-chief, wherein she claimed to have seen and identified the accused while they were fleeing from the spot. It also materially departs from the statement attributed to her by the Investigating Officer under Section 161 Cr.P.C. According to her statement recorded under Section 161 Cr.P.C., PW-2 had stated that on reaching the tubewell she saw Raj Deo (appellant no. 1) and one other person standing at the entrance of the room. She further stated that PW-1 informed her that the other person was Dhanni. According to the said statement, Raj Deo and Dhanni fled only after noticing her approaching the tubewell. In her deposition before the trial court, however, PW-2

stated that as she entered the room, the accused were coming out, and she found her son lying dead on the cot. This version is plainly inconsistent with the statement attributed to her under Section 161 Cr.P.C.

18. When confronted with her previous statement, PW-2 denied having made any such statement before the Investigating Officer. However, PW-5, the Investigating Officer, categorically deposed that PW-2 had indeed stated during investigation that she saw appellant no. 1 and another person standing at the entrance of the tubewell, and that PW-1 had identified the other person as Dhanni. He further proved that PW-2 had stated that only thereafter did they enter the room and found the deceased lying dead on the cot.

19. PW-3 and PW-4 are formal witnesses and their evidence does not require detailed discussion.

20. So far as PW-5 is concerned, the relevant part of his testimony has already been noticed. In addition, he proved the arrest-cum-recovery memo (Exhibit Ka-5). It is also significant that during his testimony he was unable to identify the person at whose instance the site plan had been prepared.

21. After the prosecution evidence concluded, the accused were examined under Section 313 Cr.P.C. They denied the prosecution allegations, disputed that they had been seen at the place of occurrence, and asserted that they had been falsely implicated on account of previous enmity.

22. At this stage, it is necessary to note that the incriminating circumstances relied upon by the prosecution were not adequately put to the accused during their examination under Section 313 Cr.P.C. In particular, the allegation that Bharat was carrying a pistol was not put either to Bharat himself or to any of the other accused. This omission assumes significance because the present appellant was not charged with committing the murder individually under Section 302 IPC, but with constructive liability under Section 302 read with Section 34 IPC. Equally, the motive alleged by the prosecution was never put to the appellant during his examination under Section 313 Cr.P.C.

23. In defence, the accused examined DW-1, Vashisht Narayan Sharma, a clerk in the concerned Electricity Distribution Division. DW-1 deposed that no electricity connection stood recorded in the name of the deceased in the official records. The evident purpose of this evidence was to challenge the prosecution claim that there was a source of illumination at the tubewell sufficient to enable the witnesses to identify the accused during the intervening night of 14/15.02.1986.

24. The trial court held that the prosecution had successfully established the motive for the crime through the testimony of PW-1 and PW-2. It rejected the defence contention that the delay in lodging the first information report rendered the prosecution case doubtful or indicated that the report had been lodged after due deliberation and consultation with the police. The trial court also rejected the argument that the prosecution's failure to examine the other witnesses named in the charge-sheet warranted an adverse inference against it. It accepted the prosecution explanation that those witnesses had been discharged because they had been won over by the accused. The trial court further held that the ocular version regarding the injuries sustained by the deceased stood corroborated by the medical evidence. It also observed that during cross-examination no suggestion had been put to the prosecution witnesses that the accused had been falsely implicated. The trial court also relied upon the alleged recovery of the pistol from Bharat (appellant no. 2). On the cumulative consideration of the aforesaid circumstances, it convicted Raj Deo and Bharat under

Section 302 read with Section 34 IPC and sentenced them to imprisonment for life, while acquitting the remaining two accused, namely Bhola and Dhanni. Aggrieved thereby, the present appeal has been preferred.

25. The counsel for the appellant contended that the testimony of PW-1 and PW-2 was riddled with material inconsistencies and subsequent improvements, rendering their evidence wholly unreliable. It was submitted that the trial court had erred both in law and on facts in placing reliance upon their testimony to record the conviction. It was further argued that the motive attributed by the prosecution had not been established and that the appellant had been falsely implicated on mere suspicion arising out of previous enmity. The counsel also submitted that the claim of the prosecution witnesses that they had seen appellant no. 1 fleeing from the place of occurrence was demonstrably false and stood contradicted by their own testimony. It was, therefore, urged that the trial court had committed a manifest error in accepting the said evidence. It was next contended that the arrest-cum-recovery memo (Exhibit Ka-5), on which reliance had been placed by the trial court, was inadmissible in evidence. It was argued that the prosecution had failed to establish any nexus between the pistol allegedly recovered from appellant no. 2 and the offence in question. Consequently, the alleged recovery could not have been relied upon for recording the conviction. Lastly, it was submitted that there was no evidence whatsoever to establish any common intention on the part of the accused. In the absence of proof of the essential ingredients of Section 34 IPC, the conviction of the appellants under Section 302 read with Section 34 IPC was wholly unsustainable. On these grounds, it was prayed that the impugned judgment be set aside and the appellant be acquitted.

26. Per contra, the AGA supported the judgment of the trial court and contended that the prosecution had successfully established the guilt of the accused beyond reasonable doubt. It was accordingly submitted that the appeal deserved to be dismissed.

27. We have considered the rival submissions advanced on behalf of the parties and have carefully perused the record of the trial court.

28. The arrest-cum-recovery memo (Exhibit Ka-5) records that the appellants were arrested on 17.02.1986 on the information furnished by a police informer. It further records that a pistol was recovered from the possession of Bharat (appellant no. 2). According to the memo, after the recovery of the pistol, the appellants allegedly confessed before the Investigating Officer that they, along with the other two co-accused, had murdered the deceased using the said weapon. The memo also records Bharat's alleged confession that he had fired the fatal shot.

29. A plain reading of Exhibit Ka-5 shows that the pistol was not discovered in consequence of any information supplied by the appellants. Rather, it was recovered from the possession of appellant no. 2 at the time of his arrest. Such recovery does not amount to a discovery within the meaning of Section 27 of the Evidence Act. Further, the alleged confessional statements were admittedly made while the appellants were in police custody. In view of Section 25 of the Evidence Act, those confessions are clearly inadmissible in evidence and cannot be proved against the appellants. Consequently, neither the alleged confessional statements nor the portions of Exhibit Ka-5 incorporating them could legally be relied upon. We, therefore, find merit in the submission advanced on behalf of the appellant that the trial court committed a manifest error, both in law and on facts, in relying upon Exhibit Ka-5 while recording the conviction.

30. It is equally significant that the prosecution has failed to establish that the pistol allegedly recovered from Bharat was the weapon used in the commission of the offence. No evidence has been led to connect the recovered pistol with the empty cartridge recovered from the vicinity of the place of occurrence. In the absence of any such evidence, the alleged recovery does not advance the prosecution case.

31. The inconsistencies in the evidence of PW-1 and PW-2 also cast serious doubt upon their claim that they had witnessed the accused fleeing from the tubewell immediately after the occurrence.

32. PW-1 deposed that she saw the accused emerging from the room at the tubewell. However, during her cross-examination, she stated that she had seen the accused from a distance of about one and a half feet. The first information report lodged at her instance records that the accused fled towards the south after emerging from the room. In contrast, during her deposition before the trial court, she stated that appellant no. 1 fled towards the north. The site plan depicts all the accused fleeing towards the south after the occurrence. This improvement appears to have been introduced only to reinforce the identification of the accused. There is another material inconsistency in her testimony. In her examination-in-chief, PW-1 stated that upon entering the room she found the deceased writhing in pain, thereby suggesting that he was still alive. However, in cross-examination she admitted that by the time she entered the room, the deceased had already died.

33. The testimony of PW-2 is equally unsatisfactory. As already noticed, there are material inconsistencies between the statement attributed to her under Section 161 Cr.P.C. and her deposition before the trial court. In view of these contradictions, her assertion that she had identified appellant no. 1 at the place of occurrence cannot be accepted without reservation. It is also noteworthy that PW-2 admitted during her cross-examination that the door of the room at the tubewell was bolted from inside. As noticed earlier, PW-5 proved the statement of PW-2 recorded under Section 161 Cr.P.C.

34. The cumulative effect of these inconsistencies is such that it would be unsafe to sustain the conviction of the appellants solely on the testimony of PW-1 and PW-2.

35. It is also pertinent to note that appellant no. 1 has been convicted under Section 302 with the aid of Section 34 IPC. The prosecution sought to establish the existence of a common intention primarily on three circumstances, namely, the appellant's alleged presence at or near the place of occurrence, his relationship with Bharat, and the motive alleged by the prosecution. These constitute the principal evidentiary circumstances on which constructive liability under Section 34 IPC is sought to be founded. It was, therefore, necessary to examine whether these circumstances, either individually or cumulatively, were sufficient to sustain the conviction of appellant no. 1. The trial court, however, has not undertaken any meaningful examination of the participation of appellant no. 1 in the commission of the offence or of the existence of any common intention shared by the accused.

36. According to PW-1, Bharat (appellant no. 2) was carrying a pistol while fleeing from the place of occurrence, whereas the remaining accused were empty-handed. Common intention to commit the crime cannot be inferred only from the ocular evidence, i.e., the testimony of PW-1 and PW- 2. The trial court appears to have inferred the existence of common intention mainly from the motive attributed by the prosecution to the accused.

37. The motive alleged by the prosecution undoubtedly establishes previous enmity between the parties. However, as repeatedly observed by the courts, previous enmity is a double-edged circumstance. While it may furnish a motive for the commission of the offence, it may equally provide a motive for false implication. More importantly, the motive relied upon by the prosecution principally concerns Bharat and the other two co-accused, Bhola and Dhanni, who were Bharat's brother and cousin respectively. The trial court itself acquitted Bhola and Dhanni. The appeal, so far as Bharat is concerned, has already abated. Appellant no. 1 stands on a materially different footing. He is merely the son of Bharat's paternal aunt (Bua). His relationship with Bharat, by itself, is wholly insufficient to attribute either a motive for the murder or a common intention to commit the offence. There is no independent evidence on record to show that appellant no. 1 shared the intention of Bharat or participated in the commission of the offence pursuant to any pre-arranged plan. In the absence of such evidence, the essential requirements for invoking Section 34 IPC remain unestablished.

38. It is equally significant that, apart from the alleged confession recorded in the arrest-cum-recovery memo?which we have already held to be inadmissible?there is no evidence against appellant no. 1 which distinguishes his case from that of the acquitted co-accused, Bhola and Dhanni. The role attributed to appellant no. 1 is identical to that attributed to Bhola and Dhanni. According to the prosecution itself, all three merely accompanied Bharat. No overt act has been attributed to appellant no. 1 which would place him on a different footing from the acquitted co-accused. In these circumstances, it is difficult to discern the basis on which the trial court acquitted Bhola and Dhanni while simultaneously convicting appellant no. 1. As already observed, the arrest-cum-recovery memo dated 17.02.1986 and the alleged confessional statements contained therein were inadmissible in evidence and could not legally be relied upon. Even otherwise, neither the alleged recovery nor the confessional statements disclose any circumstance which distinguishes the case of appellant no. 1 from that of Bhola and Dhanni. The conviction of appellant no. 1, while extending the benefit of doubt to the other two similarly placed accused, is thus unsupported by any discernible reasoning.

39. Another serious infirmity in the conduct of the trial was the manner in which the accused were examined under Section 313 Cr.P.C. The examination is remarkably cryptic and fails to comply with the mandate of Section 313 Cr.P.C. The material incriminating circumstances relied upon by the prosecution were never specifically put to the accused so as to afford them an opportunity of offering an explanation. In particular, the allegation that Bharat was carrying the pistol, or that the fatal shot was fired by Bharat in furtherance of the common intention shared by all the accused, was not put to any of the accused. The only circumstance put to them was that, after hearing the sound of the gunshot, the prosecution witnesses rushed towards the tubewell and allegedly saw the accused emerging from the room and fleeing from the place of occurrence. By itself, this circumstance does not constitute an incriminating circumstance sufficient to sustain the conviction. Likewise, the alleged motive, which forms an important plank of the prosecution case and has been substantially relied upon by the trial court while invoking Section 34 IPC, was never put to the accused during their examination under Section 313 Cr.P.C. Similarly, the alleged recovery of the pistol, which the trial court relied upon to distinguish the case of appellant no. 1 from that of the acquitted co-accused, was also not specifically put to the accused. A vague question stating that the Investigating Officer had proved Exhibit Ka-5 could not satisfy the

statutory requirement of confronting the accused with each material incriminating circumstance appearing in the evidence against them. The examination conducted under Section 313 Cr.P.C. thus fell far short of the requirements of law and caused serious prejudice to the defence.

40. The foregoing discussion clearly demonstrates that there is no legally admissible evidence on record which justifies the conviction of appellant no. 1 under Section 302 read with Section 34 IPC. As already noticed, the prosecution has failed to establish any circumstance which distinguishes the case of appellant no. 1 from that of the acquitted co-accused, Bhola and Dhanni. The evidence against all three stands on the same footing.

41. We are constrained to observe that the trial court has not addressed several issues of fundamental importance. There is no meaningful discussion regarding the participation of appellant no. 1 or the existence of any common intention. The material inconsistencies in the testimony of PW-1 and PW-2 have not been adequately considered. The admissibility of Exhibit Ka-5 has not been examined. Nor has the trial court adverted to the legal consequences of the defective examination of the accused under Section 313 Cr.P.C. Ordinarily, these shortcomings would have warranted more elaborate observations. However, having regard to the fact that the prosecution relates to an occurrence of the year 1986, we refrain from making any further comments.

42. It is sufficient to hold that the present is not a case where the prosecution has merely failed to prove its case beyond reasonable doubt. Rather, on the evidence adduced, the prosecution has wholly failed to establish the guilt of appellant no. 1.

43. Accordingly, the judgment and order dated 11.01.1989 passed by the Additional Sessions Judge/Special Judge, Azamgarh, in Sessions Trial No. 320 of 1986 (*State v. Raj Deo & Others*), arising out of Case Crime No. 23 of 1986, insofar as it convicts appellant no. 1, Raj Deo, under Section 302 read with Section 34 IPC and sentences him to imprisonment for life, is set aside.

44. Appellant no. 1, Raj Deo, is acquitted of the charge under Section 302 read with Section 34 IPC in Sessions Trial No. 320 of 1986.

45. The appellant is presently in custody. He was arrested pursuant to a non-bailable warrant issued by this Court on account of the repeated non-appearance of his counsel when the appeal was taken up for hearing. Since the conviction has now been set aside, the appellant shall be released forthwith, unless his custody is required in connection with any other case. In view of the acquittal, no further orders are required on the pending bail application.

46. The trial court records shall be transmitted forthwith to the court concerned along with a certified copy of this judgment.

47. The appeal is accordingly ***allowed***.

48. Let a copy of this judgment be transmitted by the Registrar (Compliance) to the Chief Judicial Magistrate, Azamgarh, and to the Jail Superintendent, District Jail, Azamgarh, within ten days for necessary compliance.

(2026) 7 ILRA 729
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Appeal No. 142 of 1988

Kedar & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the testimony of interested witnesses owing to animosity and history of crime between the parties, could be relied upon?

Headnotes

Indian Penal Code, 1860-Ss. 148, 364, 302 and 201-Criminal trial-Interested witnesses-PW-3 and PW-4 related by blood to deceased-animosity between families of deceased and offenders owing to criminal cases lodged against each other-interest springs from feelings of vengeance and malice-PW-3 and PW-4 held to be interested witnesses-none of independent witnesses examined by prosecution-prosecution choosing not to produce independent witnesses and resting its case on rather unreliable testimony of interested witnesses alone- unsafe to rely on uncorroborated testimony of PW-3 and PW-4-adverse inference against prosecution-benefit of doubt has to go to accused-presence of witnesses at scene of crime disbelieved- entire prosecution falls-conviction and sentence set aside-Appellant acquitted.
Appeal allowed. (E-9)

Case Law Cited

1. Datar Singh v. State of Punjab, (1975) 4 SCC 272.
2. Khatri Hemraj Amulakh v. State of Gujarat, (1972) 3 SCC 671.
3. Joginder Singh v. State of Haryana, (2014) 11 SCC 335.
4. Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145.
5. Manjit Singh v. State of Punjab, (2013) 12 SCC 746.
6. State of H.P. v. Gian Chand, (2001) 6 SCC 71.
7. State of U.P. v. Iftikhar Khan, (1973) 1 SCC 512.
8. Gahnu Mahto v. State of Bihar, 2023 SCC OnLine Jhar 45.
9. Ballu v. State of M.P., (2024) 12 SCC 202.
10. State of Chhattisgarh v. Ashok Bhoi, 2025 SCC OnLine SC 487.
11. Manikantan v. State of Kerala, 2025 SCC OnLine Ker 4239.
12. Karam Veer and others v. State, 2026:AHC:123847-DB.

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Interested witnesses; partisan witness; animosity; feelings of vengeance and malice; adverse inference; doubtful presence; conduct of witnesses; tainted sources; burden of proof; beyond all reasonable doubts; suspicious circumstances.

Appearances of parties

Counsel for the Appellants: M.S. Khan, Raj Karan Yadav, Ramesh Chandra Yadav.
Counsel for the Respondent: A.G.A.

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

1. Three men, Kedar, Bahadur and Chunubad, stood their trial before Mr. Sanwal Singh, the then 1st Additional Sessions Judge, Banda, in Sessions Trial No.51 of 1987, under Sections 148, 364, 302 and 201 of the Indian Penal Code, 1860 (for short, 'IPC'), Police Station Kamasin, District Banda. All three of them were found guilty of the offences punishable under Sections 148, 364, 302 and 201 IPC and sentenced to life imprisonment for the offence punishable under Section 302 IPC. They were awarded term sentences on other counts, a moreful detail whereof will shortly be given.

2. Investigation in this case did not commence in the typical way with the registration of a First Information Report (for short, 'FIR') formally made. Rather, what happened was that the Village Chowkidar of Village Itwan, one Ram Autar, P.S. Pahadi, District Banda, appeared at the police station on 12.06.1986 at 10.50 a.m. and tendered an oral information that to the west of his village, close by the barn (*khalihan*) of one Bhujbal, a half burnt dead body was lying. The aforesaid information was registered as Village Chowkidar's information vide G.D. No.10 dated 12.06.1986. The G.D. entry aforesaid was got thumb marked by the Village Chowkidar and has been exhibited as Ex. Ka-2. Sub-Inspector Ran Bahadur Singh, who was posted at the police station, was entrusted with the investigation of this case on the basis of the G.D. Entry. He set about the place of occurrence along with Constables Babu Lal and Krishna Pal Singh, arriving there by 12.30. p.m.

3. Upon reaching Village Itwan, S.I. Ran Bahadur Singh found the dead body lying in the grove of one Nandan, where a large crowd had gathered. He inspected the dead body and appointed panch witnesses. Inquest proceedings were duly held. An inquest report was drawn up, which is marked as Ex. Ka-3. The Investigating Officer then prepared a photo lash, *challan* lash, two reports on the spot, which he duly signed. The dead body was sealed and handed over to the constables for conveying it for the purpose of undertaking an autopsy. The Investigating Officer inspected the place of occurrence and drew up a site-plan, marked as Ex. Ka-8.

4. There was ash around the dead body and the I.O. collected the ash. He drew up a recovery memo of the ash, marked it as Ex. Ka-9, and secured the signatures of witnesses on this memo. The collected ash was sealed in a separate box. During the proceedings of the inquest, the Investigating Officer came across two eye-witnesses, Rajesh and Mohan, and took down their statements. Later on, statements of these witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') in the case diary as well as those of the panch witnesses. It was the story told by these witnesses in their statements given to the Police, which led them to an eye-witness account of the occurrence, and how it all happened. Another eye-witness, Bhola's statement was also taken down by the Police under Section 161 Cr.P.C. He corroborated Rajesh's

version and it is largely on this twin version, coming from ocular testimony, that the prosecution case against the appellants is built.

5. The prosecution would have it that the three appellants, besides Santosh, an absconder, and some others, bore animosity against the deceased, Sahendrapal. The cause was trivial. Santosh and the appellants, besides some others, would damage Sahendrapal's crop with the indiscreet minding of their cattle. Sahendrapal would object to the damage to his crops that the cattle did. His protest would make the appellants and Santosh feel ill. This brewing ill-feeling in Santosh's mind had reached such a level that about a month and a half before the occurrence, he had opened fire intending to shoot Shahendrapal. On the 11th of June, 1986 at about 4.00 p.m., Sahendrapal was present at his brick-kiln, which he had set up in his Village Ranipur. The three appellants, besides Santosh, Shiv Pujan and three unknown men, all armed with lethal weapons, alighted at Sahendrapal's brick-kiln. They abducted Sahendrapal at gun point, a fact witnessed by the latter's cousin Bhola son of Har Prasad. Bhola rushed to the village abadi and informed Rajesh, besides others, of this occurrence. These men, that is to say, Bhola and Rajesh, besides other natives of the village, gave the abducting party a chase, and on way near Dubaria Purva, they met them. Entreaties were made to Santosh and the other abductors to spare Sahendrapal. They refused. Instead, the abductors held out threats of death to the men, who had gone after the abducting party to save Sahendrapal, saying that the rescuers would also be dealt with the same way. The case of the prosecution is that the abductors took away the victim, but were followed by Rajesh and Bhola, besides other residents of the village, who had joined them, albeit at a safe distance. The abducting party reached Nandan's grove at 6 o'clock in the evening, where there was a barn. There, the abductors opened fire, shooting two rounds, one of which found target and proved fatal. Next, they placed dried arhar plants on the victim's dead body and Kedar ignited it. The dead body was burnt. The prosecution say that on account of fear, Rajesh and Bhola, besides others, who witnessed the evil deed, could not offer any resistance, particularly after they were threatened with death. They were much scared not only because of the assailants' threats, but the demonstration of their abominable intentions.

6. On the 12th of June, 1986 at 10.50 hours, when the Village Chowkidar informed the Police of P.S. Pahadi and they arrived there, information reached the two eye-witnesses Rajesh and Bhola about the occurrence. Upon coming to know that the Police had reached the spot, at about 1.00 p.m., they proceeded to the place of occurrence and disclosed all facts that were within their knowledge and whatever they had witnessed. They also disclosed the fact to the Police that the dead body was of Sahendrapal. Here, it must be mentioned that there was turf fight between Police Station Pahadi and Police Station Kamasin, in consequence of which the Police of P.S. Pahadi sent all the papers to P.S. Kamasin because it was in the local limits of that police station, where the abduction had been committed and trouble started.

7. Autopsy on the deceased′s cadaver was undertaken by Dr. S.N. Misra on 13.06.1986. The investigation in the other police station was taken up by Ram Autar Singh, who was the Station Officer of P.S. Kamasin. After investigation, a charge-sheet was submitted against the three appellants and Santosh.

8. The learned Magistrate, before the case came up, finding it to be exclusively triable by Sessions, committed the same to the Court of Sessions vide order dated 13.02.1987. The accused were furnished copies of the relevant prosecution papers as provided under Section 207 Cr.P.C.

9. Pending trial, Santosh absconded and all processes, including those under Sections 82 and 83 Cr.P.C., failed to ensure his arrest. The efforts to arrest him proved abortive and futile. This case was, therefore, separated and the sessions trial proceeded against the three appellants, to wit, Kedar, Bahadur and Chunubad.

10. The sessions trial, therefore, from which the present appeal arises, is the one which proceeded against Kedar, Bahadur and Chunubad.

11. The charges were framed, carrying four counts, against the three appellants on 28.11.1987 by Mr. Sanwal Singh, the then 1st Additional Sessions Judge, Banda. The accused were charged for offences punishable under Sections 148, 364, 302 and 201 IPC. The appellants pleaded not guilty and claimed trial.

12. The prosecution examined the following witnesses in support of their case:

1. PW-1 - Dr. S.N. Misra, Chief Medical Officer, Hardoi, the then Superintendent, District Combined Hospital, Karwi, Banda, who conducted postmortem of the deceased Sahendrapal,

2. PW-2 - S.I. Ran Bahadur Singh, the then Sub-Inspector posted at P.S. Pahadi, District Banda, who commenced investigation of the case,

3. PW-3 - Rajesh, a witness of fact and nephew of the deceased, Sahendrapal,

4. PW-4 - Bhola, also a witness of fact, cousin of the deceased,

5. PW-5 - S.I. Ram Autar Singh, the then S.O., P.S. Kamasin, District Banda, who completed investigation and submitted the charge-sheet.

13. The prosecution, in addition, produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1.	Ex. Ka-1	Postmortem Report of the deceased Sahendrapal dated 13.06.1986, proved by PW-1, Dr. S.N. Misra
2.	Ex. Ka-2	Carbon copy of GD Entry No.10 Time 10/10.50 hours dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
3.	Ex. Ka-3	Inquest report dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
4.	Ex. Ka-4	Photo Lash dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
5.	Ex. Ka-5	Challan Lash (Police Form 13) dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
6.	Ex. Ka-6	Letter to the M.O./ In-charge, Government Combined Hospital, Banda dated 13.06.1986, proved by PW-2, S.I. Ran Bahadur
7.	Ex. Ka-7	Report sending the dead body of Sahendrapal for postmortem dated 13.06.1986, proved by PW-2, S.I. Ran Bahadur
8.	Ex. Ka-8	Site-plan of the place of occurrence, proved by PW-2, S.I. Ran Bahadur

9.	Ex. Ka-9	Memo regarding taking possession of sample of ash, proved by PW-2, S.I. Ran Bahadur
10.	Ex. Ka-10	Memo of sample seal dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
11.	Ex. Ka-11	Letter to the Civil Surgeon, Karwi, Banda dated 13.06.1986, proved by PW-5, S.I. Ram Autar Singh
12.	Ex. Ka-12	Report - P.S. Kamasin to S.O., P.S. Pahadi dated 13.06.1986, proved by PW-5, S.I. Ram Autar Singh
13.	Ex. Ka-13	GD Entry No.23 Time 19.30 hours dated 15.06.1986, proved by PW-5, S.I. Ram Autar Singh
14.	Ex. Ka-14	Site-plan of the place of occurrence dated 16.06.1986, proved by PW-5, S.I. Ram Autar Singh
15.	Ex. Ka-15	Charge sheet dated 24.08.1986, proved by PW-5, S.I. Ram Autar Singh
16.	16 Material Ex. 1	Ash taken from the place of occurrence

14. After the prosecution evidence was over, the statements of the accused, now the convicted appellants, were all recorded under Section 313 Cr.P.C. on 11.01.1988, i.e., for all the three appellants. The appellants did not enter defence or lead evidence.

15. The learned Trial Judge convicted and sentenced the appellants in the following manner:

Sr. No.	Offence charged	Sentence imposed
1.	148 IPC	1 year's RI
2.	364 IPC	10 years' RI
3.	302 IPC	Imprisonment for life
4.	201 IPC	4 5 years' RI

16. Aggrieved by the impugned judgment and order dated 12.01.1988, the three convicts, Kedar, Bahadur and Chunubad preferred the instant appeal.

17. Pending this appeal, out of the three appellants, Kedar and Bahadur passed away and this appeal survives to be heard at the instance of the third appellant, Chunubad alone and now, the sole appellant, who shall hereinafter be referred to as 'the appellant'.

18. Heard Mr. Raj Kumar Yadav, learned Counsel for the appellant in support of this appeal and Mr. Shashi Shekhar Tiwari, learned A.G.A. along with Mr. K. K. Nishad, learned State Law Officer for the State.

19. There are no particulars of the date, time and place of occurrence available from the first informant′s version because all that is there for the sake of a first information report is an oral information from the Village Chowkidar and recorded as G.D. Entry No.10 at 10.50 hours on 12.06.1986 at P.S. Kamasin. All that this entry records is that the Village Chowkidar informed that to the west of the village in the jungle, where one Bhujbal's barn is situate, a half burnt body of a man was lying there. There is, therefore, no first informant′s account to judge the worth of whatever the eye-witnesses have told the Police in their statements under Section 161 Cr.P.C., and, particularly what they have testified in Court. The earliest eye-witness account of the occurrence, shedding light on the date, time and place of occurrence, would, therefore, figure from the statements under Section 161 Cr.P.C., which the prosecution witnesses have given to the Police and recorded by them. There are two eye-witnesses, that is to say, PW-3 Rajesh and PW-4 Bhola. These witnesses, after seeing the occurrence, where the deceased was shot dead in their presence and his body set afire, and threatened by the assailants of a similar fate for them, did not proceed to the police station to report the matter, but went back to their village in the safety of their homes.

The following morning, when acting on the Chowkidar's information, the Police arrived at the place of occurrence and the two witnesses learnt of the Police's presence, they emerged from safety and reached over to the Police at the scene of crime and narrated facts what constitutes the eye-witness account. The occurrence took place to the west of Village Itwan in Nandan's grove, where a barn is located. It was about 6.00 p.m. The abductors, which included the three original appellants, including the appellant, besides Shiv Pujan, Santosh and the three unknown men, made the deceased Sahendrapal stand in the grove, open to the view of this eye-witness and others. Next, out of the eight assailants, Santosh shot the deceased dead. Thus, according to this witness, the date of occurrence is 11.06.1986, the time 6.00 p.m. and the place was Nandan's grove to the west of Village Itwan, where a barn is located. If indeed this is the date, time and place of occurrence, is a matter which would entirely depend upon the fact if the eye-witness account is believed to be true and also the witnesses, who have described it upon the Police's arrival, are indeed believed about their presence at the scene of crime, when it was committed. If the eye-witnesses' presence is not believed or their testimony not accepted or found doubtful, the precise date, time and place of occurrence would largely remain unknown. Of course, the date and time of occurrence can still be ascertained from the medico-legal evidence, approximately though.

20. According to the testimony of PW-3, Rajesh, on 11.06.1986 at about 4 o'clock in the evening, he was at home when Bhola (PW-4) came over to his place and informed him that Sahendrapal had been abducted by miscreants, which included Kedar, Chunubad (the appellant), Bahadur, Shiv Pujan, Santosh and three unknown offenders. Bhola said that Sahendrapal was abducted near his brick-kiln and was being taken away towards Duriab Purab. Upon coming to know of this fact, PW-3 along with Bhola (PW-4), Mahesh, Raj Karan and other residents of the village proceeded to the place of movement of the offenders. The witness says that he met the offenders to the east of Dukia Purva. They were holding Sahendrapal captive with his hands tied behind his back. PW-3 says that he and his companions beseeched the offenders, including the appellant to let off Sahendrapal. They did not relent, and instead, threatened the witness and the other rescuers with similar violence. The offenders then proceeded towards Itwan and the witness and his companions followed them. Once the offenders had reached Nandan's grove, located to the west of Village Itwan, they halted by a barn there. The witness says that he and his companions stood at a distance of 150 feet. At that time, it was 6 o'clock in the evening. The offenders made Sahendrapal stand on one side and Santosh fired twice, targeting Sahendrapal. The first shot hit Sahendrapal and he collapsed. The witness says that, in his opinion, he died as he collapsed. Next, the appellants, Kedar, Bahadur and Chunubad, besides Shiv Pujan, placed wood from arahar plants on the body and Kedar set it afire. After Sahendrapal's body was consumed by flames, the witness along with the others, struck by fear, returned home.

21. Before these witnesses returned and soon after the dead body was consumed by flames, the offenders warned the witness and all those present that if they report the matter to the Police, the same fate would await them. The witness identified the three original appellants in this appeal, including the appellant, who were all present in Court, as the accused. Shiv Pujan and Santosh were of course offenders and not before the Court, and the others were there in the dock. This fact was also said by the witness in his examination-in-chief. PW-3 has also said that Sahendrapal was his uncle and there was no animosity with the offenders. Sahendrapal's crop would be destroyed by the appellants as also Santosh, about which Sahendrapal would chastise them. This was the only

animosity between the offenders and the victim. It is also said by PW-3 that a month antedating the occurrence, Santosh was grazing his animals in Sahendrapal's field and upon being asked not to do so, he had threatened Sahendrapal. It is also said that prior to the last mentioned event, Santosh had attempted to shoot Sahendrapal and opened fire.

22. In the cross-examination of this witness (PW-3), it appears that there has been a history of previous crimes between the victim and the witnesses' family, on one hand, and that of the offenders, on the other. There have been convictions and acquittals and while no judgments about the fact have been brought on record, but in the cross-examination, PW-3 has not testified any kind of a denial to this history of crime between parties, which may make the facts suggested, ones that are false or moonshine. To the contrary, the suggestions about the history of crimes, the prosecutions, convictions and acquittals, have not been denied by PW-3 with the degree of firmness, on bases whereof the facts and suggestions can be discarded as products of falsehood, imagination or a mere contrivance of the cross-examiner to dislodge the prosecution. Regarding the history of this litigation, which is suggestive of an entrenched animosity between parties, the cross-examination of PW-3, that is in point, must be quoted for better appreciation. It reads:

"मेरे बाबा का नाम चंद्रपाल सिंह है। मेरे पिता के कोई सगा भाई नहीं है। मेरे बाबा चंद्रपाल व हर प्रसाद दो ही सगे भाई थे। हर प्रसाद का लड़का भोला गवाह है। ददन जो मृतक सहेंद्रपाल के बाप थे मेरे बाबा के सगे भाई नहीं थे बल्कि चाचा जात भाई थे।

संतोष के बाप बाबू लाल का कतल हुआ था। मैं नहीं जानता कि उस कतल में चंद्रपाल को फांसी व रामफल मुखिया, बच्छराज व इंद्रपाल को काला पानी की सजा हुई थी। जगमोहन व चंद्रपाल का भी कतल हुआ था। रामफल के पिता जगमोहन हैं जो चंद्रपाल के चाचा जात भाई हैं। मैं निश्चित नहीं हूं कि तीनों मुलजिमान हाजिर अदालत उसमें मुलजिम रहे हों। मुझे नहीं मालूम कि जगमोहन व चंद्रपाल के कतल में बहादुर, चुनवाद, केदार, दयाली, बलवंता, शिव भूषण भइयादीन व पहाडिया मुलजिम थे। यह भी मुझे नहीं मालूम कि उस कतल में ये लोग बरी हुए थे। मैं कर्वी में नहीं बल्कि रानीपुर में डाक्टरी करता हूं।"

23. PW-4 Bhola has claimed to have seen the occurrence from the inception of things. He was at the well that was being sunk at Sahendrapal's brick-kiln, then under construction. The witness says that the deceased Sahendrapal was his cousin. The eight offenders alighted at Sahendrapal's 'under construction' brick-kiln. They were Shiv Pujan, Santosh, Kedar, Chunubad, Bahadur and three unknown men. They were all armed with guns. All of them surrounded Sahendrapal, tied him up and marched off with him. The witness says that he rushed towards the village and told Rajesh, Mahesh, Raj Karan and others in the village. All of them left the village in pursuit of the offenders, who had gone towards Dubaria Purva. Following the route that offenders had taken, the rescuing party reached the victim and the offenders and beseeched the latter to set the victim free. The offenders are said to have told the rescuing party to return back, or else they would be killed. The rescuing party did not return, but kept following the offenders until they had reached a place near Itwan, which was Nandan's grove. There were two trees there. The deceased was made to stand between them. The offenders moved away and Sahendrapal was left alone standing there. Santosh shot him. Sahendrapal collapsed. There was a second shot fired too. Later, Kedar placed wood over Sahendrapal's body and all the offenders set it afire. The witness and others, who had accompanied

him, were told that if they did not go away, they too would meet the same fate. It was thereupon that this witness and the others returned to the village and were hiding there. It was upon the arrival of the Police that they reached the scene of crime and got their statements recorded. It is also said by this witness in his examination-in-chief that Sahendrapal's fields would be caused to be grazed by Santosh. Sahendrapal would chastise him. Piqued over this dispute a year and a half prior to the occurrence, Santosh and his companions had attacked him, but he escaped unhurt. This was the animosity between the two, according to this witness, so far as his stand in the examination-in-chief goes.

24. In his cross-examination, PW-4 has described the history of crime, prosecution and punishment between parties as follows:

"संतोष के बाप बाबू लाल का कतल हुआ उसमें चंद्रपाल रामपाल धनपाल व बच्छराज पर कतल का मुकदमा चला या नहीं जानता कि उसमें चंद्रपाल को फांसी तथा बाकी को आजीवन कारावास हुआ और उसमें बहादुर मुलजिमान गवाह Police की तरफ दी थी फिर कहा कि नहीं पता कि गवाही दी या नहीं।

रामपाल के बाप जगमोहन व रामपाल के चचा जात भाई चंद्रपाल का कतल हुआ। इसमें बहादुर (Sic) बलवन्त दयाल व महावीर व शिवपूजन व भैयादीन पकड़े गये थे। यह लोग जजी से बरी हो गये।"

25. This is more or less the same history of crime, animosity, prosecution, trial and punishment as that given out by PW-3. It is true that the allegations of these crimes, the involvement of the parties' ancestors or punishment, has not been unequivocally acknowledged nor documents produced by either side to prove facts, but the denial is virtually an admission. So far as PW-4 is concerned, it is on a quivering and vacillating note. A suggestion of this kind if false, would have brought out a stout denial. Far from being that the denial in substance, admits the history of crime and prosecution between parties, albeit behind the veil of a guarded denial. Now, it is not disputed that the deceased Sahendrapal and the two eye-witnesses, PW-3 and PW-4, are related by blood. There is a history of crime, that is to say, murders being committed between the families of the two witnesses and the deceased, on one hand, and the offenders, including the appellant here, on the other. Chandrapal was PW-3 Rajesh's grandfather. He had a brother of full blood by the name Har Prasad. PW-4 Bhola is Har Prasad's son. Therefore, PW-3 Rajesh and PW-4 Bhola are collaterals, one degree removed, whereas the deceased Sahendrapal's father Daddan was a collateral of Chandrapal, making Sahendrapal a second cousin of Bhola in the same generation and Rajesh's second cousin, one degree removed. In popular language, Rajesh would be a nephew both to Bhola and Sahendrapal. It is, thus, evident that the deceased and the two eye-witnesses, PW-3 and PW-4, are collaterals in the male bloodline. Being relatives of the deceased, would of itself not make the two eye-witnesses interested witnesses, as it is called.

26. We notice that the dispute between the deceased and the offenders, as said by both the witnesses in their examination-in-chief to be one over damage to the deceased's crops, does not appear to be the bone of contention. The animosity between the families of the deceased, which includes the two eye-witnesses, on one hand, and that of the offenders, including the appellant, run far deeper. As already remarked, there was a suggestion given to PW-3 during his cross-examination that the principal accused Santosh's father Babulal was murdered. This witness has

halfheartedly denied the suggestion that in Babulal's murder, Chandrapal received the death sentence, whereas Ramphal Mukhia, Bachhraj and Indrapal were sentenced to transportation for life. Chandrapal too was murdered along with Jagmohan. Jagmohan was a first cousin to Chandrapal. Again, to the suggestion that the three appellants, that is to say, the two deceased and the one surviving, were accused in the murders of Chandrapal and Jagmohan. PW-3 has said that he is not sure if the three appellants were accused in Chandrapal's and Jahmohan's murder. He was also not sure if along with the other co-accused, they were acquitted in the said crime.

27. These facts show that Chandrapal, whose collateral's son was the deceased Sahendrapal, was apparently involved in the murder of the principal accused Santosh's father, Babulal. On the other hand, PW-3's grandfather Chandrapal and PW-4's father's brother too were murdered and the three appellants before the Court are said to have been involved in the said crime. They were later on acquitted.

28. Now, this angle of murders between the two families of the appellants, on one hand, and the deceased, on the other, makes both PW-3 and PW-4, what may truly be regarded as 'interested witnesses'. The interested or the non-partisan character of the witnesses arises from the animosity between parties owing to the criminal cases lodged against each other. The interest springs from feelings of vengeance and malice. Now, all that is required while evaluating the testimony of an interested witness is that it should be carefully scrutinized and not accepted at the face value to found a conviction. Sagacity requires that the testimony of a partisan witness, albeit consistent, should be corroborated about its veracity, if nothing else from a searching look to circumstances that may verify its truthfulness. If there is evidence *aliunde* available bearing on the point, corroboration in the more classical way may be sought from that other evidence, that may assure the Court that the interested witness is not lying after all.

29. In this case, when one looks to those circumstances or corroborating evidence, it is at once clear that although PW-3 and PW-4, according to their own saying, were not the only eye-witnesses and had with them others from the village, some of whom are mentioned in PW-3's evidence as Mahesh and Raj Karan, none of these independent witnesses have been examined by the prosecution. If one of these independent witnesses from the village, who had gone along with PW-3 and PW-4 to save Sahendrapal, had been examined, the necessary corroborative evidence would have been forthcoming.

30. There is no principle by which the prosecution can be compelled to produce particular witnesses or an adverse inference drawn against them on account of non-production of one or more witnesses, who may have some material testimony to offer. It is on principle for the prosecution to prove their case, offering the best evidence they have, and in the process to produce such material witnesses, whom they regard sufficient to establish the case. This, however, is subject to the principle that if the evidence of witnesses, who testify, is deficient in some regard or otherwise tainted and other witnesses being available, have not been produced, the Court would be within its rights in raising a presumption that if those material witnesses were produced, their testimony would have gone against the prosecution.

31. Here, the two witnesses, who were produced, offer testimony that did not suffer from any inherent flaw, but it was classically a case where their evidence is one that can be said to be tainted by malice and animosity, coming down from the previous history of crime and litigation between parties. As already remarked, their testimony required, therefore, corroboration of some kind for the Court to be satisfied of its truth and dependability. In this case, independent witnesses being available, who had accompanied PW-3 and PW-4 in the rescue mission, that is to say, Mahesh and Raj Karan, whose statements were recorded by the Police under Section 161 Cr.P.C., there is no reason why at least one of them was not produced by the prosecution. Not only one of these or both witnesses, if examined, would have either corroborated the testimony of PW-3 or belied it, enabling the Court to get to the truth of the matter, the prosecution, in choosing not to produce these independent witnesses and resting their case on the rather unreliable testimony of interested witnesses, to wit, PW-3 and PW-4 alone, have placed themselves in a position, where the Court would feel unsafe to rely on the uncorroborated testimony of these witnesses. The Court would also be compelled to draw a presumption that if the independent witnesses Mahesh and Raj Karan had been examined, their testimony would have gone against the prosecution. For the principle that in the facts of a particular case, non-production of a witness may lead to an adverse inference against the prosecution, we may refer to a very recent decision of a Division Bench of this Court in **Karam Veer and others v. State, 2026:AHC:123847-DB**, to which one of us (J.J. Munir, J. was party). In that case, we held:

"53. Though, there is no rule by which the prosecution can be obliged to produce all witnesses, who might have seen or known the occurrence first hand, it is yet to be seen if the evidence produced by the prosecution is insufficient or unsatisfactory, and there remain one or more witnesses, who could but have not been produced, what effect the non-production have on the prosecution. This is a matter, which has to be judged on the facts of each case. If there is sterling evidence of one or two witnesses, the prosecution cannot be blamed for not producing three more, whose evidence may be as sterling as those chosen by the prosecution to appear in the dock. The defence nor the Court can compel the prosecution to multiply witnesses, where those already there, can testify their case sufficiently. However, if the prosecution evidence is shaky or deficient and there still remain one or more witnesses, who could shed light on the case, non-production of such a witness, may well lead to an adverse inference against the prosecution to the effect that if produced, he would not have supported the prosecution. In this connection, the following remarks of the Supreme Court in ***Khatri Hemraj Amulakh v. State of Gujarat, (1972) 3 SCC 671*** *is relevant, where it has been remarked:*

"10. According to the statement of Dharamshi recorded in Gujrati, his tailoring shop is near the house of the accused. On the day of occurrence at about 10 a.m. Dharamshi saw the accused sitting on a stone opposite his (Dharamshi's) shop. The accused appeared to be in a state of excitement. He was looking to the ground and was not speaking with any one. After sitting like that for about an hour, the accused met Shiv Lal whose shop is also nearby. Thereafter, the accused went inside his house. Dharamshi later on that day learnt of the murder of Thakari deceased. Accordingly however, to the English record of the statement of Dharamshi, the accused after sitting on the stone for about an hour in a state of excitement met Shiv Lal. The accused and Shiv Lal then went together to the house of the accused. The learned judges of the High Court relied upon the Gujrati version of the statement of Dharamshi and accepting that to be correct, came to the conclusion that the accused was alone with Thakari deceased at the time of the present

occurrence. In this connection, we find that though Dharamshi has deposed in court that the accused was in a state of excitement, Dharamshi made no mention of the accused being in the state of excitement in his statement recorded by the police. It would thus appear that Dharamshi has tried to improve upon his police statement. Shiv Lal, with whom the accused was closetted, according to the Gujrati version of Dharamshi's statement, and who also went along with the accused inside the house, according to the English version, has not been examined as a witness in the case and there is nothing on the material before us to indicate as to why Shiv Lal was not examined by the prosecution. The non-examination of Shiv Lal who was a very material witness would give rise, in our opinion, to an inference that, if examined, he would not have supported the prosecution evidence. We thus find that a very important piece of evidence which could have shown as to whether the accused went inside his house shortly before the occurrence is missing in this case. In any case we do not find it safe to act upon the uncorroborated statement of Dharamshi.″

(emphasis by Court)

54. Stating the wider principle regarding such cases is the authority of the Supreme Court in ***Joginder Singh v. State of Haryana, (2014) 11 SCC 335****. In* ***Joginder Singh*** *(supra), it was held:*

"37. At this juncture, we may note with profit another aspect that has been highlighted by the learned counsel for the respondent. The prosecution has not examined Chander, husband of the deceased, a relevant eyewitness, Bala, Murti and Bimla, three other injured witnesses. No explanation has been given by the prosecution. Though there have been certain suggestions to PW 16 in the cross-examination, but his answer is evasive. It is well settled in law that non-examination of the material witness is not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. (See State of H.P. v. Gian Chand [(2001) 6 SCC 71: 2001 SCC (Cri) 980].)

38. In this context, we may also note with profit a passage from Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145: 2001 SCC (Cri) 1070]: (SCC p. 155, para 19)

"19. - It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself-whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony

coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

39. Recently in Manjit Singh v. State of Punjab [(2013) 12 SCC 746: (2014) 4 SCC (Cri) 531], this Court, after referring to earlier decisions, has opined thus: (SCC p. 757, para 24)

"24. ... it is quite clear that it is not the number and quantity but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see State of U.P. v. Iftikhar Khan [(1973) 1 SCC 512: 1973 SCC (Cri) 384])."

40. In the case at hand, non-examination of the material witnesses is of significance. It is so because PW 11 is really an interested witness though the High Court has not agreed with the same. It appears from the material brought on record that he had an axe to grind against the appellant. That apart, Chander, who was present from the beginning, would have been in a position to disclose more clearly about the genesis of the occurrence. He is the husband of the deceased and we find no reason why the prosecution had withheld the said witness. Similarly, the other three witnesses who are said to be injured witnesses when available should have come and deposed. Therefore, in the obtaining factual matrix that their non-examination gains significance."

55. Here, we have already noticed that the two injured witnesses, PW-2 and PW-4 have taken contradictory stands regarding the fact, if the assailants did come up to the rooftop in order to commit assault and PW-2 is vacillating on the issue, the medico-legal evidence places in doubt the otherwise firm stand of PW-4 that all the accused had their feet on the ground and shot the deceased and the injured at the rooftop. All this has led to a shaky prosecution case, as already remarked. In this case, there are three injured witnesses, that is to say, Bodha, Rajkumari and Jaggo, none of whom have been examined. PW-3, whose presence is very doubtful on the spot, has been introduced for the mere fact that one of the other eye-witnesses, not an injured witness, Javar Singh, refused to testify. In such circumstances, these three eye-witnesses, who are injured witnesses, ought have been examined, may be one or two, to firm up the prosecution case, whichever way it was. No reason has been assigned for the non-prosecution of these eye-witnesses given the shaky background of the prosecution evidence. In such circumstances, non-examination of the three eye-witnesses, or at least one or more of them, leads us to draw an adverse inference against the prosecution that if produced, these eye-witnesses would not have supported the prosecution, leading to further doubt about the veracity of the prosecution case."

32. We are still minded to see if there are any other circumstances that may lend the necessary assurance to the account of PW-3 and PW-4. Unfortunately, there are none. To the contrary, what we notice is that there are circumstances to suggest that PW-3 and PW-4 did not see the occurrence at all.

33. The foremost circumstance that is suggestive of the absence of these witnesses is that these witnesses along with two other men from the village, who are named, that is to say, Mahesh and Raj Karan, besides a number of other residents of the village had chased and attempted a rescue. When their entreaties failed and they were threatened by the gun wielding offenders, including the appellants, to go away, else they too would be done to death, they did not relent in their pursuit and went after the offenders through a considerable distance, may be a kilometer or more, till they reached Nandan's grove. They followed the offenders at a distance of 100-150 paces and watched them from this distance commit the crime in cold

blood. It is very odd behaviour for both the rescuers and the offenders that one would follow armed men after being threatened with death and the armed offenders permitting the witnesses and the other rescuers to follow them and then commit the crime in their presence. If one were to accept the version that the entreaties were refused and the offenders, including the appellants, threatened the witnesses and others in the party with death, asking them to go away, they would have forced them to go away, instead of permitting the rescue party to trail across a distance of a kilometer or more and then commit the crime in their presence. The witnesses, who were so scared, as they say, that after the crime, they hid in their homes in the village, all through the night, instead of lodging an FIR, makes it difficult to believe that they would muster the courage after receiving death threats from gun wielding men, who were carrying out an abduction, to follow them until the scene of crime, and then wait until time that they witnessed the crime. This account of the two witnesses is rather incredible to believe, making their presence doubtful on the scene of crime.

34. There is another aspect to it. As experience dictates, crimes of this kind are generally not committed where an eye-witness or witnesses would be left to go alive, make statements to the Police and testify against the offenders. If indeed PW-3 and PW-4 along with their companions had followed the offenders and witnessed the crime, with the offenders not forcing them to go away earlier, after committing the murder, the offenders in normal circumstances, would have eliminated the witnesses too. On the own showing of PW-3 and PW-4, there were eight men, all armed with guns. The evidence also shows that there was prior animosity between parties with the history of crime. If indeed the witnesses, PW-3 and PW-4, had seen the offenders, including the appellant, commit this gory crime, there is no way the offenders would have stopped at their initial target and not eliminated these witnesses and their companions too. This is another circumstance, which makes the presence of these witnesses and their testimony unbelievable.

35. The last of the circumstance that makes the presence of these witnesses doubtful at the scene of the crime is that the brave hearts that they were in going after the offenders across a considerable distance until they had witnessed the crime, suddenly turned into very scared man, who hid in the safety of their homes the night over. Back in the village, there would be a sizable number of the local residents. Admittedly, PW-4 had a licensed gun and in all probability others in the village too would have some licensed weapons. Even if not, as already remarked, the residents of the village would be a big number and the offenders would have gone far away after committing the crime. There is no earthly reason why after witnessing a gory murder of a blood relative, these two witnesses, PW-3 and PW-4, would not seek the help of other residents of the village, and in the company of strong numbers, make it to the police station at the earliest to lodge an FIR.

36. The crime was admittedly reported by the Village Chowkidar and registered as a Chowkidar's entry in the G.D. of the police station, carrying a non-discript version, where the half burnt dead body alone was reported to the Police. It is for this reason that this is all that is for an FIR account. These eye-witnesses did not, all through the night, report what they had personally witnessed in the company of two other named men and some other residents of the village as well. PW-3 and PW-4 gave their first statements to the Police after the Police arrived the next morning, acting on the Village Chowkidar's G.D. Entry, reporting the presence of a half burnt body in Nandan's grove. Therefore, the account of these two witnesses apparently springs from tainted sources, be it animosity, malice or whatever the vitiating hue of their untruthful intentions. We are, therefore, of opinion that PW-3 and PW-4 were not present at the scene of crime and their testimony is of no worth. The manner of occurrence, of course, also becomes more of an imaginary story, the two eye-witnesses having been held to be not present at the scene of crime.

37. It is trite law that it is the prosecution, who bear the burden to prove their case beyond all reasonable doubts. Of course, the words are of thoughtful expression, when it is said 'beyond all reasonable doubt'. The principle that the benefit of doubt has to go to the accused and not the State or the informant, does not comprehend within its fold, all kinds of doubts, that may be fanciful origin, trivial or based on strained logic. It is, as said, robust doubts that go to the root of the matter that set the standard for the prosecution to prove their case beyond reasonable doubt. It hardly need be gainsaid that in the principle that we mention the words 'reasonable doubt' have hold special significance, which has already been explained and need not detain us for a longer time. It is also a well regarded principle that weakness of the defence cannot be capitalized upon by the prosecution to bring home the guilt. They must prove their case by their own evidence. For the principle, reference may be made to **Datar Singh v. State of Punjab, (1975) 4 SCC 272**, where it has been remarked:

"3. It is often difficult for courts of law to arrive at the real truth in criminal cases. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime of patricide., They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record. If the pieces of evidence on which the prosecution chooses to rest its case are so brittle that they crumble when subjected to close and critical examination so that the whole superstructure built on such insecure foundations collapses, proof of some incriminating circumstances, which might have given support to merely defective evidence cannot avert a failure of the prosecution case."

38. The principle is too well settled to brook doubt and reference in this connection may also be made to the authorities enunciated in **Gahnu Mahto v. State of Bihar, 2023 SCC OnLine Jhar 45, Ballu v. State of M.P., (2024) 12 SCC 202, State of Chhattisgarh v. Ashok Bhoi, 2025 SCC OnLine SC 487, and Manikantan v. State of Kerala, 2025 SCC OnLine Ker 4239**.

39. In this case, since we have disbelieved the presence of the witnesses at the scene of crime, the entire edifice of the prosecution falls. We hold, therefore that of whatever worth the prosecution evidence is, they have not been able to prove the charges beyond reasonable doubt, or so to speak, by the criminal standard. We are of opinion, therefore, that the sole appellant Chunubad is entitled to be extended the benefit of doubt and acquitted of the charges.

40. In the result, the appeal succeeds and is **allowed**. The impugned judgment and order passed by the learned Additional Sessions Judge is hereby **set aside** and the appellant Chunubad **acquitted** of the charges. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

41. The appellant, **Chunubad**, shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

42. Let the lower court records be returned to the Trial Court forthwith.

(2026) 7 ILRA 743
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Appeal No. 346 of 2025

Pawan Kumar Pandey **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the application for suspension of sentence could be given preference over final disposal of the criminal appeal or criminal revision?

Headnotes

Criminal Procedure Code, 1973-S. 389-Suspension of sentence-Application by convicted person-Appeal and criminal revision connected and listed together-application for suspension of sentence should be disposed of if appeal could not be heard finally for any cogent reasons-If counsels are ready to argue criminal appeal or criminal revision on merits- application for suspension of sentence may not be given preference over final disposal of criminal appeal or criminal revision-endeavour of Court should be to decide criminal appeal at the earliest -Court cannot permit appellant to adopt delaying tactics in disposal of criminal appeal or criminal revision. . (E-9)

Case Law Cited:

1. Purushothaman v. State of Tamil Nadu, AIRONLINE 2023 SC 937
2. Prabhakar Tewari v. State of U.P. & Anr., Criminal Appeal No. 152 of 2020
3. Indra Pratap Tiwari v. State of Uttar Pradesh, Criminal Appeal No. 1548 of 2022
4. State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463
5. Dhan Jee Pandey v. State of Bihar & Another, Criminal Appeal No. 1864 of 2026
6. Rajni v. State of Punjab and Another, 2026 SCC OnLine SC 1050
7. Central Bureau of Investigation v. Rajendra Sadashiv Nikalje alias Chhota Rajan @ Nana Sheth & Anr., Criminal Appeal No. …../2025
8. Vijay Kumar, (2002) 9 SCC 364

List of Acts

1. Code of Criminal Procedure, 1973
2. Indian Penal Code, 1860

List of Keywords

Suspension of sentence; Delaying tactics; Period of incarceration.

Appearances of parties

Counsel for Appellant(s) : Brij Mohan Sahai, Alok Verma, Atul Krishna, Ayodhya Prasad Mishra, A.P. Mishra, Prajjwal Harsh, Praveen Kumar Yadav, Vivek Kumar Tripathi
Counsel for Respondent(s) : G.A., Akanksha Gupta, Anurag Singh, Devansh Vikram Singh, Gaurav Mehrotra, Nadeem Murtaza

(Delivered by Hon'ble Rajesh Singh Chauhan, J.
&
Hon'ble Ram Manohar Narayan Mishra, J.)

(Order on CMA/I.A. No.1 of 2025)

1. Heard Sri Ayodhya Prasad Mishra, assisted by Sri Vivek Kumar Tripathi, learned counsel for the appellant /applicant, Sri Vinod Kumar Shahi, learned Additional Advocate General of U.P. assisted by Sri Anurag Verma, learned AGA-I for the State and Sri Nadeem Murtaza, learned counsel for the victim.

2. This is the first bail application of the present appellant/ applicant- Pawan Kumar Pandey under Section 389 Cr.P.C. moved in the present Criminal Appeal assailing the judgment and order dated 04.01.2025 & 06.01.2025 passed by the Special Judge (M.P./M.L.A. related matters)/ Additional Sessions Judge (FTC-II), District- Ambedkar Nagar in Criminal Case No.297 of 2020 (Sessions Case No.297 of 2020), State Vs. Pawan Kumar Pandey and Another, arising out of Case Crime No.157 of 1990, Police Station- Baskhari, District- Ambedkar Nagar, wherein the appellant has been convicted under Sections 147, 148, 307/149 & 427 IPC and sentenced for maximum period of seven years′ rigorous imprisonment with fine stipulations.

3. Son of the injured has also filed a revision bearing Criminal Revision No.370 of 2025, Nirbhay Singh Vs. State of U.P. and Another against the aforesaid judgment and order seeking enhancement of sentence awarded to the present appellant from seven years′ rigorous imprisonment to life imprisonment, therefore, present criminal appeal and the criminal revision have been connected and listed before this Bench. Sri Nadeem Murtaza, who is counsel for the revisionist in the aforesaid criminal revision, has stated that he is ready to argue the revision.

4. Before adverting to the arguments of learned counsel for the parties and the case laws so cited, we hereby refer our order dated 04.02.2026, which reads as under:-

"1. Heard Sri Brij Mohan Sahai, assisted by Sri A.P. Mishra, learned counsel for the appellant as well as Sri V.K. Shahi, learned Addl. Advocate General, assisted by Sri Anurag Verma, learned AGA, and Sri Ajeet Singh, learned State counsel for the State-respondent and Sri Nadeem Murtaza, learned counsel for the victim.

2. Learned counsels for the parties have concluded their arguments on the bail application but so as to address the Court on the merits of the appeal as well as revision filed by the victim, they have sought a week's time.

3. List/ put up on 11.02.2026 within top ten cases.

4. This matter may be taken up immediately after fresh cases.″

5. On 04.02.2026, learned counsels for the parties concluded their arguments on the bail application but on their request that they are willing to address the Court on the merits of the appeal

and the revision, one week's time was granted listing the case for 11.02.2026. On 11.02.2026, learned counsel for the appellant did not appear, however, learned AGA and learned counsel for the victim were present. On subsequent date i.e. 18.02.2026, the case got adjourned on the request of learned counsel for the appellant and any date after Holi vacation was requested. On that too, Sri Vinod Kumar Shahi, learned Additional Advocate General, Sri Anurag Verma, learned AGA-I and Sri Nadeem Murtaza, learned counsel for the victim were present and had stated that they had no objection on request. On 19.03.2026, Sri Nadeem Murtaza, learned counsel for the victim was reported to be out of station, therefore, the case was adjourned for the next date. On subsequent dates, the case was adjourned on the request of learned counsel for the parties. On 21.07.2026, Sri A.P. Mishra, learned counsel for the appellant argued at substantial length but could not conclude his arguments, therefore, the case was listed next day i.e. 22.07.2026. On 22.07.2026, Sri A.P. Mishra, learned counsel for the appellant has submitted that he has no instructions from his client to argue the appeal, therefore, his bail application may be disposed of.

6. Though Sri A.P. Mishra had already concluded his arguments on the bail application on 04.02.2026 but he again argued on his bail application. Sri Anurag Verma, learned AGA and Sri Nadeem Murtaza, learned counsel for the victim insisted that once learned counsels for the parties have given their consent to argue the appeal on merits and they are ready to argue the appeal on merits, then this appeal should be decided finally and should not be kept pending for the reason that the appellant is not willing for final disposal of the appeal. On such submission, Sri A.P. Mishra was not agree and pressed his bail application. Sri A.P. Mishra has placed reliance on the decision of the Apex Court in re; **Purushothaman v. State of Tamil Nadu, AIRONLINE 2023 SC 937**, referring para- 9 thereof that the application for suspension of sentence should be decided at the earliest. Para-9 of the aforesaid judgment reads as under:-

"9. We have come across cases where an application for suspension of sentence was rejected by the High Court only on the ground that the advocate for the accused declined to argue the appeal on merits. When only the application for suspension of sentence is listed for hearing, the advocate for the accused is not expected to be ready to argue the appeal."

7. We find it appropriate to deal the observation of the Apex Court of para-9 of the judgment in re; **Purushothaman** (supra) at this stage itself. In the matter before the Apex Court in re; **Purushothaman** (supra), only the application for suspension of sentence was listed before the High Court and the application for suspension of sentence was rejected by the High Court, but in the present case, the application for suspension of sentence has not been rejected as on today and the criminal appeal as well as the criminal revision are listed alongwith bail application. Besides, learned counsels for the parties had sought a week's time on 04.02.2026 to argue the appeal on merits and for so many dates, he did not argue the appeal on merits instead he is pressing his bail application today, therefore, the observation of the Apex Court in re; **Purushothaman** (supra) would not be applicable in the present case.

8. Sri Mishra has also stated that on 04.02.2026, he had not taken time to argue the appeal on merits but had taken time to seek instructions from his clients as to whether he can argue the appeal on merits or not.

9. Sri A.P. Mishra has further submitted that this is the case where the present appellant has been awarded maximum sentence of seven years' rigorous imprisonment with fine and he has already served more than two years' sentence in jail, so the further sentence may be suspended till disposal of the appeal and he shall argue the appeal on merits after seeking specific instruction to that effect from his client. Sri Mishra has further submitted that in the present case the appellant has been falsely implicated. Most of the fact witnesses and alleged eye witnesses have not supported the prosecution story. As per those witnesses, the appellant was not present on the spot.

10. Sri A.P. Mishra has drawn attention of this Court towards the rejoinder affidavit filed on 02.05.2025 bearing I.A. No.6 of 2026 showing para-22 wherein the criminal history of 93 cases of the present appellant has been explained. Sri Mishra has demonstrated that out of 93 criminal cases, the present appellant has been convicted in the present case for seven years' rigorous imprisonment with fine and in one more case bearing Case Crime No.54 of 2022, he has been convicted for six months imprisonment. Except these two cases, he has been acquitted in most of the cases; in some cases either charge sheet has not been filed or he is on bail and in some other cases, notice was not given to the appellant. He has placed reliance on the decision of the Apex Court dated 24.01.2020 rendered in **Criminal Appeal No.152 of 2020 (arising out of Special Leave Petition (Crl.) No.9207/2019), Prabhakar Tewari Vs. State of U.P. & Anr.**, referring para-7 thereof wherein the Apex Court has observed that the criminal history of an accused may not be the basis for refusal of prayer for bail. He has also referred the judgment of the Apex court dated 12.09.2022 passed in **Criminal Appeal No.1548 of 2022 (Arising out of SLP (Criminal) No.7544/2022), Indra Pratap Tiwari Vs. The State of Uttar Pradesh**, on the same submission that the criminal history, if it is properly explained, may not be the reason to deny the bail.

11. The case in re; **Prabhakar Tewari** (supra), State Appeal was filed challenging the order of the High Court whereby the order granting bail to the accused-appellant was challenged showing the chequered criminal history of the accused-appellant and the Apex Court dismiss the appeal upholding the order of the High Court granting bail.

12. Therefore, Sri Mishra has submitted that keeping in view his aforesaid submissions, particularly the fact that the present appellant has served more than two years' sentence out of seven years' rigorous imprisonment, most of the fact witnesses have not supported the prosecution story so far as the role of the appellant is concerned, and he has properly explained the criminal history of the appellant, the sentence of the appellant may be stayed till final disposal of the appeal.

13. On the other hand, Sri Anurag Verma, learned AGA, has submitted that he has strong objection on the submission of Sri A.P. Mishra that on 04.02.2026, he had taken time to seek instructions from his client as to whether he can address the Court on merits of the appeal, rather the order dated 04.02.2026 is absolutely clear that the arguments on bail application had been concluded but addressing the Court on the merits of the appeal, time was sought as the aforesaid fact has been clearly reflected in the order dated 04.02.2026. The intent of the order may not be interpreted by any counsel in any other manner when the language of the order is clear and definite. So as to buttress his aforesaid contention, Sri Anurag Verma has referred the decision of the Apex Court in re; **State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, (1982) 2 SCC 463**, referring para-4 thereof, which reads as under:-

"4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation. [Per Lord Atkinson in Somasundaram Chetty v. Subramanian Chetty, AIR 1926 PC 136 : 99 IC 742] We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. [Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrain, AIR 1917 PC 30 : 42 IC 527] That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

14. Sri Anurag Verma has submitted that the chequered criminal history of the present appellant may not be ignored, though he has been acquitted in some of the cases. Besides, he has also stated with vehemence that this is not a case where the bail application of an accused is being argued but the appellant is a convicted person, having his chequered criminal history, so his presumption of innocence would not drawn here as the Trial Court has not accepted his innocence, rather holding him guilty convicted him. The perversity and illegality of the conviction order may be demolished only in appeal, not in bail application. In support of his aforesaid contentions, attention has been drawn towards the decision of the Apex Court dated 10.04.2026 in re; **Dhan Jee Pandey Vs. The State of Bihar & Another, Criminal Appeal No.1864 of 2026 [Arising out of SLP (Cri.) No.4241 of 2025]**, referring paragraphs no.14, 15, 16, 21 & 22, which reads as under:-

"14. The issue that arises for consideration herein is whether the order granting suspension of sentence to Respondent No. 2 calls for interference. At the outset, it must be emphasised that the parameters governing suspension of sentence post-conviction are qualitatively distinct from those applicable at the stage of pre-trial bail. Upon conviction, the presumption of innocence stands displaced by a judicial determination of guilt, and the appellate court is required to exercise its jurisdiction under Section 389 Cr. P.C. with due circumspection and restraint.

15. In State of Haryana v. Hasmat, (2004) 6 SCC 176, this Court has categorically held that suspension of sentence in serious offences must not be granted as a matter of routine, and that the appellate court must apply its mind to the nature of the offence, the manner of its commission, and the gravity of the findings recorded by the trial Court. It was further emphasised that reasons must be recorded in writing,

reflecting due consideration of relevant factors, and that orders granting suspension of sentence should not be passed mechanically…"

16. In Om Prakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123, this Court has clarified the scope of power under Section 389 Cr. P.C. by holding that suspension of sentence may be justified only where a palpable infirmity is apparent on the face of the record, indicating that the conviction may not ultimately withstand scrutiny. It has been expressly held that at this stage, the appellate court is not expected to undertake a reappreciation of evidence or delve into a detailed evaluation of the prosecution case…"

21. As held in State of Haryana v. Hasmat (supra), undue weight cannot be accorded to the period of incarceration or the pendency of the appeal in isolation, particularly where the conviction is founded on credible evidence.

22. The criminal antecedents of Respondent No. 2 also assume significance. The prosecution has brought on record multiple prior cases registered against him, including offences involving violence and use of arms. Though it has been contended that such cases arose out of political rivalry and have culminated in acquittal, such a contention cannot, at this stage, efface the relevance of antecedents as a factor in assessing the propriety of granting suspension of sentence."

15. He has also placed reliance on the decision of the Apex Court in re**; Rajni v. State of Punjab and Another, 2026 SCC OnLine SC 1050**, referring para-12, which reads as under:-

"12. While the period of incarceration and delay in trial are undoubtedly relevant considerations, they cannot serve as the sole or determinative basis for the grant of bail in a case involving the alleged killing of a person by an armed mob. Criminal antecedents are not merely a matter of record, but bear directly on whether an accused is likely to abide by bail conditions, refrain from repeating offences, or desist from intimidating witnesses. Where an accused carries multiple antecedents for offences as grave as those under Sections 302 and 307 of the IPC, such antecedents must weigh heavily against the grant of bail. The fact that this material was placed before the High Court yet received no consideration in the impugned order is a serious infirmity. The High Court's failure to individualize its reasoning and to weigh these disentitling factors renders the impugned order unsustainable insofar as it pertains to Respondent Nos. 2, 3 and 5."

16. Sri Verma has further submitted that the Hon'ble Supreme Court in re; **Dhan Jee Pandey** (supra) in para-22 has observed that even if the criminal cases are an outcome of political rivalry and such criminal cases culminated in acquittal, such a contention cannot efface the relevance of antecedents as a factor in assessing the propriety of granting suspension of sentence. Further, the Apex Court in re; **Rajni** (supra) in para-12 has categorically observed that criminal antecedents are not merely a matter of record, but bear directly on whether an accused is likely to abide by bail conditions, refrain from repeating offences, or desist from intimidating witnesses, so such antecedents must weigh heavily against the grant of bail. Sri Verma has, therefore, submitted that since the present appellant has committed the gruesome offence in the present case alongwith other co-accused wherein injured Anil Kumar Singh (PW-7) has recorded his testimony before the court against the present appellant, so instead of awarding seven years' rigorous imprisonment, he should have been awarded life imprisonment. Sri Verma has informed that one criminal revision bearing No.370 of 2025 (supra) has been filed from the side of the victim seeking enhancement of the punishment, so instead of deciding the application for suspension of sentence, the criminal appeal and the criminal revision may be decided on merits. He has prepared both the cases to address the Court on merits, so rejecting the application for suspension of sentence, any short date may be fixed for final hearing of the appeal and the criminal revision.

17. Sri Nadeem Murtaza, learned counsel for the victim has stated that he is appearing on behalf of the victim Nirbhay Singh son of Late Anil Kumar Singh, who was injured witness in the present case. His father Anil Kumar Singh had received very serious injuries including firearm injuries caused by the appellant using deadly firearm weapons in broad day light in a busy market. He has further submitted that the appellant is a hardened and habitual criminal with an extensive criminal history spanning from 1984 to 2022. He has also stated that the incident in question took place on 26.06.1990 and for the aforesaid incident, the trial concluded on 04.01.2025, therefore, Sri Murtaza has stated that it took about 35 years to conclude the trial and the present appellant was not cooperating in the trial proceedings. Sri Murtaza has filed photostat copy of some order sheets to show non-cooperation of the appellant in the sessions trial case. Attention has been drawn towards the order dated 24.03.2009 passed by the learned Trial Court whereby noting the fact that the present appellant was absent before the Court without any cogent reasons, so non-bailable warrants were issued. On 30.03.2009, non-bailable warrants were again issued. On 21.04.2009, on account of deliberate absence of the present appellant non-bailable warrants were issued. On 24.04.2009, application for recall of the non-bailable warrants was filed by the present appellant, which was rejected by the learned Trial Court vide order dated 30.04.2009 and he was taken into custody on 30.04.2009 itself. However, on the same date, i.e. 30.04.2009 he was enlarged on bail. Sri Murtaza has also shown the photostat copy of the application of the present appellant dated 21.08.1993 filed before the Third Judicial Magistrate, Faizabad seeking bail. In the aforesaid application, the appellant has categorically indicated that he is in judicial custody w.e.f. 18.08.1993. The photostat copy of the bail order has also been filed showing that the present appellant was granted bail by the Second Additional Sessions Judge, Faizabad on 23.09.1993. Therefore, Sri Murtaza has stated that the appellant remained in jail for about 35 days during trial. Hence, Sri Murtaza has stated that contention of learned counsel for the appellant that the present appellant remained in jail for more than two years is wrong inasmuch as he remained in jail during trial for about 35 days (from 18.08.1993 to 23.09.1993 and pursuant to the conviction order he is jail w.e.f. 04.01.2025 till date). So his total period in jail would be about one year and seven months against seven years' rigorous imprisonment awarded by the Trial Court.

18. Sri Murtaza has further submitted that criminal revision has been filed by the victim wherein he is counsel for the victim/ revisionist challenging the conviction order praying for enhancement of the punishment inasmuch as the manner under which the appellant committed a gruesome offence, he should have been awarded life imprisonment but he has been awarded only rigorous imprisonment of seven years by the learned Trial Court without considering and appreciating the evidence and material available on record. Further, he is ready to address the Court on the merits of the revision, therefore, the present appeal as well the criminal revision may be listed at any short date so that the criminal appeal and the criminal revision, both, may be decided finally on merits. He has also drawn attention of this Court towards the decision of the Apex Court dated 17.09.2025 in re; **Central Bureau of Investigation Vs. Rajendra Sadashiv Nikalje alias Chhota Rajan @ Nana Sheth @ SIR & Anr. Criminal Appeal No../2025 [SLP (Crl.) No. /2025 D.No.5707/2025**, referring paragraphs no.8 & 9, which read as under:-

"8. In Sidhartha Vashisht v. State (NCT of Delhi), (2008) 5 SCC 230, this Court also had the occasion to discuss the scope of power to suspend sentence under Section 389 CrPC in a case involving serious offence like murder. The Court held that:

"30....It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364] that in considering the prayer for bail in a case involving a serious offence like murder punishable

under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted. (emphasis supplied)

Thus, it is clear that in considering prayer for suspension of sentence, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail."

9. The ambit of power under Section 389 CrPC is to protect rights of convicted-accused in those cases where the likelihood of success of his appeal against conviction is very high or in case, where a fixed term of imprisonment is ordered, the appeal is unlikely to be heard in the near future."

19. Having heard learned counsel for the parties; having perused the case laws so cited by the learned counsel for the respective parties, the material available on record and considering the fact that on 04.02.2026, learned counsels for the parties were ready to argue the appeal on merits, for that a week's time was prayed but learned counsel for the appellant instead of arguing the appeal on merits insisted that the bail application may be decided as he has specific instructions from his client not to argue the appeal on merits but to press the bail application, we are not inclined to pass an order suspending the sentence of the appellant.

20. The Hon'ble Supreme Court has consistently observed that the application for suspension of sentence should be disposed of if in any case the appeal could not be heard finally for any cogent reasons. If the counsels are ready to argue the criminal appeal or the criminal revision on merits, the application for suspension of sentence may not be given preference over final disposal of the criminal appeal or the criminal revision. As per our considered opinion, endeavour of the Court should be to decide the criminal appeal at the earliest if parties are ready to argue the appeal on merits.

21. In the present case, Sri Vinod Kumar Shahi, learned Additional Advocate General, assisted by Sri Anurag Verma, learned AGA-I and Sri Nadeem Murtaza, learned counsel for the victim were ready to address the Court on the merits of the criminal appeal as well as the criminal revision and learned counsel for the appellant had also shown his willingness to argue the appeal on merits, then such hearing of the appeal and the criminal revision may not be postponed on the choice of the appellant. Besides, on various dates, learned counsels for the parties argued the case at substantial length. We cannot permit the appellant to adopt delaying tactics in disposal of the criminal appeal or the criminal revision.

22. Therefore, in the light of what has been considered herein above and without entering into merits of the criminal appeal and the criminal revision, which is connected with this criminal appeal, we hereby **reject** the application for suspension of sentence.

23. Since the matter has already been argued at substantial length by the learned counsels for the parties, therefore, we fix the date on 19.08.2026 for final disposal of this criminal appeal and the connected criminal revision.

(2026) 7 ILRA 751
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 23.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE RAJEEV BHARTI, J.

Criminal Appeal No. 372 of 2018

Neerajpal **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order base upon circumstantial evidence.

Headnotes

Indian Penal Code, 1860-Ss. 302, 376 and 201-Murder and rape-Circumstantial evidence-Present case admittedly based entirely on circumstantial evidence-no eye-witness- last seen theory-material inconsistencies and improvements on vital aspects-lacks independent corroboration-last seen circumstances not established beyond reasonable doubt-recoveries-no satisfactory independent corroboration-possibility of planting cannot be ruled out-non-examination of FSL expert fatal for prosecution case-medical evidence conclusively proves that deceased was raped and murdered- but does not identify perpetrators-D.N.A. evidence cannot be considered in isolation without independent corroboration-last seen circumstances not proved-material infirmities in investigation-unexplained delay in forwarding FIR to Magistrate-prosecution failed to establish continuous and unbroken chain of circumstances -prosecution failed to prove case beyond reasonable doub-Appellant entitled to benefit of doubt-conviction and sentence set aside-Appellant acquitted.
Appeal allowed. (E-9)

Case Law Cited

1. State of U.P. v. Kishanpal, (2008) 16 SCC 73
2. Sarwan Singh v. State of Punjab, (1976) 4 SCC 369
3. Subhash Chand v. State of Rajasthan, (2002) 1 SCC 702
4. Rahul v. State of Delhi, Ministry of Home Affairs, (2023) 1 SCC 83
5. Sandeep v. State of U.P., (2012) 6 SCC 107
6. Santosh Kumar Singh v. State, (2010) 9 SCC 747
7. Raj Kumar v. State (NCT of Delhi), (2023) 17 SCC 95
8. Attavellai @ Devakar v. State of Tamil Nadu, 2025 INSC 845

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

List of Keywords

Circumstantial evidence; complete and unbroken chain; last seen theory; independent corroboration; D.N.A. evidence; forensic evidence; chain of custody.

Appearances of parties

Counsel for Appellant(s): Krishna Kumar Singh, Ankit Kumar Trivedi, Anuj Dayal, Manisha Trivedi, Mohammad Salim Khan, Rajat Pratap Singh, Smriti.
Counsel for Respondent(s): S.P. Singh, A.G.A.

(Delivered by Hon'ble Rajeev Bharti, J.)

1. The instant Criminal Appeal under Section 374(2) Cr.P.C. has been filed against the Judgment and Order dated 16.11.2017, passed by the learned Additional Sessions Judge/Fast Track Court, Hardoi passed in S.T. No.236 of 2012, arising out of Case Crime No.958 of 2011, Police Station- Pihani, District- Hardoi, convicting and sentencing the appellant to undergo life imprisonment under Section 302 I.P.C. with a fine of Rs.20,000/- and in default of payment of fine to further undergo one year simple imprisonment. The appellant was further convicted and sentenced to undergo imprisonment for ten years with a fine of Rs.5000/- under Section 376 I.P.C. and in default of payment of fine to further undergo six months′ simple imprisonment. The appellant was further convicted and sentenced to undergo three years with a fine of Rs.3000/- under Section 201 I.P.C. and in default of payment of fine to further undergo two months′ simple imprisonment. All the sentences were ordered to run concurrently. However, co-accused, namely, Pappu @ Chandrapal was acquitted from all the charges by the learned Trial Court.

Factual matrix of the case

2. On 30th October 2011 at about 2:00 P.M., the deceased, a minor girl aged about 14 years′, daughter of the complainant Amar Pal, resident of Village Khijir Nagar, Police Station Pihani, District Hardoi, went to the agricultural field to collect fodder (chara). When she did not return home till evening, her father - Amar Pal (P.W.1) along with other villagers, started searching for her. During the search, Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3) informed the informant that they had last seen the deceased cutting grass in the filed of Ram Kumar where the accused Neerajpal and Pappu @ Chandrapal were allegedly roaming nearby.

3. The search party thereafter proceeded towards the place indicated by the said witnesses. Near the sugarcane filed of Ram Kumar, they allegedly found a hairband, a pair of slippers belonging to the deceased, a brown colour purse containing the driving licence of accused - Neerajpal and a mobile phone. While continuing the search, they noticed the dupatta of the deceased lying nearby pond. Upon entering the pond, the dead body of the deceased was recovered. It was alleged that after committing rape and murder, the accused persons had concealed the dead body in the pond with an intention to hush up the matter.

4. On the basis of written report, submitted by Amar Pal (P.W.1), Case Crime No.958 of 2011, under Sections 302, 201, 376 I.P.C. was registered at Police Station Pihani, District- Hardoi against accused- Neerajpal and Pappu @ Chandrapal. The Investigating Officer conducted the inquest proceedings, prepared the necessary police papers and sent the dead body for post-mortem. During investigation, the Investigating Officer prepared the site plan, collected the articles allegedly recovered from the place of occurrence and recorded the statements of the witnesses under Section 161 Cr.P.C. The post-mortem examination disclosed ante-mortem injuries on the neck and private

parts of the deceased. The cause of death was opined to be asphyxia as a result of throttling. Vaginal smear slides and swabs were collected and preserved for forensic examination.

5. During the course of investigation, accused- Neerajpal and co-accused Pappu @ Chandrapal were arrested on 02.11.2011, it is alleged that on the pointing out of accused- Neerajpal, his pant and slippers were recovered from the sugarcane field. Blood samples of both the accused were thereafter collected for D.N.A. profiling under Section 53-A Cr.P.C. and were forwarded to the Forensic Science Laboratory for examination. After completion of investigation, the Investigating Officer submitted charge sheet against both the accused for offences punishable under Sections 376, 302 and 201 I.P.C. The case being exclusively triable by the Court of Sessions, hence it was committed to the Court of Sessions, where charges were framed against the accused-persons. The accused denied the charges and claimed trial.

6. To establish the case, the prosecution examined twelve witnesses and proved the documentary evidence including the tahrir, chik FIR, recovery memos, inquest report, site plan, post-mortem report, medical evidence, DNA related documents and the report of the Forensic Science Laboratory. Upon submission of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded wherein they denied the prosecution allegations, pleaded false implication and asserted that false evidence had been fabricated against them in connivance with the police.

7. After appreciating the oral and documentary evidence on record, the learned Trial Court by judgment and order dated 16.11.2017 convicted the appellant- Neerajpal under Sections 302, 376 and 201 I.P.C. and sentenced him accordingly, while co-accused Pappu @ Chandrapal has been acquitted from the charges on the above mentioned sections. Aggrieved thereby, appellant-Neerajpal preferred the present appeal before this Court.

Deposition of Prosecution Witnesses and Defence Witnesses

8. Amar Pal (P.W.1), the informant and father of the deceased, deposed that on 30.10.2011 at about 2:00 P.M., his minor daughter (deceased) had gone to the field situated towards the western side of the village for cutting fodder (chara), as she did not return till evening, he along with other villagers started searching for her. During the search, Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3) informed him that they had seen the accused Neerajpal and Pappu @ Chandrapal near the place where the deceased was cutting fodder. Thereafter, the slippers of the deceased, a purse containing the driving licence of the accused-Neerajpal and one G-9 mobile phone were allegedly recovered from the sugarcane field of Ram Kumar, while the dead body of the deceased was recovered from the nearby pond. He proved the written report -Tahrir (Ext.Ka-1), recovery memo and identified the material exhibits. In his cross-examination, he admitted that he had not himself seen either of the accused with the deceased or committing the offence and that the allegations in the FIR were founded upon the information given by Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3).

9. Pradeep Kumar (P.W.2) deposed that while returning from his field along with Manoj Kumar (P.W.3) at about 2 -3 P.M., he had seen the deceased cutting fodder and the accused

Neerajpal and Pappu @ Chandrapal roaming nearby. Later, when the deceased could not be traced, he informed the informant about the presence of both the accused near the place of occurrence. During cross-examination, he admitted that the informant was his real uncle. He was subjected to lengthy cross-examination, wherein several omissions and inconsistencies regarding the occurrence, the clothes worn by the deceased and the surrounding circumstances were brought on record.

10. Manoj Kumar (P.W.3) did not support the prosecution case. He categorically stated that he was not present in the village on the date of occurrence, had not seen the deceased or the accused near the field and had never furnished any such information to the informant. He denied this statement regarding under Section 161 Cr.P.C. and was declared hostile by the prosecution.

11. Kamal Kishore (P.W.4) also denied his earlier statement and also denied having witnessed the accused carrying the body of the deceased or throwing it into the pond. He further denied witnessing the alleged recovery of the clothes of accused Neerajpal and stated that his signatures had been obtained on blank papers. He was also declared hostile by the prosecution.

12. Ramasarey (P.W.5), a witness to the recovery memo and inquest proceedings, did not support the prosecution. He denied the alleged recoveries and asserted that his signature had been obtained on blank papers. He further denied having made any statements to the Investigating Officer implicating the accused and was declared hostile.

13. Vijay Kumar (P.W.6), in whose name the Airtel SIM card recovered from the mobile phone was allegedly issued, denied having obtained the SIM card or having handed it over to the accused- Neerajpal. He also denied knowing the accused and was declared hostile by the prosecution.

14. Dr. Amarjeet Singh Ajmani (P.W.7), who conducted the post-mortem examination, found ante-mortem injuries over the neck and extensive injuries on the private parts of the deceased. He opined that the cause of death was asphyxia resulting from ante-mortem strangulation; vaginal swabs and slides were preserved for microscopic examination and D.N.A. analysis. In his cross-examination, he stated that the time of death could also be consistent with the night of 30.10.2011 and admitted that no mud, moss or water hyacinth was found on the body.

15. S.I. Chheda Lal (P.W.8) proved the inquest proceedings and the related documents. He stated that panchnama was prepared and the dead body was sent for post-mortem. During cross-examination, he admitted that the name of the accused did not find place in the inquest papers and that the panchnama proceedings were conducted at the residence of the informant.

16. Dr. Praveen Kumar (P.W.9) corroborated the evidence of P.W.7 regarding the post-mortem examination and proved the collection of vaginal swabs and blood samples of both accused for D.N.A. profiling. During cross-examination, he admitted that the blood samples had actually been drawn by a Laboratory Technician and also stated that delay in testing could adversely affect the integrity of the samples.

17. S.I. Sarvendra Nath Bargah (P.W.10), the Investigating Officer deposed regarding the registration of the case, inspection of the place of occurrence, preparation of site plans, recovery of the articles from the spot, arrest of both the accused, recovery of clothes at the instance of the accused- Neerajpal, dispatch of exhibits for forensic examination and submission of charge sheet. In cross-examination, he admitted that there was no eye-witness to the occurrence, that the exact place and time of the incident could not be ascertained during investigation and that nothing incriminating was recovered from the accused- Chandrapal. He further admitted that no effort was made to verify the ownership of the recovered clothes or to establish the connection of the recovered mobile phone with accused Neerajpal through independent evidence.

18. S.I. Raghvendra Singh (P.W.11) proved the chik FIR and corresponding general diary entries relating to registration of the case. During cross-examination, he admitted that the special report submitted before the Court of Chief Judicial Magistrate on 09.11.2011 and relevant column regarding dispatch from the police station did not mention the date of dispatch.

19. Kamlesh Kumar (D.W.1), examined in defence, deposed that there existed political rivalry between the families of the informant and accused- Pappu @ Chandrapal, arising out of Block Development Committee Elections. According to him, ever since the said election, relations between the two groups had remained strained, resulting in false implication of the accused due to previous enmity.

Submissions of learned counsel for the appellant

20. Learned counsel for the appellant vehemently assailed the judgment and order of conviction, passed by the learned Trial Court, contending that the same is contrary to the evidence available on record and suffers from serious factual as well as legal infirmities. It has been submitted that the prosecution has utterly failed to establish a complete and unbroken chain of circumstances so as to bring the guilt of the appellant beyond all reasonable doubts. The conviction, it was urged, rests mainly on suspicion and conjectures which can never substitute legal proof.

21. It was further submitted that the entire prosecution case hinges upon the evidence of the alleged last seen witness, namely, Pradeep Kumar (P.W.2), who is admittedly a close relative of the informant and, therefore, an interested witness. His testimony, according to the learned counsel, is replete with material contradictions, inconsistencies and improvements, rendering it wholly unreliable. It was argued that the only other alleged last seen witness, Manoj Kumar (P.W.3), did not support the prosecution case and was declared hostile. In the absence of trustworthy corroboration, the testimony of Pradeep Kumar (P.W.2) could not have been made the sole basis for recording conviction. Learned counsel further contended that the alleged recoveries relied upon by the prosecution did not inspire confidence. The recovery witness, namely, Kamal Kishore (P.W.4) and Ramasarey (P.W.5), turned hostile and denied the alleged recoveries. The independent recovery witness was withheld by the prosecution without any explanation. It was submitted that the alleged recovery of the driving licence and mobile phone from the place of occurrence and the subsequent recovery of the clothes at the instance of appellant- Neerajpal were not proved in accordance with law and could not be treated as incriminating circumstances against the appellant.

22. It was next submitted that the prosecution failed to establish any nexus between the recovered mobile phone and the appellant -Neerajpal. Vijay Kumar (P.W.6), in whose name the SIM card was allegedly issued, completely disowned the prosecution case and was declared hostile. Despite obtaining the call detail records, the Investigating Officer failed to examine any witness or produce any material connecting the mobile phone or SIM card with appellant- Neerajpal. Consequently, the alleged recovery of the mobile phone loses all evidential significance.

23. Learned counsel for the appellant further submitted that the investigation suffers from grave lapses. No eye witnesses to the occurrence were found during investigation. The Investigating Officer himself admitted that the exact place and time of occurrence could not be ascertained. It was also submitted that the FIR was forwarded/produced before the court of the learned Chief Judicial Magistrate after an unexplained delay, the inquest proceedings suffered from material irregularities, and the prosecution failed to establish who had actually recovered the dead body from the pond. These serious lapses, according to the learned counsel, cast a substantial doubt on the fairness of the investigation and the genuineness of the prosecution story. Learned counsel also questioned the evidentiary value of the D.N.A. evidence by submitting that the prosecution failed to prove the chain of custody of the biological samples beyond doubt. It was urged that the blood samples were actually obtained by the Laboratory Technician, who was never examined, and the prosecution failed to establish that the samples remained intact throughout the process. The learned Trial Court, therefore, erred in placing implicit reliance upon the D.N.A. report without first satisfying itself about the sanctity of the sampling and forwarding procedure.

24. She further pointed out that the guidelines laid down by Hon'ble the Apex Court in ***Attavellai @ Devakar v. State of Tamil Nadu,*** **reported in 2025 INSC 845**, are mandatory in nature and are required to be followed strictly to ensure the integrity and sanctity of the chain of custody of D.N.A. evidence. It is submitted that the Hon'ble Supreme Court, while expressing concern over the absence of a uniform procedure for handling D.N.A. evidence, has issued comprehensive directions to be followed in all cases involving DNA evidence. The relevant paragraphs are reproduced below:-

"44. This lack of a common procedure to be followed is concerning. As such, we issue the following directions, which shall be followed henceforth, in all cases where DNA Evidence is involved-

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science

laboratory with dispatch and in any case not later than 48-hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.

3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not

have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.

25. Lastly, it was submitted that the learned Trial Court failed to appreciate the defence evidence in its proper perspective. Kamlesh Kumar (D.W.1) established the existence of previous political rivalry between the family of the informant and the accused, thereby lending support to the defence plea of false implication. It was, therefore, urged that the prosecution having failed to prove its case beyond reasonable doubt, the impugned judgment of conviction and sentence is liable to be set aside and the appellant- Neerajpal deserves to be acquitted of all the charges.

Submission of learned A.G.A.

26. Per contra, Sri S.P. Singh, learned A.G.A. appearing for the State supported the impugned judgment and order of conviction and submitted that the learned Trial Court has rightly appreciated the oral as well as documentary evidence available on record and has recorded the conviction upon due consideration of the entire material. It was contended that the findings recorded by the learned Trial Court are based upon cogent evidence and do not suffer from any perversity, illegality or manifest error warranting interference by this Court in exercise of its appellate jurisdiction.

27. Learned A.G.A. submitted that the prosecution has successfully established a complete chain of circumstantial evidence pointing unerringly towards the guilt of the appellant. According to him, the evidence of Pradeep Kumar (P.W.2), who had last seen the appellant in the vicinity of the place where the deceased was cutting fodder, shortly before her disappearance, constitutes a vital circumstance. Merely because Pradeep Kumar (P.W.2) is a relative of the informant, his testimony cannot be discarded, particularly when it inspires confidence and withstands the test of cross-examination.

28. It was further submitted that the recoveries effected during the course of investigation, namely, the purse containing the driving licence of the appellant- Neerajpal and mobile phone recovered from the place of occurrence and the subsequent recovery of the clothes of appellant-

Neerajpal at his pointing out, constitute incriminating circumstances corroborating the prosecution case. These recoveries read conjointly with the medical and forensic evidence, complete the chain of circumstances establishing the complicity of the appellant beyond reasonable doubt.

29. Learned A.G.A. further contended that the post-mortem report clearly establishes that the deceased had been subjected to forcible sexual assault and had died due to ante-mortem strangulation. The D.N.A. evidence also lends scientific corroboration to the prosecution version and was rightly relied upon by the learned Trial Court. It was submitted that there is no material on record to doubt the authenticity or reliability of the forensic evidence.

30. Learned A.G.A. further submitted that even assuming certain omissions or irregularities had occurred during the investigation, the same cannot by themselves constitute a ground for acquittal when the substantive evidence adduced by the prosecution otherwise inspires confidence. It was argued that defects in investigation cannot eclipse otherwise reliable and trustworthy evidence, nor can they enure to the benefit of the accused where the prosecution has otherwise succeeded in proving its case beyond reasonable doubt. Learned A.G.A., therefore, submitted that the impugned judgment is well reasoned and based upon a proper appreciation of evidence on record. It was accordingly prayed that the appeal being devoid of merit be dismissed and the conviction and sentence awarded by the learned Trial Court be affirmed.

Analysis

31. We have given our thoughtful consideration to the rival submissions advanced by the learned counsel for the parties and have meticulously perused the entire evidence available on record, including the oral and documentary evidence, the medical and forensic evidence, the impugned judgment and the record of the Trial Court.

32. At the outset, it is apposite to note that the present case is admittedly based entirely on circumstantial evidence, there being no eye-witness to the occurrence. It is equally undisputed that the conviction of the appellant was, presumably, based upon three incriminating circumstances, namely, (i) the evidence relating to the last seen theory; (ii) the recoveries allegedly effected during the course of investigation and (iii) the D.N.A./forensic evidence. The correctness of the findings recorded by the learned trial court, therefore, has to be examined in the light of the settled principles governing a case resting solely upon circumstantial evidence.

33. It is well settled that, in a case based upon circumstantial evidence, every incriminating circumstance relied upon by the prosecution must be fully established, all such circumstances must form a complete and unbroken chain pointing only towards the guilt of the accused and the chain must be of such a conclusive nature as to exclude every hypothesis consistent with the innocence of the accused. Suspicion, however raised, cannot take the place of legal proof, nor can conviction be founded upon conjectures or surmises. The prosecution must stand on the strength of its own evidence and cannot derive advantage from any witness in the defence.

34. In the present case, the prosecution seeks to establish the guilt of the appellant primarily on the basis of the testimony of Pradeep Kumar (P.W.2), who is sole witness supporting the

prosecution on the aspect of the last seen circumstance, inasmuch as Manoj Kumar (P.W.3), who was cited as another witness to the same circumstance, did not support the prosecution case and was declared hostile. Likewise, the prosecution has relied upon the alleged recovery of driving licence and mobile phone from the place of occurrence and the subsequent recovery of the clothes of appellant- Neerajpal, besides placing reliance upon the medical and D.N.A. evidence. Whether these circumstances have been satisfactorily proved and whether they collectively constitute a complete chain of circumstances is the principal issue requiring determination in the present appeal.

35. Accordingly, the evidence adduced by the prosecution shall now be examined under the following heads:-

(i) Whether the prosecution has successfully established the "last seen" circumstances.

(ii) Whether the recoveries allegedly effected during investigation inspire confidence and can be treated as incriminating circumstances.

(iii) Whether the medical and D.N.A. evidence conclusively connects the appellant with the commission of the offence.

(iv) Whether the cumulative effect of the proved circumstances constitute a complete chain excluding every hypothesis other than the guilt of the appellant.

Whether the prosecution has successfully established the "last seen" circumstances

36. The first and foremost circumstance relied upon by the prosecution is the "last seen theory" which forms the foundation of the prosecution case. The learned Trial Court has substantially found the conviction of the appellant on the testimony of Pradeep Kumar (P.W.2), treating him as a principal witness of the last seen circumstances. Since the present case relies entirely upon circumstantial evidence, it becomes necessary to examine the credibility and evidentiary value of his testimony with greater care and caution. It is noteworthy that Pradeep Kumar (P.W.2) is the only witness who has supported the prosecution on the aspect of the "last seen" theory as Manoj Kumar (P.W.3) who was cited as another witness to the same circumstance, as completely resiled from the prosecution case and was declared hostile. Thus, the entire prosecution case so far as the "last seen" circumstance is concerned, relies solely upon the testimony of Pradeep Kumar (P.W.2). A careful reading of the evidence of Pradeep Kumar (P.W.2) reveals that he is admittedly the nephew of the informant- Amarpal and the deceased was his cousin, but merely because the witness is related to the deceased, his testimony cannot be discarded solely on that ground. The settled position of law is that the evidence of a related witness is not inadmissible; however, it is required to be scrutinized with greater care and caution. If upon such scrutiny, the testimony is found to be cogent, trustworthy and inspire confidence, it can safely be relied upon. Conversely, where a material contradiction or inherent improbabilities exist, the Court must seek independent corroborations before acting upon such evidence; in this regard, reliance may be placed upon a judgment of Hon'ble Apex Court in the case of **State of U.P. vs. Kishanpal & Ors, reported in (2008) 16 SCC 73**, relevant para are being reproduced below: -

"18. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded.

19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness.

20. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. A foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible."

(Emphasis supplied)

37. Furthermore, it is important to mention that even in the case of an interested witness, the corroboration is done by the rule of prudence, not by the rule of law, as in a similar instance is taken by the Apex court in the case ***Sarwan Singh vs. State of Punjab reported in (1976) 4 SCC 369***, relevant para are being reproduced below: -

"10. The next argument by learned Counsel for the appellants was that the evidence of the eye-witnesses consisted of partisan evidence and should not, therefore, be relied upon, particularly because the evidence showed that there were two opposing factions in the village - one led by the deceased and the other by the accused. Mr. Hardy, however, fairly conceded that even though the eye-witnesses may have belonged to the group of the deceased there was nothing to show that the two groups were on inimical terms with each other, but he contended that the fact that the witnesses came from one particular group was by itself sufficient to show the interested nature of the evidence. In our opinion this argument is not based on a correct appreciation of the evidence. To begin with, it cannot be said that P.W. 8 Gurdev Singh and P.W. 9 Pal Singh were interested or partisan witnesses. All that the accused have been able to show is that P.W. 8 Gurdev Singh was on visiting terms with the deceased. In villages where population is scanty every villager

is usually on visiting terms with another villager, unless there is animus between them. That by itself is not sufficient to label him as being a partisan witness. So far as P.W. 9 Pal Singh is concerned, there is positive evidence to show that he was not at all an interested witness but was a completely independent witness P W. 2 Ajaib Singh the first eve-witness has stated at page 40 of Paner Book No. II that Pal Singh was not on visiting terms with Jit Singh prior to the occurrence. When Mr Hardy drew our attention to this statement he seemed to suggest that the word "not" was printed by mistake and what really was recorded by the Judge was that Pal Singh was on visiting terms with Jit Singh We have, however, perused the original record and we find that the word "not" is present there also. What has happened is that the word "on" after "not" seems to have been inadvertently omitted. But then the sentence read as a whole clearly indicates that Pal Singh was not on visiting terms with Jit Singh. There is no evidence to show that Pal Singh was in any way closely connected or interested in the deceased, apart from the fact that he was a co-villager. In these circumstances, even if the evidence of Ajaib Singh and Gurdev Singh be treated to be interested and partisan, since their evidence is corroborated by the evidence of Pal Singh who is an independent witness. The infirmity from which the evidence of P.W.2 Ajaib Singh and P.W.8 Gurdev Singh suffered disappears. Moreover, it is not the law that the evidence of an interested witness should be equated with that of tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the Courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the Court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at mid-night in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. We, however, need not dilate on this point, because assuming as we have said that P.W. 2 Ajaib Singh and P.W.8 Gurdev Singh were interested witnesses, here we have the fact that their evidence has been clearly and consistently corroborated on all points by P.W.9 Pal Singh who is an independent witness and who bore no animus whatsoever against the accused. The learned Additional Sessions Judge has, however, overlooked this important aspect of the case and we find no reason whatsoever to distrust the evidence of Pal Singh even on its intrinsic merit. We have carefully perused the evidence of P.W.2 Ajaib Singh. P.W.8 Gurdev Singh and P.W.9 Pal Singh and we are satisfied that their evidence is creditworthy and there are no strong or cogent reasons why their evidence should be completely discarded."

38. In the present case, Pradeep Kumar (P.W.2) was subjected to an extensive cross-examination. A close scrutiny of his disposition discloses material inconsistencies and improvements on vital aspects of the prosecution case. During one part of his testimony, he stated that the deceased was wearing a salwar-kurta when he allegedly saw her cutting fodder, whereas during his subsequent deposition, he expressed his inability to state what the deceased was wearing. Likewise, there are inconsistencies regarding the implements allegedly being used by the deceased for cutting fodder and the surrounding circumstances in which the accused were allegedly seen. These are not minor discrepancies, attributable to lapse of memory, but relate to material facts forming the substratum of the prosecution case.

39. Another significant circumstance which weakens the prosecution case is that Pradeep Kumar (P.W.2) merely stated that he had seen the appellants roaming near the place where the deceased was cutting fodder. He did not depose that the deceased was in the exclusive company of either of the appellants or that they were seen proceeding together. The expression "last seen" together supposes proximity of time and place, coupled with circumstances indicating that the deceased was last seen alive in the company of the accused. The evidence of Pradeep Kumar (P.W.2) falls short of satisfying this requirement. At best it establishes the presence of the appellant in the vicinity of the agricultural field, which by itself cannot construe the incriminating circumstances of last seen together. It is equally significant that the informant- Amarpal (P.W.1) admitted in his cross-examination that he had not himself seen either of the appellant with the deceased nor had he witnessed the occurrence. The FIR was lodged solely on the basis of information allegedly furnished by Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3). Since Manoj Kumar (P.W.3) had not supported the prosecution, the very foundation of the FIR in so far as the "last seen" circumstance is concerned, stands materially weakened.

40. The Hon'ble Apex Court has consistently held that the "last seen" theory is a weak kind of evidence and cannot by itself form the sole basis of conviction unless it is supported by other incriminating circumstances, completing the chain of evidence. The evidentiary value of such a circumstance depends upon the proximity of time between the accused and the deceased being seen together and the recovery of the dead body coupled with reliable corroborative evidence. Where the evidence of "last seen" witness itself is doubtful or suffers from material contradictions, it would be unsafe to sustain the conviction solely on that basis.

41. In the facts of the present case, we find that the testimony of Pradeep Kumar (P.W.2) does not inspire the daily of components required for sustaining a conviction in a case resting entirely on circumstantial evidence. His testimony suffers from material inconsistencies, lacks independent corroboration and is further weakened by the hostile testimony of Manoj Kumar (P.W.3), who was the only other witness of the alleged "last seen" circumstances. Consequently, the prosecution has failed to establish the last seen together circumstances beyond reasonable doubt. Accordingly, the first incriminating circumstance relied upon by the prosecution cannot be held to have been proved with the degree of certainty required in criminal jurisprudence.

Whether the recoveries allegedly effected during investigation inspire confidence and can be treated as incriminating circumstances

42. The second circumstance relied upon by the prosecution pertains to the recoveries allegedly effected during the course of investigation. The prosecution seeks to connect the appellants with the crime through two sets of recoveries. (i) The recovery made on 31.10.2011 from the place of occurrence comprising a pair of sleepers of the deceased, a hair band, a purse containing the driving licence of appellant- Neerajpal and a G-9 mobile phone and (ii) the recovery allegedly made on 02.11.2011 at the pointing out of appellant-Neerajpal comprising a pair of pants and a pair of local slippers. According to the prosecution, these recoveries constitute vital incriminating circumstances linking the appellant with the commission of the offence.

43. Having carefully scrutinized the evidence relating to the aforesaid recoveries, we find ourselves unable to concur with the findings recorded by the learned Trial Court.

44. The first recovery was allegedly witnessed by Amarpal (P.W.1), Ramasarey (P.W.5) and one Rambhajan. Significantly, Ramasarey (P.W.5), one of the attesting witnesses, did not support the prosecution and categorically denied that any recovery had been effected in his presence. He further deposed that his signature had been obtained on blank papers and denied having witnessed the seizure of the articles relied upon by the prosecution. He was, therefore, declared hostile.

45. Equally significant is the fact that Rambhajan, who was an independent witness of the alleged recovery, was not examined by the prosecution. No explanation whatsoever has been furnished for withholding this material witness. It is well settled that where independent witnesses to a recovery are available, but are not examined without any plausible explanation, the Court is required to examine the prosecution version with great circumspection, particularly when the remaining witness is an interested witness.

46. Consequently, the only witness supporting the first recovery is Amarpal (P.W.1), who is not only the informant, but also the father of the deceased. Although the testimony of a related witness cannot be discarded solely on account of his relationship where the recovery itself is disputed, and the independent witnesses have been withheld while another recovery witness has turned hostile, prudence demands corroboration from independent evidence, which is conspicuously absent in the present case. The prosecution has further relied upon the recovery of a G-9 mobile phone allegedly belonging to the appellant - Neerajpal. However, this circumstance also does not withstand judicial scrutiny. The investigation revealed that the SIM card inserted in the said mobile phone was in the name of Vijay Kumar (P.W.6). When examined before the Court, Vijay Kumar (P.W.6) categorically denied having obtained the SIM card in question or having ever handed it over to the appellant-Neerajpal. He further denied even knowing the appellant and was declared hostile by the prosecution.

47. Though the Investigating Officer obtained the call detail records of the mobile phone, no efforts were made to establish that the mobile phone had actually been used by appellant-Neerajpal. Neither were the call detail records analysed, nor were any subscribers, contacts or other independent witnesses examined to connect the appellant with the alleged mobile phone. In the absence of any such evidence, the mere recovery of a mobile phone from the place of occurrence cannot be treated as an incriminating circumstance against the appellant.

48. The prosecution has also relied upon the recovery of the driving licence of the appellant-Neerajpal from the sugarcane field. While the presence of the driving licence at the place of occurrence may undoubtedly have given rise to the suspicion, suspicion, however strong, cannot constitute successful proof. Apart from the testimony of Amarpal (P.W.1), there is no independent evidence establishing the manner in which the driving licence came to be recovered from the place of occurrence. Furthermore, the defence has seriously questioned this recovery, pointing to glaring contradictions. Amarpal (P.W.1) testified that the Investigating Officer, Sarvendra Nath Bargah (P.W.10), visited the accused's residence on 31.10.2011, the very day the inquest was conducted, and the first recovery was made. In contrast, Sarvendra Nath Bargah (P.W.10) himself stated that

he went to the accused's house only on 01.11.2011. This inconsistency becomes crucial because the driving licence and other articles (claimed to be part of the first recovery on dated 31.10.2011) were allegedly recovered near the crime spot. Yet, the record does not disclose whether the Investigating Officer first visited the accused's house and thereafter proceeded to the crime scene, or vice versa. The absence of this sequence renders the recovery highly doubtful. If indeed the Investigating Officer went to the accused's house immediately after the inquest and then claimed recovery near the crime scene, the possibility of planting cannot be ruled out. This unexplained discrepancy undermines the credibility of the recovery and casts serious doubt on its authenticity.

49. The suspicion is further strengthened by other irregularities: Pradeep Kumar (P.W.2), the key "last seen" witness, had his statement recorded only after a delay of 7-8 days, despite his importance. It is needless to mention that the investigating officer, while deposing in court, needs to explain the investigation process step by step; a similar view was taken by Hon'ble the Apex Court in the case of **Subhash Chand vs. the State of Rajasthan**, reported in **(2002) 1 SCC 702**, where the Apex Court clearly highlighted the importance of the investigating officer adducing evidence in court, explaining step by step how the investigation proceeded. The relevant para is being reproduced below :-

26. Before parting with the case, we would like to place on record an observation of ours, touching an aspect of the case. There are clueless crimes committed. The factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an investigating officer. A vigilant investigating officer, well-versed with the techniques of the job, is in a position to collect the threads of evidence, finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to hilt in a court of law. The evidence of investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances, treating them as of 'beyond doubt' evidentiary value.

50. In the absence of reliable corroboration and in view of the deficiencies noticed in the recovery proceedings, these circumstances by themselves cannot conclusively establish the involvement of the appellant in the commission of the offence.

51. So far as the second recovery on dated 02.11.2011 of a pant and a pair of slippers allegedly made at the pointing out of appellant- Neerajpal is concerned, the prosecution case suffers from similar infirmities. The alleged recovery witnesses - Manoj Kumar (P.W.3), Kamal Kishore (P.W.4) did not support the prosecution and were declared hostile. They denied witnessing any recovery and asserted that their signatures had been obtained on blank papers. Consequently, the only witness supporting the recovery is once again Amarpal (informant- P.W.1), whose testimony, for the reasons allegedly discussed, requires independent corroboration.

52. Moreover, the Investigating Officer admitted during cross-examination that the recovered clothes and slippers did not bear any distinctive identification marks. Although a tailor′s label was stitched on the pants, no investigation was conducted to ascertain for whom the pants had been stitched or whether it belongs to the appellant- Neerajpal. Likewise, no forensic examination was conducted to connect the recovered articles with the crime. These omissions assume significance in a case resting entirely upon satisfactory evidence.

53. The recoveries relied upon by the prosecution suffer from serious evidentiary deficiencies. Material recovery witnesses have either turned hostile or have not been examined. No satisfactory independent corroboration had been adduced, and the prosecution has failed to establish an unbroken chain and unbroken nexus between the recovered articles and the appellant. Consequently, the alleged recoveries cannot be regarded as reliable incriminating circumstances capable of completing the chain of circumstantial evidence. We are, therefore, of the considered view that the prosecution has failed to prove the recoveries in the manner known to law, and the learned Trial Court was not justified in placing implicit reliance upon them for recording the conviction of the appellant.

Whether the medical and D.N.A. evidence conclusively connects the appellants with the commission of the offence

54. The next circumstance relied upon by the prosecution is the medical and forensic evidence, particularly, the post-mortem report and the D.N.A. report. There can be no dispute with the proposition that scientific evidence, when duly proved and supported by an unbroken chain of custody, constitutes a valuable piece of evidence. Equally well settled, however, is that such evidence not only establishes the commission of offence but must also conclusively connect the accused with its commission.

55. In the present case, Dr. Amarjeet Singh Ajmani (P.W.7), who conducted the post-mortem examination, found contusions over the neck, fractures on the hyoid bone, lacerations over the genital region and rupture on the hymen. He opined that the deceased had died due to asphyxia as a result of ante-mortem strangulation and that she had been subjected to forcible sexual intercourse prior to her death. Vaginal smear and slides were preserved for forensic examination and D.N.A. profiling. Thus, the medical evidence unequivocally established that the deceased was subjected to sexual assault and homicidal death. However, the crucial question before this Court is not whether rape and murder were committed, but whether the prosecution has succeeded in proving that it was the appellant who committed those offences.

56. Learned A.G.A. for the State has placed reliance upon the decision of Hon′ble the Apex Court in the case(s) of **Sandeep vs. State of U.P., (2012) 6 SCC 107** and **Santosh Kumar Singh vs. State, (2010) 9 SCC 747**.

57. To establish this link, the prosecution relied upon the D.N.A. evidence. Dr. Praveen Kumar (P.W.9) deposed that vaginal swab of the deceased and blood samples of both the accused were collected and forwarded for D.N.A. examination. He proved the relevant documents prepared in this regard. Nevertheless, during cross-examination he admitted that the blood samples had

actually been drawn by a laboratory Technician whose name does not find mention in the report and who was never examined before the Court. He further admitted that delay in testing biological samples could affect their integrity.

58. Furthermore, it is also important to point out that biological samples were collected from the deceased on 31.10.2011, while blood samples from the accused were obtained on 03.11.2011. Both sets of samples were forwarded to the Forensic Science Laboratory (FSL) on 05.11.2011. Thus, the samples remained in the custody of the police authority for approximately five days. However, neither oral testimony nor documentary evidence clarifies where the samples were deposited during this period, specifically whether they were kept in the *Maalkhana* or elsewhere. Surprisingly, the *Maalkhana-in-Charge* was not examined. The evidence on record further reveals that the prosecution has not examined any witness from the Forensic Science Laboratory to establish the manner in which the samples were received, preserved, analysed and examined. Moreover, it is important to place reliance on a decision of Hon'ble the Apex Court in the case of ***Rahul vs. State of Delhi, Ministry of Home Affairs & Anr.*** *reported in* ***(2023) 1 SCC 83***. While dealing with the issue concerning the evidentiary value of DNA reports, it has been held that D.N.A. profiling reports cannot be admitted in evidence ipso facto under Section 293 Cr.P.C, and it is necessary for the prosecution to prove that the D.N.A. profiling techniques were reliably applied by the expert. The relevant excerpts from the said judgment are reproduced herein below for the sake of ready reference: -

"36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the D.N.A. profiling dated 18-4-2012 (Ext. P-23/1), giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant accused. The Court finds substance in the said submissions made by the Amicus Curiae. The D.N.A. evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.

37. x x x x x x x

38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27 2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion."

(Emphasis supplied)

59. Furthermore, the most disturbing aspect of this case is that the expert who conducted the D.N.A. examination was not examined in evidence, and the D.N.A. report was merely exhibited in evidence by the Investigating Officer (PW-10), who undeniably is not connected with the report in any manner. It is important to reproduce the observation of the trial court regarding the DNA report; the relevant lines from the impugned judgment are being produced below: -

"The investigation officer sent the sample to the forensic science laboratory, and it is clear from the forensic science laboratory report Exhibit A-25 that the source of the biological material present in the swab related to the deceased was found to be the same as that of the blood sample of accused Neerajpal and was not the same as that of the blood sample of accused Pappu alias, Chandrapal. Thus, the court comes to the conclusion that the deceased/victim was raped by the accused Neerajpal."

60. We are weighed down by melancholy to see this conclusion and the way the trial court put reliance on the D.N.A. report, without proper application of its judicial mind, when it was seen from the record that the *Maalkahana-in-Charge* was not examined, nor the person who took the sample to FSL. Also, from perusal of the first D.N.A report, it appears that some biological material present in the swab related to the deceased was found to be the same as that of the blood sample of the accused Neerajpal. Nowhere is it written what this *biological material* was, which is why it was important to examine the D.N.A expert to explain these technical points. And based on these faulty observations, the trial court convicted the accused. This clearly shows a laconic trial procedure, which has led to the failure of a case involving the brutal rape and murder of an innocent girl child. Thus, in such circumstances, non-examination of the FSL expert is fatal for the prosecution's case. Furthermore, this Court is of the considered view that the prosecution's reliance on *Santosh Kumar Singh (supra)* and *Sandeep (supra)* is wholly misconceived and misplaced. In *Santosh Kumar Singh (supra)*, the prosecution had established an unbroken and duly proved chain of custody from the stage of sample collection to its deposit in the *Malkhana* and subsequent transmission to the Forensic Science Laboratory. The *Malkhana* register was produced in evidence to demonstrate the safe custody of the samples, and the D.N.A. expert was also examined to prove the integrity and authenticity of the forensic process. On the other hand, in *Sandeep (supra)*, the prosecution had satisfactorily explained every link in the chain of custody from the collection of the accused's sample until its receipt by the Forensic Science Laboratory. Therefore, both decisions were rendered on a factual foundation where the prosecution had successfully proved the continuity and sanctity of the samples at every stage. In the present case, however, the prosecution has failed to establish such an unbroken chain of custody or account for the safe handling and transmission of the samples. Consequently, the reliance placed upon the aforesaid decisions is wholly misplaced, as they are clearly distinguishable on facts and do not advance the prosecution's case. Furthermore, the supplementary DNA report dated 11.12.2025, which was produced during the pendency of the appeals before this Court, we cannot accept it for the reason that before it can be accepted, we have to remand it back to the trial court for the recall of the scientific expert, Smt. Madhu Agnihotri, Scientific Officer, Forensic Science Laboratory, Prayagraj, who will prove this report. Once that is done, then the verified exercise for the supplementary questioning under Section 313 Cr.P.C. would take place. But, the question remains same that if we do that it will cause great prejudice to the

accused, especially when he had already spent approximately 14 years in jail, as there is a limitation on remitting back to the trial court, the prosecution needs to be mindful in this regarding that there is a limitation for accepting certain evidence, in such situation the prosecution cannot, act on *'my life my rules'* principle. In this regard, it is pertinent here to place reliance on the decision of Hon'ble the Apex Court in the case of **Raj Kumar vs. State (NCT of Delhi)**, **(2023) 17 SCC 95**. The relevant paras are being reproduced below:-

"22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put the material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

27. Even assuming that the defect or irregularity was curable, the question is whether today, the appellant-accused can be called upon to explain the said circumstance. More than 27 years have passed since the date of the incident. Considering the passage of time, we are of the view that it will be unjust now at this stage to remit the case to the trial court for recording further statement of the appellant under Section 313CrPC. In the facts of the case, the appellant cannot be called upon to answer something which has transpired 27 years back. There is one more aspect of the matter which persuaded us not to pass an order of remand. The said factor is that the appellant has already undergone incarceration for a period of 10 years and 4 months."

61. Tested on the anvil of the above-mentioned judgment of the Apex Court, from the record, it appears that the present appellant/accused has served 14 years of incarceration. In such circumstances, if we now remand back to the trial for examination of an expert Witness and further for the 313 CrPC proceedings, it will cause great prejudice to the appellant/accused. Hence, in such a situation, the prosecution cannot place its reliance on the second supplementary D.N.A. report. Likewise, no evidence has been adduced to establish the proper chain of custody of the biological exhibits from the time of their collection till their examination in the laboratory. In a case where the

conviction is sought to be founded substantially upon scientific evidence, strict proof of the integrity of the samples assumes considerable importance.

62. It is equally significant that the prosecution has failed to establish other independent incriminating circumstances connecting the appellants with the offence. As already discussed, the last seen circumstances have not been proved beyond reasonable doubt, and the recoveries relied upon by the prosecution do not inspire confidence. In such a situation, the D.N.A. evidence cannot be considered in isolation so as to sustain the conviction without independent corroboration.

63. The Hon'ble Apex Court has consistently held that D.N.A. evidence is highly reliable scientific proof; its evidentiary value depends upon strict proof of collection, preservation, sealing, transmission and examination of samples. Where doubts arise regarding the integrity of the sampling process or whether the surrounding circumstances failed to corroborate the forensic evidence, the Court is required to evaluate such evidence with due caution. In the present case, while the medical evidence conclusively proves that the deceased was raped and murdered, it does not by itself identify the perpetrators. The forensic evidence also cannot be treated as conclusive in the absence of satisfactory proof regarding the chain of custody and when the other circumstances relied upon by the prosecution failed to inspire confidence. Consequently, the medical and D.N.A. evidence, though sufficient to establish the nature of the offence, does not conclusively connect the appellant with its commission beyond reasonable doubt. Accordingly, this circumstance also falls short of completing the chain of circumstantial evidence required for sustaining the conviction.

Whether the cumulative effect of the proved circumstances constitute a complete chain excluding every hypothesis other than the guilt of the appellant

64. Having examined each of the circumstances relied upon by the prosecution independently, it now falls for consideration whether (i) cumulatively they form a complete chain pointing unerringly towards the guilt of the appellant and excluding every hypothesis consistent with his innocence.

65. It is a settled principle of criminal jurisprudence that in a case resting solely on circumstantial evidence, these circumstances relied upon by the prosecution must be firmly established, for such circumstances must be consistent only with the hypothesis of the guilt of the accused, and the chain so formed must be so complete that it leaves no reasonable ground for a conclusion consistent with the innocence of the accused. If any one of the links in the chain is found to be missing or doubtful, the entire prosecution case necessarily fails.

66. In the present case, the prosecution has relied principally upon four circumstances, namely, (i) the alleged last seen circumstances; (ii) the recoveries effected during investigation; (iii) the medial and D.N.A. evidence and (iv) the conduct of the appellant.

67. As already discussed, the last seen circumstances rest solely upon the testimony of Pradeep Kumar (P.W.2), who is an interested witness. His testimony suffers from material contradiction and lacks independent corroboration, particularly when Manoj Kumar (P.W.3), the alleged last seen

witness, has not supported the prosecution. Consequently, the first and the most vital link and the chain remains unproved.

68. Similarly, the recoveries relied upon by the prosecution fail to inspire confidence. The material witnesses to the recovery either turned hostile or were withheld without explanation. The prosecution failed to establish any satisfactory nexus between the recovered mobile phone and appellant- Neerajpal. Likewise, the recovery of the driving licence and the subsequent recovery of the clothes do not stand proved beyond reasonable doubt so as to constitute incriminating circumstances against the appellant.

69. The medical evidence undoubtedly establishes that the deceased was subjected to forcible sexual assault and homicidal death by strangulation. However, the medical evidence merely proves the *corpus delicti* and the nature of the offence; it does not identify the offenders. Likewise, although the prosecution has relied upon the D.N.A. evidence, the deficiencies noticed in providing the chain of custody and absence of reliable corroborative circumstance render it untenable to treat the forensic evidence as conclusively proving the appellant′s involvement.

70. Apart from the aforesaid circumstances, the prosecution has failed to establish any motive of such a compelling nature as would lend assurance to the prosecution story. No eye-witness to the occurrence has been produced. The Investigating Officer himself admitted that during investigation, no eye-witness could be found and even the exact place and time of occurrence could not be ascertained. These admissions further weaken the prosecution case. Another circumstance which cannot be overlooked is that the prosecution evidence suffers from material infirmities in the investigation itself, including the unexplained delay in forwarding the first information report to the Magistrate, hostile recovery witnesses, failure to examine a material independent witness and failure to establish an important link in the chain of circumstances. Though every defect in investigation may not necessarily enure to the benefit of the accused, where the prosecution case itself rests exclusively upon circumstantial evidence, such omissions assume considerable significance. Thus, when the entire evidence is appreciated as a whole, it becomes evident that the prosecution has failed to establish a continuous and unbroken chain of circumstances leading only to the hypothesis of the guilt of the appellant.

71. On the contrary, the evidence leaves room for reasonable doubt and does not exclude every hypothesis consistent with innocence. In the considered opinion of this Court, the learned Trial Court fell into error in evaluating such circumstances in isolation and in treating suspicion as a substitute for proof. The cardinal principle that suspicion, however grave, cannot take the place of legal proof appears to have been overlooked while recording the conviction.

72. Accordingly, we hold that the incriminating effect of the circumstances proved by the prosecution falls short of the standard required for recording conviction in the criminal trial. The prosecution has failed to prove its case beyond reasonable doubt, and the appellant is entitled to the benefit of doubt. The conviction and sentence recorded by the learned Trial Court, therefore, cannot be sustained.

73. Having regard to the totality of the facts and circumstances of the case, we are of the considered view that the prosecution has failed to discharge its burden of proving the guilt of the appellant beyond reasonable doubt. The prosecution has also failed to ensure strict compliance with the mandatory safeguards governing the collection, preservation, transportation and documentation of the D.N.A. samples, thereby compromising the integrity of the chain of custody. In a case resting substantially on scientific evidence, such lapses strike at the very root of the prosecution case and cannot be treated as mere procedural irregularities. The deficiencies cannot be permitted to be cured at the appellate stage, particularly when such a course would occasion serious prejudice to the appellant, who has already undergone approximately fourteen years of incarceration. In these circumstances, this Court is left with no option but to extend the benefit of doubt to the appellant.

74. Accordingly, the conviction and sentence of the appellant, Neerajpal, cannot be sustained, hence the judgment and order dated 16.11.2017, passed by the learned Additional Sessions Judge/Fast Track Court, Hardoi passed in S.T. No.236 of 2012, arising out of Case Crime No.958 of 2011, under Sections 302, 376 and 201 I.P.C., Police Station- Pihani, District- Hardoi are hereby set aside. The appellant is acquitted of all the charges by extending to him the benefit of doubt. The instant appeal is, accordingly, **allowed**.

75. The accused-appellant, namely, Neerajpal would be released forthwith unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C. The amount of fine, if deposited, shall be refunded to the accused.

76. Trial court record along with copy of this judgment and order be transmitted to the court concerned forthwith.

77. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

78. Since the issues noticed in the present case are not confined to the facts of this case alone and have wider ramifications for the conduct of criminal investigations and prosecutions involving scientific evidence, we deem it appropriate to direct that a copy of this judgment be forwarded to the Director General of Prosecution, Uttar Pradesh, who shall issue appropriate administrative instructions/circulars to all Public Prosecutors and prosecuting officers in the State to ensure strict compliance with the observations and guidelines contained herein.

79. A copy of this judgment shall also be forwarded to the Director General of Police, Uttar Pradesh, and to the Director, Forensic Science Laboratory, Uttar Pradesh, for ensuring strict adherence to the chain of custody requirements and the directions issued by the Hon'ble Supreme Court in **Attavellai @ Devakar (supra)**.

80. The Senior Registrar of this Court is requested to communicate a copy of this judgment to the aforesaid authorities for information and necessary compliance.

81. Before parting with the matter, we place on record our appreciation for the valuable assistance rendered by Ms. Manisha Trivedi, learned counsel appearing for the appellant, Sri S.P. Singh, learned A.G.A. and Mr. Saurabh Singh, Research Associate.

(2026) 7 ILRA 772
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Writ C No. 26475 of 2026

Vindhya Vasini Prasad Pandey ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the award of zero marks by the examiner warranted interference in judicial review, when the purport of the answer was incomprehensible and no coherent reasoning, factual narration or legal proposition relatable either to the question asked or to the subject of "Bio-Diversity Protection Law" was discernable.

Headnotes

Constitution of India – Art. 226 – Academic evaluation – Re-examination of answer book – B.A. LL.B., IX Semester Examination 2025–26 – Petitioner awarded zero marks in "Bio-Diversity Protection Law" – Petitioner seeking re-examination of answer book and award of marks – Original question paper and answer book produced before Court and examined – Answers contained no coherent reasoning, factual narration or legal proposition relatable to the question or subject – Answer did not disclose any legal understanding of the subject – No fault found with evaluation undertaken by examiner in awarding zero marks.

Held: Scope of judicial review in academic evaluation is extremely limited – Unless arbitrariness, mala fides, violation of statutory provisions or patent error in evaluation is demonstrated, interference not warranted – No material found to establish prejudice or arbitrary evaluation – Petitioner not entitled to re-examination or award of marks – Writ petition dismissed.

The quality of the answers raised serious concerns regarding the academic standards of the institution imparting legal education. Legal education constitutes the foundation of the justice delivery system. Any substantial decline in academic standards at the institutional level affects not merely the legal profession, but the administration of justice itself. The Court directed that the matter be brought to the attention of the Bar Council of India, which may undertake inspection or inquiry in accordance with law, and also directed that a copy of the question paper and redacted answer book be sent to the Law Commission of India for consideration of broader issues concerning standards and reform of legal education. (E-5)

[Paras 10–13, 16–17]

Case Law Cited

Nil.

List of Acts

Constitution of India;
Advocates Act, 1961;
Right to Information Act, 2005;
Uttar Pradesh State Universities Act, 1973.

List of Keywords

Re-examination of answer book; Award of zero marks; Academic evaluation; Judicial review in academic matters; Limited scope of judicial review; Arbitrariness in evaluation; Mala fides; Violation of statutory provisions; Patent error in evaluation; Biodiversity Protection Law; Incomprehensible answers; Absence of legal understanding; Academic standards in legal education; Quality of legal education; Professional legal education; Bar Council of India; Standards of legal education; Institutional responsibility; Legal profession; Administration of justice; Inspection and inquiry; Law Commission of India; Reform in legal education; Dismissal of writ petition; Article 226 of the Constitution.

Case Arising From

Petitioner seeking direction to get his answer book of the subject "Bio-Diversity Protection Law" of the B.A. LL.B., IX Semester Examination 2025–26, re-examined and to award him marks accordingly.

Appearances for Parties

Advs. for the Petitioners : Vinay Kumar Dwivedi, Vinod Kumar Ojha
Advs. for the Respondent : C.S.C., Pratik Chandra

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

1. Heard Shri Vinod Kumar Ojha, learned counsel for the petitioner, and Shri Pratik Chandra, learned counsel appearing for respondent nos. 2 and 3.

2. The present writ petition has been filed seeking issuance of a writ of mandamus directing respondent nos. 2 and 3 to re-examine the petitioner's answer book of the subject "Bio-Diversity Protection Law" (Course Code No. G020904T) of the B.A. LL.B., IX Semester Examination 2025 26, having Roll No. 2110261011130, and to award marks in accordance with the answers written by the petitioner, and thereafter issue a revised statement of marks.

3. The case of the petitioner, in brief, is that he is a student of the five-year B.A. LL.B. course at Prayag Vidhi Mahavidyalaya, Muvaiya, Naini, Prayagraj, an institution affiliated to Prof. Rajendra Singh (Rajju Bhaiya) University, Prayagraj, a State University established under the provisions of the Uttar Pradesh State Universities Act, 1973. It is stated that the petitioner had successfully cleared the examinations from Semester I to Semester VIII and thereafter appeared in the B.A. LL.B. IX Semester Examination 2025 26, including the subject "Bio-Diversity Protection Law". The result was declared on 18.03.2026, and petitioner was awarded zero marks in all the attempted questions.

4. Learned counsel for the petitioner submits that upon receiving the statement of marks, the petitioner was surprised to find that he has been awarded zero marks in the aforesaid subject despite having attempted the all the questions, and he was expecting to secure more than 50 marks. It is contended that the petitioner thereafter obtained a copy of his answer book under the Right to Information Act, 2005, and found that no marks has been awarded to any of the answers attempted by him. It is further submitted that despite representations made to the University seeking re-evaluation of the answer sheet, no action was taken. It has also been stated that the petitioner has qualified the LL.M. Entrance Examination and is awaiting admission through the counseling process. On these premises, it is urged that the action of the respondent-University is arbitrary and unsustainable in law.

5. On the previous date of hearing, this Court directed the respondent-University to produce the question paper as well as the original answer sheet of the petitioner of "Bio-Diversity Protection Law" subject.

6. In compliance with the aforesaid order, the question paper and the original answer sheet have been produced before this Court and have been carefully examined.

7. During the course of hearing, this Court directed Shri Vaibhav Tripathi, learned Standing Counsel present in Court to read the answer written by the petitioner to Question No. 3-C. For illustration, the question no. 3-C and answer given by the petitioner has been reproduced below:

"Section-C

Question 3(c): Describe National Laws in India related with biodiversity conservation.

Answer: 3(c) :The procedure of invovlement in the National level of monitoring a good seeker in the trustee of God as per the transfer of property lacking behind the role of movement for seeking a trust in the currently appointed and further it should be eligible for the on going process in which the house and conditional prompted suited on the basis of maternity of grudges and condition bailing of lift and originates in the seeker of terminology for the unwanted and must be allowed.

The law related to Nation law in with a biodiversity of neutral and appointed law makers that deals with grudges of meaningful appearance as the felicititation of discovery is equivalent to the loading of trustee that guranted such willful attention for worth of its advantages as well as disadvantages these law are being protected.

By both the provision of inactive mode of surrounded and willful abstention for the allowed provision and conditional willful is equivalent to the position of factors that may seek proper attention as well as knowledge of mind full appearance it is very normal favours brings hardened with such a discovery that is meant to be applied in any of such cases.

After the observation of natural wildlife sanctuary it is point less to seek acknowledgment of any such informative to dehanalise and marginalise this could be degroded with any of such position as it cannot be afforded in the name of trusted personal in the both the scenario it can be considered on the following provision of law that are crafted to nullified and protected the integrity and sovereigtny of biodiversity conversation protection Act it must be enhanced in the provision of such law:

(i) Wildlife Protection Act 1973

(ii) Biodiversity Origin and Regulation Act 1996

These are the module of crating to protest the saviour and origin of such law it could be helpful for the seeker as well as protector on the masterious outcome of enormous as well as described render the policy of such laws that gathered no trustee in the name of premium and extension of such law that could with draw on the galaxies of welfare community and must seek knowledge it could be helpful as it adjusted the modesty in term of finalization and extensive mode of fabrication to discriminate and may be highlighted to get the knowledge to judge its community of being find by such Act it reflexes and get by the compulsory culturic that suggest just being to evolve the maternal and internal integrity that found no suggestion to affix it with the undue such policy.

This is going to be a big myth that the appointment and the duty of the favours getting by citizens and touched by it just to enhance and manage the advance capability as he could survive

and get the major consequences to accelerate its judgment for the fabrication and touched by such other souls. It could be atleast postponed and is more appearance just to avoid the nullifying material and it is adjusted by the knowledge of trusted forceful and pivotal role of applying to huge success of maternity and to adjust if it can manage as just at it could in scheduled put verification on to it and attempt atleast it is distinguished in the selfmade of it provinces just to minimise its though process and can be calculated on the ongoing and recreate the materialistic and socialistic information from any side as it deems fit on any of such condition if we are going to intolerate and calculate the minimising and traditional publicity it is going to be heartful and mere appearance could enhance its term however it is possible as such law is is rooted and gurantted by other."

8. Shri Vaibhav Tripathi, after reading the answer, fairly stated that he is unable to comprehend the purport of the answer or discern any coherent reasoning, factual narration or legal proposition relatable either to the question asked or to the subject of *"Bio-Diversity Protection Law"*. This Court has examined the answer book and arrives at the same conclusion. The answer to Question No. 3-C does not disclose any legal understanding of the subject. Consequently, no fault can be found with the evaluation undertaken by the examiner in awarding zero marks for the said answer. Similar is the position with the remaining answers contained in the answer book.

9. It is well settled that the scope of judicial review in matters relating to academic evaluation is extremely limited. Unless arbitrariness, *mala fides*, violation of statutory provisions, or a patent error in the process of evaluation is demonstrated. Upon examination of the original record, this Court finds no material to suggest that the petitioner has suffered any prejudice on account of evaluation or that the examiner has acted arbitrarily in awarding zero marks.

10. While examining the record, this Court cannot remain oblivious to the larger issue that it reflects. The petitioner is pursuing a professional degree in law, a course intended to prepare students for entry into the legal profession. The quality of the answers contained in the answer book gives rise to serious concern regarding the academic standards maintained at the institution where the petitioner has been receiving the legal education. Legal education constitutes the foundation of the justice delivery system. Any substantial decline in academic standards at the institutional level affects not merely the legal profession, but the administration of justice itself. One further aspect deserves mention. This is not a solitary instance; matters of this nature have come before this Court with disquieting frequency.

11. It is not unlikely that, had the student been properly counselled before the examination, had a suitable orientation programme been provided, and had he been adequately taught, supervised and apprised of what is expected of an examinee, the answers in question would not have been written in the manner they were. The deficiency, if any, lies as much in the institution's failure to discharge its responsibility of imparting quality education as in the answers produced by the student.

12. In view thereof, this Court considers it appropriate that the Bar Council of India, being the statutory regulator entrusted under the Advocates Act, 1961 with the maintenance of standards of legal education, may examine whether the institution concerned continues to satisfy the academic and infrastructural standards prescribed under the applicable Rules and Regulations. It shall be open to the Bar Council of India to undertake such inspection or inquiry as it may deem appropriate, in accordance with law, and after affording the institution an opportunity of being heard.

13. Likewise, the Law Commission of India may consider examining the broader questions relating to the standards of legal education in the country, and may prepare a report thereon should it consider such a course appropriate. It is clarified that the observations made hereinabove are intended only to invite the attention of the aforesaid bodies to a matter of general concern, and shall not be construed as a finding against the institution concerned, or against any teacher or examiner thereof, none of whom is before this Court.

14. For the reasons recorded above, no ground for interference under Article 226 of the Constitution of India is made out. The writ petition is, accordingly, ***dismissed***.

15. The original question paper and the original evaluated answer book shall be returned to respondent no. 4, who shall preserve the same in safe custody for any future requirement.

16. Based on the aforesaid deliberations, the Registrar (Compliance) is directed to transmit a copy of this order to the Principal Secretary, Bar Council of India, together with a photocopy of Question Paper No. 6584 for the B.A. LL.B. (Ninth Semester) Examination, 2025 26, Paper III(B) Biodiversity Protection Law, Course Code G020904T, and a photocopy of the answer book of the petitioner (with the particulars identifying the petitioner redacted- petitioner's name, roll number, enrollment number, and any other identifying particulars should be blacked out or masked on the photocopy), for such consideration as the Bar Council of India may deem fit, including consideration of whether the standards of legal education presently maintained are commensurate with the object for which they are prescribed, and whether the existing mechanism for the grant of approval of affiliation to, and the periodic inspection of, institutions imparting legal education requires strengthening to compete with globally competitive legal education standards.

17. A copy of the said question paper and answer book (similarly redacted) shall also be sent to the Member Secretary, Law Commission of India, for examination and, after such preparatory work as may be considered necessary, for being placed before the Hon'ble Chairman of the Commission for consideration and for the formulation of such proposals for reform in legal education as the Commission may deem appropriate, consistent with the objects for which it has been constituted.

(2026) 7 ILRA 777
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.07.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 21576 of 2026

Ajijur Rahman & Ors. ...Petitioner(s)
Versus
Union of India & Ors. ...Respondent(s)

Issue for Consideration

Whether proceedings initiated under the Enemy Property Act, 1968 in respect of an immovable property could be permitted to continue when no order declaring the property to be enemy property had ever been passed under the Act and the Enemy Property Rules, 2015; whether the entry of the property as enemy property in the records of the Nagar Nigam could be sustained in the absence of any formal order declaring the property to be enemy property; and whether proceedings under the Enemy Property Act, 1968 could be permitted to continue after a lapse of more than fifty years.

Headnotes

Constitution of India, Art. 226 – Enemy Property Act, 1968 – Enemy Property Rules, 2015 – Property entered in Nagar Nigam records as enemy property without any specific order passed under the Act, 1968 or the Rules, 2015 declaring the property to be enemy property – Earlier proceedings initiated in 1972/1973 – Objections along with documentary evidence submitted by the petitioners' predecessors – No order passed and proceedings remained inconclusive – Fresh notice issued in 2021 – Reply/objection submitted – No order passed for five years – Justification.

Held : Authorities had initiated proceedings in 1972, to which the petitioners' predecessors had submitted their reply and objections along with documentary evidence, but no order was passed. Proceedings were again initiated in 2021, but even after five years no order was passed. Court, upon examining the provisions of the Enemy Property Act, 1968 and the Enemy Property Rules, 2015, found that the property had been entered in the records of the Nagar Nigam, Varanasi as enemy property without any specific order having been passed by the competent authority declaring the property to be enemy property – The consequential entries were founded upon a non-est proceeding. An enquiry remaining inconclusive for decades cannot be permitted to continue indefinitely and create confusion in perpetuity – Proceedings cannot be allowed to continue after a lapse of more than fifty years, particularly when generations of the petitioners' family have continued to reside in the house – Any fresh action at such an extraordinarily belated stage could be regarded as a retributive exercise of executive discretion – Accordingly, repetitive enquiries concerning the same issue could not be permitted to continue – Impugned notice dated 19.08.2021, proceedings initiated by the Additional District Magistrate (Finance and Revenue), Varanasi under the Act, 1968, and consequential entry in the records of the Nagar Nigam, Varanasi quashed, there being no order declaring the property to be enemy property – Respondents directed not to interfere with the peaceful possession of the petitioners, who were also permitted to pay municipal taxes in accordance with law.[Paras 18-24] (E-5)

Case Law Cited

None

List of Acts

Constitution of India; Enemy Property Act, 1968; Custodian of Enemy Property Amendment Act, 1977; Enemy Property (Amendment and Validation) Act, 2017; Defence of India Act, 1971; Enemy Property Rules, 2015.

List of Keywords

Enemy property; Declaration of enemy property; Vesting of enemy property; Custodian of Enemy Property for India; Enemy Property Rules, 2015; Non-est proceeding; Entry in Nagar Nigam records; Repetitive enquiry; Inconclusive proceedings; Arbitrary exercise of power; Retributive exercise of executive discretion; Colourable exercise of power; No presumption as to nature of property; Legal fiction; Peaceful possession.

Case Arising From

From the proceedings initiated pursuant to notice dated 19.08.2021 under the Enemy Property Act, 1968 by the Additional District Magistrate (Finance and Revenue), Varanasi, and the consequential entry of the property in the records of the Nagar Nigam, Varanasi as enemy property.

Appearances for Parties

Advs. for the Petitioners : Chandra Bhan Gupta, Mohd. Aqueel Khan
Advs. for the Respondent : A.S.G.I., C.S.C., Tushar Kant, Vineet Sankalp

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Mohd. Aqueel Khan, learned counsel for the petitioners and Shri Tushar Kant, learned Panel Counsel for the Union of India and Shri Satyam Rawat, learned Advocate holding brief of Shri Vineet Sankalp, learned counsel for the Municipal Corporation, Varanasi.

2. By means of present writ petition filed under Article 226 of the Constitution, petitioners are seeking a writ in the nature of certiorari quashing the entire proceedings initiated on the basis of notice dated 19.08.2021 issued under the Enemy Property Act, 1968.

3. The contention of learned counsel for the petitioners is that the property in question i.e. J-3/34 situated at Katehar, Ward Jaitpura, District- Varanasi, measuring area 621 square feet, belongs to one Mohammad Iqram and the same has been devolved upon him through his grandfather Abdul Samad; and after the death of Mohd. Iqram, who died on 18.03.2014, the petitioners became the legal heirs and representatives of the said Late Mohd. Iqram. He has further submitted that the petitioners' family is in possession of the said ancestral property for the last more than 100 years and at no point of time any dispute was raised either by the Government of India or by the State Government regarding their possession; and now, suddenly under the Act, 1968 the impugned proceeding has been initiated.

4. Per contra, learned Standing Counsel submits that in pursuance of a complaint, a notice under Section 11 of the Act, 1968 was issued and a report was also sought from the Senior Superintendent of Police, Varanasi and thereafter, vide communication dated 01.04.2000, the Custodian of Enemy Property for India was intimated that the property in question belongs to one Mohd. Jauhar, who was the citizen of Pakistan. He further submits that the property in question has stood vested in the Custodian of Enemy Property, by virtue of provisions as contained under the Enemy Property Act, 1968 (for short 'Act of 1968') enacted on 20th August, 1968; and he further submits that as a consequence to the aggression by Pakistan in 1971, the proclamation of

emergency took place w.e.f. 3rd December, 1971, under the Defence of India Act, 1971 and the Rules framed thereunder.

5. He submits that all the immovable and specified immovable property characterized as Pakistani property in India, were vested in the Custodian of Enemy Property.

6. Taking recourse to the provisions of Indian Rules, 1971 and the orders made thereunder, he submits that the proclamation of emergency though was revoked on 20th September, 1977 but the question arose of the validation of Enemy Property Act, 1968, which could have continued beyond the period of six months from the date of revocation of emergency; and accordingly the Enemy Property (Amendment) Ordinance 1977 was promulgated, under the signature of the Vice-President of India issued on 23rd September, 1977.

7. The said Ordinance came to be replaced by the Act called the Custodian of Enemy Property Amendment Act, 1977 (for short Amendment Act, 1977). For ready reference, Sub-section 2 of Section 5, as came to be inserted vide the Amendment Act of 1977, in the Enemy Property Act, 1968 is reproduced as under:

"[2] Notwithstanding the expiration of the Defence of India Act, 1971 and the Defence of India Rules, 1971, all enemy property vested before such expiration in the Custodian of Enemy Property for India appointed under the said Rules and continuing to vest in him immediately before the commencement of the Enemy Property (Amendment) Act, 1977 shall, as from such commencement, vest in the custodian]".

8. Learned Standing Counsel submits that a bare reading of the aforesaid provision make it quite explicit that while the Defence of India Rules, 1971 and the Defence of India Act, 1971 were in force, if the properties of the Pakistani National in India continued to be vested in Custodian of Enemy Property and the status as such has continued on the date of coming into force Enemy Property Amendment Act, 1977, shall from such commencement after Act, 1977 vest in the custodian. As referred to hereinabove that Defence of Indian Rules and the Act of 1971 proclaimed on 4th December, 1971, were to continue during proclamation of emergency.

9. Learned counsel for the respondent has further placed reliance upon the newly substituted Section 6 of the Act of 1968 [by virtue of Section 6 of the Enemy Property (Amendment and Validation) Act, 2017] and submits that property once vested under the Act of 1968 and the Amendment Act, 1977, if has continued to vest with the Custodian of Enemy Property on the date of commencement of the Validation Act, 2017, any transfer of such property shall be void and shall always be deemed to have been void.

10. Section 6 of the Validation Act, 2017 runs as under:

"6. On and from the date of commencement of the principal Act, for section 6 of the principal Act, the following section shall be substituted and shall always be deemed to have been substituted, namely:-

6.(1) No enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian under this Act, whether before or after the commencement of this Act and any transfer of such property shall be void and shall always be deemed to have been void.

(2) Where any property vested in the Custodian under this Act had been transferred, before the commencement of the Enemy Property (Amendment and Validation) Act, 2017, by an enemy or enemy or enemy subject or enemy firm and such transfer has been declared, by an order, made by the Central Government, to be void, and the property had been vested or deemed to have been vested in the Custodian [by virtue of the said order made under section 6, as it stood before its substitution by section 6 of the Enemy Property (Amendment and Validation) Act, 2017] such property shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, continue to vest or be deemed to have been vested in the Custodian and no person (including an enemy or enemy subject or enemy firm) shall have any right or deemed to have any right (including all rights, titles and interests or any benefit arising out of such property) over the said property vested or deemed to have been vested in the Custodian."

11. Thus the legislative intent, it is argued, is that since 1968 the Act continued in its operation with its validation from time to time; first in the year 1977 and then in the year 2017, the property left by person who migrated to Pakistan and then acquired its citizenship before 1977, the property of such Pakistani national left behind in India, stood vested in Custodian of the Enemy Property in 1977 itself with the commencement of 1977 Amendment Act in respect of Act of 1968.

12. In response to the aforesaid, learned counsel for the petitioners submits that after issuance of the notice, till date, no order has been passed by the competent authority declaring the property as enemy property; and this fact has not been disputed by the learned Standing Counsel.

13. This Court vide its previous order dated 02.07.2026 had directed the learned counsel for the Union of India, to produce a copy of the order, declaring the property as an enemy property under the Act, 1968. On the basis of instructions, he has submitted that no order was passed by the competent authority declaring the property as enemy property at any point of time and only impugned notices, has been issued.

14. The Central Government has made rules known as the "Enemy Property Rules, 2015" in exercise of powers under Section 23 of the Act, 1968; which provides for identification of immovable property as under:

"3. Procedure for identification of immovable property-

(1) The Custodian may seek assistance of the District Authority for examination of the tehsil-wise or block-wise revenue records for the purposes of identifying any immovable property belonging to or held in the name of any "enemy" or "enemy subject" or "enemy firm."

2) The concerned District Authority shall on identifying any immovable property belonging to or held by the enemy or enemy subject or enemy firm, forward to the Custodian the complete details of such enemy property and the name and address and other particulars of the person who is in possession of such property or the name of the occupier or manager or agent of the owner.

3) If the District Authority receives any information or complaint from any person or from any source in respect of an enemy property, he shall forward such information or complaint to the Custodian along with details referred to in sub-rule (2).

(4) The Custodian may direct the District Authority in which the enemy property is located, to carry out physical inspection or verification or the enemy property for obtaining the information as specified by the Custodian.

(5) On receipt of the direction from the Custodian under sub-rule (4), the District Authority shall check the relevant revenue or municipal or police records to verify the location or area and other details of the enemy property and conduct survey for obtaining the information as specified by the Custodian.

(5-A) Without prejudice to the provisions contained in this rule, the District Authority shall take all such steps as may be necessary for the purpose of identification of the enemy property.

(6) The District Authority or any person authorized by the Custodian shall prepare a detailed report of all cases identified as enemy property and shall submit the same to the Custodian along with his comments thereon."

[***]

(14) All properties under examination and in the process of identification or verification shall be considered as Process Case and details of such cases shall be recorded in Annexure-I till its declaration.

(15) The Custodian shall maintain a register containing the properties identified as enemy properties and place the same in public domain and also exhibit the same on the website of the office of the Custodian."

15. Section 4 of the Rules, 2015 also provides for procedure for declaration and vesting of the enemy property, and contention of learned counsel for the petitioners is that the property does not come under the definition of enemy property; and accordingly no action can be taken under the Act, 1968.

16. He has also submitted that earlier also proceedings were undertaken on the basis of a wrong information in the year 1973, to which an objection was also filed on 19.12.1973, along with evidence; and thereafter, proceedings were dropped and name of the petitioners continued to be recorded in the records of Nagar Nigam, Varanasi; and now another notice has been issued on 19.08.2021 by the Additional District Magistrate (Finance and Revenue), In-Charge Official Evacuee Property, Varanasi.

17. He has further submitted that one Ajijur Rahman had also filed a reply/objection, having come to know of the notice dated 19.08.2021, on 13.09.2021; thereafter again for the last 5 years neither any orders were passed, nor served on the petitioners, while the municipal taxes were being paid regularly and therefore the vesting of the property without adhering to any procedure prescribed is nothing but a retributive exercise of executive discretion, which is a specie of a colourable exercise of power; and accordingly, said entry cannot be sustained.

18. We have perused the provisions of the Act, 1968 and the Rules, 2015; and find that without adhering to the said procedure, the property has been entered into the records of the Nagar

Nigam, Varanasi as enemy property. On instructions, respondents have also submitted that no specific order has been passed under the relevant Act and Rules; and accordingly we find that entries are based on a non-est proceeding and the instructions which has been placed before this Court by the learned Counsel appearing for the Union of India, also indicates that earlier proceedings were initiated and an objection was also filed and thereafter no order as contemplated under the Act, 1968 and Rules, 2015 were passed, adhering to the procedure prescribed and again the impugned notice has been issued on 19.08.2021; and though five years have already lapse, admittedly no order has been passed, till date.

19. In view of the aforesaid, since much water has flown, since 1972 and generations have changed, and admittedly they continued to live in the house, for more than 100 years; now proceedings at such a belated stage cannot be permitted to continue.

20. The respondent-authorities had initiated proceedings in the year 1972, but did not adhere to the procedure or pass any order then; and now again they have initiated proceedings in the year 2021 but again have failed to pass any order for the last 5 years; and accordingly, the proceedings cannot be permitted to continue after a lapse of more than 50 years, when generations after generations have continued to live in the house. Any action at such a belated stage afresh can be considered as a retributive action of the executive discretion.

21. It is trite law that a mere existence of a power, ipso facto does not contemplates its exercise in an arbitrary manner. Admittedly, notices were issued and a report was submitted by the District Magistrate, Varanasi to the Custodian of Enemy Property for India on 09.02.1972, then again a report was submitted on 16.03.2000 by the S.S.P., Varanasi; and in response to the same, along with documentary evidence, reply was submitted by the predecessors of the petitioners; and no action was taken and even thereafter notices though were issued in the year 2021, but still no order has been passed till date. Even if a nature of property is to be claimed as enemy property by fiction of law under the relevant provisions the moment an Indian resident is migrated to Pakistan, but to give it legal character an enquiry is to be followed by a formal declaration under the Act. There is no presumption contemplated as to the nature of property. So if such an enquiry remained pending for thirty years with no conclusion and final under, now it cannot be permitted to further continue to create confusion in perpetuity.

22. In view of the aforesaid, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, this Court cannot permit the repetitive inquiries qua the issue in hand, and accordingly deems it appropriate to quash the impugned notice dated 19.08.2021 and the proceedings initiated by the Additional District Magistrate (Finance and Revenue), Varanasi, under the Act, 1968; and so also the consequential entry in the records of the Nagar Nigam, Varanasi, for there being no order to the said effect.

23. Respondents are directed not to interfere in the peaceful possession of the petitioners; and they shall be allowed to pay their municipal taxes, as per law.

24. The writ petition thus stands **allowed**, as above.

(2026) 7 ILRA 783
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.07.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE MRS. GARIMA PRASHAD, J.

Writ C No. 16530 of 2026

The Oriental Insurance Co. Ltd. ...Petitioner(s)
Versus
Smt. Rachna Singh & Ors. ...Respondent(s)

Issue for Consideration

Whether a writ petition at the instance of the petitioner-Insurance Company is maintainable under Article 226 of the Constitution of India to assail an order of the competent authority granting compensation under the Mukhyamantri Kisan Evam Sarvhit Bima Yojna on the ground that such order is contrary to the terms and conditions of the Memorandum of Understanding governing the contractual arrangement between the petitioner and the State Government?

Headnotes

Constitution of India – Article 226 – Mukhyamantri Kisan Evam Sarvhit Bima Yojna – Maintainability of writ petition by Insurance Company – Challenge to order of District Magistrate directing payment of compensation under welfare scheme – Husband of respondent No.1 died in a road accident – Claim for compensation submitted under the Scheme – Claim repudiated by Insurance Company on ground of delay beyond prescribed limitation period – District Magistrate, upon reconsideration, directed payment of compensation – Insurance Company challenged the order on the ground that compensation could not be directed contrary to contractual stipulations contained in Memorandum of Understanding executed between Insurance Company and State Government – Justification:

Held : Mukhyamantri Kisan Evam Sarvhit Bima Yojna is a welfare and social security measure intended to provide immediate financial assistance to economically vulnerable families upon accidental death or disability of the sole earning member – Beneficiary's entitlement arises from the welfare Scheme framed by the State and not from the contractual arrangement between the Insurance Company and the State Government – In the instant case, Insurance Company was not seeking enforcement of any statutory or constitutional right in public law, but was seeking to resist compensation granted to the beneficiary by relying upon alleged breach of contractual stipulations contained in the MoU – Rights asserted by Insurance Company against the State Government were essentially contractual and commercial in nature – Disputes concerning interpretation, enforcement and breach of contractual obligations ordinarily fall within the realm of private law and are to be adjudicated before ordinary civil, commercial or arbitral forums rather than in writ jurisdiction – Present case concerned determination of an individual claim by the District Magistrate, the competent authority under the Scheme, and not alteration, invalidation or reinterpretation of any general term of the Scheme or MoU – Once the competent authority applied the Scheme and found the beneficiary eligible and entitled to compensation, Insurance Company could not invoke writ jurisdiction merely by alleging that the claim had been dealt with contrary to contractual conditions agreed upon with the State Government – Insurance Company did not possess corresponding locus to challenge the application of the Scheme in each individual case – Entertaining such petitions would convert writ jurisdiction into a parallel appellate forum for adjudicating contractual disputes between the Insurance Company and the State Government – Insurance Company, having voluntarily undertaken the contractual obligations under the MoU after assessing the commercial risks and accepting

premium payable by the State Government, could not ordinarily invoke Article 226 to resist disbursement directed by the competent authority in favour of the beneficiary – Writ petition accordingly held not maintainable.

In the instant case the District Magistrate had recorded a categorical finding that the claim was submitted within the prescribed period and that respondent No.1 was entitled to compensation under the Scheme – No perversity, jurisdictional error or manifest illegality demonstrated so as to warrant interference under Article 226 – Insurance Company could not deny payment on the basis of its own interpretation of contractual stipulations governing the MoU – Writ petition dismissed – Insurance Company directed to release the compensation payable to respondent No.1 within three months – However, it was provided that the dismissal of writ petition would not preclude Insurance Company from availing such remedies as may otherwise be available in law against the State Government before the appropriate civil, commercial, arbitral or other competent forum in relation to its alleged contractual grievances arising out of the Agreement/MoU governing the Scheme.[Paras 7–15, 17–20, 22–24, 26–28] (E-5)

Case Law Cited

ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553;
State of Bihar v. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216;
Kerala State Electricity Board v. Kurien E. Kalathil, (2000) 6 SCC 293;
Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728;
Gautam Yadav v. State of U.P., 2020 SCC OnLine All 1379

List of Acts

Constitution of India

List of Keywords

Mukhyamantri Kisan Evam Sarvhit Bima Yojna; Welfare and social security scheme; Memorandum of Understanding; Contractual liability; Limitation of claim; Delayed claim; Public law rights; Private law dispute; Enforcement of contractual obligations; Writ jurisdiction; Contractual and commercial dispute; Competent authority; District Magistrate; Locus of Insurance Company; Challenge to compensation determination; Mandamus; Welfare entitlement; Parallel appellate forum; Gross obstruction of welfare compensation; Alternative civil/commercial/arbitral remedy; Dismissal of writ petition; Payment of compensation.

Case Arising From

Writ petition filed by Insurance Company challenging the order passed by the District Magistrate, whereby compensation has been directed to be paid in favour of respondent no.1 under the Mukhyamantri Kisan Evam Sarvhit Bima Yojna.

Appearances for Parties

Advs. for the Petitioners : Ankur Mehrotra
Advs. for the Respondent : C.S.C., Sanjeev Kumar Saxena

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard Sri Ankur Mehrotra, learned counsel for the petitioner-Insurance Company, Sri Sanjeev Kumar Saxena, learned counsel for the private respondent and learned Standing Counsel for the State.

2. The present writ petition has been filed by the petitioner-Insurance Company challenging the order dated 29.11.2025 passed by the District Magistrate, Kanpur Nagar whereby compensation of Rs.5,00,000/- has been directed to be paid in favour of respondent no.1 under the Mukhyamantri

Kisan Evam Sarvhit Bima Yojna on account of the accidental death of her husband, late Bhanu Pratap Singh.

3. The facts, briefly stated, are that the husband of respondent no.1 died in a road accident on 29.11.2018, following which respondent no.1 submitted a claim under the Scheme seeking compensation on account of the accidental death of the earning member of the family. The claim, however, came to be repudiated by the petitioner-Insurance Company on the ground that the same had not been submitted within the prescribed limitation period contemplated under the Scheme. Aggrieved thereby, respondent no.1 approached this Court and pursuant to the directions issued therein, the District Magistrate reconsidered the matter and thereafter passed the impugned order directing payment of compensation to respondent no.1 under the Scheme.

4. Learned counsel for the petitioner Insurance Company submits that the Scheme is governed by the contractual terms and conditions contained in the Memorandum of Understanding executed between the State Government and the petitioner-Insurance Company and therefore compensation could not have been directed contrary to the contractual stipulations. It is further contended that the District Magistrate could not have travelled beyond the terms of the contract executed between the parties.

5. It has also been submitted that the issue relating to delayed claims and limitation under the Scheme, as considered by the Division Bench of this Court in ***Gautam Yadav v. State of U.P.,*** reported in ***2020 SCC Online All 1379*** presently remains pending consideration before the Hon ble Supreme Court and the operation of the judgment has been stayed in interim proceedings arising therefrom.

6. In view of the submissions advanced, the principal issue which arises for consideration before this Court is:

"Whether a writ petition at the instance of the petitioner-Insurance Company is maintainable under Article 226 of the Constitution of India to assail an order of the competent authority granting compensation under the Mukhyamantri Kisan Evam Sarvhit Bima Yojna on the ground that such order is contrary to the terms and conditions of the Memorandum of Understanding governing the contractual arrangement between the petitioner and the State Government?"

7. At the outset, it is necessary to notice the nature and character of the Scheme itself. The Mukhyamantri Kisan Evam Sarvhit Bima Yojna is not an ordinary commercial insurance arrangement between private parties. The Scheme has been framed by the State Government as a welfare and social security measure intended to provide immediate financial assistance to economically vulnerable families, including poor farmers and persons engaged in allied occupations, upon accidental death or disability of the sole earning member of the family.

8. At the same time, insofar as the petitioner-Insurance Company is concerned, the arrangement arises out of the Memorandum of Understanding (MoU) executed between it and the State Government pursuant to a negotiated contractual framework and against payment of

substantial premium by the Government. The petitioner voluntarily undertook the risk under the Scheme after assessing its commercial viability and accepted the terms of the MoU to its satisfaction. Consequently, while the Scheme possesses a public welfare character vis- -vis its beneficiaries, the rights asserted by the petitioner against the State Government remain essentially contractual and commercial in nature.

9. The beneficiaries under the Scheme are neither parties to the Memorandum of Understanding nor to the contractual arrangement between the petitioner and the State Government. Their entitlement arises from the welfare Scheme framed by the State and not from the contractual rights and obligations existing inter se between the petitioner and the State Government.

10. A distinction therefore has to be maintained between:

(i) a claim seeking enforcement of public law rights or welfare entitlements under a governmental scheme; and

(ii) a dispute arising substantially out of contractual liability and indemnification between the insurer and the State Government.

11. Where an eligible beneficiary seeks enforcement of welfare entitlements under a governmental scheme, proceedings under Article 226 seeking mandamus against the State authorities are clearly maintainable since the source of the entitlement arises under a governmental welfare scheme.

12. The position of the petitioner-Insurance Company, however, stands on an entirely different footing. The petitioner does not seek enforcement of any statutory or constitutional right in public law. Its grievance is essentially that compensation has been directed contrary to the contractual stipulations governing limitation, claim procedure and liability allocation under the Memorandum of Understanding executed with the State Government. The writ petition is, therefore, an attempt to enforce rights asserted under the MoU rather than any independent public law right.

13. Learned counsel for the petitioner has placed reliance upon ***ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.*** reported in ***(2004) 3 SCC 553*** to contend that the existence of a contractual relationship does not, by itself, bar the exercise of writ jurisdiction where the action of the State or its instrumentality is arbitrary and the dispute involves a public law element. The said principle, however, has no application to the present case.

14. The petitioner is not seeking enforcement of any public law right against the State. Rather, it seeks to resist compensation granted to a beneficiary under a welfare scheme by relying upon alleged breach of the contractual stipulations contained in the Memorandum of Understanding executed with the State Government. The beneficiary is neither a party to the Memorandum of Understanding nor to the contractual arrangement between the petitioner and the State Government and cannot be compelled to defend disputes arising out of contractual terms to which she is a stranger.

15. On the contrary, the present case squarely falls within the principles laid down in ***State of Bihar v. Jain Plastics and Chemicals Ltd.,*** reported in ***(2002) 1 SCC 216, Kerala State Electricity Board v. Kurien E. Kalathil*** reported in ***(2000) 6 SCC 293*** and ***Joshi Technologies International Inc. v. Union of India*** reported in ***(2015) 7 SCC 728*** wherein the Hon ble Supreme Court has consistently held that disputes concerning interpretation, enforcement and breach of contractual obligations ordinarily fall within the realm of private law and must be adjudicated before ordinary civil, commercial or arbitral forums rather than in writ jurisdiction.

16. The reliance placed upon the pendency of proceedings before the Hon ble Supreme Court arising from the judgment in ***Gautam Yadav*** (supra) does not advance the case of the petitioner. In the said decision, the Division Bench examined the validity of the limitation prescribed under the Scheme, which also formed part of the agreement executed between the State Government and the Insurance Company. The Court held the prescribed period to be arbitrary and unreasonable and directed that claims made within three years from the date of death or rejection be treated as within limitation. The issue arising therein thus concerned the validity and interpretation of a term governing the Scheme generally and had the effect of modifying the contractual and legal framework governing claims under the Scheme, thereby directly affecting the obligations assumed by the insurer. It is in that context that the Insurance Company s contractual rights may legitimately arise for consideration.

17. The present controversy stands on a different footing. This Court is not called upon to alter, invalidate or reinterpret any general term of the Scheme or the agreement entered into between the petitioner and the State Government. The challenge is to the determination of an individual claim by the District Magistrate, who has been designated as the competent authority under the Scheme. Once such authority has applied the Scheme and found a beneficiary eligible and entitled to compensation, the Insurance Company cannot invoke writ jurisdiction to assail that determination merely by alleging that the claim was dealt with contrary to the contractual conditions agreed upon with the State Government.

18. Thus, while a question concerning the validity or alteration of a term of the Scheme, having a general bearing upon the contractual obligations of the insurer, may stand on a different footing, the petitioner does not possess a corresponding locus to challenge the application of the Scheme in each individual case. In view of the distinction noticed above, the pendency of the proceedings arising from ***Gautam Yadav*** (supra) does not, in the considered view of this Court, affect the issue arising for consideration in the present writ petition.

19. The extraordinary jurisdiction under Article 226 cannot be permitted to become a routine remedy available to Insurance Companies for challenging compensation determinations under welfare schemes merely by alleging breach of the Memorandum of Understanding with the State Government. Entertaining such petitions would convert the writ jurisdiction into a parallel appellate forum for adjudicating inter se contractual disputes between the insurer and the State Government, thereby defeating the object of the Scheme.

20. The petitioner, having voluntarily undertaken the contractual obligations under the Memorandum of Understanding after assessing the commercial risks and accepting the premium

payable by the State Government, cannot ordinarily invoke Article 226 to resist disbursement directed by the competent authority in favour of a beneficiary under the Scheme.

21. The consequences of entertaining such petitions would be extremely serious. Poor farmers, widows and dependent family members, already devastated by the accidental death of the sole breadwinner of the family, would be compelled to run from court to court defending constitutional proceedings initiated by the Insurance Company merely because the insurer disputes its contractual liabilities towards the State Government. Welfare compensation intended for immediate financial relief cannot be permitted to be indefinitely obstructed until the Insurance Company is fully satisfied regarding every contractual or procedural aspect of its arrangement with the Government.

22. Accordingly, for the reasons recorded above, this Court holds that the present writ petition, at the instance of the petitioner-Insurance Company, is not maintainable under Article 226 of the Constitution. The issue framed above is answered accordingly against the petitioner.

23. Even otherwise, this Court finds no ground to interfere with the impugned order. The District Magistrate has recorded a categorical finding that the claim was submitted within the prescribed period and that respondent no.1 was entitled to compensation under the Scheme. No perversity, jurisdictional error or manifest illegality in the said findings has been demonstrated so as to warrant interference under Article 226 of the Constitution.

24. Once the District Magistrate, being the competent authority, adjudicated the claim and held the beneficiary entitled to compensation under the Scheme, the petitioner-Insurance Company cannot deny payment on the basis of its own interpretation of the contractual stipulations governing the Memorandum of Understanding with the State Government. To hold otherwise would virtually permit the Insurance Company to sit in appeal over every determination made by the District Magistrate under the Scheme, a course neither contemplated by the Scheme nor by the contractual framework governing the parties.

25. The impugned order was passed on 29.11.2025. Yet, despite respondent no.1 having been found entitled to compensation, the benefit under the Scheme remains unpaid. Such delay is wholly inconsistent with the object and spirit of the Scheme, which is intended to provide timely financial relief to distressed families.

26. The writ petition is, accordingly, dismissed.

27. The petitioner-Insurance Company shall comply with the impugned order dated 29.11.2025 by releasing the compensation payable to respondent no.1 within a period of three months from the date of this order.

28. However, it is observed that dismissal of the present writ petition shall not preclude the petitioner from availing such remedies as may otherwise be available in law against the State Government before the appropriate civil, commercial, arbitral or other competent forum in relation to its alleged contractual grievances arising out of its Agreement / Memorandum of Understanding governing the Scheme.

(2026) 7 ILRA 789
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 5045 of 2026

Indra Pati & Anr. ...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue for Consideration

Whether, in a dispute essentially civil in nature relating to title and possession of immovable property between private parties, the police, revenue and executive authorities can interfere with the possession of either party, adjudicate the civil rights of the parties, or assist one party in dispossessing the other, particularly when the dispute is pending before the competent Civil Court ?

Headnotes

Constitution of India — Article 226 — Maintainability of writ petition — Writ petition seeking protection of peaceful possession against private persons not impleaded — Civil dispute relating to title and possession of immovable property — Allegation of police siding with private respondent and creating hindrance in construction — Police interference in private disputes — Scope of powers.

Held: Article 226 — Maintainability — When a writ petition in substance seeks a direction against private persons interfering in peaceful possession, and such private parties have not been impleaded, the petition is not maintainable under Article 226 — Where grievance essentially arises out of a private dispute over property between the parties claiming peaceful possession, such disputes are squarely within the domain of competent Civil Courts — Police authorities and Executive officers have no jurisdiction to adjudicate or interfere in civil disputes relating to title, possession, or boundaries of immovable property between private parties, except to the limited extent necessary for maintaining public peace and preventing breach of law and order — Police and revenue/executive authorities cannot be allowed to act as adjudicatory bodies or to assist one party in dispossessing the other, without any specific order from a Court of competent jurisdiction — Such administrative intervention in a purely private dispute of title and possession is wholly without jurisdiction and contrary to the settled position of law — Court directed all police officers, District Magistrates, Sub-Divisional Magistrates, and other Executive authorities to strictly adhere to the Government Orders dated 01.12.2014 and 16.09.2015, as well as the D.G.P. Circular dated 11.03.2023 — Writ petition disposed of with liberty granted to the petitioner to approach the appropriate authority/court for redressal of their grievances. (E-5)

[Paras 7-10, 13-14]

Case Law Cited

Parmatma Saran & Anr. v. State of U.P. & Ors., 2020:AHC:21481-DB;
Suman Singh v. District Magistrate And Others, 2022 SCC OnLine All 720;
Sayeed Khan v. State of U.P. & Ors., Writ-C No. 43627 of 2014;
Prem Lata Maurya v. State of U.P. & Ors., Writ-C No. 1266 of 2023;
Phoolmati v. State of U.P., Writ-C No. 14257 of 2024;
Suresh Kumar Gangwar & Ors. v. State of U.P. & Ors., 2016 SCC OnLine All 1558.

List of Acts

Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973.

List of Keywords

Private dispute over property; Police interference in private disputes; Administrative intervention; Administrative overreach; Private civil dispute; Government Order dated 01.12.2014; Government Order dated 16.09.2015; D.G.P. Circular dated 11.03.2023; Maintainability under Article 226; Private persons not impleaded; Writ jurisdiction.

Case Arising From

Writ petition seeking a writ of mandamus directing the opposite parties not to interrupt the petitioners' peaceful possession over the land and not to harass the petitioners without any interim order from a Court of law.

Appearances for Parties

Advs. for the Petitioners : Sachin Kumar, Abhinav Sachan , Diship Kumar , Piyush Agnihotri, Shailesh Sachan
Advs. for the Respondent : C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

"I. Issue a writ in the nature of mandamus to direct the opposite parties to not to interrupt in the peaceful possession of the petitioners over the land, in the interest of justice.

II. Issue a writ in the nature of mandamus to direct the opposite parties to not to harass the petitioners without any interim order from any court of law."

3. Upon a perusal of the writ petition, it appears that the entire matter relates to a family dispute between the petitioner and the private respondents, wherein a civil suit is also pending. The petitioner has not been able to make out any case as to why this Court exercising its jurisdiction under Article 226 of the Constitution of India should entertain this petition or to pass any order in his favour.

4. However, there is another aspect of the matter, inasmuch as it has been also submitted by learned Counsel for the petitioner that although the petitioner is more than 85 years of age, she has been continuously harassed by the police in one way or the other. According to the learned Counsel, if the dispute is essentially civil in nature, then the police should not have any business in siding with any of the parties to the said civil dispute. It is the submission of the learned counsel that the police is siding with the private respondent and in collusion is creating hindrance in the legitimate constructions being raised by the petitioner.

5. This Court does not wish to go into the nitty-gritty of the said allegation of collusion between the police and private respondents as it would have it's own consequential effect of filing a complaint/F.I.R. against the private respondents or the erring police officer, as the case may be.

6. However, as far as the issue raised by the learned counsel that in a dispute, which is essentially civil in nature, the conduct and abstinence of the police is a grave issue which calls for our immediate interference.

7. This Court has repeatedly observed, and it is now well-settled, that police authorities and Executive officers have no jurisdiction to adjudicate or interfere in civil disputes relating to title, possession, or boundaries of immovable property between private parties, except to the limited extent necessary for maintaining public peace and preventing breach of law and order, as provided under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) or earlier the Code of Criminal Procedure, 1973.

8. In the cases, where grievance essentially arises out as a private dispute over property between the parties claiming peaceful possession etc., such disputes are squarely within the domain of competent Civil Courts. The police and revenue/executive authorities cannot be allowed to act as adjudicatory bodies or to assist one party in dispossessing the other, without any specific order from a Court of competent jurisdiction.

9. A Division Bench of this Court, in **Writ-C No. 3263 of 2020 (Parmatma Saran & Anr. vs. State of U.P. & Ors.), Neutral Citation No. - 2020:AHC:21481-DB;** decided on **31.01.2020,** has categorically held that when a writ petition in substance seeks a direction against private persons interfering in peaceful possession, and such private parties have not been impleaded, the petition is not maintainable under Article 226. The Court placed reliance upon the Government Order dated 16.09.2015 issued by the Chief Secretary, U.P., pursuant to earlier directions of this Court, which mandates that no administrative order shall be passed on miscellaneous applications in matters of immovable property pending between private parties or where Courts have passed interim orders. It was directed that any violation would invite strict penal action against erring officers.

10. Furthermore, the Division Bench of this Court while deciding the case of **Suman Singh Vs District Magistrate And Others, in (WRIT - C No. - 12310 of 2022), Neutral Citation No. - 2022:AHC:176795-DB;** decided on **20.10.2022,** reported as **2022 SCC OnLine All 720;** the core issue which falls for consideration before this Court was the extent of permissible judicial intervention and, more importantly, the impermissible overreach by administrative authorities in matters of private civil disputes concerning title and possession of immovable property, where the parties are already litigating their respective rights before the competent Civil Courts and interim injunction orders are operating. Despite the pendency of the said suits and the existence of interim orders, the revenue and police authorities, at the instance of one set of parties, intervened and effected dispossession on 07.11.2020. The Division Bench of this Court held that such administrative intervention in a purely private dispute of title and possession is wholly without jurisdiction and contrary to the settled position of law. Reference was made to the ***Government Order dated 01.12.2014*** issued by the Chief Secretary, Government of U.P. ***(bearing No. 491/Writ/6-Pu-3-2014-2(94)P/2014),*** which was issued in the backdrop of earlier directions of this Court passed in ***Writ-C No. 43627 of 2014 (Sayeed Khan vs. State of U.P. & Ors.).*** The aforesaid Government Order dated 01.12.2014 categorically directs that:-

"in cases relating to immovable property disputes between private parties, where civil suits are pending before the competent Civil Courts or where interim orders have been passed by the Courts, the administrative and police authorities shall act strictly within the four corners of law and shall not pass any orders or take any action beyond their jurisdiction. It has been made clear that only the competent Civil Court has the authority to adjudicate upon and pass orders in such disputes of civil nature. The administrative

authorities are required only to maintain law and order and ensure compliance of Court orders, but they cannot assume an adjudicatory role or effect dispossession/restoration of possession in private title disputes."

(English translation by this Court)

11. Similarly, in **Writ-C No. 1266 of 2023 (Prem Lata Maurya vs. State of U.P. & Ors.),** decided on **16.02.2023,** this Court, taking note of repeated allegations of police authorities (especially S.H.O.s and S.I.s) assisting private persons in forcible dispossession, directed the Director General of Police, U.P., to issue a fresh Circular reminding all police personnel of earlier instructions prohibiting interference in private disputes and to enforce the same with utmost strictness.

Pursuant to the aforesaid direction, the Director General of Police (D.G.P.), U.P., issued **Circular No. 10/2023** dated **11.03.2023**. The said Circular unequivocally reiterates that:

"i. Police have no role in deciding title or possession disputes between private parties.

ii. Any complaint regarding land/property dispute must immediately be forwarded to the concerned Executive Magistrate / Revenue Authorities.

iii. Police personnel shall not, on their own, deliver possession to any party or evict any person in a civil dispute.

iv. Action under Sections 107/116/145 Cr.P.C. may be taken only where there is imminent apprehension of breach of peace, strictly following the procedure prescribed.

v. Joint teams of Revenue and Police may be constituted under the supervision of District Magistrate and Senior Superintendent of Police only for maintaining peace and facilitating lawful resolution, not for deciding civil rights."

12. The aforesaid principles have been also reiterated in **Writ-C No. 14257 of 2024 (Phoolmati vs. State of U.P.),** wherein this Court deprecated the practice of Sub-Divisional Magistrates passing orders directing vacation of premises in pending civil suits without following due process. This Court in **Writ-C No. 28828 of 2016 (Suresh Kumar Gangwar & Ors. vs. State of U.P. & Ors.) Neutral Citation No. - 2016:AHC:99893-DB** dated **05.07.2016,** reported in **2016 SCC OnLine All 1558;** exhaustively examined the scope of Sections 144 and 145 Cr.P.C. and held that Executive Magistrates must act strictly within the parameters laid down therein, only for preservation of public peace and not for adjudication of title or civil possession. The Court emphasised that District Authorities have no right to interfere in private property disputes unless directed by a competent Civil Court.

13. Therefore, this Court expects all police officers, District Magistrates, Sub-Divisional Magistrates, and other Executive authorities to strictly adhere to the **Government Orders dated 01.12.2014 issued by the Chief Secretary, Government of U.P. (bearing No. 491/Writ/6-Pu-3-2014-2(94)P/2014); Government Order dated 16.09.2015;** as well as the **D.G.P. Circular dated 11.03.2023** and any deviation shall be viewed seriously and may invite departmental as well as contempt proceedings and also the police authorities shall ensure that no party is allowed to take law into their own hands and shall maintain peace without favouring any side in the civil dispute.

14. Accordingly, the writ petition is ***disposed of*** with liberty granted to the petitioner to approach the appropriate authority/ court for redressal of their grievances.

(2026) 7 ILRA 793
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 6335 of 2026

M/S Calcutta Springs Ltd. ...Petitioner(s)
Versus
U.O.I. & Anr. ...Respondent(s)

Issue for Consideration

Whether the petitioner, whose application for approval of the Concrete Sleeper Plant (CSP) was still pending, could be granted approval for establishing the CSP along with extension of time for commissioning of a railway siding up to 31.12.2026 under the new guidelines issued by the Railways, when the benefit of such extension was provided only to existing CSPs.

Headnotes

Constitution of India – Art. 226 – Writ of mandamus – Concrete Sleeper Plant (CSP) – Railway Board policy dated 19.02.2021 – New guidelines issued by the Railways – Approval of CSP – Railway siding – Extension of time for commissioning of railway siding – Petitioner sought approval for establishing a Concrete Sleeper Plant (CSP) along with extension of time up to 31.12.2026 for creation of a railway siding – Petitioner's application for approval still pending – Respondents contended that extension for commissioning of railway siding as per the policy was provided only to existing CSPs and that a new entrant cannot be granted approval without an existing siding as per the extant policy.

Held: Petitioner had not been granted approval by the Railways to manufacture Concrete Sleepers and the application was still pending – Petitioner's application would be governed by the new guidelines issued by the Railways – Approval process operates at multiple stages and at each of these stages, technical assessment and satisfaction of the authority is required and, in absence of final satisfaction of the said process, approval cannot be granted – High Court, being bereft of any technical expertise, cannot step into the shoes of the approving authority to make a technical assessment and grant approval to the petitioner – Any relief granted to the petitioner as sought would tantamount to deemed approval by the Railway authority – Relief sought by the petitioner seeks to achieve something indirectly, i.e. approval, which it has failed to achieve directly – Under the new regulations, any person intending to establish a Concrete Sleeper Plant (CSP) must have a railway siding ready for use – Government has merely granted a limited relaxation to those plants that are already in operation – Since petitioner's plant has not yet been approved, question of granting any extension of time for creation of a railway siding does not arise – Since petitioner has not been granted approval as a Concrete Sleeper Plant (CSP) till date and there is no concept of deemed approval, it is not entitled to the benefit of the said extension.

Writ petition dismissed. (E-5)

[Paras 8, 9, 10, 11]

Case Law Cited

Nil.

List of Acts

Constitution of India.

List of Keywords

Concrete Sleeper Plant (CSP); Railway Board policy dated 19.02.2021; New guidelines issued by the Railways; Approval of Concrete Sleeper Plant; Railway siding; Extension of time for commissioning of railway siding; Technical assessment; Technical expertise; Deemed approval; Writ of mandamus; Pending application; Existing CSP; New entrant; Extant policy.

Case Arising From

Petitioner seeking approval/provisional approval of its Concrete Sleeper Plant (CSP) under the Railway Board policy dated 19.02.2021 read with instructions dated 29.09.2023.

Appearances for Parties

Advs. for the Petitioners : Ram Nath Pandey
Advs. for the Respondent : A.S.G.I.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Shri Uday Gupta, learned Senior Advocate assisted by Shri Ram Nath Pandey, learned counsel appearing on behalf of the petitioner as well as Shri S.B. Pandey, learned Senior Advocate & DSGI assisted by Shri Varun Pandey, learned counsel appearing on behalf of the respondents and perused the record.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

"(i) Issue an appropriate writ, order or direction in the nature of mandamus, directing Respondent No. 2 to process and issue the approval / provisional approval of the Concrete Sleeper Plant (CSP) of the Petitioner Company situated at Village Pendari, P.O. Sakri, Bilaspur, Chhattisgarh 495003 forthwith in terms of the policy dated 19.02.2021 read with the instructions dated 29.09.2023; alternatively;

(ii) Issue an appropriate writ, order or direction in the nature of mandamus, directing Respondent No. 2 to process and issue the approval of the Concrete Sleeper Plant (CSP) of the Petitioner Company situated at Village Pendari, P.O. Sakri, Bilaspur, Chhattisgarh 495003 forthwith in terms of the policy dated 19.02.2021 read with the instructions dated 29.09.2023 subject to the Petitioner Company filing an Undertaking that it shall commission the siding within the timeframe granted by the Respondent No. 2 to similarly placed Concrete Sleeper Plants in terms of the instructions dated 22.05.2026;

(iii) Issue an appropriate writ, order or direction directing the Respondents to permit the Petitioner Company to participate in the tender processes which are published /issued by the Respondent No. 1 and to accept the technical and financial bid of the Petitioner - Company, subject to grant of formal approval by Respondent No. 2;

(iv) Call for the records maintained by the Respondent No. 2 regarding the application submitted by the Petitioner Company with Respondent No. 2 to verify the reasons for delay in grant

of approval to the Petitioner - Company for its Concrete Sleeper Plant situated at Village - Pendari, P.O. Sakri, Bilaspur, Chhattisgarh - 495003."

3. Learned Senior Counsel appearing on behalf of the petitioner submits that the petitioner made an application for setting up a new Concrete Sleeper Plant (CSP) on 01.04.2025 and has virtually completed all the requisite formalities. However, approval has not yet been granted to the petitioner.

4. He further submits that all the requisite documents from the petitioner's end were furnished to the Railways by March, 2026. He further submits that, subsequently, the Government of India, Ministry of Railways, Research Designs and Standards Organization (RDSO), issued a letter introducing certain new guidelines for fresh applicants seeking to set up new Concrete Sleeper Plants (CSPs). The relevant portion of the said guidelines, applicable to the petitioner, is reproduced below:-

"(I) For CSPs already approved with Revised policy dated 19.02.2021:

Those CSPs which are Stabilized till date under the Railway Board policy issued vide letter no. 2004/TK-II/22/11/5(Shifting) dated 19.02.2021 but failed to ensure commissioning of siding as per assurance by the firm/CSP according to approved layout plan, shall be given one time opportunity to commission the siding latest by 31.12.2026 as per extant approvals of Zonal Railways. The firms, which have been granted Development status can be stabilized provided they submit undertaking to commission the siding latest by 31.12.2026. The firms, which have not been granted Development status will be strictly governed by instructions in Annexure.

II. For CSPs approved earlier to Revised policy dated 19.02.2021:

RB has also emphasized that the uniformity across all CSPs, i.e. existing and new plants, is essential to the Railway requirements. Those CSPs which are at Development status including those Stabilized prior to the Railway Board policy issued vide letter no. 2004/TK-11/22/11/5(Shifting) dated 19.02.2021 but have not yet functioning with a siding, should be given one time opportunity to commission the siding latest by 31.12.2027 as per extant approvals of Zonal Railways."

5. Learned counsel argues, on the basis of the aforesaid guidelines, that the petitioner should also be permitted to set up its Concrete Sleeper Plant and be granted an extension for commissioning the railway siding up to 31st December, 2026.

6. Per contra, learned counsel appearing on behalf of the respondent-authorities submits that the petitioner has not yet been granted approval to establish a new Concrete Sleeper Plant (CSP) and, therefore, is not entitled to the benefit of the new guidelines. The learned DSGI has submitted that extension for commissioning of railway siding as per the policy is provided to only existing CSP. According to him, new entrant cannot be granted approval without an existing siding as per the extant policy.

7. This Court has given a thoughtful consideration to the submissions made by the rival parties.

8. Upon perusal of the documents and after hearing learned counsel for the parties, we are of the view that, till date, the petitioner has not been granted approval by the Railways to manufacture Concrete Sleepers at its proposed Concrete Sleeper Plant (CSP). Consequently, the petitioner's application is still pending and, therefore, it would be governed by the new guidelines issued by the Railways. Any relief granted to the petitioner as being sought would tantamount to deemed approval by the Railway authority, which cannot be the purview of law as we understand that a robust mechanism has been provided for such approval, which operates at multiple stages, involving scrutiny of documents, verification of source materials, inspection of plant and machinery, gauge checking, mix design approval, testing of samples, and evaluation of capacity and capability of the CSP. Apparently at each of these stages a technical assessment and satisfaction of the authority is required and as such, in absence of final satisfaction of the said process, approval cannot be granted to the petitioner. This Court being bereft of any technical expertise cannot step into the shoes of the approving authority to make a technical assessment and grant approval to the petitioner. We are also clear in our mind that a writ of mandamus also cannot be issued in that regard.

9. Further, it is also clear from the new regulations that have come into effect that any person intending to establish a Concrete Sleeper Plant (CSP) must have a railway siding ready for use. The Government has merely granted a limited relaxation only to those plants that are already in operation. Since the petitioner's plant has not yet been approved, the question of granting any extension of time for creation of a railway siding does not arise in the present facts and circumstances. According to this Court, the reliance on the aforesaid guidelines for granting approval is wholly misconceived/misplaced.

10. The claim of the petitioner that approval should be granted for establishing a Concrete Sleeper Plant (CSP), along with an extension of time up to 31st December, 2026 is a far fetch argument and cannot be countenanced by us. The benefit of extension has been specifically granted only to those applicants who are already operating Concrete Sleeper Plants (CSPs) for the Railways under the policy dated 19.02.2021 or who had already been approved as CSPs prior to the issuance of the said policy. Since the petitioner has not been granted approval as a Concrete Sleeper Plant (CSP) till date and there is no concept of deemed approval, it is not entitled to the benefit of the said extension. The relief sought by the petitioner seems to be in disguise as it tries to achieve something indirectly (i.e. the approval), which it has failed to achieve directly.

11. In view of the aforesaid observations and findings, the writ petition as being devoid of any merit is accordingly dismissed. However, it is made clear that we have not made any comment on the merits or otherwise, of the pending application of seeking approval of the CSP of the petitioner-company, which may be decided by the authority concerned on its own merit, in accordance with law.

(2026) 7 ILRA 797
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 7099 of 2026

M/S Konkan Railway Corporation Ltd. ...Petitioner(s)
Versus
Union of India & Ors. ...Respondent(s)

Issue for Consideration

Matter pertains to the legality of the rejection of the petitioner's bid by the respondent railway authorities on the ground that the Bank Guarantee furnished by the petitioner contained an incorrect name of the beneficiary, when the said defect was curable.

Headnotes

Railways – Tender – Bank Guarantee – Rejection of bid on ground of incorrect name of beneficiary – Curable defect – Procedural fairness – Petitioner, a Government enterprise, challenged the rejection of its bid by the respondent railway authorities – On an earlier occasion, petitioner's bid had been rejected without any reason – Upon intervention of the Court, respondents disclosed the reason for rejection as non-payment of adequate stamp duty on the Bank Guarantee – Court found the deficiency in stamp duty to be a curable defect and permitted petitioner to make good the deficiency – Petitioner accordingly furnished an adequately stamped Bank Guarantee – Respondents thereafter returned the Bank Guarantee on the ground that the name of the beneficiary was incorrect, although such objection had not been raised in the earlier round – Petitioner once again submitted the Bank Guarantee in the name of the correct beneficiary on 19.06.2026 – Same was again returned on the ground that the Bank Guarantee had been submitted belatedly – Justification:

Held : All the defects which had been pointed out by the authorities were curable defects and such defects could have been pointed out at much earlier stage – thus, the rejection was clearly in gross violation of principles of natural justice and against the established principles of law – Issuance of a Bank Guarantee in an incorrect name has been found to be a curable defect, which can be remedied even during the currency of the contract, not to talk during the bidding period – Railways being a 'State instrumentality' needs to function uniformly and fairly – As a model employer they cannot choose to play hide and seek – Acts of the respondent railway authorities in not permitting the petitioner to participate in the financial bid were illegal and without any force of law – Impugned letter dated 08.06.2026 quashed and set aside – Respondent No.2 directed to evaluate the financial bid of the petitioner after accepting the corrected beneficiary's name in the Bank Guarantee and thereafter proceed further in the tender process.[Paras 8-11] (E-5)

Case Law Cited

Nil

List of Acts

Constitution of India

List of Keywords

Railways – Tender – Bank Guarantee – Incorrect name of beneficiary – Curable defect – Procedural fairness – Principles of natural justice – State instrumentality – Arbitrary action – Financial bid – Rejection of tender

Case Arising From

Petitioner challenged the letter dated 08.06.2026, whereby the petitioner's financial bid was rejected on the ground that the name of the beneficiary mentioned in the bank guarantee was incorrect.

Appearances for Parties

Advs. for the Petitioners : Alok Kumar Singh
Advs. for the Respondent : A.S. G. I.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Sri Sudeep Seth, learned Senior Advocate assisted by Sri Alok Kumar Singh and Sri Kazim Ibrahim, learned counsel for the petitioner and learned counsel appearing on behalf of the Respondent No.1 to3 (North Eastern Railways, Gorakhpur) and Ms. Aishwarya Shukla, learned counsel for the respondent no. 5 (M/s. Rail Vikas NigamLtd.).

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

"i. Issue a writ, order or direction in the nature of Certiorari quashing the impugned letter dated 08.06.2026, styled as "Rejection and non-opening of financial bid due to technical/legal consideration"(see Annexure No. 1-as communicated to the Petitioner via WhatsApp on 08/06/2026);

ii. Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to evaluate the Financial Bid of the Petitioner (Annexure No. 18; Page 211), in compliance of the order dated 29.05.2026 of this Hon'ble Court, passed in Writ C No. 5810 of 2026;

iii. Issue, in view of the law as clarified by order dated 29.05.2026 of this Hon'ble Court, passed in Writ CNo. 5810 of 2026, a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to accept the amended Bank Guarantee, dated 18.06.2026, submitted by the Petitioner after removal of the curable defect as pointed out in impugned letter dated 08.06.2026;

iv. Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to proceed further tender process including declaration, execution and issuance of work order, or taking of any other consequential action in the tender process."

3. Learned Senior counsel for the petitioner has submitted that in spite of orders of this Court, which were passed on various occasions and finally on May 29, 2026 in the earlier round of litigation relating to the present tender in question, the authorities have acted malafidely and has now sought to reject the bid of the petitioner on a rather uncanny manner and on an absolutely new ground that the name of the beneficiary in the bank guarantee is incorrect.

4. It is to be noted that the petitioner, which is a Government enterprise, had been off and on being forced to knock the doors of this court complaining procedural unfairness against the

respondent railway authorities in the tendering process of providing Design, Supply, Erection, Testing & Commissioning of Traction Sub Stations with associated Switching Posts for 2x25 KV AT traction feeding system in Gorakhpur Cant.-Chapra Gramin section of Varanasi Division of North Eastern Railway for capacity upgradation work of electric traction power supply installations , on EPC Mode at an estimated cost of INR 262.12 Crores.

5. Apparently, the petitioner filed a writ petition on earlier occasion challenging that their bid had been rejected without any reason. However, subsequently, when this Court intervened, the contesting Respondents No.1 to3, sprung with a reason for rejection of the bid of the petitioner on the ground that the bank guarantee provided by the petitioner did not have appropriate amount of stamp duty. The said matter was argued at length and it is surprising at that point, learned counsel for the contesting respondents did not point out that the name of the beneficiary in the said bank guarantee was incorrect. If the same had been pointed out at that relevant time, similar directions would have been given to the petitioner to issue the bank guarantee in the name of a correct beneficiary.

6. Albeit, since there was not even a whisper or an iota of mention relating to the name of the beneficiary as mentioned in the bank guarantee to be incorrect, this Court finding that the ground of non-payment of adequate stamp duty on the said Bank Guarantee, as being agitated by the Respondent railways authorities to be a curable defect, permitted the petitioner to make good the said deficiency within a stipulated time vide an order dated 29.05.2026 passed in ***WRIT - C No. - 5810 of 2026 (M/S Konkan Railway Corporation Ltd. Thru. Auth. Mr. Om Prakash Verma Vs.Union Of India Thru. General Manager (N.E.R.) Gorakhpur U.P. And 5 Others);*** which also held as follows:

"10. In any case, the above reason, namely that adequate stamp duty had not been paid in accordance with the U.P. Stamp Act, in our view, is at the most a lacuna and a curable defect which could have been sought to be cured by the authority concerned. It is further to be noted, as pointed out by Sri Sudeep Seth, learned Senior Advocate appearing on behalf of the petitioner, that in the past, for another tender, a similar bank guarantee of Rs.500/- had been accepted and the financial bid of the petitioner had been opened, wherein the petitioner had been declared L-3. These documents are annexed at Page Nos.159 and 163 of the supplementary affidavit.

11. In light of the above, it appears that the action of the authorities is mala fide and is merely an attempt to eliminate the petitioner, who has submitted the lowest financial bid.

12. As regards the contention of the learned counsel for the respondents that financial bid had been opened, it has to be understood that it is well settled that a bidder, even if declared the highest bidder, does not for that reason alone obtain an indefeasible right to insist upon award of the contract. Until the process matures into a concluded contractual relationship in accordance with the governing tender conditions, the bidder's position remains provisional. The Supreme Court in Meerut Development Authority v. Assn. of Management Studies reported in (2009) 6 SCC 171 has held that State or authority under Article 12 of the Constitution of India is not bound to accept bid of L1 bidder, but is only bound to act without arbitrariness and favouristism. The relevant paragraphs of the aforesaid judgment are delineated below:-

"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested

persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

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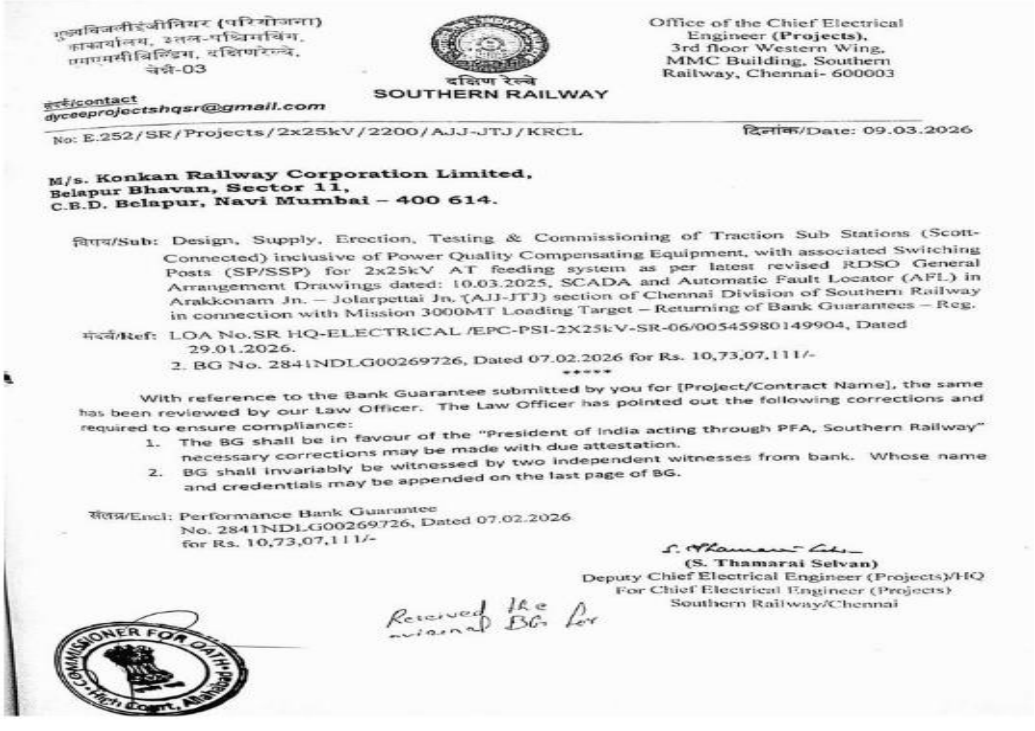
29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."”

7. Upon perusal of the record, it appears that the adequately stamped bank guarantee was duly provided by the petitioner as directed by this Court vide its order dated 29.05.2026 passed in ***M/S Konkan Railway Corporation Ltd.*** (Supra). However, surprisingly, the said bank guarantee came to be returned to the petitioner on 08.06.2026 stating that it was in the name of incorrect beneficiary. Admittedly, the petitioner once again submitted the bank guarantee in the name of correct beneficiary on 19.06.2026 but again the same was returned to the petitioner on the ground that the bank guarantee had been submitted belatedly.

8. From the scrutiny of the documents and the manners in which the respondent- authorities are approaching this particular tender, it appears to this Court that they are fixated to not allow the petitioner to participate in the tender on one ground or the other. All the defects, which had been pointed out by the authorities are curable defects and such defects could have been pointed out at much earlier stage. In our view, the ground/certain defects for rejecting the tender of the petitioner are curable and thus, the rejection is clearly in gross violation of principles of natural justice and against the established principles of law.

9. We have already dealt the same issue in our judgment dated May 29, 2026 relying on several judgments of the Hon'ble Supreme Court. On the earlier occasion, we have also observed that the discriminatory acts of the respondent-authorities were malafide and was merely an attempt to eliminate the petitioner, who had submitted a lowest financial bid. The said reasoning of this Court applies with equal force to the issue being raised in the present writ petition. Further, the findings stand vindicated from the fact that own showing of the respondent-authorities, the issuance of a Bank Guarantee in an incorrect name has been found to be a curable defect, which can be remedied even during the currency of the contract, not to talk during the bidding period. We find that the Southern Railway, Chennai an arm of the present contesting respondents (North Eastern Railways, Gorakhpur), when faced with an identical situation for a work of similar nature awarded, permitted the present petitioner to carry the necessary correction in the name of the beneficiary in a Bank Guarantee. The said letter dated 09.03.2026 issued by the Southern Railways to the petitioner would show that after the issuance of LOA dated 29.01.2026 i.e after the bidding culminated and the Bank Guarantee was provided by the petitioner on 07.02.2026, the southern railways returned the said Bank guarantee by the said letter requiring the petitioner to carry necessary correction relating to the name of the beneficiary in that Tender. The said letter has been filed by the petitioner and the same is being referred in the present order for the simple reason to show the admitted position that the railways have themselves acknowledged that said

corrections in the name of the beneficiary of Bank Guarantee to be a curable defect. The scanned copy of the said letter is as follows:-



मुख्यविजलीइंजीनियर (परियोजना)
कार्यालय, 3रा फ्लो-पश्चिमविंग,
एमएमसीबिल्डिंग, दक्षिणरेल्वे,
चेन्नै-03

ईमेल/contact
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दक्षिण रेल्वे
SOUTHERN RAILWAY

Office of the Chief Electrical Engineer (Projects),
3rd floor Western Wing,
MMC Building, Southern Railway, Chennai- 600003

No: E.252/SR/Projects/2x25kV/2200/AJJ-JTJ/KRCL दिनांक/Date: 09.03.2026

M/s. Konkan Railway Corporation Limited,
Belapur Bhavan, Sector 11,
C.B.D. Belapur, Navi Mumbai – 400 614.

विषय/Sub: Design, Supply, Erection, Testing & Commissioning of Traction Sub Stations (Scott-Connected) inclusive of Power Quality Compensating Equipment, with associated Switching Posts (SP/SSP) for 2x25kV AT feeding system as per latest revised RDSO General Arrangement Drawings dated: 10.03.2025, SCADA and Automatic Fault Locator (AFL) in Arakkonam Jn. – Jolarpettai Jn. (AJJ-JTJ) section of Chennai Division of Southern Railway in connection with Mission 3000MT Loading Target – Returning of Bank Guarantees – Reg.

संदर्भ/Ref: LOA No.SR HQ-ELECTRICAL /EPC-PSI-2X25kV-SR-06/00545980149904, Dated 29.01.2026.
2. BG No. 2841NDLG00269726, Dated 07.02.2026 for Rs. 10,73,07,111/-

*****

With reference to the Bank Guarantee submitted by you for [Project/Contract Name], the same has been reviewed by our Law Officer. The Law Officer has pointed out the following corrections and required to ensure compliance:

1. The BG shall be in favour of the "President of India acting through PFA, Southern Railway" necessary corrections may be made with due attestation.
2. BG shall invariably be witnessed by two independent witnesses from bank. Whose name and credentials may be appended on the last page of BG.

संलग्न/Encl: Performance Bank Guarantee
No. 2841NDLG00269726, Dated 07.02.2026
for Rs. 10,73,07,111/-

(S. Thamarai Selvan)
Deputy Chief Electrical Engineer (Projects)/HQ
For Chief Electrical Engineer (Projects)
Southern Railway/Chennai

Received the BG for signature

COMMISSIONER FOR OATH High Court, Allahabad

10. Having considered the facts and circumstances, we are rather amused as to how there can be a two different yard-stick for two arms of the same organization. We need not burden this judgment with the law on the subject that the railways being a state instrumentality needs to function uniformly and fairly. The acts of the respondent North Eastern Railways Authorities besides being arbitrary smacks of malafide and are whimsical. They ought to have spelt the inaccuracy in the name of the beneficiary of the Bank guarantee in the very first instance. As a model employer they cannot chose to play hide and seek. Apparently, the acts are nothing short of harassment, which is not permissible under any law. It seems the respondent authorities are hell-bent to oust the legitimate participation of the petitioner in the tendering process for obvious reasons, which cannot be permitted in any circumstances.

11. In light of the same, we are once again constrained to hold that the acts and omissions of the Respondent railway authorities in not permitting the petitioner to participate in the financial bid to be illegal and without any force of law. Consequently, the impugned letter dated 08.06.2026 is hereby quashed and set-aside and the Respondent No.2 is directed to evaluate the Financial bid of the petitioner in compliance of our order dated 29.05.2026 in ***M/S Konkan Railway Corporation Ltd. Thru. Auth. Mr. Om Prakash Verma*** (Supra), after accepting the corrected beneficiary's name in the Bank guarantee within a period of three working days from today and accordingly thereafter proceed further in the tender process.

12. With the above direction, the writ petition is ***disposed of.***

(2026) 7 ILRA 802
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 11407 of 1983
With
Writ B No. 6580 of 1986

Ram Kripal **...Petitioner(s)**
Versus
J.D.C. & Ors. **...Respondent(s)**

Issue for Consideration

(1) Scope of interference in the finding of facts recorded by the consolidation authorities in respect of the validity of Adoption-deed.

Headnotes

(A) Consolidation law – UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11 and 48 – Hindu Adoption and Maintenance Act 1956 – S. 12 and 16 – Respondent's name was recorded on the basis of registered Adoption-deed – Objection was raised by the petitioner to expunge name of respondent, which was rejected by Consolidation Officer – Appeal and Revision was also dismissed by the SOC and DDC respectively – Validity challenged – Validity of Adoption-deed in the light of the Act, 1956 also felt into consideration:.

Held : Adoption deed dated 2.8.1960 is fully proved and Ramji was rightly recorded as adopted son of late Murlidhar as Smt. Moti Rani widow of Murlidhar has adopted the Ramji on 2.8.1960 – The provision of Hindu Adoption and Maintenance Act 1956 was also taken into consideration by the consolidation authorities in holding that Ramji was adopted by Smt. Moti Rani widow of Murlidhar on 2.8.1960, as such, Ramji will inherit the share of Murlidhar – The son adopted by widow after the death of husband will be treated to be adopted son of husband also– There is no illegality in the exercise of jurisdiction by the consolidation authorities in holding that Ramji will inherit as adopted son of Smt. Moti Rani and Murlidhar. [Para 16, 17 and 19] (E-1)

Case Law Cited

Subhash Misir U/G of Sri Janardan Tewari vs. Thagai Misir, 1966 RD 255; Sawan Ram Vs. Mst. Kalawanti and Others, AIR 1967 SC 1761 **– referred to.**

List of Acts

Hindu Adoption and Maintenance Act 1956 – S. 12 and 16; UP Consolidation of Holding Act, 1953 – Ss. 9A(2), 11(1), 48.

List of Keywords

Basic year entry, Issueless, Objection, Ancestral, Lacuna, Adoption deed, Independent witness, Remand order, Concurrently, Family pedigree, Exercise of jurisdiction, Categorical finding, Scope for interference.

Case Arising From

Impugned orders dated 09.09.1983 passed by the Deputy Director of Consolidation, Impugned order dated 29.12.1973 passed by the Settlement Officer of Consolidation and 20.10.1973 passed by the Consolidation Officer.

Appearances for Parties

Advs. for the Petitioner : Sunil Kumar Mishra, B. N. Mishra, Dhananjai Prasad, H. N. Shukla, R.R. Shukla, U. K. Pandey.

Advs. for the Respondents : Ashish Kumar Singh, Sr. Adv.; Birendra Kumar; S.C. Ajay Kumar Singh, Himanshu Dubey, P. K. Dubey, S. Niranjan.

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

1. Heard Mr. Sunil Kumar Mishra, learned Counsel for the petitioners in both the aforementioned writ petitions, Mr. Ashish Kumar Singh, learned Senior Counsel assisted by Mr. Birendra Kumar, learned Counsel for the private respondent no.4 in Writ B No. 11407 of 1983 as well as private respondent no.1 in Writ B No. 6580 of 1986 and learned Standing Counsel for the State respondents.

2. Common question of law and facts are involved in both the aforementioned writ petition, as such, both the writ petitions are clubbed and heard together.

3. Brief facts of the case are that disputed property in Writ B No. 11407 of 1983 is khata no. 96 situated in Village Rasauli, Tehsil- Meja, District Allahabad now Prayagraj. Disputed property in Writ B No. 6580 of 1986 are khata nos. 123, 84, 364, 365 of Village Jawania, Pargana Khairagarh, Tehsil- Meja, District Allahabad now Prayagraj, Khata no. 98 of Village Keshavpatti, Pargana- Khairagarh, Tehsil- Meja, District Allahabad now Prayagraj, khata no. 108 of Vilalge- Atawaria, Pargana- Khairagarh, Tehsil Meja, District Allahabad now Prayagraj. In the basic year of consolidation operation, khata no. 96 was recorded in the name of Ram Kripal son of Balbhaddar, Ramji adopted son of Murlidhar, Paras Nath son of Sheo Naik and ram Kishore son of Sheo Naik, Khata no. 84, 364, 365 were recorded in the name of Ramji as adopted son of Murlidhar, khata no. 123 was recorded in the name of Mahadeo, khata no. 108 was recorded in the name of Ram Kripal and others, khata no. 98 was recorded in the name of Ramji as adopted son of Murlidhar. In respect to basic year entry of khata no. 96, an objection under Section 9A (2) of U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act was filed by Ram Kripal with the allegation that Murlidhar has died issueless and his share was inherited by his widow Smt. Moti Rani but after the death of Smt. Moti Rani, the name of Rami was wrongly recorded as adopted son of Murlidhar, as such, his name should be expunged. According to Ramji, he was adopted by Smt. Moti Rani vide adoption deed dated 2.8.1960, as such, inherited the share of Murlidhar over khata no. 96. Consolidation Officer vide order dated 20.10.1973 rejected the objection filed by Ram Kripal and allowed the claim of Ramji holding that Ramji is adopted son of Murlidhar and Smt. Moti Rani. Appeal filed by Ram Kripal against the order dated 20.10.1973 was dismissed by Settlement Officer of Consolidation vide order dated 29.12.1973. Revision under Section 48 of U.P.C.H. Act filed by Ram Kripal was allowed by Deputy Director of Consolidation vide order dated 22.5.1974 holding that Ramji is not adopted son of

Smt. Moti Rani and Murlidhar. Against the revisional order dated 22.5.1974, writ petition no. 3315 of 1974 was filed by Ramji which was allowed vide judgement dated 30.1.1981 setting aside the revisional order dated 22.5.1974 and matter was remanded back before revisional Court to decide the revision afresh. In pursuance of the judgement of this Court dated 30.1.1981, the revision was heard afresh and the same was dismissed vide order dated 9.9.1983. Hence Writ B No. 11407 of 1983 in respect to khata no. 96 of Village Rasauli has been filed for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing and setting aside the order of the Joint Director of Consolidation dated 9.9.1983, that of the Settlement Officer of Consolidation dated 29.12.1973 and the order dated 20.10.1973, passed by the Consolidation Officer.

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

(iii) Stay meanwhile the dispossession of the petitioner from the disputed plots in pursuance of the order dated 9.9.1983 passed by the Joint Director of Consolidation Allahabad."

4. In respect to the dispute of khata no. 123 of Vilalge Jawania and khata no. 108 of Village Atawaria, Ramji filed objection under Section 9A (2) of U.P.C.H. Act with the allegation that aforementioned khata are ancestral, as such, his name should be recorded as co-sharer being adopted son of Moti Rani. Consolidation Officer vide order dated 13.12.1983 held that name of Ramji be entered over khata no. 123 of Village Jawania and khata no. 108 of Village Atawaria as a co-sharer. Appeal under Section 11 (1) of U.P.C.H. Act filed by Ram Kripal against the order of Consolidation Officer was heard and dismissed by Settlement Officer of Consolidation vide order dated 12.12.1984 holding that Ramji is adopted son of Murlidhar. Ram Kripal filed a revision under Section 48 of U.P.C.H. Act before Deputy Director of Consolidation which was heard and dismissed by Deputy Director of Consolidation vide order dated 8.4.1986. Hence Writ B No. 6580 of 1986 has been filed by Ram Kripal in respect to khata no. 123 etc. of Village Jawania khata no. 98 of Village- Keshavpatti and khata no. 108 of Village-Atawaria for the following relief:-

"A writ in the nature of certiorari setting aside and quashing the orders dated 13.12.1983 passed by Consolidation Officer dated 12.12.1984 passed by the learned S.O.C. and dated 3.4.1986 passed by the learned D.D.C. Allahabad and further."

5. This Court admitted the Writ B No. 11407 of 1983 on 20.9.1983 and issued notice to the respondents.

6. Writ B No. 6580 of 1986 was admitted on 24.7.1986 and operation of the impugned orders were stayed as well as dispossession of the petitioner from the land in dispute was stayed but after hearing the Counsel for the parties, the ex-parte interim dated 24.7.1986 was vacated by this Court on 16.12.1987.

7. Learned Counsel for the petitioner submitted that adoption deed set up by Ramji cannot be relied upon as requirement of Section 16 of Hindu Adoption and Maintenance Act 1956 were not fulfilled. He further submitted that lacuna in the adoption deed cannot be removed by examining the independent witnesses. He submitted that consolidation authorities have failed to discharge their jurisdiction in proper manner, as such, impugned orders passed in both the writ petition should be set aside. He further submitted that the remand order passed by this Court in writ petition no. 3315 of 1974 has not been taken into consideration in proper manner by the revisional Court. He further submitted that after death of Murlidhar, name of his widow Smt. Moti Rani was recorded in the place of Murlidhar, as such, adoption deed set up by Ramji cannot be taken into consideration. He submitted that both the writ petitions should be allowed on the ground set up in the respective writ petitions and claim of Ramji on the basis of adoption deed alleged to be executed on 2.8.1960 should be rejected.

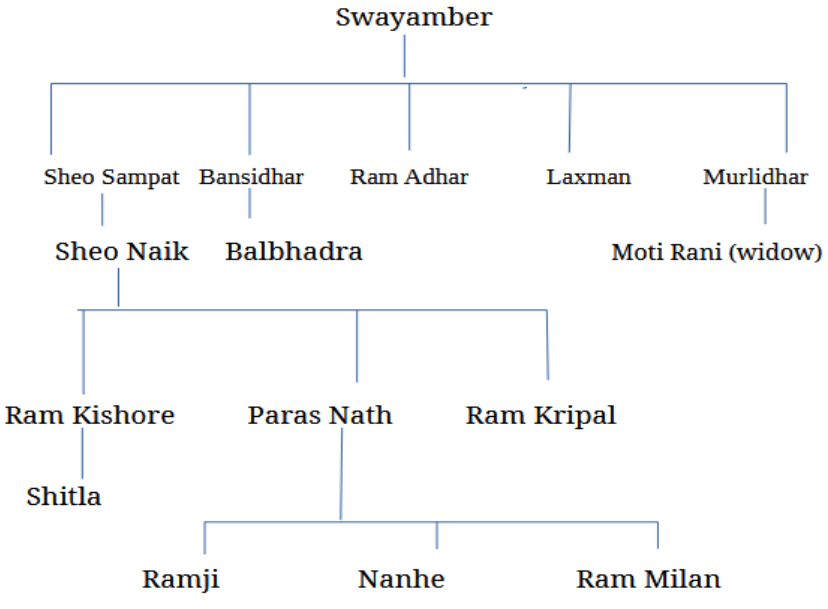
8. On the other hand, learned Counsel for the contesting respondent- Ramji in both the aforementioned writ petitions submitted that all the three consolidation authorities in both the aforementioned writ petitions have concurrently held that adoption deed dated 2.8.1960 was properly executed in favour of Ramji, as such, Ramji is entitled to be recorded over the khata in dispute on the basis of adoption as adopted son of Smt. Moti Rani. He further submitted that this Court while allowing the Writ B No. 3315 of 1974 filed by Ramji as adopted son of Murlidhar has remanded the matter before Deputy Director of Consolidation to decide the revision afresh in the light of the observation made in the body of the judgement. He submitted that Deputy Director of Consolidation in pursuance of the judgement of this Court dated 30.6.1981 has dismissed the revision holding that adoption deed was properly executed in favour of Ramji, as such, Ramji is entitled to inherit as adoption son of Murlidhar. He submitted that in view of the categorical finding of fact recorded by all the consolidation authorities, there is no scope for interference under Article 226 of the Constitution of India.

9. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

10. There is no dispute about the fact that Consolidation Officer, Settlement Officer of Consolidation and Deputy Director of Consolidation in both the aforementioned writ petition have held that Ramji is adopted son of Murlidhar and Smt. Moti Rani and Ramji is entitled to inherit as adopted son of Murlidhar and Smt. Moti Rani.

11. In order to appreciate the controversy involved in the matter, the perusal of family pedigree as mentioned in paragraph no.4 of Writ B No. 6580 of 1986 will be relevant which is as under:-

Pedigree



12. The perusal of all the issues framed before the Consolidation Officer in respect to khata no. 96 of Village Rasauli will be relevant which is as under:-

"१- क्या राम जी का नाम खाता 96 में गोदनामा के आधार पर फरजी दर्ज है।

२- क्या राम जी का गोदनामा फरजी है।

३- क्या राम जी पुत्र पारसनाथ का नाम खाता नम्बर 96 में फरजी दर्ज है।"

13. Consolidation Officer on the basis of evidence adduced by the parties has held that objection of Ram Kripa with respect to khata no. 96 cannot be allowed as Ramji is adopted son of Murlidhar on the basis of adoption deed dated 2.8.1960. The order of Consolidation Officer was maintained in appeal but by the earlier revisional order, the order passed by Consolidation Officer and Settlement Officer of Consolidation were set aside accordingly this Court allowed the writ petition filed by Ramji setting aside the revisional order and matter was remitted back before revisional Court with direction that revisional Court cannot reverse the finding recorded by the subordinate authorities on irrelevant consideration. In pursuance of the order of this Court, Deputy Director of Consolidation has dismissed the revision recording finding that adoption deed set up by Ramji is fully proved and Ramji will be treated as adopted son of Murlidhar.

14. Perusal of the operative portion of judgement of this Court dated 30.1.1981 passed in Writ B No. 3315 of 1974 by which revisional Court was directed to decide the revision afresh, will be necessary which is as under:-

"In view of what has been discussed above the order of the Deputy Director of Consolidation cannot be sustained in law and deserves to be quashed as it is based on certain irrelevant considerations and ignoring the relevant evidence on record which were relied upon by the subordinate consolidation authorities. See Suraj Rai and Others Vs. Deputy Director of Consolidation and Others (civil misc. writ petition no. 1753 of 1976 decided on 21.12.1976), (civil misc. writ petition no. 1753 of 1976 decided on 21.12.1976).

In the result, the petition succeeds and is accordingly allowed. The order of the Deputy Director of Consolidation dated 22.5.1974 is quashed and the Deputy Director of Consolidation is directed to decide the revision a fresh according to law and in the light of the observation made above. The parties shall, however, hear their own costs.
Dated/ January 30, 1981
Shyam Behari."

15. Perusal of the relevant portion of the revisional order dated 9.9.1983 passed in pursuance of the judgement of this Court will also be necessary which is as under:-

"4- माननीय उच्च न्यायालय के निर्णय के अवलोकन से यह स्पष्ट होता है कि माननीय उच्च न्यायालय ने यह निर्देश दिया है कि चूंकि आपत्तिकर्ता के रामजी को मुरलीधर का दत्तक पुत्र दिखलाया गया है, अतः जिसकी मान्यता है कि गोद लेने की रस्म की गई थी पर यह विपक्षी को साबित करने का अधिकार प्राप्त है कि यह साक्ष्यों के आधार पर यह सिद्ध करे कि गोद लेने की रस्म नहीं हुई थी। कहने का तात्पर्य यह है कि माननीय उच्च न्यायालय के निर्णय के अनुसार जब तक रामकृपाल आदि विश्वसनीय प्रमाण के आधार पर यह सिद्ध नहीं करते कि रामजी को नियमानुसार गोद नहीं लिया गया था, तब तक यह बात स्वीकार की जावे कि रामजी मुरलीधर के दत्तक पुत्र हैं। माननीय न्यायालय ने एक विविध प्रश्न भी निर्णय हेतु खुला छोड़ दिया है। यह वह है कि हिन्दू एडॉप्शन एंड मेंटेनेंस एक्ट की धारा 12 के अनुसार रामजी, जिनको मु० मोती रानी ने अपने पति मुरलीधर की मृत्यु के पश्चात गोद लिया कहते हैं, केवल मु० मोती रानी के दत्तक पुत्र माने जाएँगे और इस प्रकार मुरलीधर की संपत्ति जो वरासतन मु० मोती रानी को मिली थी, में कोई अधिकार प्राप्त नहीं होगा अथवा जब मुरलीधर के दत्तक पुत्र माने जाएँगे और इस हैसियत से उन्हें मुरलीधर की संपत्ति में पूर्ण अधिकार प्राप्त होगा।

5- निगरानीकर्ता ने सर्वप्रथम गोद लेने की बात को गलत बताया तथा गोद लेने की बात को गलत साबित करने के लिए निगरानीकर्ता की ओर से ही रामकृपाल ने तथा विजयनंदन का बयान कराया गया है। इसके अलावा चकबंदी अधिकारी ने समक्ष लाला राम कॉलेज से संबंधित रजिस्टर की प्रमाणित प्रतिलिपियाँ, मतदाता सूची एवं कुटुंब रजिस्टर के साधारण तथा वार्षिक खतौनी 1371-73 मीटर दाखिल किया गया है, जो कि चकबंदी अधिकारी के आदेश की प्रतिलिपि से विदित होता है। जहाँ तक वादी के गवाह विजयनंदन का

प्रश्न है, वह मु० मोती रानी के ग्राम का नहीं है, अपितु इस ग्राम में अपना ननिहाल बताया है पर अपने बयान में इसने उस ग्राम के विषय में अपनी जानकारी के लिए अपने को अनभिज्ञता प्रकट की। विजयानंद के बयान के प्रतिलिपि पत्रावली पर उपलब्ध है, जिसके अवलोकन से स्पष्ट होता है कि उसे रसोली ग्राम के संबंध में कोई खास जानकारी नहीं है। इसके अलावा रामकृपाल के बयान की प्रतिलिपि भी उपलब्ध है। रामकृपाल स्वयं एक पक्ष है, अतः इनके बयान के गोद की रस्म होने अथवा न होने के लिए स्वतः साक्ष्य नहीं कहा जा सकता, अपितु इस प्रकार इस पर विश्वास करने के लिए स्वतंत्र साक्ष्य की आवश्यकता होगी। इन्होंने अपने बयान में यह स्वीकार किया है कि गोदनामा के विषय में रामजी और इनके माध्यम में मुकदमा तहसीलदार लेविल तक चला था और अंततोगत्वा राजस्व परिषद तक गया। तहसीलदार के न्यायालय से रामजी को मुरलीधर का दत्तक पुत्र स्वीकार किया गया था। रामकृपाल की ओर से अन्य कोई गवाह नहीं प्रस्तुत किया गया है जो यह कहे कि मोती राम ने रामजी को गोद नहीं लिया था। जैसा ऊपर कहा गया है, माननीय उच्च न्यायालय के समीक्षण के अनुसार यह रामकृपाल का दायित्व था कि वह यह साबित करे कि मु० मोती रानी ने रामजी को गोद नहीं लिया था। माननीय उच्च न्यायालय ने यह भी समीक्षा किया है कि जब तक उपर्युक्त गोद लेने की बात विश्वसनीय साक्ष्य के आधार पर गलत न सिद्ध हो जाए, तब तक इस बात को मान्यता दें कि रामजी मुरलीधर के दत्तक पुत्र हैं। इस संबंध में यह भी उल्लेख है कि रामजी की ओर से गोदनामा प्रस्तुत किया गया तथा रघुवीर एवं श्यामाचरण गोदनामे के गवाहों के बयान भी कराये गए हैं। इतना ही नहीं, स्वयं रामजी एवं इनके जन्मदाता पिता पारसनाथ ने भी शपथपूर्वक बयान कराया गया है। निगरानीकर्ता के विद्वान वकील ने यह तर्क प्रस्तुत किया कि चूंकि गोदनामे में गोद लेने वाले के माता-पिता का हस्ताक्षर नहीं है तथा गोदनामे का रस्म संबंधित उपस्थित व्यक्तियों के नाम नहीं हैं, इसलिए यह नहीं माना जा सकता कि वैधानिक ढंग से गोदनामा हुआ है। अपने बयान की पुष्टि में विद्वान वकील ने ए.आई.आर. 1980 सुप्रीम कोर्ट के पृष्ठ 1254 पर छपी माननीय उच्च न्यायालय की व्यवस्था की ओर इंगित किया। इस व्यवस्था को पढ़ने से यह प्रकट होता है कि माननीय उच्च न्यायालय के सम्मुख जो मामला विचाराधीन था, उसमें प्रमुख बिंदु यह था कि गोद लेने वाला व्यक्ति स्वस्थ बुद्धि का है अथवा नहीं। इस बिंदु पर उपलब्ध साक्ष्य का सीमांकन करते हुए माननीय उच्च न्यायालय ने यह समीक्षा दिया है कि तत्संबंधित गोदनामा में गोद लेने की वर्ष, तिथि एवं गोद लेने के स्थान पर उल्लेख नहीं है। इसके अतिरिक्त गोदनामे में इस बात का भी उल्लेख नहीं था कि गोद लेते समय कौन-कौन व्यक्ति उपस्थित थे। वर्तमान गोदनामे में गोद लेने की तिथि 2 अगस्त सन 60 अंकित है तथा गोद लेने का स्थान का भी आभास कभी इस गोदनामे में उपलब्ध है कि जिसको कि मु० मोती रानी ने अपने ग्राम में गोद लिया। इसके अलावा गवाहान ने यह स्पष्ट रूप से कहा है कि मोती रानी ने अपने घर पर गोद लिया था, गोद की रस्म सही थी, पूजा-पाठ एवं हवन हुआ था। स्वयं रामजी के जन्मदाता पिता ने इस बातों की पुष्टि अपने ज़बान से किया है। अतः यह स्पष्ट हो जाता है कि माननीय उच्च न्यायालय द्वारा दी गई व्यवस्था के अनुकूल इस मामले में गोद लेने की कार्यवाही की गई है। अतः उपर्युक्त विवेचन के आधार पर मैं इस

मत का हूँ कि रामकृपाल द्वारा ऐसे कोई विश्वसनीय साक्ष्य न ही प्रस्तुत किए गए हैं, जिससे यह विरुद्ध हो सके कि मु० मोती रानी ने रामजी को नियमानुसार गोद नहीं लिया था। प्रस्तुत पत्रावली पर उपलब्ध साक्ष्य से यह सिद्ध होता है कि मु० मोती रानी ने रामजी को वैधानिक ढंग से गोद लिया था।

6-दूसरा प्रश्न जो विचारणीय है वह यह है कि मु० मोती रानी द्वारा गोद लिए जाने के फलस्वरूप क्या रामजी मु० मोती रानी के मृतक पति मुरलीधर के दत्तक पुत्र जाने जाएँगे तथा रामजी को मुरलीधर की संपत्ति में अधिकार प्राप्त होगा? इस संबंध में निगरानीकर्ता के विद्वान वकील की यह तर्क है कि हिन्दू एडॉप्शन एंड मेंटेनेंस एक्ट की धारा 12 एवं 14 के अनुसार रामजी केवल मु० मोती रानी के दत्तक पुत्र माने जाएँगे तथा मु० मोती रानी के मृतक पति मुरलीधर के दत्तक पुत्र नहीं माने जाएँगे और इस प्रकार रामजी विवादित भूमि के स्वामी नहीं हो सकते। अग्रतर यह भी कहा गया है चूंकि विवादित भूमि मु० मोती रानी को उनके पति की मृत्यु के बाद वरासत में मिली थी, अतः रामजी विवादित भूमि के स्वामी नहीं हो सकते। रामजी के विद्वान वकील ने इस तर्क का खंडन करते हुए यह कहा कि धारा 12 एवं 14 के इस प्रकार का कोई उल्लेख नहीं है कि पति के मृत्यु के बाद यदि पत्नी किसी लड़के को गोद लेती है तो वह लड़का केवल उस महिला का दत्तक पुत्र होगा और उसके मृतक पति का दत्तक पुत्र नहीं होगा। इसके विपरीत रामजी के विद्वान वकील ने यह तर्क दिया कि कानून का सुनिश्चित मत यह है कि पति की मृत्यु के बाद यदि पत्नी किसी को गोद लेती है तो गोद में लिए गए संतान उसके मृतक पति का भी दत्तक संतान माना जावेगा। अपने बयान की पुष्टि में विद्वान वकील ने आर.डी. 1966 पृष्ठ 255 पर प्रकाशित माननीय उच्च न्यायालय की व्यवस्था की ओर इंगित किया, जिसके अवलोकन से यह स्पष्ट होता है कि पति की मृत्यु के बाद पत्नी द्वारा गोद लिया गया पुत्र उसके मृतक पति का दत्तक पुत्र होगा इसी आशय की उच्च न्यायालय की व्यवस्था ए आई आर 1967 सुप्रीम कोर्ट के पृष्ठ 1781 पर छपी है। ऐसी परिस्थितियों में यह सिद्ध हो जाता है कि राम जी मु० मोती रानी मृतक पति मुरलीधर का दत्तक पुत्र है।

7-उपर्युक्त समीक्षा से यह स्पष्ट हो जाता है कि राम कृपाल यह सिद्ध करने में असफल रहे कि मु० मोती रानी ने राम जी की गोद नहीं लिया था, अपितु इस तथ्य को साबित करने के लिए पत्रावली पर पर्याप्त साक्ष्य उपलब्ध है कि मु० मोती रानी ने राम जी को वैधानिक ढंग से गोद लिया था। राम कृपाल की उपर्युक्त असफलता के कारण माननीय उच्च न्यायालय की समीक्षा के अनुसार मु० मोती रानी द्वारा राम जी को गोद लेने का तथ्य स्वयं सिद्ध हो जाता है क्योंकि आधार वर्ष की खतौनी में इस प्रकार का उल्लेख होने के कारण मु० मोती रानी व राम जी को गोद लिए जाने का मान्यता प्राप्त है। जहां तक इस प्रश्न का संबंध है कि राम जी वर्णित परिस्थितियों में मुरलीधर मृतक पति मु० मोती रानी के दत्तक पुत्र नहीं माने जाएंगे, माननीय उच्च न्यायालय द्वारा की गई व्यवस्था जिसका ऊपर उल्लेख किया गया है के अनुसार राम जी मुरलीधर के दत्तक पुत्र हैं। अतः अधीनस्थ न्यायालय के राम जी को मुरलीधर का दत्तक पुत्र स्वीकार करते हुए मुरलीधर का वैधानिक उत्तराधिकार मानकर कोई गलती नहीं ही है। उपर्युक्त कारणों से राम कृपाल की निगरानी में कोई बल नहीं पाकर उसे निर्णित किया जाता है।

दिनांक 9-9-83 संयुक्त संचालक चकबन्दी,इलाहाबाद।"

16. Perusal of the earlier judgement of this Court dated 30.1.1981 and impugned revisional order dated 9.9.1983 as quoted above fully demonstrate that adoption deed dated 2.8.1960 is fully proved and Ramji was rightly recorded as adopted son of late Murlidhar as Smt. Moti Rani widow of Murlidhar has adopted the Ramji on 2.8.1960. Perusal of the impugned revisional order further demonstrate that before consolidation operation in the mutation proceeding, the Ramji was found as adopted son of late Murlidhar on the basis of adoption deed executed on 2.8.1960. The provision of Hindu Adoption and Maintenance Act 1956 was also taken into consideration by the consolidation authorities in holding that Ramji was adopted by Smt. Moti Rani widow of Murlidhar on 2.8.1960, as such, Ramji will inherit the share of Murlidhar.

17. This Court in the case reported in ***1966 RD 255 Subhash Misir U/G of Sri Janardan Tewari Vs. Thagai Misir*** has held that the son adopted by widow after the death of husband will be treated to be adopted son of husband also. Paragraph nos. 9 to 13 of the judgement rendered in **Subhash Misir** (Supra) will be relevant for perusal which is as under:-

"9. It is true that if the amendment suggested by the Writer is introduced, well and good. Even in absence of such an amendment, in my opinion, interpreting sections 12 and 14 one could safely hold that in cases covered by the suggested amendment at 14(6) the adopted son would be deemed to be the son of the deceased husband of the widow. It would be very harsh if in such a case the adopted son who severs all his connections from the family of his birth does not get anything in the adoptive family on the ground that he is adopted by the widow.

10. In Madras even before the Act under the old Hindu Law a widow could adopt without the permission of her husband and the various authorities of the Madras High Court would show that such adopted son was always treated as the son of the husband of the widow. In my opinion, the same status should be given to the adopted son after the passing of the Act in other provinces as well. In 'Introduction to Modern Hindu Law' by J. Duncan M. Derret we find in paragraph 180 of that book that the learned author after dealing with Sections 12 and 14 of the Act has opined that for the purposes of inheritance and maintenance an adopted child is precisely upon the same footing as a legitimate child. According to this view also as soon as the adopted son of the widow is held to be the legitimats son the widow's husband would be deemed to be the father of the adopted child.

11. For the reasons given above my conclusion is that the adopted son of a widow would be deemed to be the son of her husband and on her death would inherit the bhumidhari property as the heir of her husband by virtue of Sections 171 and 172 of the U. P. Zamindari Abolition and Land Reforms Act.

12. The lower appellate court erred in holding that the appellant did not succeed to the bhumidhari property left by Smt. Sahebzadi. Having accepted the adoption he should have decreed the suit.

13. The result of my findings is that plaintiff gets the property left by Smt. Sahebzadi and since there is a finding or the lower appellate court that the defendant is neither sirdar nor adhivasi nor an asami. The131 possession, if any, of the defendant is that of a trespasser and he is liable to ejectment. Accordingly this appeal succeeds. The plaintiff's suit for declaration that he is the Bhumidhari of the plots in suit and for possession is decreed with costs throughout.

18. Apex Court in another case reported in ***AIR 1967 SC 1761 Sawan Ram Vs. Mst. Kalawanti and Others*** has considered the scope of Section 12 of Hindu Adoption and Maintenance Act 1956. Paragraph no.9 of the judgement rendered in **Sawan Ram** (Supra) will be relevant for perusal which is as under:-

"It may, however, be mentioned that the conclusion which we have arrived at does not indicate that the ultimate decision given by the Andhra Pradesh High Court was in any way incorrect. As we have mentioned earlier, the question in that case as whether E, after the adoption by D, the widow of B, could divest C of the rights which had already vested in C before the adoption. It is significant that by the year 1936 C was the sole male member of ,the Hindu joint family which owned the disputed property. B died in the year 1924 and A died in 1936. By that time, the Hindu Women's Rights to Property Act had not been enacted and, consequently, C, as the sole male survivor of the family became full owner of that property. In these circumstances, it was clear that after, the adoption of E by D, E could not divest C of the rights already vested in him in view of the special provision contained in clause (c) of the proviso to s. 12 of the Act. It appears that, by making such a provision, the Act has narrowed down the rights of an adopted child as compared with the rights of a child born posthumously. Under the Shastric law, if a child was adopted by a widow, he was treated as a natural-born child and, consequently, he could divest other members of the family of rights vested in them prior to his adoption. It was only with the limited object of avoiding any such consequence on the adoption of a child by a Hindu widow that these provisions in clause (c) of the proviso to s. 12, and section 13 of the Act were incorporated. In that respect, the rights of the adopted child were restricted. It is to be noted that this restriction was placed on the rights of a child adopted by either a male Hindu or a female Hindu and not merely in a case of adoption by a female Hindu. This restriction on the rights of the adopted child cannot, therefore, in our opinion, lead to any inference that a child adopted by a widow will not be deemed to be the adopted son of her deceased husband. The second ground taken on behalf of the appellant also, therefore, fails. The appeal is, consequently, dismissed with costs."

19. Considering the ratio of law laid down by Apex Court and this Court, there is no illegality in the exercise of jurisdiction by the consolidation authorities in holding that Ramji will inherit as adopted son of Smt. Moti Rani and Murlidhar.

20. In respect to plots situated in Village- Jawania, Keshavpatti and Atawaria, all the three consolidation authorities have concurrently held that Ramji was adopted by Smt. Moti Rani vide adoption deed dated 2.8.1960, as such, Ramji will inherit the share of Murlidhar which is proper exercise of jurisdiction by consolidation authorities.

21. Considering the categorical finding of fact recorded by all the consolidation authorities in both the writ petition, there is no further scope for interference by this Court under Article 226 of the Constitution of India against the impugned orders passed by consolidation authorities.

22. Both the writ petitions are **dismissed** accordingly.

23. No order as to costs.

(2026) 7 ILRA 812
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ-A No. 9299 of 2026

Smt. Shikha Yadav & Anr. ...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue for Consideration

(1) Entitlement of second spell of maternity leave within a period of two years from the date of the last maternity leave availed.
(2) Overriding effect of the Code on Social Security, 2020 to the executive instruction.

Headnotes

(A) Service law – Constitution of India – Article 42 and 43 – Code on Social Security, 2020 – S. 161 – Maternity Benefits Act, 1961 – GO dated 08.12.2008 – Maternity leave – Entitlement – Claim was rejected on the ground that a second spell of maternity leave cannot be granted within a period of two years from the date of the last maternity leave availed – Validity challenged – Overriding effect of the provision of Code, 2020 to the executive instruction felt into consideration :

Held : The provisions of The Code, 2020 shall prevail over any executive instructions, including Rule 153(1) of the Financial Handbook, Volume II, Part 2 to 4, which has also been read down by a Coordinate Bench of this Court in Smt. Anupam Yadav in relation to the grant of maternity benefits for the second pregnancy. The said benefits, therefore, shall be governed by the provisions of the Code, 2020; which does not put any embargo, by way of a timeline, between two pregnancies – The impugned orders dated 09.01.2026 and 06.01.2026 issued by respondent No. 3, whereby the claims of the petitioners have been rejected, are hereby set aside. [Para 30 and 31] (E-1)

Case Law Cited

Renu Chaudhary v. State of U.P. and Others, 2022 (2) ADJ 14; Municipal Corporation of Delhi vs. Female Workers (Muster Roll), (2000) 3 SCC 224; Yusuf Abdul Aziz vs. State of Bombay, AIR 1954 SC 321; Hindustan Antibiotics Ltd. Vs. Workmen, AIR 1967 SC 948; Writ A No. 9535 of 20224, Smt. Anupam Yadav v. State of U.P. and 2 Others; Dr. Rachna Chaurasiya v. State of U.P. and Others, 2017 (11) ADJ 399 (DB) **– referred to.**

List of Acts

Constitution of India – Article 38, 39, 42, 43 and 313; Government of India Act, 1935 – S. 241(2)(b); Code on Social Security, 2020 – Ss 2(43), 60, 62 and 161; Maternity Benefits Act, 1961; Government Order dated 08.12.2008; Financial Handbook, Volume II, Parts 2 to 4 – U.P. Fundamental Rules – Ch. XIII, Rule 153(1).

List of Keywords

Maternity leave, Conceived, Pregnant, Inconsistency, Social security, Organized sector, Unorganized sector, Child care leave, Constitutional mandate, Res integra, Social order, Social, economic, and political justice, Minimize inequalities in income, Status, Facilities, Opportunities, Adequate means of livelihood, Health and

strength of workers, Economic necessity, Discrimination on the ground of sex, Decent standard of life through just and humane conditions of work, Executive instruction, Pari materia, Embargo.

Case Arising From

Impugned orders dated 09.01.2026 and 06.01.2026 passed by the respondent No. 3.

Appearances for Parties

Advs. for the Petitioner : Mohammed Iftekhar Farooqui, Jeeshan Ahmed Siddiqui.
Advs. for the Respondents : A.C.S.C., Rajan Sharma.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Sri Mohammed Iftekhar Farooqui along with Sri Jeeshan Ahmed Siddiqui, learned counsel for the petitioner; learned Additional Chief Standing Counsel; and Sri Rajan Sharma, learned counsel for the respondents.

2. The present writ petition has been filed with the following prayer:-

"i) To issue a writ, order or direction in the nature of certiorari Quashing the impugned order dated 09.01.2026 (Letter No.159/E.C.-2/2026) contained as (Annexure No.2) and the impugned order dated 06/01/2026 issued by Respondent No.3, whereby Petitioner No.1' and petitioner No.2 maternity leave application was rejected

ii) To issue a writ, order or direction in the nature of Mandamus commanding the respondents to immediately sanction and grant maternity leave to Petitioner No.1 for 180 days from 19.01.2026 to 17.07.2026 and Petitioner No.2 for 180 days from 21.01.2026 to 20.07.2026, in accordance with law, along with all consequential service benefits admissible under law as if they were in continuous service during the said period."

3. Learned counsel for the petitioners submits that the petitioners' claim for the grant of maternity leave has been rejected on the basis of the Government Order dated 08.12.2008, which is contrary to the provisions of The Code on Social Security, 2020 (hereinafter referred to as the Code, 2020"). He further submits that the rejection of the claim on the basis of the said Government Order, which provides that a second spell of maternity leave cannot be granted within a period of two years from the date of the last maternity leave availed, is patently illegal.

4. Since the question regarding the applicability of the Code, 2020, and the ground raised by the petitioners are purely legal in nature, the learned Additional Chief Standing Counsel states that he does not propose to file a counter affidavit and is prepared to address the legal issue. Accordingly, with the consent of the parties, the present writ petition is being decided at the admission stage itself.

Facts

5. The present writ petition has been filed by the two petitioners, who claim an identical cause of action, namely, the rejection of their applications for the grant of benefits under the Code, 2020, on the basis of the Government Order dated 08.12.2008.

6. As far as petitioner No. 1 is concerned, she is working as a regularly appointed Staff Nurse/Nursing Officer under the Department of Medical Education, Government of Uttar Pradesh. She was earlier granted 180 days' maternity leave from 29.01.2024 to 27.07.2024 by Office Order dated 12.02.2024. Thereafter, she again conceived and became pregnant with her second male child, whose expected date of delivery was 12.01.2026. Accordingly, she submitted an application dated 05.01.2026 seeking the grant of maternity leave from 19.01.2026 to 17.07.2026 (180 days). The said application has been rejected by the impugned order dated 09.01.2026 issued by respondent No. 3, solely on the ground that two years had not elapsed since the grant of the earlier spell of maternity leave, relying upon the Government Order dated 08.12.2008 and Rule 153(1) of the U.P. Financial Handbook applicable to the Department of Medical Education.

7. As far as petitioner No. 2 is concerned, she is also working as a regularly appointed Staff Nurse/Nursing Officer under the Department of Medical Education, Government of Uttar Pradesh. She was granted 180 days' maternity leave from 15.01.2024 to 12.07.2024 by Office Order dated 27.01.2024. Thereafter, she again became pregnant for the second time and submitted an application dated 24.12.2025, seeking the grant of maternity leave for 180 days with effect from 21.01.2026. However, the said application was also rejected by respondent No. 3 vide order dated 06.01.2026, relying upon the Government Order dated 08.12.2008.

Issue

8. The question that arises for consideration is whether Rule 153(1) of Chapter XIII of the U.P. Fundamental Rules contained in Financial Handbook, Volume II, Parts 2 to 4, is applicable to a regular Government servant, or whether, in the event of any inconsistency between the said Rule and the provisions of the Code, 2020, being a Central enactment, would prevail and govern the field under the constitutional scheme.

Petitioners Argument

9. The contention of the learned counsel for the petitioners is that, in furtherance of the mandate contained in Article 42 of the Constitution of India, the Parliament enacted the Code, 2020. On the other hand, the provisions contained in the Financial Handbook, Volume II, Parts 2 to 4 were framed by the Governor in exercise of the powers conferred under Section 241(2)(b) of the Government of India Act, 1935, and continue to be applicable by virtue of Article 313 of the Constitution of India. He submits that the provisions of the Financial Handbook, at best, have the status of executive instructions and, therefore, must yield to the provisions of the Code, 2020. For ready reference Article 42 of the Constitution of India is reproduced herein below:-

"42. Provision for just and humane conditions of work and maternity relief.

The State shall make provision for securing just and humane conditions of work and for maternity relief."

10. He further submits that Section 161 of the Code, 2020, categorically provides that the provisions of the said Code shall have effect notwithstanding anything inconsistent therewith

contained in any other law, whether made before or after the coming into force of the Code, 2020. For ready reference Section 161 of the Code, 2020 is reproduced below:-

***"161. Effect of laws and agreements inconsistent with this Code**. (1) The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Code:*

Provided that where under any such award, agreement, contract of service or otherwise, a person is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Code, the person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he is entitled to receive benefits in respect of other matters under this Code.

(2) Nothing contained in this Code shall be construed to preclude a person from entering into an agreement with his employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Code."

11. It is further submitted that the Government of Uttar Pradesh, vide Government Orders dated 08.12.2008 and 24.03.2009, earlier adopted the decision of the Central Government along with the modifications made by it. Thereafter, the State Government, vide Government Order dated 11.04.2011, also adopted further modifications. However, the said Government Orders were in reference to The Maternity Benefit Act, 1961; and subsequently in order to simplify and rationalise the relevant provisions, 9 Central Labour enactments relating to social security, the Code, 2020 was enacted on 28th September 2020, with an object to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors and for matters connected thereto. For ready reference, the Government Order dated 11.04.2011 is reproduced below:

"प्रेषक,

वृन्दा सरूप, प्रमुख सचिव, उ०प्र० शासन।

सेवा में,

समस्त विभागाध्यक्ष एवं प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।

वित्त (सामान्य) अनुभाग-2 लखनऊ :

दिनांक 11 अप्रैल, 2011

विषयः- महिला सरकारी सेवकों को बाल्य देखभाल अवकाश की अनुमन्यता।

महोदय,

उपर्युक्त विषयक कार्यालय ज्ञाप संख्या-जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा कार्यालय ज्ञाप संख्या जी-2-573/दस-2008-216-79, दिनांक 24-3-2009 द्वारा प्रदेश की महिला सरकारी सेवकों को केन्द्र सरकार की महिला कर्मचारियों की भांति बाल्य देखभाल अवकाश की सुविधा कतिपय शर्तों के अधीन प्रदान की गयी थी। चूंकि भारत सरकार द्वारा उक्त शर्तों में

कतिपय संशोधन किए गए हैं अतः सम्यक् विचारोपरान्त श्री राज्यपाल महोदय संदर्भगत शासनादेशों में उल्लिखित शर्तों को निम्नवत् संशोधित करने की सहर्ष स्वीकृति प्रदान करते हैं:-

(1) संबंधित महिला कर्मचारी के अवकाश लेखे में उपार्जित अवकाश देय होते हुए भी बाल्य देखभाल अवकाश अनुमन्य होगा।

(2) बाल्य देखभाल अवकाश को एक कलेण्डर वर्ष के दौरान तीन बार से अधिक नहीं दिया जायेगा।

(3) बाल्य देखभाल को 15 दिनों से कम के लिए नहीं दिया जायेगा।

(4) बाल्य देखभाल अवकाश को साधारणतया परिवीक्षा अवधि के दौरान नहीं दिया जायेगा, ऐसे मामलों को छोड़कर जहाँ अवकाश देने वाला प्राधिकारी परिवीक्षार्थी की बाल्य देखभाल अवकाश की आवश्यकता के बारे में पूर्ण रूप से संतुष्ट न हो। इसे भी सुनिश्चित किया जायेगा कि परिवीक्षा अवधि के दौरान अवकाश दिया जा रहा है तो इस अवकाश की अवधि कम-से-कम हो।

(5) बाल्य देखभाल अवकाश को अर्जित अवकाश के समान माना जायेगा और उसी प्रकार से स्वीकृत किया जायेगा।

2- यदि किसी महिला कर्मचारी द्वारा दिनांक 08.12.2008 के कार्यालय ज्ञाप के जारी होने के पश्चात बाल्य देखभाल के प्रयोजन हेतु अर्जित अवकाश लिया गया है तो उसके अनुरोध पर उक्त अर्जित अवकाश को बाल्य देखभाल अवकाश में समायोजित किया जा सकेगा।

3- शासनादेश संख्या जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा शासनादेश संख्या जी-2-573/दस-2009-216-79 दिनांक 24-03-2009 इस सीमा तक संशोधित समझे जायेंगे।

4- संगत अवकाश नियमों में आवश्यक संशोधन यथासमय किये जायेंगे।

भवदीया,

(वृन्दा सरूप)

प्रमुख सचिव, वित्त।"

12. On the strength of the aforesaid submissions, learned counsel for the petitioners contends that the intent of the State Government is also evident from the Government Order dated 11.04.2011 by way of which the Government Orders dated 08.12.2008 and 24.03.2009 were modified. He submits that, by virtue of the said Government Order, the policy of the Central Government relating to the grant of Maternity Leave and Child Care Leave to its employees has been adopted by the State Government. Consequently, Rule 153(1) of the Financial Handbook, Volume-II, Part 2 to 4, as well as the Government Order dated 08.12.2008, to the extent they are inconsistent with the provisions of the Code, 2020, must yield to the said Code.

Respondents Arguments

13. Per contra, the learned Additional Chief Standing Counsel submits that the claim of the petitioners cannot be allowed in view of Rule 153(1) of Chapter XIII of the U.P. Fundamental Rules contained in the Financial Handbook, Volume-II, Part 2 to 4. In support of his submission, he places reliance upon the judgment of a Coordinate Bench of this Court in **Renu Chaudhary v. State of U.P. and Others**, wherein, in relation to an employee of an institution established and maintained by the U.P. Basic Education Board, it was held that there is no conflict between the second proviso to Rule 153 of the Fundamental Rules and the provisions of the erstwhile Act, 1961, as the said Act does not apply to the establishments of the U.P. Basic Education Board or the schools maintained by it.

14. In view of the aforesaid submissions, learned counsel for the respondents prays for dismissal of the aforesaid writ petition.

Consideration

15. Having considered the rival submissions made by the parties, before proceeding to examine the moot question as to whether the provisions of the Code, 2020, would be applicable to the employees of the State Government or whether the Fundamental Rules would govern the field, this Court deems it appropriate to consider the relevant constitutional provisions in the light of the parliamentary enactment and the Fundamental Rules that may be attracted to the facts of the present case.

16. Article 42 of the Constitution of India, as contained in Part IV thereof, provides that the State shall make provisions for securing just and humane conditions of work and for maternity relief. It is, therefore, to be examined whether the provisions contained in the U.P. Fundamental Rules in the Financial Handbook, on the subject of maternity relief, are in consonance with the constitutional mandate embodied in the Directive Principles of State Policy, applicable to the State.

17. The provisions of the Financial Handbook, Volume II, Parts 2 to 4, were framed by the Governor in exercise of the powers conferred under Section 241(2)(b) of the Government of India Act, 1935, and continue to remain in force by virtue of the provisions contained in Article 313 of the Constitution of India. It is no longer res integra that the nature of the said Rules contained in the Financial Handbook is, at best, is that of executive instructions; and by no stretch of imagination, can they be brought within the category of an "enactment" made by the legislature.

18. Further, Article 38 of Part IV of the Constitution of India, as amended by the 44th Amendment in 1978, directs the State to secure a welfare State. It mandates the State to promote the welfare of the people, by ensuring that the social order is informed by social, economic, and political justice; and requires the State to minimize inequalities in income, status, facilities, and opportunities.

19. Thereafter, Article 39 of the Constitution of India provides that the citizens, men and women equally, have the right to an adequate means of livelihood; and that the health and strength of workers, both men and women, are not abused or forced by economic necessity to enter into avocations unsuited to their strength.

20. Articles 42 and 43 of the Constitution of India, make provisions for just and humane conditions of work and maternity relief, and mandate the State to make provisions for securing such conditions of work and for providing maternity relief. To ensure that conditions of work remain equitable and dignified, reference may also be made to Article 15 of the Constitution, which provides that the State shall not discriminate on the ground of sex and shall not be prevented from making special provisions for women and children.

21. A scrutiny of the aforesaid constitutional provisions reveals that the grant of maternity benefits, protection of the health and strength of workers, and maintenance of a decent standard of life through "just and humane conditions of work, constitute a constitutional mandate and an obligation upon the State.

22. In the backdrop of the aforesaid constitutional provisions, the question that arises for consideration is whether the benefit of "maternity relief" can be curtailed by executive instructions and policies framed by the State, or whether the legislation enacted by Parliament on the subject, namely, The Code on Social Security, 2020 , which finds place in Entry 24 of List III of the Seventh Schedule to the Constitution of India, would prevail.

23. It is also trite in law that where Parliament has legislated on a subject contained in List III and the State Legislature enacts a law overriding the said provisions; For eg. The Code, 2020, such law would require the assent of the President as contemplated under Article 254(2) of the Constitution of India. The same, however, is not the case in the present matter.

24. In view of the aforesaid discussion, I have no hesitation in concluding that The Code, 2020, does not contain any stipulation prescribing a time gap between the grant of maternity benefits for the first and second child, as provided under Rule 153(1) of the Financial Handbook. On the contrary, Section 161 of the Code, 2020, categorically provides that, notwithstanding anything inconsistent therewith contained in any other law, whether made before or after the coming into force of the said Code, the provisions of the Code shall prevail. Consequently, the stipulation contained in the Government Order dated 08.12.2008 and Rule 153(1) of the Financial Handbook cannot be permitted to override or curtail the benefits conferred under the Code, 2020.

25. The aforesaid fact further gains significance from the fact that the State Government, vide its Government Order dated 11.04.2011, adopted the same policy as is being followed by the Central Government for the grant of Maternity Leave as well as Child Care Leave to its employees; though at the relevant time The Maternity Benefit Act, 1961 was applicable, however the relevant provisions are also pari materia in the Code, 2020.

“The Code on Social Security, 2020

(i) Section 2 (43) of the Code, 2020, defines "maternity benefit", in respect of Chapter VI, which means the payment referred to in Section 60(1) thereof. For ready reference, Section 2 (43) of the Code, 2020 is reproduced below:

“2(43) “maternity benefit”, in respect of Chapter VI, means the payment referred to in sub-section (1) of section 60;”

(ii) Section 60 of the Code, 2020 further stipulates that every woman shall be entitled to payment of maternity benefit, at the rate of the average daily wage that is payable to her, for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019 (29 of 2019), for a maximum period of 26 weeks. For ready reference, Section 60 of the Code, 2020 is reproduced below:

"60. Right to payment of maternity benefit. *(1) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.*

Explanation. -For the purposes of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019 (29 of 2019).

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

Explanation. - For the purposes of calculating the period under this sub-section, the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages, during the period of twelve months immediately preceding the expected date of her delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Explanation. - For the purposes of this sub-section, "child" includes a stillborn child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks

from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

(iii) Section 62 of the Code, 2020, provides for a notice in writing by a woman to her employer, specifically indicating the date from which she intends to remain absent from work. However, such date shall not be earlier than eight weeks, from the date of her expected delivery. Thereafter, the amount of maternity benefit for the period preceding the date of expected delivery shall be paid in advance, and the amount due for the subsequent period shall be paid by the employer to the woman within 48 hours. The provision further stipulates that failure to give such notice shall not disentitle a woman to maternity benefit or any other amount payable under the Code, if she is otherwise entitled to such benefit. For ready reference, Section 62 of the Code, 2020 is reproduced below:

"62. Notice of claim for maternity benefit and payment thereof*. (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Chapter may give notice in writing in such form as may be prescribed by the Central Government, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Chapter may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.*

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than eight weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after her delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed by the Central Government that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed by the Central Government that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Chapter if she is otherwise entitled to such benefit or amount and in any such case an Inspector-cum-Facilitator may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order."

26. The entire scheme of the Code, 2020, does not contain any stipulation prescribing a time gap between the birth of the first and second child, as has been provided under Rule 153(1) of the Financial Handbook.

27. The aforesaid view is fortified by the judgment dated 21.10.2022 passed in **Smt. Anupam Yadav v. State of U.P. and 2 Others**, wherein the Court also considered the ratio laid down by a Division Bench of this Court in the case of **Dr. Rachna Chaurasiya v. State of U.P. and Others.**

28. The court is conscious of the fact that the aforementioned judgments were given considering the provisions of "Maternity Benefits Act, 1961"; but however as far as the consideration of the provisions of The Code 2020, is concerned; the same are pari materia to the sections indicated hereinabove and as such the nine Central labour enactments, relating to social security also included "The Maternity Benefits Act, 1961". The reasoning of the said judgement are therefore relevant. It lays down the ratio that the Act (erstwhile The Maternity Benefits Act,1961 and Act no. 36 of 2020 i.e., The Code of Social Security, 2020) shall prevail over the executive instructions, including Rule 153 (1) of the Financial Handbook, Volume II, Part 2-4.

Conclusion

29. The provisions of the Code, 2020, enacted by Parliament in exercise of its legislative powers under Entry 24 of List III of the Seventh Schedule to the Constitution of India, seek to secure the goals enshrined in Part IV of the Constitution of India, namely, the Directive Principles of State Policy, and also give effect to the provisions contained in Article 15(3) of the Constitution of India.

30. Accordingly, it is held that the provisions of The Code, 2020 shall prevail over any executive instructions, including Rule 153(1) of the Financial Handbook, Volume II, Part 2 to 4, which has also been read down by a Coordinate Bench of this Court in Smt. Anupam Yadav (supra) in relation to the grant of maternity benefits for the second pregnancy. The said benefits, therefore, shall be governed by the provisions of the Code, 2020; which does not put any embargo, by way of a timeline, between two pregnancies.

31. In view of the aforesaid, the impugned orders dated 09.01.2026 (Annexure-2) and 06.01.2026 issued by respondent No. 3, whereby the claims of the petitioners have been rejected, are hereby set aside. A further direction is issued to respondent No. 2 that, in the event the petitioners submit fresh applications for the benefits available to them under the Code, 2020, and if the same are permissible for the period for which the benefit is claimed, respondent No. 3 shall take an appropriate decision on such applications, keeping in view the observations made and the law laid down by this Court herein above.

32. The said exercise shall be completed expeditiously, preferably within a period of two weeks from the date of filing of the applications along with a certified copy of this order.

33. With the aforesaid directions/observation, the writ petition stands allowed.

(2026) 7 ILRA 822
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ-A No. 13267 of 2025

Abhay Kumar Srivastava **...Petitioner(s)**
Versus
State of U.P. & Ors. **...Respondent(s)**

Issue for Consideration

(1) Validity of termination order passed on the allegation that the appointee's father was a government employee on the date of compassionate appointment, and effect of making no suppression of material fact before obtaining such appointment.

Headnotes

(A) Service law – Termination – Senior Clerk – Petitioner was appointed on compassionate basis after death of his mother on 27.09.2013 and was also promoted on 13.12.2019 – Petitioner's father was a government servant, hence the petitioner was terminated on the complaint made by private party – Validity challenged – No allegation of suppression of material fact to obtain the appointment was leveled –No inquiry was conducted – Effect :

Held : In the letter written by the respondent No. 6 to respondent No. 4, it is clearly mentioned that father of the petitioner retired from Government Service meaning thereby that the fact that father of the petitioner was in Government Service at the time of death of his mother was well within the knowledge of the respondents at the time of issuance of the letter of appointment. In this view of the matter, the Court is of the opinion that the order is bad in the eyes of law – Even though, the appointment was contrary to the policy of the State Government, the State by its own conduct had condoned their lapse due to passage of time and it was too late on the part of the State to have raised the said ground for cancelling the appointment and terminating the service of the appointee more so when the appointee himself was not responsible for making any false declaration. [Para 9 and 12] (E-1)

Case Law Cited

Md. Zamil Ahmed vs. State of Bihar, 2016 (12) SCC 342; Shiv Kumar vs. State of U.P. and others, 2025 (8) ADJ 11; Special Leave Petition (Civil) Diary No.72666 of 2025, District Basic Education Officer, Hathras vs. Shiv Kumar and others; Writ A No. 4597 of 2024, Smt. Sughandha Upadyay vs. State of U.P. and others; Writ A No.2058 of 2024, V. Vishwaroop Vs. State of U.P. and others decided on 15.10.2024 **– referred to.**

List of Acts

U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.

List of Keywords

Reinstate, Appointment on compassionate ground, Verification, Departmental proceeding, Concealment of facts, Fabricated document, Show cause notice, Enquiry, Terminating the service, Arbitrary, Unjust, Illegal, Mala fide, Concealing material fact, Contrary to the policy of the State Government, Passage of time, Fraud, Manipulation, Suppression of material fact, Occupational skills, Educational qualifications.

Case Arising From

Impugned order dated 11.08.2025 passed by the respondent No. 4 terminating the services of the petitioner.

Appearances for Parties

Advs. for the Petitioner : Adarsh Singh, Digvijay, Navin Kumar Sharma
Advs. for the Respondents : Shashi Prakash Singh, S.C.s

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

1. Heard Sri Adarsh Singh, learned counsel for the petitioner, learned Standing Counsel for the respondent nos. 1 and 3 and Sri S.P. Singh, learned counsel for the respondent nos. 2,4,5, and 6.

2. The petitioner has preferred the present petition inter alia with the prayer to quash the order dated 11.08.2025 passed by the respondent No.4/District Basic Education Officer, Azamgarh, copy of which is appended as Annexure No.1 to the writ petition. A further prayer has also been made to direct the respondents to reinstate the petitioner on the post of Senior Clerk in the office of respondent no.6/Block Education Officer Urban Area, Azamgarh and pay him month to month salary as and when it falls due.

3. Facts in brief as contained in the writ petition are that the mother of the petitioner namely Pushpa Srivastava, while working on the post of Assistant Teacher in Kanjay Junior High School, Station Urban Area District Azamgarh died on 05.11.2008 and father of the petitioner namely late Girish Chandra Srivastava, was working on the post of Accountant in Public Works Department. He retired on 28.02.2009 and later died on 20.03.2024. At the time of the death of the mother of the petitioner, the petitioner was minor and he became a major in the year 2011 and immediately thereafter, he applied for his appointment on compassionate ground vide application dated 30.11.2011. The aforesaid application was submitted by him before respondent No.4/District Basic Education Officer, Azamgarh. After submission of the application, a letter dated 29.03.2012 was written by the respondent No.6/Block Education Officer, Urban Area Azamgarh to the respondent No.4 recommending the name of the petitioner for his appointment on compassionate ground. The aforesaid letter was written after due verification of the papers and documents submitted by the petitioner. In the aforesaid letter, respondent No.6 also communicated to respondent No.4 that father of the petitioner retired as Government Employee, copy of the aforesaid letter is appended as Annexure no.9 to the writ petition. Thereafter, letter of appointment was issued by the respondent No.4 to the petitioner vide letter dated 27.09.2013 by which he was appointed on the post of Junior Clerk in the office of respondent No.6. Pursuant to the aforesaid letter, the petitioner joined his post on 28.09.2013. Subsequently, on 13.12.2019, the petitioner was also promoted as Senior Clerk in the office of respondent No.6. The petitioner was working regularly on the post in question and getting his salary and at no point of time, any departmental proceedings were initiated against the petitioner.

4. One Sri Arun Kumar Singh made a complaint against the petitioner before the respondent No.4 stating therein that the petitioner has got his services by concealment of facts as well as on the basis of fabricated documents, hence the appointment of the petitioner is illegal. Pursuant to the aforesaid complaint, show cause notice dated 15.07.2022 was issued to the petitioner by the respondent No.6 whereby clarification was sought from the petitioner regarding the complaint made by Arun Kumar Singh. The petitioner submitted his reply on 20.07.2022 before the

respondent No.6 whereby he explained that at the time of appointment of the petitioner, neither any fact has been concealed nor any fabricated documents have been submitted by the petitioner and the appointment of the petitioner has been made after due verification of the documents and papers submitted by him. Subsequent to the same, another show cause notice was issued to the petitioner by the respondent No.4 on 07.07.2023 and reply to the same has also been submitted by him on 17.07.2023. In the aforesaid reply, the petitioner again narrated aforesaid facts and denied the allegations levelled against him. Thereafter another show cause notice was served upon the petitioner on 05.10.2023 by the respondent No.4 and reply to the same has also been submitted by the petitioner on 10.10.2023. The order dated 30.12.2022 was passed by the Additional Director of Education (Basic), Azamgarh Region, Azamgarh whereby a direction was given to the respondent No.4 to initiate inquiry regarding appointment of the petitioner.5. It is argued by Sri Adarsh Singh, learned counsel for the petitioner as stated in paragraph 23 of the writ petition that no inquiry has been made by respondent No.4 at any point of time regarding appointment of the petitioner despite the letter/order written by the Additional Director of Education (Basic) Agamgarh Region Azamgarh to respondent No.4 on 30.12.2022 which was also served upon the petitioner. It is argued that a reply to the aforesaid letter has also been given by the petitioner to the Additional Director of Education (Basic) Agamgarh Region Azamgarh on 09.01.2023. Subsequent to the aforesaid, another show cause notice was issued to the petitioner on 06.08.2024 on the same grounds as contained in the earlier show cause notice. Another show cause notice was issued by the respondent No.4 on 04.08.2025 and reply to which was submitted by the petitioner on 05.08.2025. Subsequent to the same, order impugned has been passed by the respondent No.4 on 11.08.2025 terminating the services of the petitioner. It is argued that impugned order passed by the respondent No.4 terminating the services of the petitioner is absolutely arbitrary, unjust and illegal specially in view of the fact that the petitioner was appointed on the post of junior clerk after verification of his documents as well as information provided by him. It is further argued that father of the petitioner was employed in Public Works Department at the time of death of his mother and the same is well within the knowledge of the respondents at the time of his appointment. It is further argued that the petitioner applied for his appointment under ***U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974*** (hereinafter referred as "Rules, 1974") in the year 2013 and at that time, father of the petitioner was retired. It is argued that the impugned order has been passed without following the settled provisions as no charge-sheet has been given to the petitioner and no inquiry was ever conducted against the petitioner. It is further argued that no opportunity of hearing was provided to the petitioner before passing the order of termination. It is further argued that the complaint has been filed against the petitioner with malafide intention. It is further argued that in the recommendation letter dated 29.03.2012 issued by the respondent No.6 which duly addressed to the respondent No.4, this fact was duly communicated that father of the petitioner was in Government Service and now retired. In support of his arguments, learned counsel for the petitioner placed reliance upon the following judgements:-

I. Md. Zamil Ahmed Vs. State of Bihar reported in 2016 (12) SCC 342

II. Shiv Kumar Vs. State of U.P. and others reported in 2025 (8) ADJ 11

III. District Basic Education Officer, Hathras Vs. Shiv Kumar and others passed in Special Leave Petition (Civil) Diary No.72666 of 2025

IV. Smt. Sughandha Upadyay Vs. State of U.P. and others (Writ A No.4597 of 2024)

V. Vishwaroop Vs. State of U.P. and others (Writ A No.2058 of 2024) decided on 15.10.2024

6. A counter affidavit has been filed by respondent Nos.4 to 6. It is stated in the counter affidavit that mother of the petitioner died on 05.11.2008. Upon receiving a complaint against the petitioner, it came into light that the petitioner had obtained employment as a deceased dependent in place of his late mother by concealing material facts. It is stated in the counter affidavit that in the complaint filed by Arun Kumar Singh, it is stated that though the petitioner was given compassionate appointment in place of his deceased mother but at the time of her death, the father of the petitioner was in Government Service as Accountant in Public Works Department. Insofar as facts narrated in writ petition that at no point of time, any inquiry was conducted against the petitioner as prescribed in the relevant rules and no charge-sheet has been given before terminating services of the petitioner are concerned, there is no denial in the counter affidavit.

7. In the rejoinder affidavit filed by the petitioner, facts as narrated in the counter affidavit has been denied. In the rejoinder affidavit, counsel for the petitioner placed reliance upon various decisions rendered by this Court which has been affirmed by the Hon'ble Supreme Court from time to time.

8. Affidavits have already been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is disposed of at this stage.

9. From the facts as narrated above, it is clear that the petitioner was appointed on the post of clerk under Rules, 1974, in place of his deceased mother namely Late Pushpa Srivastava on 27.09.2013 and thereafter he was promoted on the post of Senior Clerk by order dated 13.12.2019 & during his entire service period, at no point of time, any complaint has been made against him till the time his services were terminated. He received salary and other benefits till the date of passing of order impugned. From perusal of the record, it is clear that neither any inquiry was ever conducted by the respondents at any point of time nor any charge-sheet had been submitted against him as well as no witness was examined by the respondents before passing the order impugned. Apart from the same, the petitioner was appointed under Rules, 1974, in the year 2013 and subsequently, he was promoted in the year 2019. In the letter written by the respondent No.6 to respondent No.4, it is clearly mentioned that father of the petitioner retired from Government Service meaning thereby that the fact that father of the petitioner was in Government Service at the time of death of his mother was well within the knowledge of the respondents at the time of issuance of the letter of appointment. In this view of the matter, the Court is of the opinion that the order is bad in the eyes of law.

10. In the case of ***Shiv Kumar*** (supra), the controversy was before this Court that Shiv Kumar was appointed on compassionate ground in place of his deceased father though at the relevant time, his mother was in Government Service. After hearing counsel for the parties at length, it was held by a co-ordinate Bench of this Court in paragraph 41 of the judgement that since the petitioner has not suppressed the fact that his mother was working as a government employee at the time of submission of application for appointment on compassionate ground. It was incumbent upon the authorities to undertake due diligence and conduct proper verification regarding the material facts

prior to extending the appointment. Since scrutiny was duly carried out before appointment of the petitioner, therefore, the benefit granted to the petitioner cannot be cancelled. Paragraph Nos. 41 & 42 of the aforesaid judgement reads as follows:-

41. It stands established that there was neither any misrepresentation nor concealment on the part of the petitioner with respect to the employment status of his mother. The petitioner did not suppress the fact that his mother was serving in a government post specifically as an Assistant Teacher in the same department at the time he submitted his application for compassionate appointment. It was incumbent upon the respondent authorities to undertake due diligence and conduct a proper verification of such material facts prior to extending the appointment. Since such scrutiny was duly carried out before the petitioner was offered the appointment, the benefit granted cannot be withdrawn or cancelled on account of any lapse attributable to the respondents themselves.

42. This Court further observes that the petitioner was merely 18 and a half years old at the time of submitting the application for compassionate appointment. At such a tender age, he could not have been expected to comprehend the technical requirements relating to the disclosure of the employment status of family members. In circumstances where the family is grappling with emotional distress due to the sudden demise of its sole breadwinner as in the present case, the petitioner's father, the responsibility to verify and scrutinize the family particulars rests squarely upon the respondents.

11. Against the aforesaid judgement Special Appeal No.843 of 2025 was filed by the District Basic Education Officer before this Court which was also dismissed vide judgement and order dated 22.09.2025. Against the aforesaid judgements, Special Leave Petition (Civil) Diary No.72666 of 2025 was filed which was dismissed by the Hon'ble Apex Court vide its order dated 13.03.2026.

12. In the case of ***Md. Zamil Ahmed vs. State of Bihar and Ors***. (supra), it is held by Hon'ble Supreme Court that even though, the appointment was contrary to the policy of the State Government, the State by its own conduct had condoned their lapse due to passage of time and it was too late on the part of the State to have raised the said ground for cancelling the appointment and terminating the service of the appointee more so when the appointee himself was not responsible for making any false declaration. It was held by the Supreme Court that the State was not empowered to take advantage of its own mistake and the position would have been different if the appointee had committed some kind of fraud or manipulation or suppression of material fact in securing the appointment. The relevant observations of the Supreme Court in paragraph nos. 15 and 16 of the aforesaid judgment are reproduced below:-

"15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single

Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State. 16. It is for this reason, we are of the view that action on the part of welfare State in terminating the appellant's service on such ground cannot be countenanced. We, therefore, disapprove the action taken by the State.

13. In the case of ***Sugandha Upadhyay*** (supra), it has been again held by a co-ordinate Bench of this Court that when the petitioner was appointed merely 18 years of age, the petitioner, at that age, cannot be expected to have read the Rules, 1974. The petitioner submitted a simple application which was not on any prescribed proforma stating his relationship with the deceased, his occupational skills and educational qualifications and sought compassionate appointment. The operative portion of the aforesaid order reads as follows:-

"In the present case, the petitioner was appointed ten years back and had been confirmed in service. Considering the length of service of the petitioner, it is too late for the respondents to cancel the appointment of the petitioner on the ground of the prohibition incorporated in Rule 5 and the employment status of her mother.

For the aforesaid reasons, the orders dated 20.07.2022 and 16.01.2024 passed by the Deputy Labour Commissioner and the Labour Commissioner cancelling the appointment of the petitioner and also rejecting her appeal are contrary to law and are liable to be quashed.

The orders dated 20.07.2022 and 16.01.2024 passed by the Deputy Labour Commissioner and the Labour Commissioner, respectively are, hereby, quashed.

The petition is allowed."

14. Against the aforesaid judgement Special Appeal No.5 of 2025 (State of U.P. and others Vs. Smt. Sugandha Upadhyay) has been filed by the State of U.P. which was also dismissed by this Court vide its judgement and order dated 24.01.2025. Against the aforesaid judgment Special Leave to Appeal (C) No.6320 of 2025 was filed by the State of U.P. which was also dismissed by the Hon'ble Supreme Court vide its judgement and order dated 28.03.2025, copy of the same is appended at Page 50 to the rejoinder affidavit.

15. In the case of **Vishwaroop** (supra), Lucknow Bench of this Court has held that there was no justification on the part of the State to have woken up after a lapse of 12 years and found infirmity in the appointment of the petitioner and quashed the same.

Further there was no allegations that the petitioner had concealed any material fact or some fact was found out by the State after a substantial length of time necessitating termination of his services. Once a finding has been recorded that the petitioner was not responsible for suppression of any material fact in securing his appointment then the onus lay upon the State to have examined the entire facts prior to giving him appointment on compassionate grounds. The paragraph Nos.13 & 14 reads as follows:-

"13. It is in the aforesaid circumstances, this Court is also of the considered view that there was no justification on the part of the State to have woken up after a lapse of 12 years and found infirmity in the appointment of the petitioner and quashed the same. Further there is no allegations that the petitioner had concealed any material fact or some fact was found out by the State after a substantial length of time necessitating termination of his services. Once a finding has been recorded that the petitioner was not responsible for suppression of any material fact in securing his appointment then the onus lay upon the State to have examined the entire facts prior to giving him appointment on compassionate grounds. For the lapse if any of the State the services of the petitioner cannot be terminated after a lapse of 12 years.

14. In light of the above, the writ petition is allowed. The impugned order dated 23.02.2024 is quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits from the date of his termination till the date of his reinstatement."

16. Against the aforesaid judgement Special Appeal Defective No.93 of 2025 (State of U.P. and others Vs. Vishwaroop) has been filed by the State of U.P. which was also dismissed by this Court vide its judgement and order dated 04.03.2025. Against the aforesaid judgment Special Leave Petition (Civil) Diary No.17889 of 2025 was filed by the State of U.P. was also dismissed by Hon'ble Supreme Court vide its judgement and order dated 11.08.2025, copy of the same is appended at Page 55 to the rejoinder affidavit.

17. In view of the above discussions, the Court is more than satisfied that the order dated 11.08.2025 passed by the respondent No.4/District Basic Education Officer, Azamgarh is per se illegal and the same is liable to be quashed and is hereby quashed.

18. The writ petition is allowed.

19. A mandamus is issued to the respondent No.4/District Basic Education Officer, Azamgarh & respondent no.6/Block Education Officer Urban Area, Azamgarh to reinstate the petitioner on the post of Senior Clerk in the office of respondent No.6 and pay salary month by month as and when it falls due. Since the services of the petitioner was wholly illegally terminated, the petitioner is also entitled for back wages and other service benefits and the aforesaid benefits would be provided to the petitioner within two months from the date of production of a certified copy of this order. No order as to costs.

(2026) 7 ILRA 829
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.07.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Special Appeal No. 70 of 2020

State of U.P. & Ors. ...Appellant(s)
Versus
Sant Lal Sonkar & Ors. ...Respondent(s)

Issue for Consideration

(1) Validity of GO dated 02.04.1992 providing two different pay scales for the members of the same cadre.
(2) Entitlement of Live Stock Extension Inspector to get equal salary like that of Live Stock Extension Officer, particularly when the disparity between these two posts was removed on the recommendation of Committee noting that there is no material difference in the duties and responsibilities attached to these two posts.

Headnotes

(A) Service law – Constitution of India – Article 14, 16 and 39(d) – Payment of salary – Equal pay for equal work – Classification – Intelligible differentia – L.S.E. Inspector and L.S.E. Officer – Disparity between two post was removed on the recommendation of Committee, which observed that there was no material difference in the duties and responsibilities attached to these two posts – However, two different pay scales for members of the same cadre was provided vide GO dated 02.04.1992 – Permissibility – Single Bench quashed the GO providing two different pay scale – Validity challenged – Entitlement of L.S.E. Inspector to get equal salary felt into consideration.

Held : The settled principle is that a classification must be founded upon an intelligible differentia, and such differentia must have a rational nexus with the object sought to be achieved – The classification introduced by Government Order dated 02.04.1992 is not based upon any difference in qualifications, duties, responsibilities or nature of work attached to the post after merger. On the contrary, after issuance of Government Orders dated 03.03.1990 and 05.06.1991, all employees became members of one unified cadre. [Para 29 and 32]

Further held : Once the State Government accepted the recommendations of the Committee and Pay Commission and thereafter merged the posts of Live Stock Extension Inspector and Live Stock Extension Officer into one cadre with effect from 01.01.1986, the respondents ceased to retain their separate identity as members of the erstwhile cadre of Live Stock Extension Inspector. They became members of the unified cadre of Live Stock Extension Officer. Therefore, their entitlement to pay scale was required to be determined with reference to their status in the unified cadre and not on the basis of their earlier designation **–** The finding recorded by the learned Single Judge that the classification introduced by Government Order dated 02.04.1992 was violative of Articles 14 and 16 of the Constitution does not suffer from any legal infirmity warranting interference in the present intra-Court appeal. [Para 34 and 39] (E-1)

Case Law Cited

S. Sivaguru vs. State of Tamilnadu (2013) 7 SCC 335 – **referred to.**

List of Acts

Constitution of India – Article 14, 16 and 39(d); Government Order dated 19.07.1989, 03.03.1990, 05.06.1991 and 02.04.1992.

List of Keywords

Pay scale, Merger, Qualification, Removal, Disparity, Similar work, Retrospective operation, Equal pay for equal work, Homogeneous class, Members of same cadre, Classification, Rational, Unified cadre, Pre-existing system, Seniority, Direct nexus, Longstanding grievance, Different treatment, Identical function, Unreasonable classification, Material difference, Clarificatory order, Anomaly, Intelligible differentia, Legal consequence, Entitlement.

Case Arising From

Judgement and order dated 24.07.2019 passed by Single Judge Bench in Writ A No. 12959 of 2012.

Appearances for Parties

Advs. for the Appellant : Ratan Deep Mishra, Pranab Kumar Ganguli
Advs. for the Respondents : Rajesh Kumar, Shravan Kumar Panday

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. This Special Appeal is filed by the State against the judgement and order dated 24.07.2019 passed by learned Single Judge in Writ-A No. 12959 of 2012 Sant Lal Sonkar and others Vs. State of U.P. and others (hereinafter referred to as the *impugned order*), whereby the Government Order dated 02.04.1992 and the State authorities were directed to provide pay scale of Rs.1350 2200/- with effect from 01.01.1986 to original writ petitioners, who are respondents in present Special Appeal. Aggrieved thereby, this Special Appeal is preferred seeking setting aside of the impugned judgment and dismissal of the writ petition.

2. This Court vide its order dated 22.01.2020 allowed the Delay Condonation Application No. 1 of 2020 considering the sufficient cause for the delay in filing of this Special Appeal. Further by order dated 06.02.2020, the effect and operation of the impugned order was stayed by this Court and this interim order has continued to operate during the pendency of the Special Appeal.

3. Pleadings are already exchanged and the appeal is finally heard and the judgment got reserved on 01.07.2026.

I. Factual background

4. The respondents herein were appointed between the years 1981 and 1986 as Live Stock Development Assistants. By Government Order dated 04.02.1988, the post was re-named as Live Stock Extension Inspector and presently their service conditions are governed by the U.P. Animal Husbandry Live Stock Extension and Poultry Development Service Rules, 2002.

5. The point of dispute is in the root of the merger of the service and its redesignation after joining (of respondents in this appeal), because prior to the year 1990, the Animal Husbandry Department had two posts, namely, Live Stock Extension Officer and Live Stock Development Assistant/ Extension Inspector. The former carried the pay scale of Rs. 470 735/-, whereas the latter was placed in the pay scale of Rs. 400 615/-. As a fact, both posts required the same qualifications and involved substantially identical functions. The employees working as Live Stock Development Assistants/ Extension Inspector, represented before the State Government, seeking removal of the disparity in both pay scales for taking similar work from similarly qualified employees.

6. In order to examine the above-mentioned grievance of employees, the State Government constituted a Task Force Committee (hereinafter referred to as the Committee), by Government Order dated 20.01.1987. The Committee examined the issue and concluded in its meeting held on 22.06.1987 that no material difference in the work/duties discharged by the two categories of employees. It therefore recommended that the claim of Live Stock Development Assistants / Extension Inspector for the pay scale admissible to Live Stock Extension Officers be considered by the Pay Commission. The said recommendation was forwarded on 03.09.1987 to the Secretary, Pay Commission, Uttar Pradesh.

7. During the pendency of the matter before the Pay Commission, the State Government revised the pay scales of various posts in the Animal Husbandry Department by Government Order dated 19.07.1989 with effect from 01.01.1986 or from the date of creation of the post, whichever was later. While acting upon the recommendations of the Samta Samiti, under the revised pay structure, the pay scale of Live Stock Extension Officer was revised to Rs. 1200 2040/-, whereas the pay scale of Live Stock Extension Inspector (earlier named as Live Stock Development Assistant) was revised to Rs. 975 1660/-.

8. Thereafter, the State Government accepted the recommendations of the Pay Commission and decided that the posts of Live Stock Extension Inspector and Live Stock Extension Officer would constitute a single cadre, with effect from 01.01.1986. The merger got notified by the Government Order dated 03.03.1990 and its retrospective operation got clarified by order dated 05.06.1991. The Government Order further provided that employees working as Live Stock Extension Inspectors would also be entitled to the pay scale of Rs. 1200 2040/- with effect from 01.01.1986. Consequently, the respondents and other similarly situated employees became members of the unified cadre of Live Stock Extension Officer with effect from the said date.

9. Later, the Government Order dated 02.04.1992 issued in continuation of the Government Order dated 05.06.1991, modified the Government Order dated 19.07.1989. By virtue of the said Government Order 02.04.1992, the revised pay scale of Rs. 1350 2200/- was provided only to those employees who had been working as Live Stock Extension Officers prior to 01.01.1986 in the pre-revised pay scale of Rs.470 735/-, whereas the remaining members of the unified cadre continued in the pay scale of Rs. 1200 2040/-. The validity of the Government Order dated 02.04.1992 was the subject matter of challenge in the writ petition before the learned Single Judge.

II. Impugned Judgment

10. By the impugned order, learned Single Judge has allowed the writ petition holding that the recommendations of the Committee, as accepted by the Commission and implemented by the State Government through Government Orders dated 03.03.1990 and 05.06.1991, had removed the disparity between the posts of Live Stock Extension Inspector and Live Stock Extension Officer by merging them into a single cadre with retrospective effect from 01.01.1986. The learned Single Judge further observed that the merger was done on the finding of the Committee that there was no material difference in the duties and responsibilities attached to the two posts and, therefore, the incumbents were entitled for the pay parity on the principle of equal pay for equal work.

11. The learned Single Judge further held that, after the merger of the two posts and their re-designation as Live Stock Extension Officer, all employees constituted one homogeneous class. Consequently, the Government Order dated 02.04.1992, which granted the revised pay scale of Rs. 1350 2200/- only to those employees who had been working as Live Stock Extension Officers prior to 01.01.1986 while continuing the remaining members of the same cadre in the pay scale of Rs. 1200 2040/-, was considered as an impermissible classification within a single cadre. Such classification was held to have no rational basis and to be violative of Articles 14 and 16 of the Constitution.

12. The learned Single Judge also took note of the admitted position that the disparity in pay scales between the two groups had subsequently been removed with effect from 29.11.2007 on the basis of a Committee report to resolve the issue of pay parity and there was no justification for maintaining different pay scales within the same cadre for the intervening period with subsequent notification. The learned Single Judge quashed the Government Order dated 02.04.1992 to the aforesaid extent and directed the State authorities to place the writ petitioners in the pay scale of Rs.1350 2200/- with effect from 01.01.1986 and to pay the consequential arrears.

III. Submissions on behalf of the Appellant-State

13. Aggrieved by the judgment of the learned Single Judge, Mr. Ratan Deep Mishra, learned Counsel appearing for the State submitted that the impugned judgment proceeds on wrong appreciation of factual and legal aspects of the matter. It is contended that the learned Single Judge failed to appreciate the true scope and object of the Government Order dated 02.04.1992 and consequently erred in quashing the same.

14. Elaborating on his submissions, Mr. Mishra contended that prior to 01.01.1986, the posts of Live Stock Extension Officer and Live Stock Extension Inspector constituted two separate cadres carrying different pay scales. Upon revision of pay scales with effect from 01.01.1986, the pay scale of Live Stock Extension Officers stood revised to Rs. 1200 2040/-, whereas that of Live Stock Extension Inspectors was revised to Rs. 975 1660/-. Thereafter, by Government Orders dated 03.03.1990 and 05.06.1991, the cadre of Live Stock Extension Inspectors was merged with that of Live Stock Extension Officers with retrospective effect from 01.01.1986 and all such employees were placed in the pay scale of Rs.1200 2040/-.

15. Mr. Mishra further submitted that the aforesaid merger resulted in an unintended anomaly, inasmuch as employees who had been serving as Live Stock Extension Officers long prior to 01.01.1986 and were senior in service came to draw the same pay scale as those who entered the unified cadre only by virtue of the merger. It is submitted that the Government Order dated 02.04.1992 was issued solely to remove this anomaly by protecting the pay of those officers who had held the higher post prior to 01.01.1986. The classification made therein is stated to be founded upon a rational criteria, i.e., the pre-existing status and seniority of the employees, and bears a direct nexus with the object sought to be achieved.

16. Mr. Mishra further submitted that the Government Order dated 02.04.1992 merely amended the earlier Government Order dated 19.07.1989 insofar as it related to the pay scale of the

post of Live Stock Extension Officer and did not revise the pay scale prescribed for Live Stock Extension Inspectors. According to the appellants, the benefit of the revised pay scale of Rs. 1350 2200/- was intended only for those employees who had actually been holding the post of Live Stock Extension Officer in the pre-revised pay scale of Rs. 470 735/- prior to 01.01.1986. The respondents in appeal, who admittedly became members of the cadre only by virtue of the merger as per Government Orders dated 03.03.1990 and 05.06.1991 with retrospective effect from 01.01.1986, could not claim the said benefit merely because they subsequently formed part of the unified cadre.

17. Mr. Mishra lastly submitted that the classification created by the Government Order dated 02.04.1992 was temporary and protective in nature and intended to safeguard the interests of the senior employees who had entered service much earlier, as recruitment to the post of Live Stock Extension Officer had substantially ceased thereafter. It is, therefore, contended that the classification was reasonable and legally permissible, and that the learned Single Judge committed manifest error in its direction and quashing the Government Order dated 02.04.1992 and therefore the impugned order is not sustainable.

IV. Submission of the respondent- original writ petitioner

18. Per contra, Mr. Rajesh Kumar, learned counsel appearing for the original writ petitioner, which are respondents in this Special Appeal, supported the judgment of the learned Single Judge and submitted that the Government Order dated 02.04.1992 is wholly arbitrary and unconstitutional. Mr. Kumar contended that once the recommendations of the Pay Commission were accepted and the posts of Live Stock Extension Inspector and Live Stock Extension Officer were merged into a single cadre and redesignated as Live Stock Extension Officer by Government Orders dated 03.03.1990 and 05.06.1991 with retrospective effect from 01.01.1986, there remained no justification for creating two classes within the same cadre or prescribing two different pay scales for employees holding the same post, which was effectively taking back the complete status before the exercise of the Committee which was constituted specially for the pay parity examination.

19. Mr. Kumar further submitted that the very basis of the merger was the finding of the Committee that both categories of employees had same qualifications and were discharging identical duties and responsibilities. The longstanding grievance regarding disparity in pay scales thus stood readdressed upon acceptance of the recommendations. He contended that once the disparity had been removed with effect from 01.01.1986, the fact that certain employees had originally been appointed and were actually working as Live Stock Extension Officers prior to the said date ceased to have any relevance for the purpose of revision of pay scales. The source from which an employee entered the unified cadre could not constitute a valid basis for differential treatment amongst persons holding the same post and discharging identical functions, especially when the Committee made its recommendation the fact was same.

20. Mr. Kumar further submitted that the Government Order dated 02.04.1992, by confining the revised pay scale of Rs. 1350 2200/- only to those who had been working as Live Stock Extension Officers prior to 01.01.1986 and denying the same benefit to the respondents, introduced

an artificial and unreasonable classification within a single cadre solely on the basis of the erstwhile designation of the employees and such classification bears no rational nexus with the object sought to be achieved after the merger of the cadres and in fact it revives the very disparity, which had already been removed. It is, therefore, contended that the Government Order dated 02.04.1992 is violative of Articles 14, 16 and 39(d) of the Constitution of India, and that the learned Single Judge rightly quashed the same and directed extension of the pay scale of Rs. 1350 2200/- to the respondents with effect from 01.01.1986.

V. Points for Determination

21. Having considered the rival submissions advanced by learned counsel for the parties and after perusal of the record, the point for determination in this Special Appeal is whether after merger of the posts of Live Stock Extension Inspector and Live Stock Extension Officer into a single cadre with effect from 01.01.1986 by Government Orders dated 03.03.1990 and 05.06.1991, the State Government was justified in prescribing two different pay scales for members of the same cadre on the basis of their pre-merger status by Government Order dated 02.04.1992, and whether the learned Single Judge was justified in quashing the said Government Order.

VI. Discussion and Analysis

22. Before examining the validity of the classification introduced by the Government Order dated 02.04.1992, it would be appropriate to notice the undisputed factual position.

23. It is undisputed fact that prior to 01.01.1986, the Animal Husbandry Department had two separate posts, namely, Live Stock Extension Officer and Live Stock Development Assistant (subsequently re-named as Live Stock Extension Inspector). The two posts carried different pay scales, although the qualifications, nature of duties and responsibilities attached to the posts were substantially similar.

24. The grievance regarding disparity in pay scales for similar services was examined by the State Government by constituting a Committee vide Government Order dated 20.01.1987 and further sending the Committee s recommendation to the Pay Commission for salary considerations. The Committee, after considering the duties and responsibilities attached to the two posts, recorded a finding that there was no material difference in the functions discharged by the employees of the two categories. It accordingly recommended that the claim of Live Stock Extension Inspector for grant of the pay scale admissible to Live Stock Extension Officers be considered by the Pay Commission.

25. The recommendation of the Committee was thereafter positively considered by the Pay Commission. Upon acceptance of the recommendation, the State Government issued Government Order dated 03.03.1990 and the subsequent clarificatory order dated 05.06.1991, whereby it was decided that the posts of Live Stock Extension Inspector and Live Stock Extension Officer would constitute one cadre with effect from 01.01.1986. The said Government Order further provided that employees working as Live Stock Extension Inspectors would also be entitled to the pay scale of

Rs. 1200 2040/- with effect from 01.01.1986, which was the revised pay scale admissible to Live Stock Extension Officers.

26. Thus, by virtue of Government Order dated 03.03.1990 and 05.06.1991, the earlier distinction between the two posts stood removed and it became clearly declared as one cadre. Employees working on either of the two posts prior to the merger became members of one unified cadre under one designation, namely, Live Stock Extension Officer, with effect from 01.01.1986 as per the Government Order dated 05.06.1991.

27. Subsequently, the Government Order dated 19.07.1989 was modified by Government Order dated 02.04.1992, as per which the pay scale of Rs.1350 2200/- was extended only to those employees who had actually been working as Live Stock Extension Officers prior to 01.01.1986 in the pre-revised pay scale of Rs.470 735/-. The other members of the unified cadre, including the respondents who entered the cadre by virtue of merger, continued in the pay scale of Rs.1200 2040/-.

28. Learned counsel for the appellant State attempted to justify the aforesaid distinction by submitting that the Government Order dated 02.04.1992 was issued to remove the anomaly created after merger of the cadres. As per learned counsel, those employees who were already working as Live Stock Extension Officers prior to 01.01.1986 constituted a distinct class and were entitled to protection of their higher pay on account of their earlier status and seniority.

29. There can be no dispute that the State Government possesses the power to determine pay scales and to make classification amongst employees, provided such classification satisfies the constitutional mandate of equality. The settled principle is that a classification must be founded upon an intelligible differentia, and such differentia must have a rational nexus with the object sought to be achieved. This principle has been recognised by the Supreme Court in a catena of judgments including ***S. Sivaguru Vs State of Tamilnadu (2013) 7 SCC 335.***

30. The legal consequence of integration of cadres has been considered by the Supreme Court in ***S. Sivaguru*** (supra), wherein it has been recognised that upon merger of cadres, the earlier separate identity of the cadres ceases and the employees become members of the newly constituted unified cadre. Once such integration takes place, differentiation amongst members of the same cadre merely on the basis of their erstwhile cadre identity cannot ordinarily be sustained.

31. In ***S. Sivaguru*** (supra) the Supreme Court has examined the merger of two posts in one cadre in health department of State of Tamilnadu. While deciding the issue against the State s notification to create two categories after merger in one cadre, the Supreme Court observed that:

"60. Upon merger of the two posts, it was no longer permissible to treat the redesignated Health Inspector Grade IA differently from Health Inspector Grade IB. Since 1997, all incumbents on the posts of Health Inspector Grade IA and Health Inspector Grade IB were performing the same duties. There was intermixing of the duties performed by the two categories of the Health Inspector Grade IA and IB. Both the posts had lost their original identity since 27-6-1997, and formed one homogenous cadre. Further, having relaxed the qualifications on the basis of their length of service and experience, they were on a par with the

Health Inspector Grade IA. Thereafter, the State was not justified in denying to the erstwhile Health Inspector Grade IB, the same treatment as was given to Health Inspector Grade IA. Therefore, the respondents could not have been denied the benefit of service on the post of Health Inspector Grade I from the date of the initial integration. It would be appropriate to notice the ratio of law laid down in Sub-Inspector Rooplal [Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644 : 2000 SCC (L&S) 213] , wherein it was inter alia held that the previous service of the transferred officials who are absorbed in an equivalent cadre in the transferred post is permitted to be counted for the purpose of determination of seniority. It would be appropriate to notice here that Leprosy Inspectors redesignated as Health Inspector Grade IB have not been granted the benefit of seniority in their cadre from the date of their initial appointment. They have been deprived of their service on the post of Leprosy Inspector up to 27-6-1997 when they were integrated and redesignated as Health Inspector Grade IB. However, upon merger w.e.f. 27-6-1997, there was no distinction in the services rendered by Health Inspector Grade IA and Health Inspector Grade IB. Therefore, in our opinion, the provision in GOMs No. 382 of 2007 not to grant the Health Inspectors Grade IB/erstwhile Leprosy Inspectors the benefit of the service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor was completely unjustified.

61. Thus, the High Court, in our opinion, was completely justified in quashing Clauses 6(iv) and (v) of GOMs No. 382 of 2007. The High Court has correctly held that the redesignated Health Inspector Grade I ought to have been given the same scale of pay as Health Inspector Grade IA from the date of the merger. In fact, on that date itself, the two posts should have been redesignated as Health Inspector Grade I, enjoying the same scale of pay, as all incumbents were performing the same duties and shouldering the same responsibilities. It was not permissible for the State to treat the redesignated Health Inspector Grade I differently from the Health Inspector Grade IA, on the basis of the initial source of recruitment."

32. Applying the aforesaid principle to the facts of the present case, we are of the considered view that the classification introduced by Government Order dated 02.04.1992 is not based upon any difference in qualifications, duties, responsibilities or nature of work attached to the post after merger. On the contrary, after issuance of Government Orders dated 03.03.1990 and 05.06.1991, all employees became members of one unified cadre and were holding the same post of Live Stock Extension Officer, which was the actual objective behind all the exercise undertaken by the State before decision of the merger of the cadre.

33. After considering submissions as well as records before the Court, we find the only basis for differentiation under the Government Order dated 02.04.1992 is that one category of employees had been actually working on higher pay scale with the designation having termed as Live Stock Extension Officers before 01.01.1986, whereas the other category entered the cadre by virtue of the merger of posts then got the same designation and pay parity. In our considered opinion, such distinction cannot be sustained once the State Government itself decided to merge the two posts retrospectively and treat both categories as members of one cadre on the recommendation of Committee report regarding duties and responsibilities and thereafter Pay Commission s approval for providing same salary to all in the unified cadre.

34. In the present case, once the State Government accepted the recommendations of the Committee and Pay Commission and thereafter merged the posts of Live Stock Extension Inspector and Live Stock Extension Officer into one cadre with effect from 01.01.1986, the respondents ceased to retain their separate identity as members of the erstwhile cadre of Live Stock Extension Inspector. They became members of the unified cadre of Live Stock Extension Officer. Therefore, their entitlement to pay scale was required to be determined with reference to their status in the unified cadre and not on the basis of their earlier designation.

35. The submission of the appellant that the Government Order dated 02.04.1992 merely amended the earlier Government Order dated 19.07.1989 with respect to the post of Live Stock Extension Officer and did not revise the pay scale of Live Stock Extension Inspectors, in our considered view, does not support the submission of the appellant. After the merger, the respondents were not getting the benefit as Live Stock Extension Inspectors but were getting the salary for which they were entitled as members of the unified cadre of Live Stock Extension Officers.

36. The argument that the classification was introduced to protect the interests of senior employees also cannot be accepted. Seniority of the years of service may have relevance in matters of promotion and other service benefits, however, grant of two different pay scales to employees holding the same post in the same cadre requires a rational basis. A distinction based merely upon the date on which an employee joined the service before merger of the cadre cannot justify differential pay after the cadre itself has been unified as the same is against the principles established by the Supreme Court in ***S. Sivaguru*** (Supra).

37. The object behind the entire exercise undertaken by the State Government was to remove the disparity between two posts of employees performing identical duties and responsibilities. The merger of the cadres was effected after acceptance of the recommendation that there was no difference in the nature of work performed by the two categories and further approved by the Pay Commission. The subsequent creation of two different pay scales within the same cadre, therefore, runs contrary to the very purpose for which the merger was brought into effect.

38. In the light of the aforesaid discussion, we are of the considered view that the learned Single Judge correctly appreciated the effect of Government Orders dated 03.03.1990 and 05.06.1991 and 02.04.1992. Once the posts had merged into one cadre with retrospective effect from 01.01.1986, the State Government could not create two different pay scales amongst members of the same cadre merely on the basis of their pre-merger status.

39. The finding recorded by the learned Single Judge that the classification introduced by Government Order dated 02.04.1992 was violative of Articles 14 and 16 of the Constitution does not suffer from any legal infirmity warranting interference in the present intra-Court appeal.

VI. Conclusion and Operative Order

40. For the reasons recorded above, we find no merit in the present Special Appeal. The Special Appeal is, accordingly, dismissed. The judgment and order dated 24.07.2019 passed by the learned Single Judge in Writ-A No. 12959 of 2012, *Sant Lal Sonkar and others Vs. State of U.P. and others* is hereby affirmed. Consequently, the State authorities shall extend the benefit of the pay scale of Rs. 1350-2200/- to the respondents with effect from 01.01.1986 with all consequential benefits.

41. The aforesaid exercise shall be completed within a period of three months from the date of production of a certified copy of this judgment before the competent authority.

42. No order as to costs.

(2026) 7 ILRA 838
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Special Appeal No. 903 of 2013

Surendra Sharma ...Appellant(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue for Consideration

(1) Entitlement of teacher of primary section to get salary in parity with the teacher of junior high school section.
(2) Scope of word 'institution' used in S. 10 of Act, 1970 to include 'primary section' in it.
(3) Scope of expression 'Junior High School' used in S. 2(e) of Act, 1970 to include 'Classes I to V' in it.
(4) Overriding effect of Section 10 of the Act, 1978 to Clause 10 of the Circular dated 03.05.1982.

Headnotes

(A) Service law – U. P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 – Ss. 2(e) and 10 – Payment of salary – Grant-in-aid scheme – Teacher of primary section – Entitlement – Parity with Junior High School section claimed – Single Bench rejected the claim relying on Clause 10 of the GO dated 03.05.1982, as it specifically restrict payment of salary under the grant-in-aid scheme only to the teachers and employees working in Classes VI to VIII, and expressly exclude the teachers and employees working in the primary section (Classes I to V), which was not challenged by the petitioner – Validity of judgment of Single Bench challenged – Application of ratio laid down by Apex Court in *Pawan Kumar Dwivedi's case* and *Vinod Sharma's case* felt into consideration – Application of S. 10 of Act, 1978 also felt into consideration .

Held : The court (Supreme Court) held that teachers of the primary section are also entitled to the benefit of Section 10 of the 1978 Act. It observed that both the Primary and Junior High School sections are governed by the same Board of Basic Education under the 1972 Act. The Hon'ble Supreme Court further held that denying salary to primary teachers in such schools would result in unequal treatment and could make the 1978 Act unconstitutional **–** Therefore, the appellant, who worked as a teacher in the primary section of this institution, is also a teacher of an institution covered by Section 10 of the 1978 Act. [Para 20 and 21]

Further held : The learned Single Judge held that the appellant could not challenge Clause 10 of the Circular dated 03.05.1982 after a gap of 31 years. This reasoning would have been correct if the appellant had challenged the validity of Clause 10 itself. However, that is not the appellant's case. The appellant has consistently maintained that he is entitled to salary under Section 10 of the 1978 Act, irrespective of Clause 10. This issue depends on the correct interpretation of Section 10, which was authoritatively settled by the Constitution Bench in 2014. Therefore, there is no question of delay or limitation in relying upon the later decision of the Supreme Court interpreting the existing law. [Para 26]

(B) Interpretation of statute – Circular containing the provision contrary to the provision of the Act – Application – Overriding effect of the Act felt into consideration .

Held : An executive circular cannot override or narrow the meaning of a statutory provision as explained by the Supreme Court **–** Clause 10 of the Circular dated 03.05.1982 is only an executive instruction. It cannot override Section 10 of the 1978 Act as interpreted by the Constitution Bench. [Para 25 and 40(ii)]

(C) Interpretation of statute – Precedent – Scope – Creating new law, extent of : (E-1)
Held : When the Supreme Court interprets a statutory provision, it explains what the law has always meant. It does not create a new law from the date of its judgment. [Para 37] (E-1)

Case Law Cited

State of U.P. v. Pawan Kumar Divedi, (2014) 9 SCC 692; Singasan Sharma v. State of U.P. and 3 Others, 2026 (2) ESC 583 (All)(DB); Radhey Shyam Yadav v. State of U.P., (2024) 11 SCC 770; Vinod Sharma vs. Director of Education (Basic) U.P., (1998) 3 SCC 404; Directorate of Revenue Intelligence v. Raj Kumar Arora and Others, 2025 INSC 498 : (2026) 2 SCC 401; Sanjay Kumar Agarwal v. State Tax Officer, (2024) 2 SCC 362; State (NCT of Delhi) v. K.L. Rathi Steels Ltd., (2024) 7 SCC 315; Radhey Shyam Yadav v. State of U.P., (2024) 11 SCC 770 **– referred to.**

List of Acts

U. P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 – S. 10 – U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 – Government Order dated 03.05.1982 – Clause 10.

List of Keywords

Arrear of salary, State Exchequer, Recognition, Grant-in-aid scheme, Financial approval, Payment of salary, Discriminatory, Judicial intervention, Primary section teacher, Administrative reconsideration, Technical objection, Approval, Unequal treatment, Unconstitutional, Executive instruction, Binding, Substantive change, Ground to review a judgment, Procedural irregularity, Administrative inquiry, Lapse, Entitlement, Resignation, Removal, Retirement, Opportunity of hearing.

Case Arising From

Judgment and order dated 29.04.2013 passed by Single Judge Bench in Writ A No. 23422 of 2013.

Appearances for Parties

Advs. for the Appellant : J.P. Singh.
Advs. for the Respondents : J.N. Maurya, CSC; Fuzail Ahmad Ansari, S.C.; Shashi Prakash Singh, B.P. Singh.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

1. Heard Shri J.P. Singh, the learned counsel for the appellant-petitioner and Shri J.N. Maurya, learned Chief Standing Counsel assisted by Shri Fuzail Ahmad Ansari, the learned Standing Counsel for the State-respondents.

2. The instant intra-court appeal is preferred to quash the judgment and order dated 29.4.2013 passed by Hon'ble Single Judge in Civil Misc. Writ Petition-A No.23422 of 2013 (Surendra Sharma vs. State of U.P. and 3 others) as well as order dated 11.4.2013 passed by Respondent No.3 District Basic Education Officer, Azamgarh and a direction be issued to respondents to ensure that appellant is paid his arrears of salary from State Exchequer from the date his salary was stopped.

FACTS: -

3. The petitioner was appointed as an Assistant Teacher in the Primary Section of Smt. Ram Daiyee Balika Junior High School, Dariya Dayalpur, Azamgarh (hereinafter referred to as the Institution) on 01.07.1977 and has been working in the institution since then. The institution was

initially recognized as a Primary School by an order dated 30.03.1974 and was subsequently granted recognition as a Junior High School with effect from 01.07.1977 by order dated 14.03.1978. In the year 1980, the institution was brought under the grant-in-aid scheme. The Committee of Management submitted the names of its teachers and employees for payment of salary from the State Exchequer. By order dated 03.11.1980, the District Basic Education Officer approved the petitioner's appointment and included his name in the approved list for payment of salary. The petitioner was paid salary from the State Exchequer until October, 1981, whereafter payment of salary was stopped.

4. One Smt. Jagdamba Srivastava, a similarly situated teacher, filed Civil Misc. Writ Petition No.10389 of 1991 (Smt. Jagdamba Srivastava and another vs. State of U.P. and others), which was allowed on 15.10.1993 directing payment of salary. The Special Leave Petition filed by the State against the said judgment was dismissed. Another Assistant Teacher of the same institution, namely Smt. Gayatri Rai, who had also been appointed on 01.07.1977, filed Writ Petition No.22154 of 1988 (Smt. Gayatri Rai vs. State of U.P. and others), which was allowed on 08.03.1996 directing payment of salary. Pursuant thereto, she has been receiving salary from the State Exchequer.

5. The petitioner thereafter approached the District Basic Education Officer for release of his salary. As no decision was taken, he along with another teacher filed Writ Petition No.33545 of 1997 (Smt. Ram Daiyee Devi and another vs. State of U.P. and others), which was disposed of on 22.07.1998 with a direction to the District Basic Education Officer to decide the representations of the petitioners therein. Thereafter, by order dated 08.10.1998, the District Basic Education Officer directed the Accounts Officer to examine the records. The Accounts Officer, by order dated 31.10.1998, granted financial approval for payment of salary to the petitioner. However, though the salary bill was initially processed, payment was not released. Subsequently, by order dated 12.04.1999, the District Basic Education Officer rejected the petitioner's claim for salary.

6. The petitioner challenged the order dated 12.04.1999 by filing Writ Petition No.21720 of 1999 [Smt. Ram Daiyee Devi and another vs. State of U.P. and others], in which, an interim order dated 31.10.2001 was passed directing payment of current salary to the petitioner in the same manner as being paid to Smt. Gayatri Rai. The writ petition was, however, dismissed by judgment dated 28.08.2003. Aggrieved thereby, the petitioner preferred Special Appeal No.1978 of 2009 [Smt. Ram Daiyee Devi and another vs. State of U.P. and others]. The Division Bench, by judgment dated 23.11.2012, allowed the appeal, set aside the judgment of the learned Single Judge and remitted the matter to the District Basic Education Officer, Azamgarh for fresh consideration. After affording an opportunity of hearing to the petitioner, the District Basic Education Officer passed the order dated 11.04.2013 rejecting the petitioner's claim for payment of salary. The said order dated 11.04.2013 has been challenged in the aforesaid writ petition i.e. Writ-A No.23422 of 2013 (Surendra Sharma vs. State of U.P. and 3 others) with the following prayer:

"a) to issue a writ, order or direction in the nature of certiorari quashing the order impugned dated 11.4.2013 (Annexure-16 to the writ petition) passed by Respondent No.3- the District Basic Education Officer, Azamgarh.

b) to issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure that petitioner is paid his arrears of salary from State Exchequer from the date his salary was stopped within the time specified by the Hon'ble Court.

(c) to issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure that petitioner is paid current monthly salary from the State Exchequer as and it falls due.

d) to issue such other and further writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case; so that justice be done.

e) to award cost of the writ petition throughout to the Petitioner as against the respondents."

7. The aforesaid writ petition (Writ-A No.23422 of 2013) was filed by the petitioner claiming that he was entitled to receive salary after his institution was brought under the grant-in-aid scheme because he had been appointed against a sanctioned post and his appointment had been approved by the District Basic Education Officer on 03.11.1980. It was also claimed that another teacher of the same institution, Smt. Gayatri Rai, had been granted salary through court orders, and therefore denial of the same benefit to him was discriminatory.

8. Learned Single Judge noted that the petitioner had earlier filed a writ petition (No.21720 of 1999), which was dismissed on 28.08.2003, but in a special appeal (No.1978 of 2009), the Division Bench vide order dated 23.11.2012 directed the District Basic Education Officer to pass a fresh reasoned order, observing that mere non-fulfilment of the prescribed standard under the Government Order was not sufficient to deny salary. After considering the submissions, the learned Single Judge examined Clause 10 of the Government Order dated 03.05.1982, under which the institution was brought on the grant-in-aid list. The learned Single Judge held that Clause 10 specifically restricted payment of salary under the grant-in-aid scheme only to the teachers and employees working in Classes VI to VIII, and expressly excluded the teachers and employees working in the primary section (Classes I to V). Since the petitioner was admittedly appointed as a teacher in the primary section, he was not entitled to salary under the grant-in-aid scheme.

9. Learned Single Judge further held that the petitioner had never challenged the validity of Clause 10 of the Government Order, and after more than 31 years such a challenge could not be permitted. The benefit granted to Smt. Gayatri Rai could not be treated as a precedent because it had been granted through judicial intervention without consideration of Clause 10. No other Government order extending grant-in-aid benefits to primary teachers was produced before the Court. Accordingly, the learned Single Judge held that the petitioner was not entitled to payment of salary under the Government Order dated 03.05.1982 and dismissed the writ petition on 29.04.2013. Aggrieved with the said order, the instant intra-court appeal has been preferred.

Submissions made on behalf of Appellant: -

10. Shri J.P. Singh, learned counsel for the appellant-petitioner, vehemently submits that the learned Single Judge has erred in dismissing the writ petition by placing reliance upon Clause 10 of the Circular dated 03.05.1982. He submits that the appellant's appointment had already been approved by the District Basic Education Officer on 03.11.1980 and, pursuant thereto, he was paid

salary from the State Exchequer. It is contended that the Circular dated 03.05.1982 was issued subsequently and has no retrospective operation. He further submits that neither the Circular nor any statutory provision provides that salary already sanctioned to teachers of the Primary Section would stand discontinued. He argues that the authorities as well as the learned Single Judge have read Clause 10 of the Circular in isolation while ignoring the fact that the institution had already been brought under the grant-in-aid scheme in the year 1980 and the appellant had been granted approval before issuance of the Circular. Learned counsel further submits that Clause 14 of the same Circular provides protection to teachers appointed prior to the enforcement of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 19781, but the said provision has not been considered.

11. Learned counsel further submits that the learned Single Judge failed to appreciate that another Assistant Teacher of the same institution, namely Smt. Gayatri Rai, who was appointed on the same date and whose appointment had also been approved, has been receiving salary from the State Exchequer pursuant to the orders passed by this Court. He pressed that It is submitted that the claim of Smt. Gayatri Rai was based upon the judgment dated 15.10.1993, wherein this Court held that the provisions of the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 19782 (U.P. Act No.6 of 1979) apply to institutions having both Primary and Junior High School sections and that teachers of the Primary Section are also entitled to payment of salary. The said judgment was affirmed by the Hon'ble Supreme Court upon dismissal of the Special Leave Petition filed by the State. He further submitted that despite the matter having been remanded by the Division Bench for fresh consideration, the District Basic Education Officer rejected the appellant's claim solely on the basis of Clause 10 of the Circular dated 03.05.1982, without properly considering the earlier approval granted to the appellant, the provisions of the U.P. Act No.6 of 1979 (The 1978 Act), or the binding judicial pronouncements governing the issue.

12. Learned counsel for the appellant-petitioner has placed heavy reliance upon the judgment of the Hon'ble Supreme Court in ***State of U.P. v. Pawan Kumar Divedi.*** He submits that the very question involved in the present appeal - whether a teacher working in the primary section (Classes I to V) of an institution that also runs Classes VI to VIII is entitled to payment of salary under Section 10 of the 1978 Act - stands conclusively answered by the Constitution Bench in favour of such teachers. He submits that the Supreme Court, having classified Junior High Schools into three categories, held that for an institution running Classes I to VIII as a single unit (the exact nature of the institution in question), the applicability of Section 10 of the 1978 Act "does not create any difficulty," and that even in the more contested category of institutions where the primary section is added later to an already-recognised Senior Basic School, primary-section teachers are equally entitled to salary under the said provision. Learned counsel submits that Clause 10 of the Circular dated 03.05.1982, being a mere executive instruction, cannot be read to restrict a statutory liability that has since been authoritatively construed by the Supreme Court, and that the impugned order and judgment, having proceeded solely on the strength of Clause 10 without the benefit of this subsequent pronouncement, cannot be sustained.

13. Learned counsel has further placed reliance upon the judgment of this Court in ***Singasan Sharma v. State of U.P. and 3 Others*** in support of the appellant's alternative submission that a teacher whose appointment has been duly approved by the competent authority cannot be denied

salary merely on account of subsequent administrative reconsideration or technical objections. He submits that the Division Bench, following the judgment of the Hon'ble Supreme Court in ***Radhey Shyam Yadav v. State of U.P.***, held that the State cannot take advantage of its own lapse, or that of its officers, in granting approval and thereafter deny salary and service benefits to an employee who is not himself at fault. Learned counsel submits that the appellant's appointment was approved by the District Basic Education Officer as far back as 03.11.1980, and that this approval has never been disturbed or withdrawn by any competent authority.

Submissions made on behalf of the State-respondents: -

14. Per contra, Shri J.N. Maurya, learned Chief Standing Counsel along with Shri Fuzail Ahmad Ansari, learned Standing Counsel appearing for the State-respondents, supports the judgment of the learned Single Judge as well as the order dated 11.04.2013 passed by the District Basic Education Officer. He submits that although the appellant was initially paid salary after the institution was brought under the grant-in-aid scheme, the payment was rightly discontinued from October, 1981 as the appellant was working in the Primary Section attached to the Junior High School and was not entitled to receive salary from the State Exchequer under the provisions governing payment of salaries. He submits that the appellant's claim was considered on several occasions. His representation was rejected by the District Basic Education Officer on 12.04.1999, whereafter Writ Petition No.21720 of 1999 was dismissed by the learned Single Judge on 28.08.2003. Although the Division Bench, in Special Appeal No.1978 of 2009, remitted the matter for fresh consideration, the District Basic Education Officer, after reconsidering the matter in terms of the remand order, has again rejected the appellant's claim by order dated 11.04.2013.

15. Learned Standing Counsel further submits that the District Basic Education Officer rightly relied upon Clause 10 of the Circular dated 03.05.1982, which specifically provides that salary under the 1978 Act is payable only to teachers and employees working in Classes VI to VIII and not to those working in the attached Primary Section comprising Classes I to V. He next submitted that the learned Single Judge, while dismissing Writ Petition No.23422 of 2013 by judgment dated 29.04.2013, also held that the institution was governed by Clause 10 of the said Circular and that the payment of salary to Smt. Gayatri Rai could not be treated as a precedent in the absence of any grant-in-aid order extending such benefit to teachers of the Primary Section. Learned Standing Counsel also places reliance upon the amendments introduced by the Uttar Pradesh Basic Education (Amendment) Ordinance, 2017 and the corresponding amendment in the 1978 Act, whereby "Junior Basic School" and "Junior High School" have been separately defined. He submits that the amendments reinforce the distinction between the two institutions and support the stand taken by the State. He, therefore, submits that the present special appeal lacks merit and is liable to be dismissed.

Discussion and Findings: -

16. Before dealing with the rival contentions, it is necessary to notice the statutory provision under which the claim is made. Section 10 of the 1978 Act reads as follows:

"10. Liability in respect of salary. (1) The State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after the appointed day.

(2) The State Government may recover any amount in respect of which any liability is incurred by it under sub-section (1) by attachment of the income from the property belonging to or vested in the institution as if that amount were an arrear of land revenue due from the institution.

(3) Nothing in this section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee."

17. The word "institution" is defined in Section 2(e) of the 1978 Act as "a recognized Junior High School for the time being receiving maintenance grant from the State Government." At the relevant time, the expression "Junior High School" itself stood undefined in the 1978 Act. It is this gap that led to the dispute decided by the Hon'ble Supreme Court in the case of ***Pawan Kumar Divedi*** (supra).

18. The Constitution Bench in ***Pawan Kumar Divedi*** (supra) considered the same issue that arises in this appeal. The question was whether a teacher working in the primary section (Classes I to V) of a school that also runs Classes VI to VIII is entitled to salary under Section 10 of the 1978 Act, or whether this benefit is available only to teachers of Classes VI to VIII. In paragraph 42, the Supreme Court divided such schools into three categories:

"42. It is important to notice here that recognised Junior High Schools can be of three kinds:

(i) ***having Classes I to VIII, i.e., Classes I to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School);***

(ii) a school as above and upgraded to High School or intermediate standard and;

(iii) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school."

(emphasis supplied)

19. The Supreme Court held that there was no difficulty in applying Section 10 of the 1978 Act to the first two categories of schools. It observed that where a school has Classes I to VIII, or where such a school is later upgraded, all teachers are covered by Section 10. The Court further explained that if a Primary School (Classes I to V) is added to a recognised and aided Junior High School (Classes VI to VIII), both sections become one integrated Basic School. Therefore, the expression "Junior High School" in the 1978 Act should not be given a narrow meaning. It refers to a Basic School imparting education up to Class VIII, and not merely to Classes VI to VIII. For ready reference, paras - 42.1 and 42.2 are reproduced hereinbelow:

"42.1. As regards the first two categories of Junior High Schools, the applicability of Section 10 of the 1978 Act does not create any difficulty*. The debate which has centered round in this group of appeals is in respect of third category of the schools where Classes I to V are added after obtaining recognition to the schools which are recognized and aided for imparting education in Classes VI to VIII. Whether teachers of primary section Classes I to V in such schools are entitled to the benefit of Section 10 of the 1978 Act is the moot question.*

42.2. As noticed, the constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years is beyond doubt now. The note appended to clause (xxvi), para 1 of the Educational Code (revised edition, 1958), inter alia, provides that Basic Schools include single schools with Classes I to VIII. In our view, if a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. The expression Junior High School in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. We do not think it is appropriate to give narrow meaning to the expression Junior High School as contended by the learned senior counsel for the state. That Legislature used the expression Junior High School and not the Basic School as used and defined in the 1972 Act, in our view, is insignificant. The view, which we have taken, is fortified by the fact that in Section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated."

(emphasis supplied)

20. The Hon ble Supreme Court also decided the issue relating to the third category of schools, where the primary section was added after the Junior High School had already received recognition and grant-in-aid. The Court held that teachers of the primary section are also entitled to the benefit of Section 10 of the 1978 Act. It observed that both the Primary and Junior High School sections are governed by the same Board of Basic Education under the 1972 Act. The Hon ble Supreme Court further held that denying salary to primary teachers in such schools would result in unequal treatment and could make the 1978 Act unconstitutional. Therefore, the Court affirmed its earlier decision in Vinod Sharma vs. Director of Education (Basic) U.P.6 and held that the expression "Junior High School" includes Classes I to V even where those classes were added later after obtaining separate recognition. For ready reference, para-44 of ***Pawan Kumar Divedi*** (supra) is reproduced hereinbelow:

"44. Though in the Reference Order, the two-Judge Bench has observed that the High Court in the first round in Vinod Sharma (1998) 3 SCC 404 did not appreciate that the education at the primary level has been separated from the Junior High School level and separately entrusted under the different enactments to the Board constituted under Section 3 of the 1972 Act and the same Board exercises control over Junior Basic Schools and it was a conscious distinction made by the Legislature between two sets of schools and treat them two separate components and, therefore, Vinod Sharma vs. Director of Education (Basic) U.P. (1998) 3 SCC 404 does not take the correct view but we think that the features noted in the reference order do not render the view taken in Vinod Sharma (supra) bad. ***We find merit in the argument of Dr. M.P. Raju that the schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act. Moreover, any other view may render the provisions of the 1978 Act unconstitutional on the ground of discrimination. In our considered view, any interpretation which may lead to unconstitutionality of the provision must be avoided. We hold, as it must be, that Junior High School necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government."***

45. We accordingly affirm the view taken by the three-Judge Bench in Vinod Sharma (supra). Our answer to the question is in the affirmative "

(emphasis supplied)

21. The above principles fully apply to the present case. Smt. Ram Daiyee Balika Junior High School, Dariya Dayalpur, Azamgarh, was recognized as a Primary School on 30.03.1974 and was recognized as a Junior High School with effect from 01.07.1977. Since then, it has been functioning as one institution running Classes I to VIII under the same management. It clearly falls within the first category identified in ***Pawan Kumar Divedi*** (supra), where the Supreme Court held that Section 10 applies without any difficulty. Therefore, the appellant, who worked as a teacher in the primary section of this institution, is also a teacher of an institution covered by Section 10 of the 1978 Act.

22. This question has already been decided in respect of the same institution. By judgment dated 15.10.1993 in Civil Misc. Writ Petition No. 10389 of 1991 (Smt. Jagdamba Srivastava & Another), a learned Single Judge of this Court rejected the State's argument that only teachers of Classes VI to VIII are entitled to salary under the 1978 Act. The Court held that since the institution runs both the Primary and Junior High School sections, the 1978 Act applies to all classes, and teachers of both sections are entitled to salary under the 1978 Act. The Court held as under:

" .. The institution is a Junior High School which runs both Primary as well as Junior High School sections, U.P. Act No. 6 of 1979, therefore, will be applicable to all the classes including Primary and Junior High School sections and all the teachers of Primary or Junior High School are entitled for payment of salary under the said act."

23. The judgment dated 15.10.1993 became final because the Special Leave Petition filed by the State against it was dismissed. Thus, even before the Constitution Bench decision in ***Pawan Kumar Divedi*** (supra), this Court had already taken the same view in respect of this very institution.

24. However, the order dated 11.04.2013 passed by the District Basic Education Officer, Azamgarh, and the judgment dated 29.04.2013 passed by the learned Single Judge are based entirely on Clause 10 of the Circular dated 03.05.1982 issued by the Director of Education (Basic), U.P. Clause 10 provides that salary under the Payment of Salaries Act is payable only to teachers and other employees working in Classes VI to VIII, and that the benefit is not available to teachers and employees working in Classes I to V. The Clause 10 reads as under:

"10- अनुलग्नक में उल्लिखित विद्यालयों में कक्षा 6 से 8 तक के लिये कार्यरत अध्यापकों एवं अन्य कर्मचारियों को ही वेतन वितरण अधिनियम के अन्तर्गत वेतनादि का भुगतान किया जाय। किसी भी विद्यालय से संलग्नक कक्षा 1 से 5 तक की कक्षाओं में

कार्यरत अध्यापक एवं अन्य कर्मचारियों पर ये आदेश लागू न होगे। अतः उन कर्मचारियो को किसी भी प्रकार का कोई अनुदान अन्य आदेशों के अन्तर्गत देय न होगा।"

25. Clause 10 provides that, under the 1978 Act, salary is payable only to teachers and other employees working in Classes VI to VIII of the schools listed in the Annexure. It further states that the 1978 Act will not apply to teachers and employees working in the attached Primary Section (Classes I to V), and that no grant will be payable to them under any other order. However, this clause is only an executive instruction issued by the Director of Education for implementing the grant-in-aid scheme of 1982. It cannot limit or take away a right created by Section 10 of the 1978 Act. Once the Supreme Court has interpreted the scope of Section 10, that interpretation is binding. An executive circular cannot override or narrow the meaning of a statutory provision as explained by the Supreme Court. Therefore, the learned Single Judge and the District Basic Education Officer erred in relying only on Clause 10 to hold that teachers of the Primary Section were not entitled to salary. They failed to consider Section 10 of the 1978 Act in the light of the law laid down by ***Pawan Kumar Divedi*** (supra). For this reason, their finding cannot be sustained.

26. It is also necessary to clarify another point on which the learned Single Judge appears to have been mistaken. The learned Single Judge held that the appellant could not challenge Clause 10 of the Circular dated 03.05.1982 after a gap of 31 years. This reasoning would have been correct if the appellant had challenged the validity of Clause 10 itself. However, that is not the appellant's case. The appellant has consistently maintained that he is entitled to salary under Section 10 of the 1978 Act, irrespective of Clause 10. This issue depends on the correct interpretation of Section 10, which was authoritatively settled by the Constitution Bench in 2014. Therefore, there is no question of delay or limitation in relying upon the later decision of the Supreme Court interpreting the existing law.

27. It is also important to notice that the law was later amended. By the Uttar Pradesh Basic Education (Amendment) Ordinance, 2017, Section 2 of the U.P. Basic Education Act, 1972 was changed to define a "**Junior Basic School**" as a school teaching **Classes I to V** and a "**Junior High School**" as a school teaching Classes VI to VIII. At the same time, clause (ee) was added to Section 2 of the 1978 Act, which defines a "**Junior High School**" as an institution imparting education from Classes VI to VIII. Section 2 provides as follows:

*"(ee) "**Junior High School**" means an institution which is different from High School or Intermediate College in which education is imparted to boys or girls or to both from class sixth to class eight."*

28. This amendment, introduced by U.P. Act No. 3 of 2018, gives statutory effect to the narrower meaning of "**Junior High School**" which the Constitution Bench in ***Pawan Kumar Divedi*** (supra) had earlier rejected. However, this is a substantive change in the

law and therefore applies only from the date it came into force. It does not affect the appellant's claim for salary for the period before the amendment, because that claim is governed by the law laid down in ***Pawan Kumar Divedi*** (supra).

29. This view is supported by the recent decision of the Hon'ble Supreme Court in **Directorate of Revenue Intelligence v. Raj Kumar Arora and Others**. In that case, the Court considered whether a later Supreme Court judgment, which overruled an earlier one, would apply to cases that were already pending when the later judgment was delivered. The Court held that, as a general rule, Supreme Court judgments interpreting a statute apply retrospectively. Such a judgment does not create a new law but only declares what the law has always meant. Therefore, even cases filed before the later judgment are governed by the law as clarified by that judgment, and not by the earlier view that has been overruled. The Court also clarified that this rule applies unless it expressly states that its decision will operate only prospectively.

30. The Constitution Bench judgment in ***Pawan Kumar Divedi*** (supra) contains no such direction limiting its operation to future cases. Accordingly, the general rule of retrospective application, as explained in ***Raj Kumar Arora*** (supra), fully applies. The interpretation placed by the Constitution Bench on Section 10 of the 1978 Act must therefore be treated as declaring the true meaning of that provision from the very beginning and governs the present appeal, which has remained pending throughout.

31. This principle, however, has an important limitation. It does not reopen cases that had already become final before the law was clarified. The Supreme Court expressly recognised this limitation in ***Raj Kumar Arora*** (supra), holding that judgments which had already attained finality under the earlier view would remain undisturbed. The same principle is reflected in the Explanation to Order XLVII Rule 1 of the Code of Civil Procedure, 1908, and in the consistent decisions of the Supreme Court that a subsequent change in law by a coordinate or larger Bench is not, by itself, a ground to review a judgment that has already become final, as held in **Sanjay Kumar Agarwal v. State Tax Officer**, and **State (NCT of Delhi) v. K.L. Rathi Steels Ltd.** This limitation would equally have applied to the appellant if his own claim had become final before 2014, a point discussed further below.

32. Learned counsel for the appellant also relied on the judgment of **Singasan Sharma** (supra). That case, however, did not deal with the interpretation of Section 10 of the 1978 Act. It was related to the denial of retirement benefits to teachers whose appointments had been approved many years earlier, on the basis of a later administrative inquiry, despite an earlier court decision that had become final. Relying on ***Radhey Shyam Yadav v. State of U.P.,*** the Division Bench held that once a teacher's appointment has been approved and the teacher has served for many years, salary and service benefits cannot be denied merely because of procedural irregularities or mistakes committed by the management or the authorities. A teacher who is not at fault cannot be made to suffer for such lapses. The Division Bench held in para-10, that:

"10. To further support his contention, learned counsel for the appellants relies on the decision of the Supreme Court in Radhey Shyam Yadav v. State of Uttar Pradesh and Others, (2024) 11 SCC 770, wherein Supreme Court examined the question whether a teacher, whose appointment had been approved by the competent authority and who had discharged duties for a considerable length of time, could be denied salary and service benefits on the ground of alleged irregularities in appointment. In this case the Supreme Court held that once an appointment is approved and the teacher has worked for years, salary cannot be withheld merely on the basis of procedural lapses or alleged irregularities attributable to the management or the authorities. It was further held that ***the State cannot be permitted to take advantage of its own lapse, or that of its officers, in granting approval and thereafter deny salary and service benefits. The Court emphasised that a teacher who is not at fault cannot be penalised for alleged mistakes of the management, especially when the employee has in fact rendered service and the employer has enjoyed the benefit thereof."***

(emphasis supplied)

33. Although the issue decided in ***Singasan Sharma*** (supra) was different, the principle laid down in that case supports the appellant to the extent that his appointment was approved by the District Basic Education Officer, Azamgarh on 03.11.1980, and that approval has never been cancelled or withdrawn. However, unlike ***Singasan Sharma*** (supra), there is no specific pleading in the present case to show that the appellant actually continued to teach in the institution throughout the entire period for which salary is claimed. This is a separate question of fact. It is different from the legal question of entitlement under Section 10 and is considered separately below.

34. It is also necessary to note that the record does not show the appellant's employment status after the dismissal of his writ petition on 29.04.2013. It is not clear whether he continued in service, retired on attaining the age of superannuation, or whether his service ended for any other reason. This appeal has been decided only on the question of his entitlement to salary under Section 10 of the 1978 Act for the period during which he actually taught in the institution. Since no issue regarding his employment status after 29.04.2013 has been raised or argued, this Court expresses no opinion on that question. If, during the fresh consideration, it is found that the appellant's service ended after 29.04.2013, whether by resignation, removal, retirement, or otherwise, he shall be entitled to salary only for the period during which he actually remained in service. No direction for payment of salary beyond that date shall follow from this judgment. However, if the appellant claims that his service was discontinued illegally, he shall be free to seek any remedy available to him in law. This judgment does not decide that issue.

Effect of the change in the legal landscape: -

35. It is important to understand the mistake in the present case. The order dated 11.04.2013 passed by the District Basic Education Officer and the judgment dated 29.04.2013 passed by the learned Single Judge were delivered before the Constitution Bench of the Supreme Court decided ***Pawan Kumar Divedi*** (supra). Therefore, neither of

them had the benefit of that decision. The mistake was not that they incorrectly applied the law as it was then understood. The correct legal position was clarified only later by the Constitution Bench.

36. When the impugned orders were passed, the question whether a teacher of the Primary Section in a school having Classes I to VIII was entitled to salary under Section 10 of the 1978 Act had not been finally settled. The issue was pending before a larger Bench of the Supreme Court because the earlier decision in ***Vinod Sharma*** (supra) had been doubted. In these circumstances, the District Basic Education Officer and the learned Single Judge cannot be blamed for relying on Clause 10 of the Circular dated 03.05.1982, as that was the legal position understood at that time. This judgment should not be taken as criticism of their approach.

37. However, while deciding this appeal, this Court must apply the law as it stands today. It is a settled principle that when the Supreme Court interprets a statutory provision, it explains what the law has always meant. It does not create a new law from the date of its judgment. Therefore, the decision in ***Pawan Kumar Divedi*** (supra) applies to the present case, and this Court is bound to follow it.

38. This appeal has been pending since 1999. During this period, the law relating to the appellant's claim was finally settled by the Supreme Court while the case was still pending. Therefore, the appeal must be decided according to the law declared by the Supreme Court, and not according to the legal position that existed when the impugned orders were passed.

39. The instant case is not a case where the dispute stood finally decided before the Constitution Bench delivered its judgment. We express no opinion on such cases. In the present case, the appellant's claim never attained finality. The Division Bench, by its order dated 23.11.2012 in Special Appeal No. 1978 of 2009, remanded the matter for fresh consideration whereafter the respondent no.3 passed the impugned order on 11.04.2013. The same was challenged in writ petition which was decided on 29.04.2013, which has been assailed in the present special appeal. The lis was pending before this court since 2013. Therefore the law laid down in ***Pawan Kumar Divedi*** (supra) fully applies to the present case.

Conclusion: -

40. For the reasons discussed above, we hold as follows:

(i) The institution is a single Junior High School running Classes I to VIII. It falls within the first category identified by the Constitution Bench in ***Pawan Kumar Divedi*** (supra), where the Supreme Court held that Section 10 of the 1978 Act clearly applies.

(ii) Clause 10 of the Circular dated 03.05.1982 is only an executive instruction. It cannot override Section 10 of the 1978 Act as interpreted by the Constitution Bench.

Therefore, the District Basic Education Officer and the learned Single Judge were not justified in relying on that circular to deny salary to the appellant.

(iii) The appellant's claim is not barred by delay. He is not challenging the validity of Clause 10 of the Circular. He is only claiming the benefit of the correct interpretation of Section 10 of the 1978 Act, as later declared by the Supreme Court.

(iv) The 2018 amendment, which gives a narrower meaning to the expression "Junior High School", applies only from the date it came into force. It does not affect the appellant's claim for salary for the period before the amendment.

(v) The judgment dated 29.04.2013 passed by the learned Single Judge and the order dated 11.04.2013 passed by the District Basic Education Officer were based only on interpretation of Clause 10 of the Circular dated 03.05.1982, but in the light of the law later laid down in ***Pawan Kumar Divedi***, they cannot be sustained.

(vi) However, the appellant will be entitled to salary under Section 10 of the 1978 Act only for the period during which he actually worked and taught in the institution. Since there is no clear pleading or material on record showing the exact period of service, this Court cannot determine the amount of salary payable. That exercise should be carried out by the competent authority after examining the relevant service and attendance records.

Final Order(s):-

41. In view of the aforesaid, the judgment and order dated 29.04.2013 passed by the learned Single Judge in Civil Misc. Writ Petition-A No.23422 of 2013, as well as the order dated 11.04.2013 passed by respondent No. 3, the District Basic Education Officer, Azamgarh, are hereby set aside. The special appeal is accordingly disposed of with the following directions:

(i) The matter is remitted to the District Basic Education Officer, Azamgarh, for fresh consideration in the light of the law laid down in ***Pawan Kumar Divedi*** (supra). The District Basic Education Officer shall verify, from the service records, attendance registers, and any other relevant material, (i) the period during which the appellant actually imparted education in the institution, and (ii) whether he has retired, or his service ended, and if so, from which date? If it is found that the appellant actually worked in the institution, he shall be paid arrears of salary for the verified period, from November 1981 up to the earlier of (a) the commencement of U.P. Act No. 3 of 2018, or (b) the date on which his service came to an end. This judgment does not decide any dispute regarding the end of his service and does not prevent him from taking any other legal remedy available to him if he claims that his service was terminated illegally or involuntarily.

(ii) This exercise shall be completed within a period of three months from the date a certified copy of this order is produced before the District Basic Education Officer, after affording an opportunity of hearing to the appellant.

(iii) There shall be no order as to costs.

(2026) 7 ILRA 852
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 452 of 1984

Smt. Ambika **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order in case of private defense?

Headnotes

Indian Penal Code, 1860-Ss. 96, 97, 100 and 304(I)-Culpable homicide not amounting to murder-Right of private defence-Appellant convicted under S.304(I) IPC for causing death of deceased by striking moosal over his head-prosecution witnesses suppressed injuries sustained by all four accused-injuries of accused proved by medical evidence-Investigating Officer stated that accused had exercised their right of private defence-Appellant had also lodged NCR against first informant's party-cross-case established-failure to explain injuries on person of accused raising adverse inference- that prosecution had suppressed genesis and origin of incident and had not presented true version-prosecution witnesses lying on material point and not reliable-defence case that deceased and his wife raided house of accused and abused and assaulted them causing injuries probabilised- right of private defence available-quarrel started all of a sudden- no previous enmity nor was it pre-mediated-appellant had reasonable apprehension of death or sustaining grievous hurt-only one blow given at head of deceased which proved fatal-Appellant well within her right to exercise right of private defence and had not exceeded it-Act protected under right of private defence-prosecution failed to prove its case beyond reasonable doubt-Conviction set aside-Appellant acquitted.
Appeal allowed. (E-9)

Case Law Cited

1. Lakshmi Singh v. State of Bihar, **AIR 1976 SC 2263**
2. Darshan Singh v. State of Punjab, **(2010) 2 SCC 333**

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Culpable homicide not amounting to murder; Right of private defence;Cross-case; Injuries on accused; Non-explanation of injuries; Prosecution witnesses; Reasonable apprehension; Sudden quarrel; No previous enmity; Not pre-mediated; Self-preservation.

Appearances of parties

Counsel for Appellant: Anil Kumar, Damodar Singh, Devendra Vikram Singh, Gajendra Pratap Counsel for Respondent(s): A.G.A.

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

1. This criminal appeal has been filed, under Section 374 (2) Code of Criminal Procedure, 1973, (in short Cr.P.C.), by appellant Smt. Ambika, against the impugned judgment and order dated 09.02.1984 passed by Shri R.B.L Dohare IVth, Additional Sessions Judge, Ghazipur, in Sessions Trial No.106 of 1983 (State Vs. Ambika and Another), arising out of Case Crime No. 61 of 1981, under Section 304 (1) I.P.C., Police Station- Birno, District- Ghazipur.

2. By the impugned judgment and order dated 09.02.1984, the learned trial court has convicted the appellant Smt. Ambika for offence punishable under Section 304 (1) of the Indian Penal Code (in short IPC) and sentenced her to undergo rigorous imprisonment for a period of 5 years.

3. Brief facts of the prosecution case are that Sabas, brother of deceased Rajjan, resident of Madhuban, Police Station- Birno, District- Ghazipur, submitted a written application, dated 12.05.1981, before Incharge Police Station- Birno, at 14:45, stating therein that today at about 01:00 p.m. a quarrel occurred between Baza's daughters and women of Rajjan's house. Thereupon, Rajjan reached there to intervene, then either of Baza's daughters and son, namely, Ambika, Dullu, Jamua and Munna, who was involved in the quarrel, asssulted a moosal (a long wooden pestle used for grinding grains) upon Rajjan which incidentally struck over his head. He was given first-aid treatment, but after a while he died, after spitting blood from his nose and mouth. The above incident was witnessed by Rambriksh, Gainda and other persons. Upon this application, FIR under Case Crime No. 61 of 1981, Section 304 I.P.C was lodged at Police Station- Birno, on 12.05.1985, at 14:45, and the investigation was entrusted to SHO G.R. Sharma.

4. The investigation officer conducted investigation. He recorded statements of the first informant and other witnesses, inspected the place of occurrence and prepared its site-plan. The inquest of the deceased was prepared and the post-mortem was carried out. After investigation charge-sheet has been filed against the appellant Smt. Ambika and other co-accused Smt. Dullu @ Shyam Dulari, Smt. Jamua @ Ram Pyari and Munna under Section 304 I.P.C. before the concerned Magistrate court.

5. The court concerned took cognizance of the offence and summoned the accused. They appeared before the court and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to Court of Sessions for trial.

6. The accused appeared before the learned court of Sessions, where charge under section 304 IPC was framed against Smt. Ambika and charge under Section 304 read with 34 IPC was framed against all other co-accused, Dullu @ Shyam Dulari, Jamua @ Ram Pyari and Munna. The accused pleaded not guilty and claimed to be tried.

7. The prosecution has examined five witnesses, to wit, P.W.1 Dr. A.K. Goswami; P.W. 2 Sabas; P.W.3 Rambriksh; P.W.4 Smt. Sudeshwari and P.W. 5 S.I. Ganesh Ram Sharma, to prove its case.

8. P.W. 1 Dr. A.K. Goswami, is the formal witness, who has conducted post-mortem of deceased Rajjan on 13.05.1981 at District Hospital- Ghazipur. His cadavour was brought by Constable Ram Chandra and Constable Mangala Pandey. P.W.1 has stated that rigor mortis was present on lower limb and had passed through upper limb. The eyes were out and blood was oozing out from both nostrils, ear and mouth. He found following ante-mortem injuries over body:-

(i) Contusion with swelling 10 cm x 5 cm to the right side of head, 6 cm above right ear.
(ii) An abrasion 6 cm x 3 cm at the middle of head, 8 cm above the root of nose.

9. In internal examination, the skull bones were fractured. The front part of skull and parietal bones were fractured. Both the chambers of heart were empty. Small intestine contained semi-digested food and fecal matter was present in large intestine. The bladder was empty. The death of deceased had occurred due to above injuries as a result of shock. The death could have been occurred on 12.05.1981 at 01:00 p.m. and the above injury could have been caused by moosal. P.W. 1 has proved post mortem as Ext.Ka.1.

10. In cross-examination he has said that injury no.2 could have been caused by falling on the ground and injury no.1 could be caused by any blunt weapon.

11. P.W.2 Sabas, is the real brother of the deceased and is also the first informant of the case. He has stated that Rajjan was his real brother and he was living separately from him. Accused Smt. Ambika, Dullu and Smt. Jumua are real sisters. Co-accused Munna is their real brother. All of them are Baza's children. Baza's daughters have bad character. On the date of incident at about 01:00 p.m. Smt. Ambika had struck a moosal upon Rajjan at the door, in his courtyard. Baza's son-in-law, who is Smt. Ambika's bahnoi (brother-in-law), came at Rajjan's door and was talking to Rajjan's wife then all the four accused reached there stating that she is backbiting against us and started having quarrel with Rajjan's wife. When Rajjan reached there to intervene, Dullu, Jamua and Munna caught hold of him and Smt. Ambika struck moosal upon him, as a result he died. P.W. 2 has stated that he was not witness of the alleged incident and he came to know of the incident through witness Gaina and Ram Briksh. He has also said that he got the application written through Raghunath Tiwari and after putting his thumb impression lodged the FIR, which the witness has proved as Ext. Ka.2.

12. In cross-examination, P.W.2 has said that before lodging the report it had came to his knowledge that Ambika had struck moosal at the deceased, and he can not explain the reason if it is not written in the FIR. He has said that the accused were not beaten and they may have sustained injuries due to scuffle. The blood was splattered on the ground, but the Investigating Officer had not collected it. He has denied the suggestion that Rajjan and others came to Ambika's house and had beaten them and Rajjan sustained injuries when they exercised their right of private defence.

13. P.W. 3 Ram Briksh, is the eye-witness of the alleged incident. He has stated that at the time of incident he was smoking hookah in front of Rajjan's door in presence of other persons, then Baza's son-in-law, Brahmdeo, reached there and after greeting them, started having talk with Rajjan's wife then, all the four accused reached there and started quarreling with Rajjan's wife that you are backbiting him against us. Rajjan came and tried to separate them, then Ambika who was

carrying moosal in her hand struck it over Rajjan's head and the other three accused caught hold of him, Rajjan fell on the ground and died after a while.

14. In cross-examination P.W.3 has said that Rajjan came at the place when the quarrel has started. Nobody has beaten the accused before him. They were not beaten and they could have sustained injuries due to scuffle. Rajjan and others were not having any lathi and danda in their hands. He did not see any injury over the accused. Smt. Ambika was having moosal in her hand and rest of the accused were empty handed. After hitting moosal the blood had splattered on the ground. He did not see whether Rajjan's wife sustained injuries or not. He did not beat the accused after taking them to his house. He has denied the suggestion that the accused have sustained injuries due to his beating.

15. P.W. 4 Smt. Sudeshwari, is the wife of deceased Rajjan. She has stated that Baza's son-in-law had came at her door. Ram Briksh, Gaina and some women was also present there. He was taking her well being, then Smt. Ambika, Dullu, Jamua and Munna started altercation/ quarrell. Munna, Dullu and Jamua caught hold of Rajjan and Smt. Ambika struck a moosal upon Rajjan's head, due to which her husband died.

16. In cross-examination P.W.4 has said that no maarpeet happened between her and the accused. She did not beat any of them. The accused had abused and beaten her due to her having talk with their relative. Smt. Ambika's door is visible from her door, which is about three lattha away. The accused had abused at her house. Her husband objected to it, then the accused also abused her husband for about 10-5 minutes. When she was being beaten, none of the accused were having moosal in their hands. A chauka with regard to a marrizage was made at Munna's door and moosal and okhli was kept there. Her husband was trying to save her when she was being beaten by the accused. Then, the accused caught hold of her husband and Jamuva said **"ja behan moosal la maar de"**. Smt. Ambika brought moosal from her house and struck her husband. Ram Briksh was smoking hookah. The maarpeet took place in open ground which is adjacent to her door. None of the accused sustained any injury and she did not beat them.

17. P.W. 5 S.I. Ganesh Ram Sharma, is the Investigating Officer of the case. He has stated about the investigation conducted by him and as a secondary witness to Constable Moharrir Beer Bhadra Singh, he has proved FIR as Ext.Ka.2 and copy of G.D. as Ext.Ka.3. He has stated that he reached at the place of occurrence and took into possession the dead body of the deceased. The Panchas were appointed and then inquest was prepared, which the witness has proved as Ext.Ka.5 alongwith connecting papers as Ext.Ka.6 to Ext.Ka.9. He has said that at the time of preparation of inquest he collected blood stained clothes from the spot and also moosal and prepared its (recovery memo) fard baramadagi, which he has proved as Ext.Ka.10. He proved the site-plan as Ext.Ka.11. After collecting the post-mortem report and other evidence he submitted charge-sheet under Section 304 IPC, which he has proved as Ext.Ka.12.

18. In cross-examination P.W.5 has said that the accused were arrested the same day and there were some injuries over their bodies which they may have been sustained in this quarrel. He found that Rajjan had beaten Ambika and Ambika and others had beaten Rajjan. He came to the conclusion that deceased Rajjan had beaten Ambika and in self-defense they had beaten him. He

has further said that due to some confusion he has written that **"ghar par chad kar likhne ki baat"** . He has denied the suggestion that the accused had gone to the police station to lodge the FIR the same day, but they were arrested and to conceal this fact their medical examination was conducted the next day. Witness Sabas has not stated that three accused had caught hold of Rajjan and Ambika had struck moosal upon Rajjan's head. Sudeshwari had not stated that the accused had beaten her with fists and kicks. Sudeshwari had told that she had not sustained any injury. Sudeshwari has not told that Munna, Jamua and Dullu had caught hold of her husband and Ambika had struck him with moosal. Ram Briksh has not stated that Munna, Dullu and Jamua had caught hold of Rajjan. Ram Briksh has also not stated that the women were having quarrel with each other.

19. After closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C., in which they have denied the prosecution case. It is admitted that deceased Rajjan was first informant's real brother. It is also admitted that accused Ambika, Dully and Jamua are real sisters and Munna is their real brother and they are Baza's children. It is also admitted that Dharmdeo is their bahnoi (brother-in-law). It is submitted by accused that witnesses are deposing against them due to enmity, as one of the witness is the wife of the deceased and the other is his brother. Appellant Ambika has further said that Rajjan and Sudeshwari came at their door and started hurling abusive language and also had beaten them, in defence Rajjan sustained injuries. The defence has filed the copy of statement of Sudeshwari which was recorded under Section 161 Cr.P.C. by the I.O. as Ext.Kha.1 and Ext.Kha.2.

20. The accused have examined two witnesses, to wit, D.W.1 Dr. O.D. Singh and D.W.2 Constable Prem Shankar Pathak in their defence.

21. D.W.1 Dr. O.D. Singh has said that on 13.05.1981 he was posted as medical officer at Police Station- Birno, District- Ghazipur. On that day Constable Dayaram Yadav and Pratap Yadav brought Ambika Devi, Dullu @ Shyam Dulari and Jamua for medical examination. He conducted their medical examination between 10:30 a.m. to 11:40 a.m. and prepared their injury reports, the copy of which has been proved by the witness as Ext.Kha 3 to 6.

22. In cross-examination D.W.1 has said that none of the injuries to the injured could be manufactured and they could have been caused on 12.05.1981 at about 01:00 p.m.

23. D.W.2, Constable Prem Shankar Pathak, is a formal witness, who has stated that on 13.05.1981, Ambika Devi was already in custody and upon her report, Constable Beer Bhadra had scribed NCR No. 107 at 06:50 a.m. As secondary witness he has proved the handwriting and signature of Constable Beer Bhadra Singh and accordingly, proved NCR as Ext.Kha.7 and its G.D. as Ext.Kha-8.

24. In cross-examination D.W.2, he has said that Beer Bhadra Singh, is currently posted in Phoolpur, District- Varanasi.

25. Learned trial court after perusing the evidence on record and hearing the arguments of learned Counsel for both the parties, came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt against the appellant Ambika Devi. So far as the rest of the

accused are concerned, the prosecution has not been able to prove their case, therefore, co-accused Dullu @ Shyam Dulari, Jamua @ Ram Pyari and Munna were acquitted and Smt. Ambika Devi was convicted for offence punishable under Section 304(1) IPC and was sentenced to the term as indicated above.

26. Heard Shri Devendra Vikram Singh, learned Counsel for the appellant and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

27. It is submitted by learned Counsel for the appellant that there are material contradictions in the statement of public witnesses, which raises serious doubt over the prosecution case. It is further submitted that there is no explanation of the injuries sustained by all the four accused and thus, the genesis and origin of the incident has been suppressed by the prosecution, which raises serious doubt over the prosecution case. It is also submitted that the matter relates to cross-case and FIR on behalf of the appellant was lodged and the investigating Officer has himself stated that the deceased was aggressor and he saw injuries over the person of the accused persons, when they came to the police station. It is also submitted it is the deceased and his wife who came to the house of the appellant and abused and committed maarpeet with them and the deceased sustained injuries when the accused exercised their right of private defence. Therefore, the learned trial court failed to appreciate the evidence on record, correctly and reach at the wrong conclusion of the guilt of the appellant.

28. Per contra, learned A.G.A. has submitted that the testimony of public witnesses is consistent, reliable and trustworthy. The oral testimony is supported with medical evidence. The minor contradictions have no bearing over the prosecution case and thus, the learned trial court has correctly reached at the guilt of the appellant and has rightly convicted and sentenced the appellant. Therefore, this appeal has no force and is liable to be dismissed.

29. In a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the allegation against the appellant is that she along with other co-accused, in furtherance of their common intention, committed culpable homicide not amounting to murder, of deceased Rajjan. The alleged incident has occurred on 12.05.1981 by 01:00 p.m. in village Madhaban, Police Station- Birno, District- Ghazipur. The FIR was lodged the same day at about 14:45. The distance of the place of occurrence from the police station is one kilometer, therefore, within an hour and forty-five minutes the FIR was lodged. Thus the FIR was lodged promptly.

30. It is not in dispute that the FIR was lodge against appellant Smt. Ambika, Smt. Dullu @ Shyam Dulari, Smt. Jamua @ Ram Pyari and Munna, all the four accused are brother and sisters. The prosecution case is that there occurred a quarrel between Baza's daughter and women of Rajjan, and when Rajjan reached there to intervene then someone from the accused hit a moosal over Rajjan's head, as a result, he died after a little while. Prosecution has examined P.W.2 Sabas, the first informant, who is the real brother of deceased Rajjan. The prosecution has also examined P.W.3 Ram Briksh, the eye-witness and P.W.4 Smt. Sudeshwari, the wife of the deceased- Rajjan, as witnesses of fact.

31. So far as P.W.2 Sabas is concerned, he is not an eye-witness. He has stated in examination-in-chief itself, that he has not seen the incident and the incident was told to him by the Ram Briksh and Gaina. Therefore, P.W.2 is simply the first informant, therefore, his testimony is relevant to the extent that he lodged the FIR of the incident.

32. P.W.3 Ram Briksh is said to be eye-witness of the alleged incident and as per prosecution he was sitting at the door of Rajjan's house smoking Hookah when Baza's son-in-law, Brahmdeo, came and started having conversation with Rajjan's wife, then all the four accused reached there and started having quarrel with Rajjan's wife that she is backbiting about them. When Rajjan tried to pacify then Ambika who was carrying a moosal hit it over his head and the other accused caught hold of Rajjan. Rajjan fell on the ground and died after a while.

33. In cross-examination he has said that nobody assaulted the accused and he did not see any injury to any of the accused from his eyes and none had beaten the accused with lathi or danda. P.W.3's statement is not reliable due to the reason that all the four accused sustained injuries and their injury reports has been proved by D.W.1 Dr. O.D. Singh. A perusal of these injury reports Ext. Ka.3 to 6 shows that accused Munna sustained four injuries of the nature of lacerated wound over the right side of back of head and two contusions over left scapula region and abrasion over right side of wrist joint. Accused Smt. Ambika Devi sustained four injuries of the nature of contusion and abraded contusion over left side of back of scapula region, middle of left finger and left forearm. Accused Dullu @Shyam Dulari sustained one lacerated wound scalp deep over right side of head and Smt. Jamua @ Ram Pyari sustained contusion over right shoulder joint and complain of pain over right scapula region. In the opinion of doctor all the injuries were simple in nature. In this regard, the statement of Investigating Officer is relevant who as P.W.5 has stated that he had seen some injuries over the accused persons which they sustained in this quarrel/ incident. The I.O. has also said that during investigation he found that deceased Rajjan had beaten Ambika and Ambika and others have beaten Rajjan. He also came to the conclusion that deceased Rajjan reached at Ambika's house **"ghar par chadkar aaye"** and committed maarpeet and the accused exercised their right of private defence causing injuries to him. The above statement of I.O. shows that the accused sustained injuries in the same incident.

34. The defence has examined D.W.2 Constable, Prem Shankar Pathak, who has proved NCR which was lodged by the appellant Ambika Devi. It shows that the appellant had also lodged an FIR against the first informant's party, so in view of the statement of the Investigating Officer and D.W.1 as well as the copy of NCR, G.D. and injury reports of the accused, it is clear that it is a matter of cross-case.

35. As the accused have also sustained injuries in this incident and P.W.3 Ram Briksh has suppressed this by stating that the accused were neither beaten nor sustained any injuries, so this witness has concealed material facts before the court and he has suppressed the genesis and origin of the incident raising serious doubt over his testimony.

36. P.W.4 Smt. Sudeshwari is the wife of the deceased Rajjan. She has said that when the accused started beating her then her husband Rajjan came for her rescue and when he tried to separate them, the other co-accused caught hold of him and appellant Ambika brought moosal from

her house and hit it over his husband's head. She has also said that none of the four accused sustained any injuries because they were not beaten, thus, P.W.4 Sudeshwari has also suppressed the material fact before the court with regard to the injuries sustained by all the four accused, therefore, there is no explanation of injuries sustained by the co-accused and the appellant. The nature and number of injuries sustained by the co-accused and appellant shows that they are not minor or superficial. Thus, P.W.4 has also suppressed the genesis and origin of the incident and has concealed material facts before the court.

37. In **Lakshmi Singh Vs. State of Bihar AIR 1976 SC 2263**, the Hon'ble Supreme Court has held that if the prosecution fails to explain injuries on the person of the accused the following inference may be drawn:-

(a) That the prosecution has suppressed the genesis and origin of the case and has not presented the true facts.

(b) That the witness who has denied the presence of injuries is lying on material point and his version is not reliable.

(c) That in case, there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to cast a cloud on the prosecution case.

It is further held that it is only when the injuries sustained are minor and superficial and the evidence is so clear and cogent, so independent and disinterested, and that it far outweighs the effect and omission on the part of the prosecution, non-explanation of injury does not effect the prosecution case.

38. In view of the above decision of the Hon'ble Supreme Court, the failure of explanation of injuries on the person of the accused persons, by the prosecution, raises adverse inference upon the prosecution that it has suppressed the genesis and origin of the incident and has not presented the true version. It further shows that P.W. 3 Ram Briksh and P.W. 4 Sudeshwari are not reliable witness as they have denied the presence of injuries on the person of the accused and thus they have suppressed the origin and genesis of the incident and thus they are lying on material point.

39. The appellant in her statement under Section 313 Cr.P.C. has said that it is the deceased and his wife Sudeshwari who came at her door and abused and committed maarpeet with all the four accused and in that incident the deceased sustained injuries when the accused exercised their right of private defence. Therefore, the defence case is that they exercised their right of private defence when the deceased and his wife came to her house and started committing maarpeet with them, causing injuries to all the four accused.

40. In view of the above, now it is to be examined whether the appellant inflicted injuries to the deceased in her right of private defence. Section 96, 97 and 100 in Chapter IV of IPC are relevant provisions dealing with the right of private offence under the category of General Exceptions. These provisions are reporduced here below:

"96. Things done in private defence. - Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property. - Every person has a right subject to the restrictions contained in Section 99, to defend--

First.- His own body, and the body of any other person, against any offence affecting the human body;

Secondly.- The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass."

Section 100 deals with the extent upto which the right of private defence can be exercised to cause death of the assailant.

Section 100 of the Indian Penal Code is extracted as under:

"100. When the right of private defence of the body extends to causing death. -- The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely: --

First. -- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. -- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. -- An assault with the intention of committing rape;

Fourthly. -- An assault with the intention of gratifying unnatural lust;

Fifthly. -- An assault with the intention of kidnapping or abducting;

Sixthly. -- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release."

41. Considering the principle governing the right of private defence, the Hon'ble Supreme Court in **Darshan Singh vs State of Punjab & Anr 2010 (2) SCC 333,** was pleased to hold as under:

"54. In Vidhya Singh v. State of Madhya Pradesh, (1971)3 SCC 244, the court observed that:

"18. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

55. In Jai Dev v. State of Punjab, AIR 1963 Supreme Court 612 the court held as under:

"13.....as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence."

56. In order to find out whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

57. In Buta Singh v. The State of Punjab, (1991)2 SCC 612, the court noted that:

'10.....a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons.

In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping.

Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self- preservation is the paramount consideration.

But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negatived. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact."

' 58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

42. In view of the above legal position with regard to the exercise of right of private defence and non explanation of injuries on the person of the accused and lying of prosecution witnesses on material point, renders the prosecution version unreliable and it shows that the prosecution has suppressed the genesis and

origin of the incident which probabilises the defense case, that the injuries sustained by the deceased were caused while the accused exercised her right of private defense.

43. It is submitted by learned A.G.A. that even if it is assumed that the appellant exercised her right of private defense then, she has exceeded it as she has hit a moosal over the head of the deceased which caused fracture of bones over his head resulting in his death and as the injuries suffered by the accused persons were simple in nature, therefore, the appellant could not take the plea of right of private defence because they have exceeded it. Looking into the nature and number of injuries sustained by all the four accused and also the fact that some of them were caused on their vital parts of the body, therefore, the appellant had reasonable apprehension of death or sustaining grievous hurt. On the other hand, a perusal of the post-mortem report of the deceased shows that he sustained one abrasion on the root of nose and a contusion with swelling over right side of head. In the internal examination, the bones of scalp were fractured. So effectively only one blow was given at the head of the deceased which proved fatal. It has come in evidence that the quarrel started all of a sudden, there was no previous enmity nor it was pre-mediated, so the appellant was well within her right to exercise the right of private defence and she has not exceeded it in view of the number of blows caused to the deceased vis-a-vis the injuries sustained by all four accused persons.

44. In view of the above discussion, it comes to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The prosecution has suppressed the genesis and origin of the incident and rhe prosecution witnesses are lying on material point by suppressing the injuries of the accused. Therefore, the prosecution has not proved its case beyond reasonable doubt, whereas it probablises the defence case that, it is the deceased and his wife, who raided the house of the accused and abused and assaulted them causing number of injuries to them. The appellant exercised her right of private defence, therefore, the act of appellant is protected under the right of private defence and thus, the charge against the appellant for causing culpable homicide not amounting to murder is not proved. In view of the above, I come to the conclusion that the learned trial court has failed to appreciate the evidence on record correctly and has reached at the wrong conclusion of the guilt of the appellant and as such the impugned judgment and order is liable to be quashed and this appeal deserves to be allowed.

45. In view of the above, the instant criminal appeal is, accordingly, **allowed**. The impugned **judgment and order dated 09.09.1984** passed in Sessions Trial No.106 of 1983 (State Vs. Ambika and Another), arising out of Case Crime No.61 of 1981, Police Station- Birno, District- Ghazipur **is set aside** and the appellant **Smt. Ambika** is **acquitted** of the offence under Section 304(I) IPC.

46. The appellant **Ambika** is on bail. She need not surrender. Her personal bonds and surety bonds are cancelled and sureties are discharged of 0their liabilities.

47. The appellant shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against her acquittal.

48. Let a copy of this judgment alongwith record of the trial court be returned to court concerned for information and necessary compliance.

(2026) 7 ILRA 863
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 686 of 2026

Swamideen **...Appellant(s)**
Versus
State of U.P. & Ors. **...Respondent(s)**

Issue for consideration

Whether the prosecution has succeeded in proving the charge under Section 6 of the POCSO Act and Section 376-AB IPC beyond reasonable doubt?

Headnotes

Protection of Children from Sexual Offences Act, 2012-Ss. 5/6; Indian Penal Code, 1860-S. 376-AB; Sexual offence against child-Conviction-Five-day delay in lodging FIR- not satisfactorily explained-prosecution version internally inconsistent as to when and from whom information of incident was received-original FIR invoked only S.354 IPC and S.10 POCSO Act-containing no allegation of penetrative sexual assault-graver charge under S.376-AB IPC added during investigation-material contradictions and improvements in testimony of informant -victim's statement under S.164 CrPC containing discrepancy -real and substantial possibility of tutoring of child witness-medical evidence entirely neutral-defence of alibi supported by evidence-prosecution led no evidence in rebuttal-defence evidence cogent- prosecution version doubtful- absence of allegation of penetrative assault in original report-prosecution failed to prove charge by cogent and reliable evidence beyond reasonable doubt-suspicion, however strong, cannot take place of proof-benefit of doubt-conviction set aside. **Appeal allowed.** (E-9)

Case Law Cited

1. P. Yuvaprakash v. State rep. by Inspector of Police, (2024) 17 SCC 684
2. Nirmal Premkumar v. State rep. by Inspector of Police, (2024) 20 SCC 293
3. Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130
4. Manojbhai Jethabhai Parmar (Rohit) v. State of Gujarat, 2025 SCC OnLine SC 2803
5. Yogesh Singh v. Mahaveer Singh, (2017) 11 SCC 195
6. Panchhi v. State of U.P., (1998) 7 SCC 177
7. Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793

List of Acts

1. Protection of Children from Sexual Offences Act, 2012
2. Indian Penal Code, 1860
3. Code of Criminal Procedure, 1973

List of Keywords

Sexual offence against child; Child victim; unexplained delay in FIR; No allegation of penetrative sexual assault; Possibility of tutoring; Alibi; Benefit of doubt.

Appearances of parties

Counsel for Appellant(s) : Vijay Bahadur Shivhare

Counsel for Respondent(s) : G.A., Indrajeet

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Sri Vijay Bahadur Shivhare, learned counsel for the appellant and Sri Rajesh Kumar Shukla, learned A.G.A. for the State and perused the record.

2. This criminal appeal has been preferred by the appellant, **Swamideen**, against the judgment and order dated 10.12.2025 passed by the learned Additional District Judge/Special Judge, POCSO Act, Hamirpur ("the trial court") in Session Case POCSOACT No. 108 of 2022 No. 108 of 2022 (State vs. Swamideen), arising out of Case Crime No. 417 of 2021, registered at Police Station Sumerpur, District Hamirpur by whereby the appellant was convicted under Section 6 of the POCSO Act and sentenced to undergo 20 years' rigorous imprisonment together with a fine of Rs. 10,000/-, and in default of payment of fine, to undergo further simple imprisonment for six month.

3. In view of the sensitivity attached to matters concerning sexual offences against children, and in keeping with the direction of the Hon'ble Supreme Court that the identity of a child victim of a sexual offence ought not to be disclosed, the victim is referred to in this judgment as "the victim" and not by name.

4. The prosecution case, in brief, is that on 10.12.2021, at about 10:48 a.m., an FIR was lodged at Police Station Sumerpur by Smt. Rani Prajapati (PW-2), on the written report (Tahrir) scribed at her instance, alleging that on 05.12.2021, at about 12:00 noon, her daughter, the victim, aged about four years, was playing at the door of the house when the appellant, a neighbour aged about eighty years, lured her with the offer of a toffee, took her inside his house, bolted the door, and committed obscene acts upon her private parts. It is alleged that on the victim raising an alarm, the appellant released her, whereupon she returned home and informed her mother, following which the informant went to the police station and lodged the report. On the strength of the said report, Case Crime No. 417 of 2021 was initially registered under Section 354 IPC and Section 10 of the POCSO Act. During investigation, upon the victim's age being ascertained as approximately four to five years on the basis of her birth certificate, an application was moved by the Investigating Officer for amendment of the sections applied, which was allowed by the court, and a charge-sheet (Charge-sheet No. 384-A of 2021) came to be submitted against the appellant under Section 376-AB IPC and Section 6 of the POCSO Act. The appellant was arrested on 28.12.2021 and, upon commitment, charges under Section 376-AB IPC and Section 6 of the POCSO Act were framed against him by the trial court, to which he pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined six witnesses: PW-1, the victim; PW-2, Smt. Rani Prajapati, the informant and mother of the victim; PW-3, Dr. Anshu Mishra, the Medical Officer who examined the victim; PW-4, Head Constable Devlal Tiwari, the scribe of the computerised FIR; PW-5, Dr. Pushpendra Kumar, the Medical Officer in-charge who proved the delivery register and birth record of the victim; and PW-6, Inspector Rajkumar Verma, the Investigating Officer. The prosecution also relied upon documentary evidence, including the victim's statement under Section 164 Cr.P.C. (Exhibit Ka-1), the written report (Exhibit Ka-2), the medico-legal examination report (Exhibit Ka-3), the General Diary entry (Exhibit Ka-4), the FIR

(Exhibit Ka-5), the delivery register (Exhibit Ka-6), the birth certificate (Exhibit Ka-7), the site plan (Exhibit Ka-8), the arrest memo (Exhibit Ka-9), the charge-sheet (Exhibit Ka-10), and the report of the Forensic Science Laboratory.

6. In his statement under Section 313 Cr.P.C., the appellant denied the prosecution version in its entirety and asserted that he had been falsely implicated on account of personal enmity, that the witnesses had deposed falsely at the instance of the police and the informant, and that he was elsewhere, undergoing medical treatment, on the date of the alleged occurrence.

7. In support of his defence, the appellant examined two witnesses: DW-1, Shivdayal, the Village Pradhan of Para Raipura; and DW-2, Smt. Sangeeta, the appellant's daughter-in-law. The defence also placed on record documentary evidence, including a notice/registration slip of Sadguru Netra Chikitsalaya, Janki Kund, Chitrakoot (Exhibit 41-Kha) and an out-patient registration record bearing code "DTDREF 2204", to demonstrate that the appellant was undergoing eye treatment at Chitrakoot between 05.12.2021 and 10.12.2021, and a representation dated 12.12.2021 addressed by the villagers of Para Raipura to the Station House Officer, Sumerpur, in support of the said defence.

8. By the impugned judgment, the trial court convicted the appellant, principally on the findings that (i) the five-day delay in lodging the FIR stood sufficiently explained; (ii) there were no material contradictions in the testimony of the victim (PW-1) and the other prosecution witnesses, and that the victim's testimony stood corroborated by her statement under Section 164 Cr.P.C.; and (iii) the appellant had failed to displace the prosecution case. Aggrieved thereby, the appellant has preferred the present appeal.

9. Learned counsel for the appellant has assailed the impugned judgment on the following principal grounds:

(i) The trial court has erroneously convicted the appellant under Section 6 of the POCSO Act, despite the fact that he stood charged, and was tried, for the graver offence under Section 376-AB IPC read with Section 6 of the POCSO Act; the manner in which the trial court has dealt with the two distinct charges discloses non-application of mind to the ingredients of the offences and to the evidence bearing upon each.

(ii) The delay of five days in lodging the FIR has not, in fact, been satisfactorily explained. The prosecution's own witnesses have given inconsistent and irreconcilable accounts of when, and by whom, information of the incident was received and communicated.

(iii) The FIR, as originally lodged, invoked only Section 354 IPC and Section 10 of the POCSO Act, offences of outraging modesty and sexual assault and contained no allegation whatsoever of penetrative sexual assault.

(iv) The testimony of PW-2 is riddled with material contradictions and improvements. She has, on the one hand, stated that the victim was at home with her between 12:00 and 1:00 p.m., the very time of the alleged occurrence, and that she did not see the victim go towards the appellant's house, while, on the other hand, maintaining that the occurrence took place at 12:00 noon an inherently self-contradictory position on a witness's own opportunity to observe the events she purports to describe.

(v) PW-2 denied being present when the victim's statement under Section 164 Cr.P.C. was recorded before the Magistrate, whereas the record of that very statement reflects her presence.

(vi) The victim's statement under Section 164 Cr.P.C. itself contains a material and unexplained discrepancy going to the very root of identification of accused, and furthermore, contradictory statement regarding time of occurrence.

(vii) The victim's description of the act, using the word Musanna", was never clarified, or explained either in the evidence or by the trial court in its judgment.

(viii) The medico-legal evidence of PW-3, Dr. Anshu Mishra and FSL report does not corroborate the prosecution case.

(ix) The trial court has failed to give due weight to the appellant's defence of alibi.

(x) The alibi defence is further reinforced by a representation 37-B dated 12.12.2021, made by several residents of the village to the Station House Officer, Sumerpur, even before the appellant's arrest on 28.12.2021, asserting his presence at Chitrakoot on the date of occurrence and alleging false implication. Being a document of a date prior to arrest, it cannot be dismissed as a post-facto fabrication, and the trial court has not considered it at all.

(xi) The defence version, supported by DW-1 and DW-2, that the informant was involved in an alleged illicit relationship with a person of the village, that the appellant had confronted and rebuked her on this account, and that she had thereafter threatened to falsely implicate him in a serious case, furnishes a plausible motive for false implication which the trial court has failed to examine or exclude.

10. Learned counsel for the State, per contra, has supported the impugned judgment and submitted that the testimony of a child victim of a sexual offence cannot be discarded merely on account of minor discrepancies natural to a witness of tender years; that the statement of the victim stood corroborated by her statement under Section 164 Cr.P.C.; that delay in lodging an FIR in offences of this nature is often explained by the trauma and social stigma attached thereto; and that the trial court, having had the advantage of observing the demeanour of the witnesses, was best placed to assess their credibility, calling for no interference by this Court.

11. The short question that falls for determination is whether the prosecution has succeeded in proving the charge against the appellant beyond reasonable doubt, by cogent, reliable and consistent evidence, or whether the material contradictions, the unexplained delay, the possibility of tutoring, the absence of medical corroboration, and the unrebutted defence of alibi, cumulatively, entitle the appellant to the benefit of doubt and consequent acquittal.

12. This Court has gone through the entire evidence on record, including the depositions of PW-1 to PW-6 and DW-1 and DW-2, the documentary exhibits, and the medico-legal and forensic material, as also the impugned judgment.

13. Before proceeding to appreciate the evidence, it is apposite to notice the law laid down by the Hon'ble Supreme Court in three recent decisions bearing directly upon the standard to be applied where the testimony of a minor victim, or the statements relied upon by the prosecution, are shown to suffer from material contradictions:

(a) In **P. Yuvaprakash v. State rep. by Inspector of Police, (2024) 17 SCC 684,** the Hon'ble Supreme Court held that where the victim's own statement under Section 164 Cr.P.C. gives a version materially at variance with the graver charge levelled by the prosecution, and is not shown to have been obtained under tutoring, coercion, or compulsion, the courts below cannot simply discard it; the prosecution must, at the very least, examine the Magistrate who recorded it before asking the court to disbelieve it. Acting on this reasoning, the Supreme Court set aside the conviction under Section 6 of the POCSO Act.

(b) In **Nirmal Premkumar & Anr. v. State rep. by Inspector of Police (2024) 20 SCC 293** Hon'ble the Supreme Court held as under:

"23. In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus: (SCC p. 138, paras 31-32)

the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the Public Prosecutor on the ground that she has been won over by the appellant."

24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

Further Hon'ble Apex Court held that although the solitary testimony of a victim of a sexual offence is ordinarily sufficient to sustain a conviction, this rule cannot be stretched to sustain a conviction where that testimony is found unreliable on account of identified contradictions, flaws, and lacunae. The Court emphasised that evidence "damaged by inadequacies from the outset", evident in contradictions within statements and testimonies, cannot be permitted to imperil an accused's liberty and reputation, particularly given the severe and irreversible consequences of a POCSO conviction, and set aside the conviction accordingly.

(c) In **Manojbhai Jethabhai Parmar (Rohit) v. State of Gujarat (2025) SCC Online SC 2803** Hon'ble the Supreme Court held as under:-

"65. In the present case, it is manifest that the Investigating Officer had ample opportunity to secure and preserve crucial forensic material, particularly by securing samples necessary for conducting DNA profiling of the child victim and the accused-appellant. Such scientific examination, now an integral component of modern criminal investigation, would have provided objective corroboration and materially assisted in ascertaining the truth. However, no effort was made to obtain or preserve such forensic material. This omission, whether arising from negligence or otherwise, assumes significance in light of the seriousness of the allegations. The failure to pursue an available and reliable scientific avenue not only weakens the prosecution's case but also raises a legitimate apprehension that the investigation may not have been carried out with the requisite fairness and diligence. In the circumstances, the possibility that such inaction was intended, or at least operated, to shield the actual perpetrators of the offence cannot be ruled out. Such lapses ex facie undermine the credibility of the prosecution's case and strike at the foundational requirement that every investigation must be fair, diligent, and oriented solely towards the discovery of truth.

66. The admitted sequence of facts narrated above clearly indicates something very fishy and unnerving in the manner in which, the entire prosecution story has been unfolded. In face of such grave allegations, the rank apathy of the Investigating Officers in not conducting expeditious and diligent investigation, should have been sufficient to put the Courts below on guard and become cognizant of the fact that something was really amiss in the case presented for trial. However, sadly, neither the trial Court nor the High Court, adverted to these glaring shortcomings in the case and mechanically accepted the case of prosecution even though the conduct of the material witnesses (of last seen together circumstance) was sufficient to raise a strong suspicion that they might have been the actual perpetrators of the crime.

67. It is imperative to state that during the trial, the child victim was herself examined as (PW-18) however, she could not give any evidence whatsoever to connect the accused-appellant with the crime. She could not even identify the accused-appellant as the assailant. She further stated that she was tutored by her mother. Hence, this significant point was also missed by the trial Court before convicting the accused-appellant.

Thus, the material omissions in the FIR of facts admittedly within the informant's knowledge seriously erode the credibility of the prosecution case, and that contradictions and unnatural conduct in the witnesses relied upon by the prosecution render their testimony unreliable. The Court cautioned that sympathy for a child victim, however compelling, cannot substitute for proof beyond reasonable doubt, and set aside a conviction that had subsisted for nearly thirteen years.

14. The common thread running through these decisions is that the testimony of a minor victim, and the statements of witnesses relied upon to corroborate it, must be of "sterling quality" to sustain a conviction of the gravity contemplated by Section 6 of the POCSO Act and Section 376-AB IPC; that a statement under Section 164 Cr.P.C., where genuine, cannot be brushed aside merely because it does not suit the prosecution; and that the benefit of any real and unresolved contradiction must enure to the accused, however grave the offence alleged and however natural the court's sympathy for the victim. This Court is guided by these principles in evaluating the evidence in the present case.

15. On the question of delay, this Court is unable to accept the trial court's finding that the five-day delay in lodging the FIR stood satisfactorily explained. The explanation offered by the prosecution is internally inconsistent while the victim is said to have informed her mother on the

day of occurrence or after one day,itself, the informant told the treating doctor that she learnt of the matter only two days thereafter; the identity and whereabouts of the informant's husband, said to necessitate the delay, remain unestablished by any reliable evidence; and the report itself was scribed not by the husband but by the informant's brother-in-law. Where the delay is sought to be explained by shifting and mutuallyinconsistent versions, it cannot be said to have been "duly explained" within the meaning attributed to that phrase by the trial court.

16. Equally significant is the fact that the FIR, as originally registered, made no allegation of penetrative sexual assault, invoking only **Section 354 IPC and Section 10 of the POCSO Act.** The graver charge came to be added only during investigation. While this circumstance, by itself, may not be conclusive, it is a material fact bearing on the truthfulness of the prosecution version which the trial court ought to have, but did not, take into account.

17. The contradictions in the testimony of PW-2, as to whether she witnessed the victim leave for the appellant's house, as to the precise time of occurrence, as to the date of lodging the FIR, and as to her own presence at the recording of the victim's statement under Section 164 Cr.P.C. (a fact falsified by the record of that very statement) are not minor lapses of memory. They go to the heart of the informant's reliability as a witness, and, more importantly, raise a real and substantial possibility that the victim, examined at the age of four and again, years later, at the age of six, had the opportunity to be tutored by her mother, with whom she remained in constant company. The discrepancy in the Section 164 statement as to the identity of the person named therein "Suraj", ***grandson of accused "Baladeen"*** as against the accused, Swamideen, and the conflicting versions as to whether the occurrence took place by day or by night, reinforce rather than dispel this doubt. Applying the test laid down in ***Nirmal Premkumar*** (supra), this testimony cannot be said to be of the "sterling quality" required to sustain a conviction of this gravity; and, following ***P. Yuvaprakash*** (supra), the victim's Section 164 statement, not having been shown to be tutored or involuntary on any cogent material beyond the informant's own bare assertion, cannot be brushed aside where it detracts from the prosecution's case.

18. The word used by the victim to describe the act was never clarified in evidence, and the trial court's judgment is silent on what, precisely, this term was understood to mean or how it was found to satisfy the ingredient of penetration required to sustain a conviction under Section 5/6 of the POCSO Act or Section 376-AB IPC. A conviction for so grave an offence, entailing so severe a sentence, cannot rest on an unclarified and ambiguous description of the act.

19. The medical evidence of PW-3 does not advance the prosecution case. The internal genital examination disclosed a normal hymen with no injury or swelling, and no corroboration is forthcoming from the forensic report. While the absence of injury is not, by itself, destructive of a POCSO prosecution, in the facts of this case, where the medical evidence stands entirely neutral, where there are serious contradictions in the ocular evidence, and where an unrebutted alibi has been set up, the absence of corroboration assumes considerable weight. As held in ***Manojbhai Jethabhai Parmar*** (supra), whatever sympathy the facts of a case involving a child victim may command, that sympathy cannot substitute for proof beyond reasonable doubt, and gaps of this nature in the prosecution's evidence cannot be filled by the gravity of the accusation alone.

20. This Court finds that the trial court has not accorded due consideration to the defence of alibi. The documentary evidence produced by the defence, the out-patient registration record of Sadguru Netra Chikitsalaya, Chitrakoot, bearing code DTDREF 2204 dated 05.12.2021 and others medical treatment papers of Sadguru Hospital, read with the corroborating testimony of DW-1 and DW-2, establishes a plausible and unrebutted case that the appellant was away from the place of occurrence, undergoing eye treatment at Chitrakoot, on the date of the alleged incident. The medical treatment was provided to the accused between 05.12.2021 to 10.12.2021 and number of papers/documents evidence has been submitted by the defence with list of documents. It is well settled that defence evidence is not to be viewed with suspicion or treated as inherently inferior to prosecution evidence; where it is cogent, reliable, and unshaken in cross-examination, it must be weighed on the same footing as the evidence led by the prosecution, and it is enough if it renders the prosecution version doubtful, without the defence being required to prove the alibi to the hilt. Thus the presence of accused is said to be in the hospital at Chitrakoot, the distance between district Hamirpur and Chitrakoot is about 150 kilometers. The prosecution led no evidence in rebuttal of this documentary material, and the trial court's judgment does not reflect any independent evaluation of its evidentiary worth. This constitutes a serious infirmity in the impugned judgment. The representation 37-B, dated 12.12.2021, made by residents of the village to the police prior to the appellant's arrest, lends further, contemporaneous, support to the defence version and could not have been ignored.

21. In ***Yogesh Singh vs. Mahaveer Singh (2017) 11 SCC 195,*** Hon'ble Supreme Court relying on Panchhi Vs. State of U.P. (1998) 7 SCC 177 held that:

"it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring."

22. In ***Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793).*** the landmark observation of Hon'ble Apex Court is as under:-

"The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

23. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof, and that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by cogent, credible and reliable evidence. Where two views are reasonably possible on the evidence on record, the view favourable to the accused must be adopted. This is precisely the position reaffirmed by the Supreme Court in **Nirmal Premkumar** (supra), **P. Yuvaprakash** (supra), and **Manojbhai Jethabhai Parmar** (supra), that a conviction of the gravity contemplated by the POCSO Act cannot rest on the testimony of a minor victim, or on statements relied upon to corroborate it, once that testimony is shown to be riddled with material, unresolved contradictions, that a genuine Section 164 Cr.P.C. statement cannot be discarded merely because it is inconvenient to the prosecution, and that sympathy for a child victim, however natural, cannot substitute for proof beyond reasonable

doubt. In the present case, the cumulative effect of the unexplained and inconsistently explained delay in lodging the FIR, the absence of any allegation of penetrative assault in the original report, the material contradictions and improvements in the testimony of the informant, the real possibility of tutoring of a child witness examined years apart, the discrepancy of identity and time in the Section 164 statement, the unclarified description of the alleged act, the absence of medical or forensic corroboration, and the cogent and unrebutted defence of "alibi" supported by contemporaneous documentary evidence, leads this Court to the conclusion that the prosecution has failed to prove the charge against the appellant by cogent and reliable evidence, and that the appellant is entitled to the "benefit of doubt."

24. For the reasons recorded above, this Court is of the considered view that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt, and that the finding of guilt recorded by the trial court, and the consequent conviction of the appellant under Section 6 of the POCSO Act, cannot be sustained in law.

25. The criminal appeal is **allowed**.

26. The judgment and order of conviction dated 09.12.2025 and the order of sentence dated 10.12.2025, passed by the Additional District Judge/Special Judge, POCSO Act, Hamirpur, in Session Case POCSOACT No. 108 of 2022 (State vs. Swamideen), arising out of Case Crime No. 417 of 2021, Police Station Sumerpur, District Hamirpur, are hereby **set aside.**

27. The appellant, Swamideen, is acquitted of the charges under Section 376-AB IPC and Section 6 of the POCSO Act, 2012. The appellant, if in custody in connection with the present case and not required in any other case, shall be released forthwith.

28. The fine, if already deposited by the appellant, shall be refunded to him in accordance with law. Any bail bonds/personal bonds furnished if any shall stand discharged.

29. The trial court record be sent back "forthwith" to the trial court, along with a copy of this judgment, for information and necessary compliance.

30. The trial court is directed to submit its compliance report within two months from the date of receipt of this order. Furthermore, Registry is also directed to place the compliance report on record.

31. There shall be no order as to costs.

32. Register (compliance) is directly to communicate this order to the concerned trial court through district and Sessions Judge within 24 hour.

33. Before parting with this judgment, this Court records its appreciation for the sincere assistance rendered by the Research Associates, Mr. Shivansh Pandey and Mr. Sandeep Kumar Singh, in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(2026) 7 ILRA 872
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 769 of 2025
With
Criminal Appeal No. 2424 of 2026

Saurabh Pal Singh **...Appellant(s)**
Versus
State of U.P. & Anr. **...Respondent(s)**

Issue for consideration

Whether the appellant could be discharged from the offences under Sections 376, 420, 406, 504 and 506 IPC and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 on the basis of the material collected during investigation?

Headnotes

Indian Penal Code, 1860-Ss. 376, 420, 406, 504 and 506-Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-S. 3(2)(v)-Discharge-Framing of charge-Allegation of rape on false promise of marriage-Informant and appellant known to each other and physical relationship continued over several years-informant's statement under S.164 CrPC did not disclose that physical relationship was preceded by or founded upon any promise of marriage false to appellant's knowledge at its inception-no specific date, time or place of alleged rape disclosed-absence of specific allegation of rape in statement under S.164 CrPC-long period of continuing physical relationship-material not disclosing essential ingredients of S.376 IPC even on prima facie appraisal-S.420 IPC-dishonest or fraudulent intention must exist at inception of transaction-subsequent failure to keep promise does not translate a civil dispute into criminal offence-mere fact that informant belongs to Scheduled Caste not sufficient-Offence must be committed against victim on ground that she belongs to Scheduled Caste or Scheduled Tribe-no material connecting alleged acts to caste identity of informant- Impugned orders set aside.

Appeals allowed. (E-9)

Case Law Cited

1. Arshad Neyaz Khan v. State of Jharkhand, 2025 SCC OnLine SC 2058
2. Rajnish Singh @ Soni v. State of U.P. and Another, [2025] 3 SCR 303
3. Shashikant Sharma v. State of Uttar Pradesh and Another, [2023] 15 SCR 1067
4. Anukul Singh v. State of Uttar Pradesh and Another, 2025 AIR SC 4567
5. State of Bihar v. Ramesh Singh, (1977) 4 SCC 39
6. Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4
7. State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699
8. Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368
9. Dilawar Babu Kurane v. State of Maharashtra, (2002) 2 SCC 135
10. Uday v. State of Karnataka, (2003) 4 SCC 46
11. Deepak Gulati v. State of Haryana, (2013) 7 SCC 675
12. Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608
13. Yedla Srinivasa Rao v. State of A.P., (2006) 11 SCC 615
14. Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168

15. Vijay Kumar Ghai v. State of West Bengal, (2022) 7 SCC 124
16. R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739
17. Masumsha Hasanasha Musalman v. State of Maharashtra, (2000) 3 SCC 557
18. Ramdas v. State of Maharashtra, (2007) 2 SCC 170
19. Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710
20. Khuman Singh v. State of Madhya Pradesh, (2020) 18 SCC 143

List of Acts

1. Indian Penal Code, 1860
2. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
3. Code of Criminal Procedure, 1973
4. Negotiable Instruments Act, 1881

List of Keywords

Discharge; Framing of charge; False promise of marriage; Promise false at inception—Cheating—S.420 IPC—Dishonest intention; Caste-based offence.

Appearances of parties

Counsel for Appellant(s) : Mohammad Samnani Ali, Mohd Raghib Ali, Shashi Prakash Rai, Sr. Advocate
Counsel for Respondent(s) : Ashvni Mishra, G.A.

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Shri Saghir Ahmad, learned Senior Advocate assisted by Shri Shashi Prakash Rai, Advocate and Shri Mohd. Raghib Ali, Advocate appearing on behalf of the appellant, Shri Ashvni Mishra, Advocate appearing on behalf of O.P. No.2 and learned AGA appearing on behalf of the State.

2. The present criminal appeals have been filed by the appellant to set aside/quash the impugned order dated 18.11.2024 and allow the discharge application dated 30.04.2024 pending in Sessions Trial No.159 of 2021 (State vs. Saurabh Pal Singh) under Sections 376, 504, 506, 406 and 420 IPC and Section 3(2)(v) SC/ST Act, P.S.- Shivkuti, District- Prayagraj arising out of Case Crime No.388 of 2020 in the court of Special Judge (SC/ST Act), Prayagraj. Furthermore, the appellant prayed to set aside/quash the impugned order dated 27.01.2026 in the aforesaid sessions trial by which charge has been framed against the appellant.

3. The prosecution story in brief is that the informant, a Scheduled Caste woman pursuing Ph.D. at Allahabad University, came into contact with the accused, Saurabh Pal Singh. The accused developed a close relationship with her, promised to marry her, and on that false assurance established physical relations with her over a long period. During this period, he allegedly took away her scholarship money, ATM card, jewellery, and dishonestly obtained about Rs.15,00,000 from her on the pretext of starting a restaurant. After his business was established, he allegedly refused to marry her, stopped communicating, and his wife and family members threatened her with dire consequences. The accused also allegedly issued two forged cheques of Rs.5,00,000 each, which were dishonoured, and later threatened her to leave Allahabad or face serious consequences. It is further alleged that the accused and his family members intentionally insulted and humiliated the informant by using caste-indicative abusive words and refused to return her money."

4. The informant/victim Manju Saroj filed an FIR against the appellant Saurabh Pal Singh on 29.10.2020 under Sections 504, 506, 493 and 406 IPC and Section 3(2)(va) of SC/ST Act, P.S.- Shivkuti, District- Prayagraj. After filing of the FIR, the informant/victim was medically examined on 01.11.2020 and her statement was recorded under Sections 161 and 164 Cr.P.C. Thereafter, the Investigating Officer has submitted Chargesheet No.51/2021 against the appellant on 01.03.2021 under Sections 376, 504, 506, 406 and 420 IPC and Section 3(2)(v) of SC/ST Act before the trial court concerned. The learned trial court has taken cognizance on the police report on 05.03.2021 in Special Sessions Trial No.159 of 2021. The appellant, thereafter, filed a discharge application under Section 227 Cr.P.C., which was rejected by Special Judge (SC/ST Act), Prayagraj vide order dated 18.11.2024. Thereafter, the appellant had filed Criminal Appeal No.769 of 2025. During pendency of the aforesaid criminal appeal, the learned trial court had framed charges against the appellant under Sections 376, 504, 506, 406 and 420 IPC and Section 3(2)(v) of SC/ST Act. Aggrieved thereby, the appellant had filed Criminal appeal No.2424 of 2026.

5. Tersely, the grounds of the appeals, in brief, are that the appellant has challenged the order dated 18.11.2024 rejecting his discharge application as well as the subsequent order dated 27.01.2026 framing charges, contending that the impugned orders are illegal, arbitrary and contrary to the material available on record. It is submitted that the FIR was lodged after an unexplained and inordinate delay in respect of an alleged incident spanning several years; that the appellant and the informant were in a long-standing cordial relationship and any physical relationship between them was purely consensual between two consenting adults and not on account of any misconception of fact or false promise of marriage. It is further submitted that the informant was a major, well-educated and fully aware of the appellant's marital status and that the dispute, if any, arose only after the appellant declined to marry her. According to the appellant, the allegations under Sections 376, 420, 406, 504 and 506 IPC and Section 3(2)(v) of the SC/ST Act are not made out from the FIR, the statements recorded under Sections 161 and 164 Cr.P.C. or any other material collected during investigation, as there is no evidence of fraudulent or dishonest inducement, criminal breach of trust, criminal intimidation or any offence committed on the ground that the informant belongs to a Scheduled Caste. It is further contended that the monetary transactions between the parties were voluntary in nature and, at best, disclose a civil dispute incapable of attracting criminal liability. The appellant further submits that the Investigating Officer failed to collect any cogent, clinching or admissible evidence to substantiate the allegations and mechanically submitted the charge-sheet, while the trial court, without properly appreciating the record and the settled principles governing discharge and framing of charge, rejected the discharge application and subsequently framed charges without recording adequate reasons or applying its judicial mind, although the material on record did not disclose sufficient grounds to proceed against the appellant. Thus, according to the appellant, the continuation of the criminal proceedings amounts to an abuse of the process of law and the impugned orders rejecting the discharge application and framing charges are liable to be set aside.

6. The First Information Report came to be lodged by the informant, Manju Saroj, against the appellant Saurabh Pal Singh and two other named persons, alleging offences under Sections 504, 506, 493 and 406 IPC and Section 3(2)(5-a) of the SC/ST Act. It was alleged at first time in her statement under section 161 CrPC that the appellant had committed rape upon the informant in the year 2014. Both the parties were known to each other, and that between 2010 and 2020 the

appellant received large sums of money from the informant, including a sum of Rs. 15,00,000/-, against which cheques issued by the appellant were subsequently dishonoured.

7. In her statement recorded under Section 164 Cr.P.C., the informant stated that there was no romantic/love relationship between her and the appellant, but that physical relations had taken place. She further stated that the appellant had met her before ten years and they were friends, Furthermore, he declined to solemnise marriage with her, and that she subsequently knew that the appellant was already married since 2019 and has a child from that marriage. She alleged that the appellant used to abuse and intimidate her.

8. In her earlier statement under Section 161 Cr.P.C., the informant had stated that the appellant received huge amounts of money from her on several occasions and had committed rape upon her. The informant belongs to the Scheduled Caste category. On completion of investigation, charge-sheet came to be filed only against the appellant, Saurabh Pal Singh, under Sections 504, 506, 406, 420 and 376 IPC and Section 3(2)(v) of the SC/ST Act, the remaining two named persons having been let off at the investigation stage.

9. Learned counsel for the appellant has submitted before this Court through the FIR, the statements under Sections 161 and 164 Cr.P.C., and the charge-sheet, and has raised the following submissions:

(i) No specific date, time or place of the alleged occurrence of rape has been disclosed anywhere in the FIR, despite the allegation pertaining to the ten year back.the FIR having been lodged after a gap of several years.

(ii) Although three persons were named in the FIR, charge-sheet has been filed only against the appellant; there is no explanation on record for the differential treatment of the co-accused named in the FIR.

(iii) The FIR itself discloses that the amount of Rs. 15,00,000/- was given by the informant to the appellant to run a business, which is indicative of a commercial/financial transaction and not of an amount extracted by inducement of a false promise of marriage.

(iv) Two cheques of Rs. 5,00,000/- each, said to have been issued by the appellant, were dishonoured, a matter which, if at all, gives rise to a civil remedy and/or proceedings under Section 138 of the Negotiable Instruments Act, and does not by itself constitute the offence of cheating under Section 420 IPC in the absence of dishonest intention at the very inception of the transaction.

(v) It was only in the statement under Section 161 Cr.P.C. that the allegation of physical relationship surfaces for the first time, again without any specific date or time being mentioned.

(vi) It is alleged that the informant handed over her ATM card to the appellant and that the appellant misused the same to withdraw money from her account, an allegation that, even if taken at face value, does not disclose the ingredients of criminal breach of trust under Section 406 IPC, there being no material to show entrustment of property coupled with dishonest misappropriation.

(vii) In her statement under Section 164 Cr.P.C., the informant has not made any specific allegation of rape; she has only admitted that physical relations were established, without alleging that consent was obtained by placing her under fear or by a false promise that was false to the knowledge of the appellant from its very inception.

(viii) The allegations of intimidation and abuse are principally attributed in the FIR to two other persons, namely Dolly (said to be the wife of the appellant) and her brother, and not to the appellant himself.

(ix) There is no material on record to substantiate the ingredients of criminal breach of trust; the entire transaction, on a plain reading of the material collected during investigation, is a matter of a long-standing physical relationship and financial dealings between consenting adults, given a criminal colour after the relationship soured.

10. Learned counsel for the appellant relied upon the judgement of Supreme Court in **Arshad Neyaz Khan vs. The State of Jharkhand, 2025 SCC Online SC 2058**. The relevant paragraph is extracted below:

"21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."

11. He further relied upon the judgement of the Apex Court in **Rajnish Singh @ Soni vs. State of U.P. and Another, [2025] 3 SCR 303.** The relevant paragraphs are extracted below:

"32. Further, on the perusal of the statement made by the complainant under Section 161 CrPC, it is evident that she came to know about the relations between the appellant and Namrata in the year 2020-2021. Thus, once the complainant was aware that the appellant had broken the ties with her and was involved in a relationship with another woman, there was no reason for her to hold back from filing the FIR.

35. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused.

36. This Court in Shivashankar v. State of Karnataka, had quashed criminal proceedings on the ground that it is difficult to hold sexual intercourse in the course of a relationship, which continued for eight years, as 'rape' especially when the complainant therein had alleged that they lived together as man and wife. The relevant extract is reproduced hereinbelow: -

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. **It is, however, difficult to hold sexual intercourse in the course of a relationship**

which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

(emphasis supplied)

37. Thus, by no stretch of imagination, can this Court be convinced that present is a case wherein the appellant is liable to be prosecuted for having sexually exploited/assaulted the complainant based on a false promise of marriage. The allegations of the complainant are full of material contradictions and are ex facie unbelievable. Throughout the prolonged period of 16 years, the complainant kept completely quiet about the alleged sexual abuse, meted out to her by the appellant until she learnt that the appellant had married another woman. Further in complete contradiction to the case setup in the FIR, the complainant has on many occasions portrayed herself to be the wife of the appellant and thus, evidently, they lived together as man and wife. Additionally, the long gap of 16 years between the first alleged act of sexual intercourse, continued relations for one and a half decade till the filing of the FIR convinces us that it is a clear case of a love affair/live in relationship gone sour.

38. In this background, we are of the opinion that allowing the prosecution of the appellant to continue for the offences alleged, under Sections 376, 384, 323, 504 and 506 IPC would be nothing short of a gross abuse of the process of law."

12. He relied upon the judgement of Supreme Court in **Shashikant Sharma and Others vs. State of Uttar Pradesh and Another, [2023[15 SCR 1067.** The relevant paragraphs are extracted below:

"12. At the outset, it may be emphasised that in the written submissions filed on behalf of the State, the pertinent plea raised by the learned counsel for the appellants that necessary ingredients of the offence punishable under Section 3(2) (v) of the SC/ST Act are not made out from the admitted allegations of the prosecution, has not been specifically controverted. There cannot be any quarrel with the principles laid down in the judgments cited by the State counsel in the written submissions that at the stage of framing of charges, the Court is not required to undertake a meticulous evaluation of evidence and even grave suspicion is sufficient to frame charge. Nevertheless, there is also a long line of precedents that from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under Section 173 CrPC, if the necessary ingredients of an offence are not made out then the Court is not obligated to frame charge for such offence against the accused. Reference in this regard may be made to the judgment rendered by this Court in the case of ***Suresh @ Pappu Bhudharmal Kalani Vs. State of Maharashtra*** reported in AIR 2001 SC 1375.

16. Be that as it may, as per the highest case of prosecution, the only offence under IPC punishable with imprisonment of 10 years or more being the offence under Section 307 IPC has been applied on the basis of the gun shot allegedly fired by the accused Vinod Upadhyay upon Rinku Thakur, which admittedly did not result into any corresponding injury. After perusal of the entire material on record, we have no hesitation in concluding that from the admitted case set up by the prosecution, there is no such allegation that the offence under IPC punishable with imprisonment of 10 years or more was committed by an accused of upper caste upon a person belonging to the Scheduled Caste community with the knowledge that such person belonged to the said community.

17. Hence, there is merit in the contention of learned counsel representing the appellants that prima facie ingredients of the offence punishable under Section 3(2)(v) of the SC/ST Act are not made out from the admitted allegations of prosecution and to this extent, the charge framed against the accused appellants is groundless."

13. Learned counsel for the appellant lastly relied upon the judgement of Supreme Court in **Anukul Singh vs. State of Uttar Pradesh and Another, 2025 AIR SC 4567.** The relevant paragraphs are extracted below:

"16. Despite this background, the police proceeded to file a charge sheet dated 16.04.2003 against the appellant for offences under sections 420, 467, and 468 IPC. Even if the allegations are assumed to be true, they unmistakably arise out of a commercial/contractual transaction relating to loan and repayment, which has been given a criminal colour. The case thus falls squarely within categories (1) and (7) of Bhajan Lal, namely, where the allegations do not disclose the commission of an offence, and where the proceedings are maliciously instituted with an ulterior motive. Continuation of such prosecution would amount to an abuse of process of law and consequently, warrant quashing under Section 482 Cr.P.C.

17. This Court has, in a long line of decisions, deprecated the tendency to convert civil disputes into criminal proceedings. In **Indian Oil Corporation v. M/s. NEPC India Ltd., (2006) 6 SCC 736,** it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters, and that such misuse amounts to abuse of process. The following paragraphs from the decision are apposite:

"9. The principles, relevant to our purpose are: …...A complaint can be quashed where the allegations made in the complaint. even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint. A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable."

18. Similarly, in **Inder Mohan Goswami and another v. State of Uttaranchal and others, AIR 2008 SC 251**, it was emphasized that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In **Ganga Dhar Kalita v. State of Assam, (2015) 9 SCC 647,** this Court again reiterated that criminal complaints in respect of property disputes of civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

19. Most recently, in **Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh and others, 2025 LiveLaw (SC) 726**, this Court disapproved the practice of using criminal proceedings as a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil. The Court cautioned High Courts not to direct settlements in such matters but to apply the settled principles in **"State of Haryana & Others v. Bhajan Lal & Others" Reported in 1992 Supp.(1) SCC 335."**

14. It is accordingly submitted that the learned trial court fell in error in rejecting the discharge application and in mechanically framing charge without appreciating that the material on record, even if taken at its face value and accepted in its entirety, does not disclose the essential ingredients of the offences charged, particularly under Sections 376 and 420 IPC and Section 3(2)(5) of the SC/ST Act.

15. Learned AGA has opposed the submissions advanced by learned counsel for the appellant and submitted that at the stage of discharge, the court is not required to conduct a mini-trial or to weigh the evidence as if adjudicating guilt, and that a strong suspicion founded on the material on record is sufficient to frame charge, leaving the rival contentions to be tested at trial.

16. The scope of the court's jurisdiction under Section 227 Cr.P.C. is well settled. In ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39,*** the Supreme Court held that at the stage of framing of charge the court has only to see whether there is a prima facie case and not to weigh the evidence meticulously as would be done at the trial; if there is a strong suspicion, charge may be framed, but a mere suspicion cannot take the place of proof at the appropriate stage. In ***Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4,*** the Supreme Court laid down that the judge, while considering the question of framing charge, has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out; where the material placed gives rise to grave suspicion which has not been properly explained, the court should be inclined to frame charge, but where the evidence is such that, even if unrebutted, would not warrant a conviction, discharge is the appropriate course. The court is not, however, to act as a mere post office and must exercise judicial discretion on the material available.

17. In ***State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699,*** it was held that the object of the provision empowering discharge is to save the accused from prosecution on a groundless charge, and that if the evidence, even taken at its highest, does not disclose the commission of an offence, the accused is entitled to be discharged. In ***Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368,*** the Supreme Court summarised the principles governing discharge and held, inter alia, that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge is empowered to discharge the accused; the court must consider the totality of the material and not adopt a piecemeal approach.

18. In ***Dilawar Babu Kurane v. State of Maharashtra, (2002) 2 SCC 135,*** it was reiterated that the court, at the stage of framing charge, must apply its judicial mind and consider the broad probabilities, the total effect of the material, and the basic infirmities appearing in the case, and is not to act merely as a recording authority. In ***Uday v. State of Karnataka, (2003) 4 SCC 46,*** the Supreme Court held that consent given under a misconception of fact arising from a promise to marry vitiates consent only where it is shown that the promise was false from its very inception and given in bad faith, with no intention of being fulfilled at the time it was made.

19. In ***Deepak Gulati v. State of Haryana, (2013) 7 SCC 675,*** the Supreme Court drew a clear distinction between a false promise made with the sole intention of seducing a woman and a breach of a promise made in good faith but not fulfilled owing to subsequent circumstances; it was held

that consent obtained on a promise made in good faith, even if subsequently not honoured, does not amount to consent obtained by misconception of fact so as to attract Section 375 IPC.

20. In ***Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608,*** the Supreme Court held that to prosecute a person for rape on the ground of a false promise of marriage, it must be established that the promise was false at the time it was given and that there existed a direct nexus between the false promise and the woman's decision to engage in the sexual act; a breach of promise cannot be equated with a false promise, and where a long, continuous and consensual physical relationship has existed between parties who were known to each other, an inference of a false promise from its inception cannot readily be drawn.

21. In ***Yedla Srinivasa Rao v. State of A.P., (2006) 11 SCC 615,*** it was held that where the accused had no intention to marry from the very beginning and the prosecutrix was made to believe on that false promise that he would marry her, such consent would fall foul of Section 90 IPC, conversely, therefore, where such want of intention from inception is not demonstrable from the material on record, the offence under Section 376 IPC is not made out.

22. Applying these principles to the material on record, this Court finds that the statement of the informant under Section 164 Cr.P.C. does not disclose that the physical relationship was preceded by, or founded upon, any promise of marriage held out by the appellant that was false to his knowledge at its inception. On the contrary, the informant herself has stated that there was no romantic relationship between the parties, that the physical relationship continued over several years, first time physical relationship were made in the year 2014, on the basis of her statement under section 161 Cr.P.C. On account of their being friends/acquaintances, and that she came to know of the appellant's prior marriage in 2019. Absent of any specific averment of inducement by a false promise made in bad faith from the outset, and absent any specific date, time or circumstance of the alleged act regarding committing the rape by appellant in the FIR and statement under section 164 Cr.P.C. recorded before the judicial magistrate. The essential ingredients of Section 376 IPC, as explained in the decisions referred to above, are not made out even on a prima facie appraisal of the material as it stands.

23. It is well settled that to constitute the offence of cheating under Section 420 IPC, dishonest or fraudulent intention must be shown to have existed at the time of the very inception of the transaction; a subsequent failure to keep a promise, without more, does not translate a civil dispute into a criminal offence. Reference in this regard may be made to *Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168, and Vijay Kumar Ghai v. State of West Bengal, (2022) 7 SCC 124,* wherein the Supreme Court cautioned against the use of criminal process as a tool for recovery of money that is essentially the subject-matter of a civil/commercial dispute, and deprecated conversion of a purely civil dispute into a criminal case.

24. Insofar as Section 406 IPC is concerned, the essential ingredients are entrustment of property or dominion over property, and its dishonest misappropriation or conversion to one's own use in violation of a legal contract. The mere handing over of an ATM card, without any specific averment/details as to the manner, date and extent of misuse, and without material to establish dishonest misappropriation as distinct from a financial dispute between the parties, does not satisfy

the requirements laid down in R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739, for constituting an offence under Section 406 IPC.

25. In ***Masumsha Hasanasha Musalman vs. State of Maharashtra, (2000) 3 SCC 557,*** the Apex Court held that "".To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In this case the trial court erred in convicting the accused-appellant for the offence arising under Section 3(2)(v) of the Act only on the basis that there was no controversy that the victim belonged to a Scheduled Caste." In *Dinesh @ Buddha vs. State of Rajasthan, (2006) 3 SCC 771 and in Ramdas and other vs. State of Maharashtra, (2007) 2 SCC 170*, the Apex Court reiterated the same principle, as laid down in the aforesaid case.

26. In ***Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710,*** the Supreme Court held that for an offence to fall within Section 3 of the SC/ST Act, it is not enough that the victim belongs to a Scheduled Caste or Scheduled Tribe, it must further be shown that the offence was committed against the victim on the ground that he/she belongs to such caste or tribe. Mere fact of the informant belonging to a Scheduled Caste, without any material to indicate caste-based intent or that the alleged acts were motivated by the caste identity of the informant, would not attract the provisions of the Act. In ***Khuman Singh v. State of Madhya Pradesh, (2020) 18 SCC 143,*** it was similarly held that the offence under the SC/ST Act is not established merely because the informant is a member of a Scheduled Caste; the prosecution must show a nexus between the caste identity of the victim and the commission of the offence.

27. Tested on this touchstone, the material on record, including the FIR and the statements under Sections 161 and 164 Cr.P.C., does not disclose any allegation that the acts attributed to the appellant were committed on account of the informant's caste identity, as contemplated under Section 3(2)(v) of the SC/ST Act.

28. Admittedly, the informant/victim, Manju Saroj, is a well-educated lady having higher qualifications and further she was pursuing Ph.D. She was fully aware of her future and the consequences of entering into a relationship with any person. The victim stated that she had handed over her ATM card and other related articles to the accused-appellant, Saurabh Pal Singh, who allegedly misappropriated a substantial amount of money. Admittedly, no civil or criminal proceedings for recovery of the said amount have been instituted by the victim before any competent court or authority having jurisdiction in this regard. She specifically stated in the First Information Report as well as in her statement recorded under Section 161 Cr.P.C. that she had given Rs.15,00,000 to the appellant for the purpose of running a business. She further stated that the appellant had issued two cheques of Rs.5,00,000 each, which, upon presentation before the bank, were dishonoured. If the cheques were dishonoured, proceedings under Section 138 of the Negotiable Instruments Act could have been initiated. Admittedly, no reliable material has been brought on record regarding the particulars of the cheques or the bank's endorsement showing their dishonour. The reason why the victim did not initiate proceedings under Section 138 of the Negotiable Instruments Act also remains unexplained.

29. On a cumulative consideration of the material on record and the submissions advanced, this Court finds substance in the contentions raised on behalf of the appellant. The absence of any specific date, time or

place etc. of the alleged occurrence, the admission of the informant that there was no love relationship coupled with a long period of continuing physical relationship spanning several years, the absence of any specific allegation of rape in the statement under Section 164 Cr.P.C., the disclosure in the FIR itself that the amount was advanced for business purposes, the essentially civil/commercial character of the dispute regarding dishonour of cheques, the lack of material establishing dishonest misappropriation for the purposes of Section 406 IPC, the selective prosecution of the appellant alone out of three named persons without explanation, and the absence of any material connecting the alleged acts to the caste identity of the informant, cumulatively fall short of disclosing a prima facie case, much less grave suspicion, sufficient in law to sustain the charges framed against the appellant.

30. The learned trial court, while rejecting the discharge application and framing charge, does not appear to have adverted to these material infirmities and has proceeded in a summary manner without a proper application of judicial mind to the material collected during investigation, as mandated by the decisions of the Supreme Court referred to hereinabove.

31. Having carefully examined the allegations in the First Information Report, the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., the documentary material brought on record, and the attendant circumstances including the admitted financial transactions between the parties, cheque bounce proceedings, and the overall factual background, this Court is of the considered opinion that the materials collected during investigation, even if accepted at their face value, do not disclose sufficient grounds for presuming that the appellant has committed the offences alleged. The record, on the contrary, indicates that the dispute is predominantly civil and financial in nature and that the allegations of rape on the basis of a false promise of marriage are not prima facie borne out from the material available. Likewise, no prima facie material exists to attract the ingredients of Section 3(2)(v) of the SC/ST Act, as the alleged offence is not shown to have been committed on the ground that the prosecutrix belonged to a Scheduled Caste or Scheduled Tribe.

32. Accordingly, the appellant is liable to be discharged from the offences punishable under Sections 376, 420, 406, 504 and 506 IPC as well as Section 3(2)(v) of the SC/ST Act.

33. Consequently, the impugned orders dated 18.11.2024 and 27.01.2026 passed by the learned Special Judge (SC/ST Act), Prayagraj in Sessions Trial No.159 of 2021 arising of Case Crime No.388 of 2020 rejecting the discharge application of the appellant and frames charge against him, is hereby set aside.

34. The appeals are, accordingly, **allowed**.

35. The appellant, **Saurabh Pal Singh**, stands discharged of the offences punishable under Sections 376, 420, 504, 506 and 406 IPC and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 in Sessions Trial No.159 of 2021 arising of Case Crime No.388 of 2020.

36. If the appellant is on bail, the bails bonds and sureties, furnished earlier, shall stand discharged.

37. Registrar (Compliance) is directed to communicate the instant order to the court concerned through District and Sessions Judge, Prayagraj by e-mail/FAX within a week for further proceedings and compliance.

(2026) 7 ILRA 883
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE MRS. BABITA RANI, J.

Criminal Appeal No. 795 of 1989

Ram Lal & Ors. **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

Issue for consideration

Headnotes

Indian Penal Code, 1860-Ss. 302/149, 307/149, 323/149, 147 and 148-Murder-Attempt to murder-Dying declaration-Reliability-Dying declaration recorded after obtaining fitness certificate from treating doctor-maker in full senses and fit state of mind-statement recorded in question and answer format-minor discrepancies in description of weapons not sufficient to cast doubt on entire dying declaration-Interested witnesses-PW-1 injured eye-witness and PW-2 independent eye-witness-evidence of interested witnesses not necessarily unreliable-partisanship by itself not a valid ground for discrediting or rejecting sworn testimony-PW-1 corroborated by PW-2 and injury reports-post-mortem report corroborating prosecution witnesses-no adverse impact on prosecution story for non-examination of named eye-witnesses-part of false statement will not suffice to discard prosecution version-FIR promptly lodged a few hours after incident-all accused named in FIR and dying declaration-no support to defence story of unknown robbers-evidence sufficient-conviction and sentence under Ss. 147 and 148 IPC set aside-conviction and sentence under Ss. 323/34, 307/34 and 302/34 affirmed.
Appeal partly allowed. (E-9)

Case Law Cited

1. Paniben Vs. State of Gujarat 1992 (2), SCC 474
2. Shakuntala Vs. State of Harayana (2007) 10 SCC 168
3. Jaishree Anant Khandekar Vs. State of Maharashtra, (2009) 11 SCC 647
4. Sukanti Moharana Vs. State of Orissa, (2009) 9 SCC 163
5. Paramjit Singh and others Vs. State of Punjab and others AIR 1997 Supreme Court 1614
6. Laxman v. State of Maharashtra, reported in (2002) 6 SCC 710
7. Munnawar & Ors. Vs. State of U.P., reported in (2010) 5 SCC 451
8. Sarwan Singh v. State of Punjab, (1976) 4 SCC 369
9. Thoti Manohar v. State of Andhra Pradesh, reported in (2012) 7 SCC 723
10. Vadivelu Thevar v. State of Madras, reported in (1957) 1 SCC 700
11. Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127
12. Laxman v. State of Maharashtra, reported in (2002) 6 SCC 710
13. Sarwan Singh v. State of Punjab, (1976) 4 SCC 22
14. Thoti Manohar v. State of Andhra Pradesh, reported in (2012) 7 SCC 723
15. Vadivelu Thevar v. State of Madras, reported in (1957) 1 SCC 700

List of Acts

1. Indian Penal Code, 1860

2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872
4. Bharatiya Sakshya Adhiniyam, 2023

List of Keywords

Dying declaration; non-examination of named eye witnesses; adverse impact on prosecution story.

Appearances of parties

Counsel for Appellant(s) : Nagendra Mohan, Aishwarya Pratap Singh, Mohd. Azam, Sunil Kumar Singh, Vivek Kumar Divedi

Counsel for Respondent(s) : G.a, Girish Kumar Kannojia, Vinay Kumar Singh, Yogeshwar Sharan Srivastava

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

1. Heard Sri Nagendra Mohan, learned counsel for the appellants, Sri Vinay Kumar Singh, learned counsel for the complainant and Sri Pawan Kumar Mishra, learned A.G.A. for the State.

2. The present appeal has been filed against the judgment and order dated 08.11.1989 passed by Additional Sessions Judge, Hardoi in Sessions Trial No. 467 of 1988 in re: State vs. Ram Lal and others convicting the appellants no. 1 to 3 under Sections 302/149, 324/149 and 148 of the Indian Penal Code (hereinafter referred to as **'IPC'**) and appellant no. 4 under Sections 302/149, 323 and 147 of IPC. All the 4 appellants (hereinafter referred to as **'accused'**) were sentenced to undergo imprisonment for life for their conviction under Section 302/149 of IPC and accused No. 1 to 3 were further sentenced to undergo rigorous imprisonment for three years for their conviction under Section 324/149 of IPC and to undergo rigorous imprisonment of one year for their conviction under Section 148 of IPC. Accused no. 4 was further sentenced to undergo rigorous imprisonment for 1 year in each of his conviction under Sections 323 and 147 of IPC. All the sentences were directed to run concurrently.

3. During the pendency of this appeal, the accused Ram Lal and Phulla, passed away and thus, the instant appeal was abated on their behalf by this Court vide order dated 16.03.2021. Thus, the instant appeal survives only for accused Bateshwar and Ram Naresh.

Factual Matrix of the Case

4. The case as set up by the prosecution is that on 07.04.1987, at around 6:30 PM, the accused came to the house of the complainant wherein accused Ram Lal, Bateshwar and Ram Naresh were carrying pistol and guns and accused Phulla was carrying lathi. The accused started firing at the complainant and his family members and accused Phulla attacked Murli with the lathi. When the complainant and his family members raised hue and cry, the neighboring villagers including Ismeer, Islaam, Prahlad and others came to the spot and thereafter, the accused fled the scene of occurrence. The complainant PW-1, Motilal, Subedar and Murli sustained injuries in the incident.

5. Thereafter, the complainant (PW-1) submitted the tehrir in the police station concerned on the basis of which, the First Information Report (Ex Ka-11) was lodged against all the four accused on 07.04.1987 under Sections 307/323 of IPC at Police Station Harpalpur, District Hardoi. The dying declaration of injured Subedar was recorded and in addition to the accused named in the FIR,

he named Ram Ratan also. He died on 08.07.1987 after dying declaration. After his death the offence was converted into murder under Sections 302/149, 307/149 and 323/149 IPC and investigation started against the accused.

6. The investigation of the case was taken over and conducted by Sub Inspector Ravi Raj Dixit (PW-9) who went to the place of occurrence and prepared the site plan (Ex Ka17) and also collected the blood stained and simple earth from the place of occurrence. Thereafter, on 10.04.1989, accused Ram Lal, Bateshwar and Phulla were arrested from the Kakra village. Thereafter, on 13.04.1987, the investigation was taken over by PW-7, V.P. Srivas and on the same day accused Ram Naresh was arrested. On 21.04.1987, accused Ram Ratan was arrested.

7. After recording the statement of witnesses and completing the other formalities, charge-sheet (Ex Ka-20) was filed against Ram Lal, Bateshwar, Ram Naresh, Ram Ratan and Phulla under the above-mentioned offenses.

8. On finding a prima facie case, the case was committed for trial to the court of Sessions and learned Sessions Judge framed charges under Sections 148, 323/149, 307/149 and 302/149 of IPC against accused Ram Lal, Bateshwar and Ram Naresh whereas under Sections 147, 323, 307/149 and 302/149 were framed against accused Phulla and Ram Ratan, to which they pleaded not guilty and claimed trial.

9. Thereafter, the prosecution opened its case and examined as many as 12 witnesses in its support. In order to properly appreciate the evidence and the circumstances which were arrayed against the accused, it may be apposite to have a brief resume of the evidence led by the prosecution.

10. PW-1 explained that there was some prior property dispute within his family, which had resulted in the alleged incident. He stated that accused Bateshwar and Phulla were his cousin brothers while accused Ram Lal was his uncle. PW1 further stated that on the day of the incident, at around 6:15 to 6:30 O'clock in the evening, the accused, armed with guns and lathis, came to the residence of the complainant PW-1 where his father Murli, Subedar and Motilal were also present. Accused shot at deceased Subedar, Motilal and the complainant (PW-1) and assaulted Murli with lathis. The complainant took all the injured to the place of Chandrapal on a bullock cart. Said Chandrapal wrote the complaint and complainant (PW-1) put his signature on it after same was read out to him. Thereafter, all the injured were taken to the police station on a jeep and on the basis of the tehrir Ex Ka-1, the FIR was registered. The police took PW-1 to the scene of occurrence and after the formalities, took him to the hospital where he found other injured. Thereafter, all injured were taken to Hardoi hospital where they got treatment.

11. PW-2 Islam is the neighbor of the complainant and an independent eye-witness to the incident, who corroborated the testimony of PW1 and stated that he knew the accused as well as the victims as they all belonged to his village. He stated that he had reached the place of occurrence upon hearing the hue and cry and witnessed that all the accused with their respective lathi and firearms were abusing. Accused Bateshwar armed with gun, Ramlal with Katta, Ram Naresh with gun and Ram Ratan and Phulla were armed with lathi. He further corroborated that accused

Bateshwar fired at Subedar, who fell down near the door of Har Dayal. Accused Ram Naresh and Ramlal also fired from their respective weapons, which hit Om Prakash PW-1 and Moti Lal, while accused Phulla and Ram Ratan assaulted Murli with their lathis and after incident all of them ran away from the place of occurrence.

12. PW-3 Dr. S. Thiryani was posted in the District Hospital, Hardoi on 08.04.1987 at 12:30 AM, deposed that he examined and prepared the injury report (Ex Ka-2) of the deceased Subedar when he was brought to the District Hospital, Hardoi by the police authorities. The injury report had disclosed the following injuries on the person of Subedar:

a. Firearm wound 2 cm x 2 cm x cavity abdominal deep over Umblicus. Some abdominal content coming out from the wound. Margins are lacerated and inverted. Blackening and scorching absent but tatooing present on right side of abdomen. Low bleeding present. Direction not clear. Injured kept U.O. and advised X-ray.

He further stated that he prepared the injury report of Murli (Ex Ka3) on 08.04.1987 at about 1:00 AM and found the following injuries on his person:

a) Lacerated wound 3 cm x ' cm x muscle deep on the left side skull 7 cm above eye-brow. Low bleeding present, injury kept under observation. Advised X-ray.

b) Lacerated wound 5 ' cm x 1 cm x scalp deep on the right side skull and 8 ' cm above eye brow, low bleeding present, injury kept under observation. Advised X-ray

c) Lacerated wound with abrasion 6 cm x 1' cm on the right side skull 3 cm above injury no. 2. Swelling around present, advised X-ray. Low bleeding present.

At around 1:20 AM on the night of 08.04.1987, PW-3 deposed to had prepared the injury report (Ex Ka4) of injured Motilal and found the following injuries on his person:

a) Fire arm wound of entry ' cm x 1' cm connected with the wound of exit, on the back of the right leg 18 cm above ankle joint. Margins lacerated inverted. No blackening, tatooting & scorching. Direction backwards to forward. Low bleeding present. Kept under observation and advised X-Ray

b) Fire arm wound of exit 1 cm x 3/4 cm connected with the wound of entry, on the front and outer side of the right leg 19 (nineteen) cm above ankle joint. Margins lacerated and inverted. Low bleeding present. Kept under observation and advised X-Ray

At around 1:40 AM on the night of 08.04.1987, PW-3 prepared the injury report (Ex Ka5) of complainant PW1 Om Prakash and found the following injuries on his person:

a. Two Firearm wounds each 1 cm x 3/4 cm, muscle deep at dorsum of the left hand at root of the ring finger, second on outer and dorsal side of the little finger of the left hand middle. Margins lacerated and inverted. No blackening, tatooting and scorching seen. Low bleeding present. Direction not clear. Kept under observation and advised X-Ray

b. Firearm wound 4 cm x ' cm skin deep on the front of left thigh, 19 cm above knee joint. Margins lacerated and echymosed. No blackening, tatooing and scorching seen. Direction not clear.

13. PW-4 Dr M.L. Tandon prepared the post-mortem report Ex Ka8 of the deceased Subedar and stated that Subedar had died on 08.04.1987 at around 10:45 P.M with following antimortem injuries:-.

1. Paramedian stitched wound left side abdomen adjacent to umbilicus left side. 14 stitches size 15 cmx 2.5 cm on removing the stitches depth was abdominal cavity deep, firearm wound 2cm x 2cm x abdominal cavity deep just adjacent to umbilicus in front of abdomen margins tatooed. No blackening. No scorching. Direction of wound was front to back to left side and down wards.

2. Stitched incised wound (on removing the stitches) 2 cm x 1 cm x abdomen cavity deep. Each iliac fossa with hospital dressing rubber drain with equiplast dressing.

During the internal examination, the left iliac bone was found fractured. Further the elongated foreign body shadow in the left lower abdominal region along with fracture of upper part of left hip bone was seen in the X-ray prepared by Dr. N.A. Khan. PW-4 found the cause of death of deceased Subedar due to the shock and hemorrhage as a result of anti-mortem injuries.

14. PW-5 Sri R.K. Lal Chaudhari was the SDM who had recorded the dying declaration of the deceased Subedar. He stated that the dying declaration of the deceased was recorded by him in District Hospital, Hardoi in the morning of 08.04.1987 after ensuring that patient was fit in making statement and he had prepared two carbon copies of the dying declaration.

15. Injured Soobedar died in the hospital on 08.04.1987 and the information about his death was registered in the GD (Ex Ka-28) by S.O. Kotwali. Sub Inspector U.B. Singh reached the mortuary to conduct the inquest proceedings and prepared the inquest report Ex Ka-22.

16. PW-6 Head Constable Ranjeet Singh had registered the FIR on the basis of the written complaint Exhibit Ka-1 filed by the complainant PW-1 and proved FIR and G.D. entries Exhibit Ka-11 & Ka-12 respectively. PW-7 V.P. Srivas, who was second Investigating Officer, stated that he was posted as the Station House Officer at the Harpalpur police station on 07.04.1987 and first information report was registered in his presence on the basis of the complaint submitted by PW-1. The investigation of the case was assigned to Sub Inspector, Ravi Raj Dixit (PW-9) who went to the place of occurrence with the complainant and prepared the site plan (Ex.Ka.17). He lifted the blood stained and simple earth from place of occurrence vide recovery memo Ex.Ka-18.

17. PW-7 took over the investigation on 13.04.1987 and recorded the statement of witnesses. He arrested accused Ram Ratan on 21.04.1987 and sent him in custody. After completion of entire investigation, he prepared the chargesheet Ex.Ka-20 and submitted before the court.

18. PW-8, constable Shiv Shankar Yadav had taken the body of deceased Subedar for post-mortem on 09.04.1987. PW-10 Head Constable Vishram Lal and PW-11 Constable Gokran Singh had sent the clothe of the victims for forensic examination. PW-12 Shripal Trivedi is the X-Ray Technician at District Hospital Hardoi, who had prepared the X-Ray reports of PW-1 Om Prakash and deceased Subedar.

19. The statements of accused were recorded under Section 313 of Code of Criminal Procedure, 1973 (CrPC). They pleaded false implication and claimed themselves to be innocent. Despite being provided opportunity of leading evidence, the accused chose not to furnish any evidence in their defence and support of innocence and accordingly their opportunity of leading evidence was closed.

20. After considering the contentions raised by both the sides and appreciating the evidence produced on record, the learned Trial court convicted the appellants/accused but acquitted Ram Ratan by giving him the benefit of doubt. However, no appeal has been preferred challenging the acquittal of Ram Ratan.

21. Feeling dissatisfied from the order and judgement of conviction, the accused, Ram Lal, Bateshwar, Ram Naresh and Phulla preferred the instant appeal.

Contentions of the Parties

22. Raising challenge to the impugned order and judgment passed therein, learned counsel for accused vehemently argued that learned trial court had ignored that there were several material lacunas in the case of prosecution, which had rendered the prosecution story highly improbable and doubtful. The learned counsel vehemently submitted that some unknown persons had robbed the complainant and other injured on the fateful day, however due to prior enmity, the accused have been falsely implicated. The incident took place in the dark, when the victims could not have identified the unknown robbers. The FIR is alleged to be ante timed as none of the injured witnesses were examined at the time of the lodging of the report. The appellants have also challenged the dying declaration on the ground that it contained several material facts such as names and details of the weapons of the accused and such details were unnatural to have come from a person so severely injured as Subedar. It has been further alleged that the description of the weapons and name of accused as given in the dying declaration does not match with the testimony of the prosecution witnesses.

23. Concluding the arguments, the learned counsel for the accused submitted that no independent witness has been produced by the prosecution and the learned Trial Court erred in convicting the appellants solely on the basis of the testimony of interested and partisan witnesses.

24. Per contra, learned Additional Government Advocate for the state submitted that the learned trial Court has passed a speaking and well-reasoned judgment based on proper appreciation of evidence available on record. The testimony of PW1 and PW2 remain unblemished and unchallenged, and thus, the judgment of the learned trial Court convicting the accused warrants no interference.

Points for Determination

25. Upon perusal of the contentions advanced by both the parties, the testimony of the witnesses, the impugned judgment and other evidence available on record, the following issues emerge for consideration:-

A. Whether in the given facts and circumstances, the dying declaration can be said to be tutored and unnatural?

B. Whether the trial court has committed any error relying upon the eye account of witnesses?

C. Whether the impugned order and judgment of the learned Trial court suffers from any perversity?

26. The date, time and place of the incident has not been disputed by the appellants. They have also not disputed the nature of injuries sustained by the victims and the nature of the weapons allegedly used by the assailants. The only defense of accused was that the victims were attacked by some strangers, who robbed them on 07.04.1987 and since the incident took place in the dark, the victims were unable to identify the assailants. Due to prior enmity, the complainant found it fit to name the accused and thus, the accused have been falsely implicated in the case. Against this backdrop, we proceed to determine the above-mentioned points.

Issue No. 1- Whether in the given facts and circumstances, the dying declaration can be said to be tutored and unnatural?

27. The FIR was initially lodged under Sections 307/323 of IPC and after the death of Subedar, Section 302 of IPC was added on 10.04.1987. Subedar was admitted to the hospital in the night of the incident itself, i.e., on 07.04.1987. Subedar was first taken to the Harpalpur hospital and thereafter, he was shifted to the District Hospital, Hardoi on the same night. He was medico legally examined by PW-3 and injury report Ex Ka-2 was prepared at about 12:30 AM (00:30 hours) on 08.04.1987, wherein a single fire arm injury was found on his person. At about 8:30 AM on 08.07.1987, the dying declaration of Subedar was recorded by PW-5 SDM Sri R.K. Lal Chaudhari. During treatment, Subedar succumbed to the injuries at 10:40 PM on 08.07.1987 and the post-mortem report Ex Ka8 found the cause of death to be shock and hemorrhage due to fire arm injury.

28. The learned Trial Court relied upon the dying declaration in convicting the appellants and this finding has been challenged on the ground that several material facts have been incorporated in the dying declaration, which are unnatural to state for an injured person and thus, this is contended to have rendered the dying declaration unreliable.

29. Dying declaration is admissible under Section 32(1) of the Indian Evidence Act, 1872 (now Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023). Section 32(1) of the Evidence Act states that statements, written or verbal, or relevant facts, made by a person, who is dead, are relevant when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction, which resulted in his death, in cases in which the cause of that person's death comes into question. It is based on the legal maxim nemo moriturus praesumitur mentirii which means that a man will not meet his maker with a lie in his mouth.

30. At this juncture, it would be apposite to refer to certain judicial precedents establishing the principles pertaining to the admissibility and reliability of the dying declaration. Material on record to implicate the accused persons with the offence of murder is statement of deceased Ex.Ka-6,, 7 & 10, which was being treated as dying

declaration. The prosecution heavily has banked upon the statement of deceased Ex.Ka-6, 7 & 10, which was being treated as dying declaration to implicate the accused persons with the offence of murder. Before appraisal of facts under challenge, let the judicial pronouncements and propositions of law with this regard be discussed. The judiciary evolved rule of caution, for acceptance of dying declaration as laid down by Hon'ble Supreme Court in ***Paniben Vs. State of Gujarat 1992 (2), SCC 474.*** The same rules were reiterated by Hon'ble Supreme Court in the ***Shakuntala Vs. State of Harayana (2007) 10 SCC 168, Jaishree Anant Khandekar Vs. State of Maharashtra, (2009) 11 SCC 647 and Sukanti Moharana Vs. State of Orissa, (2009) 9 SCC 163.*** The said principles are statutory and cardinal in nature and same are reproduced as under:-

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the court is satisfied that dying declaration is voluntary, it can pose conviction on it, without corroboration.

(iii) The court has to scrutinise dying declaration carefully and must ensure that the declaration is not result of tutoring, promoting or imagination. The deceased had an opportunity to preserve and identify the assailant and was in a fit state to make the declaration.

iv) Where dying declaration is suspicious, it should not be acted upon without corroborating evidence.

v) Where the deceased was unconscious and could not make any dying declaration, the evidence with it is to be rejected.

vi) A dying declaration which suffers from infirmity cannot form the base of conviction.

vii) Merely because a dying declaration does not contain the details as to occurrence, it is not to be rejected.

viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, shortness of statement itself guarantees the truth.

ix) Normally, the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration looking up to the medical opinion, but where the eye-witness said that the deceased was in a fit and conscious state to make dying declaration, the medical opinion cannot prevail.

x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

31. In ***Paramjit Singh and others Vs. State of Punjab and others AIR 1997*** Supreme Court 1614, it was held by Hon'ble Supreme Court that if all the details are given in dying declaration, the same must not inspire confidence of court in as much as a neatly structured dying declaration may bring an adverse effect in the mind of court.

32. In ***Laxman v. State of Maharashtra***, reported in (2002) 6 SCC 710, the Hon'ble Supreme Court made the following observations:

"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross- examination are dispensed with. Since the accused has no power of cross- examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.'

(Emphasis added by court)

33. In ***Munnawar & Ors. Vs. State of U.P.,*** reported in (2010) 5 SCC 451, the Hon'ble Supreme Court observed that:

"13. In Balak Ram case [(1975) 3 SCC 219] this Court dealt with two dying declarations, one recorded by the investigating officer in the case diary which was held to be unreliable and the other by the Executive Magistrate which was held to be reliable notwithstanding the fact that the injured, when taken to the hospital, was in a very critical condition. This Court observed that though there may be some suspicion with regard to the statement recorded by the Police Officer, the same could not be said of the second dying declaration.

14. It was observed thus: (Balak Ram case, SCC p. 235, para 54)

"54. The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The Civil Services have no platform to controvert allegations, howsoever grave and unfounded. It is, therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."

The aforequoted paragraph fully supports the view that (save for very good reasons) a dying declaration recorded by a Magistrate duly endorsed by a Doctor should not be discarded.

15. In K. Ramachandra Reddy case [(1976) 3 SCC 618], this Court again, on an appreciation of the circumstances leading to the recording of the dying declaration, held that it could not be relied upon. It is, therefore, obvious that the fact as to whether a dying declaration is reliable or not would depend upon the facts of the case and the evidence produced by the prosecution and no hard and fast rule by way of precedent can ever be adopted.

16. As already observed by us, there are no suspicious circumstances whatsoever with regard to the dying declaration recorded by Rajdev Singh and endorsed by Dr. Trivedi and no substantial reason has been spelt out by Mr. Sushil Kumar as to why these officers would be a party in favour of the prosecution. It is also extremely relevant that in both the cited cases, the primary argument was based on the physical condition of the maker of the dying declaration i.e. deceased. In the present case, however, the fact that the deceased had remained alive for a long period of time after the incident and died several days later of septicemia brought about by the gunshot injury clearly shows that his condition was not overly critical or precarious when the dying declaration had been recorded."

34. The facts of present case are to be analyzed keeping in view the aforesaid principles of law laid down by Hon'ble Supreme Court, as caution for acceptance of dying declaration. Before we advert to the actual admissibility of dying declaration and credibility of witnesses to dying declaration, it will be useful at this juncture to reproduce, herein below the dying declaration Ex.Ka.10,

प्रमाणित किया जाता है कि सूबेदार पुत्र लज्जू निवासी महसुलापुर थाना हरपालपुर हरदोई पूर्ण रूप से होशो हवास में हैं तथा अपना Dying Declaration record कराने को सक्षम हैं।

8/4/87
Dr. S. Thiryani

8.4.1987 at 8:30 A.M.

मृत्यु पूर्व बयान श्री सूबेदार पुत्र लज्जू उम्र 43 साल निवासी ग्राम महसोलापुर थाना हरपालपुर जिला हरदोई ने बयान किया कि

1-प्रश्न- आप अस्पताल हरदोई मे क्यों हैं।

उत्तर- मैं इलाज कराने आया हूँ क्योकि मुझे गोली लगी है

2- प्रश्न- गोली कब लगी ?

उत्तर - कल 6 बजे शाम को लगी है।

3- प्रश्न- गोली किसकी है

उत्तर- 315 बोर के कट्टा से लगी है वैसे बन्दूक भी चली थी

4- प्रश्न- क्या 315 बोर का कट्टा व बन्दूक लाइसेन्सी है।

उत्तर- दोनो बिना लाइसेंसी है

5- प्रश्न- गोली किसने मारी है।

उत्तर- गोली बटेश्वर पुत्र निरंजन ने मारी है।

6-प्रश्न- बटेश्वर के साथ और कौन कौन था ?

उत्तर- बटेश्वर के साथ फुल्ला पुत्र निरंजन व रामलाल पुत्र हीरालाल, नरेश पुत्र छुट्टा, रामरतन पुत्र बालक राम थे। बालकराम के लड़के रामरतन पर लाठी थी बटेश्वर पर 315 बोर का कट्टा था। फुल्ला पर 12 बोर का कट्टा व रामनरेश पर 12 बोर की बन्दूक व रामलाल पर 12 बोर का कट्टा था।

7- प्रश्न- किसी से रंजिश है।

उत्तर- किसी और से रंजिश नही है इन्ही से पारवारिक झगड़ा है।

8- प्रश्न- आपको किस किस ने मारा है।

उत्तर- उपरोक्त चार आदमियों ने मारा है और बटेश्वर की सबने मदद की है।

9. और कुछ कहना है।

उत्तर- कुछ और नहीं कहना है।"

(आर.के लाल चौधरी)
डिप्टी कलेक्टर/कार्यकारी
मजिस्ट्रेट हरदोई
8/4/87 8:45 A.M.

नि.अं. पॉया
श्री सूबेदार

प्रमाणित किया जाता है कि सूबेदार अपनी Dying Declaration के दौरान पूर्ण सक्षम होशो हवास में रहा।

8/4/87

35. The statement made herein above starts from the version of victim and below the statement there is thumb impression of victim/deceased. PW3 Dr. S Thiryani endorsed on the top corner of the statement that **'patient** is fully conscious and fit to make the statement. **Dated 08.04.1987 at 8:30 A.M. with the signature of doctor,'** while in the bottom it has been noted that Subedar was in complete senses during recording of his statement. The both fitness certificate were given by PW 3 under his handwriting and signature. Under the certificate of fitness, the thumb impression of left hand of deceased Subedar has been affixed, while towards the right side PW-5 has put his signature with the time 8:45 AM. The statement of injured has been recorded by PW5 in his own handwriting and has been said to be recorded after getting satisfied and obtaining fitness certificate of victim/deceased from Dr. S. Thiryani PW3. PW5 has submitted further that the statement was read over and after concluding the statement at 8:45 AM, the signature of maker was obtained in the bottom of statement. As per PW-5, the injured made his statement voluntarily and in a fit state of mind.

36. At this juncture, while appraising the dying declaration, it will not be out of record to mention the injuries found on the body of the maker of statement immediately before the recording of statement so that the fact of fitness of the injured at the relevant time can be addressed properly. In this regard, statement of PW3 Dr. S. Thiryani, treating doctor, is of great value, who found a fire arm wound of 2x2 cm, abdominal cavity deep over the umbilicus and some abdominal contents were coming out of the wound with low bleeding. Blackening, scorching as well as tattooing found on right side of abdomen during the medico-legal examination. In his cross examination, PW-3 gave corroborated version to that of PW-5 that before and after recording of dying declaration, he gave the fitness certificate in his signature and hand writing. As per PW-3, no first aid was given to the injured until his admission in this hospital and his medico-legal examination. His general condition was very low. In answer to the question put to the witness, he unequivocally stated that no sleeping pills was given to the injured during his treatment and only a pain killer injection namely Analgin was administered to him. From the bare perusal of evidence made by this witness, it is clear that the Subedar was in his full senses while making the statement. Nothing was placed on record that the maker of the statement was under the impression of sedative or any type of internal or outer impression. PW-3 being neutral and natural witness is supposed to give the evidence free from any kind of doubt or interest, therefore, there is no reason to disbelieve his deposition regarding medical ability of the injured. PW5, who is scribe of dying declaration has also corroborated the fact that PW3 gave fitness certificate in his presence. He further stated that before the commencement of the dying declaration, he himself had ensured that the statement should be free from tutoring and any external pressure and for that purpose, he asked the treating doctor to restraint entry of everyone and recorded the statement only after being assured that injured was ready to make the statement voluntarily and free from tutoring. According to him, even no patient was around the maker of the statement. Although, PW5 admitted during his cross examination that he did not detail the above fact in the dying declaration, yet there is no reason to discard his statement merely on the basis of this trifling discrepancy. Therefore, from evidence of PW3 and PW5, this fact stands established on record that at the time and during the recording of the statement, Subedar was in the fit state of mind and whatever statement was made by him, was in complete senses.

37. Now, we have to determine that whether the dying declaration is reliable, credible and admissible against the accused? In this context, if we examine the dying declaration itself, it becomes clearly evident that the document is intact in itself and there is no room of doubt in the statement made by the maker. The dying declaration has been recorded by PW-5 in question and answer format, so that the maker could be enable to understand the question and then to answer the same. While recording statement, Subedar was asked several questions such as why he was in the hospital and when he had been attacked before he was asked to name the accused. Subedar had stated that he was in the hospital for treatment and the incident took place at 6:00 PM which is consistent with the testimonies of the other witnesses. It is true that the description of weapons as given in the dying declaration was not exactly accurate to the description given in the testimonies of the prosecution witnesses and the first information report, however, it has been categorically stated that he was fired and sustained injuries in the incident itself. Although, in his statement, Subedar also named Ram Ratan having firearm along with other four accused named in the FIR, who has beeN acquitted, yet there is no reason to cast doubt on entire dying declaration merely on this score. Reason is not for to seek. Subedar is said to have been the first one to be shot by the accused and thus he may have had the least opportunity to witness which weapon was carried by which accused. All the accused are said to have been armed with guns and lathis and this has been consistent with the FIR, the complaint as well as the witness testimonies. The use of such nature of weapons in the incident has not even been disputed by the appellants. There is another fact which corroborated the credibility of dying declaration and that is duration of between statement and his death. There is no doubt that dying declaration was recorded at 8:30 A.M. and he died at about 10:45 PM., and therefore, it cannot be said that he was so feeble and lacking mental health so as to not understand the question and reply. All the answers given by the maker in dying declaration though subtle but sufficient to reach on the conclusion that accused left no stone unturned to commit his murder. The dying declaration cannot be doubted merely because of such minor discrepancies particularly in view of the fact that he was badly injured by firearm wound at the time of recording of the dying declaration. Therefore, in the given facts and circumstances, the credibility of dying declaration and observation made by learned trial court, warrants no interference.

Issue No. 2- Whether the trial court has committed any error relying upon the eye account of witnesses?

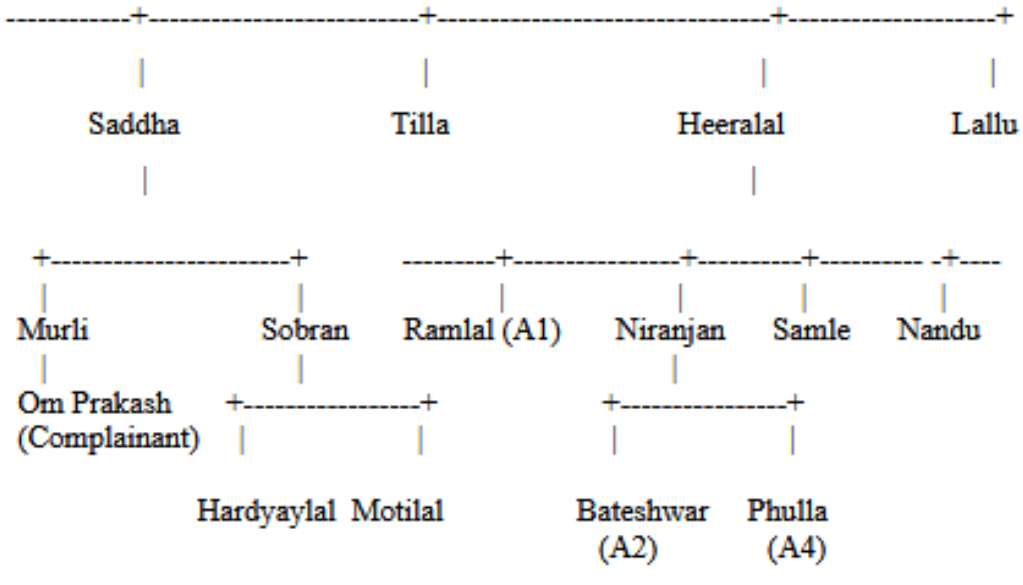
38. Another issue raised by the learned counsel for the appellants is that the prosecution has examined only two eye-witnesses, PW1 complainant and PW2. Both of them have been alleged to be interested witnesses and it has been submitted that even though several witnesses were named in the FIR, none of them were produced by the prosecution as witnesses.

39. PW-9 Sub Inspector R. R. Dixit, who was the first investigating officer, stated that though the witnesses were named in the complaint, they could not be examined on the day of the incident itself because no witnesses were available on the said day. It is only on 15.04.1987, when PW-7 is said to have recorded the statement of witnesses.

40. PW-1 and PW-2 are the only eye-witnesses, who have been examined by the prosecution, even though several persons such as Khushiram, Prahlad and others were named as witnesses in the

First Information Report. The appellants have contended that the non-examination of these independent witnesses who were named in the complaint renders the prosecution version highly doubtful and unreliable. PW1 is the complainant himself and is thus alleged to be an interested witness. PW2 is said to have contested the panchayat elections against accused Ram Lal and thus, he is alleged to have deposed against the accused out of his own personal interests.

41. PW-1 had stated that the appellants were his own cousin brothers and uncle. For the sake of convenience, the relations of the appellants with the complainant is depicted through the following chart:



42. It is thus apparent that the accused and the complainant belonged to the same family. The families of the complainant/injured and accused had several prior ongoing disputes. The complaint Ex Ka1 had disclosed that the accused had attacked the victims due to ongoing property disputes.

43. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in ***Sarwan Singh v. State of Punjab, (1976) 4 SCC 369,*** wherein the Hon'ble Supreme Court made the following observations:

"13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the 'pakodewalla', hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion the comments of the Additional Sessions Judge are based on serious misconception of the correct legal position. The

onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted a large crowd had gathered and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore nobody wants to be a witness in a murder or in any serious offence if he can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, yet there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village home. So far as Pakodewalla and Hotelwalla etc. are concerned there is positive evidence to show that they were interrogated by the police but they expressed ignorance about the occurrence. In this connection the evidence of P.W. 5 Harnek Singh clearly shows that the Investigating Officer interrogated the Hotelwalla and the Pakodewalla but they stated before him that they had not witnessed the occurrence. In these circumstances, therefore, there was no obligation on the prosecution to examine such witnesses who were not at all material. It is not a case where some persons were cited as eye-witnesses by the prosecution on material points and were deliberately withheld from the Court. For these reasons, therefore, the learned Additional Sessions Judge was not at all justified in raising an adverse inference against the prosecution case from this fact and the High Court was right in rejecting this part of the reasoning adopted by the learned Additional Sessions Judge."

(Emphasis added by court)

44. It is true that the complaint Ex Ka1 as well as the testimony of eye-witnesses disclose that several neighbors had come to the spot on hearing the hue and cry and PW-2 also reached on the spot and witnessed the entire scene happened there. However, the other named witnesses in the FIR have not been examined. This fact remained unchallenged that prior to the incident, a litigation dispute pertaining to some agricultural land had been initiated between injured Murli and Chotta, the father of accused Naresh. In that dispute, Murli was supported by injured Motilal while Chotta was supported by accused Ram Lal. Another suit had been going on between deceased Subedar and accused Ram Lal. Hardyaylal (victim Motilal's brother) and accused Ram Lal had also been engaged in some dispute because Hardyaylal's utensils had allegedly been stolen by the son of

accused Ram Lal. PW1 stated that a separate property suit was ongoing between accused Ram Lal and Hardyaylal.

45. The families of the complainant and the accused seem to have been engaged in a complex web of disputes, which involved several members of the families. It is not unusual for independent witnesses to deter from taking sides and appearing as a witness from either side in such cases. The witnesses were not willing to give their statements to the police even on the day of the incident. Such hesitation stems from concerns regarding safety and the general tendency to avoid getting involved in legal affairs. Thus, we do not find any adverse impact on prosecution story for non-examination of named eye witnesses.

46. Testimony of PW-1 and PW-2 has been challenged on the ground that they made material improvements. The original complaint had not mentioned anything about accused Ram Ratan but at the time of their testimony, PW1 & PW-2 alleged that Ram Ratan was also one of the accused, who had attacked him and the other injured. Specific role was attributed to Ram Ratan and PW-1 stated that Ram Ratan was carrying a lathi through which he had assaulted Murli. PW1 stated that he had specifically taken Ram Ratan's name while narrating the incident to the scribe Chandrapal but somehow Chandrapal omitted Ram Ratan's name. PW1 further stated that he had also taken Ram Ratan's name while giving his statement to the police but for reasons best known to the police, the name of Ram Ratan was not included in PW1's statement. PW-2 has corroborated the testimony of PW-1 and had also stated that Ram Ratan was accompanying the accused and carrying a lathi. Further PW-1 & PW-2 deposed that accused Ram Lal had country made pistol and Basteshwar was having gun, while Ram Ratan and Phulla had lathi with him, which is in the contradiction of weapons alleged in first information report, whereby accused Bateshwar was alleged to had country made pistol. The testimony of both witnesses had been challenged on the ground of them being interested witnesses.

47. In cross-examination PW-2 stated that when he reached to the spot, Bateshwar made fire first and further fire were made by Ram Lal and Ram Naresh.

48. On being asked, answered that he did not ran to escape rather remained standing there. He replied that neither he saw nor searched any pellet or tikli on the space of occurrence as he had no concern.

49. He remained on place of occurrence for about 10 minutes and left the place only after the leaving of injured for police station on bullock cart . Further stated that he did not accompany with them to hospital or police station.

50. Argument is that PW-2 is not reliable and trust worthy witness being inimical to accused persons and delayed recording of his statement by Investigating Officer. Further raised challenge on the ground that he gave contradictory statement to PW-1 and FIR with regard to weapons. The weapons with the accused, disclosed in FIR and evidence of PW-1 and PW-2 are as under:-

FIR	PW-2	PW-1

राम लाल - तमंचा	कट्टा	कट्टा
बटेश्वर - बंदूक	कट्टा	कट्टा (बड़ा कट्टा/बंदूक)
नरेश - कट्टा	बंदूक	कट्टा
फुल्ला - लाठी	लाठी	लाठी
	राम रतन - लाठी	राम रतन - लाठी

51. Before adverting to appraisal of contention raised by learned counsel for accused, it will be beneficial to refer to the judgment of the Hon'ble Supreme Court in ***Thoti Manohar v. State of Andhra Pradesh***, reported in (2012) 7 SCC 723**,** wherein the Hon'ble Supreme Court made the following observations:-

"34. In Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82, a three-Judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down.

"as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.'

35. In Kartik Malhar v. State of Bihar (1996) 1 SCC 614, it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term 'interested' postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

36. In Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh AIR 2006 SC 3010, while dealing with the liability of interested witnesses who are relatives, a two-Judge Bench observed that

"16….. it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased, if it is otherwise found to be trustworthy and credible.'

The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon.

" 16'..If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

*****

38. The learned counsel for the appellant has endeavoured hard to highlight certain discrepancies pertaining to time, situation of the land, number of persons, etc., but in our considered opinion, they are absolutely minor in nature. The minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The Court, while

appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored……."

52. In ***Vadivelu Thevar v. State of Madras,*** reported in (1957) 1 SCC 700, the Hon'ble Supreme Court held that witnesses can broadly be classified into three categories which are:

"18. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable

In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

19. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

53. In ***Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127,*** wherein the Hon'ble Supreme Court made the following observations:

"20. The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana, (1999) 9 SCC 525, this Court held as follows:

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment ' sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381:

"15. To the same effect is the decision in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526]. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of 'falsus in uno, falsus in omnibus' (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim 'falsus in uno, falsus in omnibus' has no application in India and the witnesses cannot be branded as liars. The maxim 'falsus in uno, falsus in omnibus' has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."

54. In the backdrop of the case, there is no dispute that Ram Ratan was not named in FIR, nor any incriminatory role in commission of offence was assigned, and first time his name emerged during the dying declaration of deceased Subedar. Learned trial court taking view that neither he was named in the FIR, nor in the statement of PW-1 made to Investigating Officer, acquitted him giving benefit of doubt. The question now is whether a false statement of witnesses made regarding a particular person, can render the entire story of prosecution, as unreliable? Answer is no. Law is settled that part of false statement will not suffice to discard the prosecution version from the perusal of both the witnesses. It is apparent that apart from the aforementioned statement against Ram Ratan, there is no contradiction emerged during long drawn cross examination by defence, which would cast doubt on their evidence.

55. So far as, argument of interested witness is concerned, PW-1 gave a description of all the ongoing property and other disputes within the two sides and stated that the appellants had attacked them due to those ongoing property disputes and enmity. As per the testimony of PW1, accused Phulla and Ram Ratan were carrying lathis, accused Ram Naresh and Bateshwar were carrying big guns and accused Ram Lal was also carrying a gun. The first one to fire a shot was Bateshwar, who shot deceased Subedar. Thereafter, Ram Lal and Ram Naresh shot PW1 complainant and Motilal. Phulla and Ram Ratan are said to have attacked PW1's father Murli with lathis and when PW1 raised hue and cry, then neighbors Islaam, Ismeer, Prahlad and Khushiram came to the spot and accused fled from the scene of occurrence.

56. PW-2 had also corroborated the version of PW1 and had stated that he reached the scene of occurrence upon hearing the hue and cry and identified the accused. He supported the testimony of PW1 by naming all the accused.

57. PW-1 has been corroborated by PW-2, who specifically denied any prior enmity with the accused due to which he may falsely implicate them. Except suggestion, no evidence of previous litigation with PW-2 as alleged, has been filed. Therefor, argument of PW-2 being interested witness, does not hold water, hence rightly rejected by learned trial court. PW-1 is an injured eye-witness whose presence at the scene of occurrence is not in doubt. The witnesses have been corroborated by the injury reports Ex Ka 2-5, which found firearm wounds on the person of the victims/injured. As per the post-mortem report (Ex Ka8), cause of death of Subedar was shock and hemorrhage as a result of ante mortem fire arm injuries and thus, the post-mortem report further corroborated the testimony of the prosecution witnesses. PW4, further testified that the death of Subedar was caused due to a single firearm wound. Murli is said to have sustained such wounds which could have been caused by a lathi. All the 4 accused appellants have been consistently named in the complaint, FIR, dying declaration and in the witness testimonies. In view of the corroborated evidence, we find no reason to doubt the testimonies of the prosecution witnesses, particularly PW1 and 2, in so far as the role of the accused appellants are concerned.

58. The last contention raised by the appellants is that the incident took place in the dark and some unknown robbers had attacked the victims and they falsely implicated the accused appellants.

59. PW-1 in his cross-examination had categorically denied this version of the appellants. PW1 had stated that the incident occurred at around 6-6:30 in the evening, when there was sufficient sun light. He further stated that the accused were residents of his village and thus, he was familiar with their faces. Some of the accused were also the family members of the complainant and the injured and thus, it cannot be doubted that the victims would not have had any difficulty in recognizing the faces of the accused. PW2 has also stated that the incident occurred in the evening, when there was sufficient light.

60. PW-3 found the injuries of all the victims to be around ' day old and all the injured were kept under observation. Firearm wounds were found on the person of the complainant PW1, deceased Subedar, and Motilal, while three lacerated wounds were found on the person of Murli. Thus, the injury reports (Ex Ka2-5) corroborated the prosecution witnesses in so far as the time of the incident and use of firearms was concerned. Both PW1 and PW2 had stated that injured Murli was having with lathis, while other victims were shot at. In his testimony, PW3 further corroborated that the injuries could have been caused at around 6-6:30 PM on 07.04.1987 and the injuries of Murli were said to have been caused by lathis. In his cross-examination, PW3 had denied any possibility of the injuries of Murli and Om Prakash being self-inflicted or superficial.

61. In view of the aforementioned circumstances, it is clear that the incident occurred in the evening, when there was sufficient light for the victims to have identified the accused, particularly in view of the fact that the accused lived in the same village and were family members of the victims. All the 4 accused appellants were named in the first information report itself, which was promptly lodged just a few hours after the incident. They also find a mention in the dying declaration of deceased Subedar. There is nothing on record to support the story as pleaded by the defence of some unknown robbers attacking PW1 and other injured victims. Thus, we find no strength in this argument. Therefore, this point of determination favours the prosecution and goes against accused.

Issue No.3-Whether the impugned order and judgment of the learned Trial court suffers from any perversity?

62. As discussed above, it has been established on record beyond doubt that accused sharing the common intention, not only committed murder of Subedar but also committed offence of attempt to murder by causing life threatening and simple injuries to the injured Murli, Motilal and Om Prakash by using firearms and lathi. As a matter of fact, trial was initiated against five persons and accordingly charge of Section 148/149 and 147/149 IPC was also framed, in addition to Sections 302/149, 307/149 and 323/149 of IPC. However, complicity of only four accused was found in commission of crime by learned trial court and one person Ram Ratan was acquitted. The acquittal of Ram Ratan has become final as same has not been challenged by the State or complainant. Section 147 IPC deals with rioting while Section 148 deals with rioting with deadly weapons. In both the sections, formation of unlawful assembly is mandatory ingredient, as defined under Section 141 IPC. However, acquittal of one person namely Ram Ratan out of five accused negate the formation of unlawful assembly, therefore, despite of non-existence of necessary ingredient of unlawful assembly, conviction of accused under Sections 147 and 148 IPC is patent illegal and perverse and is liable to be interfered with and accused deserves to be acquitted of charges of Sections 147 and 148 IPC. Even otherwise conviction could not have been made in both sections simultaneously.

63. However, the position, which emerges is that the evidence which has been produced by prosecution is that the evidence which has been produced by prosecution on the record is sufficient, cogent, convincing and reliable to prove that the accused and none else has committed the offence of attempt to murder, simple injuries to injured and murder of deceased Subedar in furtherance of common intention, therefore, accused Beteshwar and Ram Naresh are held guilty of offences under Sections 323/34, 307/34, 302/34 of IPC. Accordingly the order and judgment passed by learned trial court deserves to be partly allowed and modified accordingly.

64. Accordingly, the appeal is **partly allowed**. Conviction and sentence under Sections 147 and 148 of IPC is set aside and accused Bateshwar and Ram Naresh are acquitted of offences mentioned above. However, order of conviction and sentence under Sections 323/34, 307/34 and 302/34 is affirmed.

65. No other contention has been raised by the learned counsel for the appellants.

66. Accused/appellants are on bail. Their bail bonds and surety bonds are hereby cancelled and sureties are forfeited. Sureties are discharged from their obligations. Non-bailable warrants of accused Bateshwar and Ram Naresh be issued and they are directed to surrender before learned Chief Judicial Magistrate within 15 days from today, who will send them to the jail to serve the remaining sentence, failing which learned Chief Judicial Magistrate will execute the non-bailable warrants issued against them by this court. Learned chief judicial magistrate concerned will ensure strict compliance of the order passed by this court.

67. Original record be transmitted after due compliance to the concerned court forthwith and in any case within a week from today.

68. All pending applications also stand **disposed of.**

(2026) 7 ILRA 904
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.07.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 10829 of 2026

Dr. Awadhesh Kumar Tripathi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Entitlement to claim the continuation in service after retirement till the end of academic session as a vested right.
(2) Application of right to equality guaranteed under Article 14 of the Constitution of India.

Headnotes

(A) Service law – UP Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958; University Act, – S. 2(k) – Statute, Ch. XII, S. 28 (d) – Statute, Ch. XIII, S. 4(d) – Post of Associate professor – Post-retirement continuation in service till the end of academic session – Continuation was claimed as a vested right – Permissibility .

Held : The legislative intent, the applicable Statutes and the executive policy, when harmoniously construed, unmistakably demonstrate that the extension till the end of the academic session is conceived solely to subserve academic continuity and to protect the interest of students from disruption in the midst of an ongoing session. The object is institutional and not individual. It is neither a reward for long service nor an incident of the substantive appointment – Such continuation cannot be equated with the normal tenure of service nor can it be elevated to the status of an indefeasible statutory entitlement – The benefit of continuation beyond the age of superannuation is in the nature of a limited concession intended to secure continuity of teaching and not a vested service right. [Para 39, 40 and 43]

(B) Constitution of India – Article 14 – Right to equality – Positive concept of equality – Application – Parity with another employee was claimed – Permissibility, extent of :

Held : Article 14 embodies a positive concept of equality and does not envisage perpetuation of benefits dehors the governing statutory framework. A claim based upon parity must necessarily rest upon complete identity of factual and legal circumstances.[Para 48] (E-1)

Case Law Cited

Writ A No. 5910 of 2012, Sri Ram Singar Singh vs. State of U.P. and Others decided on 02.02.2012; Writ Petition No. 11111 of 1996, Sumitra Dhulia vs. Director of Education and Others, decided on 12.11.2010; Dr. Indu Singh vs. State of Uttarakhand & others, 2017 SCC Online Utt 1527 **– referred to.**

List of Acts

UP Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958; University Act, – S. 2(k) – Statute, Ch. XII, S. 28 (d) – Statute, Ch. XIII, S. 4(d).

List of Keywords

Retirement, Continuation in service, Resolution, Procedure for selection, Terms and condition of appointment, Research work, Substantive appointment, Age of retirement, Benefit of extension of service, Definition of teacher, Discretion, Administrative convenience, Principle of equality, Arbitrary, Illegal, Contrary to the

statutory provisions, End of academic session, Inconvenience to students, Smooth completion of the academic curriculum, Vested right, Statutory right, Concession, Relaxation, Physically and mentally fit, Automatic, Age of superannuation, Enforceable legal or statutory right, Protect the interest of students from disruption, Limited concession, Touchstone, Material of unimpeachable character, Perversity, Mala fides, Arbitrariness, Patent illegality, Unreasonable, Contrary to law, Misconceived, Independent source of legal entitlement, Promotion, Judicial precedents.

Case Arising From

Impugned order dated 30.06.2026 and 15.07.2026 passed by the respondent no. 4.

Appearances for Parties

Advs. for the Petitioner : R.K. Ojha, Sr. Adv.; Kunwar Bahadur Dixit; Shivendu Ojha
Advs. for the Respondents : Uday Pratap Singh

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. R.K. Ojha, learned Senior Counsel assisted by Mr. Kunwar Bahadur Dixit, learned counsel for the petitioner, Mr. Uday Pratap Singh, learned counsel for respondent nos.2, 3 and 4 and learned Standing Counsel for the State.

2. The present writ petition has been instituted challenging the order dated 30.06.2026 passed by the Director (Administration and Monitoring), Banda University of Agriculture and Technology, Banda, respondent no. 4, whereby the petitioner has been directed to retire from service with effect from 31.07.2026. The petitioner has also challenged the subsequent order dated 15.07.2026 passed by the Director (Administration and Monitoring), Banda University of Agriculture and Technology, Banda, whereby his claim for continuation in service till the end of the academic session, i.e., up to 30.06.2027, has been rejected.

3. Placing the brief facts of the case, learned counsel for the petitioner submits that Banda University of Agriculture and Technology was established in the year 2010 under the Uttar Pradesh Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958. Being a newly established university, it does not have its own statutes. In view of the Government Order as well as the resolution of the Executive Council, the provisions and statutes applicable to Chandra Shekhar Azad University of Agriculture and Technology, Kanpur, have been made applicable to the said University.

4. Learned counsel for the petitioner further submits that, under Section 2(k) of the University Act, the expression □Teacher□ has been defined as follows:

"Teacher means a person appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes and includes a person who may be declared by the Statutes to be a teacher."

5. From the aforesaid provision, it is clear that a person appointed by the University for imparting instruction or conducting and guiding research or extension programmes is included within the definition of 'teacher'.

6. Presently, the statutes of the Chandra Shekhar Azad University of Agriculture and Technology, Kanpur are applicable to the University. Accordingly, Chapter XII of the said Statutes governs the service conditions of teachers. Section 28-d of Chapter XII classifies the teachers of the University in the following manner:

"Section 28(d)(1):- The Board of Management shall, from time to time, determine, after considering the recommendation of the Academic Council in this behalf, the classification of the teaching staff of the University with appropriate designations i.e. Professors, Associate Professors/Readers, Assistant Professors/Lecturers and the like. The Board shall also have power to alter or modify such classification in any particular case."

"Section 28(d)(2): The teachers of the University shall be employed on a whole-time basis on the scales of pay approved for the University provided that the proportion of time of the teachers to be devoted to teaching,research and extension or administrative duties should be specified in their contract of appointment."

7. Chapter XIII of the Statute deals with the appointment of staff. Section 4-d thereof prescribes the procedure for selection and appointment to the posts of Professor, Associate Professor, Assistant Professor, and other teachers of the University. The relevant provision reads as follows:

"4(d) - The Selection Committee for the appointment of Professor, Associate Professor, Assistant Professor or teacher shall consist of:

(i) The Kulpati, who shall be the Chairman thereof;

(ii) The Dean of the Faculty concerned;

(iii) One Head of the Department to be nominated by the

Kulpati;

(iv) Two experts to be nominated by the Kuladhipati.

8. The petitioner was appointed pursuant to Advertisement No. 1 of 2017 to the post of Associate Professor (Agronomy). As per the General Instructions for Candidates for Appointment by Selection to Teaching Posts contained in the said advertisement, Instruction No. 5 stipulates that the primary responsibilities of the selected faculty member shall include teaching undergraduate and postgraduate courses, developing the course curriculum, and establishing laboratories. Instruction No. 6 further provides that, in addition to the aforesaid academic responsibilities, the selected faculty member shall also be required to perform duties relating to research, extension, administration, and the development of farms and laboratories, or such other functions as may be assigned by the competent authority from time to time.

9. Accordingly, the petitioner was appointed on 09.12.2017 to the post of Associate Professor (Agronomy) in the College of Agriculture. The appointment letter specifically provides that the petitioner's headquarters shall be at the Main Campus of Banda University of Agriculture and Technology, Banda. It further stipulates that the petitioner shall be liable to undertake teaching, research, or extension work at such outstations as may be assigned by the University from time to time. Thus, the terms and conditions of appointment unequivocally contemplate that, although the petitioner's headquarters would remain at the Main Campus, he could be entrusted with teaching, research, or extension duties at any outstation in accordance with the requirements of the University and the directions issued by the competent authority.

10. After joining the respondent as Associate Professor (Agronomy), the petitioner was entrusted with teaching several courses in both the undergraduate and postgraduate programmes during the period from December 2017 to October 2019. The petitioner was also nominated as the Major Advisor for supervising and guiding the students enrolled in the M.Sc. Agriculture (Agronomy) programme.

11. In addition thereto, the petitioner was permitted to continue and complete the research work and doctoral theses of the Ph.D. scholars who had been registered under his supervision at his previous institution, namely, Chandra Shekhar Azad University of Agriculture and Technology, Kanpur. The petitioner also continued to serve as a member of the Advisory Committees of such research scholars, as permitted by the University.

12. Learned counsel for the petitioner submits that the petitioner has been subjected to harassment at the hands of the authorities and has been denied promotion to the post of Professor despite being eligible for the same. It is further submitted that, by order dated 21.10.2019, the petitioner was transferred from the Department of University to the Millets Research Station, formerly known as Crop Research Farm, Gursarai, which is a research centre. It is stated that the said centre has subsequently been redesignated as the Millets Research Station, and the petitioner, while continuing to hold the post of Associate Professor, has been assigned the charge of In-charge of the aforesaid research centre.

13. It is relevant to note that the petitioner's appointment order dated 09.12.2017 merely authorizes the University to assign him additional teaching, research, or extension work at outstations from time to time, whenever so required. The said appointment order does not confer any authority upon the University to alter or change the petitioner's substantive post of appointment.

14. In support of the aforesaid submission, learned counsel for the petitioner has drawn attention to the University- vide order dated 30.12.2023, whereby Dr. Vijay Sharma, Assistant Professor, was entrusted only with the additional charge of In-charge, Oilseeds Research Centre, Mauranipur, Jhansi, while continuing to hold his substantive post as Assistant Professor. His substantive appointment remained unaffected.

15. It is submitted that, in stark contrast, the petitioner, who was duly appointed against the substantive post of Associate Professor (Agronomy), has been displaced from his substantive post

and posted as In-charge, Millets Research Station, formerly known as Crop Research Farm, Gursarai, Jhansi. It is contended that no sanctioned post of Associate Professor, or of any teaching or scientist cadre, exists at the said Research Station.

16. Learned counsel further submits that although research activities relating to millets are carried out at the aforesaid Research Station, the establishment has no sanctioned teaching post of Associate Professor. The petitioner has nevertheless been posted there and is discharging duties as In-charge of the Research Station. However, he continues to draw his salary from the University against his substantive post of Associate Professor (Agronomy), thereby indicating that his substantive appointment has never been altered and continues to subsist in the University.

17. Learned counsel for the petitioner further submits that the provisions governing the conditions of service applicable to the petitioner are contained in the Statutes of Chandra Shekhar Azad University of Agriculture and Technology, Kanpur. Attention has been invited to Chapter XXI, Clause 28-r(7), which originally provided that the age of superannuation of all classes of employees of the University shall be 60 years. It is submitted that the said provision was subsequently amended by notification dated 11.01.2005, whereby the age of retirement of teachers and scientists serving in the University was enhanced from 60 years to 62 years.

18. It is further submitted that the State Government issued a Government Order dated 14.06.2022. Clause 7 thereof provides that teachers appointed under the Uttar Pradesh Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958, falling within the definition of "teacher" under Section 2(k) and appointed in accordance with the provisions of Section 28-d of Chapter XII read with Clause 4-D of Chapter XIII of the Statutes, are entitled to continue in service until attaining the age of 62 years. The said Government Order further provides that such teachers shall also be entitled to the benefit of extension of service till the end of the academic session, i.e., up to 30th June immediately following their date of superannuation.

19. It is submitted that, in compliance with the aforesaid Government Order, respondent no. 4 circulated the same to the petitioner's University by letter dated 16.06.2022.

20. Learned counsel further submits that the petitioner's date of birth is 10.07.1964. The petitioner was appointed on the substantive post of Associate Professor (Agronomy) and, at the relevant time, was serving as In-charge, Millets Research Station, Gursarai, Jhansi. However, by communication dated 30.06.2026, the petitioner was informed that he would retire from service with effect from 31.07.2026.

21. It is submitted that even prior to the issuance of the aforesaid communication, the petitioner had submitted a representation dated 27.06.2026 before the competent authority requesting that he be granted the benefit of continuation in service till the end of the academic session in accordance with the applicable statutory provisions and the Government Order dated 14.06.2022. Thereafter, upon issuance of the impugned order dated 30.06.2026 directing his retirement with effect from 31.07.2026 without extending the benefit of the academic session, the petitioner submitted a further representation dated 01.07.2026 reiterating his claim for grant of the said benefit.

22. Aggrieved thereby, the petitioner instituted Writ Petition No. 10051 of 2026, praying for quashing of the order dated 30.06.2026 and for issuance of a writ directing the respondents to permit him to continue in service till the conclusion of the academic session, i.e., up to 30.06.2027, together with full salary and all consequential service benefits admissible in law.

23. The said writ petition was disposed of by this Court by order dated 15.07.2026, whereby the competent authority was directed to consider and decide the petitioner's claim within 72 hours. The Court further directed that, until such decision was taken, the impugned communication dated 30.06.2026 retiring the petitioner with effect from 31.07.2026 without extending the benefit of the academic session shall not be given effect to.

24. The impugned orders dated 30.6.2026 and 15.07.2026 have been challenged by learned counsel for the petitioner on the following grounds:

(i) It is submitted that all persons appointed as teachers under Section 2(k) of the Uttar Pradesh Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958, and in accordance with the procedure prescribed under Section 28-d of Chapter XII read with Clause 4-d of Chapter XIII of the applicable Statute, fall within the definition of "teacher". Consequently, such teachers are entitled to retire on attaining the age of 62 years and are further entitled to the benefit of continuation in service till the end of the academic session, i.e., up to 30th June immediately following the date of superannuation.

(ii) It is further submitted that the petitioner was appointed as Associate Professor by a duly constituted Selection Committee in accordance with Clause 4-d of Chapter XIII of the Statutes. His appointment, therefore, is to the substantive post of a teacher, and he squarely falls within the statutory definition of "teacher".

Accordingly, he is entitled to continue in service till the end of the academic session, and his services cannot be brought to an end before the expiry thereof.

(iii) Learned counsel submits that although the petitioner was entrusted with the additional charge of In-charge, Millets Research Station, he has throughout continued to hold the substantive post of Associate Professor (Agronomy). His placement at the Research Station did not alter his substantive appointment as a teacher. Consequently, he continues to be entitled to all statutory benefits available to teachers, including continuation in service till the end of the academic session.

(iv) It is further contended that the respondents cannot, by issuing an administrative order of placement or by assigning additional responsibilities, deprive the petitioner of the statutory benefits attached to his substantive post. The petitioner's vested statutory rights cannot be made dependent upon the discretion or administrative convenience of the respondents.

(v) Learned counsel has also placed reliance upon the case of Dr. Virendra Kumar Singh, who, while serving as Professor (Plant Pathology), was granted the benefit of continuation in service till the end of the academic session. It is submitted that the petitioner's appointment is identical in nature, and, therefore, denial of the same benefit to him amounts to hostile discrimination and

violates the principle of equality. Mere placement of the petitioner at the Research Station cannot disentitle him from the benefit extended to other similarly situated teachers.

(vi) Lastly, it is submitted that the petitioner's claim for promotion to the post of Professor is presently pending consideration before this Court. The pendency of the said proceedings further demonstrates that the petitioner continues to be treated as a member of the teaching cadre, and consequently, he cannot be denied the statutory benefit of continuation in service till the end of the academic session.

25. Learned counsel for the petitioner further submits that the respondents have placed reliance upon the Government Order dated 23/25.09.2011 for denying the petitioner the benefit of continuation in service till the end of the academic session. It is contended that the said Government Order was issued exclusively in respect of teachers serving in Government Degree Colleges under the Higher Education Department of the State. The Government Order provides that only such teachers whose conduct is satisfactory, who are physically and mentally fit, and who are actually engaged in teaching work, shall be entitled to the benefit of continuation in service till the end of the academic session.

26. It is submitted that the aforesaid Government Order has no application to the present case, as the petitioner is neither governed by the Higher Education Department nor serving in a Government Degree College. Rather, the petitioner is an employee of Banda University of Agriculture and Technology, Banda, an agricultural university governed by the provisions of the Uttar Pradesh Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958, and the Statutes adopted thereunder. Consequently, the petitioner's service conditions are regulated by the statutory provisions applicable to agricultural universities and not by the Government Order governing teachers of Government Degree Colleges.

27. Learned counsel further submits that the action of the respondents in denying the petitioner the benefit of continuation in service till the end of the academic session is in clear contravention of the University Statutes, as amended by notification dated 11.01.2005, as well as the clarification issued by the State Government through Government Order dated 14.06.2022, which specifically recognizes the entitlement of teachers appointed under the relevant provisions of the Act and the Statutes to continue in service until the end of the academic session.

28. It is further submitted that under the Statutes applicable to Chandra Shekhar Azad University of Agriculture and Technology, Kanpur, Professors, Associate Professors and Assistant Professors are entitled to continue in service till the conclusion of the academic session. The said Act and Statutes have admittedly been adopted and are applicable to Banda University of Agriculture and Technology, Banda. Accordingly, the petitioner, having been substantively appointed as an Associate Professor, is fully entitled to the same statutory benefit.

29. Learned counsel also submits that the petitioner continues to draw his salary from the University against the substantive post of Associate Professor (Agronomy). His placement as In-charge of the Millets Research Station, Gursarai, Jhansi, which is merely a research centre and where no sanctioned teaching post exists, does not alter his substantive status as a teacher. It is

contended that, in any event, research and the guidance of research programmes form an integral part of the statutory definition of "teacher" under the applicable Act and Statutes. Therefore, the petitioner cannot be deprived of the benefit of continuation in service merely because he has been assigned charge of a Research Station.

30. On the aforesaid premises, it is submitted that the impugned orders are wholly arbitrary, illegal and contrary to the statutory provisions governing the petitioner's service conditions. The impugned orders, therefore, deserve to be quashed, and the petitioner is entitled to continue in service till the end of the academic session, i.e., up to 30.06.2027, together with full salary and all consequential service benefits admissible in law for the said period.

31. On the other hand, learned counsel appearing for the respondent-University submits that the benefit of continuation in service till the end of the academic session is intended solely to avoid inconvenience to students and to ensure the smooth completion of the academic curriculum. It is contended that the underlying object of granting such session benefit is to enable the concerned teacher to complete the courses assigned during the academic session and to afford sufficient time to the Selection Committee to undertake the process of appointment of teachers so that newly selected teachers may assume charge with the commencement of the next academic session.

32. It is further submitted that the grant of session benefit is not a vested or statutory right conferred upon every teacher. Rather, it is in the nature of a concession or relaxation extended by the State Government with the limited object of maintaining continuity in academic activities and safeguarding the interests of the students.

33. Learned counsel further submits that the grant of such benefit is subject to the fulfilment of various conditions, including that the concerned employee is actually engaged in regular teaching, his or her work and performance are satisfactory, and he or she is physically and mentally fit to discharge the assigned duties. According to the respondents, continuation in service beyond the age of superannuation is, therefore, not automatic but is dependent upon the satisfaction of the prescribed conditions and the purpose sought to be achieved.

34. It is contended that, in the facts of the present case, the petitioner was not engaged in regular teaching work but was posted at the Millets Research Station, Gursarai, where he was primarily performing research-related functions. Since the petitioner was not imparting classroom instruction to students, he does not fulfil the essential requirement for grant of the benefit of continuation till the end of the academic session and, consequently, is not entitled to the session benefit claimed by him.

35. In support of the aforesaid submissions, learned counsel appearing for the respondent-University has placed reliance upon the judgment of this Court in **Sri Ram Singar Singh v. State of U.P. and Others, Writ-A No. 5910 of 2012, decided on 02.02.2012**. The relevant paragraph of the aforesaid judgement is as follows:-

“6. The sessions benefit is allowed to the teachers to avoid inconvenience to the students. The object of allowing the teachers to continue upto the end of the academic session is to complete the

course curriculum, and to allow the Selection Committees to make selections of the teachers, to begin with the new academic session. The grant of session benefit is not a right conferred upon the teachers, it is a relaxation given by the State Government for the purpose of maintaining continuity of the academic session, for the benefit of the students. The sessions benefit also depends upon various other conditions namely whether he/ she is actually teaching any subject regularly, his / her work and performance and health. It is by way of concession given to continue even after attaining the age of superannuation in accordance with the service rules for specific object to be achieved."

It is submitted that the said decision recognizes that the benefit of continuation in service till the end of the academic session is not an automatic or vested right available to every employee upon attaining the age of superannuation. Rather, such benefit is to be extended only where the prescribed conditions are fulfilled and where its grant advances the object of ensuring continuity in academic instruction and safeguarding the interests of the students. According to the respondents, since the petitioner was not engaged in regular teaching work at the relevant point of time but was discharging duties at the Millets Research Station, he is not entitled to claim the benefit of continuation in service till the end of the academic session.

36. Learned counsel for the respondent-University further submits that reliance is also placed upon the Full Bench judgment of this Court in **Sumitra Dhulia v. Director of Education and Others, Writ Petition No. 11111 of 1996, decided on 12.11.2010**. It is submitted that while considering the entitlement of a Professor serving in the Central Potato Research Institute, Allahabad, the Full Bench examined the scope and object of the benefit of continuation in service till the end of the academic session. Learned counsel submits that the principles laid down in the said judgment fully support the stand of the respondents and govern the controversy involved in the present case. The relevant observations of the Full Bench are reproduced hereinafter:

"16. The rules of superannuation prescribed in respect of public servants are based on consideration of life expectancy, and the capacity of the civil servant, having regard to the climatic conditions in which they work and the nature of work, they do. The rules do not involve the exercise of any discretion. They apply uniformally to all public servants, under the category, in respect of which they are framed. In Ram Deka vs. General Manager, North East Frontier Railway AIR 1964 SC 600 the Supreme Court said that the competent authority may frame rules under Article 309 of Constitution which corresponds to Section 124 of the Constitution for compulsory retirement of a government servant. All those rules as laid down in State of Bombay v. Saubhag Chand M. Doshi AIR 1957 SC 892 will be valid provided they fix both the age of superannuation and an age of compulsory retirement and the services of permanent civil servants are terminated between these two points of time. In Ram Autar Pandey v. State of Uttar Pradesh, AIR 1962 All 328 (FB) a Full Bench of our Court observed:-

"The purpose of Fundamental R. 56 is not to confer upon Government servants any right to be retained in service up to a particular age, but to prescribe the age beyond which they may not be retained in service.

This shows the intention with which the rule was framed. What to say of a vested right, not even a right was intended to be conferred by R. 56. The petitioner could not, therefore, say that

because at one stage 58 was the age of superannuation according to the rule a right was conferred upon him under which he could insist that he should be retained in service till that age and that the rule-making authority had lost its right to change the rule and to reduce the age of superannuation to a lower figure."

17. In this reference, we are concerned with extension of service as an exception to FR-56 (a), to the petitioner. Any exception to the rule of universal application, has to be strictly construed. In State of Assam vs. Basanta Kumar Das AIR 1973 SC 1252 the Supreme Court held in a case of Professor and Head of Department of Physics in Government Cotton College, Guwahati that a government servant has no right to continue in service beyond the age of superannuation prescribed in the statutory rules. If he is retained beyond that age it is only in exercise of the discretion of the Government. In B.N. Mishra vs. State of UP AIR 1965 SC 1567 it was held that the State Government was not obliged to retain the services of every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency, and exigencies of public service. If the Government decides to retain the services of some government servants after the age of retirement, it must retain every government servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency, and exigencies of public service. In State Bank of Bikaner and Jaipur and others vs. Jag Mohan Lal 1989 Supp 1 SCC 221 the Supreme Court, considering the refusal of the bank to grant extension to the respondent upon his completion of 58 years, held that the retention beyond the age of superannuation is within the discretion of employer. There is no right to continue in service beyond the age of superannuation. The extension to some employees does not imply discrimination against those who were not given extension.

18. In order to meet the difficulties faced by the students on the change of a teacher in educational institutions in the middle of the academic session, the State Government decided by Government Order dated 21.3.1984, to carve out an exception for giving benefit of extension of service to the teachers upto the end of the academic session, subject to the conditions that their work and conduct is satisfactory; they are fit both physically and mentally, and are teaching any subject regularly in the school. The Government Order provided for exemption of each case individually by the State Government, on presentation of such facts by the competent authorities. Later the Government Order dated 20.4.1995 removed the condition of consideration of each case individually and supplemented it with the condition that the extension will not be granted if any adverse fact is reported against the teacher. The Principals were made responsible to report at least one month before the superannuation, any adverse fact such as unsatisfactory work, or the unfitness of such teacher. The condition precedent of extension of service, namely employment of the teacher in a Government educational institution to be terminated by superannuation in the middle of the academic session, is thus to be strictly complied with.

19. We find substance in the contention of learned Chief Standing Counsel, on the averments in the counter affidavit and material placed on record that CPI, Allahabad, is primarily engaged in educational research work, for reorientation of educational system. The institute conducts research work in comparative analysis of educational standards, and facilities in rural and urban areas, the difficulties faced by under-privileged children in the schools; the recommendation for extra-curriculum activities such as debates, organizing special lecturers and seminars. The institute is also engaged in preparing curriculum and publishing of books relating to teaching. The training of LT grade teachers was also undertaken by the institute for some time. It was later on stopped. A Model School was being run in the

premises of CPI, Allahabad in which the teaching of Classes-I to VIII was undertaken. The school had separate teachers with service conditions regulated by the rules framed by Basic Education Board and the regulations applicable to the teachers of the Board.

20. Smt. Prema Rai, Principal of the Government, CPI, Allahabad did not recommend for extension of service of the petitioner vide her letter dated 23.3.1996, to the Director of Education (Secondary) on the ground that the petitioner had not performed any regular teaching work and was engaged in the institute, in research work. The petitioner had orally informed her that she had taught Psychology, as a subject but that there is no proof of such teaching from the time table of the teachers training. In para-3 of her letter she has stated that there is no academic session in the institute. The teachers and Professors in the institute avail 31 days earned leave and also get the benefit of leave encashment. Smt. Dhulia-the petitioner also availed the benefit of earned leave.

21. The object of giving benefit of extension of service beyond the prescribed age of superannuation to the teachers upto end of the academic session i.e. 30th June uniformally, without any reference of individual case, except in case of unsatisfactory work and failing health, is to maintain the continuity in teaching work in educational institutions. In order to ensure that the students do not suffer, on account of the change of teachers in the middle of the academic session, the teachers teaching regular subjects are given extension of service upto the end of academic session commonly known as sessions benefit. The teaching of any subject and the incomplete academic session, are the twin requirements for allowing the benefit of extension of service to such teachers. If any of these requirements are missing, the teacher is not getting the benefit of the policy, to continue beyond the age of superannuation.

22. The exceptions to the general rule have to be construed strictly in order to achieve the object for which such exceptions are made. The special benefit given to the teachers for avoiding any inconvenience to the students and to maintain the regularity of the academic session, can be availed by teachers only to extend their service after the age of their superannuation, only if they fulfill such conditions laid down in the Government order dated 21.3.1984."

It is submitted that while considering the entitlement of a Professor serving in the Central Potato Research Institute, Allahabad, the Full Bench examined the scope and object of the benefit of continuation in service till the end of the academic session. Learned counsel submits that the principles laid down in the said judgment fully support the stand of the respondents and govern the controversy involved in the present case.

37. We further submit, in light of the observations made by the Court in the case of Dr. Indu Singh vs. State of Uttarakhand & others, 2017 SCC Online Utt 1527, decided by the Division Bench of the Uttarakhand High Court, that the benefit of continuance till the end of the academic session is available only to those teachers who are actually discharging teaching duties. The determination as to whether the petitioner was in fact functioning as a teacher, i.e., performing teaching duties, is a matter to be decided by the competent authority. In view of the aforesaid legal position, the petitioner is not entitled to any such benefit.

38. Having bestowed anxious consideration upon the rival submissions advanced by learned counsel for the parties, examined the pleadings brought on record, the statutory scheme governing the Uttar Pradesh Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958, the Statutes adopted by the Banda University of

Agriculture and Technology from the Chandra Shekhar Azad University of Agriculture and Technology, Kanpur, the Government Order dated 14.06.2022, as well as the authorities cited at the Bar, this Court is of the considered opinion that the petitioner has failed to establish any enforceable legal or statutory right warranting interference under Article 226 of the Constitution of India.

39. There is no quarrel with the proposition that the petitioner was substantively appointed as an Associate Professor and that a "teacher" under Section 2(k) of the University Act includes a person engaged in imparting instruction, conducting research or guiding extension programmes. Equally, there is no dispute that the Statutes governing the University regulate the age of superannuation of teachers. However, the controversy in the present case does not revolve around the age of retirement but concerns the claim for continuation in service beyond the date of superannuation till the conclusion of the academic session. Such continuation cannot be equated with the normal tenure of service nor can it be elevated to the status of an indefeasible statutory entitlement.

40. The legislative intent, the applicable Statutes and the executive policy, when harmoniously construed, unmistakably demonstrate that the extension till the end of the academic session is conceived solely to subserve academic continuity and to protect the interest of students from disruption in the midst of an ongoing session. The object is institutional and not individual. It is neither a reward for long service nor an incident of the substantive appointment. The benefit is conditioned upon the existence of circumstances which justify its grant, namely, that the incumbent is actually engaged in regular teaching so that discontinuance midway through the academic session would adversely affect the instructional process.

41. The material placed before this Court reveals that, at the relevant point of time, the petitioner was functioning as In-charge of the Millets Research Station, Gursarai. The petitioner has not been able to demonstrate that he was entrusted with regular classroom teaching, that he was handling undergraduate or postgraduate courses during the academic session immediately preceding his retirement, or that his retirement would interrupt any teaching programme or academic curriculum. Mere continuance on the substantive cadre of Associate Professor or the drawing of salary against that post cannot, by itself, satisfy the essential requirement underlying the grant of session benefit.

42. The submission that the petitioner continued to remain a "teacher" within the meaning of Section 2(k) also does not advance his case. The statutory definition may determine the nature of his appointment; however, it does not ipso facto confer an unconditional right to continuation beyond the age of superannuation. A distinction has to be maintained between the status of a teacher and the eligibility to claim an exceptional concession after retirement. To obliterate such distinction would render otiose the very object behind the policy governing continuation till the end of the academic session.

43. This Court also finds substance in the submission advanced on behalf of the respondent-University that the benefit of continuation beyond the age of superannuation is in the nature of a limited concession intended to secure continuity of teaching and not a vested service right. The law on this aspect is no longer res integra.

44. In Sri Ram Singar Singh (supra), this Court categorically held that the session benefit is granted only to avoid inconvenience to students and to ensure completion of the academic curriculum. It was

unequivocally observed that such continuation is not a right but merely a concession dependent upon fulfilment of prescribed conditions, including actual engagement in regular teaching.

45. The aforesaid principle stands authoritatively reinforced by the Full Bench in Sumitra Dhulia (supra), wherein it was held that extension beyond the age of superannuation constitutes an exception to the general rule and, therefore, must receive strict construction. The Full Bench emphatically held that the twin conditions for grant of session benefit are that the employee must be teaching regular subjects and that the academic session should remain incomplete. In the absence of either condition, the benefit cannot be claimed. The Full Bench further clarified that an employee engaged primarily in research activities, unconnected with regular classroom teaching, cannot invoke the policy of continuation till the end of the academic session merely because he belongs to an educational institution.

46. The same principle has also been reiterated by the Division Bench of the Uttarakhand High Court in Dr. Indu Singh (supra), wherein it was held that the benefit is confined only to those teachers who are actually discharging teaching duties and that the determination of such factual aspect falls within the domain of the competent authority.

47. Tested on the touchstone of the aforesaid settled principles, the petitioner's claim does not merit acceptance. The competent authority has recorded that the petitioner was not engaged in regular teaching but was discharging duties at the Millets Research Station. No material of unimpeachable character has been placed before this Court to demonstrate that such finding suffers from perversity, mala fides, arbitrariness or patent illegality. In exercise of its writ jurisdiction, this Court cannot substitute its own opinion for that of the competent authority in matters involving factual assessment, unless the decision is shown to be manifestly unreasonable or contrary to law, which is conspicuously absent in the present case.

48. The plea founded upon parity with Dr. Virendra Kumar Singh is equally misconceived. Article 14 embodies a positive concept of equality and does not envisage perpetuation of benefits dehors the governing statutory framework. A claim based upon parity must necessarily rest upon complete identity of factual and legal circumstances. The petitioner has failed to establish that the said officer was similarly situated with regard to the nature of duties actually being discharged at the relevant time. In any event, a benefit allegedly extended in another case cannot furnish an independent source of legal entitlement.

49. Likewise, the pendency of proceedings relating to promotion does not enlarge the petitioner's right to continue in service beyond the prescribed age of superannuation. Promotion and continuation after retirement operate in distinct legal fields and are governed by separate considerations.

50. For all the reasons recorded hereinabove, this Court is satisfied that the impugned orders neither suffer from any jurisdictional error nor disclose any violation of the statutory provisions governing the Agricultural University. The decision of the respondent-University is consistent with the object underlying the applicable Government Orders, the adopted Statutes and the binding judicial precedents governing the field. No ground is, therefore, made out for exercise of the extraordinary discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

51. Accordingly, the writ petition, being devoid of merit, fails and is, hereby, **dismissed**. No order as to costs.

(2026) 7 ILRA 917
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Special Appeal No. 74 of 2026
& Other Connected Case

Arya Pratinidhi Sabha & Anr. ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Validity of order of the Deputy Registrar referring the election dispute before the Prescribed Authority u/s 25(1) of Societies Registration Act, 1860.
(2) Jurisdiction of the Prescribed Authority to decide the issue of membership, while adjudicating the election dispute referred u/s 25(1) of Societies Registration Act, 1860.

Headnotes

(A) Local bodies law – Societies Registration Act, 1860 – Ss. 4, 4B and 25(1) – Society – Election dispute – Issue of membership – Single Bench directed the Deputy Registrar to refer the election dispute before the Prescribed Authority u/s 25(1) – Validity challenged – Jurisdiction of Prescribed Authority to decide the issue of membership also felt into consideration .

Held : An election dispute cannot be decided by the Deputy Registrar and it can only be decided by the Prescribed Authority under Section 25 of the Societies Registration Act, 1860 – The Prescribed Authority while deciding the election dispute has in a way to also decide the issue of membership as an incidental and ancillary issue to the larger dispute of election. Further, the Prescribed Authority in deciding and/or clearing the said doubt has to arrive at its own conclusion relating to the membership of the society and in doing so has to take various evidence/material placed before it keeping in mind the relevant factors as well as the bye-laws of the society and documents of the nature mentioned in Section 4B of the Societies Registration Act, 1860. [Para 43 and 52] (E-1)

Case Law Cited

C/M Anjuman Kherul Almin, Allahganj and another vs. State of U.P. and others, 2013 SCC OnLine All 14353; Kisan National Education Trust Pratapganj and Another vs. Prescribed Authority (S.D.M.) and others, 2018 SCC OnLine All 6120 : 2019 (1) ADJ 817; C/M, Shri Vidur Sewa Ashram and others vs. State of U.P. and others, 2018 SCC OnLine All 8880 : 2018 (5) ADJ 717; Sarva Uttar Pradesh Gramin Bank vs. Manoj Kumar Sinha, (2010) 3 SCC 556; Surendra Kumar Verma vs. State of U.P. and others, 2002 SCC OnLine All 188; Kedar Shashikant Deshpande vs. Bhor Municipal Council, (2011) 2 SCC 654; Bihar Industrial Area Development Authority & Ors. vs. M/s SCOPE Sales Pvt. Ltd. & Anr., 2026 INSC 89: 2026 SCC OnLine SC 112; C/M, Anjuman Kherul Almin, Allahaganj and Another vs. State of U.P. and Others, 2013 SCC OnLine All 14353 : 2014 (1) ADJ 44 (DB); Vidur Sewa Ashram & others vs. State of U.P. & others, 2018 SCC OnLine All 8880 : 2018 (5) ADJ 717; Sita Ram Rai & others vs. Assistant Registrar, Firms, Societies & Chits, Gorakhpur, 2003 SCC OnLine All 689 : 2003 (5) AWC 4159; Vindhya Vasini vs. Prescribed Authority & others, 2002 SCC OnLine All 1291 : 2002 (2) AWC 1623 **– referred to.**

List of Acts

Allahabad High Court Rules, 1952 – Ch. VIII, R. 5; Societies Registration Act, 1860 – Ss. 4, 4B, 25(1).

List of Keywords

Society, Cultural upliftment of the society, Registration, Renewal, Resolution for expelling the appellant, Governing body, Meeting, Termination of primary membership, Tenure of Committee of Management, Adjudication on merit, Jurisdiction, Election dispute, Reference, Plausible and reasonable view, Perversity, Erroneous, Consequential effect, Membership of society, Issues of overlapping in nature, Legitimate member, Incidental, Electoral roll, Bona fide vote, Perennial problems, Legitimacy of functioning.

Case Arising From

Judgment and order dated 19.12.2025 passed by Single Judge Bench in Writ C No. 12312 of 2025 and Writ C No. 12346 of 2025.

Appearances for Parties

Advs. for the Appellant : Sandeep Dixit, Sr. Adv.; Atul Kumar Dwivedi.

Advs. for the Respondents : Gaurav Mehrotra, Sr. Adv.; Sameer Kalia, Sr. Adv.; Ms. Manjari; Ashwani Kumar; Harsh Vardhan Mehrotra; Maria Fatima; Mohammad Fahad; Mohammad Shameem Rizvi; Prateek Pal Singh; Shubhi Sharma.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

Heard Shri Sandeep Dixit, learned Senior Counsel, assisted by Shri Atul Kumar Dwivedi, appearing on behalf of the appellants, Shri Gaurav Mehrotra, leaned Senior Counsel, assisted by Ms. Manjari, Advocate, Shri Sameer Kalia, learned Senior Counsel, assisted by Ms. Shameem Rizvi and Subhi Sharma and Shri Prateek Pal Singh, learned counsels appearing on behalf of respondents.

Prologue

2. The present two special appeals have been preferred by the appellants under Chapter VIII, Rule 5 of the Allahabad High Court Rules, 1952 interdicting two separate orders of same date i.e. 19.12.2025, passed by the learned Single Judge in:

(i) Writ-C No. 12312 of 2025 (Arya Pratinidhi Sabha Thru. President Pradhan, Dr. Ram Ratan Chaturvedi and Another vs. State of U.P. and others); and

(ii) Writ-C No. 12346 of 2025 (Arya Pratinidhi Sabha Thru. Pradhan, Devendra Pal Verma and Another vs. State of U.P. and others).

The facts and circumstances involved in both the special appeals are common and relating to the affairs of the society- 'Arya Pratinidhi Sabha' and moreover the aforesaid two impugned orders passed in their respective writ petitions arises out of a common order dated 05.12.2025 passed by the Deputy Registrar, Firms, Societies and Chits, Lucknow Division, Lucknow. Therefore, both these Special Appeals have been heard together and as such they are being decided by this common judgment.

Factual Matrix

3. Succinctly, the facts as per the Appellant would be that □Arya Samaj□ was founded by Swami Dayanand Saraswati in the year 1875 with the primary objective of promoting the social, spiritual and cultural upliftment of the society. It has a four-tier organizational structure comprising: (i) the Sarvadeshik Arya Pratinidhi Sabha, (ii) the Pradeshik Arya Pratinidhi Sabha, (iii) the Zila Arya Pratinidhi Sabha, and (iv) the Arya Samaj Units.

4. There are approximately 300 registered Arya Samaj Units functioning across various districts of Uttar Pradesh. These Units constitute the electoral college for the election of the General Body of the Pradeshik Arya Pratinidhi Sabha. The General Body, in turn, elects the Governing Body (Antrang Sabha). The Sarvadeshik Arya Pratinidhi Sabha at New Delhi has framed its own Rules and Sub-Rules, which are binding upon all Arya Samaj Units affiliated to the Pradeshik Arya Pratinidhi Sabha.

5. The **appellant no.1- Arya Pratinidhi Sabha** for the State of Uttar Pradesh stands duly registered under the Societies Registration Act, 1860. The Society is required to functions in accordance with its registered bye-laws, which define its constitution and delineate the powers and duties of the General Body, the Governing Body (also known as the □Antrang Sabha□),s and its office bearers. The registered bye-laws of the society prescribes a tenure of five years for the Committee of Management. The registration of the society has been renewed from time to time, and the last renewal was granted on 16.01.2021 for a period of five years with effect from 10.10.2020.

6. The last undisputed elections of the society were held on 27.03.2016, in which Devendra Pal Verma, (hereinafter referred to as 'the appellant No.2') was elected as 'Pradhan', while Late Dheeraj Singh was elected as 'Up-Pradhan'. Subsequently, dispute arose in the society relating to the working of the Pradhan, resulting in the passing of an order by the Deputy Registrar, whereby the appellant No.2 was restrained from discharging his powers and functions as Pradhan and Late Dheeraj Singh was appointed as officiating Pradhan vide order dated 09.11.2016, passed by the Deputy Registrar. The said order was challenged by the appellant No.2 by filing Writ Petition (C) No.59067 of 2016 (say Writ-I) before this Court, which was subsequently withdrawn with liberty to file a fresh petition. Thereafter, another writ petition being Writ Petition No.10563 (M/S) of 2017 (say Writ-II) was filed by the appellant No.2 before this Court.

7. In the meantime, the Deputy Registrar passed another order dated 16.01.2017, vesting the charge of the office of Pradhan in Smt. Gayatri Dixit, the senior-most Up-Pradhan of the society. Obviously, the said order came to be challenged by Late Dheeraj Singh by filing Writ Petition No.1829 (M/S) of 2016 (say Writ-III), in which an interim order dated 25.01.2017 staying the operation of the order dated 16.01.2017 was passed.

8. On the heels of the aforesaid stay order, Late Dheeraj Singh allegedly convened a meeting of 'Antarang Sabha' on 25.03.2017 and General Body on 26.03.2017, resultantly passing a resolution for expelling the appellant No.2 from the membership of the society, for a period of 6 years. Aggrieved by the same, Appellant No.2 lodged a complaint before the Deputy Registrar, who, vide order dated 30.03.2017, stayed the effect of the resolution dated 26.03.2017. The said order dated 30.03.2017 also came to be challenged by Late Dheeraj Singh by filing a Writ Petition

No. 7613 (M/S) of 2017 (say Writ-IV), wherein an interim order was passed on 12.04.2017, staying implementation of order dated 30.03.2017.

9. During the pendency of the aforesaid Writ petition, a meeting of Governing Body of the society was held on 23.07.2017, wherein Late Dheeraj Singh was elected as 'Pradhan', the membership of existing Pradhan namely, Smt. Gayatri Dixit was terminated as being ineligible. Subsequently, on 24.07.2017 a meeting of the General Body was conducted at Muzaffarnagar, wherein the appellant No.2 and two other members were expelled from the membership.

10. All the aforesaid three writ petitions were clubbed together and disposed of by the learned Single Judge of this Court vide judgment dated 30.07.2019. By the said judgment, the aforesaid orders dated 09.11.2016, 16.01.2017 and 30.03.2017 of the Deputy Registrar were set aside and the matter was remitted to the Deputy Registrar, Firms, Societies and Chits, with directions to decide the matter by a reasoned and speaking order after affording opportunity of hearing to all concerned parties, including the issue of entitlement of the appellant No.2 to hold the office of Pradhan and the membership of Late Dheeraj Singh.

11. During the pendency of the proceedings, the appellant No.2 came to be ousted from Arya Samaj, Muzaffarnagar. Consequently, the Deputy Registrar passed an order dated 02.11.2019 rejecting the complaint of the appellant No.2 on the ground that he was not a valid member of Arya Samaj. The said order was also challenged by the appellant No.2 by filing Writ Petition No.4515 (M/S) of 2020 (Say Writ-V).

12. In the meanwhile, disputes arose regarding the post of Secretary. Late Dheeraj Singh appointed Shri Gyanendra Singh as 'Secretary', while Vishal Singh claimed to be the 'Officiating Secretary' and filed a complaint. The Deputy Registrar, vide order dated 09.01.2020, directed Late Dheeraj Singh to convene a meeting of the 'Antarang Sabha' to fill up the post of 'Secretary' in accordance with the bye-laws of the society.

13. Thereupon, on the complaints made by some reputed members, an enquiry was conducted which revealed that Late Dheeraj Singh had obtained membership of 'Arya Samaj Baldev Ashram, Khurja, Bulandshahr' on the basis of some fake and forged documents. Consequently, an F.I.R. was also registered against him and accordingly, his primary membership was terminated vide an order dated 01.02.2020.

14. In the interregnum, the order dated 09.01.2020, passed by the Deputy Registrar for conveying a meeting for filling of the post of □Secretary□, was challenged by Late Dheeraj Singh and Shri Gyanendra Singh in Writ Petition No.7217 (M/S) of 2020 (say Writ-VI); wherein learned Single Judge of this Court was informed about the termination of membership of Late Dheeraj Singh on 01.02.2020. Thus, an interim order dated 06.03.2020 was passed directing that if any election is held in pursuance to the order dated 09.01.2020, that would be subject to the final adjudication of the said writ petition. Against the aforesaid interim order, a Special Appeal No.139 of 2020 came to be filed which was dismissed by a Division Bench of this Court vide an order dated 13.03.2020.

15. Consequent to the termination of primary membership of Late Dheeraj Singh on 01.02.2020, the Arya Pratinidhi Sabha passed a no-confidence motion against him on 16.02.2020 and removed him from the post of Pradhan. Resultantly, the vacancy was filled and the list of the governing body for 2019-20 was forwarded to the Deputy Registrar for registration. The Deputy Registrar, vide an order dated 19.03.2020, registered the Committee of Management for 2019-2020 subject to the outcome of Writ Petition Nos.7217 (M/S) of 2020 and 4515 (M/S) of 2020.

16. The order dated 01.02.2020 terminating the membership of Late Dheeraj Singh was challenged by him in Regular Suit No.581 of 2020, wherein an order of status quo was passed on 28.02.2020, but the implementation of the termination order was not stayed. Thereafter, Late Dheeraj Singh filed Writ Petition No.9735 (M/S) of 2020 (Say Writ-VII). The Regular Suit was withdrawn on 17.03.2021 without liberty, and Writ Petition No.7217 (M/S) of 2020 was also dismissed as withdrawn on 18.03.2021.

17. Subsequently, the Society under the leadership of appellant No.2, made certain enquiry and terminated the memberships of large number of persons, as allegedly having been illegally inducted by Late Dheeraj Singh. The said action was approved on 21.09.2020 and the amended list was registered on 21.11.2020, before the Deputy Registrar. However, the said order was challenged in Writ Petition Nos. 25151 (M/S) of 2020 (say Writ-VIII); and 25284 (M/S) of 2020 (say Writ-IX); before a learned Single Judge of this Court, which were set aside on 02.02.2021, and matter was remanded to the Deputy Registrar, who again passed a fresh order on 15.03.2021 maintaining the registration.

18. In the meantime, as the tenure of the Committee of Management was expiring, fresh elections were held and the list of General body members was published on 05.03.2021, in the weekly newspaper ‘Arya Mitra’. Elections were conducted on 21.03.2021; the results were declared the same day, wherein Appellant No. 2 was elected unopposed as ‘Pradhan’. The Governing body list and election papers were submitted on 22.03.2021 and registered by the Deputy Registrar on 26.03.2021.

19. In the interregnum, Writ Petition Nos. 4515 (M/S) of 2020; and 9735 (M/S) of 2020 (i.e. Writ-V and Writ- VII) were heard together and were decided by this Court on 07.06.2021 in which the order dated 19.03.2020 was set aside and the matter was remitted to the Deputy Registrar for fresh decision on merits. Writ Petition No. 4515 (M/S) of 2020 filed by Appellant No. 2 was dismissed, noting that his primary membership had been restored and not challenged by any aggrieved person.

20. Against the judgment dated 07.06.2021, insofar as it related to Writ Petition No.4515 (M/S) of 2020, the appellant No.2 filed Review Application No.94 of 2021, which was dismissed vide a detailed reasoned order dated 16.08.2023. The judgment dated 07.06.2021 insofar as it related to Writ Petition No.9735 (M/S) of 2020 was challenged by the society in Special Appeal No.217 of 2021, which was disposed of on 01.07.2021 with directions to the Deputy Registrar to pass a fresh reasoned order considering all relevant issues.

21. In compliance of the aforesaid judgments, the Deputy Registrar was seized of the matter. However, by order dated 23.04.2022, the matter was referred to the Prescribed Authority. The said order was challenged in Writ-C No.3418 of 2022 (say Writ-X), which was allowed on 18.09.2024, and the matter was again remitted to the Deputy Registrar for a fresh reasoned and speaking order, after examining the records and submissions of the parties.

22. In pursuant to the judgment dated 18.09.2024, the appellant No.2 filed a detailed claim along with evidence on 27.12.2024, pointing out the non-membership and expulsion of Opposite Party Nos.3 and 4 and the restoration of his own membership. Consequently, the Deputy Registrar passed an order dated 09.01.2025 declaring the elections time-barred and directing fresh elections under Section 25(2) of the Societies Registration Act, 1860. The said order was set aside by this Court on 26.08.2025 in a bunch of writ petitions being, Writ-C- No. 1263/2025; (say Writ-XI), Writ-C- No 702/2025; (say Writ-XII), Writ-C- No 4172/2025; (say Writ-XIII), and Writ-C- No 4500/2025; (say Writ-XIV), with a specific directions to the Deputy Registrar to pass a fresh order after considering the earlier judgments dated 07.06.2021, 16.08.2023 and 18.09.2024 and the material placed by the parties.

23. After the pronouncement of the judgment dated 26.08.2025, further submissions were filed by the appellant No.2. However, the Deputy Registrar passed the impugned order dated 05.12.2025 allegedly ignoring the directions of this Court and the material on record, including the removal of 22 illegally inducted members and the non-membership of rival claimants such as Acharya Swadesh (whose membership was terminated for 12 years on 23.01.2014) and others. The said order dated 05.12.2025 was challenged by the appellants in Writ-C No.12346 of 2025 (say Writ-XV), and by Dr. Ram Ratan Chaturvedi □Pradhan□ vide Writ □C-12312 OF 2025 (say Writ-XVI). Both the said writ petitions were decided by the impugned judgment dated 19.12.2025, whereby the disputes essentially being in the nature of elections were directed to be referred to the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860.

24. It is this judgment and order dated 19.12.2025, which has been impugned in the present Special Appeals. The appellants are assailing the directions contained in paragraph 8 of Writ-C No. 12346 of 2025; ((Arya Pratinidhi Sabha Thru. Pradhan, Devendra Pal Verma and Another vs. State of U.P. and others), and paragraphs no.9 and 10 of Writ-C No. 12312 of 2025; (Arya Pratinidhi Sabha Thru. President Pradhan, Dr. Ram Ratan Chaturvedi and Another vs. State of U.P. and others), wherein the Registrar has been directed to refer the present dispute to the prescribed authority under Section 25(1) of the Society Registration Act, 1860.

25. The case of the appellants is that the learned Single Judge, while passing the impugned judgment, failed to consider the binding earlier judgments of Co-ordinate Benches and the Division Bench of this Court remitting the matter to the Deputy Registrar for adjudication on merits, and that the directions in paragraph 8 (or 9 and 10 of the other writ) are contrary to the said earlier judgments.

Contention of the Appellants

26. Mr. Sandeep Dixit, learned Senior Counsel appearing for the appellants has fairly submitted that his clients are partly aggrieved by the impugned judgment, in as much as the directions issued by the learned Single Judge, as contained in paragraph no.8 of Writ-C No. 12346 of 2025; (Arya Pratinidhi Sabha Thru. Pradhan, Devendra Pal Verma and Another vs. State of U.P. and others), and paragraphs no.9 and 10 of Writ-C No. 12312 of 2025; (Arya Pratinidhi Sabha Thru. President Pradhan, Dr. Ram Ratan Chaturvedi and Another vs. State of U.P. and others), are only under challenge.

27. According to Mr. Dixit, learned Senior Counsel appearing for the appellants, the learned Single Judge, while passing the impugned order, has failed to consider the detailed judgments passed by the Co-ordinate Benches on earlier occasions with regard to the adjudication of the various issues in question. Consequently, according to him, the learned Single Judge has erroneously directed the Deputy Registrar, Firms, Societies and Chits, Uttar Pradesh, Lucknow to refer the dispute to the Prescribed Authority. He further submits that the impugned judgment cannot render futile the earlier judgments passed by the Co-ordinate Benches and that the learned Single Judge ought not to have taken a divergent view from the earlier judgments.

28. The learned Senior counsel has vociferously submitted that the impugned order has failed to consider the judgments dated 07.06.2021, 18.09.2024 and 26.08.2025 passed by the Co-ordinate Benches of this Court, by virtue of which, various issues were relegated to the Deputy Registrar, Firms, Societies and Chits, Uttar Pradesh, Lucknow. Expanding further, Mr. Dixit has submitted that the learned Single Judge has failed to consider that the Deputy Registrar had been remitted the matter vide an order dated 07.06.2021 for decision on the matter referable to the proceedings under Section 4 and 4-B of the Act of 1860, which exclusively lie within the jurisdiction of the Deputy Registrar and as such, according to him, the direction of the learned Single Judge construing even this dispute to be an election dispute could not had referred the same to the Prescribed Authority under Section 25(1) of the Act.

29. He further submits that the core dispute relating to the membership of the society could not have been referred to the Prescribed Authority and, therefore, in that regard, the order passed by the learned Single Judge is faulted and bad in law. Other grounds relating to the non-consideration of specific averments of the appellant to the effect that Shri Bhuwan Tiwari is a rank outsider and not a primary member of any unit of Arya Samaj, and that Acharya Swadesh had been expelled from the primary membership for a period of 12 years, in 2014 have also not been considered by the learned Single Judge.

30. According to the learned Senior counsel, the factum of Dr. Ram Ratan Chaturvedi, having been never inducted as a member of the society was not considered by the learned Single Judge, which goes to the root of the controversy. Thus, he submits that most of the claimants are strangers/non-members of the society and, therefore, had no authority to hold any election for the Managing Committee of the society. As such, the automatic direction issued to the Deputy Registrar to refer the dispute to the Prescribed Authority for decision under Section 25(1) of the Societies Registration Act, 1860, was unwarranted. He vehemently submitted that the order passed by the learned Single Judge deserves to be modified and/or set aside to that extent.

Contention of the Respondent

31. On the other hand, Mr. Gaurav Mehrotra, learned Senior Advocate appearing for respondent no.4, has controverted the submissions advanced by the learned Senior Counsel for the appellants and submitted that, in cases involving rival claims of the Committee of Management, the Deputy Registrar has no jurisdiction to adjudicate the dispute. Such matter is required to be referred by the Deputy Registrar to the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860, for adjudication. In order to buttress the aforesaid submission, Mr. Mehrotra has placed reliance on the judgment and order dated 18.12.2013, passed in **Special Appeal (Defective) No. 1286 of 2013 (C/M Anjuman Kherul Almin, Allahganj and another vs. State of U.P. and others), reported in 2013 SCC OnLine All 14353.**

32. Mr. Mehrotra has vehemently submitted that the impugned order is legal and valid inasmuch as the law is settled that, while exercising its powers under Section 25(1) of the Societies Registration Act, 1860 the 'Prescribed Authority' is competent to decide the issue of membership, as an ancillary issue and to determine the composition of electoral college/general body of the society incidentally. In support of the said submission, he has placed reliance upon the judgment and order dated 14.09.2018 passed in **Writ-C No. 23628 of 2014 (Kisan National Education Trust Pratapganj and Another vs. Prescribed Authority (S.D.M.) and others, reported in 2018 SCC OnLine All 6120 : 2019 (1) ADJ 817; as well as Committee of Management, Shri Vidur Sewa Ashram and others vs. State of U.P. and others, reported in 2018 SCC OnLine All 8880 : 2018 (5) ADJ 717.**

33. According to Mr. Mehrotra, the impugned order does not, in any manner, causes any prejudice to the cause of the appellants, inasmuch as, the learned Single Judge has left all the issues and controversies open to be adjudicated by the Prescribed Authority. Therefore, there was no occasion for the appellants to file the present appeals. He also submits that the law in this regard is very clear and well settled, inasmuch as the appellant is not only required to show that any law has been violated, but it must also be shown that some prejudice has been caused. It is the submission of Shri Mehrotra that, apparently, no prejudice has been caused to the appellant, as the issue being agitated before the Division Bench could also have been agitated before the Prescribed Authority by the appellant. In this regard, he relies on the judgment of the Hon'ble Supreme Court passed in Sarva Uttar Pradesh Gramin Bank vs. Manoj Kumar Sinha, reported in (2010) 3 SCC 556; and Surendra Kumar Verma vs. State of U.P. and others, reported in 2002 SCC OnLine All 188.

34. Mr. Mehrotra has also drawn the attention of this Court to the factum of participation of the Appellants in the proceedings before the Prescribed Authority pursuant to the passing of the impugned orders by the learned Single Judge. During the course of hearing, he has submitted a certified copy of the adjournment requested by the appellant No. 2 (Devendra Pal Verma) vide an application dated 14.01.2026 before the Prescribed Authority, followed by another application seeking adjournment on 19.01.2026. According to the learned Senior Counsel, a facial reading of both the applications seeking adjournment clearly signifies that Devendra Pal Verma has subjected itself to the jurisdiction of the Prescribed Authority and willingly participated in the proceedings without any demur and as such, the present appeal is not maintainable. According to him, once appellant- Devendra Pal Verma had submitted to the jurisdiction of the Prescribed Authority and

participated in the proceedings, he would be deemed to have acquiesced in the authority's jurisdiction. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of **Kedar Shashikant Deshpande vs. Bhor Municipal Council, reported in (2011) 2 SCC 654**; in this regard.

35. Towards the end, it has been submitted by Mr. Mehrotra and not controverted by Mr. Dixit, learned Senior counsels appearing for the parties that the Prescribed Authority, pursuant to the impugned order passed by the learned Single Judge, the learned Prescribed Authority in terms of Section 25(1) of the Societies Registration Act has already adjudicated upon the rights of the parties and the controversies between them. According to Mr. Mehrotra, as a matter of fact, even the said decision of the Prescribed Authority is a subject matter of challenge before a Single Judge of this Court and according to him, all the issues are engaging the attention of the said Court. Therefore, according to Mr. Mehrotra, the present special appeal, besides lacking merits, is purely academic in nature and infructuous as all the issues are again open for adjudication before the learned Single Judge of this Court.

Reasoning and Finding

36. We have considered the rival submissions of learned Senior counsels of the contesting parties and the materials available on record.

37. Having perused the material on records, we have no hesitation in observing that, the present society has a chequered history of litigation. There have been dozens and scores of litigations filed inter-se between the parties on a drop of hat and we find that, on each occasion, the matters have been remanded to the Deputy Registrar for adjudication of the rights of the parties in the past 10 years in almost four-five rounds of litigation, without any respite. Apparently, the issue had been moving in a circular clock-wise manner from the Registrar of Societies, then to the learned Single Judge of this Court, then to a Division Bench of this Court and then again back to the pavilion of Registrar of Societies, on remand either by the learned Single judge or by a Division Bench of this Court.

38. If we move little anti-clock wise in time, this Court finds that the impugned order dated 19.12.2025 has been passed in two writ petitions filed by two different individuals, namely, Devendra Pal Verma (appellant No.2) and Dr. Ram Ratan Chaturvedi, both of whom claiming themselves to be □Pradhan□ of the society. Both of them have challenged the same order dated 05.12.2025, by virtue of which the Deputy Registrar, Firms, Societies and Chits, Lucknow Division, Lucknow, was adjudicating various issues remanded to him vide a judgment dated 26.08.2025 passed by a learned Single Judge of this Court in four writ petitions being, Writ-C- No. 1263/2025, 702/2025, 4172/2025 and 4500/2025. Apparently, vide the said impugned order the Deputy Registrar, returned a finding that the elections of Devendra Pal Verma held on 21.03.2021 and Ram Ratan Chaturvedi held on 27.03.2021 were invalid (both of whom filed writ petitions challenging the same). The Registrar concerned, also vide the same order held that the election of Bhuwan Tiwari held on 27.03.2021 to be valid and in accordance with law.

39. Ironically, the present intra-court Appeal is yet another litigation being fought in a circular clock-wise manner, wherein the order dated 05.12.2025 of the Deputy Registrar of societies has been challenged before the learned Single Judge of this Court, who has remanded the matter to the Deputy Registrar with some directions vide impugned order dated 19.12.2025. Now, it being the turn of the Division Bench in the chain of litigation being fought by the society, the Division Bench of this Court has been approached challenging the order of the learned Single Judge.

40. This Court at the very outset, deprecates such kind of litigations being fought by belligerent members of a society, who essentially ought to have come together to foster collective well-being, social harmony, and mutual support. Apparently, the basic objectives and the primary duty of the members, seems to have been lost and taken a back seat in the ensuing battle of supremacy, between the factions of the society, which has to stop at some point of time. Although, we refrain from giving a sermon on the said issue as we have been assigned with a limited role to examine the legality of the impugned order passed by the learned Single Judge, but the fact of the matter remains that the hostility of the members of the Appellant-society is writ large.

41. Having said so, we proceed to consider the controversy raised in the present intra-court Appeal. However, before proceedings any further, keeping in view the contention raised by the learned Senior counsel for the Appellants, we consider it apt to first determine our periphery within which we have to adjudicate the present issue. Relief/prayers, which has been sought in the aforesaid writ petitions, is a conclusive indicator as to what the Appellants or the parties concerned has sought for in the subject Writ petition and as to what relief has been granted by the learned Single Judge. Apparently, the impugned order has been passed in the following two subject writ petitions. Writ No. 12346/2025 filed by Dr. Ram Ratan Chaturvedi, claiming himself to be 'Pradhan' of the society, wherein he has sought for the following relief(s):

" I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 05.12.2025 issued by the Respondent No.2, copy of which, is contained in Annexure-I to this writ petition.

II. Issue a writ, order or direction in the nature of mandamus commanding the Respondent No.2 to consider and decide the issue of the Governing Body of the Petitioner No.1 society afresh under section 4 of the Societies Registration Act, 1860, including the issue of rival claims of the Governing Body of the petitioner No.1 society to the prescribed Authority under Section 25(1) of the Societies Registration Act, 1860, strictly in accordance with law."

Similarly, Writ No. 123412 of 2025 has been filed by the Appellant No.2 (Devendra Pal Verma), claiming himself to be □Pradhan□ of the society, wherein he has prayed for the following relief(s):

"i) issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 05.12.2025 passed by the opposite party No.2 contained as Annexure No.1 to the writ petition.

ii) issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to interfere in the functioning of the Managing committee of the petitioner no.1"

42. Prima-facie, the relief sought in both the writ petitions was substantially to quash the order dated 05.12.2025 passed by the Deputy Registrar, Firms, Societies and Chits, Lucknow Division, Lucknow, wherein the Registrar concerned was examining election dispute of four fraction of the society and had declared one of them as winner. It is available from a facial reading of the order passed by the Deputy Registrar that there were four factions, who have conducted their own elections and elected different Pradhan's of the same society. The issue before the Deputy Registrar was to examine the veracity of the elections held by each of these four groups namely, (i) Devendra Pal Verma's group wherein he was elected 'Pradhan' in election held on 21.03.2021; (ii) Ram Ratan Chaturvedi's Group wherein he was elected 'Pradhan' in election held on 27.03.2021; (iii) Bhuwan Tiwari's Group wherein he was elected 'Pradhan' in election held on 27.03.2021; and (iv) Vivek Singh's group, wherein Acharya Swadesh was elected as 'Pradhan' in election held on 07.03.2021. The task before the Deputy Registrar apparently was to examine the records and declare one of the groups to have correctly held the elections.

43. Keeping the aforesaid impugned order in background, we find that the learned Single Judge has very distinctly recorded in the impugned orders that although the parties have advanced elaborate submissions, they could not dispute the legal position that an election dispute cannot be decided by the Deputy Registrar and it can only be decided by the Prescribed Authority under Section 25 of the Societies Registration Act, 1860.

44. Thus, we find that since all the parties were at ad-idem that the issue was essentially an election dispute, the Learned Single Judge quashed the order dated 05.12.2025 and additionally directed the Deputy Registrar concerned to refer the issue to the Prescribed Authority to decide the elections dispute under Section 25(1) of the Societies Registration Act, 1860, strictly in accordance with law.

45. Having examined the background in which the impugned order was passed and as a matter the said order itself, we do not find any error in the said impugned order passed by the learned Single Judge as apparently nothing was adjudicated by him and merely it was directed to the concerned Registrar to refer the dispute as being an elections dispute to the competent Authority. The learned Single Judge does not in any manner refers to any of the earlier orders passed inter-se between the parties, which as a corollary means that it was for the parties to refer to these earlier orders before the Authority, to substantiate and/or defend their version of the story. Thus, the grounds being agitated by the Appellant seems to be expanding the scope of prayer made in the writ Petition, which according to this Court is not permissible under law.

46. As a sequel to above, this Court does not find any viable ground to interfere in the matter as the view taken by the learned Single Judge seems to be a plausible and reasonable view, as it does not suffer from any perversity. It would be apposite at this juncture to refer to a very recent judgment of the Hon'ble Apex Court, wherein the Court very beautifully and assertively delineated the extent of interference in an intra-court appeal in the following words vide judgment and order

dated 23.01.2026 in the case of **Bihar Industrial Area Development Authority & Ors. V/s M/s SCOPE Sales Pvt. Ltd. & Anr.; reported as 2026 INSC 89: 2026 SCC OnLine SC 112** :-

"13. We must also bear in mind the nature and extent of jurisdiction that an intra-court appellate Bench of a high court exercise. Such appellate jurisdiction is conferred either under the Letters Patent or by the relevant statutory provisions. It is pertinent to note that both - Single Bench and Division Bench - exercise the same jurisdiction under 'Article 226' of the Constitution. In our view, the exercise of intra-court appellate jurisdiction is warranted only where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not to be invoked merely because another view is possible on the same set of facts, particularly where the view adopted by the Single Judge is a plausible and reasonable one. In other words, an intra-court appellate Bench ought not to substitute its own view, merely because such Bench considers its view to be better than the one taken by the Single Bench; so long as the view taken by the Single Bench is a plausible one, interference should stay at a distance."

47. Given the facts and the material on records, we have no doubt in our mind that the judgment or order, impugned in the present Special Appeal is neither demonstrably erroneous nor suffers from perversity, so as to require our interference in any manner in the present intra-court Appeal.

48. However, we find that the present intra-court Appeal merits dismissal on several other grounds also. As we embark upon our arduous duty to discuss other grounds agitated by the leraned Senior Counsel for the Appellants, we find that the learned Single Judge has set-aside the findings of the Deputy Registrar by allowing the writ petitions and, as a consequential effect thereof, has also directed the Deputy Registrar to refer the election dispute to the Prescribed Authority under Section 25 of the Societies Registration Act, 1860. The learned Single Judge has further directed that the Prescribed Authority shall decide the dispute after giving an opportunity of hearing to the affected parties and after taking into consideration all the pleas raised by the parties, in accordance with law.

49. We find that the learned Single Judge has also recorded that the contesting parties were ad idem to the effect that an election dispute could not have been decided by the Deputy Registrar and was required to be decided only by the Prescribed Authority under Section 25 of the Societies Registration Act, 1860. Apparently, it seems that the learned Senior Counsel for the appellant is not aggrieved by the direction of referring the election dispute to the Prescribed Authority. According to him, the Deputy Registrar ought first to have examined and adjudicated upon the issue relating to membership and other allied issues, and thereafter, the election dispute ought to have been decided by the Prescribed Authority and in that regard has referred to earlier judgments passed by this Court concerning the same society.

50. Dehors the aforesaid consensual consequential order passed by the learned Single Judge, the ancillary issues raised by the Appellant is that under Section 25(1) of the Societies Registration Act, 1860 the Prescribed Authority could not examine the membership of the society, and secondly the learned Single Judge would not had directly directed the Registrar concerned to refer the issue to the Prescribed Authority, without first the Registrar itself deciding the issues of membership, for

which this Court had on several previous occasions remanded the matter to the concerned Registrar.

51. Apparently, it seems the Appellant is trying to place the issue of membership and the issue of election dispute in two separate compartments, whereas the fact of the case reveals that it was due to membership issue that the elections dispute has arisen. Thus, in a way both the issues cannot be kept in separate compartment as the issues are overlapping in nature. Given the background of the present case, membership is an issue ancillary to the elections dispute and as such the same can be very well decided together. Once it is held that the issue is overlapping, these issues cannot be decided separately. It would be altogether absurd to first direct the Deputy Registrar to examine the issues relating to memberships and then direct the election dispute to be referred to the Prescribed Authority. This Court finds that the Prescribed Authority being a senior officer than a Deputy Registrar would be more equipped to resolve this overlapping issue□s together, rather than separate the issues and invite different findings from different authorities and add more to the already existing confusion and battle of supremacy in the society.

52. Further, it has to be understood that Section 25(1) of the Societies Registration Act, 1860 invariably says that "any doubt" with respect to continuance in office of an officer-bearers of a society can also be decided by the Prescribed Authority. Let's take for example, in an election, a doubt arose relating to the vote being cast by one of the members, owing to him being a legitimate member or not?, The pertinent question would be, is it required for the Prescribed Authority at that point to refer the determination of such legitimacy of memberships to the Deputy Registrar and await his determination to proceed further to decide the election dispute. According to this Court, the answer must have to be in negative. Similar answer would have to be followed for all those cases for accepting or rejecting any vote due to reasons of membership. Thus, effectively, the Prescribed Authority while deciding the election dispute has in a way to also decide the issue of membership as an incidental and ancillary issue to the larger dispute of election. Further, the Prescribed Authority in deciding and/or clearing the said doubt has to arrive at its own conclusion relating to the membership of the society and in doing so has to take various evidence/material placed before it keeping in mind the relevant factors as well as the bye-laws of the society and documents of the nature mentioned in Section 4B of the Societies Registration Act, 1860. The said proposition can be easily construed from a plain reading of the proviso to Section 25(1) of the Societies Registration Act, 1860, which inter-alia states:

"25.Dispute regarding election of office bearers.-

(1) The Prescribed Authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office bearers of such society, and may pass such order in respect thereof as it deems fit:-

[Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-]

(a) that any corrupt practice has been committed by such office bearer; or

(b) that the nomination of any candidate has been Improperly rejected; or

(c) that the result of the election in so far it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the Improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society."

(Emphasis Supplied)

53. Although, the issue does not require any further deliberation as the same is clear like day-light that issues of memberships being incidental to elections can be very well decided by the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860 as an ancillary issue. Further, the said understanding of this Court is fortified by the judgment of a Co-ordinate Bench of this Court, in the case of **Committee of Management, Anjuman Kherul Almin, Allahaganj and Another Vs. State of U.P. and Others**, reported in **2013 SCC OnLine All 14353 : 2014 (1) ADJ 44 (DB);** wherein the Division Bench after considering the provisions of Section 4 and 25 (1) of the Societies Registration Act, 1860 has held that once an application for taking on record the name of the office-bearers and an objection as to the validity of the office-bearers who were elected have been filed, the Registrar, considering under Section 25 (1), ought to refer the matter to the Prescribed Authority. The relevant paragraphs 7 to 11 of the judgment are extracted herein-below: -

"7. Under Section 4 of the Societies' Registration Act, 1860, as amended in the State of U.P. the following provision has been made:-

"4. (1) Annual list of managing body to be filed.-Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Provided that if the managing body is elected after the last submission of the list, the counter signature of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not counter-sign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in sub-section (1) there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension or abridgment of purposes made under section 12, and of the rules of the society corrected up to date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the proceeding year of account."

8. The proviso to Section 4, as amended in the State of U.P., states that if the managing body is elected after the last submission of the list the counter signature of the old members, shall, as far as possible, be obtained on the list. If the old office bearers do not countersign the list the Registrar may in his discretion issue a public notice inviting objections and decide all the objections received within the said period.

9. Section 25(1) as applicable in the State of U.P. provides as follows:-

"25. Dispute regarding election of office-bearers.-(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in the Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an officer-bearers of such society, and may pass such orders in respect thereof as it deems fit:

[Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with the provisions of any rules of the society."

10. Both these provisions have been harmonized in the judgment of the Division Bench in All-India Council (Supra) where it was held as follows: -

"Section 25 of the Societies Registration Act as amended by the State Legislature enacts a comprehensive code and creates a designated forum or tribunal for adjudication in a summary manner of all disputes or doubts in respect of the election or continuance in office of an office-bearer of such society. It also provides the grounds upon which the election of an office-bearer can be set aside. The procedure to be followed for filling up of the vacancies arising from the decisions rendered by the Prescribed Authority under Sub-section (i)of Section 25 has also been laid down(Section 25(2).

7.It will, therefore, be seen that insofar as disputes or doubts in respect of the election or continuance in office of the office-bearers of a society registered in Uttar Pradesh are concerned, the Legislature has created a specific forum and laid down an exhaustive procedure for determination of the same under Section 25. There is no other provision, express or otherwise, providing for determination of such disputes specifically. It is settled law that where, as here, the Legislature creates a specific forum and lays an exhaustive procedure for determination of a particular class of disputes in respect of matters covered by the statute, such disputes can be determined only in that forum and in the manner prescribed thereunder and not otherwise. If,

therefore, a dispute is raised with regard to the election or continuance in office of an office-bearer of a society registered in Uttar Pradesh, the same has to be decided only by the Prescribed Authority under Section 25(1) and not by the Registrar, save, of course, to the decision of the Prescribed Authority being subject to the result of a civil suit."

11. The judgment of the Division Bench came up for consideration in Gram Shiksha Sudhar Samiti (Supra). In the subsequent judgment the Division Bench held that the earlier judgment has harmonized the provisions of both Sections 4 and 25 and what can be inquired into under Section 25 of the Act, cannot be gone into under the proviso to Section 4. In that case, the Division Bench held that the learned Single Judge ought to have set aside an order of the Registrar dated 11 July 2010 and ought to have directed the Registrar to refer the objection to the Prescribed Authority under Section 25(1). The Division Bench held that once an application for taking on record the name of the office bearers and an objection as to the validity of the office bearers who were duly elected has been filed, the Registrar considering under Section 25(1) ought to refer the matter to the Prescribed Authority. Undoubtedly, in the subsequent decision in the Committee of Management (Supra) it has been held that the Registrar "is not a post office for referring any and every dispute". The Division Bench there held that more than three years after the holding of an election there was no reason to entertain a petition at the belated stage."

54. Further, we find that this Court in the case of **Vidur Sewa Ashram & 7 others Vs. State of U.P. & 4 other reported in 2018 SCC OnLine All 8880 : 2018 (5) ADJ 717;** was considering the question whether membership of the General body of a society could be decided by the Prescribed Authority incidentally to the dispute relating to elections or not. The said Court after considering the provisions of Section 25(1), 25(2) and 4(B) of the Societies Registration Act, 1860 and another judgment rendered by this Court in Sita Ram Rai & others Vs. Assistant Registrar, Firms, Societies & chits, Gorakhpur, reported in 2003 SCC OnLine All 689 : 2003 (5) AWC 4159; and Vindhya Vasini Vs. Prescribed Authority & others reported in 2002 SCC OnLine All 1291 : 2002 (2) AWC 1623; went on to observe that in Sita Ram Rai's case (supra), it has been held that election disputes, if any, including validity of members entitled to vote can be decided by the Prescribed Authority under Section 25(1) of the Act. In the said Judgment, it was also concluded that **Vindhya Vasni case (supra)**, held that the decision relating to number of members of General body entitled to participate in election is incidental for deciding the doubt about the validity of elections under sub-section 1 of Section 25 of the Societies Registration Act, 1860, and therefore, can be decided by the Prescribed Authority.

55. The crux of these judgments is that whenever there is a dispute relating to an election, a special forum under Section 25(1) of the Societies Registration Act, 1860 has been provided and all such disputes ought to be adjudicated by the said forum. Thus, we are unable to agree with the submission of the learned Counsel for the Appellant that the Prescribed Authority cannot examine the membership dispute in a proceeding under Section 25(1) of the Societies Registration Act, 1860, which may be ancillary to the election dispute. In any case, we find that the objection to the electoral roll due to membership dispute is essentially an election dispute and can be adjudicated by the Prescribed Authority, in as much as the phrase any doubt or dispute in respect of the election or continuance in office of an officer-bearers of such society mentioned in Section 25(1) of the

Societies Registration Act, 1860 is of great elasticity as it encompasses within it any doubt or dispute, which according to this Court also includes a doubt or dispute relating to membership also.

56. We also find that the learned Single Judge of this Court, while considering the case of the present society in one of the writ petition filed before this Court being, Writ -C No.- 3418 of 2022 vide a judgment dated 18.09.2024, after referring to the judgment rendered in the case of Committee of Management, Shri Vidur Sewa Ashram, (supra) went on to hold that a Prescribed Authority while dealing with an issue of an election can as an ancillary issue examine, determine and can also adjudicate the issue of membership as that would impact the electoral college which may have an impact on whether there has been a rightful reception of vote or there has been denial of a bona-fide vote which would impact the result of the election.

57. Further, we cannot be oblivious to the fact that an election dispute in a society is a perennial problem. In view of the nature of this problem, the Courts having come to the rescue have provided that in case there is a membership issue intertwined with an election dispute, the same can very well be decided by the Prescribed Authority in its summary proceedings. The said understanding of this Court is also based on the principle of convenience as it cannot be expected that any election dispute, wherein membership issue has been also raised, should in the first instance be sent to the Registrar for adjudicating the membership issue and then refer the same to the prescribed Authority to adjudicate the election dispute. The said analogy would give a fertile ground to unscrupulous litigants/members to keep the membership issue always open, so that the election dispute is never resolved and in turn the very democratic process is sent to the back burner. According to this court, the said cumbersome process was never expected on a plain reading of the Section 25(1) of the Societies Registration Act, 1860.

58. The next issue, which has been vehemently argued by the learned Senior Counsel for the Appellant is non-consideration by the learned Single Judge of the earlier judgment dated 07.06.2021, 16.08.2023, 18.09.2024 and 26.08.2025 passed by this Court in the case of the present society.

59. On a perusal of the aforesaid judgments highlighted by the learned Senior Counsel for the Appellants, it is pertinent to mention herein that there is no element of doubt about the findings arrived by this Court in those earlier Judgment. However, a facial reading of these Judgments would demonstrably indicate that each of these orders eventually remands the matter for adjudication to the Deputy Registrar and all the issues have been left open and parties have been provided opportunity to agitate their issues before the Authority. A survey of these judgments as relied by the learned Senior Counsel is being depicted in a tabular chart along with a foot-note, which invariably makes us derive as follows:

Order dated 07.06.2021	Final order passed in two petitions being Writ Petition No. 9735(M/S) of 2020 (by Dr. Dheeraj Singh) Writ Petition No. 4515(M/S) of 2020(by Mr. Devendra Pal Verma)	Dhiraj Singh's writ Petition was allowed and accordingly, the order of the Deputy Registrar by virtue of which the list of members of the society, wherein Dheeraj Singh was ousted was quashed and set-aside. <u>The matter was remanded to the Deputy Registrar to adjudicate afresh after hearing all the parties</u>. The Writ of Devendra Pal Verma was dismissed. The learned Single Judge did not find any perversity in the order dated 02.11.2029 by virtue

		of which Mr. Devendra Pal Verma's representation claiming his membership was dismissed by Deputy Registrar. Apparently, the learned Single Judge noted that vide an order dated 30.07.2019, a Division Bench of this Court while disposing of a bunch of matters has also directed the Registrar to determine the issue regarding the membership of Mr. Devendra Pal Verma.
NB: The conclusion which can be drawn from order dated 07.06.2021 is that the issue of membership was remanded to the Deputy Registrar for considering afresh after hearing all the parties.		
Order dated 16.08.2023	Final order passed in Review Application No. 94 of 2021 by Mr. Devendra Pal Verma against order dated 07.06.2021 passed in Writ Petition No. 4515(M/S) of 2020(by Mr. Devendra Pal Verma)	The review petition was dismissed. However, the learned Single Judge in a very lengthy Judgment recorded the fact that in fact a Special Appeal Being No. 217/2021 has been filed against the same order dated 07.06.2021, however, in Writ Petition No. 9735(M/S) of 2020, wherein the Division Bench vide an order dated 01.07.2021 has directed the Deputy Registrar to decide the membership issue remanded to him by the learned Single Judge as per his order but without being influenced by any observation made by the learned Single Judge.
NB: A safe conclusion which can be drawn from order dated 16.08.2023 that the issue of membership was remanded to the Deputy Registrar for considering afresh after hearing all the parties and without being influenced by the observation made in order dated 07.06.2021. The learned Single Judge has clarified that in case the membership of Mr. Devendra Pal Verma is valid, as having been restored, he would be at liberty to participate in the proceedings pending before the Deputy Registrar and raise objections accordingly, which would have its own consequences as the entire matter is to be decided by the Deputy Registrar.		
Order dated 18.09.2024	Final common order passed in Writ-C- No. 3418/2022 (Mr. Devendra Pal Verma) and Writ-C- No. 14794/2022 (Mr. Bhuwan Tiwari).	Writ Petition No. 3418/2022 was allowed but Writ No. 14794/2022 was dismissed. The issue raised in 3418/2022 was as to whether the Registrar was right in invoking Section 25(1) of the Act, so to refer the dispute to the prescribed Authority. The learned Single Judge, while quashing the order of the Deputy Registrar, remitted the matter to the Deputy Registrar and remitted the matter to him for fresh adjudication after affording an opportunity to all the concerned parties.
NB: The take-away from this order is that the matter stands remanded to the Deputy Registrar and all the issues were left open and a directions was given to examine the records and consider the observation made in the aforesaid order and pass a reasoned and speaking order.		
Order	Final common order passed in	Order of the Registrar was impugned, wherein he

dated 26.08.2025	Writ-C- No. 1263/2025, Writ-C- No 702/2025, Writ-C- No 4172/2025 and Writ-C- No 4500/2025.	has declared the society to be time-bared and directed for fresh election on the basis of list dated 27.03.2016. The writ petitions were allowed, wherein the matter was remanded to the Registrar, with a direction to pass fresh order after hearing the rival claims.
NB: The net result of this order was that the matter was remanded to the Deputy Registrar for fresh adjudication after hearing the rival claim.		

60. Thus, this Court finds that on each occasion the matter was remanded to the Deputy Registrar for adjudication of the matter afresh after considering the rival claims of the parties. Thus, technically, all the issues were left open, including the issue of membership, if any. Looking the impugned Judgment from the said angle, we do not find any adverse remark or any embargo placed on the Deputy Registrar or the Prescribed Authority by the learned Single Judge to not consider these aforesaid Judgments and decide the matter in a particular manner. According to this Court, these Judgments referred by the learned Senior Counsel exists in the record to the extent of their significance to the issue and would be always available to the Concerned Authority for consideration, while deciding any issue, be it also the membership issue, while passing a final order. Therefore, we are unable to subscribe to the views of Mr. Dixit that the impugned order could be in any manner amenable to this Court on this ground.

61. It has been next submitted by the learned Senior Counsel that the learned Single Judge has failed to consider the factum of (i) Bhuwan Tiwari being not a primary member of the society, as he had been expelled from primary membership for 12 years in the year 2014 and as such how he could be elected as 'Pradhan' of the society in the elections dated 20.02.2021, especially when the person, under whose chairmanship the said election was conducted has given an Affidavit later in the year 2024 that he had not participated in the said election; (ii) Acharya Swadesh could not had been elected 'Pradhan' of the society as allegedly his membership had been terminated in 2014 for a period of 12 years; (iii) Dr. Ram Ratan Chaturvedi, could not had been elected as 'Pradhan' of the society as he was never inducted as a member of the society, for which the Appellant relied on some letter dated 17.05.2022 issued by an alleged 'Secretary' of the society.

62. We are afraid even this ground being agitated by the learned Senior Counsel does not comes to the rescue of the Appellants. Although, these grounds were not required to be specifically mentioned herein above, as a plain reading of these grounds would suffice and sufficiently indicate that these are elections disputes, however, we have purposefully mentioned herein above to assure ourselves that the grounds raised by the Appellant is fundamentally and technically an election dispute only and can be considered and examined by the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860, in accordance with law.

63. There is another aspect of the matter, in as much as it has been submitted by the learned Senior Counsel for the respondent that the Appellant has already participated in the proceedings before the Prescribed Authority and in that regard adjournment Applications have been referred by him to buttress his submission that when the Appellant has already submitted to the Jurisdiction of the Prescribed Authority, the law does not permit to challenge the jurisdiction of the prescribed Authority to adjudicate the issue's being raised in the present Appeal.

64. Since, we have already held herein above that the Prescribed Authority has the jurisdiction to adjudicate all ancillary issues relating to election dispute, be it the issue of memberships also, we do not wish to comment on

the aforesaid ground raised by the learned Senior Counsel for the respondent as it would be open to all the parties concerned to raise all such issues before the Prescribed Authority.

65. Be that as it may, for all the aforesaid reasons, we are unable to agree to any of the arguments made by the Appellant as the same being devoid of any merits. Accordingly, the present Appeals are **Dismissed**.

66. Needless to say, the parties shall be at liberty to raise all such grounds, as may be permissible under law before the Authority/Court, before whom the present matter is engaging attention, including with regard to the membership.

67. The impleadment Application is allowed in the aforesaid terms.

68. There shall be no order(s) as to cost.

Epilogue

69. Admittedly, we have found that the last undisputed election had been in the year 2016. The next elections thereafter of the year 2021 is marred with controversy. As noted herein above, there are four factions, wherein one faction has set up their rights on the basis of an election said to have been held on 21.03.2021 wherein Shri Devendra Pal Verma (Appellant No.2) is said to have been elected as a □President□. The second faction is led by Shri Bhuwan Tiwari, wherein he claims rights on the basis of his election held on 20.02.2021. The third faction is led by Shri Vivek Singh, who alleges that his election was held on 07.03.2021. The fourth faction is led by Shri Ram Ratan Chaturvedi, who claims rights on the basis of an election dated 27.11.2021.

70. This Court cannot be oblivious to the sordid state of affairs of the Appellant-society, wherein presently there are at least four faction operating and each of them claims to be controlling the society, leaving the other three to challenge their legitimacy of functioning and sometimes even their membership.

71. However, we have been informed at the Bar that pursuant to the impugned order of the learned Single Judge, which has been the subject matter of the present intra-court Appeal, the Prescribed Authority has already passed an order. Interestingly, in keeping with the tradition of the litigatory activity of the society, the order passed by the Prescribed Authority stands challenged and the same is pending before a learned Single Judge of this Court vide Writ-C- No. 2626 of 2026, wherein preliminary objections have been raised and even an interim order has been passed by the learned Single Judge. We leave it to the wisdom of the learned Single Judge to decide the matter in such a manner, which could bring quietus to the issue of memberships of the society, be it by appointment of a receiver or an administrator or constitution of a committee of retired High Court judge, before any election is held as the controversy and wounds of last election of 2021 has resulted in flocking of litigations to this Court.

72. Technically, in view of the aforesaid development and pendency of the matter before the learned Single Judge, the adjudication of this intra-court Appeal is purely academic and inconsequential. However, since we have been called upon to decide the correctness of the impugned order dated 19.12.2025 passed by a learned Single Judge, relating, we have taken the responsibility of passing this Judgment and accordingly have dismissed both the appeals in the given facts and circumstances.

(2026) 7 ILRA 937
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.07.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Special Appeal No. 288 of 2021

Jai Ram ...Appellant
Versus
Sri Prafulla Kumar Mishra & Ors. ...Respondents

Issue for Consideration

(1) Permissibility of treating the documents as seniority list, which was not issued by competent authority under Reg. 3(1) of the Regulations.
(2) Maintainability of Special Appeal against the Judgment passed in writ petition arising out of appellate order.

Headnotes

(A) Service law – U.P. Intermediate Education Act, 1921 – Regulations framed thereunder – Ch. II, Reg. 3(1)(a), (b), and (c) – Seniority – Determination – Appellant was appointed on 01.08.1996, while respondent/writ petitioner was appointed on 30.12.2000 – In his writ petition, the respondent relied upon some documents, alleging them as longstanding seniority lists, against which no objection was ever raised by the appellant – Single Bench held that unsettling a long-standing seniority, after nearly eighteen years, is impermissible in the eye of law – Validity challenged – Documents, relied as seniority list, was not issued by the Committee of Management, the competent authority under Reg. 3(1) – Effect – Permissibility to treat the documents as seniority list felt into consideration .

Held : The documents annexed as Annexure No. 6 to the writ petition, cannot be termed as seniority lists in terms of Regulation 3(1) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 for the reason that those documents were not issued by Committee of Management of Institution. As such, the reliance placed by the learned Single Judge on such documents to conclude that the seniority lists were published by the institution and the appellant (Jai Ram) did not raise any objection to such seniority lists is completely misconceived as objections can be raised in reference to Regulation 3(1)(e) if the seniority lists would have been issued by the Committee of Management as required under Regulation 3(1) – No seniority list, as required under Regulation 3 contained in Chapter II of the Regulations was ever issued so as to reach to the conclusion that the appellant failed to file any objection to the seniority list published by the institution and thereby acquiesced in and waived his right to challenge such seniority. [Para 22 and 29]

(B) Allahabad High Court Rules, 1952 – Ch. VIII, R. 5 – Special Appeal – Maintainability – Impugned Judgment of Single bench was passed in writ petition arising out of an order of the Joint Director of Education – Preliminary objection regarding maintainability of Special Appeal was raised alleging the order of JDE as the order passed by appellate authority – Permissibility .

Held : The order dated 25.03.2017, which was challenged in Writ Petition No. 8702 (SS) of 2017, was not an order passed in the exercise of appellate jurisdiction under Regulation 3(1)(f) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. An appeal lies only under Regulation 3(1)(f) against a decision taken by the Committee of Management under Regulation 3(1)(e) concerning a dispute relating to seniority. The order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow, was not an order arising out of any decision of the Committee of Management on objection

raised before it under Regulation 3(1)(e) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. Thus, the preliminary objection raised by respondent no. 1 regarding the maintainability of the present Special Appeal is liable to be rejected. [Para 16] (E-1)

Case Law Cited

Sheet Gupta vs. State of U.P., 2009 SCC OnLine All 1613; State of U.P. v. Madhav Prasad Sharma, (2011) 2 SCC 212 **– referred to.**

List of Acts

U.P. Intermediate Education Act, 1921, the U.P. Secondary Education Services Selection Board Act, 1982 **– S. 33-F;** U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971; Regulations framed under the U.P. Intermediate Education Act, 1921 **–** Ch. I, Reg 1-6, Ch. II, Reg. 3(1)(a), (b), and (c).

List of Keywords

Short term vacancy, Regularization, Seniority, Irregularity, Grievance, Substantive appointment, Objection, Seniority list, Long-standing seniority, Date of initial appointment, Single operation, Misrepresent, Material fact, Maintainability, Preliminary objection, Appellate jurisdiction, Stretch of imagination, Principle of acquiescence, Waiver, Estoppel, Misconceived, Inter se seniority, Determination.

Case Arising From

Judgment and order dated 13.08.2021 passed by the Single Judge Bench in Writ Petition No. 8702 (SS) of 2017.

Appearances for Parties

Advs. for the Appellant : Ramesh Kumar Srivastava, Meenakshi Singh Parihar, Amrendra Nath Tripathi
Advs. for the Respondents : C.S.C., Vijay Dixit, Chandra Bhushan, Devam Shukla, Neel Kamal Mishra, Sanjay Kumar Sharma.

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

1. Heard Sri Ramesh Kumar Srivastava, learned counsel for the appellant, learned Standing Counsel for respondent nos.2 to 5 and Sri Vijay Dixit, learned counsel for respondent no.1.

2. The instant Special Appeal has been filed by the appellant (Jai Ram) challenging the judgment and order dated 13.08.2021 passed in Writ Petition No. 8702 (SS) of 2017, Prafulla Kumar Mishra Vs. State of U.P. and Others.

3. The brief facts of the case, as borne out from the record, are that the appellant (Jai Ram), after being selected by the Uttar Pradesh Secondary Education Services Selection Board (hereinafter referred to as the "Board"), was appointed to the post of Lecturer (English) on 25.01.1996. Pursuant thereto, he joined on 01.08.1996 as Lecturer (English) in Krishak Inter College, Maholi, District Sitapur, an Intermediate College governed by the provisions of the U.P. Intermediate Education Act, 1921, the U.P. Secondary Education Services Selection Board Act, 1982, and the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971.

4. On the other hand, respondent no.1, Sri Prafulla Kumar Mishra was initially appointed on ad hoc basis to the post of Lecturer (Biology) in the institution on 25.07.1991 against a short-term

vacancy. Thereafter, he was regularised by order dated 03.12.2001 with effect from 30.12.2000 under Section 33-F of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as the "Act, 1982"). Thus, it is an undisputed fact that the appellant (Jai Ram) was substantively appointed on the post of Lecturer (English) on 01.08.1996, after being selected and recommended by the Board, whereas respondent no.1, Sri Prafulla Kumar Mishra was substantively appointed with effect from 30.12.2000 pursuant to the order of regularisation dated 03.12.2001 passed under Section 33-F of the Act, 1982.

5. The appellant (Jai Ram) submitted representations dated 26.12.2014 simultaneously to the District Inspector of Schools (hereinafter referred to as the "DIOS"), Sitapur, and the Joint Director of Education, VIth Region, Lucknow, raising his grievance regarding his seniority in the Lecturer Cadre.

6. In furtherance of the appellant's representation dated 26.12.2014, the DIOS, Sitapur, issued a letter dated 08.01.2015 to the Principal of the institution directing him to examine the issue of seniority raised by the appellant. However, nothing transpired and as such the appellant submitted another representation dated 09.09.2015 to the DIOS, Sitapur. Thereafter, the DIOS, Sitapur, issued a letter dated 19.10.2015 to the Principal of the institution referring to the statutory provisions contained in Regulation 3(1)(a), (b), and (c) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, pointing out the irregularity in the seniority list and directing the issuance of a revised seniority list in accordance with the aforesaid provisions. The DIOS, Sitapur sent another reminder on 09.02.2016. The appellant (Jai Ram) also submitted a representation dated 15.09.2016 to the Joint Director of Education, VIth Region, Lucknow, reiterating his grievance regarding his seniority. However, as nothing further transpired, the appellant (Jai Ram) approached this Court by filing Writ Petition No. 29967 (SS) of 2016, which was disposed of by order dated 29.12.2016, directing the Regional Level Committee to decide the matter within a period of two months from the date of production of a certified copy of the order.

7. In compliance of the order dated 29.12.2016 passed by the Writ Court in Writ Petition No. 29967 (SS) of 2016, Jai Ram Vs. State of U.P. and Others, the Joint Director of Education, VIth Region, Lucknow, after calling for the service records from the institution and hearing the aggrieved parties, passed order dated 25.03.2017 determining the inter se seniority of the appellant (Jai Ram), Sri Prafulla Kumar Mishra and Sri Gyan Prakash Mishra. Taking into consideration the respective dates of substantive appointment of all three lecturers, the Joint Director held that the appellant (Jai Ram) was senior to Sri Prafulla Kumar Mishra and Sri Gyan Prakash Mishra, as his date of substantive appointment was 01.08.1996, whereas the dates of substantive appointment of Sri Prafulla Kumar Mishra and Sri Gyan Prakash Mishra were 30.12.2000 and 16.12.2001, respectively.

8. Feeling aggrieved by the order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow, respondent no.1, Sri Prafulla Kumar Mishra filed Writ Petition No. 8702 (SS) of 2017, Prafulla Kumar Mishra Vs. State of U.P. and Others, in which the appellant (Jai Ram) was impleaded as respondent No.5. The writ petition was allowed by judgment and order dated 13.08.2021, which is under challenge in the present Special Appeal.

9. The learned Single Judge, while passing the judgment and order dated 13.08.2021 in Writ Petition No. 8702 (SS) of 2017, took into consideration the fact that seniority lists had been repeatedly issued since the year 1997, 2005, 2006 and 2012, in which Sri Prafulla Kumar Mishra was consistently shown senior to the appellant (Jai Ram). The learned Single Judge further observed that the appellant (Jai Ram) had never raised any objection to those seniority lists and that it was only in the year 2015 that he raised the issue of seniority before the DIOS, Sitapur. The learned Single Judge held that entertaining such a claim after nearly eighteen years would amount to unsettling a long-standing seniority, which is impermissible in law. Accordingly, relying upon various judgments of the Hon'ble Supreme Court laying down the principle that long-settled seniority should not ordinarily be disturbed after a considerable lapse of time, the learned Single Judge quashed the order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow.

10. The issue raised by the appellant in the present appeal is that the learned Single Judge, while passing the judgment and order dated 13.08.2021 in Writ Petition No. 8702 (SS) of 2017, Prafulla Kumar Mishra Vs. State of U.P. and Others, failed to take into consideration the fact that the alleged seniority lists of the years 1997, 2005, 2006 and 08.11.2012 were not seniority lists prepared and circulated in accordance with Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. It is the case of the appellant (Jai Ram) that no such seniority list was ever prepared by the Committee of Management in the first instance nor was the appellant (Jai Ram) ever confronted with any such seniority list so as to enable him to file objections as contemplated under the Regulations. Reference has been made to the seniority lists annexed as Annexure No. 6 to Writ Petition No. 8702 (SS) of 2017, which were available before the learned Single Judge to demonstrate that the alleged seniority lists were not issued by the Committee of Management. Hence, according to the appellant, the learned Single Judge erroneously based his conclusion on such alleged seniority lists, which could not have been treated as valid seniority lists at all being not prepared and issued under Chapter II, Regulation 3 of the Regulations framed under U.P. Intermediate Education Act, 1921.

11. The documents annexed as Annexure No. 6 to Writ Petition No. 8702 (SS) of 2017 contain three documents describing them as seniority lists. The first document is a list dated 02.12.2015 issued by the Principal of the institution describing it as the seniority list of the Lecturer Cadre. The said list was prepared on the basis of the dates of initial appointment of the lecturers, wherein respondent no.1, Sri Prafulla Kumar Mishra was shown senior to the appellant (Jai Ram) because his initial appointment as Lecturer on ad-hoc basis was on 25.07.1991, whereas the date of initial appointment of the appellant (Jai Ram) was 01.08.1996. The second document annexed as Annexure No.6 to the said writ petition is a list relating to the year 2011-12, in which the appellant (Jai Ram) was placed at Serial No.8 and respondent no.1, Sri Prafulla Kumar Mishra was placed at Serial No.5, again based on their dates of initial appointment as Lecturers. The said document further indicates that it was prepared during the period when the institution was under "Single Operation", meaning thereby that due to certain disputes, the institution was being administered under the "Single Operation" and the Committee of Management lacked the authority to administer the affairs of the institution. The third document pertained to the year 2016-17, which was issued by the Principal of the institution on 07.05.2016 and in the said document, respondent no.1, Sri

Prafulla Kumar Mishra was placed at Serial No.3, whereas the appellant (Jai Ram) was placed at Serial No.5, again on the basis of their initial appointments as Lecturers.

12. The counter affidavit filed by the Committee of Management in Writ Petition No. 8702 (SS) of 2017 refers to four seniority lists allegedly prepared by the Committee of Management, pertaining to the years 1996-97, 2005, 2011-12 and 2016-17. In all these lists, the appellant (Jai Ram) was shown below respondent no.1, Sri Prafulla Kumar Mishra. The Committee of Management took the stand that the appellant (Jai Ram) had never objected to any of the aforesaid seniority lists and, therefore, after a lapse of nearly eighteen years, he could not challenge the same. However, no such seniority list nor any other document evidencing the preparation or publication of such seniority lists by the Committee of Management were annexed to the counter affidavit so as to establish that these lists had been prepared in exercise of the powers conferred under Regulation 3(1) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 in conformity with the procedure prescribed therein.

13. The appellant (Jai Ram) also filed a counter affidavit in Writ Petition No. 8702 (SS) of 2017, wherein he specifically pleaded that he had consistently raised his grievance regarding seniority and when no heed was paid to his representations, he was compelled to file Writ Petition No. 29967 (SS) of 2016 and as such, it cannot be said that he did not raise any objection against the seniority list. A copy of the writ petition bearing Writ Petition No. 29967 (SS) of 2016, Jai Ram Vs. State of U.P. and Others, annexed with the supplementary affidavit dated 20.04.2021 filed in the present Special Appeal, clearly demonstrates the manner in which the appellant (Jai Ram) had challenged the determination of his seniority. Taking note of the grievances raised by the appellant therein, the Writ Court disposed of the writ petition by order dated 29.12.2016 directing the Regional Level Committee to decide the issue relating to the seniority of the appellant (Jai Ram) within a period of two months.

14. The respondent No. 1, Sri Prafulla Kumar Mishra, while filing objections to the present Special Appeal, raised a preliminary objection regarding its maintainability under Chapter VIII, Rule 5 of the Allahabad High Court Rules. It was contended that the present Special Appeal is not maintainable as it has been preferred against a judgment passed in a writ petition wherein the order dated 25.03.2017 passed by the appellate authority has been quashed. Reliance was placed upon the Full Bench judgment of this Court in Sheet Gupta v. State of U.P., 2009 SCC OnLine All 1613 as well as the judgment of the Hon'ble Supreme Court in State of U.P. v. Madhav Prasad Sharma, (2011) 2 SCC 212. The other objection raised by respondent No. 1 is that the seniority lists dated 11.12.2006 and 08.11.2012 were duly countersigned and circulated by the DIOS and that the appellant (Jai Ram) was fully aware of the same, however, despite such knowledge, he never challenged the seniority list dated 11.12.2006 and 08.11.2012. It has further been alleged that the appellant has misrepresented material facts while filing the present Special Appeal and, on that ground alone, the appeal deserves to be dismissed.

15. The document dated 11.12.2006, as relied upon by respondent No. 1 as seniority list annexed as Annexure No. 4 to the supplementary affidavit upon bare perusal, appears to be merely a statement containing the particulars of the Lecturers in seriatim of their initial date of appointment in the institution, forwarded by the Principal of the institution to the DIOS, Sitapur

which has been counter signed by him. By no stretch of imagination the said document can be termed as a seniority list in terms of Regulation 3(1) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. The another document dated 08.11.2012, referred to by respondent No. 1 as seniority list has not been annexed with the short counter affidavit filed in the present Special Appeal.

16. In response to the preliminary objection regarding the maintainability of the present Special Appeal, we take note of the fact that the order dated 25.03.2017, which was challenged in Writ Petition No. 8702 (SS) of 2017, was not an order passed in the exercise of appellate jurisdiction under Regulation 3(1)(f) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. An appeal lies only under Regulation 3(1)(f) against a decision taken by the Committee of Management under Regulation 3(1)(e) concerning a dispute relating to seniority. The order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow, was not an order arising out of any decision of the Committee of Management on objection raised before it under Regulation 3(1)(e) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. Thus, the preliminary objection raised by respondent No. 1 regarding the maintainability of the present Special Appeal is liable to be rejected, inasmuch as the order dated 25.03.2017 was not passed in the exercise of appellate jurisdiction under Regulation 3(1)(f) arising from a decision of the Committee of Management under Regulation 3(1)(e) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921.

17. Respondent No. 1 also filed another affidavit dated 10.07.2024, described as "Objections/Short Counter Affidavit", in response to the supplementary affidavit dated 13.08.2023. In the said affidavit emphasis has again been laid upon the fact that the learned Single Judge decided Writ Petition No. 8702 (SS) of 2017 on the admitted premise that at least four seniority lists of the Lecturer Cadre had been issued by the authorities on 25.07.1997, 02.12.2005, 11.12.2006, and 08.11.2012, none of which was ever challenged by the appellant (Jai Ram). It has thus been argued that the contrary stand cannot be now allowed to be taken in the present Special Appeal that no seniority list was published. Reliance has also been placed upon the yearly magazine published by the institution, namely "Saurabh", wherein the seniority position of the Lecturers was allegedly published from time to time. Relevant extracts of the magazine have been annexed with the short counter affidavit to contend that the appellant cannot now assert that no seniority list had ever been published.

18. A perusal of the relevant pages of the magazine annexed with the short counter affidavit filed by respondent No.1, reveals that they merely contain a list of teachers and employees working in the institution and such a list by no stretch of imagination can be treated as a seniority list prepared by the Committee of Management in accordance with the provisions contained in Regulation 3(1) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921.

19. The entire controversy, therefore, centres around the factual issue as to whether any valid seniority list was ever published in the years 1997, 2005, 2006, and 2012 and whether the appellant, despite having knowledge thereof, failed to raise any objection, thereby attracting the

principles of acquiescence, waiver or estoppel and precluding him from challenging the inter se seniority of the Lecturers at this belated stage.

20. Before arriving at any conclusion regarding the alleged publication of seniority lists during the years 1997, 2005, 2006 and 2012, it is necessary to examine the statutory provisions of Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. Regulation 3 is reproduced hereunder :

3. (1) The Committee of Management of every institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post;

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age;

[(bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted:

Provided that if such length of service is equal, seniority shall be determined on the basis of age.]

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service;

(d) If a teacher who is placed under suspension is reinstated on his original post his original seniority in the grade shall not be affected;

(e) Every dispute about the seniority of the teacher shall be referred to the Committee of Management which shall decide the same giving reasons for the decision;

[(f) उपखण्ड (ड) के अधीन प्रबन्ध समिति के विनिश्चय से व्यथित कोई अध्यापक ऐसा विनिश्चय ऐसे अध्यापक को सूचित किये जाने के दिनांक से 15 दिन के भीतर सम्बन्धित क्षेत्रीय उप-शिक्षा निदेशक को अपील कर सकता है, और अपील पर सम्बन्धित पक्षों को सुनवाई का अवसर देने के उपरान्त उप शिक्षा निदेशक अपना निर्णय कारण सहित देगा, जो अन्तिम होगा और प्रबन्ध समिति द्वारा कार्यान्वित किया जायेगा।]

(g) यदि एक ग्रेड में कार्यरत दो या अधिक अध्यापक किसी एक ही तिथि पर पदोन्नति किए जाएँ तो उनकी ज्येष्ठता का आधार उस ग्रेड का सेवाकाल होगा, जिसमें वे कार्यरत थे, परन्तु यदि सेवाकाल बराबर है, तो पदोन्नति की दशा में आयु के आधार पर ज्येष्ठता निर्धारित की जायेगी।]

(2) The seniority list shall be revised every year and the provisions of Clause (1) shall mutatis mutandis apply to such revision.

(Emphasis supplied)

21. A bare perusal of Clause (1) of Regulation 3 reveals that the Committee of Management of the institution is the competent authority for issuance of the seniority list after taking into consideration the provisions contained in sub-clauses (a) to (g) of Clause (1) of Regulation 3. Clause (2) of Regulation 3 mandates that the seniority list shall be revised every year and, during such revision, the provisions of Clause (1) shall be applied as such.

22. When we analyse the alleged seniority lists annexed with memo of Writ Petition No. 8702 (SS) of 2017, we find that Sri Prafulla Kumar Mishra, while filing Writ Petition No. 8702 (SS) of 2017, collectively annexed the seniority lists as Annexure No. 6 to the writ petition. The first document is an alleged seniority list of Lecturers dated 02.12.2005, which has been issued by the Principal of the institution. The second document is an alleged seniority list pertaining to the year 2011-12, which indicates that the institution, at that point of time, was under "Single Operation" and the third document is a list of teachers working in the Lecturer cadre with reference to their initial dates of appointment for the year 2016-17, which was issued on 07.05.2016 by the Principal of the institution. We are of the view that the documents annexed as Annexure No. 6 to the writ petition, as available on the record of the present Special Appeal, cannot be termed as seniority lists in terms of Regulation 3(1) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 for the reason that those documents were not issued by Committee of Management of Institution. As such, the reliance placed by the learned Single Judge on such documents to conclude that the seniority lists were published by the institution and the appellant (Jai Ram) did not raise any objection to such seniority lists is completely misconceived as objections can be raised in reference to Regulation 3(1)(e) if the seniority lists would have been issued by the Committee of Management as required under Regulation 3(1).

23. Apart from the aforesaid documents annexed as Annexure No. 6 to Writ Petition No. 8702 (SS) of 2017 filed by respondent No.1, we do not find any other document which was available on record before the learned Single Judge to reach the conclusion that the appellant (Jai Ram) did not raise any objection to the seniority lists and, as such, he could not belatedly raise such objections.

24. On a close scrutiny of the documents annexed as Annexure No. 6 to Writ Petition No. 8702 (SS) of 2017, we can only say that to some extent, the seniority list of Lecturers for the year 2011-12, when the institution was under "Single Operation", may be said to be a seniority list issued under Regulation 3(1) of the Regulations as during such period Committee of Management was in dispute. Be that as it may, even the seniority list of the year 2011-12 of the Lecturer cadre is based on the initial appointment of the incumbent Lecturer and, as such, the seniority reflected therein is also not in conformity with Regulation 3(1)(b) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 which provides that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. It is not in dispute that the date of substantive appointment of the appellant on the post of Lecturer (English) is 01.08.1996 and that of Prafulla Kumar Mishra is 30.12.2000.

25. Apart from the aforesaid documents annexed as Annexure No. 6 to Writ Petition No. 8702 (SS) of 2017, respondent No.1 has placed another document dated 11.12.2012 along with the

preliminary objections to the short counter affidavit filed by him in the present Special Appeal on 26.08.2021, which is nothing but the details of teachers working in the institution in the Lecturer grade, issued by the Principal of the institution. The said document also cannot be termed as a seniority list in terms of Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 not being issued by Committee of Management.

26. At this juncture, it would be worth mentioning the provisions contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921, which provide for the Scheme of Administration. Regulation 1 provides that the Committee of Management of an institution shall include ex-officio members, i.e. the Headmaster/Principal and two teachers, for a term of one year each by rotation according to seniority selected in the manner prescribed in Regulation 2 contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921. Regulation 2 provides that the Committee of Management shall maintain a seniority list of all the substantively appointed teachers, which shall be based on the date of their appointment in the institution. Regulation 3 further provides that the two senior-most teachers shall, in the first instance, be selected from the said list as ex-officio members of the Committee of Management. Regulation 4 contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921 provides that the Manager shall prepare and maintain the seniority list showing therein the date from which a teacher is entitled to count his seniority and before finalizing the list, he shall supply a copy thereof to every teacher in the institution. Any objection filed by a teacher within one month from the date of receipt of the copy by him shall be decided by the Committee of Management. Regulation 5 further provides that any teacher aggrieved by the decision of the Committee of Management may file an appeal before the DIOS within fifteen days from the communication of the said decision and thereafter a copy of the list, after its finalization, shall be supplied to each teacher. Regulations 1 to 6 contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921 are reproduced hereinbelow :-

1. Ex-officio members of the Committee of Management. The Committee of Management of an institution shall include the following ex-officio members:

(i) Headmaster or Principal, as the case may be,

(ii) Two teachers for a term of one year each by rotation according to seniority selected in the manner prescribed below.

2. "ज्येष्ठता के आधार पर बारी-बारी से चयन किये जाने के लिये प्रबन्ध द्वारा संस्था के समस्त मौलिक सेवा वाले अध्यापकों की एक ज्येष्ठता सूची रखी जायेगी। यह सूची उस संस्था में उनकी स्थायी नियुक्ति की तिथि तथा इस प्रकार दो अथवा उससे अधिक अध्यापकों की नियुक्ति की दशा में उनकी ज्येष्ठता उनकी आयु की ज्येष्ठता पर निर्धारित की जायेगी।"

3. The two senior most teachers shall be selected from this list as ex officio members of the Committee of Management in the first instance. Their terms shall begin from the date on which the Committee of Management is constituted after the approval of the Scheme of Administration by the Director. On the expiry of their terms or in the event of vacancy or vacancies occurring earlier by one or both, the teachers resigning his/their membership/ memberships of the Committee or ceasing

to be in the service of the institution, the teacher/ teachers next in the seniority list shall be selected in his/their place/places for a full term. The ex-officio membership of a teacher shall not lapse on his being promoted or demoted from one grade or category to another during the currency of his term.

4. The manager shall prepare and maintain the seniority list showing therein the date from which a teacher is entitled to count his seniority. Before finalizing the list, he shall supply a copy thereof to every teacher in the institution and any objection filed by a teacher within a month of the receipt of the copy by him shall be decided by the Committee of Management.

5. Any teacheraggrieved by the decision of the Committee may within fifteen days of its communication to him file an appeal to the Inspector or Regional Inspectress, as the case may be, whose decision thereon shall be final.

6. A copy of the list after it has been finalized shall be supplied to each teacher, the head of the institution and the Inspector or Regional Inspectress for the reference and record. Any change in the strength or grades to teachers comprising a category shall be duly noted in the list and all concerned promptly intimated of it. Any teacher who feels aggrieved by the change may file objection before the Managing Committee within a month of the intimation and that objection shall be dealt with as if it were an objection under Regulation 4.

27. Regulation 2 contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921 provides for maintaining the seniority list on the basis of the date of initial appointment in the institution, whereas Regulation 3(1)(b) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 provides for the seniority of teachers to be determined on the basis of their substantive appointment. The seniority referred to in Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 relates to the seniority list prepared for the purpose of service benefits in reference to service conditions, i.e., promotion, etc.; whereas the seniority referred to in Regulation 2 contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921 is for the purpose of selection of ex-officio members on rotational basis for including them in the Committee of Management. Thus, the alleged seniority lists referred by respondent no.1 and the Committee of Management before the Writ Court as well as in the present appeal, can be referred to Regulation 2 contained in Chapter I of the Regulations framed under the U.P. Intermediate Education Act, 1921, as those lists pertain to seniority based on the date of initial appointment of teachers for the purpose of inclusion of ex-officio members on rotational basis in the Committee of Management and have no relevance in the controversy involved in the present litigation. The issue before this Court is with regard to seniority for the purpose of service benefits pertaining to service conditions, which has to be determined in the manner prescribed under Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 and for that purpose seniority list has to be prepared and issued by Committee of Management.

28. To qualify as a seniority list under Regulation 3(1) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, it has to be prepared in accordance with the provisions contained in Regulation 3 and any list containing merely the details

of teachers working in the institution, issued by the Principal of the institution or any authority other than Committee of Management, cannot be termed as a seniority list. Before the Writ Court as well as in the present appeal, the Committee of Management failed to establish that any seniority list was ever prepared on the basis of the substantive appointment of the teachers in the manner prescribed under Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. In the counter affidavit filed before the Writ Court, there is no whisper by the Committee of Management as to whether any seniority list was finalized under Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 after invitation and consideration of objections by the teaching staff of the institution. Although it appears that there is no specific provision for inviting objections prior to the finalization of the seniority list under Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, nevertheless, the finalized seniority list is required to be circulated in terms of Regulation 3(1)(f) and (g) contained in Chapter II of the said Regulations. In case the seniority list is not circulated, the provisions contained in Regulation 3(1)(f) and (g) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 would be rendered otiose as without any knowledge of the final seniority list, an aggrieved person can neither file objection as contemplated under Regulation 3(1)(e) nor appeal under Regulation 3(1)(f).

29. Upon examining the documents annexed to Writ Petition No. 8702 (SS) of 2017 as well as the other documents brought on record in the present Special Appeal, we are of the view that in fact, no seniority list, as required under Regulation 3 contained in Chapter II of the Regulations was ever issued so as to reach to the conclusion that the appellant failed to file any objection to the seniority list published by the institution and thereby acquiesced in and waived his right to challenge such seniority.

30. The publication of the magazine of the institution every year containing details of the teachers do not come within the ambit of a seniority list, as such details are merely in the nature of information regarding the teachers working in the institution since their initial appointments and at the most is referable to maintaining seniority in terms of Chapter I for the purpose of representation in Committee of Managment as ex-officio members on rotational basis. The determination of inter se seniority is based on various factors enumerated in Regulation 3(1) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 and not depends merely on the initial date of appointment. Rather, it is the date of substantive appointment, as referred to in sub-clause (b) of Clause (1) of Regulation 3, which is the relevant factor for determination of seniority for the purpose of promotion and other benefits.

31. There is no dispute with regard to the judgments referred to in the impugned judgment and order dated 13.08.2021 passed by the learned Single Judge in Writ Petition No.8702 (SS) of 2017, as it is trite that long-settled seniority cannot be disturbed. However, on examining the facts relating to the present controversy, we are of the view that the learned Single Judge based his conclusion by treating the documents annexed as Annexure No. 6 to Writ Petition No. 8702 (SS) of 2017 as seniority lists, though they were not seniority lists published by the Committee of Management under Regulation 3(1) contained in Chapter II of

the Regulations framed under the U.P. Intermediate Education Act, 1921. Hence, it cannot be said that the appellant (Jai Ram) failed to raise objections at the relevant point of time with regard to his seniority. The objection can only be raised to a duly published seniority list issued in accordance with the statutory provisions. Any list published by an authority not competent to issue a seniority list cannot be termed as a seniority list so as to require any objection thereto as contemplated under Regulation 3.

32. At the best, it can be the case of the respondent no. 1 that the seniority list for the year 2011-12, issued when the institution was under "Single Operation", is referable to Regulation 3 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. Even if it is assumed that the appellant (Jai Ram) did not file any objection to such seniority list published in the year 2011-12, we find that the appellant raised his objection before the DIOS, Sitapur, on 24.12.2014 with regard to his seniority. Hence, it cannot be said that there was any considerable delay in raising objections to the seniority list published in the year 2011-12.

33. Moreover, we also find that the appellant (Jai Ram) is admittedly senior to respondent No.1, Prafulla Kumar Mishra as it is not in dispute that the date of substantive appointment of the appellant is 01.08.1996 and that of Prafulla Kumar Mishra is 30.12.2000. Regulation 3(1)(b) contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 specifically provides that seniority is to be reckoned from the date of substantive appointment. We are also of the view that no vested right accrued in favour of respondent No.1, as he was neither promoted nor assigned to officiate on the basis of the alleged seniority lists on a higher post over and above the appellant prior to the appellant raising his objection by means of his representation dated 24.12.2014 before the DIOS, Sitapur. In fact, it was the appellant who was given the charge of Officiating Principal of the institution in terms of the order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow, whereby the appellant was held to be senior to Sri Prafulla Kumar Mishra. However, subsequently, he was divested of the charge of Officiating Principal by the judgment and order dated 13.08.2021 passed in Writ Petition No. 8702 (SS) of 2017, whereby the order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow, was set aside. Thus, it was only as a consequence of the judgment and order dated 13.08.2021 passed in Writ Petition No. 8702 (SS) of 2017 that the appellant was divested of the post of Officiating Principal of the institution. It is, therefore, not a case where respondent No.1 can contend that by the order dated 25.03.2017, he was divested of any accrued or vested right.

34. In view of the aforesaid discussion, we are of the view that the present appeal deserves to be allowed and is hereby **allowed**. Accordingly, we set aside the judgment and order dated 13.08.2021 passed in Writ Petition No. 8702 (SS) of 2017 and uphold the order dated 25.03.2017 passed by the Joint Director of Education, VIth Region, Lucknow. We further direct that the appellant (Jai Ram) shall be given all consequential benefits being senior to respondent No.1 within a period of fifteen days from the date of production of a certified copy of this order before the Joint Director of Education, VIth Region, Lucknow.

(2026) 7 ILRA 949
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Application U/S 378 No. 43 of 2017

State of U.P. ...Appellant
Versus
Ramkesh & Anr. ...Respondents

Issue for Consideration

Matter pertains to consideration of an application for leave to appeal under S. 378(3) of the Code of Criminal Procedure against an order of acquittal in a case based on circumstantial evidence, particularly the last seen together theory, identification of the dead body, alleged recovery of the necklace and mobile phone, and the question whether the chain of circumstantial evidence was complete and sufficient to warrant interference with the possible view taken by the trial Court. (Paras 12-29).

Headnotes

Criminal Law - Code of Criminal Procedure, 1973 - S. 378 - Appeal against acquittal - Grant of leave under S. 378(3) - Parameters - Appellate Court must consider whether prima facie case has been made out or arguable points have been raised - Where the trial Court has taken a possible view on appreciation of evidence, interference not warranted merely because another view is possible - Acquittal reinforces the presumption of innocence - Interference justified only in exceptional cases where compelling circumstances exist and judgment under appeal is perverse - Present case - Trial Court found material discrepancies regarding last seen together, recovery of articles and identification of dead body - Chain of circumstantial evidence found broken - No case made out for grant of leave to appeal. (Paras 14-19, 27-29).

Criminal Law - Circumstantial evidence - Five golden principles - Prosecution required to establish circumstances fully - Circumstances must be consistent only with hypothesis of guilt - Circumstances must be of conclusive nature and tendency - Circumstances must exclude every possible hypothesis except the one to be proved - Chain of evidence must be complete and leave no reasonable ground consistent with innocence - Mere suspicion cannot take place of proof. (Paras 20-21, 26-28).

Criminal Law - Last seen together theory - Conviction cannot be based only on circumstance of last seen together - Doctrine applies where time gap between last seen alive and discovery of death is so small that possibility of any person other than accused being perpetrator becomes impossible - Even then prosecution must complete chain of circumstances and some corroboration is required - Present case - considerable time gap between alleged last seen and recovery of dead body - possibility of any other person being author of crime could not be ruled out - last seen circumstance therefore insufficient. (Paras 22-25, 27).

Criminal Law - Identification of dead body - Body completely decomposed and decayed - Body undressed/naked - Identification through clothes highly doubtful - Contradictory evidence regarding time and manner of identification - Prosecution failed to explain inconsistency - Circumstance not reliable. (Para 27).

Criminal Law - Recovery of articles - Necklace and mobile phone allegedly recovered at instance of accused - Recovery disputed by defence evidence - No missing article mentioned in FIR or at

time of inquest - Recovery found doubtful and not in consonance with S. 27 of the Indian Evidence Act - Circumstance incapable of completing chain of circumstantial evidence. (Para 27). Criminal Law - The Indian Evidence Act, 1872 – Section 106 - Burden of proof - Last seen together evidence not credible or cogent - Burden does not shift to accused - Mere suspicion cannot take place of proof. (Para 27).

Held: The case of the prosecution totally rests upon circumstantial evidence - the prosecution mainly rests its case on the circumstances of last scene together - the doctrine of last seen rests on the logical presumption that where an individual is last seen alive in the close company of an accused, and is soon thereafter found dead, the accused must reasonably account for the circumstances in which they parted ways - however, the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible - even then the circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt - in the present case there was no missing report for a considerable period, there was material inconsistency regarding identification of the dead body, the recovered dead body was completely decomposed and decayed and was undressed or naked, identification through clothes was highly doubtful, there was a considerable time gap between the last scene and recovery of the alleged dead body and possibility of any other person than accused persons being the author of the crime could not be ruled out - recovery of the necklace and mobile phone was also doubtful since the alleged missing articles were not mentioned in the FIR or at the time of preparation of inquest and the recovery was not in consonance with the provision contained in S. 27 of the Indian Evidence Act - since the evidence pertaining to the last seen together theory was not found credible or cogent, the burden of proof under S. 106 of the Indian Evidence Act does not shift to the accused persons - mere suspicion cannot take the place of proof - the chain of circumstantial evidence is broken and is not complete as testimony of the witnesses of facts are not fully reliable - the prosecution case is not squarely fitted in the doctrine of five golden rules - the trial Court has taken possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court taking a different view - it is not a case worth granting leave to appeal and the application for granting leave to appeal is rejected - consequently, the present government appeal is also dismissed. (Paras 20-29). (E-7)

Case Law Cited

Bannareddy and others vs. State of Karnataka and others, **(2018) 5 SCC 790;** *Jayamma vs. State of Karnataka,* **2021 (6) SCC 213***; Virendra Singh vs. State of UP and others,* **2022 (3) ADJ 354 DB***; Babu vs. State of Kerala* **(2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179***; Balak Ram v. State of* **U.P. AIR 1974 SC 2165***; Shambhoo Missir & Anr. v. State of Bihar* **AIR 1991 SC 315***; Shailendra Pratap & Anr. v. State of U.P.* **AIR 2003 SC 1104***; Narendra Singh v. State of M.P.* **(2004) 10 SCC 699***; Budh Singh & Ors. v. State of U.P.* **AIR 2006 SC 2500;** *State of U.P. v. Ramveer Singh* **AIR 2007 SC 3075***; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.* **AIR 2008 SC 2066***; Arulvelu & Anr. Vs. State* **(2009) 10 SCC 206***; Perla Somasekhara Reddy & Ors. v. State of A.P.* **(2009) 16 SCC 98***; Ram Singh alias Chhaju v. State of Himachal Pradesh* **(2010) 2 SCC 445***; Sheo Swarup and Ors. King Emperor* **AIR 1934 PC 227***; Tulsiram Kanu v. The State* **AIR 1954 SC 1***; Balbir Singh v. State of Punjab* **AIR 1957 SC 216;** *M.G. Agarwal v. State of Maharashtra* **AIR 1963 SC 200***; Khedu Mohton & Ors. v. State of Bihar* **AIR 1970 SC 66***; Sambasivan and Ors. State of Kerala* **(1998) 5 SCC 412***; Bhagwan Singh and Ors. v. State of M.P.* **(2002) 4 SCC 85***; State of Goa v. Sanjay Thakran and Anr.* **(2007) 3 SCC 755***; Chandrappa and Ors. v. State of Karnataka* **(2007) 4 SCC 415***; Ghurey Lal v. State of Uttar Pradesh* **(2008) 10 SCC 450***; State of Rajasthan v. Naresh @ Ram Naresh* **(2009) 9 SCC 368***; State of Uttar Pradesh v. Banne alias Baijnath & Ors.* **(2009) 4 SCC 271***; Dhanapal v. State by Public Prosecutor, Madras* **(2009) 10 SCC 401***; Ramesh Babulal Doshi vs. State of Gujarat* **(1996) 9 SCC 225 : 1996 SCC (Cri) 972***; Anwar Ali and another vs. State of Himachal Pradesh* **(2020) 10 SCC 166;** *Nagabhushan vs. State of Karnataka* **(2021) 5 SCC 222***; Achhar Singh vs. State of Himachal Pradesh* **(2021) 5 SCC 543***; Rajesh Prasad vs. State of Bihar and another,* **(2022) 3 SCC 471***; Jafarudheen vs State Of Kerala;* **(2022) 8 SCC 440;** *Manoj Rameshlal Chhabriya v. Mahesh Prakash Ahuja & Another;* **2025 SCC OnLine SC 451***; State of Maharashtra v. Sujay Mangesh Poyarekar* **(2008) 9 SCC 475***; Sharad Birdhi Chand Sarda vs State Of Maharashtra* **AIR 1984 SC 1622***; Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra; Rambraksh vs. State of Chhattisgarh,* **(2016) 12 SCC 251***; Krishnan alias Ramasamy*

and Others vs. State of Tamil Nadu **(2014) 12 SCC 279***; Arjun Marik v. State of Bihar* **[1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551];** *Anand Jakkappa Pujari @ Gaddadar Vs. State of Karnatka,* **2026 SCC Online SC 716;** *State of U.P. v. Satish,* **(2005) 3 SCC 114 2005 SCC (Cri) 642***; Sujit Biswas vs State Of Assam* **(2013) 82 ACC page 467***.*

List of Acts

The Indian Penal Code, 1860; The Code of Criminal Procedure, 1973; The Indian Evidence Act, 1872

List of Keywords

appeal against acquittal; grant of leave to appeal; circumstantial evidence; last seen together; five golden principles; chain of circumstances; presumption of innocence; double presumption; identification of dead body; recovery of necklace; mobile phone; special knowledge; burden of proof; mere suspicion; proof; reasonable doubt; possible view; complete chain; conclusive proof; miscarriage of justice; benefit of doubt; re-appreciation of evidence

Case Arising From

APPELLATE JURISDICTION: Against the judgment and order dated 19.11.2026 passed by the Additional Sessions Judge, Court No. 8, Barabanki in Sessions Trial No. 1451 of 2009 arising out of Case Crime No. 1432 of 2009, whereby the accused persons were acquitted of the charges under Ss. 302, 201, 404 and 411 of the Indian Penal Code.

Appearances for Parties

Advs. for the Appellant:
Learned AGA for the appellant-State of UP.
Advs. for the Respondents:
Not mentioned in the judgment.

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

Re: Criminal Misc. Application (Leave to Appeal)

1. Heard learned AGA for the appellant-State of UP and perused the record.

2. The present government appeal has been preferred by the State against the judgment and order dated 19.11.2026 passed by Additional Sessions Judge, Court No.8, Barabanki in Sessions Trial No. 1451 of 2009 arising out of Case Crime No. 1432 of 2009, under Sections 302/201/404/411 of Indian Penal Code (herein after referred to as 'IPC'), Police Station Kotwali Haidergarh, District Barabanki.

3. The factual matrix of the case is that on 04.08.2009 at about 3:30 p.m., informant's deceased wife, Smt. Sangeeta, went to the road outside the village accompanied with her 14-year-old son, Anuj. The accused persons, Ramkesh and one unknown, were present there with a motorcycle. The deceased boarded the motorcycle with them and headed towards Haidergarh. On the way, eyewitnesses Rakesh Mishra and Harish Chandra Tiwari saw them, subsequently visited the informant's house, and narrated the incident. The deceased, Sangeeta, had gone with the accused persons to her maternal aunt's (Mausi) house to give her Rs2,000/-. After handing over the amount, she telephoned her son, Anuj, informing him that she would return home within half an hour. However, she failed to return by evening, and her mobile phone was found switched off, prompting the family to search for her. On 17.08.2009, the informant received information that the

body of a woman had been recovered from a waterlogged area near the canal. Thereafter, the informant, along with his father-in-law and his son, Anuj, identified the body as that of the deceased, Sangeeta.

4. On the basis of written application First Information Report (hereinafter referred to as 'FIR') had been lodged against accused Ramkesh and one unknown person under Section 304 of IPC in Police Station Kotwali Haidergarh. After lodging of the FIR the Investigating Officer prepared the inquest report of the recovered dead body and sent the same for autopsy. In furtherance of the investigation the Investigating Officer also visited the place of occurrence, prepared site plan, recorded the statement of witnesses and after concluding the investigation filed charge-sheet against accused Ramkesh and Ram Sagar, opposite party Nos. 1 and 2 respectively under Sections 302, 201, 404 and 411 of IPC.

5. After compliance of mandatory provision of Section 207 of Code of Criminal Procedure (herein after referred to as 'CrPC'), learned Chief Judicial Magistrate, Barabanki finding the case exclusively triable by Session, committed the same to Court of Session Judge from where it was made over to the Court of Additional Sessions Judge, Court No.8, Barabanki for trial accordingly to law, who framed the charges against the accused persons for which they denied and claimed to be tried.

6. To substantiate its case, learned trial Court recorded the testimony of the prosecution witnesses Ramesh Mishra PW-1, Amar Nath Shykla PW-2, Rakesh Datt Mishra PW-3, Anurag Shukla PW-4, Mukesh Kumar PW-5, Anuj Shukla PW-6, Umakant Mishra PW-7, I.O. Zabrul Hashan PW-8, Dr. Rajesh Ojha PW-9 and Usha Devi PW-10.

7. The statement of the accused persons under Section 313 of CrPC. Was recorded. At the stage of defence Ram Kishor DW-1 was examined.

8. After hearing the learned counsel for the parties and perusing the material available on record, the learned trial court concluded that prosecution has miserable failed to establish its case and charge levelled against accused persons is not duly proved, consequently acquitted the accused persons for the charges levelled against them.

9. Being aggrieved and dissatisfied by the order of acquittal, the State has filed this appeal alongwith application under Section 378(3) of Cr.P.C. for grant of leave to appeal against the said judgment.

10. The judgment of acquittal was passed on the ground that there was no direct evidence of the murder of the deceased and the case rests upon circumstantial evidence.

The learned trial Court further observed that the prosecution has placed reliance on the theory of last seen together, but that was not found believable since there were inconsistencies in the cross-examination of the witnesses of the last seen together. The learned trial Court also found that the dead body of the deceased was recovered much after the disappearance of the deceased, which indicated an advanced stage of decomposition as blisters were present and bones had separated

from the flesh. It was not possible to identify the deceased only on the basis of dead body. The learned trial Court also observed that the dead body was found undressed; therefore, the statement of the witnesses with regard to identifiction of the dead body on the basis of clothing was highly misconceived and not reliable. The learned trial Court also observed that it was nowhere mentioned in the FIR that the necklace and mobile phone of the deceased were also missing, but suddenly, during the course of investigation, the alleged recovery of the necklace and mobile phone of the deceased was made at the instance of the accused persons, which is also doubtful. The learned trial Court also observed that at the time of the alleged incident, the husband of the deceased was present at Haridwar in consequence of his private job. He returned from Haridwar on 19.09.2009 and then identified the dead body of the deceased, whereas an application had already been moved by him for the autopsy of the dead body on 17.08.2009. Furthermore, his son Anuj stated that two to three days after his mother went missing, a dead body was recovered nearby the canal bridge, and he identified the dead body after noticing the clothes worn by the deceased. It was also observed by the learned trial Court that no missing complaint was lodged by the informant till the recovery of the dead body. Thus, it was found that there were material discrepancies in the testimonies of the witnesses of fact with regard to the last seen together, the recovery of articles, and the identification of the dead body, rendering the statements of the witnesses of fact unworthy of belief. Under such circumstances, the trial Court found that the prosecution could not prove its case beyond reasonable doubt, and the accused persons were given the benefit of doubt and a judgment of acquittal was passed.

11. Challenging the impugned judgment, the learned AGA submits that the trial Court has erred in appreciating the evidence on record. He further submits that the chain of circumstantial evidence is complete, which is duly proved by the prosecution witnesses. The dead body of the deceased was duly identified on the basis of the clothes worn by the deceased; therefore, no occasion arose to conduct a DNA test on the body of the deceased. It is also submitted that the necklace (mangalsutra) and mobile phone of the deceased were recovered at the instance of the accused persons, which was within their special knowledge. It is also submitted that the call details of the mobile phones of the accused persons and the deceased were collected, which indicated that the accused persons called her many times on her mobile phone. The prosecution witnesses, in their examination-in-chief and cross-examination, have supported the prosecution version. The learned trial Court has given undue weightage to minor inconsistencies that occurred in the prosecution evidence and has wrongly ignored the core of evidence of prosecution witnesses. He also submits that the observations made by the learned trial Court are arbitrary, being based on surmises and conjectures, and have given undue weightage to the defence stand and evidence, while the prosecution witnesses remain intact and have fully corroborated the prosecution case, and the chain of circumstances is linked together, drawing an inference against the accused persons, but learned trial Court has taken different view, which is not one of the possible view. Submission, therefore, is that the judgment and order of acquittal passed by the trial Court requires serious consideration and reversal and the accused persons herein are liable to be convicted.

12. We have considered the submissions and have perused the record.

13. Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

14. In the case of **Bannareddy and others vs. State of Karnataka and others, (2018) 5 SCC 790**, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities"

15. In **Jayamma vs. State of Karnataka**, 2021 (6) SCC 213, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against against an order of acquittal passed by a Trial Court in the following words:

"The power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a "possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact."

16. In a judgment of this Court in **Virendra Singh vs. State of UP and others**, 2022 (3) ADJ 354 DB, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

"10. In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; Shambhoo

Missir & Anr. v. State of Bihar AIR 1991 SC 315; Shailendra Pratap & Anr. v. State of U.P. AIR 2003 SC 1104; Narendra Singh v. State of M.P. (2004) 10 SCC 699; Budh Singh & Ors. v. State of U.P. AIR 2006 SC 2500; State of U.P. v. Ramveer Singh AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors. AIR 2008 SC 2066; Arulvelu & Anr. Vs. State (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P. (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh (2010) 2 SCC 445).

13. In Sheo Swarup and Ors. King Emperor AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See: Tulsiram Kanu v. The State AIR 1954 SC 1; Balbir Singh v. State of Punjab AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200; Khedu Mohton & Ors. v. State of Bihar AIR 1970 SC 66; Sambasivan and Ors. State of Kerala (1998) 5 SCC 412; Bhagwan Singh and Ors. v. State of M.P. (2002) 4 SCC 85; and State of Goa v. Sanjay Thakran and Anr. (2007) 3 SCC 755).

15. In Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having

secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, this Court re-iterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh @ Ram Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of Uttar Pradesh v. Banne alias Baijnath & Ors. (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in Dhanapal v. State by Public Prosecutor, Madras (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the

presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

11. Hon'ble Apex Court in the case of Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.

12. The aforesaid judgments were taken note of with approval by Supreme Court in the case of Anwar Ali and another vs. State of Himachal Pradesh (2020) 10 SCC 166, Nagabhushan vs. State of Karnataka (2021) 5 SCC 222, and Babu (supra) in Achhar Singh vs. State of Himachal Pradesh (2021) 5 SCC 543."

17. Similar view has been reiterated by Hon'ble Apex Court in **Rajesh Prasad vs. State of Bihar and another**, (2022) 3 SCC 471.

18. In **Jafarudheen vs State Of Kerala; (2022) 8 SCC 440**, the Hon'ble Supreme Court made the following observations:

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

19. In **Manoj Rameshlal Chhabriya v. Mahesh Prakash Ahuja & Another; 2025 SCC OnLine SC 451** the Hon'ble Supreme Court made the following observations regarding the parameters that must be considered while dealing with the applications seeking leave to appeal under Section 378 of CrPC:

"7. The question as to how the application for grant of leave to appeal filed under Section 378(3) of the Cr.P.C. should be decided by the High Court and what are the parameters which the High Court should keep in mind remains no longer res integra. This issue was examined by this Court in State of Maharashtra v. Sujay Mangesh Poyarekar reported in (2008) 9 SCC 475. C.K. Thakker, J. speaking for the Bench held in paras 19, 20, 21 and 24 respectively as under:

"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by subsection

(3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.

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12. We are of the view that at the stage of considering grant of leave under sub-section (3) of Section 378 of the Cr.P.C., a prima facie case should be looked into by the High Court, of course, not ignoring the materials on record."

20. On perusal of material available on record, it reveals that there is no direct evidence of murder of the deceased. The case of the prosecution totally rests upon circumstantial evidence. In the present case a young woman has been murdered. Certainly this incident is a heart breaking, but where direct evidence of murder is not available, then it is to be seen by the Court that what role of the circumstances played in this case.

21. In **Sharad Birdhi Chand Sarda vs State Of Maharashtra** AIR 1984 SC 1622, Hon'ble Apex Court laid down that the following conditions, which may be called five golden principles or the "punchsheel" of the proof of a case based on circumstantial evidence, must be fulfilled before a case against an accused can be said to be fully established:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra(') where the following observations were made:

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

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

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

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

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

22. In the case in hand, the prosecution mainly rests its case on the circumstances of last scene together. The doctrine of last seen rests on the logical presumption that where an individual is last seen alive in the close company of an accused, and is soon thereafter found dead, the accused must reasonably account for the circumstances in which they parted ways, as such facts fall particularly within his knowledge. Thus, it rests on the presumption that human behavior follows natural probabilities, and, hence, the person who was last seen with the deceased must be able to explain the facts that resulted in the subsequent death of the deceased.

23. In **Rambraksh vs. State of Chhattisgarh**, reported in (2016) 12 SCC 251 Hon'ble Apex Court Court observed that the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be

based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

24. Further Hon'ble Apex Court in the case of Krishnan alias Ramasamy and Others vs. State of Tamil Nadu reported in (2014) 12 SCC 279 while relying on its judgment in Arjun Marik vs. State of Bihar7 observed as follows:

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows: (SCC p. 385, para 31) 31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

25. In the case of **Anand Jakkappa Pujari @ Gaddadar Vs. State of Karnatka reported in 2026 SCC Online SC 716** in paragraph 41 and 42 Hon'ble Apex Court held that:

"41.The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case, the courts should look for some corroboration.

42. In State of U.P. v. Satish, (2005) 3 SCC 114 2005 SCC (Cri) 642, this Court observed:-

"22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together. it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

26. Here it is expedient to mention that where case is heinous in nature then instrutor of proof is also required to prove the case. In the case of **Sujit Biswas vs State Of Assam (2013) 82 ACC page 467**, distinguishing the word "may be" and "will be proved" Hon'ble Apex Court was of the view that an accused cannot be punished merely on the basis of suspicion. A conclusive proof to bring home the guilt of accused is required. Observation of the Court may be extract as below:

"Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be, proved, and something that `will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be 'and `must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be true and `must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be true and `must be true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

27. In view of the above principles and on perusal of the material available on record, it reveals that following chain of the circumstantial evidence is adduced by the prosecution, but that is not worth belief, reason is that:

i) It is alleged that deceased was missing since 04.08.2009 and witnesses of last scene together, namely Rakesh Mishra and Harish Chandra Tiwari saw the deceased amongst the accused persons on motorcycle and as per Rakesh Mishra PW-3, he has informed on the same day, but since 04.08.2009 till 16.08.2009, no missing report was lodged by the complainant side, this fact is admitted to the husband of the deceased Amar Nath Shukla, who is examined as PW-2, that at the time of alleged incident he was present at Haridwar, where he was doing private job and returned from Haridwar on 19.08.2009, then he along with his son and father-in-law identified the dead body of the deceased. While contrary to that son of the informant Anuj Shukla PW-6 has stated that he traced her mother a lot but could not find out, two to three days after the incident one dead body of a woman was found nearby the canal bridge then he identified the dead body on the basis of clothes worn by the deceased, which was his mother's dead body, this cannot be said a minor discrepancy and with regard to this inconsistency, no explanation is given by the prosecution.

ii) Dr. Rajesh Ojha (PW-9), who conducted the autopsy of the deceased, opined that during the external examination of the dead body, the skin was found to have peeled off at many places. There were blisters across the entire body, and maggots were creeping. The right leg had been eaten by animals. In various places on the body, flesh was missing, the sutures of the skull were open, and the body had decomposed and decayed. During the internal examination, the membrane of the brain was found to have liquefied. In the trachea, dust particles were present, and the lungs were filled with water. He further opined that the cause of death of the deceased was drowning in water resulting in asphyxia, and the duration of death was stated to be between 04.08.2009 and 17.08.2009, which may be extended beyond two weeks.

Ramesh Mishra (PW-1) deposed in his cross-examination that the recovered dead body was completely decomposed, to the extent that it could not even be identified whether it was the body of a male or a female. The husband of the deceased, Amar Nath Shukla (PW-2), also deposed that the dead body had become

completely decomposed and decayed, making it impossible to ascertain whether it was the body of a male or a female. Furthermore, at the time of identification, the recovered dead body was undressed/naked, thus identification through clothes of the dead body was highly doubtful.

iii) there is a considerable time gap between the last scene and recovery of the alleged dead body of the deceased, therefore, in view of the time gap between the point of time when the accused and deceased were alleged to be seen alive and when the alleged dead body and deceased was found possibility of any other person than accused persons being the author of the crime could not be ruled out.

iv) the other circumstance pertaining to recovery of the necklace (mangalsutra) and mobile phone of the deceased. PW-2 Amar Nath Shukla has stated that one necklace and mobile phone were recovered at the instance of accused Ramkesh and Ramsagar respectively, but this fact was controverted by defence witness Ram Kishore DW-1, who deposed that when he was sitting at his door steps, then police personnel arrived there and asked him the house of Ram Kesh. Thereafter, police personnel went to the house of Ram Kesh and brought the Ram Kesh in their custody and went away. At that time no jewelry was recovered from the house of Ram Kesh. Apart from this fact is also notable that if any personal article of the deceased was missing then till preparation of inquest, nowhere it was narrated neither by the husband of the deceased nor by his son, and this fact is also not mentioned in the FIR, thus recovery of the necklace and mobile has also become doubtful since it is not consonance with the provision contained in Section 27 of the Indian Evidence Act.

v) Since the evidence pertaining to the "last seen together" theory was not found credible or cogent, the burden of proof under Section 106 of the Indian Evidence Act does not shift to the accused persons requiring them to explain how the incident had occurred. Mere suspicion cannot take the place of proof.

28. On close scrutiny, we also find that chain of circumstantial evidence is broken, which is not complete as testimony of the witnesses of facts are not fully reliable since there are not sterling witness. In such view of the matter, we, therefore, find that the prosecution case is not squarely fitted in the doctrine of five golden rules as doctrine propounded by Hon'ble Apex Court in the case of **Sharad Birdhi Chand Sarda** (supra). In such view of the matter, we, therefore, find that trail Court has taken possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court taking a different view as per the law discussed above.

29. Accordingly, it is not a case worth granting leave to appeal. The application for granting leave to appeal is rejected.

Re: Government Appeal

1. Consequently, since the Criminal Misc. Application (Leave to Appeal) has been rejected by order of date, the present government appeal is also dismissed.

2. Let record of trial court be sent back to Court concerned along with copy of judgment and order for information.

(2026) 7 ILRA 963
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.07.2026

BEFORE

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

Criminal Appeal No. 79 of 2026

X Victim/Complainant of FIR No. 68/2019 ...Appellant
Versus
State of U.P. & Anr. ...Respondents

Issue for Consideration

Matter pertains to an appeal by the victim against the judgment and order of acquittal passed by the trial court in a prosecution under Ss. 376 and 506 of the Indian Penal Code, 1860 - scope of interference by the appellate court with an order of acquittal - whether the appreciation of evidence by the trial court suffered from illegality, manifest error or perversity and whether the prosecution had proved its case beyond reasonable doubt on the basis of convincing, plausible, trustworthy and consistent evidence. (Paras 12-18, 31-34)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 376, 506 - Appeal against acquittal - Scope of appellate interference - Legal principle - An appellate court has full power to review, re-appreciate and reconsider the evidence upon which an order of acquittal is founded and may reach its own conclusion on questions of fact and law. However, in case of acquittal, there is a double presumption in favour of the accused and if two reasonable conclusions are possible based on the evidence on record, the appellate court should not disturb the finding of acquittal. Where the evaluation and appreciation of evidence by the trial court does not suffer from illegality, manifest error or perversity and the view taken is reasonable and plausible, interference is not warranted. (Paras 12-18, 34)

Criminal Law - Evidence - Appeal against acquittal - Testimony of victim - Sterling witness - The testimony of the victim, around whom the entire sequence of events revolves, is of utmost importance and value. For an eye witness to be believed, the evidence should be of sterling quality, capable of being taken at face value, consistent from the initial statement till the evidence before the court, natural and capable of withstanding cross-examination. Where material contradictions, omissions, improvements and changes occur in the testimony and the version is not supported by other oral, documentary or material evidence, the testimony does not qualify as that of a sterling witness. (Paras 20-24, 26-31)

Criminal Law - Evidence - Medical evidence - Consent - Prosecution case - Minor variations between medical evidence and ocular evidence do not take away the primacy of credible ocular evidence. However, the prosecution must establish its case beyond all reasonable doubts by convincing, plausible, trustworthy and consistent evidence. Material contradictions regarding the manner and date of occurrence, absence of corroborative evidence, non-recovery of the alleged video, material omissions in the first information report and failure to examine relevant witnesses may render the prosecution version insufficient to prove the charges. Where the trial court has taken the best probable view on the evidence and its judgment is not unreasonable, illogical or improbable, no interference with the acquittal is warranted. (Paras 22-34)

Held: An appellate court has full power to review, re-appreciate and reconsider the evidence upon which an order of acquittal is founded and may reach its own conclusion on questions of fact and law - however, in case of acquittal, there is a double presumption in favour of the accused and the presumption of innocence is further reinforced, reaffirmed and strengthened by the trial court - the appellate court should not disturb an acquittal where two reasonable conclusions are possible on the evidence on record and where the evaluation and appreciation of evidence by the trial court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based its finding are reasonable and plausible - the testimony of the victim was of utmost importance and value but the victim did not qualify the test of a sterling witness - material contradictions were found regarding the manner in which she reached the place of occurrence, the alleged repeated rape, the alleged video recording and blackmailing, the date and manner of her taking away and the allegations relating to trafficking - the alleged video was neither found in possession of the accused nor circulated and no evidence of the alleged video was found during investigation - the prosecution failed to produce corroborative evidence regarding the alleged journey from the place of occurrence to Delhi and failed to examine the persons with whom the victim allegedly returned home - the father of the victim was a hearsay witness and his evidence was of negligible value - the defence plea was not proved as per law but the burden remained upon the prosecution to prove its case beyond all reasonable doubts by convincing, plausible, trustworthy and consistent evidence - the prosecution failed to discharge that burden - the trial court had taken the best probable view and its judgment was not unreasonable, illogical or improbable - no interference was warranted with the judgment and order of acquittal and the appeal was dismissed. (Paras 12-18, 20-34) (E-7)

Case Law Cited

Suraj Singh vs. State of Uttar Pradesh, **Criminal Appeal No. 1072 of 2004***; Sheo Swarup v. R. Emperor,* **(1934) 61 IA 398***; Nur Mohd. v. Emperor***, (AIR 1945 PC 151);** *Prandas v. State,* **(AIR 1954 SC 36);** *Surajpal Singh v. State,* **(1952 SCR 193);** *Ajmer Singh v. State of Punjab,* **(1953 SCR 418);** *Atley v. State of U.P.,* **(AIR 1955 SC 807);** *Aher Raja Khima v. State of Saurashtra,* **(1955) 2 SCR 1285);** *Sanwat Singh v. State of Rajasthan,* **(1961) 3 SCR 120;** *M.G. Agarwal v. State of Maharashtra,* **(1963) 2 SCR 405***; Shivaji Sahabrao Bobade v. State of Maharashtra,* **(1973 (2) SCC 793)***; K. Gopal Reddy v. State of A.P,* **(1979) 1 SCC 355***; Ramesh Babulal Doshi v. State of Gujarat,* **(1996) 9 SCC, 225***; Allarakha K. Mansuri v. State of Gujarat,* **(2002) 3 SCC 57;** *Bhagwan Singh v. State of M.P.,* **(2002) 4 SCC 85***; Harijana Thirupala v. Public Prosecutor, High Court of A.P.,* **(2002) 6 SCC 470***; Ramanand Yadav v. Prabhu Nath Jha,* **(2003) 12 SCC 606***; Kallu v. State of M.P.,* **(2006) 10 SCC 313;** *Chandrappa and Ors. v. State of Karnataka,* **(2007 (4) SCC 415);** *Kamaljit Singh v. State of Punjab,* **(2003 (12) SCC 155);** *Solanki Chimanbhai Ukabhai v. State of Gujarat,* **(1983 (2) SCC 174);** *State of U.P. v. Krishna Gopal,* **(1988 (4) SCC 302);** *Govindaraju alias Govinda v. State,* **(2012) 4 SCC 722***; Jafarudheen vs State Of Kerala,* **(2022) 8 SCC 440***; Rajpal Singh v. Rajveer & Others,* **2025 SCC OnLine SC 2823***; Manjunath vs State of Karnataka,* **2023 INSC 978***; Raj Sandeep @ Deepu alias Deepu vs. State (NCT of Delhi),* **35 (2012) 8 SCC 21 [2 Judge Bench] 35- [Cr. A No. 866 of 2011];** *Ganesan v State36; Naresh @ Nehru v State of Haryana, 37; Krishnan and Anr. v. State represented by Inspector of Police,* **(2003 (7) SCC 56)**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Delhi Special Police Establishment Act, 1946

List of Keywords

appeal against acquittal; double presumption; presumption of innocence; appellate court; re-appreciate the evidence; reasonable conclusions; sterling witness; victim; ocular evidence; medical evidence; reasonable doubt; material omission; material improvement; hearsay witness; corroboration; prosecution evidence; burden upon the prosecution; proof beyond reasonable doubt; convincing evidence; plausible evidence; trustworthy evidence; consistent evidence; video recording; blackmailing; consent; trafficking; acquittal; miscarriage of justice; best probable view; manifest error; perversity

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal No. 79 of 2026, preferred by the victim/complainant against the judgment and order dated 12.03.2026 passed by the Additional District and Session Judge, Fast Track Court, Unnao in Sessions Trial No. 686 of 2020, arising out of Crime No. 68 of 2019, Police Station Bihar, District Unnao, whereby the accused was acquitted of the charges under Ss. 376 and 506 of the Indian Penal Code, 1860.

Appearances for Parties

Advs. for the Appellant:
Shri Abhishek Kumar
Advs. for the Respondents:
Learned A.G.A. appearing for respondent No.1

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

1. Heard Shri Abhishek Kumar, learned counsel for the appellant and learned A.G.A. appearing for the respondent No.1.

2. This order shall dispose of the aforementioned appeal which has been preferred by victim of the case against the judgement and order dated 12.03.2026, passed by Additional District and Session Judge, fast track court, Unnao in Sessions Trial No. 686 of 2020, arising out of Crime No.68 of 2019, Police Station - Bihar, District - Unnao, In re; State vs. Hitender Pratap Singh @ Gaurav Kumar whereby the respondent no.2 (hereinafter referred to as 'accused') has been acquitted of the charges under Section 376, 506 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for brevity).

3. Brief facts of the case relevant for the purpose of disposal of this appeal are that on 16.02.2019, the victim (name has not been disclosed to conceal her identity and herein after referred as victim) moved an application to the police station to register the first information report against the accused with the allegations that on 18.01.2019 at around 01:00 P.M., when she was going towards her fields, the accused who was already present in the mustard field, dragged her and forcibly committed rape upon her. When she opposed and stated to report the incident at her home, the accused threatened to make the recorded video go viral to all the groups and under the guise of video threatened her to do as per his instructions and on several occasions, committed rape. She didn't tell anyone about the incident out of the fear. It has further been alleged that on 20.01.2019, sister of accused namely Deepika came to her house and told that she has been called by her brother and both of them left. On the way, she met the accused having a motorcycle and was asked to sit on the bike. Out of fear, she sat on it and was taken to Lal Kuan Tiraha, Police Station Bighapur, District Unnao, and made to sit inside a vehicle namely a Magic Van wherein a woman, namely Anjali was already seated, and was further taken to Kanpur railway station. At the said railway station, two unknown persons met and all of them set off for Ghaziabad railway station. It has been alleged that from the suspicious conversation between two unknown persons and the woman namely Anjali, she came to know that she has been fallen prey of conspiracy of her trafficking and on finding an opportunity, she informed her family through the phone of a passenger. Accordingly, on an information, the cousin of victim along with his acquaintances reached railway station. Seeing them approaching, Anjali and two unknown persons quit the train. In this way, victim managed to rescue herself and came back home along with her cousin and his

acquaintance on 15.02.2019. Had her cousin not reached timely, she would have been sold or forced into prostitution. With the aforesaid allegations, she submitted typed application under her signature to register the case against the accused and his accomplice.

4. On the basis of the written tehrir, the first information report bearing number 68/2019 was registered against accused in Police Station Bihar, under Section 376/506/120-B of IPC.

5. Investigation was carried out by PW6 Sub Inspector Dinesh Kumar Mishra. During investigation, he recorded the statement of victim and other factual witnesses as well as police witnesses. The medical examination of the victim was got conducted and medical report was collected and statement of doctor concerned was recorded. The victim was also produced before the magistrate concerned for recording her statement and after taking permission of the court, perused the same and made the relevant entry in the case diary. Thereafter, the investigation was transferred to Senior Sub- Inspector Gaurav Kumar PW7, who carried out the investigation further. Again the investigation was handed over to PW5 Sub-Inspector Mor Mukut Pandey, who after completing entire investigation and its formalities and finding out prima facie incriminatory evidence only against the accused under section 376/506 of IPC, submitted the charge sheet before the court concerned who after taking the cognizance of the offence, committed the case for trial to the court of session. Learned trial court framed the charges against the accused in the aforementioned sections, to which the accused pleaded not guilty and claimed trial.

6. The prosecution opened its case and examined as many as two factual witnesses i.e. victim as PW1 and her father as PW2. Both the witnesses corroborated the incident, and its place, date and time. PW3, Dr. Geeta Agrawal, who conducted the medico legal examination of the victim and prepared the report Ex. Ka.4 indicated the age of victim about 19 years and found, the hymen old and torn and no external injury in her internal parts. As per this witness, no opinion of rape could be given. PW4 Head Constable Ajay Kumar Maurya deposed that on the basis of written application moved by the victim, he registered the first information report and corresponding entry of first information report in general diary. PW5 Sub-Inspector Mor Mukat Pandey deposed that after taking over the investigation by the administrative order of superior, he endeavoured to arrest the accused and consequently arrested him in front of his house on 10.08.2020 vide arrest memo Ex. Ka.7 and after completing all the formalities, filed charge sheet against the accused under section 376/506 IPC. PW6 Sub-Inspector Dinesh Kumar Mishra, who is the first investigating officer, corroborated the fact of registration of first information report in his presence. He further deposed that after taking over the investigation, he prepared the site plan Ex. Ka.9 and recorded the statements of witnesses as well as produced the victim before the magistrate for recording her statement under section 164 Cr.P.C and perusal of same with the prior permission of learned Magistrate. PW7 Gaurav Kumar, Senior Sub-Inspector, who was second Investigating Officer took over the investigation vide administrative order and investigated the case accordingly. The complicity of Deepika and Anjali was not found in the commission of any offence they had been charged with. With the above prosecution witnesses, the prosecution closed its evidence.

7. After conclusion of prosecution evidence, the statement of accused was recorded under section 313 of CRPC, in which the accused stated his false implication due to animosity. Accused challenged the allegations on the ground that at the time of alleged incident, he was not present at

the spot rather was in Prayagraj, which is about 200 km away from the place of incident. He further submitted that a false and manipulated story was pressed into service by victim only to pressurise him in exercise of patent abuse of law.

8. After recording his statement, an opportunity was given to adduce the evidence oral as well as documentary in support of his defence. In documentary evidence, he filed the call record details issued by BSNL against his mobile no. 9935881641, information issued by the railways regarding the train, documents relating to the his examination in air force. However, no ocular evidence was adduced.

9. Learned trial court after hearing the arguments advanced by both the parties and considering the facts, circumstances and evidence available on record, passed the impugned order and judgement acquitting the accused from the charges levelled against him. The victim, being aggrieved, has filed the instant appeal.

10. While pressing the appeal, learned counsel for victim submitted that the acquittal of accused vide impugned order and judgement, has resulted in substantial injustice and illegality and the judgement has been passed ignoring the evidence available on the record. It is contended that the impugned judgement is patent miscarriage of justice and the accused has been granted benefit of doubt considering the minor contradictions in the evidence of PW1 and PW2 while heavily relying upon the defence of the accused, which is erroneous and tantamounts to grave miscarriage of justice. The victim, who is the star witness of the case, along with her father has established the prosecution story to the hilt that accused committed rape and recorded the incident in the video and when she expressed her strong protest, she was put in fear to viral the video on all the groups and on account of the video, she was raped by accused and blackmailed by him and her sister. PW2 father of the victim also lends support to her statement, therefore, the victim has proved herself as a sterling witness and remained steadfast in her statement from beginning to end. The investigating officers also supported the prosecution story and no contradiction or inconsistency, as such was brought out on record to disbelieve the story, rather looking into the entire prosecution evidence as a whole, the only irresistible conclusion is that an offence of rape has been proved against the accused beyond reasonable doubt, but learned trial court, repelling, ignoring and ultimately disbelieving the evidence of the best witness of the case, reached on an unjustified and unreasonable conclusion and recorded non speaking findings rendering benefit of doubt to accused and passed impugned order and judgment of acquittal, therefore, the same is required to be interfered by this court by admitting the instant appeal. Concluding the arguments, it has been stated that the prosecution has proved its case beyond reasonable doubt to its chapter and verses, therefore, impugned order and judgement is bad in the eyes of law and deserves to be set aside.

11. We have heard the arguments of the state and perused the record minutely and meticulously.

12. Before adverting to the facts of the instant case, it may be beneficial to refer to the following pronouncements which deal with the scope of interference with a judgment of acquittal at the appellate stage. In the landmark judgment of **Suraj Singh vs. State of Uttar Pradesh,**

Criminal Appeal No. 1072 of 2004, Hon'ble Supreme Court while dealing with an appeal pertaining to an acquittal, considered and clarified the legal position as below:-

"5. ....Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

"378. Appeal in case of acquittal.?(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

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

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

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

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

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

6. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

7. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

8. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to re-appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

9. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

10. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point.

11. The first important decision was rendered by the Judicial Committee of the Privy Council in Sheo Swarup v. R. Emperor (1934) 61 IA 398). In Sheo Swarup the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code (similar to Section 378 of the present Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

12. Lord Russel summed up the legal position thus:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."

13.His Lordship, then proceeded to observe: (IA p.404)

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

14. The Committee, however, cautioned appellate courts and stated: (IA p.404)

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

(emphasis supplied)

15. In Nur Mohd. v. Emperor (AIR 1945 PC 151), the Committee reiterated the above view in Sheo Swarup (Supra) and held that in an appeal against acquittal, the High Court has full powers to review and to reverse acquittal.

16. So far as this Court is concerned, probably the first decision on the point was Prandas v. State (AIR 1954 SC 36) (though the case was decided on 14-3- 1950, it was reported only in 1954). In that case, the accused was acquitted by the trial court. The Provincial Government preferred an appeal which was allowed and the accused was convicted for offences punishable under Sections 302 and 323 IPC. The High Court, for convicting the accused, placed reliance on certain eyewitnesses.

17. Upholding the decision of the High Court and following the proposition of law in Sheo Swarup (supra), a six-Judge Bench held as follows:

"6. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice."

(emphasis supplied)

18. In Surajpal Singh v. State (1952 SCR 193), a two-Judge Bench observed that it was well established that in an appeal under Section 417 of the (old) Code, the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons.

19. In Ajmer Singh v. State of Punjab (1953 SCR 418) the accused was acquitted by the trial court but was convicted by the High Court in an appeal against acquittal filed by the State. The aggrieved accused approached this Court. It was contended by him that there were "no compelling reasons" for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the trial court as regards the credibility of witnesses seen and examined. It was also commented that the High Court committed an error of law in observing that "when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed."

20. Upholding the contention, this Court said:

"We think this criticism is well founded. After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons."

(emphasis supplied)

21. In Atley v. State of U.P. (AIR 1955 SC 807) this Court said:

"In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal Procedure Code came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order. It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of

innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated."

(emphasis supplied)

22. In Aher Raja Khima v. State of Saurashtra (1955) 2 SCR 1285) the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking for the majority (2:1) stated: (AIR p. 220, para 1) "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong."

(emphasis supplied)

23. In Sanwat Singh v. State of Rajasthan (1961) 3 SCR 120, a three-Judge Bench considered almost all leading decisions on the point and observed that there was no difficulty in applying the principles laid down by the Privy Council and accepted by the Supreme Court. The Court, however, noted that appellate courts found considerable difficulty in understanding the scope of the words "substantial and compelling reasons" used in certain decisions. It was observed inter-alia as follows:

"This Court obviously did not and could not add a condition to Section 417 of the Criminal Procedure Code. The words were intended to convey the idea that an appellate court not only shall bear in mind the principles laid down by the Privy Council but also must give its clear reasons for coming to the conclusion that the order of acquittal was wrong."

The Court concluded as follows:

"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as,(i)'substantial and compelling reasons',(ii)'good and sufficiently cogent reasons',and (iii) 'strong reasons' are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

24. Again, in M.G. Agarwal v. State of Maharashtra (1963) 2 SCR 405, the point was raised before a Constitution Bench of thisCourt. Taking note of earlier decisions, it was observed as follows:

"17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, 'the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons': vide Surajpal Singh v. State (1952 SCR, 193). Similarly in Ajmer Singh v. State of Punjab (1953 SCR 418), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are 'very substantial and compelling reasons to do so'. In some other decisions, it has been stated that an order of acquittal can be reversed only for 'good and sufficiently cogent reasons' or for 'strong reasons'. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in Sheo Swarup the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan and Harbans Singh vs. State of Punjab (1962 Supp. 1 SCR 104) and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse."

(emphasis supplied)

25. Yet in another leading decision in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

26. Putting emphasis on balance between importance of individual liberty and evil of acquitting guilty persons, this Court observed as follows:

"6. Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand

guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then breakdown and lose credibility with the community. The evil of acquitting a guilty person light- heartedly, as a learned author (Glanville Williams in Proof of Guilt) has saliently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....' In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

(emphasis supplied)

27. In K. Gopal Reddy v. State of A.P (1979) 1 SCC 355, the Court was considering the power of the High Court against an order of acquittal under Section 378 of the present Code. After considering the relevant decisions on the point it was stated as follows:

"9. The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for 'substantial and compelling reasons' only and courts used to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons','good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the pronouncement of this Court in Sanwat Singh v. State of Rajasthan (1961) 3 SCR. In Sanwat Singh case this Court harked back to the principles enunciated by the Privy Council in Sheo Swarup v. R. Emperor and reaffirmed those principles. After Sanwat Singh v. State of Rajasthan, this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in Sheo Swarup case. Occasionally phrases like 'manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more as flourishes of language, to emphasise the reluctance of the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to review the entire evidence and to come to its own conclusion. In some cases (Ramaphupala Reddy v. State of A.P., (AIR 1971 SC 460) Bhim Singh Rup Singh v. State of Maharashtra (AIR 1974 SC 286), it has been said that to the principles laid down in Sanwat Singh case may be added the further principle that 'if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court'. This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable

as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable."

(emphasis supplied)

28. In Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC, 225, this Court said:

"While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then- and then only-reappraise the evidence to arrive at its own conclusions."

29. In Allarakha K. Mansuri v. State of Gujarat (2002) 3 SCC 57, referring to earlier decisions, the Court stated:

"7. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to re-appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding."

30. In Bhagwan Singh v. State of M.P. (2002) 4 SCC 85, the trial court acquitted the accused but the High Court convicted them. Negativing the contention of the appellants that the High Court could not have disturbed the findings of fact of the trial court even if that view was not correct, this Court observed:

"7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused

should be adopted. Such is not a jurisdiction limitation on the appellate court but judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to re- appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not".

31. In Harijana Thirupala v. Public Prosecutor, High Court of A.P. (2002) 6 SCC 470, this Court said:

"12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

32. In Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606, this Court observed:

"21. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

33. Again in Kallu v. State of M.P. (2006) 10 SCC 313, this Court stated:-

"8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the

benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

(emphasis supplied)

34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances","distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

35. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says [see "The Mathematics of Proof II": Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p.340 (342)]: "The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A junior may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent

people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

36. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

37. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimzation of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of U.P. v. Krishna Gopal (1988 (4) SCC 302).

38. The above position was highlighted in Krishnan and Anr. v. State represented by Inspector of Police (2003 (7) SCC 56).

39. So far as discrepancy between ocular evidence and medical evidence is concerned, this Court in Kamaljit Singh v. State of Punjab (2003 (12) SCC 155) observed as under:

"It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. (See Solanki Chimanbhai Ukabhai v. State of Gujarat (1983 (2) SCC 174). The position was illuminatingly and exhaustively reiterated in State of U.P. v. Krishna Gopal (1988 (4) SCC 302).When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference."

40. Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". 41. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole

touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

13. This legal position is reiterated in **Govindaraju alias Govinda v. State (2012) 4 SCC 722** and the following passage therefrom needs to be extracted:

13. Under the scheme of CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the appellate court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law."

14. In **Jafarudheen vs State Of Kerala, (2022) 8 SCC 440**, the Hon'ble Supreme Court made the following observations:

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

15. In **Rajpal Singh v. Rajveer & Others; 2025 SCC OnLine SC 2823**, the Hon'ble Supreme Court held that even where the appellate court re-appreciates the evidence while dealing with a judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor. The relevant paragraph 9.2 is extracted here-in-below:

"9.2 It is a well-settled principle enunciated by series of judgments of this Court that there must exist "substantial and compelling reasons" to upset the acquittal. Once the court acquits the accused, the presumption of innocence is reinforced. Thereafter, the interference by the appellate court would be minimal and has to be guided by strong and cogent reasons. Reversal of acquittal should not be a matter of course just because the other view is considered to be possible by the appellate court. Even when the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor."

16. As per the law laid down as mentioned above, generally the order of acquittal passed by the court shall not be interfered with because the presumption of innocence of accused is further

strengthened by acquittal and it is to be interfered only when there are compelling and substantial reasons for doing so. Further, if the evaluation and appreciation of evidence by the trial court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based it finding, is reasonable and plausible, the High Court should not disturb the order of acquittal even if another view is possible.

17. Before proceeding further, it will be profitable to mention the admitted facts of the case, at this juncture. As per first information report, the incident happened on 18.01.2019 and first information report has been lodged on 16.02.2019 with a delay of 28 days. PW2 is father of victim, who is only hearsay witness. There is no dispute that victim was major on the day of incident and educated and till the date of lodging the FIR, the incident was known to none. Accused and victim are co-villagers and grand father and father of accused were Gram Pradhan at a point of time. The mustard field was behind the house of victim and house of accused was also situated on the western side of house of victim.

18. In the wake of the above principles, admitted facts, and evidence on record, we have to see whether the findings recorded by learned trial court bears any error or perversity while passing the impugned order of acquittal of respondents.

19. As per prosecution, on 18.01.2019, at about 1 pm, when victim had gone to the fields for some work, she was raped by accused and incident was also recorded by him in video. It has also been alleged that on the basis of the video, she was blackmailed and subjected to rape on several occasions and on 20.1.2019, she was forced to go to Delhi with some unknown persons for trafficking, but somehow she succeeded to communicate her parents timely through the phone of a passenger and could save herself from the clutches of the unknown persons and came back home safely with her cousin. In order to prove its version, prosecution has examined two factual witnesses only i.e. victim as PW1 and her father as PW2. It is relevant to mention here that PW2, father of victim has admitted that he has no personal information about the incident having happened with her daughter and it is on 14.02.2019, when her daughter came back from Delhi, he came to know about the incident of rape. Therefore, his deposition is based on victim's account and not on his own knowledge and consequently, his evidence is of negligible value in the eyes of law, being hearsay one.

20. PW1, who is not only eyewitness and victim of offence committed against her, but also is a witness, around whom the entire sequence of events revolves, therefore, her testimony is having utmost importance and value and it is only her testimony, which will decide whether the impugned judgment is just or not.

21. At this stage, it will be apposite to refer to **Manjunath vs State of Karnataka, 2023 INSC 978**, per which Hon'ble Supreme Court has discussed the quality of a witness, which is reproduced as below:-

"22. For an eye witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value, the principle has been discussed in Raj Sandeep @ Deepu alias Deepu vs. State (NCT of Delhi) 35 as follows-

"22. In our considered opinion, the "sterling witness" should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what 35 (2012) 8 SCC 21 [2 Judge Bench] 35- [Cr. A No. 866 of 2011] would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged." (emphasis supplied) This was quoted with profit by this Court in Ganesan v State36. Recently, this principle was further reiterated in Naresh @ Nehru v State of Haryana 37."

22. In the instant case, prosecution has classified its version broadly in three parts; firstly, the events in connection and at the time of commission of offence; secondly, alleged black mailing on account of video and subjected to rape; and thirdly, the incident dated 20.01.2019, as alleged. We have gone through the entire evidence of PW1 and entire circumstances and reached the conclusion that PW1 has not qualified the test of a 'Sterling witness' as is required to make the accused liable to be held guilty and punished. Therefore, after perusal of the testimony of the witnesses and appreciating the fact and circumstances, we find that the observation recorded by learned trial court are absolutely coherent and reasonable and are capable of being upheld on following grounds:-

i) first argument which needs answer is how the victim reached on the spot? Admittedly, first information has been lodged by the victim herself alleging that she had gone to the field at about 1:00 pm and was caught and raped by the accused who was already in the mustard field. Admittedly, her statement under Section 161 CrPC (Ex. ka.2) was recorded by constable Sunita on her dictation and statement under Section 164 (Ex. Ka.2) by learned magistrate. She testified in her chief examination in corroboration of her statement recorded under Sections 161 and 164 CrPC, stating that on the day of incident i.e.18.01.2019, accused came to her house and asked her to meet behind her house and then only she reached in the field. When she was put in cross examination, she testified that he came to her house at 12 pm and then she went to the mustard field at about 12:30 pm. Perusal of her evidence shows that the reason assigned by her to reach the place of occurrence, does not inspire confidence. We find two contradictory versions. In first information report, she demonstrated as if she was not knowing about the presence of accused in mustard field, on the contrary, in evidence she has admitted of her going to the place of occurrence by her own accord.

ii) the victim has further admitted in her cross examination that she did not talk with accused in open as she was afraid of being seen by someone, hence, both of them went to the field and talked with each other for about two minutes. The admission of victim established in clear terms that she was not forced to go to the mustard field. The victim is undisputedly educated, knowing her well being and interest fully. We also find no reason to believe as to why a girl would meet a person merely on his wish and that too, done, unless she gets approval of her own conscience and if for the sake of arguments, it is admitted that in good faith and trust and following instructions of accused, she reached there, then also, we fail to understand as to why she had talked covertly in a fully grown field. The surrounding facts and circumstances speaks volumes and suffice to show that in fact the story was not as it has been served.

iii) Continuing her account, the victim stated that she asked the accused as to what the matter was, but he did not say anything, and instead pushed her down to the ground. She categorically stated that accused did not come to her, rather she went to him. Narrating the incident, she further testified that accused took off his and her clothes one by one and committed rape with her for about half an hour. Victim admitted that the rape incident was recorded by the mobile of accused and not by any third person. She kept on deposing that when both of them lay down on ground, then only the accused set up his mobile phone to shoot the video and accordingly the entire incident was recorded. In last, she cleaned her private parts and had thrown away her underwear on the place itself and same was also recorded in video.

iv) One important fact admitted in her cross examination is that after the incident, both of them put on their clothes and saw the entire recorded video for half an hour at the place of occurrence itself. She further admitted that after watching it, she expressed her concern that if anyone else saw it, it would lead to great disgrace and in response, the accused told her not to show the video to anyone. Having the entire conversation after the incident, she came back to her house while the boy remained standing there. Thus, the manner in which she had answered and admitted the happening of incident, no iota of evidence emerged on record that

the incident was committed against her without her will or consent. There is no dispute that the victim is major in age and had gone the place of occurrence by her own accord which is at the backside of her house and adjoining to the house of accused as well. Site plan also suggests that there were some other houses of inhabitants. In that eventuality, had she raised an alarm resisting the incident, someone certainly would have come forward to help her out, but the victim chose neither to raise noise, nor did she attempt to oppose it herself. It is also not out of place to mention here that if video is being recorded in the presence of the victim and thereafter, the victim and accused watch that video at leisure after the event, then there is no ground to admit that she was subjected to rape against her will. On the contrary, her own admission makes it crystal clear that incident did not occur without her consent and will and therefore, argument of learned counsel is rejected. As discussed here-in-above, we have dealt with first part of prosecution story as classified above.

23. Now, this court has to see as to whether she was subjected to repeated rape on the ground of video recording, as alleged in FIR. In her statement made to investigating officer, she got recorded that on account of alleged video, she was subjected to rape several times, however, no such evidence has been given by her during trial, therefore, the allegation of repeated rape being mere bald allegation, has not been proved.

24. The victim has alleged in her chief examination that sister of accused namely Deepika came to her house on 20.01.2019 and showed the video extending threats to viral the video in case she would not follow the instructions of her brother. However, this fact has not been disclosed in FIR, therefore, being material omission, this may go to the root of the case. At this juncture, it is relevant to mention that the investigating officer found no incriminating allegations against Deepika and exonerated her during the investigation itself, therefore, we find no need to look into the allegations in this regards.

25. Admittedly, the alleged incident was not reported by victim to anyone in or out of family. In cross examination, she admitted that after the incident, she was not raped any more by the accused. There is no dispute that video was neither found in possession of accused, nor same was ever circulated to any person singly or in groups. Investigating officer categorically stated that no evidence of alleged video was found from the possession of accused, hence, same could not be recovered. From the above details, it has been articulated that except the allegations of victim, no evidence of video was found at any point of time, nor there is any evidence placed on record that her modesty was outraged sexually on account of alleged video after the incident. We, therefore, find that nothing incriminating against the accused has emerged in the second part of the story of prosecution.

26. Now we come to the last i.e. third part of the prosecution story which deals with the allegations against accused of her taking away and being handed over to some unknown persons. As per FIR, on 20.01.2019, she was called by accused through Deepika. On the way, accused met her on motorcycle and she sat on it out of fear. She was taken to Lal Kaun Tiraha where the accused made her sit in a Magic car and was brought to railway station Kanpur Central and then to Delhi by two unknown persons and a woman namely

Anjali. However, sensing their intentions, she saved herself by alerting her family members in time. During the cross examination, she admitted that tehrir was typed by a typist under her dictation and she put her signature on it and accordingly the FIR was registered. When she appeared before the court to testify, she deposed about her being taken away on 13.02.2019. Therefore, there are two contradictory date of occurrence, have been emerged on the record. The first information report was lodged on 16.02.2019 after her return to home i.e. 13.02.2019, therefore, we don't find any reason to discard the fact of her taking on 20.01.2019, in the peculiar circumstances, when the victim herself dictated the terms of details in FIR. Hence, placing the entire different date before the court would not only will shake the veracity of the evidence of victim, but also makes the prosecution story unbelievable.

27. As for allegation that Deepika extorted Rs. 1000/- repeatedly from victim by blackmailing her, it is pertinent to note that she has not mentioned in FIR, rather it was developed in statement under section 161 and 164 Cr.pc. Top of the fact is that in her statement before magistrate, she has stated of extortion of Rs. 500/-. Therefore, the statement of the victim has not proved to be consistent, rather it has been distorted and changed to suit the circumstances.

28. It has been further been testified by PW1 that said Deepika came to her house between 8:30- 9 AM and she left with her to the road from where she got on the motorcycle of accused. However, it has emerged in her cross examination again that her leaving home with Deepika was either on 20.01.2019 or 13.02.2019, is incorrect; in fact, accused had taken her away from near the house. Again, she admitted that she did not state in the first information report that she accompanied Deepika to the road where she met the accused and then sat on his motorcycle and reached the Lal Kuan Bighapur with him. One more fact which drew our attention is deposition of the father of victim per which he deposed that in early morning when he got up, he saw a mobile on charging and inquired about the same and found his girl missing. It has been established from the evidence of father of victim, she had gone missing on 20.01.2019 at 03:00 AM. Therefore, the version of victim of her taking away between 8:30-09:00 AM, is in contradiction to the statement of her father, hence, the time and manner of her gone missing can not be accepted as gospel truth.

29. It has been alleged that after reaching at Lal Kaun, Bigha Pur, accused made her sit in a magic van, in which Anjali was already seated and himself disappeared from the scene. If the evidence of victim be assessed in totality, then it would transpire that despite having opportunity of raising alarm or mentioning anyone of her taking away, she made no efforts, while travelling by motorcycle, getting off at Lal Kuan to board a Magic car or at Kanpur railway station, (central) or finally during the train journey. We also fail to understand that why she did not even once bother to ask the accused as to where and why she was being taken, especially considering the fact when she was not accompanied by him after Lal Kaun, Bighapur. Having no whisper on record to this effect, makes the version unreliable in the backdrop of human conduct of any prudent person.

30. The prosecution version has been rejected to its threshold by learned trial court as victim has made unexplained and material improvement and changes in her deposition. The FIR only recounts the story of Anjali and two unknown individuals being on train; three of them getting off after a conversation with her mother through mobile of a passenger and then returning home with her cousin, viz-a-viz her testimony per which she has testified the developed facts i.e. locking her in toilet on arrival of TT by the unknown persons, disembarking of accused at Ghaziabad, making call to her mother at Anand Vihar through mobile of a co-passenger and travelling to Dwarika station with so called passenger and finally meeting her cousin Ashutosh and his acquaintances and returning home with all the three and her cousin Renu. PW6, the investigating officer admitted that no evidence was available in support of allegations of her going from her place to Delhi including magic car, Kanpur railway station or Delhi. PW7, another investigating officer also supported the version of PW6 and corroborated that no such evidence came into light during his investigation. To bolster the victim's version, it was the duty of prosecution to examine the witnesses with whom she came back to her house, however, no effort was made by prosecution to examine so called persons as prosecution witnesses, for reasons best known to the prosecution.

31. Having considered the circumstances detailed above, the contradictory evidence of prosecution witnesses in absence of any corroboration, has been found insufficient to prove the allegations against the accused for which he was charged with.

32. Concluding the third part of prosecution story as shown, it is pertinent to mention at this juncture that since the initiation of prosecution, it was defence taken by accused that at the time and on the day of incident, he was not at the scene of occurrence and rather was in Prayagraj. In support of his plea, he has also submitted the call details of his mobile, however no ocular evidence has been placed on record to prove the documentary evidence, detailed above, therefore, the defence as produced by accused, has not been proved as per law. Be it as it may be, the settled principle is that it is burden upon the prosecution to prove its case beyond all reasonable doubts by a convincing, plausible, trustworthy and consistent evidence, which the prosecution has failed in the instant case.

33. On the basis of norms set up by settled legal principles and on the basis of evidence placed on record, we have gathered the view that learned trial court has taken best probable view in the case in hand while discussing the entire facts and circumstances. Nothing adverse has been brought on record by the prosecution to the hilt to leave the tinge of doubt in the order and judgement under this appeal.

34. Keeping in view the aforesaid failure of prosecution to prove the guilt of accused, as observed by learned trial court, we are of considered view that judgement passed by learned trial court is not unreasonable, illogical and improbable. Accordingly no interference is warranted. Hence the appeal is **dismissed**.

(2026) 7 ILRA 986
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 236 of 1985

Babu Lal **...Appellant**
Versus
State **...Respondent**

Issue for Consideration

Matter pertains to whether the conviction under S. 302 IPC was sustainable where the prosecution had not examined a material witness, the motive was disputed, and the weapon used was an agricultural tool, and whether the nature of the weapon and surrounding circumstances were sufficient to establish intention to cause death. The Court also considered whether the sentence could be reduced to the period undergone in view of the appellant's age. (Paras 14-27).

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 302 and 323 - Code of Criminal Procedure, 1973 - Ss. 91, 293 and 294 - Non-examination of material witness - Best evidence rule - Prosecution not bound to examine all witnesses named in charge-sheet - Non-production of material or best evidence does not by itself weaken the prosecution case where guilt is established from evidence adduced before the trial court - Defence remains entitled to call such witness in defence - Held, non-examination of material witness did not weaken the prosecution case. (Paras 14-16).

Criminal Law - Indian Penal Code, 1860 - Ss. 302 and 323 - Motive - Direct evidence - Where offence is proved by direct evidence of eyewitnesses, motive loses its significance - Previous-day altercation concerning apportionment of moveable property sufficient to establish motive in the facts of the case. (Paras 15, 20).

Criminal Law - Indian Penal Code, 1860 - S. 302 - Intention to cause death - Agricultural tool not traditionally used as weapon - Nature of weapon not determinative by itself - Intention to be inferred from several factors including part of human anatomy targeted, repeated assault, manner of approach and surrounding circumstances - Repeated blows on vital part of body and attack from behind while concealing weapon established intention to cause death. (Paras 21-25).

Criminal Law - Indian Penal Code, 1860 - S. 302 - Mens rea - Intention cannot be dismissed only on account of nature of weapon used - Knowledge and intention to be adduced from circumstances to see whether accused bore adequate knowledge or intention - Repeated targeting of head, a vital part of human body, and ferocity of attack sufficient to establish intention to cause death. (Paras 23-24).

Criminal Law - Indian Penal Code, 1860 - Ss. 302 and 304 Part-II - Sentence - Sudden and grave provocation or sudden fight - No mitigating facts available to scale down conviction from S. 302 IPC to S. 304 Part-II IPC - Advanced age of accused not sufficient to reduce sentence to period undergone - Appeal dismissed. (Paras 25-28).

Held: The best evidence rule does not apply in criminal jurisprudence and its non-production in trial would not disturb the substratum of the prosecution's case - the prosecution's case is always to be assessed on the basis of evidence adduced by it before the learned trial court - it is the prosecution's prerogative as to whom they examine as witness and even though they may have named ten witnesses in the charge sheet, they are not bound to examine all of them - non-production of material or best evidence before the learned trial court does not mean that the defence is precluded from calling them as witnesses on their behalf - the evidence of the two eyewitnesses corroborated each other on material particulars and the post mortem report corroborated their statements - the incident that happened a day previous was sufficient enough to be taken in cognizance to establish motive and even otherwise, as the offence has been proved by direct evidence of two eyewitnesses, the motive loses its significance - the intention to commit murder cannot be dismissed only on account of nature of weapon used - the intention is to be adduced by that part of human anatomy which was targeted by the assailant, coupled with the knowledge that the use of the article to target a vital part of the human body would cause grievous hurt which, in the ordinary course of nature, may result in death or will result in death - the intention to commit an act depends upon several factors and by examining these factors, the Court is able to infer that the actions of the appellant resulted in the outcome that was expected or desired - the vital part of the body, namely the head, was repeatedly assaulted and the attack was made from behind in such a manner that the victim did not have a chance to act in self defence - the deceased was struck not once but four times and the ferocity of the attack disclosed the intention of the accused person to cause death - the deceased was targeted repeatedly on the head which clearly shows that the intention was not merely to cause hurt - the appellant acted in a manner with the intention of causing death of the deceased which was a natural outcome of his action - no infirmity or perversity was found in the impugned judgment - there was no sudden and grave provocation or sudden fight and no mitigating facts were available to scale down the conviction from S. 302 IPC to S. 304 Part-II IPC - the appeal was dismissed and the appellant was directed to surrender to complete the remaining part of the life sentence. (Paras 14-28).

Case Law Cited

No case law cited.

List of Acts

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

List of Keywords

best evidence rule; non-examination of a material witness; prosecution's case; ocular evidence; motive; direct evidence; agricultural tool; intention; vital part of the body; head; mens rea; knowledge; grievous hurt; death; self defence; private defence; actus reus; ferocity of the attack; sudden and grave provocation; sudden fight; mitigating facts; life sentence.

Case Arising From

APPELLATE JURISDICTION: Appeal against the judgment of conviction dated 11.10.1984 passed by the learned Court of Session in S.T. No. 607 of 1984, whereby conviction was recorded for offences under Ss. 302 and 323 IPC and sentences of rigorous imprisonment for life and one year's rigorous imprisonment respectively were imposed.

Appearances for Parties

Advs. for the Appellant:
D.P. Singh, learned Senior Counsel assisted by V.S. Chauhan,
learned counsel for the appellant.
Advs. for the Respondents:
Divya Ojha, learned AGA-I, for the State.

(Delivered by Hon'ble Atul Sreedharan
&
Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri D.P. Singh, learned Senior Counsel assisted by V.S. Chauhan, learned counsel for the appellant and Ms. Divya Ojha, learned AGA-I, for the State.

2. The present appeal has been filed by the sole appellant who is aggrieved by the judgment of the conviction dated 11.10.1984 passed by the learned Court of Session, in S.T. No.607 of 1984 (State Vs. Babu Lal Kachi). By the said judgment and order, the appellant was convicted for offence under Sections 302 and 323 IPC and sentenced to suffer rigorous imprisonment for life under Section 302 IPC and one year's rigorous imprisonment under Section 323 IPC.

3. Brief facts of the case are as follows:

4. The deceased Ganga and the accused Babu Lal are brothers. On 25.03.1984 at about 11:30 am, an oral report was given by PW-1 to the police, a summary of which reflects that on the date of the incident, the appellant Babu Lal who was armed with the Sabri (from description given by learned Senior Counsel for the appellant and learned AGA, it appears to be used for digging which is approximately one and half feet), came from behind and struck the deceased on his head at least three to four times. When she pleaded with him to stop, she was also attacked. PW-1 is the wife of the deceased. She further says that her sister-in-law came there, interceded and removed the Sabri from the hands of the appellant (which is stated to be used for digging which is one and half feet), as so stated by the Investigating Officer in his deposition.

5. Learned Senior Counsel appearing on behalf of the appellant submits that during the course of the trial and thereafter during pendency of the appeal, the appellant may have completed approximately five years of sentence before he was enlarged on bail by this Court. Learned Senior Counsel for the appellant has put forth several arguments, firstly, stating that the entire case against the appellant is false as most material witness in this case who was Rani, sister of the deceased who is alleged to have interceded, snatched the Sabri from hands of the appellant and who gave the Sabri to the police, has never been examined as a witness. Therefore, the argument is that the best evidence in this case has been concealed by the prosecution which vitiates the trial itself.

6. The secondly, the learned Senior Counsel for the appellant submitted that no motive for the murder has been proved by the prosecution and what is stated to be motive which has come out in the deposition of PW-1 to the effect that a day before the incident, there was a sharing of moveable articles between the deceased and the appellant during which, the deceased requested the appellant to leave some articles for him also to which the appellant allegedly stated that he will not leave a

single article for the deceased and his family and shall take everything. This, according to the learned counsel for the appellant, was too insignificant an instance in order to motivate the appellant to take the life of his own brother and, therefore, it should be held by this Court that the prosecution has not been able to prove the motive in this case.

7. The third argument put forth by learned Senior Counsel for the appellant is whether the death allegedly caused by the accused using an object which is not used as a dedicated weapon and was further used from the blunt side, would reflect that the accused had the intention to kill the deceased. He further submits that even if the prosecution case is taken in its entirety to be true and proved beyond reasonable doubt, the only offence for which the appellant could have been held guilty of and punished, was for an offence under Section 325 IPC (causing grievous hurt).

8. The last argument put forth by learned Senior Counsel for the appellant is that the prosecution has failed miserably to prove the intention beyond reasonable doubt. In this regard, it has been submitted that the intention has to be inferred from the sum totality of facts of a particular case. In this case, learned Senior Counsel for the appellant has argued that the offending weapon which was seized by the police is only one and half feet long in length and made of iron and not an article that is used as a weapon but something that finds use in agriculture.

9. Under the circumstances, learned Senior Counsel for the appellant submits that as the appellant did not reach the scene of occurrence and attack the deceased with a weapon which could only cause grievous hurt or death, then in such a situation, the Court must necessarily arrive at a finding that the prosecution has not been able to prove the intention.

10. Per contra, learned counsel for the State, on the other hand, has argued that though it is correct that Rani who otherwise a material witness, has not been examined by the prosecution, the case of the prosecution is not weakened as the rule of best evidence is never applicable in criminal jurisprudence. She has further argued that the guilt of the accused must be arrived at by the learned trial court on the basis of the evidence as has been adduced by the prosecution and if the same, in exclusion to the best evidence is still able to prove guilt of the accused beyond reasonable doubt, then in such a case the accused can be convicted for the offences that he has been charged of.

11. As regards the second submission of the learned Senior Counsel for the appellant with regard to the absence of motive, learned counsel for the State has drawn the attention of the Court to the deposition of PW-1 before the learned trial court where she has categorically stated that a day before the incident, there was a discussion between the deceased and the appellant with regard to apportioning of the moveable properties. In this regard, learned counsel for the State submits that PW-1 has stated that there was a request by the deceased to the appellant to leave some articles for him and his family which was outrightly refused by the appellant who said that he would not leave anything for the deceased and his family and that he would take everything. According to the learned counsel for the State, this altercation and the answer given by the appellant was proved by statement of PW-1 which has not been disturbed by cross examination only goes to show that there was an element of animosity which came into existence a day before the incident itself, and the same can be deemed to be reasonable motive. Even otherwise, learned counsel for the State has argued that where the evidence on record is available to prove the intention on the basis of the

ocular evidence, the question of motive loses significance which, according to the learned counsel for the State, may be an imperative aspect in a case based on circumstantial evidence but not in a case where direct evidence has come on record.

12. As regards the question of death being caused by the accused by use of an object which is not traditionally used as a weapon of offence but as an agricultural tool and, therefore, the question of intention not being proved by the prosecution, learned counsel for the State has submitted that the intention to cause death or grievous hurt which in its ordinary course of nature can result in death, has to be assessed from some totality of the circumstances. In this case, learned counsel for the State has submitted that there were multiple assaults on the deceased by the appellant and, therefore, the circumstance supports the inference that the appellant wanted to cause the death of the deceased rather than to subject him to bodily pain.

13. Heard learned counsel for the parties and perused the record of the learned trial court.

14. There are two prosecution witnesses who are material in this case. They have been examined. Rani who was also a material witness, as is so appearing from the charge sheet, has not been examined. However, in criminal jurisprudence, it is well settled that the best evidence rule does not apply, and its non-production in trial would not disturb the substratum of the prosecution's case. The prosecution's case is always to be assessed on the basis of evidence adduced by it before the learned trial court. It is the prosecution's prerogative as to whom they examine as witness and even though they may have named ten witnesses in the charge sheet, they are not bound to examine all of them. The Court, on the other hand, would appreciate the guilt of the accused, or lack of it, based upon the evidence adduced by the prosecution. As relating to the best evidence rule and non-examination of a material witness, it is always open to the defence to call that witness in defence. Non-production of material or best evidence before the learned trial court does not mean that the defence is precluded from calling them as witnesses on their behalf. Where the best evidence is a document, the Court would always decide whether to call for that document under Section 91 of the erstwhile Cr.P.C. either on its own, or if such application is moved by the defence or prosecution. Therefore, this Court with all due respect, rejects the argument that non-examination of a material witness and thereby not producing the best evidence by the prosecution, has gone to weaken its case.

15. In this case, PW-1 is the wife of the deceased. PW-2 is the daughter of the deceased. Both of them have corroborated each other on material particular of the case. PW-1 has categorically stated the events of the morning as to how the appellant came from behind when her husband was sitting near the front door and assaulted him from behind three to four times which caused injuries to the deceased due to which he died on the spot. This witness has also stated that a day before the incident, the discussion had taken place between the deceased and the appellant with regard to apportionment of moveable property to which both of them were heirs.

16. PW-2 is also an eyewitness to the incident and being the daughter, she states likewise as her mother. She has also stated how her aunt (sister of the deceased) came and disarmed the appellant. She also states that the deceased died on the spot. Both these witnesses have not been contradicted on material particulars given in their examination in chief. A suggestion was also

given to both these witnesses that they have not actually seen the incident and they are falsely stating before the learned trial court which has been denied by both the witnesses.

17. The post mortem report goes to corroborate the statements of PW-1 and PW-2. However, learned counsel for the appellant has taken an objection for taking the post mortem report into consideration as that was marked as Exhibit without getting the same proved by calling the doctor as a witness and has stated that the post mortem report would not be covered under Section 293 of the erstwhile Cr.P.C. as that only covers scientific reports like FSL reports or ballistic reports etc. He has also submitted that it was essential for the learned trial court to call the doctor before the learned trial court and get him to reiterate the injuries recorded by him in the post mortem report and give an opportunity to the defence to cross examine.

18. However, while going through the impugned order, it appears that at internal page no.5 of the impugned judgment, the learned trial court has recorded that learned counsel for the accused himself has admitted the genuineness of the post mortem report on account which it was marked as Exhibit Ka-13. Thus, it appears that at the time of admission or denial of the document under Section 294 Cr.P.C., the defence has admitted the genuineness of the post mortem report and the effect of such admission is that no formal proof needs to be adduced. Thereafter, the learned trial court has recorded five injuries seen on the deceased, which are reproduced herein below:

"(i) Abraded contusion in an area of 8 cm x 7 cm on inner side of right eyebrow of right side present.

(ii) Abraded contusion 3 cm x 1 cm on top of right cervical.

(iii) Abraded contusion in an area of 11 cm x 2 cm on outer side of left shoulder joint.

(iv) Abraded contusion in an area of 7 cm x 5 cm on left side face just below ear.

(v) Lacerated wound 4 cm x 2 cm on right side head parietal and frontal bone."

19. The last injury no.5 was a lacerated wound on the right side of the head on the parietal and frontal bone resulting in communited fracture and the death was caused on account of the ante mortem injuries which were sufficient to cause instantaneous death and could be caused by the Sabri which is stated to have been used by the appellant in the ordinary course of nature.

20. We find the arguments put forth by the learned counsel for the State forceful that the incident that happened a day previous was sufficient enough to be taken into congnizance to establish motive. Even otherwise, as the offence has been proved by direct evidence of two eyewitnesses who have testified before the learned trial court, the motive loses its significance.

21. As regards the next issue raised by the learned counsel for the parties with regard to the absence of the intention, as the article that was used to commit the offence was not a

dangerous weapon and that it was an article that was used commonly in agriculture. As regards this, the learned counsel for the State has submitted that when the appellant entered the house and approached the deceased from behind, he had concealed the Sabri by holding it in such manner that its possession by the appellant was concealed by his forearms. As regards the argument of the learned counsel for the appellant, the absence of the intention in this case or inability of the prosecution to prove the same, this Court holds that the intention to commit an act depends upon several factors. By examining these factors, the Court is able to infer that the actions of the appellant resulted in the outcome that was expected or desired by the appellant. The first thing that goes to reflect the intention in this case is that it was the vital part of the body (head) that was repeatedly assaulted five times by the appellant.

22. The post mortem report corroborates the deposition of PW-1 who says that her husband's head was struck three to four times by the appellant. The post mortem report also corroborates that part of the witness testimony that the appellant approached the deceased from behind as the injuries on the body are on the head which is parietal and frontal bone, cervical area of the neck, and right shoulder, are all parts of human anatomy which are on the rear of the human body but for the injury on the parietal bone (side of the head) and the frontal bone (front upper part of the skull). Therefore, the intention of the appellant was to approach the deceased in such a manner that the victim did not have a chance to act in self defence.

23. The intention to commit murder cannot be dismissed only on account of nature of weapon used. More particularly, the intention is to be adduced by that part of human anatomy which was targeted by the assailant, coupled with the knowledge (also a part of mens rea) that the use of the article to target a vital part of the human body would cause grievous hurt which, in the ordinary course of nature, may result in death or will result in death. Illustratively, a person throwing a brick at the victim but missing the target altogether or resulting in a minor injury on the head, the person may still be tried and convicted for an offence under Section 307 IPC for attempt to commit murder as the article used and targeted the part of human anatomy was such that if the blow was full and completely received by the targeted part of the body, it would, in all probability, have resulted in death, depending upon the force with which it was thrown. Contrast this, with a pebble thrown on the head of a person which strike the head of the person, for which an offence under Section 307 IPC is inconceivable as the article that was used would never cause either grievous hurt or death in the ordinary course of nature. Another illustration with regard to such a situation where two labourers have a quarrel and one stabbed the other on the inner part of the victim's thigh which severs the femoral artery, and the victim dies on account of which the accused may only be convicted for an offence under Section 326 IPC for having caused grievous hurt using dangerous weapon or means. Contrasting the same situation, if a quarrel takes place between two doctors and the same injury is caused by the doctor on account of which the victim dies, the doctor may be prosecuted and convicted for an offence under Section 302 IPC or 304 Part-I or II IPC because the doctor being educated in medical science knows exactly where the femoral artery passes.

Thus, mens rea should be adduced from the circumstance to see if the accused bore adequate knowledge or intention.

24. Thus, in the present case, the argument of the learned Senior Counsel appearing on behalf of the appellant that the intention has not been proved, this Court rejects the same. The deceased was struck not once but four times. He died on the spot. The ferocity of the attack on the victim disclosed the intention of the accused person to cause death as he arrived there surreptitiously concealing the weapon, from behind the deceased in order to ensure that the deceased did not even get a fighting chance or an opportunity to exercise his right of private defence. Where the knowledge is of such a nature that a reasonable person can draw the inference that the actus reus would, in all probability than not, in the ordinary course of the nature, only result in death and that the death would be the only probable outcome in which case, the conviction may take place under Section 302 IPC. In the present case, as already stated by learned counsel for the State that the deceased has been targeted repeatedly on the head which clearly shows that the appellant's intention was not merely to cause hurt to the deceased as if that was the intention, the appellant could have struck any non-vital part of the body.

25. Under the circumstances, in view of what has been argued and evidence adduced before the learned trial court, this Court holds that the appellant acted in a manner with the intention of causing death of the deceased which was an natural outcome of his action, therefore, we do not find any infirmity or perversity in the impugned judgment passed by the learned trial court. Consequently, the present appeal is dismissed.

26. However, we have also taken into consideration the argument put forth by learned Senior Counsel for the appellant that the appellant is now 82 years of age and, therefore, the Court may consider in reducing his sentence to the period undergone. That, unfortunately, is an impossibility for this Court. The evidence adduced did not reflect a sudden and grave provocation or sudden fight account of which the Court may examine the possibility of setting aside the conviction under Section 302 IPC and hold the appellant guilty under Section 304 Part-II IPC. There is no such mitigating facts available to scale down from Section 302 IPC to Section 304 Part-II IPC.

27. The fact that the appellant would have to go back to jail after 40 years, no doubt, disturbs this Court but this Court, not being vested with powers of the Supreme Court under Article 142 of the Constitution of India, cannot do otherwise but send the appellant now back to jail to complete the remaining part of his life sentence.

28. The appellant's bail bonds are cancelled. He shall surrender forthwith before the learned court concerned which shall send him back to jail to complete the remaining part of the sentence. If the appellant does not surrender before the learned court concerned, shall issue non-bailable warrants to secure his presence and thereafter send him to jail.

29. The record of the learned trial court be sent back.

(2026) 7 ILRA 994
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.07.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Appeal No. 1409 of 1990

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

Issue for consideration

The matter pertains to a criminal appeal challenging conviction and sentence under sections 302/34 IPC. The deceased was allegedly abducted by three accused persons under the pretext of attending a Holi festival and was subsequently found murdered.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 302/34-Criminal Procedure Code,1973-Section 374(2)-Murder-Abatement of appeal against deceased appellants-Benefit of doubt to surviving accused-Substantive evidence against surviving Appellant No.3 examined-Conflict between ocular testimony and medical evidence-Absence of gunshot and sharp-weapon injuries despite alleged use of country-made pistol and bhala-Non-recovery of empty cartridges-Discrepancy in dates of F.I.R. and Panchayatnama indicating ante-timed recording-Effect of denial by accused under section 313 CrPC over formal document admissions by counsel under section 294 CrPC-Non-examination of First Informant and key eye-witnesses-Unnatural conduct of eye-witnesses and lack of reaction from armed accused-Conviction set aside-Surviving appellant acquitted.(Para 3 to 15) (E-6)

Held

The court held that where the medical evidence fails to corroborate the specific weapons assigned to the accused, the F.I.R. suffers from unexplained and ante-timing discrepancies vis-a-vis the inquest document, and key prosecution witnesses remain unexamined, the charge under section 302/34 IPC cannot be sustained. Conviction set aside. (E-6)

List of Acts

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

List of Keywords

Ocular Vs. Medical Evidence, Section 313, Murder with Common intention, Abatement of Appeal, Ante-timed F.I.R., Inquest Report (Panchayatnama), Post-mortem Report, Weapon Discrepancy, Country-made Pistol & Bhala, Non-recovery of Cartridges, Benefit of Doubt.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 1409 of 1990

Babu Ram Pradhan & Ors. Vs. State of U.P.

From the judgment and order dated 22.07.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-
Rakesh Kumar Rathore, Ravi Prakash Srivastava, Sanjeev Kumar, Shivajee Srivastava, Sukhvir Singh

Adv. for Respondent(s):-
A.G.A

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Achal Sachdev, J.)

1. Heard Sri Rakesh Kumar Rathore, learned counsel appearing for the appellant and Sri Ajay Sharma, learned A.G.A. for the State.

2. The instant Criminal Appeal has been filed against the judgement and order dated 17.07.1990 passed by the IVth Additional District & Sessions Judge, Etah, convicting the appellants Babu Ram, Veer Sahai and Gulab Chandra under Section 302 read with section 34 of the Indian Penal Code (hereinafter referred to as 'I.P.C.'), Police Station - Kotwali, District - Etah.

3. When on 19.03.1984 the first informant Chiraunji Lal was informed by one Dulare that his son Khet Pal had been murdered, the first information report (hereinafter referred to as 'F.I.R.') was lodged. Initially probably when it was not being lodged, the help of the S.S.P. was taken and ultimately on 21.03.1984 the F.I.R. was lodged. As per the F.I.R., on the 18th of March, 1984 at around 05:00 - 06:00 PM Babu Ram Pradhan, Veer Sahai and Gulab Chand, the three accused, had come to the house of the first informant and had taken Khet Pal, the son of the first informant, to another village for a Holi Milan. The three accused who had taken the deceased along with them had assured the first informant that they would be bringing back the son of the first informant by the fall of night. However, when till 09:00 AM in the morning on the 18.03.1984, the son did not come back and an information came from Dulare son of Chaubey that Khet Pal had been murdered by Babu Ram Pradhan, Veer Sahai and Gulab Chand near a tubewell in Rasakpur then the F.I.R. was lodged. Further, in the F.I.R. it was mentioned that in the hand of Babu Ram Pradhan there was a country made pistol, in the hand of Gulab Chand there was a bhala and Veer Sahai was having a lathi. When the incident had taken place, Dulare, the person who had come to inform the first informant about the incident, raised a hue and cry then witnesses i.e. Ram Das, Ram Dayal and Hublal came on the spot and they all saw the incident. The first informant had stated in the F.I.R. that upon coming to know the incident, he reached the place of occurrence and he did not find the dead-body at the place of incident and ultimately he found it at the place where the postmortem was to be done. In the F.I.R. further it was mentioned that the three eye-witnesses, Ram Das, Ram Dayal and Hublal, were belonging to the village Kulla Habibpur. The lodging of the F.I.R. on the 21st of March, 1984 had resulted in some investigation. However, even before the F.I.R. was

lodged on 19.03.1984 the panchayatnama was already prepared. The panchayatnama had stated that along with the other documents, F.I.R. was also forwarded on the 19th of March, 1984. Thereafter, the postmortem was conducted on the 19th of March, 1984 at 04:45 PM and the opinion of the doctor was that the death had occurred due to the injury no. 1. The injuries which were found on the body of the deceased, as per the postmortem report, were as follows:

(1) Lacerated wound 3 cm x 1 cm x bone deep on frontal region of head just to the right of midline placeo on exploration haematoma & ecthymosis under the injury. Frontal bone fractured. Membrane and brain congested.

(2) Abraded contusion 4 cm x 1/1/2 on left side upper part (syinal cord) - not exposed.

(3) Contusion 5 cm x 2 cm on top of left shoulder.

(4) Contusion 5 cm x 2 cm on top of right shoulder.

(5) Multiple abraded contusions overlapping and criss-crossing each other on whole of right side chest. On exploration, 4th, 5th , 6th and 7th ribs fractured underneath.

(6) Abraded contusion 6 cm x 2 cm on back and middle part of left forearm.

(7) Lacerated wound 4 cm x 1 cm muscle deep on inner aspect and lower part of left forearm. Both bones fractured underneath.

(8) Abraded contusion 6 cm x 2 cm on front of left knee

(9) Abraded contusion 6 cm x 2 cm with lacerated wound 3 cm x ½ cm muscle deep on inner aspect of lower part of left leg.

4. Thereafter, the police submitted its report and the court thereafter took cognizance and framed charges against the three accused persons namely Babu Ram Pradhan, Veer Sahai and Gulab Chand under Section 302 read with section 34 of I.P.C. From the side of the prosecution as many as four prosecution witnesses appeared.

5. PW-1, Hublal, was the person who was allegedly there at the place of incident. The F.I.R. had also stated that Hublal was there at the place of incident. PW-1 had appeared before the court and it was noticed by the court that he was hard of hearing. He had stated that on the relevant date at around 12:00 in the mid night, he was watering the fields of Siya Ram. Along with him Dulare, Ram Das and Ram Dayal were also there. They had heard 3 to 4 rounds of firing shots and thereafter had rushed towards the place from where the sound was emanating. He had stated in his examination-in-chief that he had seen himself that Khet Pal, deceased, was being

beaten by Babu Ram Pradhan, Veer Sahai and Gulab Chand. Babu Ram Pradhan had a country made pistol with him, Gulab Chand had a bhala and Veer Sahai had a lathi. Upon seeing that the four persons were nearing them, the accused had run away. The deceased was lying in an injured state. PW-1 had stated that he had recognized the accused persons in the moon light because the three accused were known to him from before. He had also stated that Khet Pal had come to the village to celebrate Holi festival. Before the court, PW-1 had specifically stated that Babu Ram Pradhan and the other two accused were of the village to which PW-1 belonged, while Khet Pal was belonging to Nagla Shri Kishan which was two kilometers away from his village.

In his cross-examination, he had stated that Khet Pal had absolutely no relatives in the village where he died. He had also admitted that he had no idea if any case of theft etc. was going on against Khet Pal. About the rivalry with regard to the pradhan elections between Babu Ram Pradhan and Subedar, he had stated that he had no idea. He had also denied that any case with regard to theft etc. was going on vis-a-vis he himself and Khet Pal. He had also denied the suggestion that the PW-1 was involved in some case with the accused persons. He had reiterated the reasons for his being there in the agricultural fields as he was watering the fields of Siya Ram. He had stated that he had seen the incident from 15-20 steps away and he had also stated that while Gulab Chand was hitting the deceased with the ballam/bhala, he was using it as a lathi. None of the accused had fired on the witnesses. He had also not noticed the cloth which the deceased was wearing. He had denied the fact that Khet Pal had come to steal some vehicle in the village and the villagers had killed him. He had specifically denied that he had given any information to the family members of Khet Pal. Despite the incident, he had stated that he had continued with his work of irrigating the fields.

6. PW-2 was the other witness Ram Das who claimed himself to be an eye-witness. He had stated that he had seen the incident at 01:00 AM in the night of 19th of March, 1984. He had also stated that he was irrigating the fields and upon hearing the 3-4 rounds of firing being shot, he had rushed towards the place from where the sound of firing was coming and in the moon light he had seen the three accused beating the deceased. He had denied any enmity between the accused persons and he himself. He had also stated that he had seen the incident but had not cared to inform the family of the deceased. He had categorically stated that the accused had not fired upon them. As the PW-1 had stated, he had also stated that he had not noticed the clothes which the deceased was wearing.

7. PW-3 was the Sub-Inspector G.S. Rawat. He had proved the panchayatnama i.e. Exhibit 2 and the accompanying documents i.e. Exhibits 3 to 7. He had sealed the dead-body and sent it for post-mortem.

8. PW-4 was the Head Constable Laxman Singh, who had proven the chik.

9. Thereafter, upon the completion of the statements of the prosecution witnesses, the accused persons got their statements recorded under Section 313 of Cr.P.C. Upon

the judgment and order dated 17.07.1990 being passed by the IVth Additional District & Sessions Judge, Etah, wherein the three accused persons were convicted for the offence under Section 302 read with section 34 of I.P.C., the instant Appeal was filed.

10. During the pendency of the Appeal, the appellant no. 1, Babu Ram Pradhan, and the appellant no. 2, Veer Sahai, died and the Appeal, therefore, was abated vis-a-vis the appellants no. 1 and 2.

11. Sri Rakesh Kumar Rathore, learned counsel appearing for the appellant no. 3 has made the following submissions:

(i) Learned counsel for the appellant has stated that the F.I.R. was not proved by the first informant and the post-mortem was also not proved by the doctor who had conducted the post-mortem. Learned counsel for the appellant has also submitted that the F.I.R. was in fact lodged on the 21st of March, 1984 but the panchayatnama which was prepared on 19th of March, 1984 when was sent with it the dead-body for post-mortem on 19th of March, 1984, strangely enough it was accompanied by the F.I.R. dated 21.3.1984 which is annexed to the panchayatnama.

(ii) Learned counsel for the appellant states that even though the tehrir, post-mortem report and the site plan were admitted under Section 294 of Cr.P.C. but when the accused persons got their statements recorded, they had denied about the admission in their statements under Section 313 of Cr.P.C. He, therefore, submits that any admission made under Section 294 of Cr.P.C. of the tehrir, post-mortem report and the site plan would be of no consequences whatsoever.

(iii) Learned counsel for the appellant has further submitted that if the case of the prosecution is seen, then it would become evident that Babu Ram Pradhan had a country made pistol and he had also as per the PW-1 and PW-2 fired 3-4 shots but not a single empty cartridge was found at the place of incident. What is more, there was no injury which would correspond to a fire shot of a country made pistol. Still further, Gulab Chand was said to be having a bhala but there was no injury of any bhala. Only to give a colour to the incident, learned counsel for the appellant states that the PW-2 in his statement before the court had stated that the bhala was used as a lathi. Almost all the injuries were of laceration and contusion. Also there were abrasion wounds.

(iv) Learned counsel for the appellant, therefore, submits that only to create a case against the accused persons, the PW-1 and the PW-2 had appeared in the witness box. The other two eye-witnesses did not care to appear in the witness box. What is more, even the first informant, Chiraunji Lal, never appeared in the witness box.

(v) Learned counsel for the appellant has also submitted that when the accused persons had seen the four persons watching them and following them then they had not tried to nip the evidence in the bud by killing them. They had not fired even a

single shot on the eye-witnesses who were only 15-20 steps away from the place of incident.

12. Sri Ajay Sharma, learned A.G.A. has opposed the Appeal and has submitted that the accounts of the two witnesses could not be disbelieved. He states that it mattered little if Ram Dayal, Dulare and Chiraunji Lal did not appear in the witness box. He submits that when under Section 294 of Cr.P.C. the documents were admitted then it mattered little if the accused persons under Section 313 of Cr.P.C. did not admit the documents. He further submits that the injuries also did not matter much as the eye-witnesses themselves had seen the incident taking place.

13. Having heard the learned counsel for the parties, we are definitely of the view that if the incident, as had been reported in the F.I.R., if is analyzed then we find that the accused Babu Ram Pradhan had allegedly fired 3-4 shots but not a single empty cartridge was found. Still further, we find that none of the injuries corresponded to the weapons which were assigned to Babu Ram and Gulab Chand i.e. a country made pistol and a bhala. Still further we are of the view that the F.I.R. when was lodged on 21.03.1984, how the F.I.R. itself accompanied the panchayatnama which was conducted on 19.03.1984. What is more, the F.I.R., the post-mortem report and the site plan had not been proved by the relevant persons but they were only admitted by the defence counsel under Section 294 of Cr.P.C., but when the accused persons had come before the Court and had got their statements recorded, then they had denied the documents which had allegedly been admitted by the counsel. We are also of the view that when the witnesses had stated that they were only 15-20 steps away from the place of incident and they had seen the accused persons and also the accused persons had seen them, then there ought to have been some reaction from the side of the accused persons and they should have tried to ward off the witnesses who were coming near them.

14. Thus, for all the reasons stated above, we are definitely of the view that the appellants were wrongly charged. The appellant no. 1, Babu Ram Pradhan, and the appellant no. 2, Veer Sahai, have already died. So far as the appellant no. 3, Gulab Chandra, is concerned, we are of the view that the charges levelled against him are not proved. The appellant no. 3, Gulab Chandra, be acquitted from all the charges for which he was tried.

15. The Appeal vis-a-vis the appellant no.3, Gulab Chandra, is **allowed**. The judgment and order dated 17.07.1990 passed by the VIth Additional District & Sessions Judge, Etah, in Session Trial No. 47 of 1986 is hereby set-aside vis-a-vis the appellant no.3.

16. If the appellant is on bail, he need not surrender and his sureties and bail bonds be discharged. The trial court record be sent back to the concerned trial court.

(2026) 7 ILRA 1000
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal No. 1491 of 2023
& Other Connected Case

Smt. Sarita Devi **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to determination whether the learned Trial Court committed a legal error or perversity in convicting and sentencing the appellants under S. 302 read with S. 34 of the Indian Penal Code on the basis of the evidence available on record, particularly the multiple dying declarations of the deceased and the alleged material inconsistencies therein. (Paras 41-43)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 302, 34 - Evidence - Dying declaration - Multiple dying declarations - Evidentiary value - Material inconsistencies - Reliability - Held, a dying declaration, if found to be voluntary, truthful and free from external tutoring or psychological promptings, can form the independent and sole basis of conviction without further corroboration - Where multiple dying declarations exist, each declaration must be subjected to closest scrutiny and material variance or fatal improvements must be considered - Inconsistencies must be material for credibility to be shaken - Declaration recorded by a Magistrate or like higher officer may be relied upon subject to truthfulness and freedom from suspicion. (Paras 43-49, 71)

Evidence - Bharatiya Sakshya Adhiniyam, 2023 - S. 26 - Dying declaration - Statutory relevance - Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, as to the cause of death or circumstances of the transaction resulting in death, relevant where cause of death comes into question - Principles applicable to dying declarations under the earlier statutory framework considered. (Paras 44-46)

Evidence - Dying declaration - Fitness of declarant - Medical certification - Magistrate-recorded declaration - Voluntariness - Reliability - Held, contemporaneous certification by the Medical Officer before and after recording, coupled with testimony of the Executive Magistrate who recorded the declaration, established that the deceased was in a perfectly fit state of mind - Mere variation between an informal statement to the informant, a statement recorded by the Investigating Officer and the formal dying declaration did not diminish the statutory value of the declaration recorded before the Executive Magistrate. (Paras 57-60)

Evidence - Dying declaration - Multiple statements - First declaration and subsequent statements - Material variance - Role attributed to accused - Held, the formal dying declaration recorded by the Executive Magistrate was entitled to overriding evidentiary value where it was supported by medical certification and the testimony of its author and no material or substantive degradation was elicited in cross-examination - Minor lacuna or defect in investigation could not override convincing, cohesive and credible statutory evidence. (Paras 54-60)

Criminal Law - Evidence - Circumstantial and medical evidence - Burn injuries - Self-immolation - Defence plea - Held, the plea of self-immolation was speculative, weak and unsubstantiated -

Medical evidence established ante-mortem flame burns involving approximately 80% of the total body surface area and death due to septicaemic shock resulting from infected burns - Absence of accused persons when neighbours arrived was consistent with the prosecution case that they had fled after setting the deceased ablaze. (Paras 61-64, 73)

Criminal Law - Evidence - Ocular evidence - Defence relying upon prosecution witnesses - Statements under S. 313 Cr.P.C. - Inconsistent defence - Held, where the accused themselves disowned the witnesses relied upon by their counsel and failed to contradict the core recitals of the dying declaration, the defence argument based upon such witnesses could not be accepted. (Paras 65-70)

Criminal Law - Indian Penal Code, 1860 - Ss. 302, 34 - Conviction - Common intention - Dying declaration corroborated by medical and other evidence - Prosecution establishing case beyond reasonable doubt - No illegality, infirmity or perversity in impugned judgment of conviction and sentence - Appeals dismissed and conviction and sentence upheld. (Paras 71-75)

Held: The prosecution primarily rested its case upon the dying declaration of the deceased - a dying declaration, if found to be voluntary, truthful and free from any external tutoring or psychological promptings, can form the independent and sole basis of conviction without requiring any further corroboration - where multiple dying declarations exist on record, the Court is under a strict judicial obligation to subject each declaration to the closest scrutiny, ensuring that they are coherent, consistent and do not suffer from any material variance or fatal improvements - the primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind - when inconsistencies are found between various dying declarations, other evidence available on record may be considered for corroboration and each declaration must be scrutinised on its own merits - the statement recorded by a Magistrate or like higher officer can be relied on subject to the indispensable qualities of truthfulness and being free of suspicion - the testimony of the Executive Magistrate and the Medical Officer conclusively demonstrated that the dying declaration was recorded when the deceased was in a perfectly fit state of mind and was duly backed by contemporaneous medical certifications - the mere fact that the detailed version was not recorded in the same manner by the Investigating Officer did not diminish the overriding statutory value of the solemn dying declaration made before the Executive Magistrate - the statement regarding twelve years of struggle disclosed the historical backdrop of continuous torture and harassment and could not be interpreted to imply voluntary self-immolation - the medical testimony established that the cause of death was septicaemic shock resulting from infected ante-mortem flame burns involving approximately 80% of the total body surface area - the defence theory of self-immolation was highly speculative, weak and entirely unsubstantiated by the record - the absence of the accused persons at the spot when the neighbours arrived to extinguish the fire was consistent with the prosecution narrative that after setting the deceased ablaze, all the accused persons immediately fled the scene of crime - the prosecution successfully established its case beyond reasonable doubt - there was no illegality, infirmity or perversity in the impugned judgment of conviction and order of sentence - both criminal appeals were devoid of merits and were dismissed and the conviction and sentence of the appellants were upheld. (Paras 43-49, 57-75) (E-7)

Case Law Cited

State of Punjab Vs. Parveen Kumar, **(2004) 10 SCC 769***; Smt. Vimalbai Vs. State of Maharashtra* **(Criminal Appeal No. 192 of 2010);** *Naeem Vs. State of Uttar Pradesh,* **(2024) 17 SCC 735***; Jemaben Vs. State of Gujarat,* **2025 SCC OnLine SC 2299***; Mohan Lal Gangaram Gehani Vs. State of Maharashtra,* **(1982) 1 SCC 700***; Abhishek Sharma Vs. State (Govt. of NCT of Delhi),* **(2024) 13 SCC 660.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Bharatiya Sakshya Adhiniyam, 2023

List of Keywords

criminal appeal; conviction; sentence; dying declaration; multiple dying declarations; material contradictions; material variance; voluntary; reliable; fit state of mind; medical certification; Executive Magistrate; Investigating Officer; corroboration; tutoring; psychological promptings; ocular evidence; medical evidence;

ante-mortem flame burns; septicaemic shock; self-immolation; common intention; burden of proof; reasonable doubt; statutory value; credibility; truthfulness; abscondance; perversity; illegality; infirmity.

Case Arising From

APPELLATE JURISDICTION: Against the judgment and order dated 04.04.2023 passed by the learned Additional Sessions Judge, Court No. 11, Lucknow in Session Trial No. 641 of 2016, arising out of Case Crime No. 426 of 2015, Police Station Sarojini Nagar, District Lucknow, whereby the appellants were convicted under S. 302 read with S. 34 of the Indian Penal Code and sentenced to imprisonment for life with fine of Rs. 10,000/- each and, in default of payment of fine, additional rigorous imprisonment for six months.

Appearances for Parties

Advs. for the Appellant:
Sri Amol Kumar Srivastava
Advs. for the Respondents:
Sri S.P. Singh, learned Additional Government Advocate for the State;
Ms. Geetanjali Nayak, learned counsel appearing on behalf of the informant

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Sri Amol Kumar Srivastava, learned counsel for the appellants, Sri S.P. Singh, learned Additional Government Advocate (AGA) for the State, and Ms. Geetanjali Nayak, learned counsel appearing on behalf of the informant.

2. These connected criminal appeals, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), challenge the common judgment and order dated 04.04.2023 passed by the learned Additional Sessions Judge, Court No. 11, Lucknow in Session Trial No. 641 of 2016, arising out of Case Crime No. 426 of 2015, Police Station Sarojini Nagar, District Lucknow. By the impugned judgment, the appellants, namely Sarita Devi (in Criminal Appeal No. 1491 of 2023) and Malti Devi @ Malti Sharma (in Criminal Appeal No. 1587 of 2023), have been convicted under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and sentenced to undergo imprisonment for life along with a fine of Rs. 10,000/- each, and in default of payment of fine, to undergo additional rigorous imprisonment for six months.

3. The prosecution story, in brief, is that Manisha Sharma (the deceased), sister of the informant Manish Rai, was married to Kamlesh Sharma, son of Vimal Sharma, on July 3, 2003. It is alleged that the deceased was consistently harassed and faced ongoing disputes with her father-in-law, Vimal Sharma, at her matrimonial home. On October 27, 2015, at approximately 07:30 P.M., at her matrimonial residence situated in Village Chillawan near Sunny Toyota, Police Station Sarojini Nagar, Lucknow, the accused persons, namely Vimal Sharma (father-in-law), Malti Devi, Shambhu Sharma (son of Malti Devi), and Sarita Devi (wife of Shambhu Sharma), brutally assaulted the deceased. It is further alleged that with the common intention to eliminate her, the accused persons poured kerosene oil on her person and set her ablaze, inflicting severe burn injuries. Upon hearing her cries, neighbors and local residents rushed to the spot and shifted the deceased in a critical state to the Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, where her dying declaration was subsequently recorded by an Executive Magistrate on October 28, 2015, at about 08:44 A.M.

4. On the basis of the written tehrir submitted by the informant Manish Rai, a formal First Information Report (here-in-after referred as FIR) was registered against all the four named accused persons on 28.10.2015 at 18:10 hours as Case Crime No. 426 of 2015, initially under Sections 307 and 326 of the I.P.C. at Police Station Sarojini Nagar, Lucknow. Consequent upon the demise of the victim during the course of her treatment at Safdarjung Hospital, New Delhi, on 04.11.2015, the case was subsequently converted/transmuted to Section 302 of the I.P.C.

5. During the period of hospitalization of the victim, her dying declaration was meticulously recorded by the Executive Magistrate/Tehsildar on 28.10.2015 at about 08:44 A.M. at the Civil Hospital, Lucknow. Consequent upon her medical condition showing no signs of improvement, she was referred to a higher medical center and was subsequently admitted to the Safdarjung Hospital, New Delhi, on 02.11.2015. However, despite the best medical interventions, the victim succumbed to her severe burn injuries during the course of her treatment on 04.11.2015 at 11:45 P.M.

6. Following the demise of the victim, the inquest proceedings (panchayatnama) were conducted by the police on 05.11.2015, and the dead body, along with the requisite police papers, was dispatched for post-mortem examination. In order to furtherance of investigation , the Investigating Officer (hereinafter referred to as the 'I.O.') inspected the place of occurrence, collected material physical evidences from the spot, and prepared the site plan (naksha nazri). In view of the death of the victim, the case was converted into an offence punishable under Section 302 of the I.P.C. On conclusion of the investigation, the I.O. finding sufficient and prime facie evidence against the accused persons, submitted the formal charge-sheets before the jurisdictional Magistrate.

7. After ensuring strict compliance with the mandatory provisions of Section 207 of the Cr.P.C. regarding the supply of copies of the prosecution documents to the accused, the learned Magistrate, finding that the offence under Section 302 I.P.C. was exclusively triable by the Court of Session, committed the case to the Court of Sessions Judge, Lucknow, in accordance with Section 209 of the Cr.P.C. From there, the case was subsequently made over to the learned Additional Sessions Judge, Court No. 11, Lucknow, for trial according to law.

8. The learned Trial Court, after affording opportunity of hearing on charges, framed formal charges under Section 302 read with Section 34 of the I.P.C. against the accused persons. The charges were read over and explained to the accused persons in vernacular, who pleaded not guilty and claimed to be tried, thereby setting the trial into motion.

9. In order to substantiate its case and establish the guilt of the accused persons beyond reasonable doubt, the prosecution relied upon both oral and documentary evidence. The prosecution produced and examined as many as ten witnesses, namely: Sri Manish Rai (PW-1, the informant and brother of the deceased), Rajesh Kumar Srivastava (PW-2, the Tehsildar/Executive Magistrate who recorded the dying declaration), Santosh Kumar Sahu (PW-3, an independent neighbor), Mansha Ram (PW-4, a witness to the circumstances immediately following the incident), Dr. Ashish Kumar (PW-5, who conducted the post-mortem examination), Head Constable Dhoom Singh (PW-6, who registered the chick FIR), Akhilesh Dwivedi (PW-7, the initial Investigating Officer), retired A.S.I. Rajendra Kumar (PW-8, who conducted the inquest

proceedings in Delhi), Sudhir Singh (PW-9, the subsequent Investigating Officer who submitted the charge-sheet), and Dr. Rahul Chaudhary (PW-10, the Medical Officer who certified the fitness of the deceased before and after the recording of her dying declaration).

10. Apart from the ocular evidence, the prosecution also adduced and proved several vital contemporaneous documentary evidences, including the written tehrir (Exhibit K-1), the inquest report (Exhibit K-2), the dying declaration of the deceased (Exhibit K-3), and the post-mortem report (Exhibit K-4), alongside relevant material objects collected from the scene of crime.

11. PW-1, Manish Rai, the complainant (brother of the deceased), deposed in his examination-in-chief that ever since the marriage of his sister on 03.07.2003, frequent matrimonial disputes and friction persisted between the deceased and her father-in-law, the accused Vimal Sharma. He explicitly stated that the accused Vimal Sharma had developed an illicit relationship with the co-accused Malti Devi, to which the deceased strongly and consistently objected. It was on account of this persistent objection that all the accused persons harbored deep-seated animosity and malice toward the deceased, which also led her to file a prior written complaint with the Police Station Sarojini Nagar on 12.07.2015 regarding her systemic harassment. PW-1 further deposed that upon receiving telephonic information regarding the incident from his brother-in-law, Kamlesh Sharma, he immediately rushed to the Civil Hospital, Lucknow. He testified that when he reached the hospital, his sister was in a conscious state and narrated the entire horrific incident to him in tears. According to her disclosure, her father-in-law had initially assaulted her, following which the accused Shambhu Sharma forcefully restrained her and muffled her mouth; the accused Sarita Devi then poured kerosene oil upon her person, and Malti Devi handed over the matchbox to the accused Vimal Sharma, who subsequently set her on fire. He also stated that after his sister succumbed to the burn injuries, her two minor sons came to reside under his care and custody.

12. PW-2, Rajesh Kumar Srivastava, the then Tehsildar, Sarojini Nagar, Lucknow, deposed in his examination-in-chief that upon receiving specific administrative instructions from the Sub-Divisional Magistrate (SDM), Sarojini Nagar, he proceeded to the Civil Hospital, Lucknow, for the purpose of recording the dying declaration of the severely injured victim, Manisha Sharma. He stated that at about 08:44 A.M. on 28.10.2015, after obtaining a formal certificate from the attending Medical Officer regarding the conscious and fit mental state of the injured to give a statement, he proceeded to record her declaration.

He testified that the victim explicitly stated that after having tea, she went inside her room where her father-in-law, Vimal Sharma, brutally assaulted her with a fist blow, causing her to strike violently against the wall. Thereafter, the daughter-in-law of his father-in-law's mistress brought kerosene oil, and both her suser (Vimal Sharma) and Malti Sharma poured the kerosene upon her person and set her ablaze, as a result of which her entire saree caught fire and she sustained extensive burn injuries. The victim further stated that her husband was not present at the time of the occurrence, she had been struggling/fighting for twelve years, and upon hearing her cries, the neighboring residents rushed to the spot to rescue her. PW-2 verified the recorded dying declaration in a sealed envelope before the court, identifying it as Exhibit K-3.

13. PW-3, Santosh Kumar Sahu, an independent resident of the locality, deposed that at about 07:30 P.M. on October 27, 2015, while he was conversing with his friend Ramu outside his residence, he suddenly heard frantic cries emanating from the house of Kamlesh Sharma. He testified that he saw Kamlesh□s wife, Manisha Sharma, running out onto the verandah while engulfed in flames, whereupon he and his friend immediately rushed forward and extinguished the fire by covering her person with a bedsheet. He further stated that her screams drew neighboring women to the scene, and a local resident named Salman dialed '100' to inform the police. During his cross-examination, PW-3 categorically admitted that the victim's house was adjacent to his own, and at the time of the occurrence, the victim was entirely alone inside the house. He further disclosed that the accused persons, namely Shambhu, Malti, Sarita, and Vimal Sharma, owned another house situated four or five houses away, where they had shifted their residence prior to the incident. He also stated that although he knew the accused Vimal Sharma worked at the airport, he was not aware of his exact duty hours.

14. PW-4, Mansha Ram, deposed in his examination-in-chief that owing to a prior accident, he was infirm, used a walker for mobility, and regularly sat outside his house. He testified that between 07:00 P.M. and 08:00 P.M. on October 27, 2015, he observed the accused Vimal Sharma passing by on a bicycle in a trembling state. He further stated that on the very same day, Vimal's daughter-in-law had sustained fatal burn injuries. In his cross-examination, the witness clarified that he had been sitting outside his house since around 06:00 P.M. and the time mentioned by him was approximate as he was not carrying a watch or a mobile phone. He admitted that he did not witness the actual incident of immolation firsthand and his knowledge regarding the source of fire was based on general public information. He further stated that while the signatures on his statement were his own, a police official (Diwan Ji) had obtained them about 10 to 15 days after the incident without reading or explaining the contents of the document to him.

15. PW-5, Dr. Ashish Kumar, who was then posted as a Senior Resident at Safdarjung Hospital, New Delhi, proved the post-mortem report of the deceased (Exhibit K-4). He deposed that the dead body of the deceased was formally identified by her brother Manish Rai and her husband Kamlesh Sharma. External examination revealed that the body was wrapped in a multicoloured blanket and covered in medical bandages, except for the face and neck. Bluish discoloration was observed under the right toes, and the scalp hair was singed. The deceased had sustained extensive ante-mortem flame burns covering approximately 80% of her total body surface area, including the face, neck, chest, abdomen, back, lower back, and all four limbs. The presence of granulation tissue and yellowish foul-smelling pus at the margins of the burn injuries categorically indicated that she had survived for a considerable period after receiving the burns, and the margins showed signs of active infection. Internal examination revealed a congested and edematous brain, congested lungs with consolidation present in the lower lobes, an empty stomach, and congested abdominal organs. The Medical Officer opined that the cause of death was septicaemic shock resulting from infected ante-mortem flame burns involving about 80% of the total body surface area.

16. PW-6, Head Constable Dhoom Singh (No. 664), proved the check FIR and the corresponding GD entry as Exhibit K-5 and Exhibit K-6 respectively. PW-7, Akhilesh Dwivedi, Sub-Inspector, who was the initial Investigating Officer of the case, proved the site plan (naksha

nazri as Exhibit K-7), the recovery memo of the material objects (Exhibit K-8), and other contemporaneous documentary exhibits prepared during the course of the investigation. He deposed that on 29.10.2015, he proceeded to the Civil Hospital, Lucknow, where he recorded the statement of the injured victim, Manisha Sharma, under Section 161 of the Cr.P.C. He testified that during her statement, the injured victim explicitly disclosed that on 27.10.2015, between 07:00 P.M. and 07:30 P.M., her father-in-law, Vimal Sharma, initially assaulted her with fists, the accused Shambhu Sharma forcefully held and muffled her mouth, co-accused Sarita Devi poured kerosene oil upon her person, and Malti Devi handed over the matchbox to Vimal Sharma, who thereafter set her on fire. She explicitly reiterated that her husband was not present at the house at the relevant time and that the neighbours rescued her upon hearing her cries.

17. PW-8, retired A.S.I. Rajendra Kumar, who was then posted at Police Station Safdarjung Enclave, New Delhi, deposed in his examination-in-chief that upon receiving official information from the Safdarjung Hospital regarding the demise of the deceased, Manisha Sharma, he recorded the identification statements of her brother (Manish Rai) and husband (Kamlesh Sharma). He testified that he formally conducted the inquest proceedings (panchayatnama) and prepared the relevant police papers, identifying the inquest report as Exhibit K-2 and Exhibit K-9. He further stated that the body was subsequently forwarded to the mortuary for post-mortem examination, and upon completion of the autopsy, the dead body was formally handed over to the husband of the deceased for final rites.

18. PW-9, Sudhir Kumar Singh, Inspector, deposed that while he was posted as the Station House Officer (S.O.) at Police Station Sarojini Nagar, Lucknow, the investigation of Case Crime No. 426 of 2015 which was initially registered under Sections 307 and 326 of the I.P.C. was transmuted/converted to Section 302 of the I.P.C. on 10.11.2015 following the death of the victim, and the subsequent investigation was entrusted to him. He stated that after taking over the investigation, he perused the case diary (CD) prepared by the erstwhile Investigating Officer and recorded the statements of several prosecution witnesses, including Raj Kapoor, Munni Devi, and others under Section 161 of the Cr.P.C. He also obtained and examined the medical treatment records of the deceased from the Civil Hospital, Lucknow. He further testified that during the course of the investigation, he conducted raids at the residential premises of the accused persons, namely Malti Devi and Sarita Devi, on several occasions, but they were found to be absconding. Consequently, after executing the necessary process, the co-accused Malti Devi and Sarita Devi were arrested and taken into custody on 01.05.2016, and their statements were recorded. He also verified the steps taken regarding the prior arrest and custodial statements of the accused Vimal Sharma and Shambhu Sharma.

19. PW-10, Dr. Rahul Chaudhary, who was posted as the Emergency Medical Officer (E.M.O.) at the Dr. Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, on 28.10.2015, deposed that the victim Manisha Sharma, aged about 32 years, was admitted to the Burn Ward at approximately 08:40 A.M. with extensive burn injuries. He categorically testified that prior to the recording of the dying declaration by the Tehsildar/Executive Magistrate, he thoroughly examined the patient and certified that she was fully conscious, oriented, and mentally fit to make a voluntary statement. He proved his initial fitness certification on the dying declaration (Exhibit K-3), which read: "Manisha Sharma W/o Kamlesh Sharma is in fit state of her mind for her statement". He

further stated that he remained outside and was not present in the room while the Executive Magistrate was actively recording her statement. He testified that upon completion of the recording, he examined the patient again and appended his subsequent certification confirming that the victim remained in a fit state of mind before and during her statement.

20. In order to corroborate and substantiate the ocular testimony, the prosecution placed on record and successfully proved the written tehrir as Exhibit Ka-1, the formal inquest report (panchayatnama) as Exhibit Ka-2, the dying declaration of the deceased recorded by the Executive Magistrate as Exhibit Ka-3, and the post-mortem examination report as Exhibit Ka-4. The procedural and investigative records were also established, including the Check FIR as Exhibit Ka-5, the corresponding General Diary entry as Exhibit Ka-6, the site plan (naksha nazri) as Exhibit Ka-7, the recovery memo (fard) of the objects seized from the spot as Exhibit Ka-8, and the supplementary inquest/body identification papers as Exhibit Ka-9. Furthermore, the primary charge-sheet submitted against Vimal Sharma and Shambhu Sharma was proved as Exhibit Ka-10, while the supplementary charge-sheet against Malti Devi and Sarita Devi was marked as Exhibit Ka-11. These documentary exhibits were corroborated by material objects produced before the Court, consisting of a sealed cloth bundle (potli) as Material Exhibit-1, a polythene container as Material Exhibit-2, and the samples of half-burnt clothes and ash as Material Exhibit-3, which upon FSL analysis confirmed traces of kerosene oil.

21. Upon the closure of the prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. All incriminating circumstances appearing against them in the evidence were read over and explained to them, which they denied, reiterating their innocence and alleging false implication due to enmity. In her additional statement, the accused Sarita Devi specifically pleaded that she had been residing in a separate house prior to the incident; however, no oral evidence was adduced by the accused persons in support of their defence at that stage, save for filing a photocopy of the duty chart of the co-accused Vimal Sharma.

22. The learned Trial Court, after hearing the learned counsel for both the parties, marshaling the facts, and critically analyzing the evidence on record, concluded that the prosecution had successfully established its case beyond all reasonable doubt against three of the accused persons, namely Vimal Sharma, Malti Devi @ Malti Sharma, and Sarita Devi, under Section 302 read with Section 34 of the I.P.C. Consequently, the learned Trial Court convicted and sentenced Vimal Sharma, Malti Devi, and Sarita Devi accordingly. However, after analyzing the evidence regarding the remaining co-accused, Shambhu Sharma, the learned Trial Court found that the prosecution had failed to prove his complicity in the crime beyond a reasonable doubt, and consequently, he was acquitted of the charges leveled against him. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, the appellants have preferred these connected criminal appeals before this Hon'ble Court.

Finding of the learned Trial Court

23. The learned Trial Court, upon a holistic appreciation of the evidence, observed that there were no material contradictions or inconsistencies in the testimonies of the prosecution witnesses. It held that the dying declaration of the deceased (Exhibit K-3) was entirely voluntary, truthful, and

inspired confidence, being strongly corroborated by the medical certification of fitness provided by Dr. Rahul Chaudhary (PW-10) as well as the testimony of the Executive Magistrate, Rajesh Kumar Srivastava (PW-2), who recorded the declaration. The Trial Court further recorded a categorical finding that the evidence available on record conclusively demonstrated that the convicted accused persons poured kerosene oil on the body of the deceased and set her ablaze, an act which clearly manifested their deliberate intention to cause her death. This homicidal intent was further substantiated by the gravity and extent of the injuries sustained by the deceased, as evidenced by the medical and post-mortem reports confirming deep thermal burns covering approximately 80% of her total body surface area, which ultimately led to fatal septicaemic shock.

Submissions on behalf of the Appellants:

24. Learned Counsel for the appellants, while assailment of the impugned judgment of conviction, has rigorously submitted as under:

25. Inconsistency in Multiple Dying Declarations: It is submitted that the case of the prosecution hinges primarily upon multiple dying declarations of the deceased, which are materially inconsistent, contradictory, and completely destructive of each other's credibility.

26. First Dying Declaration (Exhibit K-3): The first dying declaration, recorded by the Tehsildar (Executive Magistrate) on 28.10.2015, presents a distinct three-pronged narrative. Firstly, it alleges that the father-in-law (Vimal Sharma) initially punched the deceased, causing her to strike against the wall; secondly, it states that the daughter-in-law of his mistress brought the kerosene oil; and thirdly, it asserts that both Vimal Sharma and Malti Sharma sprinkled the kerosene and set her on fire. It is submitted that this first declaration is internally vague, ambiguous, and fails to precisely attribute the specific and exclusive overt act of immolation to any single accused. Furthermore, the deceased's statement that she had been "struggling for twelve years" indicates deep-seated mental distress, rendering her prone to imagination. Additionally, the constant presence of her brother (the informant) at the hospital creates a strong probability of tutoring and psychological influence. Crucially, no role was attributed to the co-accused Shambhu Sharma in this declaration, though he was subsequent indicted.

27. Second Dying Declaration (161 Cr.P.C. Statement): In complete variance to the first narrative, the second dying declaration recorded by the Investigating Officer on 29.10.2015 under Section 161 of the Cr.P.C. introduces an entirely new version. In this subsequent statement, it is alleged that the father-in-law first called Shambhu Sharma, who then forcefully gagged the deceased; thereafter, Sarita Devi poured the kerosene oil, Malti Devi merely handed over the matchbox, and Vimal Sharma lit the fire.

28. **Material Divergence and Embellishment**: It is submitted that there is a total divergence and material shift in the rolls, persons, and the core conduct attributed to the accused persons between the two declarations. In the second declaration, the act of pouring kerosene is shifted entirely onto Sarita Devi, and the role of Malti Devi is significantly scaled down to merely handing over a matchbox, which clear points toward a classic case of embellishment, deliberate over-implication, and improvements made by the prosecution. Since neither of the dying declarations

inspires confidence or fulfills the test of being coherent, truthful, and reliable, they could not have been legally made the sole basis of conviction.

29. Reliance on Judicial Precedents: To fortify his arguments, the learned counsel for the appellants has placed reliance upon the following judicial precedents:

30. **State of Punjab Vs. Parveen Kumar, (2004) 10 SCC 769**: Wherein the Hon'ble Supreme Court held that the mere fact that the name of an accused is common in two distinct dying declarations is not sufficient to sustain a conviction if the declarations contain material contradictions regarding the core incident.

31. **Smt. Vimalbai Vs. State of Maharashtra (Criminal Appeal No. 192 of 2010):** Wherein the Hon'ble Court, while discussing the validity of conflicting dying declarations, held that where the specific roles attributed to the appellants vary substantially between pouring kerosene oil and lighting the matchstick, the credibility of such declarations stands severely impeached, and no sole conviction can be safely predicated upon them.

Submissions on behalf of the State:

32. On the other hand, the learned Additional Government Advocate (AGA) appearing for the State, along with the learned counsel for the informant, has vehemently opposed the submissions of the appellants and contended as under:

33. **Sufficiency of Evidence and Validity of Judgment**: It is submitted that the prosecution has adduced overwhelming, credible, and sufficient evidence against the appellant-convicts to prove its case beyond any reasonable doubt. The learned Trial Court, after a meticulous marshaling of the entire facts and circumstances of the case, correctly found the appellants guilty. There is absolutely no legal infirmity, error, or perversity in the impugned judgment and order of conviction which may warrant interference by this Hon'ble Court.

34. Sanctity of the Dying Declaration: It is next submitted that the dying declaration of the deceased (Exhibit K-3) was recorded by the Executive Magistrate only after obtaining a strict prior certification from the Emergency Medical Officer (PW-10) pertaining to the conscious, oriented, and fit mental condition of the deceased. Furthermore, upon conclusion of the statement, the Medical Officer appended a subsequent certification confirming her mental stability and fitness throughout the recording process. The averments made in the dying declaration are completely natural, spontaneous, and there was absolutely no occasion, time, or opportunity for any manipulation or tutoring.

35. **Corroboration by Ocular and Medical Evidence**: It is further contended that the core of the dying declaration stands firmly corroborated by independent ocular and scientific evidence. PW-3, Santosh Kumar Sahu, upon hearing the victim's cries, immediately rushed to her rescue, extinguished the raging flames covering her person using a bedsheet, and she was subsequently shifted to the hospital. Additionally, the forensic evidence in the form of the FSL report (Exhibit K-11) conclusively establishes the presence of kerosene oil on the half-burnt clothes and ashes

recovered from the scene of crime, which completely demolishes the defence theory. Therefore, the Trial Court rightly concluded that the appellants actively participated in setting the deceased on fire with a common intention to kill her.

36. **Reliance on Judicial Precedents**: To fortify his arguments, the learned AGA has placed placing reliance upon the following authoritative pronouncements of the Hon'ble Supreme Court:

37. **Naeem Vs. State of Uttar Pradesh, (2024) 17 SCC 735**: Wherein the Hon'ble Apex Court held that a dying declaration can form the sole basis for conviction. The rule requiring corroboration is merely a rule of prudence and not an absolute rule of law. Once a dying declaration, after careful judicial scrutiny, is found to be true, voluntary, and entirely free from any effort to induce or tutor the deceased, there exists no legal impediment in making it the absolute basis of conviction, even in the absence of independent corroboration.

38. **Jemaben Vs. State of Gujarat, 2025 SCC OnLine SC 2299**: Wherein the Hon'ble Supreme Court categorically held that merely because there are minor discrepancies or trivial variances in the versions given by the prosecution witnesses or in the manner of occurrence narrated before independent witnesses (such as PW-3), the solemn dying declaration made before an independent Magistrate cannot be ignored or discarded if it forms a coherent and consistent chain of events.

39. In view of the aforesaid facts, circumstances, and settled legal position, it is submitted that the present appeals are entirely devoid of merits and are, therefore, liable to be dismissed.

Discussion, Reasons and Conclusion

40. We have heard the learned counsel appearing for both the appellant-convicts, the learned Additional Government Advocate (AGA) for the State, and perused the entire material available on record.

41. Upon a comprehensive consideration of the facts, circumstances, and submissions advanced by the learned counsel for the respective parties, the following point for determination is formulated to adjudicate the present appeals:

42. Whether the learned Trial Court committed a legal error or perversity in convicting and sentencing the appellants under Section 302 read with Section 34 of the I.P.C. on the basis of the evidence available on record?

43. Since the crux of the arguments advanced on behalf of both the parties fundamentally subverts and rests upon the evidentiary value and reliability of the multiple dying declarations of the deceased, it is expedient to analyze the statutory principles and the law propounded by the Hon'ble Supreme Court in this regard.

44. It is relevant to note that the statutory provision governing dying declarations, which was hitherto occupied by Section 32(1) of the old Indian Evidence Act, 1872, is now encapsulated

under Section 26 of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as 'BSA, 2023). Section 26 of the BSA, 2023 provides that statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

45. The jurisprudential essence of a dying declaration under Section 26 of the BSA, 2023 rests upon the sanctified legal maxim "Nemo moriturus praesumitur mentiri", which translates to the principle that a person will not meet their Maker with a lie in their mouth. A dying declaration, if found to be voluntary, truthful, and free from any external tutoring or psychological promptings, can form the independent and sole basis of conviction without requiring any further corroboration. However, where multiple dying declarations exist on record, the Court is under a strict judicial obligation to subject each declaration to the closest scrutiny, ensuring that they are coherent, consistent, and do not suffer from any material variance or fatal improvements.

46. The legal philosophy and jurisprudential principles governing the admissibility and appreciation of a dying declaration have been clean-cut and well-settled by a catena of decisions of the Hon'ble Apex Court, establishing that a dying declaration is a substantial piece of evidence under the statutory framework (formerly Section 32(1) of the Indian Evidence Act, 1872). It is well-settled that there is no rigid statutory form prescribed for recording a dying declaration; it can be made verbally, in writing, or by any recognized method of communication, including signs, words, or gestures, provided the cognitive quality and fitness are established. The definite reason behind holding a dying declaration reliable is that a statement made by a person on the verge of death carries special sanctity, as at that solemn moment, a person is most unlikely to make an untrue statement, and the shadow of impending death is by itself a guarantee of the truth of the statement regarding the circumstances leading to the demise. However, at the same time, a dying declaration, like any other piece of evidence, has to be rigorously tested on the touchstone of credibility to be acceptable, which is all the more essential because the accused does not get an opportunity of questioning veracity of the statement by cross-examination. Nevertheless, if the dying declaration is found entirely reliable, it can form the base of conviction, as a person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth, and great solemnity and sanctity are attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. As Matthew Arnold famously observed, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

47. In this respect it is also relevant to consider the ruling of the Hon’ble Supreme Court in the case of Mohan Lal Gangaram Gehani Vs. State of Maharashtra, (1982) 1 SCC 700. The Apex Court in the said precedent held that where the prosecution relies upon more than one statement in

the nature of a dying declaration, the statement which is first in point of time must ordinarily be preferred, unless the subsequent statements are proven to be equally spontaneous and reliable. However, for a plurality of dying declarations to be accepted as trustworthy, they must exhibit a high degree of coherence and consistency regarding the core substratum of the prosecution's case.

48. In the recent and authoritative pronouncement of the Hon'ble Supreme Court in the case of Abhishek Sharma Vs. State (Govt. of NCT of Delhi), (2024) 13 SCC 660, the Apex Court comprehensive propounded and codified the legal parameters regarding the appreciation of multiple dying declarations. After evaluating the extensive jurisprudential matrix, the Hon'ble Supreme Court delineated the core guiding principles which a Court must strictly consider and apply while dealing with a case involving more than one dying declaration, ensuring that any material contradictions are carefully scrutinized to prevent a miscarriage of justice. The Hon'ble Supreme Court, upon considering various judgments regarding multiple dying declarations, established the following principles for a court to consider when dealing with such cases:

"(1) The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

(2) All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

(3) When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations;

(4) The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances;

(5) Each declaration must be scrutinised on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further;

(6) When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion;

(7) In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc."

49. In view of the aforesaid settled position of law propounded by the Hon'ble Apex Court, we shall now proceed to critically evaluate and scrutinize the multiple dying declarations of the deceased available on record, in light of the extensive arguments advanced by the learned counsel for the respective parties.

50. The dying declaration of the deceased, Manisha Sharma, recorded by the Executive Magistrate (PW-2) on 28.10.2015 at the Dr. Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, which has been proved and exhibited as Exhibit Ka-3, is reproduced here-in-below:

मृत्यु कालिक बयान

"Pt. Manisha Sharma W/o Kamlesh Sharma is in fit state Paper torn mind For her Statement.

Sd/- Illegible
28-10-15
Stamp seal - EMO
Dr. S.P.M(Civil) Hospital
Lucknow (U.P.)
श्रीमती मनीषा शर्मा W/o कमलेश शर्मा उम्र 32 वर्ष,
ग्राम चिल्लॉवा सनी टोयटा थाना
सरोजनी नगर
समय- 8:44 AM
दिनांक- 28 / 10 / 2015
स्थान सिविल अस्पताल

चाय पीने के बाद कमरे में गयी थी। मेरे ससुर मुक्के से मारे, दीवार पर चिपक गयी। उसकी रखैल की बहू मिट्टी तेल लेकर आ गयी, मेरे ससुर और मालती शर्मा मिट्टी का तेल थोड़ा सा छिड़का, आग ज्यादा लग गयी। पूरे साड़ी में आग लग गयी। मुझे इंशाफ दिलवाईये, मैं बारह साल से संघर्ष कर रही हूं, मेरे पति वहां नहीं थे। मेरे ससुर का नाम विमल शर्मा है, उन्होंने ही आग लगाया है। मालती शर्मा तेल डाली। मुझे जलाया गया है। पूरे मोहल्ले के लोग मुझे बचाये। मेरे चिल्लाने पर आये। मेरे ससुर दारू पीते हैं। यह घटना कल की है। शायं 05:30 की है।

Manisha Sharma W/o Kamlesh Sharma remained in fit state of her mind before and during her Statement.

Sd/- Illegible
28/10/15
9-01 Am
मेरे द्वारा अपने समक्ष बयान लिखा गया।
ह० राजेश कुमार श्रीवास्तव निशान अंगूठा दाया
तहसीलदार सरोजनीनगर ह० अपठनीय
ह० अपठनीय
9.01 Pm पूर्वान्ह
28.10.2015
STAMP - EMO
Dr. S.P.M(Civil) Hospital
Lucknow (U.P.)

51. On a thorough perusal of the material available on record, it reveals that the prosecution primarily rests its case upon the dying declaration of the deceased. However, before entering into the evaluation of the solemn dying declaration made by the deceased before the Executive Magistrate, it is expedient to analyze the ocular testimonies and other prosecution evidence available on record.

52. PW-1, Manish Rai, the brother of the deceased, admitted in his cross-examination that his brother-in-law, Kamlesh Sharma, had initially informed him regarding the alleged incident over a mobile phone. Upon receiving this information, he immediately rushed to the hospital, where his deceased sister narrated the entire incident to him. In his cross-examination, he further stated that on 27.10.2015, his mother was the first person to be intimated in respect of the burning incident of the deceased. Upon receiving this intimation, he directly reached the Dr. Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, following which his father also arrived at the hospital between 09:00 P.M. and 09:30 P.M. He candidly admitted that he was not an eyewitness to the actual occurrence, as he did not visit the matrimonial house of the deceased immediately, and therefore, he could not interact with the neighbors at the spot. He testified that on 28.10.2015 at around 09:00 A.M., the Executive Magistrate recorded the dying declaration of the deceased. This witness categorically denied the suggestions put forth by the defence/convict side that the deceased had been cajoled or tutored into falsely implicating the accused persons in the matter.

53. At this juncture, it is relevant to note that the accused persons have taken a specific defence during the cross-examination of the witnesses, asserting that the deceased had set herself on fire. PW-1 vehemently denied the defence suggestion that the deceased was mounting pressure on the accused to deposit money into her personal bank account, which allegedly led to her self-immolation.

54. The learned counsel for the appellants has vehemently argued that there are material contradictions and glaring inconsistencies between the oral statements of the prosecution witnesses, the statement recorded by the Investigating Officer, Akhilesh Dwivedi (PW-7), and the formal dying declaration made before the Executive Magistrate. To test the veracity of this argument, we have carefully perused the testimony of Sub-Inspector Akhilesh Dwivedi (PW-7). He deposed that on 29.10.2015, during the course of investigation, he proceeded to the Civil Hospital, Lucknow, where he recorded the statement of the injured victim, Manisha Sharma, under Section 161 of the Cr.P.C. In the said statement, the victim disclosed that on 27.10.2015 between 07:00 P.M. and 07:30 P.M., her father-in-law, Vimal Sharma, initially called Shambhu Sharma. Upon his arrival, Shambhu forcefully pressed and gagged her mouth, co-accused Sarita Devi brought kerosene oil, Malti Devi handed over the matchbox to Vimal Sharma, and Vimal Sharma subsequently set her on fire. She further stated that all four accused persons thereafter fled the scene, following which the neighbors arrived, extinguished the flames on her body and with their assistance, her husband admitted her to the hospital.

55. PW-7 further exposed that on 30.10.2015, he recorded the statement of the victim's husband, Kamlesh Sharma, under Section 161 of the Cr.P.C. Kamlesh Sharma narrated that he was not present at the house at the time of the alleged incident. Upon receiving information regarding the burning of his wife, he rushed back to the house and saw his wife lying in a severely burnt state. He stated that Vimal Sharma, Shambhu Sharma, Sarita Devi, and Malti Devi, after pouring kerosene oil, had set his wife on fire.

56. The learned counsel for the appellants has pointed out that while the deposition of the I.O. (PW-7) emerges with a specific role for Shambhu Sharma (gagging the mouth), Sarita Devi (pouring kerosene), Malti Devi (handing over the matchbox), and Vimal Sharma (setting the fire);

the statement of the deceased's husband (Kamlesh Sharma) generalizes the overt act by stating that all the accused persons collectively poured kerosene oil and set her on fire. On the other hand, a different posture is reflected in the formal dying declaration recorded by the Executive Magistrate (Exhibit Ka-3), wherein the deceased stated that her father-in-law, Vimal Sharma, assaulted her with fists, the daughter-in-law of his mistress (Sarita Devi) brought the kerosene oil, and thereafter her father-in-law and Malti Sharma sprinkled the kerosene oil, and Vimal Sharma set her on fire. On the basis of these variations regarding the specific roles attributed to Malti Devi, Sarita Devi, and the complete omission of Shambhu Sharma in the Magistrate's recording, the appellants contend that the recitals in the multiple dying declarations are mutually destructive, unworthy of confidence, and completely lose their legal sanctity.

57. We are, however, not in agreement with this line of argument advanced by the defence. The reason is that neither the informant, Manish Rai (PW-1), nor the Investigating Officer, Akhilesh Dwivedi (PW-7), are medical experts to legally certify or disclose the exact cognitive and mental fitness of the deceased at the precise moment they interacted with her. Therefore, it cannot be conclusively presumed that at the time of giving the statement to the I.O. or the informal narrative to the informant, the deceased was in a perfectly fit state of mind to render a precise and legally structured account.

58. On the contrary, to evaluate the statutory sanctity of the dying declaration (Exhibit Ka-3), the testimony of Rajesh Kumar Srivastava, the then Naib Tehsildar/Executive Magistrate (examined as PW-2), is of paramount importance. PW-2 deposed that upon receiving official intimation from the SDM, Sarojini Nagar, he reached the Dr. Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, on 28.10.2015 at around 09:00 A.M. He categorically testified that when he recorded the statement of the deceased, her voice was absolutely clear and intelligible. He clarified that any discrepancy regarding the date was merely typographical, and he firmly established that the statement was recorded on 28.10.2015. Crucially, PW-2 certified that the attending doctor had examined the patient and certified her to be in a mentally fit state of mind prior to the recording. He also clarified that during the actual recording of the statement, the medical officer was not present inside the room, ensuring an environment free from any influence.

59. The veracity of the Executive Magistrate (PW-2) stands fully fortified by the testimony of the medical expert, Dr. Rahul Chaudhary, who was examined as PW-10, who before the Magistrate commenced the recording and thoroughly examined the patient mentally and physically, finding her fully conscious, oriented, and fit to give her voluntary statement. He further deposed that after the completion of the recording by the Magistrate, he examined her again and appended a subsequent certification confirming that the deceased remained stable and in a fit mental state before and throughout the recording process. In his cross-examination, PW-10 firmly stated that he had actively ousted Kamlesh Sharma and all other relatives from the room before examining the victim, and after conducting the medical examination, he himself stepped out of the room. He emphatically controverted the defence suggestion that he had manipulated or manufactured the dying declaration in collusion with the victim's husband.

60. A joint and harmonious reading of the testimony of the author of the dying declaration, Rajesh Kumar Srivastava (PW-2), and the medical officer, Dr. Rahul Chaudhary (PW-10),

conclusively demonstrates that the dying declaration of the deceased was recorded when she was in a perfectly fit state of mind, duly backed by contemporaneous medical certifications. The rigorous cross-examination of these witnesses has failed to elicit any material or substantive degradation which could assist the case of the appellants. The mere fact that this particular detailed version was not recorded in the same manner by the Investigating Officer does not diminish the overriding statutory value of the solemn dying declaration made before the Executive Magistrate. Any minor lacuna or defect in the investigation cannot override convincing, cohesive, and credible statutory evidence.

61. It has been next argued by the learned counsel for the appellants that the dying declaration indicates a backdrop of long-standing matrimonial friction, as the deceased itself stated that she had been "struggling for twelve years", which according to the defence, indicates a motive for false implication. We find ourselves unable to accept this contention. The statement of the deceased regarding her twelve-year struggle clearly discloses the historical backdrop of continuous torture and harassment meted out against her. It highlights the circumstances of cruelty that culminated in her being set on fire and by no stretch of imagination can it be interpreted to imply that she voluntarily committed suicide by self-immolation.

62. This conclusion is further fortified by the medical testimony of Dr. Ashish Kumar (PW-5), who conducted the post-mortem examination. He categorically deposed that the cause of death was septicaemic shock resulting from infected ante-mortem flame burns involving approximately 80% of the total body surface area. Although the defence attempted to raise arguments to disprove the ante-mortem nature of the injuries, it is crucial to note that it is not even the case of the appellants that the death was not caused by burn injuries. Their sole defence rests on the theory of self-immolation, which stands completely falsified by the nature and extent of the injuries and the evidence on record.

63. The appellants have further sought shelter under the testimony of Mansha Ram (PW-4) to argue that if the appellants were actively involved in the commission of the offence, they would have been noticed by this witness, whereas he only claimed to have seen the convict Vimal Sharma passing by on a bicycle in a trembling state. However, in his cross-examination, PW-4 candidly admitted that he did not witness the actual occurrence with his naked eyes and his knowledge was based on what he heard from others. A perusal of his testimony reveals that he is, at best, a chance witness who observed Vimal Sharma fleeing the vicinity immediately after the incident. The mere fact that he did not see the other co-appellants fleeing alongside Vimal Sharma on the bicycle does not establish their innocence or prove their non-involvement in the joint commission of the offence inside the house.

64. The appellants have also placed reliance on the testimony of Santosh Kumar Sahu (PW-3), arguing that he was the person who rescued the deceased and shifted her to the hospital and at that time he did not find any of the appellants present at the spot. We have given our anxious consideration to this submission coupled with the testimony of PW-4. However, the absence of the appellants at the spot when the neighbors arrived to extinguish the fire is completely consistent with the prosecution narrative that after setting the deceased ablaze, all the accused persons

immediately fled the scene of crime. Therefore, their absence does not point towards false implication, but rather corroborates their guilty conduct and subsequent abscondance.

65. It is vehemently contended by the learned counsel for the appellants that the testimonies of Santosh Kumar Sahu (PW-3) and Mansaram (PW-4), when read in conjunction, completely establish that the appellants were not involved in the commission of the alleged offence by any means or manner and that they have been falsely implicated in the present case. We have given our anxious consideration to this contention, but upon a thorough perusal of the record, we find ourselves unable to concur with this line of argument.

66. On a close examination of the testimony of Santosh Kumar Sahu (PW-3), particularly during his cross-examination, he stated that he did not see the accused persons exiting the house of the deceased. He further stated that upon hearing the victim's screams, she emerged out from the house by herself and at that specific moment of time, she was alone. He added that he was unable to recall the exact clothes worn by the deceased at that juncture. Seizing upon this statement, the defence has strenuously argued that none of the accused persons were present inside the house when the deceased allegedly set herself on fire.

67. The learned counsel for the appellants has further built his argument around a statement made by PW-3 in his cross-examination, wherein he mentioned that the accused persons Shambhu, Malti, Sarita, and Vimal Sharma owned two houses and had shifted their residence to their second house, while the deceased continued to reside in the house adjacent to that of the witness. However, in the very same deposition, PW-3 simultaneously clarified that this second house of the accused persons was situated just four or five houses away from their first house.

68. This proximity completely destroys the defence theory. The mere fact that the accused persons owned or occasionally occupied another house separate from the place of occurrence does not, by any stretch of imagination, imply that the other house was so geographically remote that they could not have reached the spot before or at the time of the commission of the crime. The presence of the appellants at the scene of the crime cannot be ruled out or denied on the faint plea of having another house, when that house was located in the immediate vicinity, roughly three to four houses away.

69. Here, it is also highly expedient to contrast this defence plea with the statutory statements given by the appellant-convicts under Section 313 of the Cr.P.C. When incriminating circumstances were put to the appellants, Malti Sharma and Sarita Sharma completely denied the testimony of PW-3 (Santosh Kumar Sahu), asserting that he had deposed falsely against them due to enmity. Similarly, with regard to the testimony of the prosecution witness Mansaram (PW-4), on whose statement the defence is paradoxically placing heavy reliance, both the appellants stated in their Section 313 Cr.P.C. examinations that the said witness had given a false statement. Furthermore, regarding the testimony of Rajesh Kumar Srivastava (PW-2), the scribe who recorded the solemn dying declaration, both appellants stated that they had nothing to say.

70. Thus, a glaring contradiction emerges in the defence strategy: while their counsel relies on the oral statements of PW-3 and PW-4 to argue innocence, the accused persons themselves have explicitly disowned and discarded those very witnesses in their statement under Section 313 by branding them as

liars. Where sufficient opportunity was afforded to the accused to explain the incriminating circumstances, they chose a blanket denial of the ocular evidence but significantly failed to utter a single word to contradict the core recitals or deny the incriminating circumstances recorded in the dying declaration. Consequently, the arguments advanced by the learned counsel for the appellants cannot be accepted merely on the strength of an inconsistent oral plea.

71. On a minute and critical observation of the dying declaration recorded by the Executive Magistrate (PW-2), we do not find any structural inconsistency or infirmity regarding the presence and the explicit roles attributed to the present appellants. It is a cardinal principle of criminal jurisprudence that a dying declaration recorded by an independent Magistrate, where there is no opportunity for tutoring, fabrication, or psychological promptings, is highly reliable and cannot be ignored.

72. The genesis of the crime stands firmly established by the testimony of the informant, Manish Rai (PW-1), who deposed that the deceased's father-in-law, convict Vimal Sharma, maintained an illicit relationship with Malti Devi. This relationship was continuously and vehemently opposed by the deceased, Manisha Sharma, on account of which Vimal Sharma, Malti Devi, Shambhu Sharma, and Sarita Devi collectively nurtured severe animosity toward her. The depth of this friction is evidenced by the fact that prior to the fatal incident, on 12.07.2015, the deceased had also submitted a formal written application detailing this harassment to the Police Station, Sarojini Nagar.

73. It is true that the deceased's husband (Kamlesh Sharma) was not examined by either side during the trial. However, the defence has urged before us to consider that the appellants were falsely implicated because the deceased was under severe mental distress and was allegedly mounting pressure on her father-in-law, Vimal Sharma, to disburse and deposit his retirement funds directly into her personal bank account. We find this alternative theory of self-immolation to be highly speculative, weak, and entirely unsubstantiated by the record. Where the statutory dying declaration is clinching, reliable, and convincing completely free from any visible embellishment, manipulation, or inducement and is fully supported by the broader circumstances disclosed in the prosecution evidence, the defence plea becomes fail.

74. Therefore, after taking into consideration all the facts, evidence, and circumstances in their entirety, as well as the role and active participation of the appellants in the alleged offence, we find that the prosecution has successfully established its case beyond reasonable doubt. Consequently, the learned trial court has thoroughly discussed every aspect, analyzed the evidence in detail, and arrived at a proper conclusion. There is no illegality, infirmity, or perversity in the impugned judgment of conviction and order of sentence passed by the learned Trial Court dated 04.04.2023.

75. Consequently, both the criminal appeals (Criminal Appeal Nos.1491 of 2023 and 1587 of 2023) are devoid of merits and are hereby **dismissed**. The conviction and sentence of the appellants, as recorded by the learned Trial Court, are upheld.

76. Since we have decided the appeals on merit so the pending bail applications stand dismissed.

77. Let a copy of this judgment along with the trial court record be transmitted to the learned Trial Court immediately for necessary compliance.

(2026) 7 ILRA 1019
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1689 of 2000

Sobaran & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the finding and reasoning of the Trial Court convicting the accused-appellants under Ss. 148, 302 read with S. 149 IPC, on the basis of the theory of last seen together and the recovery of the alleged murder weapon under S. 27 of the Evidence Act, is sustainable in the absence of any eye-witness and without completion of the chain of circumstantial evidence. (Paras 16-37).

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 148, 302 read with S. 149 -Circumstantial evidence - Last seen together theory - Conviction based solely on last seen together without corroborative evidence held unsustainable - the prosecution witnesses projected as witnesses of last seen were found to have concealed what they had allegedly seen and did not disclose the same to the informant or to the Investigating Officer until after the dead bodies were identified, rendering their evidence shaky and suspicious - held that evidence of last seen together is a weak type of evidence and conviction only on this basis, without any other corroborative evidence, is not sustainable. (Paras 19-24, 28).

Evidence Act, 1872 - S. 27 - Discovery statement - Recovery of weapon - Absence of disclosure memo - no disclosure statement of the accused was recorded by the Investigating Officer regarding concealment of the murder weapon - recovery memo of the alleged weapon held doubtful and unreliable in the absence of a disclosure statement, and further, the Forensic Science Laboratory report did not establish that the human blood found on the weapons belonged to the deceased persons. (Paras 29-32).

Criminal Law - Circumstantial evidence - Chain of circumstances - Golden principles - conviction on circumstantial evidence requires that the chain of circumstances be complete and consistent only with the hypothesis of guilt, excluding every other hypothesis - in the absence of direct evidence, reliable last seen evidence, or an admissible disclosure/recovery, the chain of circumstantial evidence was held incomplete - Trial Court's judgment and order of conviction and sentence dated 19.07.2000 held perverse and illegal and set aside, appeal allowed. (Paras 33-39).

Held: On a conjoint reading of the evidence of the witnesses projected as witnesses of last seen together, it emerges that these witnesses did not disclose what they had purportedly seen, heard or observed on 11.12.1996 to any person, and only after hearing rumour of the lying of two unidentified dead bodies did they come forward, a conduct and manner which creates a reasonable doubt about the veracity and truthfulness of their evidence - it is settled principles of law that on the basis of shaky and suspicious nature of evidence of prosecution witnesses, no accused person could be held guilty and convicted for the commission of the alleged crime - evidence of last seen together is a weak type of evidence and conviction only on the basis of last seen together, without there being any other corroborative evidence against the accused, will not be

sufficient to convict the accused for the commission of the alleged crime - as regards the recovery of the murder weapon, there is no disclosure statement of the accused persons recorded by the Investigating Officer about the hiding of the murder weapon at the alleged place, and therefore the recovery memo of the alleged weapon of murder becomes doubtful, more so as the Forensic Science Laboratory report, while confirming presence of human blood on the weapons, does not establish that such blood belonged to the deceased persons - this case is neither a case of direct evidence nor a case of last seen together theory inspiring confidence, and it is settled principles of law that in case of circumstantial evidence the prosecution is legally responsible and duty bound to complete every link of the chain of circumstantial evidence from which it could be undoubtedly proved that in all human probability the act must have been committed by the appellants - on the basis of shaky, suspicious and doubtful circumstantial evidence, conviction of an accused-appellant could not be recorded - the finding and reasoning of the Trial Court is without any cogent and reliable evidence and is against the settled principles of law, and the judgment and order of the Trial Court is perverse and illegal, hence not found sustainable in the eyes of law - the judgment and order of conviction and sentence is liable to be set aside and the appeal deserves to be allowed. (Paras 24, 28, 31, 32, 34, 36, 37, 38, 39). (E-7)

Case Law Cited

Rambraksh @ Jalim vs. State of Chhattisgarh, **(2016) 12 SCC 251***; Krishnan alias Ramasamy vs. State of Tamil Nadu***, (2014) 12 SCC 279***; Arjun Marik v. State of Bihar,* **[1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551];** *Kanhaiya Lal vs. State of Rajasthan,* **(2014) 4 SCC 715***; Wadla Bheemaraidu Vs. State of Telangana,* **2024 SCC OnLine SC 3589***; Babu Sahebgouda Rudragoudar v. State of Karnataka,* **(2024) 8 SCC 149***; State of U.P. v. Deoman Upadhyaya,* **1960 SCC OnLine SC 8 : AIR 1960 SC 1125***; Sharad Birdhi Chand Sarda Vs. State of Maharashtra,* **(1984) 4 SCC 116;** *Shivaji Sahabrao Bobade v. State of Maharashtra,* **[(1973) 2 SCC 93 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783]**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

last seen together; circumstantial evidence; complete chain of circumstances; unidentified dead bodies; prosecution story; reasonable doubt; shaky evidence; suspicious evidence; unreliable evidence; recovery of murder weapon; Garasa; Takora (Kulhari); human blood; disclosure statement; discovery; Forensic Science Laboratory; FSL report; Section 27 IEA; five golden principles; cogent and reliable evidence; conviction and sentence; perverse and illegal; appeal allowed

Case Arising From

APPELLATE JURISDICTION: Appeal against the judgment and order of conviction and sentence dated 19.07.2000 passed by the Trial Court in S.T. No. 138 of 1997, State Vs. Sobaran and Others, arising out of Case Crime No. 226 of 1996 under Ss. 148, 302 read with S. 149 IPC, Police Station Nawabganj, District Farrukhabad.

Appearances for Parties

Advs. for the Appellant: Not Specified in Judgment Text.
Advs. for the Respondents: A.G.A. for the State; Learned Counsel for the Informant/Complainant.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This **Criminal Appeal No. 1689 of 2000 (Sobaran and Others Vs. State of U.P.)** has been preferred by accused-appellants against the judgment and order of the Trial Court dated 19.07.2000, passed in S.T. No. 138 of 1997, State Vs. Sobaran and Others arising out of Case Crime No. 226 of 1996 under Sections 148, 302 read with Section 149 I.P.C., Police Station Nawabganj, District Farrukhabad.

2. Informant Mohd. Yunus Son of Alisher Khan-(PW-6), resident of Ganipur, Nawabganj, P.S. Nawabganj, Farrukhabad, has filed written report Exhibit Ka-6 at Police Station Nawabganj, District Farrrukhabad. In Exhibit Ka-6, informant Mohd. Yunus-PW-6 has stated that I Mohd. Yunus son of Alisher Khan is a resident of Ganipur, Nawabganj. Today on 12.12.1996, I had gone to Block Compound to inquire about distribution of trees. At that time, it was 01:00 O' clock of the day. I saw that some children of the school and villagers were running fast towards North from Block Compound. I tried to know the problem and after reaching 300 meters away, I saw that dead bodies of two persons were lying in the wheat field of Ram Swaroop Pal son of Jodha Lal Pal resident of Hamirpur Bogar, Police Station Nawabganj, in which one person wore pant, shirt and the other woar Kurta, Paijama and Sadri. There were many injuries on their faces due to this it is difficult to identify their faces. I have come to police station to give information about this fact, accordingly. This information dated 12.12.1996 has been lodged by Mohd. Yunus PW-6 at Police Station Nawabganj.

3. On the basis of the information Exhibit Ka-6, an FIR Exhibit Ka-21 was registered at Case Crime No. 226 of 1996 under Section 302 IPC on 12.12.1996 against unknown accused persons by Constable Clerk Krishna Dutt Dixit PW-9. Krishna Dutt Dixit PW-9. After registration of the FIR also entered and prepared G.D. rapat No.24 at 03:30 pm as Exhibit Ka-22. After registration of the FIR-Exhibit Ka-21, investigation of the case was taken into his hand by SHO Shivraj Singh PW-8. I.O. Shiv Raj Singh PW-8 has reached with police team including Sub Inspector Rajaram Suman PW-5 and Sub Inspector R.N. Tiwari PW-7 at the place of occurrence. Under direction of I.O. Shivraj Singh PW-8, S.I. Rajaram Suman PW-5 collected sample of plain soil and blood stained soil, near the dead body of the deceased Awadhesh and prepared recovery memo Exhibit Ka-2. From the place of occurrence, he has also taken into possession one bar of bamboo and prepared recovery memo of this as Exhibit Ka-3. He also took simple soil and blood stained soil from near the place of the dead body of the deceased Sobaran and prepared a recovery memo Exhibit Ka-4. Under direction of S.I Shivraj Singh PW-8 and R.N. Tiwari PW-7 prepared panchayatnama of deceased Sobaran as Exhibit Ka-7. He also prepared other related police papers of panchayatnama, such as letter to CMO, photolash, challanlash, report to R.I. as Exhibit Ka-8, Exhibit Ka-9, Exhibit Ka-10 and Exhibit Ka-11, respectively. S.I. R.N. Tiwari, PW-7 on the same date prepared panchayatnama of the deceased Awadhesh as Exhibit Ka-12 and other necessary police papers, such as report to CMO, Challannash, Photolash, report to R.I. as Exhibit Ka-13, Exhibit Ka-14, Exhibit Ka-15, respectively. After preparing the panchayatnama of the deceased Sobaran and Awadhesh, the dead bodies of the deceased were handed over to Constable Dev Dutt Pandey and Shivraj Singh PW-8 for postmortem examination.

4. After receiving information about the dead bodies of Sobaran and Awadhesh and identification of the above dead bodies, father of the deceased Sobaran, Hariram PW-1 has also got ascribed written report Exhibit Ka-1 from Ram Niwas PW-2 and submitted it at police station Nawabganj, district Farrukhabad. In his written report Exhibit Ka-1, Hariram PW-1 has stated that on 7.10.1996, Satish Chandra, son of Feru Singh of my village was bitten by snake, due to which, he died. Feru Singh had given information at police station about the death of Satish Chandra. The police got postmortem conducted of his body, in which cause of death was found to be snake biting, but Feru Singh had doubted that, Sobaran Singh and Surendra had killed my son. He oftenly discussed this thing in the village and regarded enmity with us. Due to this reason, I and my son

went to my relations at Nagla Ajeet P.S. Patiyali, district Etah. From there we also came and go at my village. I had came here from 3-4 days and two months have lapsed by now after the date the incident happened and their doubts would have been disappeared. Yesterday on 11.12.1996, my son Sobaran on his motorcycle with Awadhesh son of Ram Chandra, resident of Village Bhadki Naya Gaon district Etah, had came Nawabganj, to came his home and on the crossroad (chauraha) at Nawabganj, Ram Kisun son of Jageshwar Singh and Vedram Singh Son of Himchal Singh of my village and my Samdhi Kaptaan Singh son of Chetram, resident of Nagla Azeet had seen both of them. My Samdhi had asked them to go home then they said that you may go we will reach after sometime. At crossroad (Chauraha), these peoples had also seen Feru Singh son of Ram Swaroop, Nar Singh @ Naiya, Dharamveer Son of Feru Singh, Sobaran son of Maiku Lal, Shiv Pal Singh son of Maiku Lal at crossroad. After darkness began, my son Sobaran and Awadhesh son of his Aunt (Mausi) both had to proceed on foot towards village. Then these people have also seen coming behind them. Today, in the day on receiving information, that two dead bodies were lying in front of the Block Compound, I have also come with my family members, then I saw that my son Sobaran and his aunt's son Awadhesh both are lying dead in the wheat field. On enquiring about this, Vedram, Ram Niwas and my Samdhi had told all things to me. I have full belief that Feru Singh and other above people had killed my son Sobaran and Awadhesh, so kindly take necessary action against them.

5. On 27.12.1996, appellants Feru Singh, Nar Singh, Shiv Raj were arrested by the I.O. with his police team from Manjhana railway station at 02:00 pm in day. Above three appellants have stated in their statements before the I.O., that they could get recovered murder weapon, i.e. Gadasa and Takora. Upon this information given by the accused persons Feru Singh, Shiv Raj Singh and Nar Singh, they were taken into a jeep with police party and proceeded to village Bogar. On reaching near village Bogar, accused persons Feru Singh, Nar Singh and Shiv Raj Singh get down from the police jeep and on their pointing out from the pool of the patel near the hut of Shiv Raj Singh, has traced a Takora which was appearing stained with blood and given to the police. The accused person Nar Singh @ Naiya has also given a blood stained Garasa from the pool of the patel near the hut of appellant Shiv Raj Singh. The Garasa appears to be blood stained. On the dictation of the I.O. Shivraj Singh PW-8, S.I. Rajaram Suman PW-5 prepared fard recovery of the above articles as Exhibit Ka-5.

6. I.O. Shivraj Singh PW-8 prepared site plan Exhibit Ka-7 of the place of occurrence from where dead bodies of the deceased were found. I.O. also prepared site plan of the place from where the murder weapon was recovered as Exhibit Ka-18. He has also recorded the statements of witnesses including informant Hariram PW-1 and arrested accused persons. After completing all the formalities of the investigation, I.O. Shivraj Singh PW-8 filed a charge-sheet Exhibit Ka-19 against the appellants.

7. The dead bodies of the deceased were carried by Constable Dev Dutt Pandey and Shiv Singh for postmortem. Dr. Arun Prakash Chaturvedi PW-10 has conducted the postmortem on the dead bodies of deceased Awadhesh son of Ram Chandra and prepared postmortem report as Exhibit Ka-29. He also conducted postmortem of the dead body of deceased Sobaran and prepared postmortem report as Exhibit Ka-33. Dr. Arun Prakash Chaturvedi PW-10 found following ante mortem injuries on the dead body of the deceased Awadhesh :

"(1) Incised wound 10cm x 1 cm cranaial cavity deep on left side of head 5 cm above left ear at parietal and occipital region

(2) Incised wound 12 cm x 2 cm x cranaial cavity deep 2 cm above injury no.1.

(3) Incised wound 7 cm x 1.5 cm x cranaial cavity deep on top of left side head 1.5 cm above injury No.2.

(4) Incised wound 10 cm x 3 cm x cranaial cavity deep on left side forehead involving left eye.

(5) Incised wound 11.5 cm x 2.5 cm cavity deep obliquely placed on upper part of neck involving right side of chin.

(6) Abraded contusion 15 cm x 11 cm over left side of face involving upper part of neck.

(7) Incised wound 3 cm x 1 cm x bone deep over right mastoid region.

(8) Lacerated wound 4 cm x 1.5 cm x bone deep on right side back of head. Occipital region 3 cm behind injury No.7.

Note: All Incised wound margins clean and out ragged at places. All skull bones broken and fractured in pieces. Teeth fractured and loose. Brain cut and lacerated with blood clot."

Dr. Arun Prakash Chaturvedi PW-10 has also found the following ante mortem injuries on the dead body of deceased Sobaran :

(1) Incised wound 12 cm x 1.5 cm x cranaial cavity deep on right side forehead involving right eye and face.

(2) Incised wound 7 cm x 2 cm x bone deep on right side of forehead clear mid line involving right eye.

(3) Incised wound 8 cm x 3 cm x bone deep over nose involving middle of forehead. (4) Incised wound 10 cm x 3 cm x bone deep front of neck upper part involving chin.

(5) Incised wound 4 in numbers on anterior aspect of right side neck measuring from 6 cm x 1.5 cm to 3 cm x 1 cm to muscle deep.

(6) Incised wound 5 cm x 1 cm x bone deep over right masteoid region. (7) Abraded contusion 10 cm x 6 cm on right side face involving front of right ear.

(8) Abraded contusion five in numbers semi-lunar shape measuring 5 cm x 0.2 cm to 3 cm x 0.5 cm over postero-lateral aspect of right shoulder upper arm.

(9) Abraded contusion 7 cm x 4 cm front on right shoulder.

Note : Incised wound having clear and ragged margins, all facial bones fractured, teeth nose broken. Mandible and maxilla fractured."

In the opinion of Dr. Arun Prakash Chaturvedi, the cause of death of both deceased was hemorrhage and shock due to ante-mortem injuries.

8. After submission of the charge-sheet by I.O. Shivraj Singh PW-8 in the concerned Magistrate Court having jurisdiction, case was committed to the Court of Session for trial.

9. Charges were framed against accused appellants on 21.04.1999 under Sections 148, 302 read with Section 149 IPC by the Trial Court. The accused have denied from the charge and claimed trial.

10. In support of its case, prosecution adduced Hariram PW-1, Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, and Mohd Yunus PW-6 as witnesses of facts and Raja Ram Suman PW-5, R.N. Tiwari, PW-7, Shivraj Singh PW-8 Krishna Dutt Dixit-PW-9 and Dr. Arun Prakash Chaturvedi PW-10 were adduced as formal witnesses. Apart from the above oral evidence of these witnesses, prosecution also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-34.

11. Learned Trial Court has recorded evidence of the prosecution and accused were examined under Section 313 Cr.P.C. In their statement under Section 313 Cr.P.C., accused appellants have denied the allegations levelled against them and they have also expressed ignorance about the questions which were put to them. They have also stated that, they were falsely implicated in this case by Hariram due to enmity and police has also falsely implicated them due to enmity and village rivalry and partibandi. They have also stated that, witnesses have given the evidence against them due to enmity. They have adduced Akhilesh as DW-1 in their defence.

12. After hearing the arguments of both the parties, Trial Court has found guilty to accused persons under Section 148, 302 read with Section 149 IPC and for the commission of the crime, each accused appellants were convicted and sentenced under Section 148 IPC for two years rigorous imprisonment and a fine of Rs. 1,000/-, each and on default of payment of fine, each accused appellants were directed to serve six months additional imprisonment. Each accused appellants were also convicted and sentenced under Section 302 read with 149 IPC by life imprisonment and a fine of Rs. 10,000/- each. In case of default of payment of fine, each accused appellant were directed to serve additional one year simple imprisonment. All the sentences of each accused person were directed to run concurrently. Aggrieved by the above impugned judgment and order of the learned Trial Court dated 19.07.2000, appellants have preferred this criminal appeal before this Court.

13. It is noteworthy to mention here that during the pendency of this criminal appeal, appellant Nos. 1 Sobaran son of Maiku Lal; appellant No.2 Shivraj son of Maiku Lal, appellant No.4 Feru Singh have died. Due to death of appellant Nos. 1, 2, and 4, criminal appeal in respect of these above appellants have abated. It is revealed from the office report dated 22.1.2025 that accused-appellant No.5 Nar Singh @ Naiya has been declared juvenile by the Juvenile Justice Board, Etah

in Case Crime No. 226 of 1996 under Sections 149, 148, 302 IPC., hence this criminal appeal is being adjudicated only in respect of appellant Nos. 3, 5 and 6 namely Shiv Pal, appellant No.5 Nar Singh @ Naiya and Dharamveer @ Dharampal.

14. Learned counsel for surviving appellants have submitted that due to prior enmity and grudge, Hariram PW-1 has lodged written report/information against accused-appellants only on the ground of doubts. No witness has seen commission of the offence by their own eyes. Place of occurrence where dead bodies were lying of the deceased Sobaran and Awadhesh is an open place in the wheat field, near the Block Compound. If any person would have really seen the commission of the crime/evidence by the appellants then, in this condition, FIR Exhibit Ka-6 have not been registered as against unknown persons. It is also submitted on behalf of the appellants that no prosecution witnesses have seen the deceased persons going with appellants at Nawabganj. However, later with deliberation and afterthoughts, Hariram PW-1 falsely projected Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, as witnesses of the last seen theory with a view to falsely implicate the appellant in this case. These witnesses were also planted and projected by the prosecution in this case to support the prosecution story. However, from the perusal of the evidence of prosecution witnesses, it is clear that they were not present at Nawabganj on 11.12.1996 and they have also not going behind the deceased persons Sobaran and Awadhesh. It is also submitted that recovery of so-called Garasa and Takora at the pointing out of the appellants is also doubtful, because in Forensic Science Laboratory Examination report, only blood was found on Garasa and Takora (Kulhari). However, it has not been mentioned in the FSL Report that blood which was found on Garasa and Takora was of deceased Sobaran and Awadhesh. Learned counsel for the appellants has also submitted that there is no direct evidence in this case. There is also no circumstantial evidence in this case against the accused appellants. However, learned Trial Court, on the basis of conjectures and surmises without completing every chain of circumstantial evidence, wrongly held guilty to accused appellants for the commission of the crime. The Trial Court has also not appreciated the evidence in proper perspective and in legal manner according to the evidence as available on the records. The finding of the Trial Court is without cogent evidence, which is based on misreading of the prosecution evidence that are against the prosecution itself. The prosecution was wholly unsuccessful to prove its case beyond reasonable doubt. However, the Trial Court only on the ground of enmity and conjecture and surmises, wrongly held guilty and convicted the accused appellants in this case, for the commission of the alleged crime. The finding and reasoning of the Trial Court is perverse and without any evidence and against the law. Hence, liable to be set aside. Therefore, the appeal of the appellants deserves to be allowed.

15. Against the above submission of learned counsel for the appellants, learned AGA for the State-respondent and learned counsel for the informant/complainant have also opposed the above arguments of the appellants. Learned AGA for the State-respondent and learned counsel for the informant/complainant have submitted that appellants have committed the murder of Sobaran and Awadhesh on 11.12.1996. They have called upon the deceased Sobaran and Awadhesh on the pretext of compromise and taken to field with them and taking opportunity, accused appellants have killed mercilessly and brutally to deceased Sobaran and Awadhesh. Prosecution witnesses Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, have seen accused appellants with deceased Sobaran and Awadhesh on 11.12.1996 at Nawabganj crossroad (chauraha) and thereafter they were also seen with accused appellants. Thus, there is ample evidence of last seen

together all appellants with deceased persons on the day of incidence before their death. On the instance of the appellant, murder weapon Takora and Garasa were recovered from near the hut of Shiv Raj Singh, on which human blood was found, which was used by the appellants in the commission of murder of Sobaran and Awadhesh. The Trial Court has rightly appreciated the prosecution evidence as available on the record. The Trial Court has delivered sound and cogent finding, which is based on reliable prosecution evidence and, therefore, the Trial Court found ample evidence against accused appellants, hence accused appellants were convicted and sentenced by the learned Trial Court. There is no perversity and illegality in the judgment and order of the Trial Court dated 19.07.2000. There is no force in criminal appeal as filed by the appellants. Hence, criminal appeal of appellants is devoid of merits and there is no force in the submission advanced by learned counsel for the appellants. Due to this reason, the judgment and order of conviction and sentence dated 19.07.2000 deserves to be affirmed.

16. In the light of the above arguments and counter arguments of the learned counsel for the accused-appellants and learned AGA, learned counsel for the informant, we have perused and gone through the finding and reasoning as recorded by the learned Trial Court in convicting and sentencing the accused-appellants for the alleged crime.

17. First of all, from the perusal of the written report Exhibit Ka-6, it reveals that after this news that dead bodies of two unknown persons were lying in the wheat field of Ram Swaroop Pal son of Jodha Lal Pal, a resident of Hamirpur Bogar P.S. Nawabganj near north side of the block compound. The dead bodies of the two persons were unidentified and no person was there to identify the dead bodies of the two deceased and no person was lodging information about this fact that two unidentified bodies are lying on there. In these circumstances, Mohd. Yunus PW-6, a local resident of Ganipur, Nawabganj has filed written report Exhibit Ka-6, in which he has given the information about lying of two dead bodies of the deceased persons as unidentified in the wheat field of Ram Swaroop Pal at police station Nawabganj. This Exhibit Ka-6 was written by Mohd. Yunus PW-6 on 12.12.1996. On the basis of this Exhibit Ka-6, as filed by Mohd. Yunus PW-6, Chik FIR Exhibit Ka-11 No.139 was registered at Crime No. 326/1996 under Section 302 IPC on 12.12.1996 at 13:30 PM. This fact indicates that till 13:30 PM on 12.12.1996, dead bodies of the two deceased namely Sobaran and Awadhesh were unidentified on the place of occurrence and it is also clear that till 13:30 PM on 12.12.1996, family members or any relative of the deceased persons have not come to the place of occurrence where two dead bodies were lying as unidentified. This fact also clearly established this that family members of the deceased persons have no information about this incident that their sons/brothers/husbands, as the case may be, were murdered near the block compound of Nawabganj and their bodies were lying there as unidentified. Investigation of the case was started on the basis of the written report Exhibit Ka-1, as filed by Mohd. Yunus PW-6.

18. On hearing news and rumors about the two dead bodies of the deceased were lying in the north side of the block compound of Nawabganj, which were unidentified, Hariram PW-1, father of deceased Sobaran with his family members reached at the place of occurrence where dead bodies were lying as unidentified. During the course of cross-examination, Hariram PW-1, has clearly accepted this fact that in village I heard a rumor that two dead bodies of boys are lying in a field in front of block compound, Nawabganj. All the people have started to proceed at the place of occurrence to see this scene. Therefore, I have also gone with family to see the place of occurrence,

when I had came at the place of occurrence then, all the police personnel were present on there. Meanwhile, dead bodies of the two deceased persons were identified as Sobaran son of Hariram and Awadhesh son of Ram Chandra. After that Hariram PW-1, father of deceased Sobaran has got ascribed a second written report Exhibit Ka-1 from Ram Niwas PW-2, submitted at Police Station Nawabganj. In these facts and circumstances, it is clearly revealed that after 13:30 PM on 12.12.1996, Hariram PW-1, has filed a written report Exhibit Ka-1 with deliberation and afterthoughts, implicating accused in this case for the commission of the alleged crime. This fact cast against the truthfulness of the prosecution story and by this, prosecution story becomes doubtful from the very beginning, itself.

19. Thus, it is clear that in this case, no eye-witness have seen the commission of the crime by the accused with their own eyes. From the perusal of the finding and reasoning of the judgment and order dated 19.07.2000, as passed by the learned Trial Court, we find that learned Trial Court has relied on the evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, as witnesses of last seen of the deceased persons with the accused-appellants. In this way, the Trial Court applied last seen together theory in this case and regarded Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, as a witness of last seen, who have seen Sobaran and Awadhesh with accused persons before their death on 11.12.1996 in the market of Nawabganj, wondering at crossroad together. Relying on the evidence of Hariram PW-1, Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, the Trial Court has regarded their evidence as fully reliable as witnesses of last seen together. From the perusal of the evidence of Ram Niwas PW-2, we find that this witness has stated that this incident has happened on 11.12.1996. On that day, he had gone Nawabganj market when he came at Nawabganj crossroad (chauraha) near the market, then he met with Kaptaan Singh, who was Samdhi of Hariram. According to this witness, when this witness was returning from crossroad Nawabganj to his home then, there Sobaran and Awadhesh have also met with this witness. According to this witness, when this witness almost in his way of return, proceeded towards bus stop then, accused Sobaran, Shivram, Shiv Pal, Feru Singh, Nar Singh @ Naiya met him. These people were going behind Hariram and Awadhesh. According to this witness, he has seen accused persons were going behind deceased Awadhesh and Sobaran. Thereafter, next day after hearing rumor about the lying of two dead bodies, this witness has also gone alone at the place of occurrence to see the dead bodies. According to this witness, Hariram PW-1 has also met with this witness at the place of occurrence. Hariram PW-1 and his wife have identified their son Sobaran□s and dead body of Awadhesh. This witness has also stated that after recovery of the dead bodies, I had told to Hariram PW-1 that accused persons, his son and son of their Sadu had met at crossroad. In his cross-examination, this witness has clearly stated that on reaching in village, I had not told this thing to uncle Hariram that I had seen both deceased and accused persons at Nawabganj crossroad. Hariram PW-1 had not meet on the next day. I had not went to the house of Hariram to inquire this fact that Sobaran and Awadhesh (cousin brother) have came to village or not. Therefore, from the perusal of the evidence of Ram Niwas PW-2, it is clear that this witness although has stated that he had seen the deceased persons with accused at crossroad of Nawabganj Bazar on 11.12.1996 and also this fact that accused persons were going behind the deceased persons. Only on the hearing of rumor about lying of two dead bodies at the place of occurrence, this witness has gone there where Hariram PW-1 has met with this witness with family, then, this witness has told this thing to Hariram PW-1. Thus, the evidence and statement of Ram Niwas PW-2, cast a doubt about truthfulness and credibility, trustworthiness of

his evidence itself. If really Ram Niwas PW-2 had seen deceased persons with accused appellants on 11.12.1996 at Nawabganj crossroad Bazar then, this witness could easily told this fact to Hariram PW-1, father of the deceased Sobaran on 11.12.1996. However, only after identification of the dead bodies of two deceased persons Sobaran and Awadhesh, this witness has told the above fact to Hariram PW-1, father of deceased Sobaran at the place of occurrence after 13:30 PM on 12.12.1996. Therefore, in the light of the above discussion, we are of the opinion that this witness is being projected and planted by the prosecution with a view to support the prosecution case. This witness is not a witness of last seen together of deceased Sobaran and Awadhesh before this death with accused.

20. From the perusal of the evidence of Shyam Singh PW-3, we find that this witness has also stated in the same manner and style, as was stated by Ram Niwas PW-2 in his evidence. This witness has also stated that he has gone to Nawabganj Bazar, crossroad on 11.12.1996 and when he was returning to his home, then, he saw in front of the block compound in the evening at about 08:00 PM that accused appellants and deceased Sobaran and Awadhesh were going on the street ahead of him. According to this witness, accused persons were saying that they and deceased were talking themselves that you come today, we will settle the matter. The accused were also saying that if we would went in the village then, different types of talk would be there by sitting there and we can do the compromise. According to this witness, thereafter the accused and deceased had gone in the north direction from the road and this witness has returned to his home. In his cross-examination, this witness has stated that I had not told this thing to Hariram PW-1, because there was a large crowd over there. This witness has stated that he reached at 02:00 PM on the day of occurrence to see the dead bodies. This witness has also stated that I had not told till today this thing that I had seen the deceased drinking wine near the block compound.

21. Therefore, from the perusal of the evidence of Shyam Singh PW-3, it is amply clear that prosecution has also planted and projected this witness with consideration and afterthoughts to substantiate its case and to ensure conviction of the accused for the commission of the alleged crime. Surprisingly in the same way in which Ram Niwas PW-2, has not told to Hariram PW-1, what he has seen at crossroad of Nawabganj Bazar. In the same way, this witness has also not told to Hariram PW-1, father of the deceased Sobaran that he has seen accused persons and deceased together and talking among themselves about compromise on 11.12.1996. This conduct and manner of Shyam Singh PW-3 is highly suspicious, that creates a reasonable doubt about this fact that in reality he has seen accused and deceased together talking among themselves about compromise. Thus, evidence of Shyam Singh PW-3 is also found unreliable and unworthy of credit. His evidence also does not inspire any confidence.

22. From the perusal of the evidence of Indresh Singh PW-4, we find that Indresh Singh PW-4 son of Ram Chandra is a resident of village Bhadki, P.S. Naya Gaon, District Etah, presently residing at Nagla Gusron, P.S. Mohammadabad, District Farrukhabad. Indresh Singh PW-4 is elder brother of deceased Awadhesh. This witness has stated in his evidence that on the day of occurrence, he was at his home at village Bhadki. Apart from this, this witness, his mother, wife of deceased Awadhesh were also present at home. According to this witness, accused Sobaran, Shivraj and one other person whose name is not known, have came at the home of this witness at Bhadki. According to this witness, accused have said to Awadhesh that, come and assist us in doing

compromise. Deceased Sobaran was also present there. According to this witness, accused persons were saying that they will give weightage to your words. Thereafter according to this witness, accused took Sobaran son of Hariram PW-1 and Awadhesh with them. Thereafter on next day, this witness has heard that Sobaran and Awadhesh have died. In his cross-examination, this witness has said that Sobaran had come at my home a day before incident. This witness has also stated that those accused who had come to take my brother and Sobaran on the date of 11.12.1996 at 09:00 AM. This witness is stating that on 11.12.1996 at 09:00 AM, accused persons have come at the house of this witness and took with them deceased Sobaran and Awadhesh. In his cross-examination, this witness has clearly accepted that he has not told to the I.O. that accused persons have called and taken with them the deceased Sobaran and Awadhesh on the pretext of compromise and killed them. According to this witness, on the next day morning in the cremation ceremony, he had gone at the house of Hariram PW-1, then, this witness has told that about three accused had taken with them deceased Sobaran and Awadhesh on 11.12.1996 on the pretext of compromise.

23. Thus, from the perusal of the evidence of Indresh Singh PW-4, it is also revealed that, prosecution has also planted and projected Indresh Singh PW-4 as a witness of last seen together. However, from the perusal of the whole evidence of this witness, it is clear that in spite of this fact that accused had gone at home at Bhadki of this witness and taken deceased Sobaran son of Hariram PW-1 and Awadhesh with them on the pretext of compromise, even in this situation, when so-called enmity was running between Hariram PW-1 and accused appellant Feru Singh, this witness Indresh Singh PW-4 has not told these things to Hariram PW-1 or other responsible person. Even Indresh Singh PW-4 has not told this thing that has happened on 11.12.1996 at his home at village Bhadki to the I.O. even at the place of occurrence where dead bodies of the deceased Sobaran son of Hariram and Awadhesh son of Ram Chandra were found. From the evidence and statement of this witness itself, it is revealed that this witness is not a witness of last seen together of deceased persons with accused before their death.

24. In the light of the above discussion, we find that although prosecution has projected Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4 as witnesses of last seen, who have seen deceased Sobaran and Awadhesh alive with accused persons before their death. However, from the above discussion and perusal of the evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, it is clear that in reality these witnesses have not seen to the deceased Sobaran and Awadhesh with the accused persons before their death. Prosecution has miserably failed in their attempt to prove its case on the basis of the evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4 as witnesses of last seen together. However, learned Trial Court wrongly and against the settled principles of law relying on unreliable and doubtful evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4 has held guilty to accused appellants.

25. The Hon'ble Supreme Court in **Rambraksh @ Jalim vs. State of Chhattisgarh (2016) 12 SCC 251** has observed as follows:

"...the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this

circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

26. In the case of **Krishnan alias Ramasamy vs. State of Tamil Nadu (2014) 12 SCC 279**, while relying its judgment in **Arjun Marik vs. State of Bihar 1994 (2) SCC 372**, the Hon'ble Supreme Court observed as follows :

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows: (SCC p. 385, para 31)

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. **Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded**."

27. Hon'ble Supreme Court in the case of **Kanhaiya Lal vs. State of Rajasthan (2014) 4 SCC 715** has held as follows:

"...that evidence on last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 of the IPC."

28. Thus, from the legal principles as enunciated by Hon'ble Supreme Court in **Krishnan alias Ramasamy (supra), Arjun Marik (supra) and Kanhaiya Lal (supra**), it is clear that evidence of last seen together is a weak type of evidence and conviction, only on the basis of last seen together, without there being any other corroborative evidence against accused will not be sufficient to convict the accused for the commission of the alleged crime. From the perusal of the evidence of prosecution witnesses who are projected by the prosecution as witness of last seen, such as Ram Niwas PW-2, Shyam Singh PW-3, Indresh Singh PW-4 by the prosecution it is clear that evidence of the above prosecution witnesses of the so called last seen together, do not inspire any confidence. From the reading and perusal of the evidence of the above witnesses of prosecution, it is clear that for the conviction of the appellants, evidence of these witnesses could

not be safely relied for the conviction of the appellants. Since they have not told what they had seen, heard or observed on 11.12.1996 to any person, such as Hariram PW-1, father of the deceased Sobaran or to any other person or to any police official. They have concealed whatever they have seen, heard and observed on 11.12.1996 to themselves. Only after hearing rumor i.e. on 12.12.1996 that dead bodies of two unknown deceased persons were lying near the block compound in the wheat field, the above prosecution witnesses have stated this fact to Hariram PW-1, father of the deceased Sobaran and other persons. The conduct and manner of these above prosecution witnesses creates a reasonable doubt about the veracity and truthfulness of their evidence. Evidence of prosecution witnesses Ram Niwas PW-2, Shyam Singh PW-3, Indresh Singh PW-4 are of a very shaky and suspicious nature. It is settled principles of law that, on the basis of shaky and suspicious nature of evidence of any prosecution witnesses, no accused person could be held guilty and convicted for the commission of the alleged crime.

29. From the perusal of the finding and reasoning of the learned Trial Court, we find that learned Trial Court in convicting appellants for the commission of the alleged crime also relied on the recovery of the alleged murder weapon Garasa and Takora (Kulhari) on the pointing out of the accused appellant Feru Singh, Nar Singh @ Naika, Shiv Raj from the pool of the patela near the hut of Shiv Raj on 27.12.1996. This recovery memo of alleged murder weapon is Exhibit Ka-5. The Trial Court has also relied on the report of the Forensic Science Laboratory, Mahanagar Lucknow Exhibit Ka-34, in which in result of examination report, it is mentioned that Garasa, which is shown at Serial No.21 and Takora (Kulhari) which is shown at Serial No. 22 have human blood on them. Thus, according to the FSL report Exhibit Ka-34, on Garasa and Takora (Kulhari) human blood has been found. However, in the FSL report, it has not been stated that this human blood belongs to deceased Sobaran son of Hariram and Awadhesh son of Ram Chandra. If prosecution would have been successful in proving this fact that human blood which has been found on Garasa and Takora (Kulhari) is of deceased persons Sobaran son of Hariram PW-1 and Awadhesh son of Ram Chandra, then in this condition, a link in the chain of circumstantial evidence could be regarded to be established by the prosecution. However, without ascertaining this fact that this human blood on Garasa and Takora (Kulhari) is surely of the deceased persons only on the ground of human blood as found on Garasa and Takora (Kulhari) accused (appellant) could not legally be held guilty for the commission of the alleged crime in this case. However, we find that Trial Court only on this ground that human blood has been found in FSL report on the Garasa and Takora (Kulhari) of the murder weapon Exhibit Ka-34, has held guilty to appellants for the commission of the crime. It is very dangerous to hold any person only on the basis of so called recovery of murder weapon on which human bloods were found, that accused person have committed the alleged crime. Apart from the above facts and circumstances, from the perusal of the records of the Trial Court, we find that there is no disclosure statement of the accused persons Feru Singh son of Ram Swaroop, Nar Singh @ Naiya, Dharamveer Son of Feru Singh, Sobaran son of Maiku Lal, Shiv Pal Singh son of Maiku Lal recorded by the Investigating Officer Shiv Raj Singh PW-8 about the hiding of the murder weapon at the alleged place. Since there is no disclosure statement of appellants in the records of the case, therefore, in this circumstance, recovery memo of the alleged weapon of murder Garasa and Takora (Kulhari) becomes doubtful and due to this reason, we could not legally rely on the above recovery of alleged weapon of murder as Exhibit Ka-5. The Trial Court wrongly and against the settled principles of law relied on the doubtful recovery of the alleged murder weapon and convicted the accused appellants on the basis of the recovery memo

Exhibit Ka-5. Since it could not be ascertained that blood found on the Garasa and Takora (Kulhari) was certainly of the deceased persons then, it could not be surely and certainly said that the recovered weapon of murder has been used in the alleged commission of the crime by the appellants. However, the Trial Court has not considered these relevant facts in its finding and reasoning on this point. According to evidence of I.O. all three accused persons simultaneously in one voice have made their disclosure statements and have also stated that they have concealed the the murder weapon near the village.

30. On this point of recovery under Section 27 of the Indian Evidence Act, Hon'ble Supreme Court in the case of **Wadla Bheemaraidu Vs. State of Telangana 2024 SCC OnLine SC 3589**, has held in paragraphs 26 and 27 as follows:

"26. The law is well settled by a catena of judgments of this Court that the information under Section 27 IEA which leads to discovery of an incriminating material/evidence must be proved by the Investigating Officer as being voluntary and uninfluenced by 27 Exhibit P22-A threat, duress or coercion. The Investigating Officer is also required to prove the contents of the information/confessional memo to the extent they relate to the facts discovered.

27. This Court in the recent judgment of Babu Sahebgouda Rudragoudar v. State of Karnataka (2024) 8 SCC 149, while referring to the earlier judgments on this point, examined the aspect regarding the standard of proof of information provided by the accused to the Investigating Officer under Section 27 IEA in the following terms:-

"60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Evidence Act, 1872 (hereinafter being referred to as "the Evidence Act") and the discoveries made in furtherance thereof.

61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in State of U.P. v. Deoman Upadhyaya, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125]."

31. Thus, in the light of the legal principles as laid down by the Hon'ble Supreme Court in **Wadla Bheemaraidu (supra**), we find that I.O. Shivraj Singh PW-8 has not recorded any disclosure statement in any disclosure memo of the appellants Feru Singh son of Ram Swaroop, Nar Singh @ Naiya, Dharamveer Son of Feru Singh, Sobaran son of Maiku Lal, Shiv Pal Singh son of Maiku Lal about the hiding of murder weapon. Thus, the recovery memo Exhibit Ka-5, and the discovery of the alleged murder weapon Garasa and Takora (Kulhari) have also become suspicious and against the settled principles of law. The Trial Court without keeping this legal aspect in mind has wrongly relied on recovery memo Exhibit Ka-5 of the alleged weapon of murders and has wrongly held appellants guilty for the commission of the alleged crime. Therefore, in the light of the legal principles as enunciated by the Hon'ble Supreme Court in Wadla Bheemaraidu (supra),

recovery of the weapon of murder at the pointing out of the appellants also becomes doubtful and unreliable.

32. From the perusal of the finding and reasoning as delivered by the Trial Court in the judgment and order dated 19.07.2000, we find that Trial Court against the settled principles of law, has wrongly observed that prosecution is successful in connecting the chain of circumstantial evidence against the appellants. We find that in the present case at hands, this case is neither a case of direct evidence nor a case of last seen together theory, because there is no witness of prosecution of this nature who could be regarded as a witness of last seen, who have seen lastly the accused persons with the deceased Sobaran and Awadhesh, alive before their death. It is settled principles of law that in case of circumstantial evidence, the prosecution is legally responsible and duty bound to complete every link of the chain of circumstantial evidence from which it could be undoubtedly proved, that in all human probability, the act must have committed by the appellants. Without completing the chain of circumstantial evidence by the prosecution, Trial Court wrongly held guilty to accused appellants for the commission of the alleged crime.

33. Hon'ble Supreme Court in **Sharad Birdhi Chand Sarda Vs. State of Maharashtra (1984) 4 SCC 116** laid down five golden rules to be kept in mind while appreciating circumstantial evidence as follows :

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao 2 (1984) 4 SCC 116 Bobade v. State of Maharashtra [(1973) 2 SCC 93 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between □may be□ and □must be□ is long and divides vague conjectures from sure conclusions.□ (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

34. Thus, in the light of the law, as laid down by the Hon'ble Supreme Court in **Sharad Birdhi Chand Sarda (supra**) it is clear that for the conviction of any accused person on the basis of the circumstantial evidence, every link of the chain of circumstantial evidence must be necessarily complete and unerringly leads towards the accused for the commission of the crime.

35. For the conviction on the basis of the circumstantial evidence, the chain of circumstantial evidence must be completing each link of the circumstantial evidence. In other words, circumstantial evidence must be necessarily, consistently leads towards the culpability of accused.

36. On the basis of shaky, suspicious and doubtful circumstantial evidence, conviction of an accused-appellant could not be recorded.

37. Thus, in the light of the judgment in the case of Sharad Birdhi Chand Sarda (supra) of Hon'ble Supreme Court, we find that in the present case at hand, there is no either reliable and trustworthy evidence of last seen together of the deceased persons with the appellants before their death. There is neither any unimpeachable circumstantial evidence of this nature, which could be regarded as circumstantial evidence that could connect every link of the chain of circumstantial evidence against the accused appellants. In the light of the above discussions, we find that there is no circumstantial evidence of this nature, that on the basis of which, accused appellants could be held guilty for the commission of the alleged crime. The finding and reasoning of the learned Trial Court in this regard is without any cogent and reliable evidence and is also against the settled principles of law as enunciated by the Hon'ble Supreme Court in **Krishnan alias Ramasamy (supra), Arjun Marik (supra), Kanhaiya Lal (supra), Wadla Bheemaraidu (supra), and Sharad Birdhi Chand Sarda (supra)**. Due to this reason, we are of the considered view that the judgment and order of the Trial Court dated 19.07.2000, passed in S.T. No. 138 of 1997, State Vs. Sobaran and Others arising out of Case Crime No. 226 of 1996 under Sections 148, 302 read with Section 149 I.P.C., Police Station Nawabganj, District Farrukhabad is perverse and illegal, hence not found sustainable in the eyes of law. Therefore, the judgment and order of conviction and sentence dated 19.07.2000 is liable to be set aside and the appeal deserves to be allowed.

38. We, therefore, set aside the judgment and order dated 19.07.2000 of conviction and sentence in respect of surviving accused appellant No.3 Shiv Pal, appellant No.5 Nar Singh @ Naiya (already declared juvenile) and appellant No.6 Dharamveer @ Dharampal as passed by the Trial Court S.T. No. 138 of 1997, State Vs. Sobaran and Others arising out of Case Crime No. 226 of 1996 under Sections 148, 302 read with Section 149 I.P.C., Police Station Nawabganj, District Farrukhabad.

39. Thus appeal is **allowed**. From the perusal of the records it is revealed that appellant No.3 Shiv Pal, appellant No.5 Nar Singh @ Naiya and appellant No.6 Dharamveer @ Dharampal are on bail hence their personal bonds are cancelled and sureties are discharged from their liabilities.

40. Let this judgment and order be sent with record to the Trial Court for necessary compliance, forthwith.

(2026) 7 ILRA 1035
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.07.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1696 of 1993

Babu Khan & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether acquittal of some accused on the same evidence necessarily warrants acquittal of other accused?

Headnotes

Indian Penal Code, 1860—Ss. 147, 148, 149, 302 and 307-Evidence- Acquittal of some accused on same evidence- Evidence reliable and trustworthy against some accused but unreliable against others- trustworthy part of evidence can be acted upon and accused convicted- *falsus in uno falsus in omnibus*- merely a rule of caution and not a mandatory rule of evidence- acquittal of some accused does not necessarily mean acquittal of others-Overt act causing death specifically attributed to accused- no prejudice caused by absence of separate charge under S.302 IPC simpliciter- conviction under S.302 IPC sustainable- no rule of law requiring all injured persons to be examined- prosecution has discretion to select relevant witnesses- trustworthy evidence of examined eyewitnesses sufficient- direct evidence- motive need not be established- ocular evidence corroborated by medical evidence.
Appeal dismissed. (E-9)

Case Law Cited

1. Suraj Pal v. State of U.P., AIR 1955 SC 419.
2. Sharad Birdhi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 18 CRLA No. - 1696 of 1993 116.
3. Javed Shaukat Ali Qureshi v. State of Gujarat, (2023) 9 SCC 164.
4. Gurcharan Singh and Another v. State of Punjab, (1955) 2 SCC 424
5. Nisar Ali v. State of Uttar Pradesh, (1957) 1 SCC 350
6. Willie (William) Slaney v. The State of Madhya Pradesh, (1955) 2 SCC 340
7. Maqsoodan v. State of Uttar Pradesh, AIR 1983 SC 126
8. Wasim Khan v. State of U.P., AIR 1956 SC 400, and Bhoor Singh v. State of Punjab, (1974) 4 SCC 754

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

List of Keywords

Separate charge; rule of caution; corroboration and contraditions.

Appearances of parties

Counsel for Appellant(s) : Ishan Deo Giri, K.s. Tewari, Lila Wati, Mohammad Tausif, Mohammad Wadood, Saddam Husain, Sadrul Islam Jafri, Salman Ahmad, Sarvesh Pandey, Vishesh Kumar

Counsel for Respondent(s) : Basharat Ali Khan, Abha Pandey, D. Vaish, D.g.a., Lal Ji Pandey, Mohd. Samiuzzaman Khan, Obaidur Rahman Khan, R.k. Singh, Shri Prakash Dwivedi

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. N.I. Jafri, learned Senior Counsel assisted by Mr. Gurfan Ahmad Khan, Mohammad Wadood, Mohd. Tausif, Mr. Vishesh Kumar & Mr. Bheshaj Puri, Advocate, holding brief of Mr. Ishan Deo Giri, learned counsel for the appellants; Mr. Zawwar Haider Naqvi, Advocate, holding brief of Mr. B.A. Khan, learned counsel for the informant; Mohd. Shoebh Khan, learned AGA-Ist for State-respondent and perused the record.

2. The instant criminal appeal has been preferred by the appellants, namely, Babu Khan, Sayeed Khan, Malik Khan, Jafru Khan, Irshad Khan, Rustam Khan, Najaru Khan and Hashim Khan, respectively, against the impugned judgment and order of conviction and sentence dated 24.09.1993 passed by the learned IInd Additional Sessions Judge, Mirzapur in Sessions Trial No. 329 of 1989 (State v. Babu Khan and others), arising out of Case Crime No. 283 of 1988, under Sections 147, 148, 149, 302, 307 IPC, Police Station- Kotwali Dehat, District- Mirzapur.

3. Brief facts of the present case as narrated in the written report (Exhibit Ka-1) are that informant Fakruddin (PW-1) has got ascribed the written report from Sadaruddin S/o Sharif Khan and lodged the same at Police Station- Kotwali Dehat, District- Mirzapur. Informant Fakhruddin, S/o Mohd. Hussain Khan, is a resident of Village Chitawanpur, Post Vindhyachal, Police Station Kotwali Dehat, Mirzapur. Today, on 24.10.1988, my maternal grandfather (nana) Jasim Khan went with Akilu to plough his field, bearing plot No. 1387. While they were ploughing the field, Babu Khan came to the field from his house and forbade them from ploughing. Upon this, my maternal grandfather (nana) said, 'The field is mine, I will plough it. Hearing this, Babu Khan S/o Chhedi Khan ran towards his house, saying, 'I will be back right now with a gun. On hearing about the dispute, Karimuddin, Hakimuddin, Sons of Jasim, Kallu @ Ayyub and Rahimuddin also reached the field. Babu S/o Chhedi, holding a gun in his right hand, challenged them, saying, 'Kill them, let no one escape. At around 7:30 in the morning, Babu Khan with a gun in his right hand, and from his house Shabvir S/o Vaish Khan with a gun in his right hand, Hashim S/o Vais Khan with a gun in his right hand, Sayeed Khan S/o Vaish Khan with a gun in his right hand, Jafru Khan S/o Waheed Khan with a gun in his right hand, Irshad Khan and Alau Khan with country-made pistols (katta) in their right hands, Rustam S/o Bhikkhu Khan with a country-made pistol in his hand, Kallu @ Ayyub S/o Abdul Haq with country made pistol (katta) in his hand, Badru @ Josab with a country made pistol (katta) in his hand, Mahau S/o Isha with a spear (ballam) in his hand, Mitthoo S/o Gulfan with a country-made pistol in his hand, Ikhlaque S/o Gulam Farid with a country-made pistol in his hand, Sahabu S/o Isha Khan with a country-made pistol in hand, Malik S/o Shabvir with a gun in his hand, Istekhar S/o Kasim Khan with a country-made pistol in his hand, Riyaz S/o Munis with a spear (ballam) in his hand, Parvez S/o Shabvir with a spear (ballam) in his hand, Najaru S/o Waheed Khan arrived with a country-made pistol (katta) in his hand. Upon Babu's instigation, these people started firing guns and country-made pistols (katta) at Jasim, Akilu, Rahimu, Karimu, Hakimu and Hasnain. Upon being hit by the bullets, these people got injured and started screaming. Hearing the commotion, Badruddin S/o Sharif Khan, Sharif Khan S/o Wasil Khan, Ashraf @ Guddu, myself, and many people from the village ran towards them. Seeing us,

they (the attackers) again challenged us, saying, 'These people have also arrived, kill them all□. Saying this, they started firing, due to which I, Badruddin, Sharif Khan and Ashraf @ Guddu got injured. Badruddin fell down right there. Upon being challenged by the villagers, all the accused fled towards the west. All the villagers were loading us into a tractor to bring us to the police station. Upon reaching Ramai Patti, Badruddin passed away. The villagers took Kallu @ Hashim, Rahimu, Hasnain and Ashraf @ Guddu on one tractor to the hospital. I have come to the police station on another tractor along with the deceased Badruddin, Sharif Khan, Hakimu, Karimu, Jasim and the villagers. Please register my report and take appropriate action.

4. On the basis of the written report (Exhibit Ka-1), Constable-406, Ghurfekan Ram (PW-9), registered the First Information Report (Exhibit Ka-31) on 24.10.1988 at 9:15 A.M. as Case Crime No. 283 of 1988, under Sections 147, 148, 149, 302 & 307 IPC at Police Station Kotwali Dehat, District Mirzapur, against 18 named accused persons.

5. After registration of the First Information Report, the matter was handed over to Investigating Officer Badri Prasad Mishra (PW-12) for investigation. During the course of the investigation, the Investigating Officer prepared the Panchayatnama (inquest report) of the deceased, Badruddin. He also prepared the necessary police papers, including the photolash, challanlash, letter for the post-mortem examination, letter for the return of the clothes after the post-mortem examination, sample of seal, and letters to R.I. for conducting the post-mortem examination. Thereafter, the dead body of the deceased was duly sealed and packed and was handed over to Constable Rajeshwar Prasad and Constable Sundar Pal Singh at the police station for being taken to the hospital for post-mortem examination. Subsequently, the Investigating Officer proceeded to the place of occurrence, recorded the statement of the informant, Fakruddin (PW-1). On the informant's pointing out, he inspected the place of the incident. During the inspection, he collected samples of plain soil and blood-stained soil from the place of occurrence and prepared a recovery memo thereof, which was exhibited as Exhibit Ka-46. He also recovered empty cartridge from the place of occurrence and prepared a recovery memo, marked as Exhibit Ka-47.

6. The Investigating Officer further prepared the site plan of the place of occurrence in his own handwriting, signed it, and proved the same as Exhibit Ka-48. During the investigation, he also recorded the statements of the prosecution witnesses under Section 161 Cr.P.C. After 27.10.1988, the first Investigating Officer was transferred, and on 30.10.1988, the investigation of the case was entrusted to the second Investigating Officer, B.B. Singh (PW-14). Upon taking over the investigation, B.B. Singh (PW-14) commenced the investigation and recorded the statements of Jasim Khan (PW-3) and other prosecution witnesses under Section 161 Cr.P.C. He also took into custody the clothes of the injured persons from the hospital and prepared a recovery memo in respect thereof, which was marked as Exhibit Ka-41. After completing all the necessary formalities of the investigation and collecting sufficient material against the accused persons, B.B. Singh (PW-14) submitted the charge sheet (Exhibit Ka-42) against accused persons, before the Court of the competent Magistrate having jurisdiction.

7. Constable Rajeshwar Prasad (PW-7), along with Constable Sundar Pal Singh, took the dead body of the deceased, Badruddin, to the mortuary for autopsy. Dr. R.K. Sood (PW-10) conducted

the postmortem examination of the deceased, Badruddin, and prepared the postmortem report (Exhibit Ka-37). The following ante-mortem injuries were found on the dead body of the deceased, Badruddin:-

"(I) There were gunshot Injuries on the chest, abdomen, both hands, and face of the deceased, the sizes of which ranged from 0.25 cm to 0.25 cm. Several pellets were felt under the skin. It was found that rigor mortis had passed off from the neck but was present in the hands and legs."

"**Internal Examination**:- The membrane over the lung on the left side was found ruptured/torn, and two entry wounds caused by pellets were present in the left lung. The membrane over the heart was ruptured/torn at several places, and entry wounds caused by pellets were present in the left chamber of the heart. All chambers of the heart were empty. Upon examination of the Chest Cavity, about one liter of blood was found. The membrane of the stomach (Peritoneum) was ruptured/torn at one place, and about one liter of blood was also present in the stomach. The food bag (stomach bag) was empty, and a little clotted blood was present in it. Blood was found under the membranes at several places in the small intestine, and at one place in the large intestine, there was a mark of entry of a pellet. The right portion of the liver was punctured at two places. The liver, spleen, and both kidneys showed redness (congestion). The urinary bladder was half full."

The cause of death was found to be shock due to the aforementioned injuries and excessive bleeding.

8. The injured persons involved in the incident were medically examined at the District Hospital, Mirzapur. Their medical examination was conducted by Dr. Rama Kant (PW-6), who prepared their respective injury reports.

Dr. Rama Kant (PW-6) medically examined injured Hashim @ Kallu on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-29. The following injuries were noted on his person:-

"(i) Circular bluish abrasion measuring 3 x 2 cm on the left side of the front part of the chest below the left shoulder.

(ii) Multiple marks of entry/penetrating injuries on the posterior and outer part of the left forearm.

(iii) Multiple marks of penetrating wounds on the front and side of the chest and abdomen.

(iv) Situated between the collarbone and the lower abdomen/pelvis, measuring 2 x 2 cm.

(v) A penetrating wound measuring 0.2 x 0.2 cm on the front part of the right arm, 11 cm above the elbow.

(vi) Multiple entry marks measuring 0.2 x 0.2 cm on the front and inner part of the left thigh, spread over an area of 30 x 11 cm.

(vii) Multiple entry marks measuring 0.2 x 0.2 cm on the front and inner part of the right thigh, spread over an area of 30 x 17 cm.

(viii) Entry marks measuring 0.2 x 0.2 cm on the outer side of right knee, a penetrating wound of size 0.2 x 0.2 cm on the inner part of the right leg, 4 cm below the knee.

(ix) A penetrating wound measuring 0.2 x 0.2 cm in size on the inner part of the left leg, which is 11 cm above the ankle."

There were signs of oozing/bleeding in all the abovementioned injuries. The above wounds were kept under observation. All injuries were fresh and were likely to have been caused by a firearm.

Dr. Rama Kant (PW-6) medically examined the injured Hasnain on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-30. The following injuries were noted on his person:-

"(i) An oval-shaped penetrating wound measuring 0.2 cm x 0.3 cm on the front side of the left shoulder, 5 cm below the left shoulder.

(ii) Multiple penetrating wounds on the right side of the front part of the chest, spread over an area of 27 x 9 cm. The size of the wounds is 0.2 x 0.2 cm.

(iii) Multiple penetrating wounds on the dorsal side of the left thumb, index finger, and middle finger.

(iv) Multiple penetrating wounds of 0.2 x 0.2 cm size on the inner side of the left thigh, spread over an area of 9 x 5 cm, 20 cm above the knee.

(v) Multiple penetrating wounds measuring 0.2 x 0.2 cm on the inner side of the right thigh, spread over an area of 10 x 5 cm, 6 cm above the knee."

No blackening or charring was present. Tattooing was not present. Oozing of blood was present. An X-ray of the chest was advised. Surgical emphysema was present on the chest wound, which proves that air escaped from the lungs. All the above wounds were kept under observation, which were fresh and likely to have been caused by a firearm.

Dr. Rama Kant (PW-6) medically examined the injured Rahimuddin on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-31. The following injuries were noted on his person:-

"(I) An abrasion measuring 1.5 x 0.2 cm on the front part of the chest, on the right side, 5 cm outwards from the right nipple.

(ii) An oval-shaped abrasion measuring 0.2 x 0.1 cm on the lower part of the right side of the front of the chest, in which a pellet is embedded and blackening is present around it, located 16 cm below the right nipple and towards the inner side.

(iii) A large number of small wounds are present on the left side of the abdomen, the sizes of which vary, located 6 cm outwards from the left side of the umbilicus.

(iv) Multiple wounds on the front and inner part of the left thigh, spread over an area of 18 x 5 cm, 6 cm above the knee.

(v) Three wounds measuring 0.2 x 0.2 cm on the outer part of the left forearm, 10 cm from the elbow.

(vi) Multiple penetrating wounds measuring 0.2 x 0.2 cm on the dorsal aspect of the left thumb.

(vii) Two wounds measuring 0.2 x 0.2 cm on the dorsal aspect of the index and middle fingers of the left hand.

(viii) A penetrating wound measuring 0.2 x 0.2 cm on the inner part of the right leg, 15 cm above the right ankle."

An X-ray of the chest and abdomen was conducted. No blackening, tattooing, or charring was present, except in respect of wound no. 2. All the above wounds were kept under observation, which were fresh and likely to have been caused by a firearm.

Dr. Rama Kant (PW-6) medically examined the injured Ashraf @ Guddu on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-32. The following injuries were noted on his person:-

"(i) Two penetrating wounds measuring 0.2 x 0.2 cm on the left cheek, in front of the left ear.

(ii) A penetrating wound measuring 0.2 x 0.2 cm on the left side of the front of the neck, 3 cm below and anterior to the angle of the lower jaw.

(iii) A penetrating wound measuring 0.2 x 0.2 cm on the left side of the front of the chest, 2 cm above and medial to the left nipple.

(iv) Two penetrating wounds measuring 0.2 x 0.2 cm on the left side of the upper abdomen, 4 cm above the umbilicus towards the left side."

No blackening, tattooing, or charring was present. An X-ray of the abdomen and chest was advised. All the above wounds were fresh and were likely to have been caused by a firearm.

Dr. Rama Kant (PW-6) medically examined the injured Jasim on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-33. The following injuries were noted on his person:-

"(i) A penetrating wound measuring 0.2 x 0.2 cm on the left side of the forehead, 2 ½ cm above the left eyebrow.

(ii) A penetrating wound measuring 0.2 x 0.2 cm on the front right part of the chest, 5 cm above and towards the inner side of the right nipple.

(iii) Two penetrating wounds measuring 0.2 x 0.2 cm on the left side of the upper part of the abdomen, spread over an area of 4 cm, located 11 cm above the navel.

(iv) A penetrating wound measuring 0.2 x 0.2 cm on the posterior part/root of the left thumb.

(v) A penetrating wound measuring 0.2 x 0.2 cm on the outer part of the right thigh, 16 cm above the knee.

(vi) Multiple penetrating wounds on the outer part of the left leg, spread over an area of 8 x 1 cm.

(vii) An abrasion measuring 3 x 0.2 cm located on the front aspect of the lower part of the right leg."

There was no blackening or swelling present. An X-ray of the chest and abdomen was advised. The injuries were kept under observation.

Dr. Rama Kant (PW-6) medically examined the injured Karimuddin on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-34. The following injury was noted on his person:-

"(i) An oval abrasion measuring 0.2 x 0.2 cm on the front inner part of the left thigh."

An X-ray was advised. The injury was simple in nature and was kept under observation.

Dr. Rama Kant (PW-6) medically examined the injured Fakruddin on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-35. The following ante-mortem injuries were noted on his person:-

"(i) A penetrating wound measuring 0.2 x 0.2 cm on the right cheek.

(ii) Penetrating wounds measuring 0.2 x 0.2 cm spread over an area of 12 x 12 cm on the right side of the chest, located 10 cm outwards from the right nipple."

An X-ray of the chest was advised. No blackening, charring, or singeing was present. The above wounds were kept under observation, which were fresh and likely to have been caused by a firearm.

Dr. Rama Kant (PW-6) medically examined the injured Sharif Khan on 24.10.1988 and prepared his injury report, which was proved as Exhibit Ka-36. The following injuries were noted on his person:-

"(i) A circular abrasion measuring 0.5 cm in size on the front part of the left wrist.

(ii) A bluish contusion/discoloration measuring 1 x 1 cm on the front part of the right thigh, 12 cm above the knee.

(iii) An injury measuring 0.5 x 0.5 cm on the front part of the right thigh, just above the knee. Bleeding was present under the big toe of the right foot. An X-ray was advised.

(iv) A penetrating wound measuring 0.2 x 0.2 cm on the front aspect of the left leg, 18 cm above the ankle. "

An X-ray was advised. All the above injuries were simple and fresh. Injury Nos. 1, 2 and 3 were likely to have been caused by friction/abrasion. Injury Nos. 4 and 5 were kept under observation.

9. Dr. A.P. Singh (PW-13), examined injured Hakimuddin on 24.10.1988 at District Hospital, Mirzapur, and he prepared injury report Exhibit Ka-40. Dr. A.P. Singh found the following injuries on the body of the injured Hakimuddin:-

“(i) Firearm injury measuring 0.2 cm x 0.2 cm x muscle deep, situated on the front aspect of the right leg, which was 15 cm above the ankle joint. X-ray was advised.

(ii) Firearm injury measuring 0.2 cm x 0.2 cm x deep up to muscle, situated on the right leg, which was slightly below and adjacent, at a distance of 6 cm from injury no. 1. X-ray was advised.”

Both the aforementioned injuries were simple in nature and X-ray was advised. These injuries have been caused by a firearm and are fresh.

10. After submission of the charge-sheet (Exhibit Ka-42) against accused persons in the Court concerned, learned Magistrate committed the case to the Court of Session for trial.

11. Charges were framed by the Trial Court on 09.07.1990 against accused Riyaz and Parvez, under Sections 148, 302 read with Section 149, and Section 307 read with Section 149 IPC. Charges were also framed against the accused persons Babu Khan, Hashim Khan, Sayeed, Malik, and Jafru on 09.07.1990, under Sections 148, 302 read with Section 149, and Section 307 read with Section 149 IPC. On the same date, i.e., on 09.07.1990, charges were also framed against the accused persons Irshad, Rustam, Mitthoo, Ikhlaque, Istekhar, Nazaru Khan, Badaru, Kallu @

Ayyub, and Sahabu, under Sections 148, 302 read with Section 149, and Section 307 read with Section 149 IPC. The charges were read over to the accused persons. The accused persons denied the charges and claimed trial.

12. The prosecution, in support of its case, examined 14 witnesses before the Trial Court. Informant Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3) were examined as witnesses of fact. The remaining witnesses, namely, Dr. Ashok Kumar Mishra (PW-4), Dr. K.P. Singh (PW-5), Dr. Rama Kant (PW-6), Rajeshwar Prasad (PW-7), Ganga Prasad Sharma (PW-8), Ghurfekan Ram (PW-9), Dr. R.K. Sood (PW-10), Sadanand (PW-11), Badri Prasad Mishra (PW-12), Dr. A.P. Singh (PW-13) and B.B. Singh (PW-14), were examined as formal witnesses. In addition to the oral evidence, the prosecution also relied upon documentary evidence marked as Exhibits Ka-1 to Ka-47 in support of the charges against the accused persons.

13. After recording the evidence of all the prosecution witnesses, the accused persons were examined under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., the accused persons accepted the facts mentioned in question nos. 1, 2 and 3, as true. However, for the rest of the questions that were put before them, the accused persons either expressed their ignorance about the facts mentioned in those questions or stated them to be false and fabricated. They also claimed that the case was registered and the prosecution witnesses testified against them due to enmity.

14. In their statements recorded under Section 313 Cr.P.C., the accused appellants Malik and Hashim Khan stated that they have no concern with the disputed field and were not involved in the incident. At that time when Jasim and others received injuries, they were not present at the place of occurrence and were falsely implicated in the matter due to enmity. Furthermore, accused appellant Irshad also stated in his statement recorded under Section 313 Cr.P.C. that he had enmity with Fakruddin concerning the property dispute of Jamiran Bibi. Due to this enmity, he was falsely implicated in this case. Ikhlaque is the grandson of Jamiran and I am Ikhlaque's cousin.

15. The accused-appellants stated that they would adduce evidence in their defence. In pursuance thereof, they produced documentary evidence, which was marked as Exhibits Kha-5 to Kha-23.

16. Learned Trial Court, after hearing arguments of both sides and perusing the evidence available on record, acquitted the accused Kallu, Badru, Mitthoo,Ikhlaque, Sahabu, Istkhar, Riyaz and Parvez of all charges. Trial Court also acquitted Babu Khan, Jafru Khan, Najaru Khan, Malik Khan, Sayeed Khan, Rustam Khan and Irshad Khan of the charge under Section 302 read with Section 149 IPC. However, Trial Court found appellant nos. 1 to 7, namely, Babu Khan, Sayeed Khan, Malik Khan, Jafru Khan, Irshad Khan, Rustam Khan and Najaru Khan guilty under Sections 147, 148 and 307 read with Section 149 IPC. Each of these accused appellants was sentenced to one year of rigorous imprisonment under Section 147 IPC, two years under Section 148 IPC, and four years under Section 307 read with Section 149 IPC, along with a fine of Rs 1,000/- each, with a default sentence of six months additional rigorous imprisonment. Appellant no. 8, Hashim was held guilty under Sections 302, 307, 147, 148 and 149 IPC and convicted for the offense under Section 302 IPC for life imprisonment. He was also sentenced to one year of rigorous

imprisonment under Section 147 IPC, two years under Section 148 IPC, and four years under Section 307 IPC, along with a fine of Rs 1,000/- with a default sentence of six months additional rigorous imprisonment. All sentences were directed by the Trial Court to run concurrently.

17. Aggrieved by the impugned judgment and order of conviction and sentence dated 24.09.1993 passed by the Trial Court, appellants Babu Khan, Sayeed Khan, Malik Khan, Jafru Khan, Irshad Khan, Rustam Khan, Najaru Khan and Hashim Khan have preferred this criminal appeal before this Court.

18. It is worthwhile to mention that during the pendency of this criminal appeal, appellant No. 1 Babu Khan, appellant No. 2 Sayeed Khan, appellant No. 4 Jafru Khan and appellant No. 7 Nazaru Khan, have died. Due to the death of these appellants, the appeal in relation to them has already abated. Therefore, this criminal appeal is currently being adjudicated only in respect of surviving appellants, appellant No. 3 Malik Khan, appellant No. 5 Irshad Khan, appellant No. 6 Rustam Khan, and appellant No. 8 Hashim Khan.

19. Learned counsel for the accused appellants has submitted that the Trial Court, while convicting and sentencing the appellants, erroneously relied upon the statements of Kallu and Hasnain recorded under Section 164 Cr.P.C. by Kanak Tripathi (Deputy Collector). However, neither the Kanak Tripathi (Deputy Collector), nor the injured witnesses, Hasnain and Kallu, were examined as prosecution witnesses. The Trial Court's conviction was instead based on the statements of PW-1, PW-2 and PW-3 as well as the statements of injured witnesses, Hasnain and Kallu. Furthermore, the counsel pointed out that appellants No. 1 to 7 were convicted under Sections 147, 148 & 307 read with Section 149 IPC but were acquitted of the charge under Section 302 read with Section 149 IPC. Lastly, the Trial Court convicted and sentenced appellant No. 8, Hashim Khan, under Sections 147, 148, 302 & 307 IPC based on the same set of evidence and the Section 164 Cr.P.C. statements recorded by Kanak Tripathi, Deputy Collector.

20. Learned counsel for the appellants has further submitted that no specific charge under Section 302 IPC was framed against appellant No. 8, Hashim Khan. Despite the absence of such a charge, appellant No. 8 has been convicted and sentenced under Section 302 IPC, which has caused serious prejudice to him and has vitiated the conviction. In support of his submission, learned counsel has placed reliance upon paragraph nos. 2, 3, 4 and 7 of the judgment of the Hon'ble Supreme Court in **Suraj Pal v. State of U.P., AIR 1955 SC 419.**

21. It has also been submitted by learned counsel for the appellants that the evidence against the appellants as well as against the acquitted accused persons, namely, Kallu, Badru, Mitthoo, Ikhlaque, Sahabu, Istkhar, Riyaz and Parvez, is exactly identical, as is evident from the evidence of informant Fakruddin (PW-1), Wakilu @ Akilu (PW-2), and Jasim Khan (PW-3). Furthermore, the statements of injured Hasnain and injured Hashim @ Kallu, recorded under Section 164 Cr.P.C., are not proved and are not put to the appellants under Section 313 Cr.P.C. Therefore, the surviving appellants are also entitled to be acquitted by this Court, as the evidence against them is the same.

22. Learned counsel for the appellant has also submitted that the Hon'ble Supreme Court, in **Sharad Birdhi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, has held that each and

every incriminating material or piece of evidence sought to be relied upon against the accused must be put to the appellants in their statements recorded under Section 313 Cr.P.C. In the present case, the statement recorded under Section 164 Cr.P.C., which has been relied upon by the Trial Court, is liable to be excluded from consideration as it was not put to the appellants in their statements recorded under Section 313 CrPC.

23. It is also submitted that the other injured persons, namely, Sharif Khan, Hakimuddin, and Karimuddin, have not been examined by the prosecution. Since the statements of the injured Hasnain (now deceased) and Hashim @ Kallu were neither proved by the prosecution nor put to the appellants in their statements recorded under Section 313 Cr.P.C., the same are liable to be excluded from consideration. Therefore, on the basis of the same evidence that led to the acquittal of eight other accused persons by the Trial Court, the surviving appellants, namely, appellant No. 2 Sayeed Khan, appellant No. 3 Malik Khan, appellant No. 5 Irshad Khan, appellant No. 6 Rustam Khan, and appellant No. 8 Hashim Khan, are also entitled to be acquitted. In support of this submission, learned counsel for the appellants has placed reliance upon paragraphs 15, 17 and 21 of the judgment of the Hon'ble Supreme Court in **Javed Shaukat Ali Qureshi v. State of Gujarat, (2023) 9 SCC 164.**

24. On the basis of the aforesaid arguments and the case laws of the Hon'ble Supreme Court relied upon by learned counsel for the accused appellants, it has been vehemently argued that the Trial Court has not appreciated the evidence available on record in its proper perspective and in accordance with law. The Trial Court has based its findings on inadmissible evidence and has also acted contrary to the settled principles of law in this regard. Therefore, the judgment and order of conviction and sentence dated 24.09.1993 passed by the Trial Court, being perverse, illegal, and unsustainable in law, is liable to be set aside, and the criminal appeal filed by the surviving accused appellants deserves to be allowed.

25. Per contra, learned AGA for the State and learned counsel for the informant have submitted that the present case is based on the direct evidence of eyewitnesses, namely, PW-1, PW-2 and PW-3, and it is not a case of circumstantial evidence. Trial Court, after appreciating and evaluating the evidence of eyewitnesses, namely, PW-1, PW-2 and injured witness Jasim Khan (PW-3), found no evidence against the acquitted accused persons. However, after considering the evidence of the aforesaid eyewitnesses, including injured witness Jasim Khan (PW-3), and taking into account the specific role, active participation, and overt acts attributed to the present appellants, the Trial Court found the material evidence against them to be cogent, reliable and sufficient for recording their conviction and sentence for the alleged offence. The Trial Court neither relied upon nor considered the statements of other injured witnesses, namely, Hasnain and Hashim @ Kallu, recorded under Section 164 Cr.P.C., rather, it based its findings on the evidence of the examined prosecution witnesses, namely, PW-1, PW-2 and PW-3.

26. The Trial Court has only referred to the statements under Section 164 Cr.P.C. of the injured witnesses, including Jasim Khan (PW-3), and injured witnesses Hasnain and Hashim @ Kallu, under Section 157 of the Evidence Act, because the defence itself cross-examined these three witnesses on this point. Meaning thereby, the Trial Court has based its findings solely on the evidence of PW-1, PW-2 and injured witness Jasim Khan (PW-3). Therefore, mere reference by the

Trial Court to the statements of the witnesses recorded under Section 164 Cr.P.C., in the light of the cross-examination conducted by the defence, does not render the findings, reasoning, and conviction of the accused appellants illegal or perverse in law. It is also a settled principle of law that if, on the same evidence of the prosecution witnesses, some accused persons are acquitted, the other accused persons can still be legally convicted, if the evidence against them is found to be cogent, reliable, and trustworthy. The Trial Court has discharged its duty and recorded its findings and reasoning in accordance with the settled principles of law. Therefore, putting questions regarding the statements recorded under Section 164 Cr.P.C. of the injured witnesses was not legally required in the present circumstances. It is also submitted by learned counsel for the State and learned counsel for the informant that if a separate charge under Section 302 IPC has not been framed simpliciter, the conviction under Section 302 read with Section 149 IPC cannot, on that ground alone, be held to be illegal or perverse.

27. Thus, learned counsel for the State and learned counsel for the informant have lastly submitted that the learned Trial Court has minutely appreciated all the evidence available on record in its proper perspective and in accordance with law and has recorded its findings and reasoning on the basis of cogent and reliable evidence. Therefore, there is no perversity or illegality in the impugned judgment and order of conviction and sentence dated 24.09.1993 passed by the learned Trial Court. Hence, the criminal appeal filed by the surviving accused appellants, being devoid of merit and substance, deserves to be dismissed. Consequently, the impugned judgment and order dated 24.09.1993 passed by the learned Trial Court is liable to be affirmed.

28. In the light of the above submissions and counter-submissions advanced by learned counsel for the parties, we have perused the written report (Exhibit Ka-1) and the deposition of informant Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3). From a perusal of the written report (Exhibit Ka-1), it is revealed that informant Fakruddin (PW-1) named the surviving accused appellants, namely, Malik Khan, Irshad Khan, Rustam Khan and Hashim Khan, along with other appellants (now deceased) and acquitted accused persons, for the commission of the crime. PW-1 stated that they were all armed with guns and country-made pistols (katta). A few accused persons were also armed with spears (ballam). The place and cause of occurrence was Arazi No. 1387. According to the written report and the evidence of Fakruddin (PW-1), on the date of the incident i.e., 24.10.1988, Akilu (PW-2) was ploughing field Arazi No. 1387 by tractor. Fakruddin (PW-1) and Jasim Khan (PW-3) were also present nearby. Appellant Babu Khan (now deceased) then came to the place of occurrence from his house and prohibited Akilu (PW-2) from ploughing the field. Upon this, a hot exchange and altercation took place between Babu Khan and Jasim Khan (PW-3). Thereafter, appellant Babu Khan (now deceased) rushed to his home and returned to the place of occurrence with a gun. At that time, upon hearing the altercation, Rahimuddin, Kallu @ Hashim, Karimuddin, Hakimuddin and Hasnain also arrived at the spot. Following Babu Khan, 17 other accused persons also arrived at the spot armed with guns or kattas. Upon the exhortation of Babu Khan (now deceased), all the accused persons began firing upon Akilu, Jasim, Rahimuddin, Karimuddin, Hakimuddin and Kallu @ Hasnain. As Akilu (PW-2) was ploughing the field, he hid behind the tractor, therefore, he did not receive any injury.

29. From a perusal of the written report (Exhibit Ka-1) and the evidence of the informant Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3), it appears that due to the

firing by the accused persons, Jasim Khan and other injured persons received injuries. From the evidence of the prosecution witnesses, it is further revealed that after receiving injuries from firearms, all the injured persons began to cry out, drawing the attention of Badruddin, Sharif Khan and Ashraf @ Guddu. Upon seeing them, the accused appellant Babu Khan (now deceased) attempted to kill them. Thereupon, Babu Khan and the other accused persons opened fire again at Badruddin, Sharif and Ashraf @ Guddu and at informant Fakruddin (PW-1). In the second set of the incident, Badruddin received a fatal gunshot injury and died on the way to the hospital.

30. Thus, from a perusal of the evidence of Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3), as well as the injury reports of injured persons, namely, Hashim @ Kallu, Hasnain, Rahimuddin, Ashraf @ Guddu, Jasim, Karimuddin, Fakruddin, Sharif Khan and Hakimuddin, it is revealed that a total nine persons received gunshot injuries in the incident and Badruddin died in the same incident due to the gunshot injury, while he was on the way to the hospital.

31. We have also perused the findings and reasoning recorded by the Trial Court in this regard. We find that the Trial Court, after a detailed discussion and appreciation of the prosecution evidence, held that Kallu, Badru, Mitthoo, Ikhlaque, Sahabu and Istekhar, although present at the place of occurrence, had not caused any injury to the injured persons. The Trial Court, after a detailed discussion and appreciation of the evidence of the informant Fakruddin (PW-1), Wakilu @ Akilu (PW-2), and the injured witness, Jasim Khan (PW-3), also held that the named accused persons, namely, Riyaz, Parvez and Mahau, had not participated in the incident, although they were alleged to have been carrying spears (ballams) in their hands. Upon appreciation of the prosecution evidence, the Trial Court found that the accused-appellants, namely, Malik, Jafru, Najaru, Sayeed, Babu, Rustam, Hashim, and Irshad had participated in the incident by firing guns and country-made pistols (kattas). The named accused persons in the written report (Exhibit Ka-1), Shabvir and Mahau, had died during the pendency of the trial.

32. Thus, upon appreciation of the evidence of PW-1, PW-2 and PW-3, the Trial Court found that no role or act of participation in the commission of the crime had been established against the named accused persons, namely, Kallu, Badru, Mitthoo, Ikhlaque, Sahabu, Istekhar, Riyaz and Parvez. Consequently, they were acquitted of the charges levelled against them. However, after a detailed discussion and appreciation of the evidence, the Trial Court found the accused-appellants, namely, Babu Khan, Jafru, Najaru, Malik, Sayeed, Rustam and Irshad, guilty under Sections 147, 148, 307 and 149 IPC. The accused-appellant Hashim was found guilty under Sections 147, 148, 149, 302 and 307 IPC and, accordingly, was convicted under Section 302 IPC. The remaining accused, namely, Babu Khan, Jafru, Najaru, Malik, Sayeed, Rustam and Irshad, were acquitted of the charge under Section 302 read with Section 149 IPC.

33. Since, in the present case, one person, Badruddin, died due to a gunshot injury, and Hashim @ Kallu, Hasnain, Rahimuddin, Ashraf @ Guddu, Jasim, Karimuddin, Fakruddin, Sharif Khan and Hakimuddin sustained gunshot injuries caused by the appellants, firearm injuries were found on their bodies. Thus, in this incident, a total of nine persons sustained gunshot injuries and became injured. The Trial Court, after a detailed discussion of the prosecution evidence available on record, convicted the accused-appellants, namely, Babu Khan, Sayeed Khan, Malik Khan,

Irshad Khan, Jafru Khan, Rustam Khan, Najaru Khan and Hashim Khan and held them guilty of the offences alleged against them.

34. Upon reviewing the Trial Court's findings and reasoning, we find that the Court properly appreciated the evidence on record in a legal manner. Based on the prosecution's evidence, the Court found accused appellants, namely, Babu Khan, Sayeed Khan, Malik Khan, Jafru Khan, Irshad Khan, Rustam Khan, Najaru Khan, and Hashim Khan guilty and convicted them accordingly, while acquitting the other named accused persons.

35. On this point, the learned counsel for the surviving accused-appellants submitted that if, on the basis of the same evidence, some of the accused persons have been acquitted by the Trial Court, then the present accused-appellants are also entitled to acquittal of the alleged charges. In support of this submission, the learned counsel for the appellants has placed reliance on the judgment of the Hon'ble Supreme Court in Javed **Shaukat Ali Qureshi v. State of Gujarat, (2023) 9 SCC 164**, particularly paragraphs 15, 17 and 21, which read as follows:-

"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.

17. Accused nos. 1, 5 and 13 were convicted only on the basis of the testimony of PW-25 and PW-26. They were acquitted by holding that the testimony of both witnesses was unreliable and deserved to be discarded. If the same relief is not extended to accused nos. 3 and 4 by reason of parity, it will amount to violation of fundamental rights guaranteed to accused nos. 3 and 4 by Article 21 of the Constitution of India. Therefore, we have no manner of doubt that the benefit which is granted to accused nos. 1,5 and 13 deserves to be extended to accused nos.3 and 4, who did not challenge the judgment of the High Court. In this case, the suo motu exercise of powers under Article 136 is warranted as it is a question of the liberty of the said two accused guaranteed by Article 21 of the Constitution.

21. Accordingly, the appeal succeeds and we pass the following order:

21.1. The appellant, accused no.6 Javed Shaukat Ali Qureshi, is acquitted of the offences alleged against him by setting aside the judgment of the Trial Court dated 17th March 2006 and judgment of the High Court dated 11th February 2016 to the extent. He is on bail. His bail bonds stand cancelled;

21.2. We set aside the order of conviction of accused no.3 Mehboobkhan Allarakha and accused no.4 Saidkhan @ Anna Ikbalhusain by setting aside the same judgments to that extent and acquit them of the offences alleged against them. They shall be forthwith set at liberty if they are not required to be detained in connection with any other case;

21.3. We recall the order dated 11th May 2018 in SLP (Crl.) Diary No.13063 of 2018 and grant leave. For the reasons set out above, accused no. 2 Amjadkhan Nasirkhan Pathan stands acquitted by setting aside the impugned judgment of the Trial Court and the High Court to that extent. He shall be forthwith set at liberty unless he is required to be detained in connection with any other offence; and

21.4. The appeal is allowed on the above terms. "

36. We have perused the judgment of the Hon'ble Supreme Court in **Javed Shaukat Ali Qureshi (Supra)**, referred to and relied upon by the learned counsel for the accused-appellants. We have also perused the judgment of the Hon'ble Supreme Court in **Gurcharan Singh and Another v. State of Punjab, (1955) 2 SCC 424**, rendered by a **three-Judge Bench**. Further, we have considered the decision of the Hon'ble Supreme Court in **Nisar Ali v. State of Uttar Pradesh, (1957) 1 SCC 350**, also rendered by a three-Judge Bench.

37. In **Gurcharan Singh (Supra**), the Hon'ble Supreme Court, while dealing with the same issue, held in paragraph-9 as follows:-

"9. The case in hand is similar to the case reported as Dalip Singh v. State of Punjab, (1953) 2 SCC 36, insofar as it was found in that case, as we are inclined to hold in this case, that the acquittal of the other two accused by the High Court may not have been entirely correct. Reference to that reported case is only by way of illustration and not by way of an appeal to precedent, because on facts no two cases can be similar. Each case has its own peculiar facts and it is therefore always risky to appeal to precedents on questions of fact. The highest that can be or has been said on behalf of the appellants in this case is that two of the four accused have been acquitted, though the evidence against them, so far as the direct testimony went, was the same as against the appellants also; but it does not follow as a necessary corollary that, because the other two accused have been acquitted by the High Court the appellant also must be similarly acquitted."

38. Similarly, the Hon'ble Supreme Court, in **Nisar Ali (Supra)**, has held on the same point in paragraph nos. 8 and 9 as follows:-

"8. It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the Court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim falsus in uno falsus in omnibus was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. This maxim has not received general acceptance in different jurisdictions in India, nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases, the testimony may be disregarded and not that it must be disregarded. One American author has stated:

'... the maxim is in itself worthless; first in point of validity ... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is a superfluous form of words. It is also in practice pernicious...'

9. The doctrine merely involves the questions of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'."

39. Thus, in light of the legal principles laid down by the Hon'ble Supreme Court in the aforementioned case laws of three-Judge Benches, it is not necessary to reject the evidence of witnesses whose testimony, in respect of some accused persons, is found reliable, while in respect of others, it is found unreliable.

40. According to the law as enunciated by the Hon'ble Supreme Court in case laws of this nature, the Court should cautiously and carefully analyze and appreciate the evidence of prosecution witnesses. If the evidence of prosecution witnesses is found reliable and trustworthy in respect of some accused persons, but unreliable in respect of other accused persons, the evidence shall not be rejected outright. Meaning thereby, the part and portion of evidence of the prosecution witnesses that is found trustworthy and reliable shall be read into evidence. In light of such reliable and trustworthy prosecution evidence, accused persons can be legally held guilty and convicted. If, upon appreciation of the prosecution evidence, there is no trustworthiness or creditworthiness regarding the evidence of the prosecution witnesses in respect of other co-accused persons, then, on the basis of the same evidence, those accused persons could be legally acquitted. Thus, it is merely a rule of caution and not a mandatory rule of evidence, in light of the legal principles enunciated by the Hon'ble Supreme Court in the case laws referred above.

41. From a perusal of the findings and reasoning of the Trial Court on this point, we find that the Trial Court has minutely and thoroughly discussed and analyzed the evidence of prosecution witnesses, such as, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3). Through minute details and lengthy discussions, the Trial Court has found the participation and involvement of the surviving accused-appellants, along with the deceased accused-appellants, in the commission of the alleged crime.

42. Thus, we find, in the facts and circumstances of the case, case laws of the Hon'ble Supreme Court referred to above are fully applicable in the present case. In light of the above discussions and the legal principles enunciated by the Hon'bleSupreme Court in the aforementioned case laws, we find no force in the arguments raised by the learned counsel for the accused appellants on this point.

43. In light of the next submission made by the learned counsel for the surviving accused appellants, we have perused the records of the case. A perusal of the record confirms that charges were framed by the Trial Court against accused Riyaz and Parvez on 09.07.1990, under Sections 148, 302 read with Section 149 and 307 read with Section 149 IPC. Against the accused Babu Khan, Hashim, Sayeed, Malik and Jafru, charges were framed under Sections 148, 302 read with Section 149, and Section 307 read with Section 149 IPC. Similarly, against the accused Irshad, Rustam, Mitthoo, Ikhlaque, Istekhar, Nazaru, Badru, Kallu @ Ayyub and Sahabu, charges were

also framed under Sections 148, 302 read with Section 149, and Section 307 read with Section 149 IPC. To substantiate these charges, the prosecution adduced evidence, and after the recording of evidence, the accused persons were examined under Section 313 Cr.P.C. The defense also adduced evidence in support of its case.

44. After having heard arguments from both parties, the Trial Court delivered its judgment and order dated 24.09.1993. By the impugned judgment and order, the Trial Court after elaborately and minutely scrutinizing the entire evidence of prosecution witnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3), along with other relevant evidence in this respect, concluded that accused persons, namely, Malik, Jafru, Nazaru, Sayeed and Rustam, gathered at the place of occurrence, formed an unlawful assembly, and committed the roit while armed with deadly weapons, such as, guns, country-made pistols and spears. Trial Court found that accused persons, namely, Malik, Jafru, Nazaru, Sayeed and Rustam, armed with guns, fired upon the injured persons with the intention to kill them. Consequently, based on the evidence on record, the Trial Court convicted appellants, namely, Babu Khan, Jafru Khan, Nazaru Khan, Malik Khan, Sayeed Khan, Rustam Khan and Irshad Khan, under Sections 147, 148 and 307 read with Section 149 IPC.

45. However, upon appreciation of the evidence, the Trial Court found that the deceased, Badruddin, did not die from gunshots fired by accused persons, namely, Malik, Jafru, Nazaru, Sayeed & Rustam, and concluded that those accused did not fire at the deceased. Trial Court concluded that Badruddin died from the gunshot fired by the accused, Hasim Khan. Consequently, based on the evidence on record, the Trial Court acquitted accused persons, namely, Babu Khan, Jafru Khan, Nazaru Khan, Malik Khan, Sayeed Khan and Rustam Khan of the charges under Section 302 read with Section 149 IPC. Appellant, Hasim Khan was found guilty and convicted under Section 302 IPC for causing the death of Badruddin, and was further convicted under Section 307 of the IPC along with other co-accused persons.

46. The main submission of the learned counsel for the surviving accused-appellants is that when charges were framed against appellant Hashim Khan and the other co-accused persons under Section 302 read with Section 149 IPC, the conviction and sentence of the surviving accused-appellants simpliciter under Section 302 IPC, without framing an alternative and simpliciter charge under Section 302 IPC by the Trial Court, is illegal and contrary to the settled principles of law. In support of this submission, the learned counsel for the accused-appellants has placed reliance upon the judgment of the Hon'ble Supreme Court in **Suraj Pal v. State of Uttar Pradesh, AIR 1955 SC 419.**

47. A perusal of **Suraj Pal (Supra)** reveals that, in that case, nineteen accused were tried for offences under Sections 148, 307 and 302 read with Section 149 IPC. The Sessions Court initially convicted all nineteen accused. Upon appeal, the High Court acquitted ten of the accused while affirming the conviction and sentence of one individual for offences under Sections 148, 307 and 302 IPC. Notwithstanding these facts, the Hon'ble Supreme Court held that the absence of a specific charge against the appellant under Sections 307 and 302 IPC, for which he was subsequently convicted and sentenced, constituted a serious lacuna. The Court emphasized that the

framing of specific and distinct charges for every distinct head of criminal liability is a fundamental requirement and serves as the essential foundation for any conviction and sentence.

48. In light of the aforementioned submission and the reliance placed by the learned counsel for the surviving accused appellants on the decision in **Suraj Pal (Supra)**, we have also perused the judgment of a **five Judge Constitution Bench** of the Hon'ble Supreme Court in **Willie (William) Slaney v. The State of Madhya Pradesh, (1955) 2 SCC 340**. In the said judgment, the Hon'ble Supreme Court held as follows:-

"Held, is to further the ends of justice through a full and fair trial on well- established and well Understood lines in accord with natural justice - If the accused fully understands the charge he is to defend and for that given a full and fair opportunity, then if there is substantial competence with the spirit and requirements of the Code, held, mere mistakes in procedure and were inconsequential errors and omissions will not vitiate the trial unless substantial prejudice has been caused to the accused.

The question before the Supreme Court was whether the omission to frame an alternative charge under Section 302 simpliciter of the Penal Code was an illegality that cuts at the root of the conviction and makes it invalid or whether it was a curable irregularity in which all that the Court was concerned was to see is whether there was prejudice. Basically, is the charge to be regarded as a ritualistic formula so sacred and fundamental that a total absence of one, or any departure in it from the strict and technical requirements of the Code of Criminal Procedure, is so vital as to cut at the root of the trial and vitiate it from the start, or is it one of many regulations designed to ensure a fair and proper trial so that substantial, as opposed to purely technical, compliance with the spirit and requirements of the Code in this behalf is enough to cure departures from the strict letter of the law.

The Code of Criminal Procedure (CrPC) like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If an accused gets full and fair trial in accord with natural justice and well established principles, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the CrPC and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the CrPC is based.

Certain procedures are regarded as vital, the disregard of which is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the court is satisfied that there was prejudice. The question of curing an irregularity can only arise when one or more of the express provisions of the CrPC is violated. It is impossible to lay down any hard and fast rule but taken by and large the question usually narrows down to one of prejudice. In any case, the courts must be guided by the

plain provisions of the CrPC without straining at its language wherever there is an express provision. The real object of the CrPC is to leave these matters to the discretion and vigilance of the courts.

Chapter 45 CrPC, 1898 deals generally with irregular proceedings. There are certain irregularities which do not vitiate the proceedings (Section 529 CrPC). Certain other irregularities are treated as vital and there the proceedings are void irrespective of prejudice (Section 530 CrPC). A third class is dealt with in Sections 531, 532, 533, 535, 536(2) and 537. There, broadly speaking, the question is whether the error has caused prejudice to the accused or, as some of the sections put it, has occasioned a failure of justice. The CrPC has carefully classified certain kinds of error and expressly indicates how they are to be dealt with. In every such case the Court is bound to give effect to the express commands of the legislature: there is no scope for further speculation. The only class of case in which the Courts are free to reach a decision is that for which no express provision is made.

A charge must set out the offence with which the accused is charged and if the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated "as to give the accused notice of the matter with which he is charged". The charge must also contain such particulars of date, time, place and person "as are reasonably sufficient to give the accused notice of the matter with which he is charged" (Sections 221 to 223).

The object of the charge is to enable the accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. However, in a summons cases no formal charge is required: all that is necessary is to tell accused the substance of the accusation made against him (Section 242).

When a charge contains either an error or omission in it or both, and whatever its nature, it is not to be regarded as material unless:

(1) the accused has in fact been misled by it and

(2) it has occasioned a failure of justice. (Section 225)

That is reasonably plain language.

These errors and omissions can be remedied at any time during the course of the trial in the Sessions Court (Section 226) or even at the very end of the trial (Section 227), and when this is done the trial need not proceed de novo but can go on from the stage at which the alteration was made provided neither side is prejudiced (Section 228). So no error or omission in the charge, and not even a total absence of a charge, cuts at the root of the trial. The proceedings up to the stage of the alteration, which can be at the very end of the trial, are not vitiated unless there is prejudice; they are good despite these imperfections. That is impossible when the error is so vital as to cut at the root of the trial. It follows that errors in the charge, and even a total absence of a charge, are not placed in the non-curable class.

Even in a case where the error is not observed and corrected during the trial and the accused is convicted, the High Court is empowered to direct a retrial only if, in its opinion, the accused was "misled in his defence" (Section 232). It is to be observed that this is so whether there was a total absence of a charge or merely an error in it. It is evident that a conviction cannot stand if the defect cuts at the root of the trial, therefore, defects even of this nature are not regarded as fatal."

49. Thus, a perusal of the five- Judge Constitution Bench decision in **Willie (William) Slaney (Supra)**, the position of law is clear that if the charge framed discloses the overt act committed by a particular accused, though the charge is for the offence under Section 302 read with Section 149 IPC and the accused faced trial with the knowledge that the prosecution case is that he committed the particular overt act which caused the death, the non-framing of a distinct charge for the offence under Section 302 IPC will not cause prejudice to the accused, even though the charge framed was under Section 302 read with Section 149 IPC. In such a case, even though the charge is for the offence under Section 302 read with Section 149 IPC and there is not even an alternate charge for the offence under Section 302 IPC simpliciter, when the charge discloses an overt act by a particular accused which caused the death of the victim, if the evidence establishes that the particular accused inflicted that particular injury which caused the death, he could definitely be convicted for the offence under Section 302 IPC simpliciter. Even though there is no specific charge for Section 302 IPC simpliciter and the charge is for the Section 302 read with Section 149 IPC, there could be a conviction under Section 302 of the IPC simpliciter.

50. In light of the law laid down by the five-Judge Constitution Bench of the Hon'ble Supreme Court in **Willie (William) Slaney (Supra)**, we have perused the records and evidence of the present case. It is evident that the Trial Court framed charges against the accused appellant, Hasim Khan, along with co-accused appellants. The record reveals that nine persons sustained gunshot injuries during the incident, and one person, namely, Badruddin, died in this incident by gunshot injuries on various parts of his body. Consequently, the accused appellant, Hasim Khan, was fully aware and had sufficient notice that he was being charged for the murder of Badruddin. This is further corroborated by the written report (Exhibit Ka-1) and the testimonies of prosecution witnesses Fakruddin (PW-1), Wakilu @ Akilu (PW-2), and Jasim Khan (PW-3), all of whom consistently stated that the accused appellant, Hasim Khan, was armed with a gun at the time of the incident.

51. From a perusal of the post-mortem report (Exhibit Ka-37) of deceased Badruddin, it is revealed that deceased Badruddin had suffered gunshot injuries on his chest, abdomen, both hands and face. According to the post-mortem report, pellets also entered his body and reached the left lung of deceased Badruddin. Not only this, pellets were also found in the left chamber of his heart along with injuries, and injuries from the pellets were also found on the left lung of Badruddin. The chambers of the heart were ruptured or torn at several places. Pellets also entered the large intestine of the deceased, and marks of injuries were found at the points of entry of the pellets. The right part of the liver was punctured at two places.

52. From a perusal of the above injuries and according to the post-mortem report (Exhibit Ka-37) of deceased Badruddin, it is amply clear that this kind of injury to different parts of the body, with the entry of pellets, can only be caused by a firearm like a gun. It is the case of the prosecution

that accused appellant Hasim had a gun in his hand. Therefore, accused appellant Hasim was fully aware about the role played by him in causing the death of deceased Badruddin from the time of the incident, also during the trial of the case and the examination of the prosecution witnesses.

53. From a perusal of the findings and reasoning recorded by the Trial Court in this regard, we find that the Trial Court deeply and thoroughly examined and appreciated the entire evidence adduced by the prosecution. It specifically determined that the surviving accused appellant, Hasim Khan, was solely responsible for causing the death of the deceased, Badruddin. The Trial Court further concluded that the other accused appellants were responsible for inflicting fatal injuries upon the injured witnesses in this case, by their respective firearms.

54. Thus, in light of the aforementioned discussions and the legal principles enuncitated by the **five-Judge Constitution Bench** of the Hon'ble Supreme Court in **Willie (William) Slaney (Supra)**, we find that no prejudice has been caused to the accused appellant, Hasim Khan, nor has there been any miscarriage of justice, by virtue of his conviction and sentencing under Section 302 IPC. Accordingly, we find no substance in the arguments advanced by the learned counsel for the surviving accused-appellants in this regard.

55. From a perusal of the evidence of Jasim Khan (PW-3), it is clear that he was present at the place of the occurrence and sustained gunshot injuries. A total of seven injuries were found on his body, as recorded in the injury report (Exhibit Ka-33) prepared by Dr. Rama Kant (PW-6). In his examination-in-chief, Jasim Khan (PW-3) stated that all of them were sent to the hospital where they were medically examined and he was admitted. After six days, the investigating officer recorded his statement in the hospital.

56. Upon perusing the entire examination-in-chief of Jasim Khan (PW-3), we find that this witness did not state that his statement or dying declaration was recorded by the Executive Magistrate in the hospital. However, during cross-examination by the defence, the witness was questioned on this point. He stated that he had not told the Deputy Saheb that before the incident in the month of Asar, he had gone twice to plough the field, and that he had gone to plough the field again on the date of the incident because the ground had become dry. He clarified that the Magistrate had only asked about the assault, so he had only provided details regarding the assault. Elsewhere in his cross-examination, when questioned further regarding the statement given to the Magistrate, he stated that he had not told the Magistrate that he had nothing in his hands except lathi & danda. He also stated that on that day, the Magistrate recorded his statement and that he told the Magistrate the names of the attackers, namely, Rustam, Irshad, Sahabu, Mahabu, Ikhlaque, Riyaz, Istekhar, Kallu and Badaru along with others involved in the incident. He added that if the Magistrate did not record these things, he cannot state the reason for this.

57. Thus, we find that despite the fact that Jasim Khan (PW-3) has not given any statement in his examination-in-chief regarding the recording of his dying declaration under Section 164 Cr.P.C. before the SDM/Executive Magistrate, however, defence itself questioned him on this point during cross-examination. In light of the above, the Trial Court referred to the statement of injured Jasim Khan (PW-3) as recorded by Deputy Collector,

Kanak Tripathi only for the purpose of corroboration and contradiction under Sections 157 & 155 of the Evidence Act.

58. In this respect, the Trial Court referred to and relied upon the judgment of the Hon'ble Supreme Court in **Maqsoodan v. State of Uttar Pradesh, AIR 1983 SC 126**, and observed that, if a person's statement is recorded by a Magistrate under the apprehension that he may die, but the person survives the injuries, then such statement cannot be read under Section 32 of the Evidence Act. However, the statement of the injured person can be used under Sections 157 & 155 of the Evidence Act for the purpose of corroboration and contraditions and for testing the veracity and truthfulness of the subsequent testimony and evidence of that witness.

59. Since the defence itself questioned the injured witness, Jasim Khan (PW-3), during cross-examination, the Trial Court considered those answers while deciding the case. In its judgment and order dated 24.09.1993, the Trial Court examined the prosecution evidence to ensure justice, especially for those persons whose involvement was not proved by the evidence. Therefore, the Trial Court referred to the statement of Jasim Khan (PW-3), which had been recorded by Kanak Tripathi (Deputy Collector), and considered his entire evidence in that context.

60. A perusal of the statements of the accused appellants under Section 313 Cr.P.C., reveals that a total of 32 questions were put to them. Question No. 18 placed the incriminating circumstances relating to the evidence of Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3) before the accused appellants in the Court. Although no separate specific question regarding the evidence of Jasim Khan (PW-3) was framed under Section 313 Cr.P.C., it cannot be presumed that the Trial Court failed to put questions regarding his evidence in light of Question No. 18. Thus, it is clear that the Trial Court addressed the evidence of Jasim Khan (PW-3) through Question No. 18. Therefore, we find that the Trial Court substantially complied with the provisions of Section 313 Cr.P.C. through Question No. 18. Furthermore, it is noteworthy that no grievance or objection in this regard was raised by the accused-appellants before the Trial Court.

61. A **three-Judge Bench** of the Hon'ble Supreme Court, in **Wasim Khan v. State of U.P., AIR 1956 SC 400**, **and Bhoor Singh v. State of Punjab, (1974) 4 SCC 754**, held that every error or omission in compliance with the provisions of Section 313 Cr.P.C. does not necessarily vitiate the trial. The accused must show that actual prejudice has been caused or was likely to have been caused to him.

62. Since it is the prosecution case that the surviving accused appellant, Hashim Khan, was armed with a gun and that the injuries found on the body of the deceased, Badruddin, could only be caused by such a firearm, it cannot be presumed that any prejudice was caused to the accused appellant, Hashim Khan by the omission of a specific question under Section 313 Cr.P.C. during his examination before the Court. This fact is further established from the statements of the prosecution witnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3), who have consistently stated that Hashim Khan was armed with a

gun. Therefore, we find no force in the arguments advanced by the learned counsel for the surviving accused appellants in this respect.

63. In the present case, total nine persons, including the injured witness Jasim Khan (PW-3), sustained gunshot injuries. Dr. Rama Kant (PW-6) and Dr. A.P. Singh (PW-13) prepared the injury reports of the injured persons. From a perusal of the injury reports, it is evident that nine persons received gunshot injuries, with pellets entering different parts of their bodies. The deceased, Badruddin, had received fatal gunshot injuries on various parts of his body, with many pellets penetrating and puncturing his internal organs. However, out of nine injured persons, the prosecution only adduced Jasim Khan (PW-3) as a prosecution witness.

64. A perusal of the written report (Exhibit Ka-1), the evidence of Fakruddin (PW-1) and Wakilu @ Akilu (PW-2) establishes that along with other injured persons, Jasim Khan (PW-3) was also present at the place of occurrence when the alleged incident occurred. Jasim Khan (PW-3) witnessed the occurrence from the very beginning till the end. The injury report of Jasim Khan (Exhibit Ka-33) further reveals that he sustained injuries as an eyewitness in the alleged incident. In this case, the prosecution produced Jasim Khan (PW-3) as a witness to support its case. While other injured persons, including Hasnain and Hashim @ Kallu, have not been adduced and examined by the prosecution in support of its case.

65. From a perusal of the evidence available on record, it is clear that Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3) were present at the place of occurrence and witnessed the incident with their own eyes. Jasim Khan (PW-3) also sustained gunshot injuries in the incident. Thus, there are three eyewitnesses whose unimpeachable and trustworthy evidence has successfully proved the prosecution's case beyond a reasonable doubt. There is no rule of law mandating that all injured persons must always be summoned and examined by the prosecution to support the its case. The prosecution has full discretion to select and adduce relevant witnesses whose evidence is sufficient to prove the charges beyond a reasonable doubt.

66. Upon perusing the evidence and the findings recorded by the Trial Court, we find that the prosecution has successfully proved its case beyond a reasonable doubt through documentary evidence, including the injury reports of the injured persons, and the direct testimony of the eyewitnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3).

67. According to settled principles of law, there is no fixed number of witnesses required to be produced by the prosecution to prove its case beyond a reasonable doubt. In the present case, the prosecution has successfully proved its case through the evidence of eyewitnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3) and supporting documentary evidence beyond a reasonable doubt. Therefore, we find no merit in the arguments advanced by the learned counsel for the surviving accused appellants in this respect.

68. From a perusal of the written report (Exhibit Ka-1), the evidence of eyewitnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3) and the other supporting documentary evidence available on record, it is clear that present case is based directly on the evidence of eyewitnesses. In other words, the present case is one of direct evidence, which is directly supported by the evidence of these eyewitnesses. Therefore, in a case where the prosecution story rests directly on eyewitness evidence, the law does not require the establishment of every chain of evidence, as is required in cases based on circumstantial evidence.

69. We have perused the judgment of the Hon'ble Supreme Court in **Sharad Birdhi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 116**. It reveals that the facts of that case centered on murder by poisoning and suicide, with no direct evidence available, and the case was entirely based on circumstantial evidence. However, the case in hand is based on direct evidence provided by the eyewitnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3). Therefore, the accused appellants are not entitled to any benefit from the judgment in **Sharad Birdhi Chand Sarda (Supra)**. Consequently, we find no substance in the arguments advanced by the learned counsel for the surviving accused-appellants in this respect.

70. It is also a settled principle of law that in a case of direct evidence, no proof of motive for the incident is required to be established by the prosecution. The present case is based entirely on the direct evidence of eyewitnesses, namely, Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim Khan (PW-3), who were present at the place of occurrence and witnessed the incident. However, a perusal of the record reveals that the cause of the dispute was Araji No. 1387, to which both the prosecution and the defence laid their respective claims. Thus, the dispute over Araji No. 1387 was the main cause that led to the occurrence of the incident. This dispute provided the motive to the accused appellants, including those who are now deceased, to commit the alleged crime. Therefore, the motive was also present and proved by the prosecution with respect to the commission of the alleged crime.

71. We have also gone through and perused the findings and reasoning recorded by the learned Trial Court in the judgment and order of conviction and sentence dated 24.09.1993. A perusal of the said judgment and order reveals that the Trial Court has discussed the entire evidence in a detailed and elaborate manner. The evidence of all the prosecution witnesses has been considered and findings have been recorded on every point of argument raised by the defence before the Trial Court. By analysing and scrutinising the entire prosecution evidence, the Trial Court has discussed each and every point and recorded findings thereon, which are based on the cogent and reliable evidence of the prosecution witnesses.

72. From a perusal of the findings and reasoning recorded by the Trial Court, it is also revealed that the Trial Court has appreciated the entire evidence in its proper perspective and in accordance with law. The Trial Court has relied upon the evidence of the eyewitnesses, namely, informant Fakruddin (PW-1), Wakilu @ Akilu (PW-2) and Jasim

Khan (PW-3), treating the same as reliable in support of the prosecution case, and has found the surviving accused appellants, along with the other appellants (now deceased), guilty of the commission of the alleged crime.

73. In the present case, nine persons sustained gunshot injuries, and one person, namely, Badruddin, died due to fatal gunshot injuries, while on the way to the hospital. Some minor discrepancies and variations are likely to creep into the evidence of any prosecution witness in any case. However, we find that there are no material or major contradictions, variations or omissions in the evidence of the prosecution witnesses. The findings and reasoning recorded by the Trial Court are based on the evidence of the prosecution eyewitnesses and documentary evidence. The Trial Court has appreciated the evidence in accordance with the settled principles of law applicable in this regard. Therefore, we find no perversity or illegality in the impugned judgment and order dated 24.09.1993 passed by the Trial Court.

74. Hence, the present criminal appeal preferred by the surviving accused appellants is liable to be dismissed, and the impugned judgment and order of conviction and sentence dated 24.09.1993 passed by the Trial Court is found to be sustainable in the eyes of law and deserves to be affirmed.

75. In view of the above discussions, we **affirm** the impugned judgment and order of conviction and sentence dated 24.09.1993 passed by the learned IInd Additional Sessions Judge, Mirzapur in Sessions Trial No. 329 of 1989 (State v. Babu Khan and others), arising out of Case Crime No. 283 of 1988, under Sections 147, 148, 149, 302, 307 IPC, Police Station- Kotwali Dehat, District- Mirzapur. Consequently, the present criminal appeal is devoid of merit and is, accordingly, **dismissed**.

76. The surviving accused appellants- **Malik Khan, Irshad Khan, Rustam Khan** and **Hashim Khan**, are on bail. Their bail bonds are cancelled, and the sureties are discharged.

77. The surviving accused appellants are directed to surrender before the Court of the learned Chief Judicial Magistrate (CJM), Mirzapur, within a period of one month from today or from the date of production of a certified copy of this order, to serve out the remaining sentence passed by the learned Trial Court vide its order dated 24.09.1993.

78. In the event, if surviving accused appellants- **Malik Khan, Irshad Khan, Rustam Khan** and **Hashim Khan**, fail to surrender before the court concerned within the stipulated period of one month, the Chief Judicial Magistrate, Mirzapur, shall take immediate steps by issuing non-bailable warrants against them to secure their arrest. Upon their arrest, they shall be sent to jail to serve out the remaining sentence as passed by the Trial Court vide order dated 24.09.1993.

79. Let a copy of this judgment and order, along with the Lower Court Record, be transmitted to the Trial Court **forthwith** for necessary information and compliance.

(2026) 7 ILRA 1060
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 2417 of 1984

Kammu & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the judgment and order of conviction and sentence passed against the surviving accused-appellants is sustainable in the eyes of law?

Headnotes

Indian Penal Code, 1860-Ss. 148, 302/149, 379 and 404-PW-1 not an eye-witness-PW-2 and PW-3-their presence at the place of occurrence highly doubtful-PW-2 gave two different and contrary versions-very material contradictions-creating a strong and reasonable doubt about presence of this witness at the place of occurrence-PW-3 also not an eye-witness- Evidence of PW-2 and PW-3 not reliable and trustworthy-Prosecution with afterthought and consideration projected PW-2 and PW-3 as eye-witnesses-no eye-witness in this case-all 12 accused persons simultaneously targeted and fired upon deceased-Only two entry wounds and one injury of exit of gunshot wound-no pellets, bullets, tiklis or empty cartridges found at place of occurrence-Non-recovery of alleged murder weapons -enmity and rivalry-trial Court has not appreciated prosecution evidence in legal and proper manner-Judgment and order perverse -conviction and sentence set aside.
Appeal allowed. . (E-9)

Case Law Cited

1. Khambam Raja Reddy v. Public Prosecutor, High Court of Andhra Pradesh, (2006) 11 SCC 239
2. Sushil v. State of Uttar Pradesh, 1995 SCC (Cri) 388
3. State of Punjab v. Sucha Singh, (2003) 3 SCC 153
4. Sujit Biswas v. State of Assam, (2013) 12 SCC 406
5. Badam Singh v. State of Madhya Pradesh, (2003) 12 SCC 792

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973

List of Keywords

Eye-witnesses; major and material contradictions; strong and reasonable doubt; wholly doubtful and suspicious; medical and ocular evidence; non-recovery of pellets, bullets, tiklis or empty cartridges; non-recovery of murder weapons; enmity and rivalry; proof and evidence; beyond reasonable doubt.

Appearances of parties

Counsel for Appellant(s) : I.M. Khan
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. I.M. Khan, learned counsel for the surviving appellants, Mr. G.N. Kanaujiya, learned A.G.A.-I for the State/opposite party and perused the record.

2. This criminal appeal has been preferred by accused-appellants, Kammu, Baddu, Mohd. Ali @ Mohd. Dhol, Shafiullah, Zafar, Ghulam, Hidayatullah, Aslam, Azizullah, Manzar Ali, Atiqullah and Babu @ Munna against the judgment and order dated 31.08.1984 of learned Trial Court passed in Sessions Trial No. 619 of 1981 (State v. Kammu and others) connected with Sessions Trial No. 284 of 1982 (State v. Kammu and others), Sessions Trial No. 284 of 1983 (State v. Babu @ Munna) and Sessions Trial No. 341 of 1982 (State v. Atiqullah) arising out of one Case Crime No. 143 of 1981, under Sections 148, 302, 379, 404 IPC, Police Station Khakhreru, District Fatehpur.

3. Brief facts of the case are that informant Riyaz Ahmad (PW-1) got scribed the written report, Exhibit Ka-1, by Hamid Ali Khan and by that lodged an F.I.R., Exhibit Ka-2, on 19.09.1981 at 09:30 P.M. against Kammu, Baddu, Mohd. Ali @ Mohd. Dhol, Shafiullah, Zafar, Hidayatullah, Ghulam, Saif Ullah, Aslam, Azizullah, Manzar Ali, Atiqullah and Babu @ Munna alleging inter alia that this morning my son Sarfaraz had gone from home carrying his tractor, his licensed gun and a belt of cartridges for ploughing the field of my relative Shaukat Ali at Singwahar, which is situated near village Kot. Along with my son, Moid Ahmad, son of Syef, resident of village Shahnagar, was also on the tractor. Shaukat Ali was getting his field ploughed by my son with the tractor, then Shabbir son of Siddique, resident of village Shahnagar, who had gone for hunting carrying his licensed double-barrel gun and a belt of cartridges, came there and sat with Moid Ahmad and Shaukat on the southern boundary (medh) of the field. At about 05:00 p.m., the accused Kammu son of Najabtayar Khan, resident of village Kot, carrying his licensed double-barrel gun; Baddu son of Najabtayar Khan, carrying his licensed rifle; Mohd. Ali @ Mohd. Dhol, who is police pensioner, carrying his licensed 12-bore gun; Shafiullah son of Najabtayar Khan; Zafar son of Hasmat; Ghulam son of Sarafal; Hidayatullah alias Hiddu son of Ahmadullah; Saifullah son of Ahmadullah, carrying a stolen gun in their hands; Aslam son of Islam, resident of Badanmau; Azizullah son of Nasrullah, resident of Shipuri; Manzar Ali son of Rahmat Ali, resident of Nasirpur; Atidullah son of Rafiqullah, resident of Shahnagar, Police Station Khakhreru, carrying his licensed gun; and Babu @ Munna, resident of Mohammadpur, Police Station Thariyav, presently resident of village Ajrauli, each carrying stolen guns in their hands, came from the side of village Kot and greeted Moid Ahmad and Shabbir, who were sitting on the boundary (medh) of the field. Thereafter, accused Babu @ Munna very quietly took double-barrel gun of Shabbir and belt of cartridges into his possession. In the meantime, accused Kammu exhorted the other accused persons, saying that "Sarfaraz must be killed today and he should not be allowed to escape alive. This hurdle should also be removed." As soon as accused Kammu raised this exhortation, my son got down from the tractor and, taking his gun and belt of cartridges, attempted to run away and save himself. Thereupon, all the accused persons, including Kammu, fired at my son with their guns and rifle with the intention of causing his death. As a result of the firing by the accused persons, my son sustained fire-arm injuries on side of the tractor, fell on the boundary of the field and died. My son sustained injuries on the right side of his chest, in the middle of his chest, on his back below the waist, and on the wrist of his right hand. The above-mentioned witnesses present at the spot with my son raised an alarm and shouted, whereupon, hearing the cries and the sound of

gunfire, Hafeez son of Abdul Aziz, resident of Oreha, whose field is situated nearby, and Ram Asrath son of Maiku Kunwar, resident of Maqsudanpur Mujra, who was cutting fodder in the same field, came running to the spot and they too witnessed the occurrence and challenged the accused persons. Thereafter, Hidayatullah @ Hiddu took away my son's licensed gun and belt of cartridges lying near him and also took Rs. 500 from his pocket, after which the accused persons proceeded towards village Kot. The bullets fired by the accused persons struck in the three wheels of tyres of the tractor, which became punctured. Accused persons are the associates and members of the gang of Atahar Ahmad son of Nisar Ahmad of village Rahmatpur and on the advice and consultation of Atahar Ahmad, the accused persons committed the murder of my son today. I had been making complaints against the atrocities, hooliganism and illegal acts of the aforesaid accused persons, due to which they bore an internal grudge against me and my son, and because of the said enmity, the aforesaid accused persons found an opportunity and killed my son. When I received information of this incident at my house from Moid Ahmad, I immediately rushed to the spot along with the villagers and came to know about the occurrence.

4. On the basis of above written report, Exhibit Ka-1, dated 19.09.1981, an F.I.R., Exhibit Ka-2, was registered by Head Moharrir Prem Chandra Dubey (PW-4) at Police Station Khakhreru on 19.09.1981 at 21:30 hours against accused persons, namely, Kammu, Baddu, Mohd. Ali @ Mohd. Dhol, Shafiullah, Zafar, Ghulam, Hidayatullah, Aslam, Azizullah, Manzar Ali, Atiqullah and Babu @ Munna under Sections 147, 148, 149, 302, 406, 404 IPC. After registration of the F.I.R., Exhibit Ka-2, investigation of the case was handed over to S.I. Lal Singh Chandel (PW-6). The Investigating Officer Lal Singh Chandel (PW-6) collected papers of the F.I.R. and G.D. of the case and proceeded to the place of occurrence in the night. On 20.09.1981 in the morning, he prepared panchayatnama of the deceased, Sarfaraz, Exhibit Ka-5, in his writing and signatures. He prepared the papers of challan lash, Exhibit Ka-6, report to C.M.O., Exhibit Ka-7, report to R.I., Exhibit Ka-8, photo lash, Exhibit Ka-9 and sample of the seal, Exhibit Ka-10. Thereafter, he sent the dead body of the deceased for post mortem examination by Constables Amrit Lal and Shivman Singh. The Investigating Officer also took bloodstained clothes of the deceased from his body and marked the same as Exhibit Ka-11. The Investigating Officer also took from the dead body of the deceased, one pair shoes of nylon in his possession and prepared its memo as Exhibit Ka-12. The Investigating Officer also took from the place of occurrence the simple and bloodstained soil and prepared its memo as Exhibit Ka-13. The Investigating Officer Lal Singh Chandel (PW-6) has recorded the statements of the informant and other witnesses under Section 161 Cr.P.C. He also prepared the site plan of the place of occurrence as Exhibit Ka-14 on the pointing out of the witnesses. The Investigating Officer tried to arrest the accused, however, he was unsuccessful in arresting them even after issuance of the process under Section 82/83 Cr.P.C. against them. Thereafter, on 10.10.1981, after completing the investigation, he submitted charge-sheet, Exhibit Ka-15, in the court concerned against the accused persons, in which eight accused persons were absconding.

5. Dr. V.K. Tripathi (PW-5) has conducted the post mortem examination on the dead body of the deceased, Sarfaraz Ahmad, on 21.09.1981 and prepared the post mortem report, Exhibit Ka-4. According to the post mortem report, Exhibit Ka-4, which was prepared by Dr. V.K. Tripathi (PW-5), following ante-mortem injuries were found on the body of the deceased, Sarfaraz :-

"(i) Gun shot wound of entry ½" x ¼" x chest cavity deep on the front side chest over the sternum 4" below the suprasternal notch. Margins lacerated and inverted. No blackening and tattooing.

(ii) Gun shot wound of exit 4" x 3 " x chest cavity deep with margins lacerated and everted on the right side chest adjacent to axilla.

(iii) Gun shot wound of entry ½" x ½" x abdominal and chest cavity deep on the upper part left iliac area of back 2□ lateral to midline. Margins lacerated and everted. No blackening and tattooing.

Course :- (A) Bullet entering through injury no. 1, fractured sternum entered in right chest cavity lacerating lungs, fracturing right third rib, passed out through injury no. 2.

(B) Bullet entering through injury no. 3, fracturing left ilium lacerating abdominal viscera diaphoran left lung, heart fracturing left second rib, lodged in pectorial muscle of left chest. Thus, four small and one big metallic piece found lodged,, taken out sealed in an envelope and sent to S.P. through proper channel.

(iv) Multiple abrasions in an area of 2" x 2" with one penetrating wound ½" x ¼" x 1" deep on the flexer aspect of lower 1/4th part of right forearm."

6. On internal examination of the dead body of the deceased, Sarfaraz, in the opinion of Dr. V.K. Tripathi (PW-5), the cause of death of the deceased is shock and haemorrhage as a result of gunshot injuries.

7. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

8. Charges were framed against the accused-appellants by the learned Trial Court on 30.08.1983 under Sections 148, 302, 379, 404 IPC. The accused-appellants denied from the charges framed against them and claimed trial.

9. To substantiate the charges against the accused-appellants, prosecution adduced informant Riyaz Ahmad (PW-1), Moid Ahmed (PW-2) and Shabbir (PW-3) as witnesses of facts and H.C. Prem Chand Dubey (PW-4), Dr. V.K. Tripathi (PW-5), Lal Singh Chandel (PW-6) and Rahmatullah (PW-7) were adduced as formal witnesses. Apart from the above ocular evidence, prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-15.

10. Trial Court recorded evidence of the prosecution witnesses. Thereafter, accused-appellants were examined under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., all accused have expressed ignorance and no knowledge about the questions put to them under Section 313 Cr.P.C. In addition to this, all accused have also stated that this case was registered against them due to enmity only. All prosecution witnesses have given their evidence against them due to enmity. Accused Hidayatullah has also stated that "I had given applications dated 24.04.1981 and

01.05.1981 against the Inspector of Police Station Khakhreru and also against the informant Riyaz Ahmad, etc. On the basis of this, a case was registered against the Inspector under Section 7." Accused Azizullah has also stated in his statement under Section 313 Cr.P.C. that "he approached MLA Indrajeet. All witnesses of this case are hands of MLA Indrajeet." They have also denied from all charges levelled against them. The accused-appellants adduced Mahendra Pal Singh as DW-1.

11. After recording the evidence of the prosecution and defence, Trial Court has heard the arguments of both the parties. Trial Court has delivered a finding and reasoning of conviction and sentence against the accused persons by the impugned judgment and order dated 31.08.1984. The Trial Court convicted the accused-appellants under Section 148 of the IPC and sentenced them to undergo rigorous imprisonment for one year. The accused-appellants were also convicted under Section 302 read with Section 149 of the IPC and sentenced to imprisonment for life. Further, they were convicted under Section 379 of the IPC and sentenced to undergo rigorous imprisonment for three years. Lastly, the accused-appellants were convicted under Section 404 of the IPC and sentenced to undergo rigorous imprisonment for three years. All the sentences of the accused-appellants were directed to be run concurrently.

12. Aggrieved by the judgment and order of conviction and sentence dated 31.08.1984, the accused-appellants preferred this criminal appeal before this Court.

13. During pendency of this criminal appeal, appellant nos. 1, 2, 3, 4, 5, 8, 10, 11 and 12, namely, Kammu, Baddu, Mohd. Ali @ Mohd. Dhol, Shafiullah, Zafar, Aslam, Manzar Ali, Atiqullah and Babu @ Munna have died, therefore, the criminal appeal against appellant nos. 1, 2, 3, 4, 5, 8, 10, 11 and 12 stands dismissed as abated. Now, the criminal appeal is being adjudicated only in respect of surviving appellant nos. 6, 7 and 9, namely, Ghulam, Hidayatullah and Azizullah.

14. Learned counsel for surviving accused-appellants, Ghulam, Hidayatullah and Azizullah, has submitted that informant Riyaz Ahmad (PW-1) was at his home at the time of the incident. He is not an eye-witness of the incident. He received information from Moid Ahmad (PW-2). Upon receiving the information about happening of the incident from Moid Ahmad (PW-2), informant Riyaz Ahmad (PW-1) has got scribed the written report, Exhibit Ka-1, by Hamid Ali Khan and lodged the same at Police Station Khakhreru, District Fatehpur. In the evidence of informant Riyaz Ahmad (PW-1), only enmity between the prosecution on the one hand and the accused persons on the other and also among the accused persons themselves have been narrated by Riyaz Ahmad (PW-1), therefore, evidence of Riyaz Ahmad (PW-1) is not reliable and trustworthy in support of the prosecution story. It is also submitted that according to the prosecution, Moid Ahmad (PW-2) and Shabbir (PW-3) are the star eye-witnesses of the prosecution, who were said to be present at the time and place of the incident. However, from perusal of the evidence, it is apparent on the face of the record that neither Moid Ahmad (PW-2) nor Shabbir (PW-3) were present at the place of occurrence. This fact is clear from the evidence of this witnesses that there are major and material contradictions, exaggeration and concoctions that proved this fact that Moid Ahmad (PW-2) and Shabbir (PW-3) were not present at the time and place of the incident. The prosecution with a view to support and strengthen its case against the accused persons with considerations and afterthoughts projected these two eye-witnesses Moid Ahmad (PW-2) and Shabbir (PW-3) as witnesses of the

incident. However, in reality, their evidence in cross-examination have itself belied the truthfulness of their evidence about their presence at the time and place of the incident. The prosecution story has also become doubtful due to the evidence of prosecution witness Rahmatullah (PW-7). From perusal of the statement of Rahmatullah (PW-7), it is clear that prosecution with the help of police wrongly and falsely implicated the accused persons in this case for the alleged crime. It is apparent from the prosecution case that some other persons have killed the deceased, Sarfaraz, by firing upon him, in which he sustained gun-shot injuries. Later, on receiving the information about murder of deceased, Sarfaraz, informant Riyaz Ahmad (PW-1) with Moid Ahmad (PW-2) and Shabbir (PW-3) and also with collusion of the police falsely named and implicated the accused-appellants in this case for commission of the alleged crime. It is also submitted on behalf of the appellants that it is stated by Moid Ahmad (PW-2) and Shabbir (PW-3) that all accused named in the F.I.R. have fired simultaneously with their respective guns upon the deceased, Sarfaraz, but Moid Ahmad (PW-2) and Shabbir (PW-3) have not seen any pellets, bullets or empty cartridges at the place of occurrence. The Investigating Officer Lal Singh Chandel (PW-6) have not seen and found any pellets, bullets and empty cartridges from the place of occurrence, which also makes the prosecution story highly doubtful. Learned Trial Court only on the basis of surmises and conjectures and also on the basis of enmity, which is a double-edged weapon that cuts both sides, has wrongly recorded a finding against the accused-appellants without any cogent evidence available in this regard and also against the settled principles of law. Learned Trial Court has not appreciated the evidence in this case as available on the record and only on the ground that fact of enmity is tilting in favour of prosecution has held guilty to the accused-appellants in this case. Learned Trial Court has not appreciated the evidence in proper perspective and in legal manner and recorded the finding and reasoning without any cogent and reliable evidence and against the settled principles of law, therefore, due to this reason, criminal appeal of the surviving accused-appellants, Ghulam, Hidayatullah and Azizullah is liable to be allowed and the judgment and order of conviction and sentence dated 31.08.1984 passed by the learned Trial Court is liable to be set aside.

15. Per contra, learned A.G.A. for the State has vehemently opposed the above arguments of learned counsel for the surviving accused-appellants. He has submitted that although informant Riyaz Ahmad (PW-1) is not an eye-witness of the incident, however, from the evidence, facts of enmity and rivalry between the parties are proved and established. Moid Ahmad (PW-2) and Shabbir (PW-3) are the eye-witnesses in this case, who have seen the happening of the incident with their eyes. Before the prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3), happening of the incident occurred and accused-appellants formed an unlawful assembly armed with deadly weapons like guns, legal and illegal, surrounded the deceased, Sarfaraz, and causing riot, killed him by firing on his body. There is no major or material contradictions in the evidence of Moid Ahmad (PW-2) and Shabbir (PW-3). The minor contradictions and omissions are likely to be crept in every evidence of prosecution in every case. Only on this ground, prosecution story could not be doubted as suspicious or doubtful. Learned Trial Court has appreciated the evidence in proper perspective and in a legal manner. The finding and reasoning of the learned Trial Court is based on cogent evidence as available on the record. Learned Trial Court has found ample, reliable and cogent evidence against the accused-appellants and thereby found that the prosecution was able to prove its case beyond reasonable doubt against the accused-appellants, hence learned Trial Court has recorded a finding and reasoning of conviction and sentence against the accused-appellants. There is no illegality, perversity or any drawbacks in the finding and reasoning of the learned Trial

Court, therefore, criminal appeal of the surviving accused-appellants is devoid of merits and therefore, is liable to be rejected.

16. We have heard the arguments of learned counsel for the accused-appellants and also the arguments of learned A.G.A. for the State, gone through the evidence as available on record and also perused the judgment and order of conviction passed by the learned Trial Court.

17. From perusal of the written report, Exhibit Ka-1, and evidence of informant Riyaz Ahmad (PW-1), we find that Riyaz Ahmad (PW-1) was at his house at the time of happening of the incident. He was sitting in the verandah of his house, then Moid Ahmad (PW-2) came to his house and informed him about happening of the incident. Upon receiving the above information as narrated by Moid Ahmad (PW-2), informant Riyaz Ahmad (PW-1) reached at the place of occurrence with his family and villagers and got the written report, Exhibit Ka-1, scribed by Hamid Ali Khan naming all accused persons in the written report and has lodged the same at Police Station Khakhreru, District Fatehpur. From perusal of the statement of informant Riyaz Ahmad (PW-1), it is quite clear that this witness is not an eye-witness of the incident. This witness has only lodged the written report naming all accused persons at Police Station Khakhreru, District Fatehpur.

18. From perusal of the evidence of informant Riyaz Ahmad (PW-1), this fact emerges that there were bitter enmity and rivalry between the prosecution side on the one hand and the accused-appellants on the other. Both sides usually were in habit of making complaints against each other and they never missed any opportunity in making complaints and humiliating each other. From the evidence of Riyaz Ahmad (PW-1), this fact also emerges from the evidence that both sides were related to each other through old matrimonial relations. It is also revealed that a number of murders had taken place, in which members of one party were witnesses while members of the other party were accused persons in criminal cases against each other. It is also revealed that both parties were involved in several cases against each other, and various criminal proceedings were pending before the Court. Informant Riyaz Ahmad (PW-1) was Village Pradhan for ten years continuously. It is natural that many residents of the village may be supporters and rivals of the Pradhan of the village, therefore, from perusal of the evidence of informant Riyaz Ahmad (PW-1), only the fact of enmity and rivalry between the prosecution side and defence side emerges, however, it is settled principle of law that only on the ground of enmity, no accused person could be held guilty for commission of the heinous crime like murder.

19. Moid Ahmad (PW-2) is an eye-witness of the incident. It is said that this witness was present with deceased, Sarfaraz, when Sarfaraz was ploughing the fields of Shaukat and the incident happened. According to the prosecution, Moid Ahmad (PW-2) witnessed the incident with his own eyes. From perusal of the evidence of Moid Ahmad (PW-2), we find that according to this witness, he had gone with Sarfaraz on his tractor on 19.09.1981 from the morning about 08:30-09:00 A.M. to plough the fields of Shaukat of Singwahar. According to Moid Ahmad (PW-2), Sarfaraz has also taken and carried his licensee gun and belt of cartridges with him when he departed for Singwahar to plough the fields of Shaukat. When Moid Ahmad (PW-2) along with the deceased, Sarfaraz, on his tractor reached at Singwahar at the fields of Shaukat then Shaukat has also reached there and he was empty handed. He further states that Sarfaraz began to plough the fields of Shaukat by tractor and he (PW-2) and Shaukat sat on the boundary (medh) of the fields.

Then about 04:00 P.M. in the evening from the direction of Kot, accused Kammu with gun, Baddu with rifle, Mohd. Ali @ Mohd. Dhol with gun, Saif with gun, Shafiullah with gun, Zafar with gun, Ghulam with gun, Hidayatullah with gun, Azizullah with gun, Atiqullah with gun, Manzar with gun, Aslam with gun and Babu @ Munna with gun came at the spot in the fields of Shaukat. According to this witness before coming of the accused persons, Shabbir (PW-3) with this licensee gun and belt of cartridges had also come and sat near him. When accused persons arrived there, then they greeted each other. According to this witness, accused Babu @ Munna had quietly and suddenly took the gun and belt of cartridges from Shabbir (PW-3), then accused Kammu exhorted that Sarfaraz has been found today by chance, so kill him today. Thereafter, this hurdle shall also be removed. According to this witness, Kammu had also said that his father also does politics. On this point, Sarfaraz stopped his tractor and wanted to run away then all accused have fired upon him from their weapons. Sarfaraz has received gun-shot injuries. After receiving the injuries, Sarfaraz with his gun and belt of cartridges fell on the ground. According to this witness, when hue and cry was made by this witness, then Hameez and Ram Asre have also come. Thereafter, Hiddu @ Hidayatullah took the guns and belt of cartridges from Sarfaraz and also took Rs. 500/- from his pocket. Thereafter, all accused persons have gone towards Kot. After that, according to Moid Ahmad (PW-2), information about the incident was given to the father of Sarfaraz about 4:45-5:00 p.m. From Shahnagar, Adhaiya is situated towards east at a distance of one km. According to this witness, he reached Adhaiya in the morning on the date of incident about 7-7:30 a.m. This witness states that his fields were also to be ploughed. Due to this, he had gone to Adhaiya. This witness also deposed that field of this witness is situated in the riverine lowland (kachhar) area of Shahnagar. His fields could be about 4-6 bigha. Sarfaraz had ploughed a few fields measuring about 2-2.5 bighas, and thereafter, he had gone to Singwahar to plough the fields.

20. From the perusal of the statement of Moid Ahmad (PW-2), Sarfaraz has requested him to accompany him to go to Singwahar with him. This witness has also stated that he directly from Shahnagar proceeded to Singwahar and has not gone in any other village. Thus, from the above evidence about reaching at the place of occurrence and at the house of the deceased, Sarfaraz, at village Adhaiya, two different versions have been stated by this witness. At one place, this witness has stated that he from his home at Shahnagar went to village Adhaiya at the house of Sarfaraz. Informant Riyaz Ahmad (PW-1) has also stated that Moid Ahmad (PW-2) has also went with Sarfaraz on the tractor. At other place, in his deposition, this witness Moid Ahmad (PW-2) has deposed that he is resident of Shahnagar. He clearly stated that he from Shahnagar directly had gone to Singwahar and never went in any other village. The above two versions of the statements about reaching at the place of occurrence at Singwahar and at the village Adhaiya of deceased, Moid Ahmad (PW-2) has stated two different and distinct story. That contradictory statements which have been deposed by Moid Ahmad (PW-2) are very material contradictions which create a doubt about the presence of this witness at the place of occurrence. Doubt about the presence of this witness at the place of occurrence is also indicated by the statement of this witness in which he has deposed that he has not given this statement that since morning, fields of Shaukat was being ploughed. If the Investigating Officer has written in my statement that from the early morning, he has gone to the fields of Shaukat and his field was being ploughed, I could not state the reason that how the Investigating Officer has written this fact in my statement. In this way, two different and contrary versions which are material and major contradictions in this regard have been deposed by this witness in his evidence, that creates strong and reasonable doubt about presence of this witness

at the place of occurrence. From this, it appears that this witness had not gone with the deceased, Sarfaraz, on his tractor on the date of the incident to Singwahar to plough the fields of Shaukat. After happening of the incident, this witness was projected and produced by the prosecution to support its case. From the testimony of this witness, it is apparent that accused Babu @ Munna, along with the other accused persons, came before Shabbir (PW-3), and they greeted each other. Thereafter, Babu @ Munna came to Shabbir and he quietly took the gun and also snatched the belt of cartridges from him but Shabbir could not say anything. According to this witness, on the exhortation of accused Kammu, all 12 accused persons fired simultaneously upon the deceased, Sarfaraz.

21. From the perusal of the evidence of Moid Ahmad (PW-2), We find that after accused Babu @ Munna had snatched the gun and belt of cartridges from Shabbir, Shabbir did not demand the return of his gun, because if he had done so, he would have been killed. This witness has also stated that "all the accused persons were abusing us and threatening that they would spare us, but if we gave evidence, we would be killed." However, this witness has also stated that "I had not told these things to the Investigating Officer. I could not state any reason for this." According to this witness, he has not seen any pellets, bullets and cartridges lying at the place of occurrence. However, on the point of snatching the gun by accused Babu @ Munna, prosecution witness Shabbir (PW-3) has stated a totally different fact about this. Shabbir (PW-3) has stated that at the time of firing, I stood up from that place where I was sitting. On making hue and cry by us, accused persons have not threatened to kill us. The above statement of the other so-called eye-witness, Shabbir (PW-3), regarding the alleged threats and intimidation by the accused persons to kill the witnesses, Moid Ahmad (PW-2) and Shabbir (PW-3), as narrated by Moid Ahmad (PW-2) in his testimony, creates a doubt regarding the veracity of such allegation and renders the same as suspicious and unreliable. Thus, this fact emerged that Moid Ahmad (PW-2) was not present at the place of occurrence when the incident happened and his presence at the place of occurrence is highly doubtful.

22. Prosecution also produced Shabbir (PW-3) as an eye-witness of the incident. From the perusal of the deposition of this witness, we find that he had gone to hunt the francolin bird (teetar) by his licensee gun along with the belt of cartridges on the day of the incident towards Kot. According to this witness at 03:30 p.m., he reached at Singwahar then this witness has seen Sarfaraz ploughing the fields of Shaukat by tractor and Moid Ahmad and Shaukat were sitting on the boundary (medh) of the field. This witness has also went and sat near Shaukat. Thereafter, according to this witness, accused persons have come at the place of occurrence. From the perusal of evidence of Shabbir (PW-3), it is revealed that this witness has also stated in the same way and style as has been stated by Moid Ahmad (PW-2) in his evidence. However, from perusal of the deposition of Shabbir (PW-3) and Moid Ahmad (PW-2), one common and same thing is being stated by the two witnesses in the same way and style. Both Moid Ahmad (PW-2) and Shabbir (PW-3) have stated in their evidence that all accused persons have fired simultaneously with their gun and rifle upon Sarfaraz. According to the deposition of these two prosecution witnesses, total 12 accused persons have come at the place of occurrence holding in their hands guns and rifles and all the 12 accused persons simultaneously targetting the deceased, Sarfaraz, at the same point of time fired upon him. In this situation, if 12 accused persons will target and fire simultaneously upon the deceased, Sarfaraz, then in this condition, more than 12 and minimum 12 gun-shot injuries must be present at the body of the deceased, Sarfaraz. However, from the perusal of the

evidence of Dr. V.K. Tripathi (PW-5), who conducted the post mortem examination of the deceased, Sarfaraz, and prepared the post mortem report, Exhibit Ka-4, we find that according to the post mortem report, Exhibit Ka-4, only three entry wound of gun-shot injuries are found on the body of the deceased, Sarfaraz, and one injury of exit wound of the gun-shot was found on the dead body of the deceased, Sarfaraz. One injury of abrasion was also found on his body.

23. From the perusal of the post mortem report, Exhibit Ka-4, in reality, only two entry wounds of gun-shot have been found on the dead body of the deceased, Sarfaraz, and one injury of exit of the gun-shot wound are found. According to the prosecution story, three tyres of the tractor were also punctured. Even if, for the sake of argument, it is assumed that three bullets fired by the accused persons struck the three tyres of the tractor, it would appear that only five shots were fired by the culprits. However, it is also amazing fact that 12 accused persons fired simultaneously targetting the deceased, Sarfaraz, then in this mass firing by 12 persons, there was no pellets, bullets, tiklis or cartridge lying found at the place of occurrence. Moid Ahmad (PW-2) has also clearly stated that there he has not seen any pellets, bullets, tiklis or cartridge lying at the place of occurrence. This fact also creates a reasonable doubt about presence of prosecution witnesses at the place of occurrence. In this way, medical evidence does not found support from the oral evidence of Moid Ahmad (PW-2) and Shabbir (PW-3). Thus, there is a major and material contradictions between the medical and ocular evidence about this fact. From this major and material contradictions and variation between the medical and ocular evidence of Moid Ahmad (PW-2) and Shabbir (PW-3), prosecution story also becomes doubtful and suspicious.

24. On the point of discrepancies between the medical and ocular evidence, Hon'ble Supreme Court in the case of **Khambam Raja Reddy and another v. Public Prosecutor, High Court of Andhra Pradesh, (2006) 11 SCC 239** has held in para 19 that;

"19. The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in State of M.P. v. Dharkole, (2004) 13 SCC 308 where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in Dharkole case may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts.

25. Thus, in the light of the legal principles as enunciated by Hon'ble Supreme Court in the case of **Khambam Raja Reddy** (supra), it becomes clear that in case of difference and discrepancy between the medical and ocular evidence, if on appreciation of the evidence of ocular evidence, evidence of the prosecution witnesses inspires confidence, then in this condition, ocular evidence of eye-witnesses could be accepted in support of the prosecution story. However, in case, testimony of

ocular witnesses are found suspicious and surrounded with doubtful circumstances and facts, then ocular evidence of the prosecution could not be believed in support of the prosecution case. In the present case, as discussed above, upon perusal of the evidence of the prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3), it appears that all the accused persons simultaneously targeted and fired at the deceased, Sarfaraz. However, as we find, only three gunshot injuries were found on the body of the deceased, Sarfaraz. This fact creates major and material contradictions as we have discussed above, presence of the prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3) at the time and place of the incident makes the prosecution story highly doubtful. In this circumstances and when we see the evidence of the prosecution witness in totality, we find that evidence of the prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3) are not reliable and believable and do not inspire confidence. Due to this reason, evidence of Moid Ahmad (PW-2) and Shabbir (PW-3) are not reliable and believable in support of the prosecution case.

26. From perusal of the evidence of Shabbir (PW-3), it is revealed that there were also bitter enmity between the prosecution witness Shabbir and accused persons. On one side, Shabbir was a witness in several cases against the defence, and on the other side, many of the accused persons are also witnesses in the case against Shabbir (PW-3). There were also bitter enmity with regard to the license of the fair price shop. From the evidence of this witness, it is also revealed that each side were in habit of instigating and implicating each other in cases. There were different gangs on the prosecution side as well as on the defence side. Each party was in the habit of implicating the other in cases wherever they found any opportunity to do so. In this way, we find that informant Riyaz Ahmad (PW-1), Moid Ahmad (PW-2) and Shabbir (PW-3) have also stated elaborately about the enmity and rivalry between the prosecution on the one hand and the defence/accused persons on the other. However, it is also a settled principle of law that only on the ground of enmity and rivalry and on suspicion, without cogent and reliable evidence, no accused person could be held guilty for commission of any heinous crime like murder. Enmity is one thing, and cogent evidence is another. For the conviction of a person in respect of a heinous crime like murder, cogent and reliable evidence beyond reasonable doubt must be available on the record to hold the persons arrayed as accused guilty of the commission of the crime. On the ground of enmity, no person could be convicted for commission of the heinous crime like murder. Hon'ble Supreme Court in the case of **Sushil and others v. State of Uttar Pradesh, 1995 SSC (Cri.) 388** and in the case of **State of Punjab v. Sucha Singh, (2003) 3 SCC 153**, has held that;

"enmity is a double aged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."

27. It is also a settled principle of law that suspicion and doubt, however, so grave and strong, could not take the place of proof and evidence. Meaning thereby, on the ground of doubt and suspicion, no accused person could be convicted for commission of the crime. For conviction of any person for commission of any crime against them, cogent evidence beyond reasonable doubt either in the form of direct evidence or in the form of circumstantial evidence must be present on the record of the file. However, in any circumstance, suspicion and doubt could not become a basis in the place of evidence for conviction of any accused person for commission of the alleged crime. Hon'ble Supreme Court in the case of **Sujit Biswas v. State of Assam, (2013) 12 SCC 406** has also held in para 13 that;

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

28. In criminal matters involving heinous crime like murder, a Court can held guilty to accused persons for commission of the alleged crime. The prosecution may prove its case by adducing direct evidence, circumstantial evidence, or incriminating articles, materials, objects, or other evidence connecting the accused with the commission of the crime. A conviction can be recorded only if such evidence establishes the guilt of the accused beyond reasonable doubt. Conversely, if the prosecution fails to adduce direct evidence, circumstantial evidence, or any incriminating material, object, or other evidence linking the accused to the crime beyond reasonable doubt, the Court cannot record a finding of guilt or convict the accused. In other words, if the prosecution is unsuccessful to prove its case either by direct evidence or ocular evidence or by circumstantial evidence, then any accused person could not be held guilty and convicted for the alleged crime against them. In every situation, prosecution is legally duty-bound to establish and prove its case beyond reasonable doubt by their evidence which may be direct evidence or circumstantial evidence.

29. From the perusal of the evidence of Shabbir (PW-3), it appears that, despite the accused Babu @ Munna having allegedly snatched his licensed gun and belt of cartridges, he neither uttered a single word nor made any attempt to recover his licensed gun and belt of cartridges from the possession of the accused Babu @ Munna. Even Shabbir (PW-3) has not lodged any F.I.R. against the accused Babu @ Munna about snatching of his licensee gun and belt of cartridges by the accused Babu @ Munna. This fact was accepted by Shabbir (PW-3) in his cross-examination that □I have not lodged any report in respect of snatching of my gun. All the things have been written in the written report of Riyaz Ahmad.□ From the perusal of the evidence of this witness, it is revealed that Riyaz Ahmad (PW-1) has got scribed the written report before this witness in which fact of snatching his gun has been mentioned, hence this witness has not lodged a separate report in respect of snatching of his gun by the accused Babu @ Munna from his possession. It is also revealed from the evidence of this witness that till the recording of the evidence of the witness, he has not received his licensee gun and this witness has not filed any case in respect of receiving his

gun. The above statements and conduct of the prosecution witness Shabbir (PW-3) also creates a reasonable doubt about his presence at the place of occurrence when the incident occurred. From the conduct as revealed from the statement of Shabbir (PW-3), we find that the manner and the way in which deposition has been given by Shabbir (PW-3) in the Court creates a reasonable doubt about credibility, trustworthy and reliability about his evidence. This fact also creates a reasonable doubt which leads towards this inference that Shabbir (PW-3) was not present at the time and place of the incident. From the appreciation of whole evidence of Shabbir (PW-3), this fact also clearly emerged that prosecution has also projected Shabbir (PW-3) with consideration and afterthought to support the case of prosecution. However, from the whole appreciation of the statement of this witness, we find that evidence of this witness does not inspire confidence, therefore, we are of the considered opinion that Shabbir (PW-3) was also not present at the place of the incident. He was also not an eye-witness of the incident. Hence, we find that deposition of this witness is wholly doubtful and suspicious and thereby not reliable and trustworthy.

30. From the perusal of the evidence of so-called eye-witnesses Moid Ahmad (PW-2) and Shabbir (PW-3), it is evident that there was no pellets, bullets, tiklis or empty cartridges lying at the place of occurrence. The Investigating Officer Lal Singh Chandel (PW-6) who investigated this case has also not found any pellets, bullets, tiklis or empty cartridges at the place of occurrence. According to this witness, he has inspected the place of occurrence and tried to recover the above pellets, bullets, tiklis or empty cartridges from the place of occurrence, however, he could not find the same. Non-recovery of the pellets, bullets, tiklis or empty cartridges from the place of occurrence also creates doubt about the truthfulness and credibility of the prosecution story. It is a fact that according to prosecution, 12 persons simultaneously fired upon the deceased, Sarfaraz. In this condition, recovery of the pellets, bullets, tiklis or empty cartridges is necessary outcome of the incident. It is natural that if 12 accused persons fired simultaneously, some bullets, pellets, tiklis, or empty cartridges would inevitably have fallen at the place of occurrence. However, non-recovery of the pellets, bullets, tiklis or empty cartridges from the place of occurrence also creates high suspicion about the truthfulness of the prosecution story.

31. In criminal trial, if case of the prosecution is based wholly on the evidence of the eye-witnesses of the prosecution and no other circumstantial and connecting evidence is available, then in this condition, it must be seen by the Courts that whether presence of the so-called eye-witnesses of the prosecution at the place of occurrence is true and behind any doubt. If by appreciating the evidence of the eye-witnesses, it is found that presence of the eye-witnesses at the place of occurrence is highly doubtful, then in this condition, when presence of the eye-witnesses at the place of occurrence is highly doubtful, therefore, in consequence, statement and evidence of eye-witnesses would also be regarded with doubt and suspicion. In the result, evidence of this nature of the eye-witnesses of the prosecution whose presence at the place of occurrence is highly doubtful, their deposition in Court would also become unreliable and unworthy of credence.

32. It is also a fact that the Investigating Officer not tried to recover a large number of guns and rifles, both licensed and unlicensed, which were used in the commission of the crime from the possession of the accused persons. Since, according to the prosecution case,

12 accused persons simultaneously fired at the deceased, Sarfaraz, and caused his death, the Investigating Officer was duty-bound to recover and seize the alleged murder weapons, such as rifles and guns, from the possession of, or the houses of, the accused persons. However, in this case, the Investigating Officer did not try to recover and take into possession any murder weapon such as rifles or guns from the possession of the accused persons or from their houses. This fact also makes the prosecution story suspicious.

33. The prosecution story also becomes doubtful and concocted from the evidence of the prosecution witness Rahmatullah (PW-7), who took photographs of the place of occurrence where the dead body and tractor was lying in the field. Rahmatullah (PW-7) stated in his deposition that when he has gone at the place of occurrence to take the photographs, the field where the incident happened was situated on the bank of the river. There was jungle. The tractor was lying in the field. From there at a distance of 30-40 steps, river was situated. The tractor was standing there. I went to take the photographs. Inspector has said that "stop at this moment." Inspector has also said that "first of all, tyres must be burst. Then photographs will be taken." One person by firing, burst the tyres of the tractor. Then Inspector said to me that "took the photographs of the scene." According to this witness, he took photographs of the scene and returned to his place. Although this witness was declared hostile by the prosecution and cross-examination at the length, however, in his cross-examination by the prosecution, this witness has again stated that "before me, one back wheel and one front wheel was burst." This witness has also stated that when this witness reached at the place of occurrence for photography, after one and half hour, a policeman burst the tyres of tractor. When the evidence of this witness would be seen in totality of the whole evidence of the prosecution including Moid Ahmad (PW-2) and Shabbir (PW-3), then entire prosecution story would become highly doubtful which cast cloud of suspicion on the truthfulness and veracity of the prosecution story.

34. Thus, from the above discussion and appreciation of the whole prosecution evidence, it is clear that from the beginning of the written report, Exhibit Ka-1, the prosecution has concocted, fabricated, and, as an afterthought, developed a false story to implicate all the accused persons in this case. This fact is revealed from the statements and the language used in the written report, Exhibit Ka-1, itself. The written report reveals this fact that from the beginning, the prosecution tried to bring Moid Ahmad (PW-2) and Shabbir (PW-3) as eye-witnesses of the incident. However, after overall appreciation of the entire evidence of Moid Ahmad (PW-2), it is clear that this witness has made major and material contradictory statement about the manner in which he reached at the place of occurrence which makes the evidence of this witness unreliable.

35. The evidence of prosecution witness Shabbir (PW-3) also reveals that prosecution has also tried to accidentally project this witness to reach at the place of occurrence on the pretext of coming back after returning from hunting without any hunt of the francolin bird (teetar). The conduct of Shabbir (PW-3) is highly suspicious and doubtful. Shabbir (PW-3) had a double-barrel licensee gun and belt of cartridges in his hand. However, in spite of snatching the gun and belt of cartridges by the accused Babu @ Munna, this witness has not uttered a single word against this and also has not opposed or resisted when his gun

and belt of cartridges were being snatched by the accused Babu @ Munna. Shabbir (PW-3) even not tried to snatch and take possession of his gun and belt of cartridges from accused Babu @ Munna. Although according to this witness, he is a licensee gun holder but being a licensee gun holder, he has not lodged any F.I.R. in this respect against the accused Babu @ Munna and other accused persons. This witness was being satisfied only on the mentioning about his gun by the informant Riyaz Ahmad (PW-1) in the written report, Exhibit Ka-1. Apart from the above facts, this witness neither filed nor lodged any complaint or initiated any proceedings before any Court or competent authority for the recovery of his licensee gun and belt of cartridges allegedly lost in the incident. The conduct of the above prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3) are highly unnatural and doubtful. The conduct of Moid Ahmad (PW-2) and Shabbir (PW-3) revealed clearly this fact that although these two witnesses have stated the same prosecution story against the accused persons, however, on appreciating their evidence deeply and on scrutiny of their statement as deposed by them in the Court, it is clear that Moid Ahmad (PW-2) and Shabbir (PW-3) are not the eye-witnesses of the incident but it is revealed that there was no eye-witness in this case. Due to this reason the prosecution with afterthought and consideration projected Moid Ahmad (PW-2) and Shabbir (PW-3) as eye-witnesses of the incident. However, by scrutiny of their evidence, we find their evidence wholly doubtful and unreliable.

36. Hon'ble Supreme Court in the case of **Badam Singh v. State of Madhya Pradesh, (2003) 12 SCC 792** has held on the point of appreciation of evidence of the witness in para 16 as follows;

"16. The learned Sessions Judge after considering the evidence on record and accepting the evidence of the eyewitnesses found the appellant guilty of the offence under Section 302 IPC and sentenced him to imprisonment for life. The High Court by its impugned judgment dismissed the appeal preferred by the appellant. We have perused the impugned judgment of the High Court. The High Court which was the first court of appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs 5 and 6 whereas the fact is that the FIR was lodged by PW 4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eyewitnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. In our view, the High Court has not approached the evidence in the manner it should have done being the first court of appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a court to hold, that though consistent, their evidence is not acceptable for any other reason. If the court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible or that their presence at the place of occurrence as eyewitnesses is suspect, the court may reject their evidence. That is why it is necessary for the High Court to critically scrutinise the evidence in some detail, it being the final court of fact. We have, therefore, gone through the entire evidence on record with the assistance of the counsel for the parties.

37. In the light of the decision in the case of **Badam Singh** (supra) and the legal principles enunciated by the Hon'ble Supreme Court regarding the evaluation and appreciation of the evidence of prosecution witnesses, we find that the manner in which the so-called eye-witnesses of the prosecution, Moid Ahmad (PW-2) and Shabbir (PW-3), have narrated the prosecution story is highly improbable, unreliable, and unworthy of credence. In their evidence as is revealed in their cross-examination, we find that major and material contradictory evidence have been given by these prosecution witnesses, which makes the prosecutions story wholly unbelievable. On reading the whole evidence of the prosecution witnesses, we find that Moid Ahmad (PW-2) and Shabbir (PW-3) are projected prosecution witnesses who were adduced with a view to support the prosecution case and thereby ensure the conviction of the accused persons. Thus, we find that evidence of prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3) is wholly unreliable and unworthy of credence.

38. We have also perused and gone through the finding and reasoning as delivered by the learned Trial Court dated 31.08.1984 and find that learned Trial Court has not appreciated the prosecution evidence in legal and proper manner. Trial Court only on the ground of enmity and rivalry held the accused-appellants guilty for commission of the alleged crime. Trial Court has not appreciated the evidence of the prosecution witnesses in a deep and proper manner and wrongly relied on the evidence of prosecution witnesses Moid Ahmad (PW-2) and Shabbir (PW-3) as reliable. Thus, Trial Court relied on that evidence of the prosecution witness Moid Ahmad (PW-2) and Shabbir (PW-3) which we find according to the legal principles and fact of the case as wholly unreliable.

39. Thus, we find that judgment and order dated 31.08.1984 of the learned Trial Court of conviction and sentence is perverse and without the cogent evidence and against the settled principles of law, hence the same is not sustainable in the eyes of law. Hence, we find that judgment and order of Trial Court dated 31.08.1984 is liable to be set aside and the criminal appeal of the surviving appellants, Ghulam, Hidayatullah and Azizullah, is liable to be allowed.

40. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 31.08.1984 of conviction and sentence passed against the accused-appellants, Ghulam, Hidayatullah and Azizullah, by Trial Court in Sessions Trial No. 619 of 1981 (State v. Kammu and others) connected with Sessions Trial No. 284 of 1982 (State v. Kammu and others), Sessions Trial No. 284 of 1983 (State v. Babu @ Munna) and Sessions Trial No. 341 of 1982 (State v. Atiqullah) arising out of Case Crime No. 143 of 1981, under Sections 148, 302, 379, 404 IPC, Police Station Khakhreru, District Fatehpur. The appellants are acquitted of the charges under Sections 148, 302, 379, 404 IPC. The appellants, Ghulam, Hidayatullah and Azizullah, are on bail. They need not surrender. Their bail bonds are cancelled and sureties stand discharged.

41. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for necessary compliance.

(2026) 7 ILRA 1076
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 2810 of 1983

Razzak **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to a criminal appeal against conviction under S. 326 IPC, involving consideration of whether the evidence on record established the requisite knowledge regarding the likely consequences of pouring acid upon the vital parts of the deceased, whether the trial court committed legal error in convicting under S. 326 IPC and imposing three years' rigorous imprisonment without the mandatory fine, whether the benefit of probation of good conduct could be extended to the appellant, and whether, in an appeal preferred by the accused alone and in the absence of any appeal or revision by the State for enhancement of sentence, the appellate court could convert the conviction to a higher offence or enhance the sentence. (Paras 16-24)

Headnotes

Criminal Law - Indian Penal Code, 1860 - S. 326 - Voluntarily causing grievous hurt by dangerous weapons or means - Acid burns - Knowledge of likely consequences - Medical evidence - Extensive acid burn injuries over vital parts of body sufficient in ordinary course of nature to cause death - Deliberate use of acid upon the body of another person, particularly in the manner and to the extent reflected by the injuries, sufficient to impute knowledge that the act was likely to cause death or such bodily injury as was likely to cause death - Finding of trial court that requisite knowledge was absent held not correct or sustainable. (Paras 16-19)

Criminal Law - Indian Penal Code, 1860 - S. 326 - Sentence - Mandatory fine - Provision prescribing imprisonment and fine - Trial court convicting under S. 326 IPC and imposing three years' rigorous imprisonment without imposing fine - Failure to impose fine held to amount to legal error in sentencing - Fine forming integral and mandatory part of sentence under S. 326 IPC. (Para 19)

Criminal Law - Indian Penal Code, 1860 - Ss. 302, 304 and 326 - Appellate jurisdiction - Appeal by accused alone - Enhancement of sentence - In absence of separate appeal or revision by State for enhancement - Appellate court ought not to enhance sentence or otherwise alter finding to prejudice of accused - Conviction under S. 326 IPC therefore not converted to higher provision and sentence not disturbed notwithstanding observations regarding correctness of trial court's reasoning. (Para 21)

Criminal Law - Probation - Gravity and mode of committing offence - Offence resulting in death after prolonged suffering - No reasonable ground to justify benefit of release on probation of good conduct - Benefit of probation rejected. (Paras 22-23)

Criminal Law - Appreciation of evidence - Medical and other evidence - Disparity between superficial acid injuries sustained by accused and extensive acid burns sustained by deceased - Accused's injuries held to be a strong pointer to accused being aggressor - Conduct of attempting to escape from spot after occurrence and failure to hospitalise deceased for proper medical treatment also taken into consideration - Involvement of accused held not doubtful. (Paras 16-18)

Held: The appellant himself also sustained burn injuries by acid during the course of the commission of the offence, which injuries were superficial in nature as opposed to the extensive 60% acid burns sustained by the deceased, and this disparity in the nature and extent of the injuries was itself a strong pointer to the fact that it was the appellant who was the aggressor and not the reverse - the deceased did not die instantaneously but succumbed to his injuries after prolonged medical treatment on account of septicaemia and exhaustion consequent upon the extensive burn injuries - the statement recorded by the Investigating Officer from the deceased in relation to the cause of his death and the circumstances thereof, followed by his death, satisfies the requirements of S. 32(1) of the Indian Evidence Act and may be admissible as a dying declaration notwithstanding that it was not recorded before a Magistrate - the involvement of the accused was not doubtful on the basis of evidence available on the record - the accused did not hospitalise the deceased to provide proper medical treatment and the deceased was hospitalised by a third person though the accused was present on the spot at the time of occurrence - the accused tried to escape from the spot after committing the offence and was apprehended by independent witnesses just some distance away from the place of occurrence - the medical evidence on record, taken cumulatively, disclosed that the appellant was aware of the likely consequences of pouring acid upon a human being - acid is a substance whose corrosive and dangerous nature is a matter of common knowledge - its deliberate use on the body of another person, particularly in the manner and to the extent reflected by the injuries sustained by the deceased, was sufficient to impute to the appellant the knowledge that his act was likely to cause death or such bodily injury as was likely to cause death - the finding of the trial court that the appellant did not possess the requisite knowledge to attract the offence of murder or culpable homicide was not correct or sustainable on the basis of facts and circumstances and evidence on record - although the appellant stood charged under S. 302 IPC, the trial court proceeded to convict him for the lesser offence punishable under S. 326 IPC - S. 326 IPC prescribed a mandatory sentence along with imposition of fine and the trial court was required to award a proper sentence of imprisonment and fine - failure to impose fine amounted to legal error in sentencing - the trial court adopted an unduly lenient approach and fell into legal error - however, in the absence of any separate appeal or revision by the State for enhancement of sentence, and having regard to the well-settled principle that an appellate court ought not to enhance a sentence or otherwise alter a finding to the prejudice of the accused on an appeal preferred by the accused alone, the sentence awarded by the trial court was not disturbed and the conviction under S. 326 IPC was upheld - there was no reasonable ground to justify extending the benefit of release on probation of good conduct - appeal dismissed. (Paras 16, 17, 18, 19, 21, 22, 23, 24) (E-7)

Case Law Cited

None.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

Criminal appeal; acid burns; grievous hurt; dangerous weapons or means; medical evidence; dying declaration; requisite knowledge; murder; culpable homicide; mandatory fine; legal error in sentencing; appellate court; enhancement of sentence; appeal preferred by accused alone; probation of good conduct; unduly lenient approach; miscarriage of justice; judicial discretion; judicial arbitrariness.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order passed by the learned Sessions Judge, Gorakhpur, in S.T. No. 219 of 1983, whereby the appellant was convicted and sentenced to undergo three years R.I. under S. 326 IPC.

Appearances for Parties

Advs. for the Appellant:
Ms. Vaishali Rai, learned Amicus Curiae
Advs. for the Respondents:
Shri Purshottam Maurya, learned AGA

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Ms. Vaishali Rai, learned Amicus Curiae for the appellant and Shri Purshottam Maurya, learned AGA for the State.

2. This criminal appeal has been preferred by the appellant Razzak against the judgment and order passed by the learned Sessions Judge, Gorakhpur, in S.T. No. 219 of 1983, whereby the appellant has been convicted and sentenced to undergo three years R.I. under Section 326 IPC.

3. Tersely, the prosecution story is that the appellant and the deceased Gulam Husain resided together on the upper floor of their double-storeyed house at village Bichhia, the ground floor whereof was in occupation of tenants. It is the case of the prosecution that on 05.09.1981, at about 7 A.M., a quarrel took place between the appellant and his father inside the said upper floor of the building where the two of them were residing together, in the course of which the appellant poured acid upon the person of his father. The occurrence is stated to have taken place within the four walls of the house, in circumstances where independent outsiders were not ordinarily expected to be present. Immediately after the occurrence, the appellant is said to have attempted to flee towards the south but was apprehended on the spot by P.W.-1 Mahatam Singh, with the assistance of Ram Sakal, while he was still running away after pouring the acid on his father. The appellant was thereafter handed over to the police.

4. After registration of the FIR, Investigating Officer has collected the documentary and oral evidences. Ex. Ka.-1 and Ex. Ka.-6 is the FIR, which has been proved by P.W.-1. Ex. Ka.-2 is the injury report of accused Razzaq, which has been proved by P.W.-3. Ex. Ka.-3 is the injury report of Gulam Husain, which has been proved by P.W.-4. Ex. Ka.-4 is the post mortem report of Gulam Husain, which has been proved by P.W.-5. Ex. Ka.-5 is the statement of Gulam Hussain, which has been proved by P.W.-6. Ex. Ka.-7 is the G.D. entry. Ex. Ka.-8 is the panchnama, Ex. Ka-9 is the challan, Ex. Ka.-10 is the sketch, Ex. Ka.-11 is the letter for post mortem examination of Gulam Husain, Ex. Ka.-12 is the G.D. entry, Ex. Ka.13 is the site plan, Ex. Ka-14 is the statement of Jiyani and Ex. Ka.-15 is the chargesheet, which have been proved by P.W.-7.

5. The learned Sessions Judge, Gorakhpur has framed the charge against the appellant on 18.06.1983 under Section 302 IPC. In support of their case, the prosecution has examined Mahatam (informant) as P.W.-1, Smt. Jiyani as P.W.-2, who is the eye witness, Dr. U.N. Pandey as P.W.-3, who has examined the injuries of Razzak, Dr. K.K. Dixit as P.W.-4, who has examined the injuries of deceased Gulam Husain, Dr. K.M. Singh as P.W.-5, who has conducted the autopsy on the dead body of Gulam Husain and prepared the post mortem report, S.I. Umesh Chand as P.W.-6, who had recorded the statement of Gulam Husain and Ram Janam Yadav as P.W.-7, who conducted later part of the investigation and submitted charge-sheet. The defence has examined Abdul Nisar as D.W.-1.

6. The grounds of the appeal in brief are that the conviction of the appellant is against the weight of evidence on record and is bad in law. Furthermore, the sentence awarded to the appellant is too severe.

7. P.W.-1 stated in examination-in-chief, in brief, that while going to his field at about 9:00 a.m., he heard an alarm and saw the accused fleeing towards the drain. He and other villagers chased and apprehended the accused. P.W.-1 did not witness the accused throwing acid from the roof. According to the prosecution, the acid was thrown on Gulam Husain during a scuffle. Gulam Husain's body had turned black due to the acid burns, and the accused, Razzaq, had sustained acid splashes on his hand. The injured Gulam Husain was taken to the Medical College by Abdul Nisar, a rickshaw puller. P.W.-1 lodged the FIR.

8. P.W.-2 Smt. Jiyani stated, in examination-in-chief that Razzak is the son of Gulam Husain. My house is situated opposite the entrance of Gulam Husain's house. I do not know when or how Gulam Husain died. He has since passed away.

9. P.W.-3, Dr. U.N. Pandey stated, in examination-in-chief that on 05.09.1981 he examined the accused Razzaq and found simple injuries on his hand, consistent with acid splashes. He opined that the injuries had been caused on 05.09.1981 at about 7:00 a.m. He prepared the injury report and proved the same before the Court.

10. P.W.-4 Dr. K.K. Dixit stated in his examination-in-chief, in brief, that he conducted the medical examination of the deceased, Gulam Husain, and found approximately 60% acid burn injuries involving the face, neck, chest, and upper part of body. He opined that the injuries were fresh, sustained at about 7:00 a.m. on 05.09.1981, and were caused by acid. According to him, such 60% acid burns were sufficient to endanger life and carried the possibility of causing death. He referred the patient to the Eye Surgeon and Plastic Surgeon for specialized treatment and proved the injury report before the Court.

11. P.W.-5, Dr. K.N. Singh stated in his examination-in-chief, in brief, that he conducted the post-mortem examination and proved the post-mortem report. He found extensive corrosive (acid) burn injuries over almost the entire upper part of body, including the face, front and back of the neck, chest, scalp, both upper limbs, forehead, and eyes. The burns were deep, ulcerated, muscle-deep at places, with blackening and peeling of the skin, and the left eyeball was shrunken due to the burns. The post-mortem recorded multiple extensive burn injuries, including a 20"x12" burn over the neck and chest, 19"x8" burn over the right upper limb, 24"x 3 ½" burn over the left upper limb, 4"x 5" burn over the left frontal region, 17" burn over the scalp, and a 29"x14" ulcerated burn extending from the back of the neck to the hip, muscle-deep with loss of skin. PW-5 opined that the injuries were caused by acid/corrosive substance, and that the cause of death was septicaemia and exhaustion resulting from the extensive acid burn injuries. He confirmed that the injuries were sufficient in the ordinary course of nature to cause death.

12. PW-6 S.I. Umesh Chand Upadhyay stated in his examination-in-chief that he recorded the statement of the injured Gulam Husain at the Medical College Hospital on 08.09.1981. He deposed that the deceased Ghulam Hussain had informed him that acid had been thrown on him; however, by inadvertence, the word "liquor (शराब)" was written instead of "acid (तेजाब)" in the Case Diary, which he clarified before the Court. Following Gulam Husain's death 12-14 days later, the statement was treated as a dying declaration.

13. PW-7, Ram Janam Yadav, Investigating Officer stated in his examination-in-chief, in brief, that he took over the investigation on 17.12.1981 after information regarding the victim's death was received at the police station. Consequently, the offence was converted from Section 326 IPC to Section 304 IPC on 21.10.1981. He examined the earlier investigation, recorded the statement of Mahatam Singh (P.W.-1), and completed the remaining investigation by preparing and signing the relevant papers.

14. Learned counsel for the appellant submits that the appellant has not committed the offence alleged by the prosecution and has been falsely implicated in the present case. It is contended that the death of his father was purely accidental. The appellant himself made every effort to save his father's life and, in the process, sustained burn injuries on his hands while trying to rescue him. It is further submitted that the present criminal appeal has remained pending since the year 1983 and that the appellant is now more than 60 years of age. Therefore, even if this Court comes to the conclusion that the appellant is guilty of the offence, he deserves to be extended the benefit of probation in view of the facts and circumstances of the case.

15. Learned AGA vehemently opposed the submissions advanced on behalf of the appellant and supported the findings and judgment of the trial court. It is submitted that the appellant is the real son of the deceased, Gulam Hasan, and no enmity or ulterior motive has been brought on record to suggest that he has been falsely implicated in this case. It is further submitted that during an altercation with the deceased, the appellant intentionally poured acid on the vital parts of the deceased's body, causing grievous burn injuries. The deceased succumbed to the injuries during the course of treatment about 20 days after the incident. It further contended that although the appellant had committed a grave offence amounting to murder or culpable homicide, the trial court adopted a lenient approach by convicting and sentencing him only under Section 326 IPC.

16. It has come on record, and has not been seriously disputed, that the appellant himself also sustained burn injuries by acid during the course of the commission of the offence, which injuries were found to be superficial in nature on examination by P.W.3 Dr. U.N. Pandey, as opposed to the extensive 60% acid burns sustained by the deceased and noted by P.W.4 Dr. K.K. Dixit and P.W.5 Dr. K.N. Singh, who conducted the post-mortem examination. This disparity in the nature and extent of the injuries sustained by the appellant, on the one hand, and the deceased, on the other, is itself a strong pointer to the fact that it was the appellant who was the aggressor and not the reverse, as sought to be suggested. The deceased Gulam Husain did not die instantaneously. He succumbed to his injuries after prolonged medical treatment, death having occurred approximately three

weeks after the occurrence, on account of septicaemia and exhaustion consequent upon the extensive burn injuries. The accused, in his Section 313 Cr.P.C. statement, admitted that acid was thrown during the scuffle but failed to explain how Gulam Husain sustained the injuries.

17. During the course of investigation, the Investigating Officer, P.W.6 S.I. Umesh Chand Upadhya, visited the deceased at the Medical College Hospital on 08.09.1981 and recorded his statement under Section 161 Cr.P.C., which statement clearly implicated the appellant as the person responsible for causing the injuries. Having regard to the fact that this statement was made by the deceased in relation to the cause of his death and the circumstances thereof, and was followed by his death, it satisfies the requirements of Section 32(1) of the Indian Evidence Act and may be admissible as a dying declaration, notwithstanding that it was not recorded before a Magistrate. The diseased Gulam Husain was unable to speak properly at the time of statement recorded and 161 Cr.P.C. by the investigating officer, but he has specifically stated that some material was thrown by his son Razak over him. So far involvement of the accused is concerned, is not doubtful on the basis of evidence available on the record. It is also pertinent to mention here that the accused Razzak has not hospitalised the deceased to provide the proper medical treatment in order to save the life of his father, the deceased was hospitalised by a third person, though, he was present on the spot at the time of occurrence. The accused Razzak tried to escape from the spot after committing the offence, and he was apprehended by the independent witnesses just some distance away from the place of occurrence. It also clearly transpires the mala fide conduct and behaviour of the applicant.

18. The medical evidence on record, taken cumulatively, further discloses that the appellant was aware of the likely consequences of pouring acid upon a human being. Acid is a substance whose corrosive and dangerous nature is a matter of common knowledge. Its deliberate use on the body of another person, particularly in the manner and to the extent reflected by the injuries sustained by the deceased, is sufficient to impute to the appellant the knowledge that his act was likely to cause death or such bodily injury as was likely to cause death. In these circumstances, the findings recorded by the learned trial court that the appellant did not possess the requisite knowledge to attract the offence of murder or culpable homicide does not, in the considered view of this Court, appear to be correct or sustainable on the basis of facts and circumstances and evidence on record.

19. It is, however, noticed that although the appellant stood charged under Section 302 I.P.C., the trial court proceeded to convict him for the lesser offence punishable under Section 326 I.P.C. (voluntarily causing grievous hurt by dangerous weapons or means). On the basis of evidence fact & circumstances available on the record in totality, it appears that applicant was required to convict under section 304 of IPC on the ground that he had knowledge that what he is doing at the time of commencement of offence against his father by way of pouring the acid over the vital part of the body of deceased. On the basis of observation hereinabove, I am not agree with the findings of the trial court. In this regard, section 326 I.P.C., as it stood applicable, prescribes a mandatory sentence along with imposition of fine and the trial court was also required to award a proper sentence of

imprisonment and fine which is as an integral and mandatory part of a sentence under the said Section. It is seen from the impugned judgment that no such proper sentence was in fact awarded by the trial court. This Court is of the view that the trial court committed material legal error in this regard, in failing to impose the fine mandated by law upon recording a conviction under Section 326 I.P.C. Where the IPC provision prescribes punishment in the form, **"....shall be punished with imprisonment .... and shall also be liable to fine" , or "....with imprisonment and fine**", the trial court is expected to impose fine also. Failure to impose fine amounts to legal error in sentencing.

20. Before parting with the record, this Court considers it necessary to record its deep anguish over the manner in which the learned Trial Judge dealt with the present sessions trial. The accused was charged for the offence punishable under Section 302 IPC on the allegation that he intentionally caused the homicidal death of his own father by pouring acid upon him, resulting in fatal burn injuries. The evidence on record, both ocular and medical, unmistakably required a careful examination with reference to the ingredients of Section 302 or 304 IPC. However, the learned Trial Judge, by a manifest misappreciation of the evidence and a complete failure to apply the settled principles governing the offence of murder/culpable homicide, recorded a conviction only under Section 326 IPC and imposed a sentence of merely three years rigorous imprisonment. No legally sustainable reason has been assigned for discarding the charge of murder or for extending such extraordinary and unwarranted leniency. The omission to impose the statutory sentence of fine, which formed an integral part of the punishment prescribed under Section 326 IPC, further reflects patent non-application of mind to the mandatory provisions of law and the settled principles governing sentencing. The cumulative effect of these glaring errors resulted in a serious miscarriage of justice. This Court is conscious that the impugned judgment was rendered more than four decades ago and that the concerned Presiding Officer has, in all probability, demitted judicial office. Nevertheless, the passage of time cannot dilute the duty of this Court to record its disapproval of an adjudication which displays a serious failure to appreciate the evidence, apply the correct legal principles and impose the punishment mandated by law. Judicial discretion is never synonymous with judicial arbitrariness. Sympathy or misplaced leniency has no place where the statute and the evidence demand a reasoned and lawful adjudication. Such lapses have the potential to erode public confidence in the administration of criminal justice. It is, therefore, considered appropriate to observe that every judicial officer trying criminal cases must exercise the highest degree of care, legal acumen and judicial discipline while recording findings on guilt and imposing sentence. This judgment shall serve as a reminder that failure to discharge these fundamental judicial obligations may invite serious judicial criticism and, where the officer is in service, appropriate administrative consequences in accordance with law.

21. It is informed by the learned A.G.A. that no separate appeal or revision for enhancement of sentence has been preferred by the State against the judgment of the trial court. In the absence of any such appeal by the State, and having regard to the well-settled principle that an appellate court ought not to enhance a sentence, or otherwise alter a finding to the prejudice of the accused. On an appeal preferred by the

accused alone, this Court refrains from disturbing the sentence awarded by the trial court or from converting the conviction to one under a higher provision, notwithstanding the observations made hereinabove regarding the correctness of the trial court's reasoning.

22. This Court is further of the view that the trial court, in assigning the benefit, it did to the appellant on the question of sentence, adopted an unduly lenient approach and thereby fell into legal error. The offence in question was committed by the appellant against his own father, within the sanctity of their shared home, and resulted in the latter's death after prolonged suffering.

23. Having regard to the gravity and mode of committing the offence, there is no reasonable ground made out on the record which would justify extending to the appellant the benefit of release on probation of good conduct. The submission made on behalf of the appellant seeking such benefit is, accordingly, rejected.

24. For the reasons recorded above, this Court finds no merit in the appeal insofar as it challenges the finding of guilt recorded against the appellant. The sentence awarded by the learned Sessions Judge, Gorakhpur in S.T. No. 219 of 1983, though found to suffer from a legal infirmity on account of non-imposition of the mandatory fine as sentence under Section 326 I.P.C., is not disturbed, in the absence of any appeal or revision by for enhancement thereof. Therefore, the conviction of the appellant under Section 326 IPC is upheld.

25. The appeal is **dismissed**.

26. The appellant, if on bail, shall surrender within a period of two weeks from today to serve out the remainder of the sentence. The bail bonds are cancelled and sureties, if any, are discharged from their liabilities.

27. If the appellant fails to surrender within stipulated period as above, learned trial court is directed to take immediate legal steps adopting coercive measures including issuance of non-bailable warrant to take the appellant into custody for execution of sentence in accordance with law.

28. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

29. The Registrar (Compliance) is also directed to serve a copy of this order within 48 hours by FAX/e-mail to the concerned court through District & Sessions Judge, Gorakhpur for compliance.

30. Let Ms. Vaishali Rai, learned Amicus Curiae, be paid her remuneration as fixed by this Court yide order dated 07.05.2026, within a period of two weeks from today.

(2026) 7 ILRA 1084
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 31.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 2895 of 2022
& Other Connected Case

Ramakant Tiwari @ Faouji ...Appellant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the conviction of the appellant under S. 302 of the Indian Penal Code, 1860 is sustainable or is liable to be altered to S. 304 Part I of the Indian Penal Code, 1860 under Exception 4 to S. 300 of the Indian Penal Code, 1860; and whether the acquittal of the co-accused is perverse or warrants interference under S. 372 of the Code of Criminal Procedure, 1973. (Paras 12, 14, 70-78, 78-89)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 300 Exception 4, 302 and 304 Part I - Culpable homicide not amounting to murder - Application of Exception 4 to S. 300 is conditioned upon the simultaneous existence of four cumulative requirements: the act must be committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender taking undue advantage or acting in a cruel or unusual manner - The initial altercation over irrigation occurred at 12:00 noon, after which the accused disengaged, returned to their houses, armed themselves with firearms, and returned to the informant's house at 2:00 P.M. to fire, showing a clear break of nearly two hours in the chain of events which allowed tempers to cool, and the use of a deadly firearm against an unarmed person constitutes taking undue advantage - The conviction of the appellant under S. 302 is affirmed and cannot be altered to S. 304 Part I. (Paras 78-89).

Criminal Jurisprudence - Indian Evidence Act, 1872 - S. 3 - Appreciation of evidence - Related and interested witnesses - Ocular testimony vis-a-vis medical evidence - Testimony of a related witness cannot be discarded merely on account of relationship unless they are interested with an ulterior motive to falsely implicate, and must be scrutinized with caution; minor inconsistencies in peripheral details due to lapse of time and human memory do not affect the core of the prosecution case, and the medical evidence of a single entry and corresponding exit wound is consistent with ocular testimony of multiple shots where only the shot fired by the appellant hit the vital part of the deceased - The informant and the eye-witness, being brothers or close relatives of the deceased, were natural witnesses whose presence was natural due to the family land dispute, and they consistently deposed that the appellant fired the fatal shot to the neck of the deceased, which was corroborated by the post-mortem report showing death from shock and hemorrhage due to ante-mortem firearm injury - The ocular testimony of the related witnesses was trustworthy and corroborated by medical evidence. (Paras 41-55).

Criminal Jurisprudence – Indian Evidence Act, 1872 - S. 27 - Recovery of weapon of offence - Ballistic expert report - Corroboration by independent witness in respect of recovery is a rule of prudence and not an inflexible rule of law; testimony of official witnesses is reliable if it inspires confidence, and a ballistic expert's microchemical and comparison examination confirming that the recovered empty cartridge was fired from the recovered country-made pistol is a strong

scientific circumstance connecting the accused with the crime - A country-made pistol of .315 bore along with one empty cartridge was recovered from the personal search of the appellant, and the ballistic report confirmed that the recovered empty cartridge was fired from the recovered pistol, and the presence of the spent cartridge in his possession was not unnatural as the weapon was a single-shot country-made pistol requiring manual extraction - The recovery of the weapon and cartridge was duly proved and corroborated the ocular testimony. (Paras 56-64).

Criminal Jurisprudence - Indian Evidence Act, 1872 - S. 11 - Plea of alibi - Burden of proof - Latin expression alibi means elsewhere, and the plea must be established by the accused with certainty through cogent and convincing evidence to completely exclude the possibility of his presence at the scene of the crime - The appellant set up a plea of alibi through a defence witness and hospital records to show he was at a hospital during the incident, but failed to prove his presence at the hospital at the precise time of the occurrence, and failed to examine any doctor or hospital official to prove the documents - The plea of alibi was not established and was rightly rejected. (Paras 65-69).

Criminal Jurisprudence - Indian Penal Code, 1860 - S. 34 - Common intention - Appeal against acquittal - Common intention cannot be inferred merely because several accused were present or armed; the criminal act must be committed in furtherance of common intention, and interference with acquittal is warranted only if findings are manifestly illegal or perverse; where two views are possible, the one favourable to the accused must prevail - The co-accused were acquitted as the informant admitted previous matrimonial enmity, there was no independent or scientific corroboration connecting their weapons to the crime, and the double-barrel gun was recovered from the house of its licence-holder and not from the exclusive possession of the co-accused - The acquittal of the co-accused was a plausible view representing a proper appreciation of evidence and did not warrant interference. (Paras 70-78, 91, 93)

Held: Merely because a witness is related to the deceased does not render him an interested witness in the eye of law since the testimony of a related witness cannot be discarded merely on account of relationship and is only required to be scrutinized with greater caution - Minor inconsistencies unless they go to the root of the prosecution case cannot form the sole basis for discarding otherwise reliable ocular evidence because human memory is not infallible and variations with respect to peripheral details are natural - The duty of the Court is to separate the grain from the chaff and determine whether the substratum of the prosecution case survives - Corroboration by an independent witness in respect of a recovery is a rule of prudence and not an inflexible rule of law and where the evidence of the police officials is found to be cogent and trustworthy there is no legal prohibition against acting upon such evidence - The plea of alibi requires strict proof of such a nature as would completely exclude the possibility of the presence of the accused at the place of occurrence and must be proved with certainty - Common intention under S. 34 cannot be inferred merely because several accused were present at the place of occurrence or were allegedly armed as the prosecution must establish that the criminal act was committed in furtherance of the common intention of all the accused - The application of Exception 4 to S. 300 is conditioned upon the simultaneous existence of four cumulative essential requirements which require that the act must have been committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner - The use of a deadly firearm against an unarmed person after returning from the place of quarrel with sufficient time for reflection unmistakably amounts to taking undue advantage and falls outside the protective ambit of Exception 4 to S. 300 as the disengagement of the accused from the initial quarrel followed by returning home to arm himself and coming back to the place of occurrence breaks the continuity of the quarrel and clearly evidences deliberation - An order of acquittal further strengthens the presumption of innocence available to the accused and interference is warranted only where the conclusions recorded by the trial court are manifestly illegal perverse or such as no reasonable person would arrive at on the evidence available on record. (Paras 42, 45, 46, 57, 65, 71, 77, 80, 81, 89) (E-7)

Case Law Cited

State of Rajasthan v. Kalki **(1981) 2 SCC 752***; Namdeo v. State of Maharashtra,* **(2007) 14 SCC 150***; Leela Ram v. State of Haryana,* **(1999) 9 SCC 525***; Rachhpal Singh v. State of Punjab,* **(2002) 6 SCC 462***; Praveen Kumar v. State of Karnataka,* **(2003) 12 SCC 199***; Kalpnath Rai v. State,* **(1997) 8 SCC 732***;*

Anter Singh v. State of Rajasthan, **(2004) 10 SCC 657***; Binay Kumar Singh v. State of Bihar,* **(1997) 1 SCC 283***; Kamal Prasad v. State of Chhattisgarh,***(2023) 10 SCC 172***; Devendra Kumar v. State of Chhattisgarh,* **2024 SCC OnLine SC 3182***; Mahesh Balmiki @ Munna v. State of Madhya Pradesh,* **1999 SCC OnLine SC 823***; Sukhbir Singh v. State of Haryana,* **2002 SCC OnLine SC 240***; Rampal Singh v. State of Uttar Pradesh,* **(2012) 8 SCC 289***; Ashok Saxena v. State of Uttarakhand,* **2025 SCC OnLine 224***; Dauvaram Nirmalkar v. State of Chhattisgarh,* **2025 SCC OnLine 955***; Stalin v. State represented by the Inspector of Police,***2020 SCC OnLine SC 723***; Govind v. State of Haryana,* **2025 SCC OnLine SC 2456***; Yogarani v. State,* **2024 SCC OnLine SC 2609***.*

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

murder; culpable homicide; sudden fight; sudden quarrel; heat of passion; premeditation; undue advantage; related witness; interested witness; appreciation of evidence; ballistic expert; Forensic Science Laboratory; plea of alibi; common intention; acquittal; conviction; firearm injury.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal No. 2895 of 2022 and Criminal Appeal No. 128 of 2022 arise out of the judgment and order dated 21.10.2022 passed by the learned Additional Sessions Judge, Court No. 5, District Hardoi in S.T. No. 140 of 2014, S.T. No. 141 of 2014, S.T. No. 142 of 2014, S.T. No. 143 of 2014, and S.T. No. 152 of 2014.

Appearances for Parties

Advs. for the Appellant: Sri Rahul Kumar Singh (in Criminal Appeal No. 2895 of 2022); Ms. Smriti (in Criminal Appeal No. 128 of 2022).

Advs. for the Respondents: Ms. Meera Tripathi, A.G.A. (for the State); Ms. Smriti (for the complainant in Criminal Appeal No. 2895 of 2022); Sri Amit Chaudhary (for respondent nos. 2 to 4 in Criminal Appeal No. 128 of 2022)

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

1. Heard Sri Rahul Kumar Singh, learned counsel for the appellants, Ms. Smriti, learned counsel for the complainant in Criminal Appeal No. 2895 of 2022, Ms. Smriti, learned counsel for the appellant, Sri Amit Chaudhary, learned counsel for respondent nos. 2 to 4 in Criminal Appeal u/s 372 Cr.P.C. No. 128 of 2022, and Ms. Meera Tripathi, learned A.G.A. for the State. Perused the records.

2. The Criminal Appeal No. 2895 of 2022 has been filed by Ramakant Tiwari against his conviction and criminal appeal no. 128 of 2022 has been filed by Ashok Kumar, complainant, against the acquittal of accused-appellants namely Chandrakant Tiwari, Saroj Tiwari and Kaushal Kishor Tiwari. Both these criminal appeals arise out of judgment and order dated 21.10.2022, passed by the learned Additional Sessions Judge, Court No. 5, District Hardoi, passed through the following Session Trial Numbers:

S. No.	Session Trial No.	Case Crime No.	Under Sections	Acquitted Appellants	Convicted Appellants
1.	S.T. No. 140 of	Case	Section 302 r/w	Saroj Tiwari,	**Ramakant Tiwari** — u/s

	2014 *(State v. Ramakant Tiwari and Others)*	Crime No. 1593 of 2013	32, Section 307 r/w 34, Section 506 of Indian Penal Code (in short IPC) and Section 30 of Arms Act	Kaushal Kishore Tiwari, and Chandrakant Tiwari	302 for rigorous imprisonment of life along with a fine of Rs. 25,000/- and in case of default of payment of fine an additional imprisonment of one year; u/s 307 rigorous imprisonment for 5 years along with fine of Rs. 5,000/- and in case of default of payment of fine an additional imprisonment of three months; u/s 506 an imprisonment of one year. All these sentences are to be run concurrently
2.	S.T. No. 141 of 2014 *(State v. Saroj Tiwari)*	Case Crime No. 1616 of 2013	Section 25 Arms Act	Saroj Tiwari	-
3.	S.T. No. 142 of 2014 *(State v. Kaushal Kishor Tiwari)*	Case Crime No. 1617 of 2013	Section 23 of Arms Act	Kaushal Kishor Tiwari	-
4.	S.T. No. 143 of 2014 *(State v. Ramakant Tiwari)*	Case Crime No. 1595 of 2013	Section 25 Arms Act	-	**Ramakant Tiwari** — u/s 25 of Arms Act for one year imprisonment along with a fine of Rs. 1000/- and in case of default of payment of fine an additional imprisonment of one month
5.	S.T. No. 152 of 2014 *(State v. Chnadrakant Tiwari)*	Case Crime No. 1772 of 2013	Section 25 and 27 of Arms Act	Chandrakant Tiwari	-

3. Since the aforesaid criminal appeals arise out of a common judgment and order dated 21.10.2022, as such same have been heard together and decided by a common order and judgement.

Prosecution Story in Nutshell:

4. The prosecution case, in brief, is that the complainant, Ashok Kumar Tiwari, son of Salik Ram, resident of Village Baijupurwa, Majra Seva, Police Station Kotwali Dehat, District Hardoi, lodged a written report on 01.12.2013 at Police Station Kotwali Dehat, District Hardoi, alleging therein that about two years prior to the incident, his wife had allegedly been abducted by Saroj Tiwari, son of his uncle, leaving behind three children who have since been residing with the complainant. It was further alleged that after the said incident, Saroj Tiwari and his brother Kaushal Kishore @ Hallu started residing separately and developed animosity towards the complainant on account of his opposition to their acts. It was further stated that Ramakant @ Fauji, cousin of Saroj Tiwari, had organized a Bhagwat ceremony at his residence and had invited Saroj Tiwari and Kaushal Kishore @ Hallu. On 01.12.2013 at about 2:00 P.M., the accused persons, namely, Ramakant @ Fauji and Chandrakant @ Chotta, sons of Ganga Ram Tiwari, along with Saroj Tiwari and Kaushal Kishore @ Hallu, sons of Vishram Tiwari, started irrigating the agricultural land of the complainant with an intention to forcibly take possession thereof. Upon receiving information regarding the said act, the complainant along with his younger brothers, Rajesh and Rakesh, and his cousins, Nanhe and Pappu, sons of Badshah Tiwari, reached the spot and objected to the said act of the accused persons. Thereupon, the accused persons became aggressive and attempted to assault them, as a result whereof the complainant side retreated towards their house. It is further alleged that thereafter Ramakant @ Fauji, armed with an illegal firearm as well as a licensed double-barrel gun, and Saroj Tiwari and Kaushal Kishore @ Hallu, armed with illegal firearms, opened fire upon the complainant side with an intention to commit their murder. During the course of the incident, Ramakant @ Fauji allegedly fired at Rajesh Tiwari, brother of the complainant, causing firearm injuries to him, as a result whereof he fell on the spot. Thereafter, the accused persons allegedly fled from the place of occurrence while extending threats to kill the complainant and other witnesses. Rajesh Tiwari succumbed to the firearm injuries and died at the place of occurrence itself.

5. On the basis of the written report, FIR was registered as FIR No. 1593 of 2013, under Sections 302 r/w 34, 304 r/w 34 and 506 of IPC against the accused persons, namely, Ramakant Tiwari @ Fauji, Chandrakant Tiwari @ Chhota, Saroj Tiwari and Kaushal Kishore Tiwari @ Hallu, at Police Station Kotwali Dehat, District Hardoi, and the same was duly entered in the General Diary.

6. Upon completion of the investigation, the Investigating Officer found sufficient material against the accused-appellants and submitted charge-sheets. In Case Crime No. 1593 of 2013, charge-sheet was submitted against accused-appellants Ramakant Tiwari @ Fauji, Chandrakant Tiwari @ Chhotta, Saroj Tiwari and Kaushal Kishore Tiwari @ Hallu for the offences punishable under Sections 302, 307 and 506 IPC r/w Section 30 of the Arms Act. Separate charge-sheets were also submitted against accused-appellant Ramakant Tiwari @ Fauji in Case Crime No. 1595 of 2013 under Section 3/25 of the Arms Act, against accused-appellant Saroj Tiwari in Case Crime

No. 1616 of 2013 under Sections 25/27 of the Arms Act, against accused-appellant Kaushal Kishore Tiwari @ Hallu in Case Crime No. 1617 of 2013 under Sections 25/27 of the Arms Act and against accused-appellant Chandrakant Tiwari @ Chhotta in Case Crime No. 1772 of 2013 under Sections 3/25/27 of the Arms Act.

7. In order to prove its case, the prosecution examined Ashok Kumar (PW-1), Nanhu Tiwari (PW-2), Dr. S. P. Singh (PW-3), H. M. Sanjay Singh (PW-4), SHO Brijesh Kumar Tripathi (PW-5), Inspector-in-charge Kiranpal Singh (PW-6), SI Jaichand Sonkar (PW-7), Inspector Ashok Kumar Singh (PW-8), SI Hari Om Gupta (PW-9), Head Constable Rajesh Kumar Mishra (PW-10), SI Sanjay Singh (PW-11), and Inspector-in-charge Ganesh Kumar Shukla (PW-12).

8. In defence, the accused-appellants examined Smt. Sudha, wife of Shrikant, as DW-1. Besides the oral evidence, the defence also produced documentary evidence. On behalf of accused-appellant Chandrakant, certified copies of the record pertaining to Sessions Trial No. 386 of 2008 (State v. Chota @ Chandkant Pandey and Others, Case Crime No. 519 of 2007), under Sections 328/34, 302/34 and 392 IPC read with Section 3(2)(5) of SC/ST Act, Police Station Hariyawan, including the judgment dated 14.02.2017, were brought on record as Paper Nos. 77-B/2 to 77-B/6. On behalf of accused-appellant Ramakant Tiwari, a hospital discharge slip along with the treatment records were filed as Paper Nos. 78-B/1 to 78-B/7. Further, on behalf of accused-appellant Saroj, certified copies of the judgment dated 11.05.2017 passed in Sessions Trial No. 135 of 2001 (State v. Saroj Tiwari and Others), were filed and exhibited as Paper Nos. 79-B/2 to 79-B/10.

9. The following exhibits were produced and proved, by prosecution, before the Trial Court:

Exhibit No.	**Particulars / Item**
Ext. Ka-1	Written Report
Ext. Ka-2	Post-Mortem Report
Ext. Ka-3	Check FIR of Case Crime No. 1593/13
Ext. Ka-4	GD entry of Case Crime No. 1593/13
Ext. Ka-5	Site Plan
Ext. Ka-6	Recovery Memo of sample of blood-stained and plain earth
Ext. Ka-7	Recovery Memo of country made pistol and cartridges of Case Crime No. 1595/13
Ext. Ka-8	Recovery Memo of double barrel gun and cartridges of Case Crime No. 1772/13
Ext. Ka-9	Charge-sheet no. 1593/13
Ext. Ka-10	Recovery Memo of country made pistol and cartridges of Case Crime No. 1616/13
Ext. Ka-11	Recovery Memo of country made pistol and cartridges of Case Crime No. 1617/13
Ext. Ka-12	Panchayatnama
Ext. Ka-13	Letter to RI
Ext. Ka-14	Letter to CMO
Ext. Ka-15	Challan lash
Ext. Ka-16	Sample Seal

Ext. Ka-17	Sketch of dead body
Ext. Ka-18	Site Plan of Case Crime no. 1772/13
Ext. Ka-19	Sanction accorded by District Magistrate under Arms Act for Case Crime no. 1772/13
Ext. Ka-20	Charge-sheet of Case Crime No. 1772/13
Ext. Ka-21	Site Plan of Case Crime No. 1595/13
Ext. Ka-22	Sanction accorded by District Magistrate under Arms Act for Case Crime No. 1595/13
Ext. Ka-23	Charge-sheet of Case Crime No. 1595/13
Ext. Ka-24	Site Plan of Case Crime No. 1616/13
Ext. Ka-25	Sanction accorded by District Magistrate under Arms Act for Case Crime No. 1616/13
Ext. Ka-26	Charge-sheet of Case Crime No. 1616/13
Ext. Ka-27	Site Plan of Case Crime No. 1617/13
Ext. Ka-28	Sanction accorded by District Magistrate under Arms Act for Case Crime No. 1617/13
Ext. Ka-29	Charge-sheet of Case Crime No. 179/13
Ext. Ka-30	Check FIR of Case Crime No. 1595/13
Ext. Ka-31	GD Entry of Case Crime No. 1595/13
Ext. Ka-32	Check FIR of Case Crime No. 1772/13
Ext. Ka-33	GD Entry of Case Crime No. 1772/13
Ext. Ka-34	Check FIR of Case Crime No. 1616/13
Ext. Ka-35	GD Entry of Case Crime No. 1616/13
Ext. Ka-36	Check FIR of Case Crime No. 1617/13
Ext. Ka-37	GD Entry of Case Crime No. 1617/13
Ext. Ka-38	Report of Forensic Science Laboratory
Ext. Ka-39	Report of Forensic Science Laboratory relating to Section 302 IPC

10. The following material exhibits were produced and proved before the Trial Court:

Material Exhibit Number	**Particulars / Item**
Material Exhibit-1	Country made pistol and cartridges recovered from accused-appellant Ramakant Tiwari
Material Exhibit-2	DBBL gun and cartridges recovered on pointing of accused-appellant Chandrakant @ Chotu
Material Exhibit-3 and 4	Sample of blood-stained and plain earth
Material Exhibit-5	Country made pistol and cartridges recovered from accused-appellant Saroj
Material Exhibit-6	Country made pistol and cartridges recovered from accused-appellant Kaushal Kishore

11. The statements of the accused-appellants were recorded under Section 313 of the Code of Criminal Procedure, wherein all the incriminating circumstances appearing in the prosecution evidence were put to them. The accused-appellants denied the prosecution case in its entirety and pleaded false implication. They disputed the testimonies of the prosecution witnesses, asserting that the statements made by them were false and that the alleged recoveries, seizure proceedings and other investigative steps had been falsely fabricated by the Investigating Officer. They also questioned the fairness of the investigation and the genuineness of the prosecution case. Accused-appellant Ramakant Tiwari specifically stated that the report of the Forensic Science Laboratory had been received after an inordinate delay. The accused-appellants further set up a defence that they had been falsely implicated on account of previous enmity arising out of the matrimonial relationship of the informant□s wife with the family of accused-appellant Saroj. Accused-appellant Ramakant Tiwari further stated that he had merely been called to the police station for interrogation but was illegally arrested; that the then Station House Officer had demanded a sum of ₹2,00,000/-, and on his expressing inability to pay the same, his licensed double-barrel gun was taken into possession and was subsequently implicated in another criminal case concerning his younger brother. He maintained that he was innocent and had not committed the alleged offence. The accused-appellants also stated that they intended to lead evidence in defence.

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

12. Learned counsel for the accused-appellants, while assailing the impugned judgment and order of conviction, submitted that the prosecution has failed to establish its case beyond reasonable doubt and that the learned Trial Court has erred both on facts and in law in recording the conviction of accused-appellant Ramakant. It was contended that the prosecution evidence suffers from material contradictions and inconsistencies; that the medical and ballistic evidence does not support the ocular version; that the alleged recoveries are unreliable; that the plea of alibi raised by accused-appellant Ramakant has not been properly appreciated; and that, in any event, the facts of the case would attract Exception 4 to Section 300 IPC, warranting alteration of the conviction from Section 302 IPC to Section 304 Part I IPC.

Submissions made by learned counsel for the complainant and learned A.G.A : -

13. Per contra, learned A.G.A. supported the impugned judgment and order passed by the learned Trial Court and submitted that the prosecution has succeeded in establishing the guilt of accused-appellant Ramakant beyond reasonable doubt through cogent ocular, medical and scientific evidence. It was further submitted that no interference with the conviction and sentence recorded against him is warranted.

14. Learned counsel for the complainant adopted the submissions advanced by the learned A.G.A. in support of the conviction of accused-appellant Ramakant. In addition, thereto, it was submitted that the learned Trial Court committed a manifest error in extending the benefit of doubt to accused-appellants Chandrakant @ Chhota, Saroj Tiwari and Kaushal Kishore @ Hallu. He submitted that the evidence on record sufficiently establishes that the said accused shared the common intention to commit the offence and, therefore, the appeal against their acquittal deserves to be allowed.

Oral Testimonies:

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

15. **PW-1 Ashok Kumar**, the informant, deposed that about two years prior to the incident, his wife, Shraddha, had left with accused Saroj and started living somewhere else. He further deposed that accused-appellant Ramakant, who lived in the same village as that of informant, organized a Bhagwat at his house and invited accused-appellants Saroj and Kaushal Kishore. He further deposed that on the date of the incident, the accused-appellants, namely Ramakant @ Fauji, Chandrakant @ Chhota, Saroj and Kaushal Kishore, attempted to irrigate his agricultural land with the intention of taking forcible possession thereof. Upon objection being raised by him, his brothers namely Rajesh, Rakesh, Nanhe and Pappu, an altercation ensued, wherein the accused-appellants attempted to attack them. He further deposed that they (he and his brothers) ran and came to his (witness) house. He further deposed that at about 2:00 p.m., accused-appellant Ramakant, armed with a country-made pistol, Chandrakant @ Chhota carrying a licensed double-barrel gun, and Saroj and Kaushal armed with country-made pistol reached the door of his house and opened indiscriminate fire with the intention to commit murder. He further deposed that the shot fired by accused Ramakant hit his brother Rajesh Tiwari, who succumbed to the firearm injury on the spot, while the remaining people saved themselves by taking shelter. He further deposed that after the occurrence, the accused-appellants fled away while extending threats of dire consequences. Thereafter, he proceeded to the police station where a written report was scribed at his instance by a person present outside the police station, the contents thereof were read over to him, and after admitting the same to be correct, he affixed his thumb impression thereon. The written report was proved and marked as Ext. Ka-1.

16. **During cross-examination**, he deposed that incident occurred on 1st of the month but he was unable to recall the specific month as he is illiterate. He further deposed that the occurrence had taken place at around 2:00 p.m., whereas the accused-appellants had initially gone to irrigate the disputed agricultural field at around 12:00 noon. He further deposed that after objecting to the irrigation, the accused-appellants returned to their respective houses, procured firearms and thereafter came to his (witness) residence. He further deposed that the disputed field was situated at a short distance from the house of accused-appellant Ramakant and that it took only a few minutes to travel from the field to the place of occurrence. He further deposed that no member from his side was carrying any weapon. He further deposed that Ramakant and Chandrakant resided in the same premises though their residential portions were separate and that his house was situated opposite to the house of Ramakant. He further deposed that the deceased Rajesh was his real brother and deposed that accused-appellant Saroj had eloped with his wife, resulting in previous enmity between the parties. He further deposed that the disputed agricultural land was jointly owned by him and his brothers. He further deposed that the accused-appellants did not fire simultaneously and that the first and only fatal shot was fired by accused Ramakant with a .315 bore country-made pistol while the witness was standing close to the deceased. He further deposed that accused-appellant Chandrakant was carrying the licensed double-barrel gun belonging to accused-appellant Ramakant, though no shot was fired therefrom. He further deposed that the place of occurrence was about ten steps away from the entrance of his house and approximately twenty steps from the house

of accused-appellant Ramakant. He further deposed that the Bhagwat was organized by Ramakant and he was not invited in the same. He further deposed that he reached the police station at about 4:00 P.M. along with his cousin Nanhu, where the written report was scribed by a person outside the police station and thereafter submitted to the police. He further deposed that the police station was situated at a distance of about five miles from his village and that no other villager had accompanied him for lodging the FIR. He further deposed that the altercation in the field had taken place at around 1:30 P.M.; however, he neither informed the police authorities nor any person of the village regarding the said altercation prior to the occurrence. He further deposed that at the time of the firing all the accused-appellants were present at the place of occurrence and that no villager reached the spot immediately after the incident despite the occurrence having taken place during broad daylight. He further deposed that although the police reached the village at around 4:00 P.M. and the inquest proceedings were conducted on the same day, his case had not been registered by the police authorities till that point of time. He further deposed that the accused-appellants remained present at the place of occurrence for about 10 to 15 minutes. He further deposed that apart from accused-appellant Ramakant, accused-appellant Chandrakant fired from a licensed double-barrel gun, whereas accused-appellants Saroj and Kaushal Kishore fired from .315 bore country-made pistols. He further deposed that he was not inside his house during the occurrence and was responding to the firing resorted to by the accused-appellants. He further deposed that he was not carrying a .315 bore country-made pistol. He further deposed that although he had no specific enmity with accused-appellant Saroj, but since Saroj had allegedly eloped with his wife, he bore enmity against all the accused-appellants. He denied the suggestion that he was not present at the place of occurrence or that, on account of the alleged elopement of his wife with accused-appellant Saroj, he had falsely implicated the accused-appellants. He also denied the suggestion that the present case had been instituted falsely due to previous enmity. He further deposed that about two years prior to the occurrence, accused-appellant Saroj had taken away his wife and that he had neither lodged any FIR nor submitted any written complaint before the police in respect thereof. He further deposed that his wife had not left of her own volition but had been taken away by accused-appellant Saroj. He further deposed that on account of the said incident, enmity had developed between him and accused-appellant Saroj, and that it was because of the said enmity that he had implicated accused-appellants Saroj and Kaushal Kishore in the present case.

17. **PW-2 Nanhu Tiwari**, cousin brother of informant, deposed that about two years prior to the occurrence, the wife of informant, Ashok Kumar, had eloped with accused-appellant Saroj Tiwari, whereafter accused-appellants Saroj Tiwari and Kaushal Kishore had left the village and started residing elsewhere. He further deposed that accused-appellant Ramakant @ Fauji had organised a Bhagwat Katha in the last week of November, 2013, wherein accused-appellants Saroj Tiwari and Kaushal Kishore had also participated. He further deposed that on 01.12.2013, at around 2:00 P.M., the accused-appellants attempted to irrigate the agricultural land of informant Ashok Kumar with an intention to take forcible possession thereof. Upon receiving information, the informant Ashok Kumar, Rajesh (deceased), Rakesh, the witness himself and Pappu reached the field and objected to the same, whereupon the accused-appellants became aggressive. He further deposed that thereafter they (witness and his brother) returned to their respective houses, whereupon the accused-appellants also went to their respective houses and came out armed with firearms He further deposed that the accused-appellant Ramakant @ Fauji was carrying a country-made pistol, accused-appellant Chandrakant @ Chhota was carrying a licensed double-barrel gun,

while accused-appellants Saroj Tiwari and Kaushal Kishore were each armed with country-made firearms. He further deposed that the accused-appellants started firing indiscriminately with an intention to commit murder and before they could comprehend the situation, the shot fired by accused-appellant Ramakant @ Fauji struck Rajesh on his face, as a result of which he fell down and succumbed to the injury on the spot. Thereafter, the accused-appellants fled from the place of occurrence while extending threats to kill them.

18. **During cross-examination**, he deposed that he was present at the place of occurrence along with Ashok Kumar, Rakesh and the deceased Rajesh Kumar. He further deposed that accused-appellants Saroj and Kaushal Kishore were his real cousins, whereas accused-appellants Ramakant @ Fauji and Chandrakant @ Chhota were his distant relatives. He further deposed that the houses of the parties were situated at different distances from each other and described the relative location of their respective houses and exits. He further deposed that the occurrence took place at around 2:00 P.M. during the winter season and that Rajesh, Ashok Kumar, Rakesh and he himself were standing outside the house of Ashok Kumar at the relevant time. According to him, Rajesh Kumar was standing at a distance of about four to five feet from him and the assailants were at a distance of about ten to twelve metres. He further further deposed that prior to the occurrence, he had attempted to persuade the accused-appellants not to quarrel and that the altercation initially took place in the agricultural field situated about 30□40 meters towards the north of the village. He further deposed that at the relevant time, neither parties were carrying any lathi or danda or firearm in the field and that they remained there for about fifteen minutes during which altercations and exchange of abuses took place, afraid by the altercation, he and his brother ran away from the filed and came back to the house of Rajesh Kumar and in the mean time the accused-appellants reached their respective houses. He further deposed that after reaching their (accused-appellants) houses, the accused-appellants came out armed with firearms and started indiscriminate firing. He further deposed that the accused-appellant Chandrakant @ Chhota fired first from a licensed double-barrel gun, whereafter accused-appellant Kaushal Kishore fired from a .315 bore country-made pistol. He further deposed that the firing continued simultaneously and that the firearm shot fired by accused-appellant Ramakant @ Fauji struck Rajesh Kumar on his face, resulting in his death. He stated that except for the dispute regarding irrigation of the field, there was no other cause for the occurrence. He further deposed that about two and a half years prior to the occurrence; the wife of informant Ashok Kumar had eloped with accused-appellant Saroj. He, however, denied the suggestion that on account of the said incident accused-appellants Saroj and Kaushal Kishore had been falsely implicated or that he was deposing falsely because of such previous enmity. He further deposed that a total of four shots were fired during the occurrence. He further deposed that no empty cartridge was recovered from the place of occurrence in his presence. He further deposed that the written report had been scribed by the Station Officer Brajesh Kumar at the police station and that Ashok Kumar had affixed his thumb impression thereon. He also stated that the Investigating Officer reached the place of occurrence within about fifteen to twenty minutes. He denied the suggestion that he had not witnessed the occurrence or that he was giving false evidence.

19. **PW-3 Dr. S. P. Singh**, Senior Consultant, District Hospital Hardoi, deposed that on 02.012.2013 he was working on the same post and place as mentioned above. He further deposed that constable Awadhesh Kumar had brought the dead body along the requisite papers. He further deposed that the began with the post-mortem examination on the same day at around 2:05 P.M. and

the same was finished arounf 2:50 P.M.. He approximated the age of the deceased to be around 25 years and of average age. Post-mortem stating was present on the back of the body and rigor mortis had started disappearing from the hands and had started appearing on legs. Following injuries were found during the internal examination:

◦ **Injury No. 1**: Firearm wound of entry size 1 cm X 1cm X muscle deep on right side of chin 3cm below the right angle of mouth. Margins were lacerated and inverted, direction from forward to backward.

◦ **Injury No. 2**: Firearm wound of exit size 1.5 cm X 1.5 cm X connecting injury no. 1 situated at the back of the neck, 2 cm lateral to C-5 bone. Margins were lacerated and inverted.

On internal examination, he found that the right carotid artery of the neck was ruptured and the muscles of the neck were extensively lacerated. He further deposed that the membranes of the brain were pale and that the lungs, liver, spleen and kidneys were also found pale. Both chambers of the heart were found empty. The stomach contained approximately 60 ml of semi-digested food. In his opinion, the death of the deceased had occurred on account of shock and hemorrhage resulting from the ante-mortem firearm injury. He further opined that the death had occurred approximately one day prior to the post-mortem examination and that the injury could have been caused by a single bullet fired from a firearm at about 2:00 P.M. on 01.12.2013. He verified his handwriting and signature on the post-mortem report and the same was marked as Ext. Ka-2.

20. **During cross-examination**, he deposed that there was only one entry wound and one exit wound caused by the firearm injury. He further deposed that the entry wound was situated on the right side of the neck, approximately 3 cm below the angle of the right mandible, whereas the exit wound was located on the posterior aspect of the neck near the C-5 bone, about 2 cm lateral thereto. He further deposed that there was no blackening, tattooing or scorching around either the entry or the exit wound. He further deposed that the trajectory of the firearm injury was from front to back. He further deposed that no wad, pellet or bullet was recovered from the body during the post-mortem examination and that, apart from the aforesaid firearm injury, no other external or internal injury was found on the body of the deceased. He further deposed that the exact distance from which the firearm had been discharged could only be opined by a Ballistic Expert. He further deposed that the firearm shot had been fired from the front. He further deposed that rigor mortis ordinarily commences about six hours after death, becomes fully established thereafter, remains for about twelve hours and then gradually passes off. He further deposed that the exact time at which the firearm injury was inflicted could not be stated with certainty. He further deposed that at the time of post-mortem examination he had received eleven police papers, though a copy of the FIR had not been supplied to him. He further deposed that approximately 60 ml of semi-digested food was present in the stomach, indicating that the deceased had taken food within about six hours prior to his death, though the nature of the food could not be identified. He further opined that there could be a variation of approximately six hours in the estimated time since death mentioned in the post-mortem report.

21. **PW-4 Sanjay Singh**, Sub-Inspector, Police Station Sultanpur, deposed that on 01.12.2013 he was posted as Head Moharrir in Police Station Kotwali Dehat, District Hardoi. He further

deposed that on the same day informant Ashok Kumar Tiwari presented a written report bearing his thumb impression. On the basis of the said written report, he registered Case Crime No. 1593 of 2013, under Sections 302, 307 and 506 IPC, and prepared the check FIR at around 4:00 P.M. He further proved the check FIR which was marked as Ext. Ka-3. He further deposed that he made the corresponding General Diary entry and proved the same, which was marked as Ext. Ka-4. He further deposed that thereafter, the investigation of the case was entrusted to Station Officer Brajesh Kumar Tripathi.

22. **During cross-examination**, he deposed that the informant had come alone to the police station carrying the written report. He further deposed that he did not enquire as to who had scribed the written report or at whose instance it had been written. He further deposed that it took him approximately half an hour to prepare the check FIR and that a copy thereof was supplied to the informant thereafter. He further deposed that immediately after registration of the FIR, he prepared the special report and dispatched the same to the superior authorities. He further deposed that neither the time of preparation of the special report nor the date of its dispatch was mentioned in the GD. He further deposed that although the FIR was dispatched to the Court within twenty-four hours, the endorsement of its receipt in the Court was dated 11.12.2013. He further deposed that he had not obtained the thumb impression of the informant on the original copy of the FIR. He further deposed that the written report had been directly handed over to him by the informant, though he did not know by whom it had been scribed. He denied the suggestion that the written report had been prepared at his instance or that he had got the same scribed through any person known to him. He also denied the suggestion that the FIR had not been registered in accordance with law or that he was deposing falsely.

23. **PW-5 Brijesh Kumar Tripathi**, Station House Officer, Police Station Mohammadi Kheeri, deposed that on 01.12.2013 was posted as SHO in Kotwali Dehat and on the same day case crime no. 1593 of 2013 was registered in his presence. He further deposed that he initiated the investigation and prepared a site map of the spot, which was proved and marked as Ext. Ka-5. He further verified and proved the recovery memo of plain and blood-stained soil, which was marked as Ext. Ka-6. He further deposed that the accused-appellant Ramakant @ Fauji was arrested on 03.12.2013 at around 11:20 P.M. and from his possession a 0.315 country-made-pistol along with three live and one empty cartridge were recovered, the recovery memo of the same was marked as Ext. Ka-7. He further deposed that while recording the statements of the accused-appellant Ramakant, he confessed that from the said pistol a bullet was fired as a consequence of which Rajesh died. He further deposed that the accused-appellant Saroj confessed that he along with Hallu, Chota and Fauji fired at on the opposite party and Fauji's bullet hit Rajesh. He further deposed that accused-appellant Kaushal confessed that Rajesh died due the bullet fired by Fauji and he also fired bullets. He further deposed that on 10.12.2013 accused-appellant Chandrakant @Chhota surrender and the entry of the same was made in the GD. He further deposed that accused-appellant Chandrakant confessed that he took the licensed double barrel gun of Fauji, rest of the accused-appellant fired from country-made-pistols and it was Fauji's bullet which hit Rajesh and he died as a consequence of it. He further deposed that Chandrakant led to the recovery said double barrel gun from thatched roof on the northern wall of accused-appellant Ramakant's house. He further deposed that from the said gun smell of the gun powder was coming, three live cartridges of 12 bore were recovered from its but cover and on opening the barrel, one empty

cartridge was recovered from the left barrel and one misfired cartridge from the right barrel. He further deposed that the recovery memo of the same was prepared and was marked as Ext. Ka-8. He further deposed that, on the basis of information received from an informant, the accused-appellant, Ramakant @ Fauji, was arrested at Kaudha Railway Station at around 11:20 p.m. Upon searching him, one country-made pistol of 0.315 bore was recovered from the left pocket of his pants, while three live cartridges of 0.315 bore and one empty cartridge were recovered from the right pocket of his pants. Further, three sealed bundles were produced before the Trial Court, one of which bore the seal and label of FIR No. 1595/13 under Section 3/25 of the Arms Act against Ramakant @ Fauji. Upon being opened before the Court, the bundle was found to contain one country-made pistol of .315 bore, three live cartridges of .315 bore marked as LC1, LC2, and LC3, one empty cartridge marked as EC1, two empty cartridges marked as TC1 and TC2, and one packing cloth. He further deposed that the said pistol and cartridges had been recovered from the accused-appellant, Ramakant Tiwari @ Fauji, and the same were marked as Material Exhibit-1. Further, upon opening the second sealed bundle, a DBBL gun was found inside. The said bundle bore the seal and label of FIR No. 1772/13 under Sections 3/25/27 of the Arms Act against Chandrakant @ Chhota. Upon opening the bundle, it was found to contain one DBBL gun, three live cartridges of 12 bore, one empty cartridge of 12 bore, and one misfired cartridge of 12 bore. He further deposed that the said articles had been recovered at the pointing out of the accused-appellant, Chandrakant @ Chhota, and the same were marked as Material Exhibit-2. Further, upon opening the third sealed bundle, two separate boxes containing samples of blood-stained earth and plain earth were found. The same bundle also contained the blood-stained clothes of the deceased, comprising one coloured shirt, one T-shirt, one pair of pants, one underwear, and one vest. The box containing the sample of blood-stained earth and the box containing the sample of plain earth were marked as Material Exhibits-3 and 4, respectively. He further deposed that, upon completion of the investigation, he submitted charge-sheet No. 9/14 before the Court on 21.01.2014. The said charge-sheet was proved and marked as Exhibit Ka-9.

24. **During cross-examination**, he deposed that a .315 bore country-made pistol had been recovered from accused Ramakant. He further deposed that, out of the three empty cartridges produced before the Court, one had been recovered by him from the possession of accused Ramakant, while the remaining two were test-fired cartridges prepared by the Forensic Science Laboratory during ballistic examination. He identified the empty cartridge marked EC-1 as the one recovered by him and stated that the remaining two cartridges bore the writings and signatures of the officials of the Forensic Science Laboratory. He further deposed a licensed double-barrel gun, standing in the name of accused Ramakant @ Fauji, had been recovered on the pointing out of accused Chandrakant, from the thatched roof near the northern wall of the house of accused Ramakant @ Fauji. He clarified that the said gun had not been recovered from the possession of accused Ramakant, from whom only the .315 bore country-made pistol had been recovered. He further deposed that the fatal firearm injury sustained by the deceased Rajesh had been caused by a .315 bore pistol allegedly fired by accused Ramakant @ Fauji and that no person other than the deceased had sustained any firearm injury during the occurrence. He further denied the suggestions that the alleged recoveries had been fabricated, that the weapons had not been recovered from the accused-appellants, that the licensed gun had in fact been recovered by Sub-Inspector Jaichandra Sonkar, or that the recovery memo had been prepared subsequently at the police station. He further

deposed that he saw the disputed agricultural field but the entry of the same was not made in GD neither a site map of the same was prepared.

25. **PW-6 Kiranpal Singh**, Inspector-in-Charge, Crime Branch, District Meerut, deposed that on 07.12.2013, he was posted as Sub-Inspector at Police Station Kotwali Dehat. On the said date, acting on information received from an informant that the accused-appellants, Saroj and Kaushal, were attempting to flee, he, along with the police force, apprehended both of them. Upon the personal search of accused-appellant Saroj, one country-made pistol of .315 bore along with two live cartridges of .315 bore was recovered from his possession. Similarly, upon the personal search of accused-appellant Kaushal, one country-made pistol of .315 bore along with two live cartridges of .315 bore was recovered from his possession. He further deposed that both the pistols were in working condition. He further deposed that two sealed bundles were produced before the Trial Court. One of the bundles bore the seal and label of FIR No. 1616/13 under Sections 25/27 of the Arms Act against Saroj. Upon opening the said bundle before the Court, one country-made pistol of .315 bore and two live cartridges of .315 bore were found therein. The said articles were marked as Material Exhibit-5. Upon opening the second sealed bundle, bearing FIR No. 1617/13 under Sections 25/27 of the Arms Act against Kaushal, one country-made pistol of .315 bore and two live cartridges of .315 bore were found therein. The said articles were marked as Material Exhibit-6.

26. **During cross-examination**, he deposed that the recovery of the country-made pistols was effected from the Hardoi-Shahjahanpur Road, which was a busy public road frequented by buses plying between Hardoi and Delhi. He further deposed that no independent public person was present at the place of recovery at the relevant time. He further stated that although the recovery memo did not mention the length or breadth of the recovered pistols, the same was because the inscriptions on the weapons were not clearly visible at the time of recovery. He denied the suggestion that the recovery was fabricated or that the markings on the recovered articles were clearly visible but deliberately omitted from the recovery memo. He further deposed that apart from the recovered pistols and cartridges, no other article was recovered from the personal search of the accused. He further stated that before conducting the personal search of the accused, the members of the police party had searched one another to ensure that none of them was carrying any incriminating article, though such fact had not been recorded in the recovery memo. The witness denied the suggestions that the recoveries had been falsely shown at the instance of superior officers to strengthen the prosecution case, that no incriminating articles had in fact been recovered from the accused, or that the accused had not attempted to flee on seeing the police party.

27. **PW-7 Jaichand Sonkar**, SI (Retd.), deposed that on 01.12.2013 he was posted as SI at police station Kotwali Dehat and that on the same day when case no. 1593/13 was registered u/s 302, 307 and 506 IPC, he accompanied SHO Brijesh Kumar Tripathi. He further deposed that under the direction of SHO he prepared the inquest of the dead body, relevant documents for the panchayatnama and thereafter sent the body for post-mortem examination. He proved and verified the panchayatnama, letter to RI, letter to CMO, challan lash, sample seal and sketch of the dead body which were marked as Ext. Ka-12, Ka-13, Ka-14, Ka-15, Ka-16 and Ka-17 respectively. He further deposed that accused-appellant led to recovery of DBBL gun along with three live, one misfired and one empty cartridge from thatched roof adjacent to the house of accused-appellant Ramakant @ Fauji. He further deposed that on the basis of instruction of SHO Brijesh Kumar

Tripathi, he had prepared the recovery memo of the above-mentioned articles, which was proved and marked as Ext. Ka-8.

28. **During cross-examination**, he deposed that upon the accused-appellant, Chandrakant @ Chhota, being taken on police remand, he was taken directly to the place of occurrence. He further deposed that the DBBL gun was recovered from a thatched roof situated adjacent to the house of Ramakant. He further deposed that the said thatched roof belonged to accused-appellant Ramakant @ Fauji. He further deposed that at the time of recovery, the gun contained one misfired cartridge in the right barrel, one empty cartridge in the left barrel, and three live cartridges in the buttstock. He also admitted the suggestion put to him that the weapon of offence was not recovered from the house of the accused-appellant Chandrakant @ Chhota. He denied the suggestion that the proceedings of the case were carried by him on wrong date and time, while he was still sitting in police station and for the same reason no independent witnesses were found.

29. **PW-8 Ashok Kumar Singh**, Inspector, EOW Lucknow, deposed that on 05.01.2014 he was posted as SSI, Kotwali Nagar and on the same day by the orders of the Circle Officer, Hardoi, the ivestiagtion of FIR No. 1772/13 u/s 3/25/27 of Arms Act against Chandrakant @ Chhotta was handed over to him. He further deposed that after taking over the investigation, he examined the previous case diary, recorded the statements of the informant and other prosecution witnesses, inspected the place of occurrence at the instance of the informant and prepared the site plan. He further deposed that after collecting sufficient evidence, he submitted the proposal for grant of prosecution sanction before the District Magistrate, obtained the requisite sanction and thereafter submitted the charge-sheet against accused-appellant Chandrakant @ Chhota under the provisions of the Arms Act. He proved the site plan, sanction order and charge-sheet prepared by him, which were marked as Ext. Ka-18, Ka-19 and Ka-20 respectively. He further deposed that he was also entrusted with the investigation of Case Crime No. 1595 of 2013 under Section 3/25 of the Arms Act against Ramakant Tiwari @ Fauji. After taking over the investigation, he examined the earlier case diary, recorded the statements of the informant and the relevant police officials, inspected the place of occurrence, prepared the site plan and, upon finding sufficient evidence, submitted the proposal for prosecution sanction before the District Magistrate. After sanction was accorded, he submitted the charge-sheet against accused-appellant Ramakant Tiwari @ Fauji. He proved the prosecution sanction and the charge-sheet, which were marked as Ext. Ka-21 and Ka-22 respectively.

30. **During cross-examination**, he deposed that the statements of witnesses in both Arms Act cases were recorded at the police station and not at the place of occurrence. He further deposed that no independent witnesses were shown in the charge-sheets, though statements of the police witnesses had been recorded. He further deposed that the licensed double-barrel gun allegedly recovered at the instance of accused-appellant Chandrakant belonged to accused-appellant Ramakant Tiwari @ Fauji and had been recovered from the thatched roof of Ramakant's house on the pointing out of Chandrakant. He denied the suggestion that the weapon had in fact been recovered by another police officer or that the alleged recovery was fabricated. He denied the suggestions that the site plans had been prepared while sitting at the police station without visiting the place of occurrence, that statements of witnesses had not been recorded by him, or that the charge-sheets were prepared on the basis of a false or manipulated investigation.

31. **PW-9 Hari Om Gupta**, Sub-Inspector (Retd.), deposed that on 07.12.2013 he was posted as Sub-Inspector at police station Kotwali Dehat, Hardoi and on the same day, investigation of case crime nos. 1616 of 2013 and 1617 of 2013 under Sections 25/27 Arms Act against accused Saroj Tiwari and Kaushal Kishore @ Hallu was entrusted to him. He further deposed that he inspected the place of occurrence, prepared the site plan, recorded the statements of the witnesses, obtained prosecution sanction from the District Magistrate and, on completion of investigation, submitted charge-sheets against both the accused. He proved the site plans, prosecution sanction orders and charge-sheets prepared in reference to case against Saroj, which were marked as Ext. Ka-24, Ka-25 and Ka-26. He proved the site plans, prosecution sanction orders and charge-sheets prepared in reference to case against Kaushal Kishore @ Hallu, which were marked as Ext. Ka-27, Ka-28 and Ka-29 respectively.

32. **During cross-examination**, he admitted that the alleged recovery was made from a public place and that no independent witness was associated with the recovery proceedings. He denied the suggestions that the recovery was fabricated, that the site plan was prepared without visiting the place of occurrence, or that the charge-sheets were submitted after conducting a false investigation.

33. **PW-10 Rajesh Kumar Mishra**, Head Constable, Police Station Bado Sarai, District Barabanki, deposed that on 03.12.2013 he was posted as Head Constable at police station Kotwali Dehat and on the same day he prepared a check FIR on the basis of recovery memo of FIR No. 1595/13 under 3/25 of Arms Act, which was proved and marked as Ext. Ka-30. He further deposed that he also made a GD entry of the same, which was proved and marked as Ext. Ka-31. He further deposed that on 22.12.2013,a check FIR on the basis of recovery memo of FIR No. 1772/13 u/s 3/25/27 of Arms Act, which was proved and marked as Ext. Ka-32. He further deposed He further deposed that he also made a GD entry of the same, which was proved and marked as Ext. Ka-33.

34. **During cross-examination**, he deposed that the FIR against the accused-appellant Chandrakant under Section 3/25/27 of Arms Act was filed by Sub-Inspector Brijesh Kumar Tripathi and he (sub-inspector) came to him at around 5:00 P.M.. He further deposed that sub-inspector along with the recovery memo had also brought seized and sealed DBBL gun of Chandrakant. He denied the suggestion that at the time of registration of FIR, SO was not present with the accused-appellant or with the gun or SO did not provide him with the recovery memo or that the Ext. Ka-8 was prepared at the police station or that the signature of the accused and of others were obtained at the police station. He further deposed that the case u/s 3/25 of Arms Act against Ramakant by SO Brijesh Kumar Tripathi was registered by him and he also made the corresponding GD entry. He further deposed that while preparing the check FIR seized weapon was shown to him, as they were wrapped in a sealed bundle and were marked as .315 bore country-made pistol. He denied the suggestion that the signature of the accused-appellant was made at police station or that the recovery memo was false or that the proceedings were done while being present in police station or that he took the actions on the behest of SO.

35. **PW-11 Sanjay Singh**, SI, Police Station Shahabad , deposed that on 07.12.2013, he was posted as Head Moharrir at Police Station Kotwali Dehat, District Hardoi and on the same day, he prepared check FIR no. 201/13 at around 6:10 AM, on the basis of the recovery memo and arrest pertaining to case crime Nos. 1616/13 and 1617/13 under Sections 25/27 of the Arms Act against

Saroj Tiwari and Kaushal Kishore @ Hallu and the same was proved and marked as Ext. Ka-34.He further deposed that he also made a GD entry of the same, which was proved and marked as Ext. Ka-35. He further deposed that the investigation of the case relating to accused Kaushal Kishore @ Hallu and Saroj Tiwari was entrusted to SI Hari Om Gupta. He further deposed that check FIR no. 1616/13 against the accused Saroj Tiwari was prepared by him and the same was marked as Ext. Ka-36. He further deposed that GD entry of the same was also made by him, which was marked as Ext. Ka-37.

36. **During cross-examination**, he deposed that the recovery of the firearms from accused Saroj and Kaushal had taken place simultaneously and, therefore, he had prepared both check reports in one form by mentioning separate case crime numbers. He denied the suggestion that the check report is ante-time or ante-date, or that for the said reason it had not been sent to the Circle Officer on time and was forwarded subsequently.

37. PW-12 Gangesh Kumar Shukla, Inspector-in-charge, Police Station Kotwali Dehat, deposed that on 29.08.2022, he was posted on the same post and place. He further deposed that the Forensic Science Laboratory reports relating to Case Crime No. 1595/13 under Section 3/25 Arms Act and Case Crime No. 1595/13 under Sections 302, 307 and 506 IPC had earlier been forwarded by the Forensic Science Laboratory, however, for certain reasons the same were not available on the original case record. He further deposed that the second copy of Forensic Science Laboratory report was received and forwarded before the Court through a supplementary application, which was proved and marked as Ext. Ka-38. He also proved the forensic examination report relating to Section 302 IPC, which was marked as Exhibit Ka-39.

38. **During cross-examination**, he deposed that the FSL report received by him in respect of the offence under Sections 302 and 307 IPC did not mention that it was a second copy. He admitted that he had no knowledge whether the double-barrel gun recovered in Crime No. 1617 of 2013 under Sections 3/25/27 of the Arms Act had been sent for forensic examination and stated that no FSL report regarding the said gun had been received by him. He further deposed that the FSL report relating to the disputed .315 bore pistol had been received. He further deposed that he had no knowledge whether any other articles had been sent for forensic examination or from which accused the recovered weapons had been seized, as the FSL report only dealt with the articles examined. He further deposed that he was not posted at the police station when the seized articles were forwarded to the Forensic Science Laboratory. He denied the suggestion that the report had been prepared only to strengthen the prosecution case.

39. **DW-1 Sudha**, wife of Shrikant, deposed that accused Ramakant @ Fauji was a resident of her village and that there had been a dispute between Ashok and Saroj on account of Ashok's wife leaving with Saroj. She stated that on the date of the incident Ramakant had gone to Hardoi for medical treatment and returned to the village at around 4:00 5:00 P.M., by which time the altercation had already taken place.

40. During cross-examination, she deposed that she came to know about the death of Rajesh only later and had not witnessed the actual occurrence. She further deposed that she was already standing on the roof before the quarrel commenced. She further deposed that she had seen

Ramakant leaving for Hardoi for medical treatment and had informed persons enquiring about him that he had undergone an operation and had gone to obtain medicines. She denied the suggestions that she was deposing falsely, that she had been won over by the accused, or that she had come to Court only at the instance of the wife of accused Ramakant @ Fauji.

Court Analysis:

Contradictions in the testimony of PW-1 and PW-2 and absence of independent witness

41. Learned counsel for the accused-appellant Ramakant assailed the findings recorded by the learned Trial Court on the ground that the prosecution case rests solely upon the testimonies of PW-1 Ashok Kumar and PW-2 Nanhu Tiwari, both of whom are closely related to the deceased and are, therefore, interested witnesses. It was further submitted that their depositions suffer from material contradictions with regard to the sequence of events, the role attributed to the accused and the manner of occurrence, rendering the prosecution case wholly unreliable. It was also argued that despite the alleged incident having taken place in broad daylight in a residential locality, no independent witness was examined by the prosecution, thereby casting a serious doubt upon the prosecution version.

42. At the outset, it is necessary to bear in mind the distinction between a related witness and an interested witness. Merely because a witness is related to the deceased does not render him an interested witness in the eye of law. A witness can be said to be interested only when he has a direct stake in securing the conviction of the accused or has some ulterior motive to falsely implicate him. The law has consistently recognized that the testimony of a related witness cannot be discarded merely on account of relationship; rather, such evidence is required to be scrutinized with greater caution. If, upon such scrutiny, it is found to be natural, trustworthy and consistent on the material particulars, there is no legal impediment in placing reliance upon it. In this regard, reference may be made to the decisions of the Hon'ble Supreme Court in **State of Rajasthan v. Kalki (1981) 2 SCC 752, Namdeo v. State of Maharashtra, (2007) 14 SCC 150 and Leela Ram v. State of Haryana, (1999) 9 SCC 525.**

43. Furthermore, PW-1 is the brother of the deceased and the informant, whereas PW-2 is also a close relative. Their presence at the place of occurrence cannot be said to be unnatural, particularly when the occurrence itself is alleged to have arisen out of a dispute concerning the irrigation and possession of agricultural land belonging to the family. The defence has not been able to demonstrate any circumstance which would indicate that these witnesses were not present at the place of occurrence or that they deliberately substituted the real assailant with an innocent person.

44. It is true that certain inconsistencies emerge in the testimonies of PW-1 and PW-2. PW-1 stated that the fatal shot fired by accused-appellant Ramakant was the first shot, and did not speak of any earlier discharge by Chandrakant. PW-2, by contrast, stated that Chandrakant fired first from the licensed double-barrel gun, followed by a shot from Kaushal Kishore, with the firing thereafter becoming simultaneous the fatal shot again being traced to Ramakant. PW-2 further deposed that four shots were fired in all; PW-1 gave no such count. However, such discrepancies do not strike at

the root of the prosecution case, as both witnesses have consistently deposed that the altercation initially took place over the disputed agricultural land, that thereafter the accused returned armed with firearms, and that the fatal firearm injury resulting in the death of Rajesh was caused by accused Ramakant. The core of the prosecution case thus remains intact.

45. It cannot be expected that a witness to a ghastly incident involving the murder of a close family member would, after a considerable lapse of time, narrate the entire occurrence before the Court with photographic precision or mathematical exactitude. Human memory is not infallible. Variations with respect to peripheral details are not only natural but are often indicative of the fact that the witnesses are recounting the incident from memory rather than reproducing a tutored version. The depositions of PW-1 and PW-2 were recorded after a considerable period of time and through an exhaustive cross-examination, therefore, minor inconsistencies were bound to surface. Such discrepancies, unless they go to the root of the prosecution case, cannot form the sole basis for discarding otherwise reliable ocular evidence.

46. The learned Trial Court has rightly applied the well-established principle that the duty of the Court is to separate the grain from the chaff. Where exaggerations or embellishments are mixed with truthful portions of the testimony, the entire evidence need not be rejected. The Court is required to separate the credible part from the unreliable portion and determine whether the substratum of the prosecution case survives. On a careful appreciation of the evidence on record, this Court finds no reason to take a view different from that adopted by the learned Trial Court.

47. The submission regarding the absence of independent witnesses is equally devoid of merit. The occurrence arose out of a dispute between close relatives and is stated to have taken place in a village setting. It is a matter of common judicial experience that independent villagers are generally reluctant to involve themselves in criminal litigation, particularly where the dispute is between members of the same family or rival factions of the village. Their reluctance to come forward cannot, by itself, be treated as a circumstance sufficient to reject the otherwise reliable testimony of natural witnesses. The prosecution is required to prove its case by the quality of evidence and not by the number of witnesses examined. Merely because no independent witness has been examined does not render the evidence of PW-1 and PW-2 unacceptable, especially when their presence at the place of occurrence is natural and their testimony, on the material aspect concerning the role of accused Ramakant, finds corroboration from the medical evidence.

Medical and Ballistic Evidence vis-a-vis the Ocular Testimony

48. The learned counsel for the accused-appellant Ramakant contended that the prosecution case is rendered doubtful by the medical evidence itself. It was urged that although the prosecution alleged indiscriminate firing by all the accused-appellants, the post-mortem examination disclosed only a solitary firearm injury comprising one entry wound and one corresponding exit wound. It was further submitted that neither blackening, tattooing nor scorching was found around the entry wound; no bullet or pellet was recovered from the body of the deceased; and, therefore, the ocular version was wholly inconsistent with the medical evidence. Learned counsel also questioned the recovery of the .315 bore country-made pistol and the empty cartridge from accused-appellant

Ramakant on the following day of the incident, contending that no prudent person would continue to carry a spent cartridge after committing the offence.

49. The post-mortem report, Ext. Ka-2, unequivocally establishes that the deceased sustained a solitary firearm injury comprising one entry wound and one corresponding exit wound. The post-mortem doctor, PW-3, categorically opined that death had occurred due to shock and haemorrhage resulting from the ante-mortem firearm injury. He further deposed that the injury could have been caused by a single firearm shot. Thus, the medical evidence clearly establishes that only one firearm projectile struck the deceased. The consistent prosecution case, as deposed by PW-1 and PW-2, is that although several shots were fired by the accused-appellants, only the shot fired by accused-appellant Ramakant hit the deceased, while the remaining shots did not find their target. The mere fact that no other person sustained firearm injuries or that only one injury was found on the body of the deceased does not render the prosecution version inherently improbable.

50. Equally untenable is the submission founded upon the absence of blackening, tattooing or scorching around the entry wound. Such features are merely relevant for determining the approximate range from which the firearm was discharged and are not decisive of the prosecution case. Significantly, the post-mortem doctor did not opine that the injury could not have been caused in the manner alleged by the prosecution. On the contrary, he specifically stated that the exact distance from which the firearm had been discharged could only be determined by a Ballistic Expert. Likewise, the non-recovery of the projectile from the body of the deceased loses much of its significance in the present case, as the post-mortem examination itself records a corresponding exit wound, clearly indicating that the projectile had traversed the body and exited therefrom.

51. The record further reveals that the .315 bore country-made pistol allegedly recovered from accused-appellant Ramakant, together with one empty cartridge and three live cartridges recovered from his possession, was forwarded to the Forensic Science Laboratory for examination. As per its report, Ext. Ka-38, the recovered empty cartridge was marked as EC-1, whereas the three live cartridges were marked as LC-1, LC-2 and LC-3. Upon microchemical examination, the Laboratory detected residues of nitrate, lead, copper and nickel on the said pistol, indicating that it was a fired cartridge case.

52. The Ballistic Expert thereafter test-fired two cartridges from the recovered .315 bore country-made pistol, which were marked as TC-1 and TC-2. On comparison of the firing pin impressions and breech-face marks found on EC-1 with those appearing on the test-fired cartridge cases, the Expert opined that EC-1 had been discharged from the said country-made pistol recovered from accused-appellant Ramakant. This scientific opinion constitutes an important corroborative circumstance connecting the recovered firearm with the fired cartridge and substantially strengthens the prosecution case.

53. The Hon'ble Supreme Court in **Rachhpal Singh v. State of Punjab, (2002) 6 SCC 462** held that where ballistic examination positively establishes that the recovered cartridge cases had been fired from the weapon recovered from the accused, minor discrepancies relating to the nature of firearm injuries or the precise description of entry and exit wounds lose much of their significance, particularly when the presence of the accused with the weapon at the relevant place

and time stands otherwise established. The principle enunciated therein squarely applies to the present case.

54. Equally unpersuasive is the argument that the recovery of the spent cartridge from accused-appellant Ramakant on the following day of the occurrence is inherently improbable. The submission proceeds on the premise that every offender would invariably discard every incriminating article immediately after the commission of the offence. Such an assumption neither accords with ordinary human conduct nor can it be elevated into a rule of law. Furthermore, the weapon in question is a single-shot country-made pistol. Unlike self-loading or automatic firearms, such a weapon does not ordinarily eject the spent cartridge automatically upon discharge. Before the weapon can be reloaded, the empty cartridge has to be manually removed from the chamber. If, immediately after firing the fatal shot, the accused fled from the place of occurrence without reloading the weapon, the presence of the spent cartridge in the weapon or in his possession cannot be regarded as so unnatural or improbable as to render the recovery unbelievable. The Court cannot discard an otherwise duly proved recovery merely because the defence suggests that the accused ought to have acted differently after the occurrence.

55. Be that as it may, the conviction of accused-appellant Ramakant does not rest solely upon the recovery of the firearm or the empty cartridge. The recovery is only one link in the chain of circumstances and lends corroboration to the otherwise cogent ocular testimony of PW-1 and PW-2, which, in turn, finds substantial support from the medical and forensic evidence. Viewed cumulatively, the ocular, medical and ballistic evidence present a consistent and coherent prosecution case. The submissions advanced on behalf of the accused-appellant, therefore, do not create any dent in the findings recorded by the learned Trial Court, which rightly concluded that accused-appellant Ramakant was responsible for the fatal firearm injury sustained by the deceased.

Evidentiary Value of the Recovery Effected from Accused-Appellant Ramakant

56. Learned counsel for the accused-appellant Ramakant next assailed the recovery of the .315 bore country-made pistol and cartridges from his possession. It was contended that the alleged recovery is inherently unreliable as it was effected from Kaudha Railway Station, a place admittedly accessible to the public at large, and that no independent witness was associated with the recovery proceedings. It was, therefore, submitted that the recovery cannot safely be relied upon.

57. The law is well settled that corroboration by an independent witness in respect of a recovery is a rule of prudence and not an inflexible rule of law. Where the evidence of the police officials effecting the recovery is found to be cogent, consistent and trustworthy, there is no legal prohibition against acting upon such evidence merely because it has not been corroborated by an independent witness. In Praveen Kumar v. State of Karnataka, (2003) 12 SCC 199 the Hon'ble Supreme Court held that though courts ordinarily seek independent corroboration as a matter of caution, once the testimony of the investigating officer inspires confidence, the absence of an independent witness does not render the recovery unreliable. A similar principle was reiterated in **Kalpnath Rai v. State, (1997) 8 SCC 732,** wherein it was held that there is no proposition of law that the testimony of police officers is unworthy of acceptance unless supported by independent

witnesses. The Court only owes a greater duty of careful scrutiny, and if such evidence is otherwise found reliable, the prosecution case cannot be rejected solely on the ground of non-examination of independent witnesses. The same view has been reiterated in **Anter Singh v. State of Rajasthan, (2004) 10 SCC 657,** wherein it was held that even where seizure witnesses do not support the prosecution, the evidence of the officer effecting the recovery does not stand vitiated if it otherwise inspires confidence.

58. In the present case, PW-5 Brijesh Kumar Tripathi has consistently deposed regarding the arrest of accused-appellant Ramakant on 02.12.2013 and the recovery of one .315 bore country-made pistol, one fired empty cartridge and three live cartridges from his possession. Nothing material could be elicited during his cross-examination to discredit the manner of recovery or to indicate any previous enmity or motive on the part of the investigating agency to falsely implicate the accused. In the absence of any such circumstance, the recovery cannot be discarded merely because it is supported by official witnesses alone.

59. The contention that the recovery was effected from a public place is equally unpersuasive. The mere fact that Kaudha Railway Station is a place accessible to the public does not, by itself, render the recovery doubtful. Accessibility of the place cannot be equated with the availability of independent persons willing to associate themselves with the arrest and search of a person accused of a serious offence. It is a matter of common judicial experience that members of the public generally exhibit reluctance in associating themselves with criminal investigations. Unless the defence is able to demonstrate that the recovery proceedings suffer from material infirmities or were otherwise manipulated, the recovery cannot be rejected solely on the ground that no independent witness was joined.

60. It is also relevant to note that the recovery does not stand in isolation. As already discussed in the preceding part of this judgment while dealing with the ballistic evidence, the recovered firearm and cartridges were subjected to forensic examination and the report of the Forensic Science Laboratory lends independent scientific assurance to the prosecution case. Though the conviction is not founded solely upon the recovery, the scientific evidence materially reinforces the credibility of the recovery proceedings.

61. The learned Trial Court, therefore, committed no error in treating the recovery as a corroborative circumstance while appreciating the prosecution evidence.

Appreciation of the Evidence of DW-1:

62. Learned counsel for the accused-appellant Ramakant next submitted that the learned Trial Court failed to properly appreciate the testimony of DW-1 Sudha, who was examined in defence to establish that accused-appellant Ramakant was not present at the place of occurrence at the relevant time. It was contended that although the deposition of DW-1 finds mention in the impugned judgment, the learned Trial Court has not recorded any finding regarding its evidentiary value nor assigned any reason for discarding the same. According to the learned counsel, such omission has resulted in serious prejudice to the defence.

63. The submission is not entirely without substance. A perusal of the impugned judgment indicates that while the learned Trial Court has noticed the deposition of DW-1, it has not undertaken any detailed appreciation of her testimony. However, such omission, by itself, does not vitiate the judgment. Being the first appellate court on facts, this Court is under an obligation to independently evaluate the entire evidence, including the defence evidence, and determine its probative value.

64. DW-1 Sudha was examined to probabilise the plea of alibi set up by accused-appellant Ramakant. According to her, on the date of the occurrence, Ramakant had gone to Hardoi for medical treatment and returned to the village only at about 4:00-5:00 P.M., by which time the incident had already taken place. She further stated that she had witnessed only the quarrel from the roof of her house and had not seen the actual occurrence.

65. The plea of alibi is not an exception under the Indian Penal Code but is a rule of evidence embodied in Section 11 of the Indian Evidence Act, 1872. In **Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283**, the Hon'ble Supreme Court explained that the Latin expression alibi means "elsewhere" and is invoked by an accused to establish that he was at such a place, at the relevant time, that his participation in the crime was impossible. The Court further held that the burden upon the prosecution to prove the presence and participation of the accused at the scene of occurrence is in no manner diluted merely because a plea of alibi has been raised. Such a plea falls for consideration only after the prosecution has satisfactorily discharged its initial burden. Once the prosecution succeeds in establishing the presence of the accused through reliable evidence, the burden shifts upon the accused to establish the plea of alibi by leading cogent and satisfactory evidence of such a nature as to completely exclude the possibility of his presence at the place of occurrence. It was further observed that the plea of alibi is required to be proved with certainty and, therefore, strict proof is necessary. The aforesaid principles have been recently reiterated in **Kamal Prasad v. State of Chhattisgarh,(2023) 10 SCC 172** wherein the Hon'ble Supreme Court emphasised that the plea of alibi must be established by cogent and convincing evidence and is subject to strict judicial scrutiny.

66. Tested on the aforesaid principles, the testimony of DW-1 does not inspire confidence sufficient to probabilise the plea of alibi. In her cross-examination, she admitted that she had not witnessed the actual firing, had not seen the dead body and had no personal knowledge as to how Rajesh sustained the fatal injury. She further admitted that she had never disclosed these facts to anyone prior to her deposition before the Court and that no statement had ever been recorded from her during the course of investigation. Significantly, she also admitted that she had been approached by the wife of accused-appellant Ramakant to depose before the Court. Though such circumstance by itself may not render her testimony inadmissible, it is a relevant factor while assessing the weight to be attached to her evidence.

67. More importantly, the plea of alibi set up by the defence does not receive satisfactory corroboration from the material placed on record. DW-1 merely stated that accused-appellant Ramakant had gone to Hardoi for medical treatment on the date of the occurrence and returned to the village at about 4:00-5:00 P.M. However, beyond this bare assertion, no reliable evidence has been adduced to establish his presence at Hardoi at the precise time when the occurrence took

place. Though the defence has placed on record certain medical papers, including a hospital discharge slip and treatment documents (Paper Nos. 78B/1 to 78B/7), those documents merely indicate that accused-appellant Ramakant had undergone medical treatment. They neither disclose the exact time at which he remained present at the hospital nor establish that he continued to remain there during the period when the occurrence took place. Equally significant is the fact that no doctor, hospital official or any other independent witness was examined to prove the said documents or to establish that accused-appellant Ramakant was actually present at the hospital at the relevant point of time. The documentary evidence, therefore, falls considerably short of proving that the accused-appellant was elsewhere when the offence was committed.

68. The plea of alibi is not established by merely showing that the accused had undergone medical treatment on the date of the incident. What the law requires is proof of such a nature as would completely exclude the possibility of his presence at the place of occurrence. The documents relied upon by the defence do not satisfy this standard. At best, they create a possibility that the accused had visited a hospital; they do not render his presence at the scene of crime impossible. When weighed against the consistent ocular evidence of PW-1 and PW-2, which has already been found reliable and receives support from the medical and ballistic evidence, the defence version does not create any reasonable doubt regarding the presence of accused-appellant Ramakant at the place of occurrence. Consequently, the plea of alibi cannot be said to have been established in the manner required under Section 11 of the Indian Evidence Act.

69. Viewed in its entirety, the evidence of DW-1 falls short of probabilising the plea of alibi. At best, it raises a possibility, but does not displace the cogent ocular evidence of PW-1 and PW-2, which has otherwise been found reliable and stands corroborated by the medical and other evidence on record. Consequently, although the learned Trial Court ought to have undertaken a more elaborate appreciation of the defence evidence, this Court, upon an independent evaluation of the same, finds no reason to take a view different from that reached by the learned Trial Court.

Appeal Against the Acquittal of Chandrakant @ Chhota, Saroj Tiwari and Kaushal Kishore @ Hallu

70. The counsel for the complaint had argued that on grounds. Firstly, it is contended that the learned Trial Court erred in holding that the prosecution had failed to establish the existence of common intention under Section 34 IPC. Secondly, it is urged that the learned Trial Court failed to properly appreciate the recoveries effected from the aforesaid accused, which, according to the complainant, sufficiently established their participation in the commission of the offence.

71. Before adverting to the merits of the submissions, it is necessary to bear in mind the well-settled principles governing an appeal against acquittal. Though the appellate court possesses full power to reappreciate the evidence, an order of acquittal further strengthens the presumption of innocence available to the accused. Interference is, therefore, warranted only where the conclusions recorded by the Trial Court are manifestly illegal, perverse or such as no reasonable person would arrive at on the evidence available on record. Where two views are reasonably possible, the one favourable to the accused must ordinarily prevail.

72. Insofar as accused-appellants Saroj Tiwari and Kaushal Kishore are concerned, the learned Trial Court has attached considerable significance to an admission made by PW-1 Ashok Kumar during his cross-examination. PW-1 admitted that owing to the previous incident in which accused-appellant Saroj had allegedly eloped with his wife, he harboured enmity against Saroj and Kaushal Kishore and due to this reason has taken their name in the present case. The said admission assumes significance while appreciating the allegations levelled against Saroj and Kaushal Kishore, particularly when the prosecution sought to attribute similar overt acts to all the accused. The Trial Court was, therefore, justified in subjecting the testimony of PW-1 to closer scrutiny while examining the precise role attributed to the co-accused.

73. Furthermore, the recoveries allegedly effected from Saroj and Kaushal Kishore also do not materially improve the prosecution case. PW-6, in his cross-examination, admitted that the recoveries were effected from the Hardoi-Shahjahanpur Road, a public thoroughfare, and that no independent witness was associated with the recovery proceedings. PW-9, who investigated the connected Arms Act cases, also admitted the absence of independent witnesses. More importantly, unlike the recovery effected from accused-appellant Ramakant, no forensic or ballistic evidence has been brought on record connecting the weapons allegedly recovered from Saroj and Kaushal Kishore with the crime in question. Consequently, the learned Trial Court cannot be faulted for holding that such recoveries, by themselves, were insufficient to establish their participation in the offence.

74. The case against Chandrakant stands on an even weaker footing. The prosecution alleged that he had used the licensed double-barrel gun belonging to Ramakant during the occurrence. However, the medical evidence establishes only one firearm injury, which the prosecution itself attributes to the shot fired by Ramakant. No injury has been connected with the alleged use of the double-barrel gun.

75. The subsequent recovery of the licensed double-barrel gun also does not materially advance the prosecution case. The evidence on record discloses that the firearm was recovered approximately twenty-one days after the occurrence from the thatched roof adjoining the northern wall of the house of Ramakant, who admittedly was the licence-holder of the said firearm. PW-7 has also admitted that the weapon was not recovered from the house or exclusive possession of Chandrakant. Thus, the recovery was neither from Chandrakant nor from a place shown to be under his exclusive control. The prosecution was, therefore, required to establish by cogent evidence that Chandrakant was in conscious and unauthorised possession of the licensed firearm so as to attract liability under Section 30 of the Arms Act. No such evidence has been adduced. The circumstance that the recovery was allegedly effected pursuant to the disclosure statement of Chandrakant cannot, by itself, establish his conscious possession, particularly when the firearm was recovered from the residential premises of its licence-holder after a considerable lapse of time. Furthermore, unlike the recovery from Ramakant, no ballistic evidence connects the said double-barrel gun with the injury sustained by the deceased. The learned Trial Court was, therefore, justified in extending the benefit of doubt to Chandrakant.

76. The argument founded upon Section 34 IPC is also devoid of merit. Common intention cannot be inferred merely because several accused were present at the place of occurrence or were

allegedly armed. The prosecution is required to establish, by cogent evidence, that the criminal act was committed in furtherance of the common intention of all the accused. In the present case, the Trial Court found that the prosecution had failed to establish such common intention beyond reasonable doubt insofar as Chandrakant, Saroj and Kaushal Kishore were concerned. Having independently reappreciated the evidence, this Court is unable to hold that the said conclusion is either perverse or contrary to the record.

77. The Trial Court, after considering the admitted previous enmity, the absence of satisfactory independent or scientific corroboration regarding the specific roles attributed to Chandrakant, Saroj and Kaushal Kishore, the infirmities attending the recoveries allegedly effected from them, and the failure of the prosecution to establish common intention beyond reasonable doubt, extended to them the benefit of doubt. This Court finds no perversity or manifest illegality in the said appreciation of evidence. The findings recorded by the Trial Court represent a plausible view of the evidence and do not warrant interference in an appeal against acquittal.

Whether the Conviction of Accused-Appellant Ramakant is Liable to be Altered from Section 302 IPC to Section 304 Part I IPC?

78. Learned counsel for the accused-appellant Ramakant had argued that even assuming the prosecution case to be proved, the present case would not travel beyond culpable homicide not amounting to murder punishable under Section 304 Part I IPC. It was contended that the occurrence arose out of a sudden quarrel relating to irrigation of agricultural land, that there was no prior planning or premeditation, and that the fatal injury was inflicted during the course of a sudden fight. It was, therefore, urged that the case falls within Exception 4 to Section 300 IPC.

79. Since the applicability of the said Exception lies at the heart of the controversy, it would be apposite to reproduce the same:

"Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner."

A plain reading of the aforesaid Exception makes it evident that its application is conditioned upon the simultaneous existence of four essential requirements, namely:

(i) the act must have been committed without premeditation;

(ii) it must have occurred in a sudden fight;

(iii) the act must have been committed in the heat of passion upon a sudden quarrel; and

(iv) the offender must not have taken undue advantage or acted in a cruel or unusual manner.

These conditions are cumulative and not disjunctive. The absence of any one of these essential ingredients is sufficient to exclude the application of Exception 4. It is, therefore, necessary to examine whether the facts of the present case satisfy the statutory requirements.

80. In the present case, the evidence on record unmistakably establishes that the altercation relating to irrigation took place at about 12:00 noon in the agricultural field. The prosecution witnesses have consistently deposed that after the verbal altercation, the accused persons left the field, returned to their respective houses, armed themselves with firearms and thereafter reached the house of the informant at about 2:00 P.M., where the fatal firing took place. Thus, the occurrence at the field and the subsequent firing cannot be regarded as one continuous transaction. The chain of events stood interrupted when the accused voluntarily withdrew from the field and proceeded to their houses. The interval of nearly two hours afforded sufficient opportunity for tempers to cool and for reason to prevail. Instead of abandoning the dispute, accused-appellant Ramakant consciously armed himself with a .315 bore country-made pistol and returned to confront the informant party. The subsequent act of firing, therefore, cannot be characterised as one committed in the heat of passion generated by the earlier quarrel.

81. Equally significant is the nature of the weapon employed. The fatal injury was inflicted by a firearm aimed at the neck of the deceased. The use of a deadly firearm against an unarmed person, after returning from the place of quarrel with sufficient time for reflection, unmistakably amounts to taking undue advantage within the meaning of Exception 4. The conduct of accused-appellant Ramakant, therefore, falls outside the protective ambit of the Exception.

82. The decisions relied upon by the learned counsel for the accused-appellant are clearly distinguishable. In **Devendra Kumar v. State of Chhattisgarh, 2024 SCC OnLine SC 3182**, the occurrence arose out of a single continuous scuffle involving agricultural implements without any interruption or opportunity for reflection. Similarly, in **Mahesh Balmiki @ Munna v. State of Madhya Pradesh, 1999 SCC OnLine SC 823**, the entire occurrence formed one uninterrupted transaction. In the present case, however, the accused disengaged from the quarrel, returned home, armed themselves with firearms and thereafter came back to the place of occurrence. The continuity of the quarrel thus stood broken, clearly evidencing deliberation rather than spontaneity.

83. Furthermore, the reliance placed upon **Sukhbir Singh v. State of Haryana, 2002 SCC OnLine SC 240**, is equally misplaced. In that case, the interval between the quarrel and the assault was only a matter of a few minutes, and the Hon'ble Supreme Court treated the occurrence as part of one continuous transaction. The facts before this Court are materially different. Here, nearly two hours elapsed between the initial altercation in the field and the fatal firing at the residence of the informant.

84. Similarly, **Rampal Singh v. State of Uttar Pradesh, (2012) 8 SCC 289** also does not advance the case of the accused-appellant. Though the accused therein had gone inside the house and returned with a rifle, the Supreme Court found, on the peculiar facts of that case, that there was no previous animosity and the occurrence had arisen entirely on the spur of the moment. In the present case, the evidence discloses pre-existing hostility between the parties, an interval sufficient for passions to subside, and a deliberate decision to arm oneself before returning to the place of occurrence. The factual foundation on which the conviction was altered in Rampal Singh (supra) is, therefore, wholly absent here.

85. The decisions in **Ashok Saxena v. State of Uttarakhand, 2025 SCC OnLine 224 and Dauvaram Nirmalkar v. State of Chhattisgarh, 2025 SCC OnLine 955**, also turn upon their own peculiar facts involving either the doctrine of transferred malice or an immediate and grave loss of self-control. Neither principle is attracted in the present case, where the prosecution has established a clear break between the quarrel and the fatal assault.

86. On the contrary, the observations of the Hon'ble Supreme Court in **Stalin v. State represented by the Inspector of Police,2020 SCC OnLine SC 723** support the prosecution. The Court therein held that the mere fact that death resulted from a single injury does not, by itself, justify alteration of the conviction from Section 302 IPC to Section 304 IPC. The nature of the weapon, the part of the body targeted and the attendant circumstances remain decisive considerations. In the present case, accused-appellant Ramakant used a firearm and directed the shot towards the neck of the deceased, a vital part of the body. The fact that only one shot struck the deceased is, therefore, of no assistance to the defence.

87. Equally untenable is the reliance upon **Govind v. State of Haryana, 2025 SCC OnLine SC 2456**. In that case, the prosecution case rested principally upon a doubtful recovery after the eyewitnesses had turned hostile. The present case stands on an entirely different footing. Here, the conviction of accused-appellant Ramakant rests upon the consistent ocular testimony of PW-1 and PW-2, which receives substantial corroboration from the medical evidence, the ballistic evidence and the forensic examination of the recovered weapon. The recovery from accused-appellant Ramakant merely furnishes an additional corroborative circumstance.

88. Lastly, the reliance upon **Yogarani v. State, 2024 SCC OnLine SC 2609** is misconceived. The principle of parity enunciated therein applies only where the evidence against the convicted accused and the acquitted co-accused is substantially identical. As already discussed while dealing with the complainant's appeal, the evidentiary foundation against accused-appellant Ramakant stands on an altogether different footing. The fatal injury has consistently been attributed to him; the firearm recovered from his possession is scientifically connected with the fired cartridge through the ballistic report; and the prosecution case against him receives corroboration unavailable in the case of the acquitted accused. The principle of parity, therefore, has no application to the facts of the present case.

89. Viewed cumulatively, the evidence unmistakably establishes that accused-appellant Ramakant acted after the initial quarrel had concluded, after sufficient time had elapsed for

the passions to cool, and after consciously arming himself with a deadly firearm before returning to the place of occurrence. The act cannot, therefore, be characterized as one committed without premeditation or in the heat of passion upon a sudden quarrel. The ingredients of Exception 4 to Section 300 IPC are conspicuously absent. The learned Trial Court was, therefore, fully justified in recording the conviction under Section 302 IPC, and no case for alteration of the conviction to Section 304 Part I IPC is made out.

Conclusion:

90. Upon consideration of the entire evidence on record, the rival submissions advanced on behalf of the parties, and the settled principles governing criminal jurisprudence, this Court is of the considered opinion that the prosecution has successfully established the guilt of accused-appellant **Ramakant @ Fauji** beyond all reasonable doubt. The ocular testimony of PW-1 and PW-2, insofar as it relates to accused-appellant Ramakant, inspires confidence and receives substantial corroboration from the medical, ballistic and forensic evidence. None of the submissions advanced on behalf of the accused-appellant regarding the alleged contradictions in the prosecution case, the recovery of the firearm, the plea of alibi, or the applicability of Exception 4 to Section 300 IPC merit acceptance.

91. Moreover, this Court finds no infirmity in the acquittal of accused-appellants **Chandrakant @ Chhota, Saroj Tiwari and Kaushal Kishore @ Hallu**. The findings recorded by the learned Trial Court in extending to them the benefit of doubt are founded upon a plausible appreciation of the evidence and cannot be characterised as either perverse or manifestly erroneous so as to warrant interference in an appeal against acquittal. The complainant has failed to make out any case for reversing the order of acquittal.

92. Consequently, Criminal Appeal No. 2895 of 2022, preferred by accused-appellant Ramakant, is dismissed. The judgment and order of the learned Trial Court qua accused-appellant Ramakant is hereby affirmed. The accused-appellant Ramakant, who is in jail, shall continue to undergo the remaining part of the sentence awarded to him by the learned Trial Court, in accordance with law.

93. Criminal Appeal No. 128 of 2022, preferred by the complainant challenging the acquittal **of Chandrakant @ Chhota, Saroj Tiwari and Kaushal Kishore @ Hallu**, is also **dismissed**. The judgment and order of the learned Trial Court acquitting the aforesaid accused persons are hereby **affirmed.**

94. Consequently, CM Application No. 01 of 2022, preferred on behalf of the accused-appellant Ramakant, stands dismissed as not pressed.

95. Let the trial court records be transmitted forthwith to the court concerned along with a certified copy of this judgment for information and necessary compliance.

(2026) 7 ILRA 1114
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 3672 of 2013

Narendra Singh @ Kate Singh Baba ...Appellant
Versus
State of U.P. ...Respondent

Issue for consideration

Whether sentence of life imprisonment awarded to appellant under Section 304 IPC was excessive?

Headnotes

Indian Penal Code, 1860-S. 304-Appreciation of evidence- PWs 1, 2 and 3, eyewitnesses- date, place and manner of incident consistently stated- depositions reliable- no material contradiction oral and documentary medical evidence corroborating manner of incident- five ante-mortem injuries on head of deceased- prosecution successfully proved that appellant inflicted several blows with Takora - resulting in his death- prosecution proved its case beyond reasonable doubt- nothing on record to demonstrate that assault was premeditated- no apparent motive or intention behind crime - sentence of life imprisonment imposed by Trial Court on higher side and excessive- life imprisonment commuted to fixed-term sentence of 15 years without remission- conviction under S.304 IPC affirmed- fine and default sentence maintained.
Appeal partly allowed. (E-9)

Case Law Cited

1. *Balu Sudam Khalde v. State of Maharashtra*, (2023) 13 SCC 365
2. *Bhagwan Jagannath Markad v. State of Maharashtra*, (2016) 10 SCC 537
3. *State of M.P. v. Balveer Singh*, (2025) 8 SCC 545
4. *Munna Moyuddin Shaikh v. State of Gujarat*, Criminal Appeal No. 2686 of 2026, arising out of SLP (Crl.) Diary No. 35717 of 2025

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

List of Keywords

Appreciation of ocular evidence; eyewitnesses; minor contradictions; FIR not an encyclopedia; prompt registration of FIR; medical evidence; ante-mortem injuries; Takora; Section 304 IPC; no premeditation; mental illness; no apparent motive or intention; sentence excessive; life imprisonment; fixed term sentence.

Appearances of parties

Counsel for Appellant(s) : Arun Kumar Bhatt, Arvendra Singh, Chetan Chatterjee
Counsel for Respondent(s) : Govt. Advocate, Prashant Verma

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Present Criminal Appeal has been preferred against the judgment and order dated 23.05.2013 passed by the Additional Sessions Judge, Court No.1, Mainpuri in Sessions Trial No.320 of 2011 State Vs. Narendra Singh alias Kate Singh (Baba) arising out of Case Crime No.435 of 2011, under Sections 304, 323, 504, 506 of Indian Penal Code (hereinafter referred to as 'IPC'), Police Station - Kishni, District Mainpuri, whereby the accused-appellant was convicted and sentenced for the offence under Section 304 IPC for life imprisonment with a fine of Rs.10,000/- and in case of default of payment of fine, to undergo further rigorous imprisonment for six months.

2. Brief facts of the prosecution's case are as under:

On 29.04.2011, a written report (Ex.Ka.-1) was given by the informant Mahendra Singh son of Phool Singh at the police station concerned with the averments that on 29.04.2011, the younger brother of the informant namely, Narendra Singh alias Kate Singh, who has become baba (ascetic) and is mentally weak, made an assault on the head of his father with a Takora (a sharp-edged agricultural tool) when his father picked up brick upon being abused by Narendra Singh over harvesting the crop in exchange of chaff. At that time, son of the informant Aadesh Kumar and wife of the informant Kamlesh Kumari were present there, who tried to stop him, upon which Narendra hurled abuses, threatened the duo to kill, beat them with kicks and fists and tried to assault them with Takora. Blood started oozing from the head of his father Phool Singh and he became unconscious. When his brother Harendra Singh, his son Aadesh and his wife Kamlesh Kumari tried to catch him, then in yellow clothes, he fled away towards the east, through the field having Takora in his hand. The brother of the informant Harendra Singh and other villagers have taken his father in unconscious state directly to the Government Hospital, Mainpuri. **Narendra Singh alias Kante Singh, the younger brother of the informant, was given medical treatment at the Mental Hospital, Agra five years back**. At present, he was completely fine. Request was made to register the case and initiate legal proceedings.

3. On the basis of the written report (Ex.Ka-1), chik First Information Report (Ext. Ka-2) was registered as Case Crime No.435 of 2011 under Sections 308, 323, 504, 506 IPC at Police Station concerned on 29.04.2011 at 18:15 hours against the accused Narendra Singh alias Kante Singh.

4. Investigation started and during investigation, information was received regarding the death of Phool Singh while he was undergoing treatment at the district hospital. Thereafter, the Investigating Officer conducted the inquest in the presence of witnesses (panchas), prepared the inquest report and sent the dead body of the deceased for post mortem at the mortuary.

5. On 30.04.2011 at 4:30 P.M., the autopsy of the deceased Phool Singh was performed at District Hospital, Mainpuri by Dr. R.K. Sharma (P.W.6), who found following antemortem injuries on his person :

(i) A 5 cm long stitched wound was located 5 cm above the left ear. A pool of blood was found beneath it.

(ii) A 4 cm long stitched wound was located 6 cm above the right ear. The bone beneath the wound was fractured and depressed.

(iii) A 3 cm long stitched wound is located on the back of the skull.

(iv) A 3 cm long stitched wound is located on the back of the skull, 2 cm below Injury No. 3.

(v) A 3 cm long stitched wound is located on the back of the skull, 2 cm below Injury No. 3, and is removed from one side.

The eyes were found closed, blood was found to be pooled in the ears, and the left temporal and parietal bones were fractured and were also found to be pressed inside. The brain membranes were found to be red and blood clots were found in various places of the brain. Both lungs were pale. There was approximately 100 ml of semi-liquid fluid in the abdomen. The spleen and kidneys were found red. The autopsy report was proved as Ex.Ka-17. In the opinion of Autopsy surgeon, all the above injuries on the deceased's body could have been caused by an axe at 5:15 pm on 29.04.2011 and the cause of death of the deceased was due to Coma, as a result of ante-mortem injuries. The deceased's condition was normal, with stiffness throughout. The deceased's probable time of death was approximately one day old.

6. Although it was the bounden duty of the Investigating Officer to collect medical papers regarding admission and treatment of the deceased which could have established the date and time of his admission in District Hospital, Mainpuri and treatment provided to him after admission. A perusal of the post-mortem report reveals that some treatment was provided to the deceased on his admission, that is why his all ante-mortem injuries were found to be stitched. There is a possibility that even some medico legal injury report might have been prepared by the doctor at the time of his admission. Such medical records including medico legal report i.e. MLR could have shown the exact nature of injuries sustained by the deceased. There seems to be a gross negligence on the part of the Investigating Officer, as the same were not collected and there is also a gross negligence of supervisory duty of the concerned Circle Officer also, while supervising the investigation. However, the prosecution has brought on record the post-mortem report of the deceased and has also proved it through ocular testimony of the autopsy surgeon. Therefore, the prosecution has established the ante-mortem injuries of the deceased as well as cause of death of the deceased.

7. During the course of investigation, the Investigating Officer recorded the statement of witnesses and prepared the site plan. On 29.04.2011 at 21:15 hours, information about the death of injured Phool Singh was received and the case was amended to Section 304 I.P.C. Inquest of the body of the deceased was conducted and inquest report was prepared thereafter. Postmortem of the body of the deceased was conducted and after completing all the formalities, charge sheet was submitted against the accused under Sections 304, 323, 504, 506 IPC.

8. After submission of charge sheet, cognizance was taken upon the same by the learned Magistrate, who committed the case to Court of Sessions, as prima facie charges were for the Sessions triable offence.

9. Accused appeared before the Court of Session and after hearing both the parties, charges were framed against him under Sections 304, 323, 504, 506 IPC. The accused denied the charges levelled against him, pleaded not guilty and claimed to be tried.

10. To bring home the charges against the accused, the prosecution adduced P.W.1 Mahendra Singh (informant, who is son of the deceased and real brother of the accused Narendra Singh), P.W.2 Aadesh Kumar (son of the informant / grandson of the deceased), P.W.3 Kamlesh (wife of the informant), P.W.4 Arvind Kumar (Head Moharrir, P.S. Kishni), P.W.5 S.I. Bahadur Singh (Investigating Officer, who inspected the spot, prepared site plan, recorded the statements of the witness, conducted the inquest proceedings, prepared the inquest report & other papers and sent the body of the deceased for postmortem in a sealed cloth) and P.W.6 Dr. R.K. Sharma (who conducted the post-mortem of the deceased).

11. In support of oral version, following documents were filed and proved on behalf of the prosecution:

Written report / tehrir dated 29.04.2011 (Ex.Ka.-1), chik F.I.R. (Ex.Ka.-2), G.D. No.26 time 18:15 hours (Ex.Ka.-3), G.D. No.33 time 21:15 hours (Ex.Ka.-4), site plan (Ex.Ka.-5), inquest report (Ex.Ka.-6), Carbon copy of chik F.I.R. (Ex.Ka.-7), copy of written report / Tehir (Ex.Ka.-8), Carbon copy of G.D. No.26 time 18.15 hours (Ex.Ka.-9), Photo Nash (Ex.Ka.-10), Letter to Incharge Inspector, Kotwali (Ex.Ka.-11), Challan Nash (Ex.Ka.-12), Letter to Reserve Inspector (Ex.Ka.-13), Letter to C.M.O. (Ex.Ka.-14), G.D. No.48 (Ex.Ka.-15), Charge-sheet (Ex.Ka.-16) and Postmortem-report (Ex.Ka.-17).

12. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for his version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to him and said that the prosecution case is false, he is innocent and falsely implicated. Investigation was not done in fair and impartial manner. Accused also pleaded that the informant wanted to usurp his land and house, therefore, he has been falsely roped in this case.

13. The defence has examined DW-1 Harendra (son of the deceased).

14. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellant as above. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal.

15. Heard Ms. Vishakha Pande, the Amicus Curiae appearing for the appellant and Ms. Archana Singh, the learned A.G.A. for the State.

16. Learned Amicus Curiae appearing for the appellant argued that the appellant has falsely been implicated in the crime and he is innocent. There was no motive to commit the crime. The evidence of witnesses of facts is not trustworthy as there are contradictions in their evidence. Verbal abuses took place from both the sides and the incident occurred in a heat of passion. The prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. It was further argued that in the F.I.R., date of incident has been mentioned as 29.04.2011, however at what time the alleged incident took place, has not been described in the F.I.R. Moreover, the F.I.R. was lodged at a belated stage, for which no explanation was offered by the prosecution. Therefore, the prosecution story is not believable and the appellant

is liable to be acquitted. It was further argued that the learned trial Court has misinterpreted the evidence available on record. No ingredient to bring home the guilt of the accused under Section 304 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial Court misread the evidence and wrongly convicted and sentenced the appellant. It was further argued that this appeal pertains to the year 2013 and the appellant is languishing in jail for a considerable period of time. The sentence for life imprisonment awarded to the appellant by the trial Court is very harsh and excessive.

17. Contrary to it, learned A.G.A. vehemently opposed the submissions made on behalf of the appellant and submitted that in the incident, the deceased was killed by his own son i.e. the appellant - convict by inflicting fatal blows of takora (axe) on his head. PW-1, the son of the deceased, P.W.-2, the grandson of the deceased and P.W.-3, the daughter-in-law of the deceased have supported the prosecution case in their testimony. Other witnesses of fact have also corroborated the prosecution version. Five stitched wounds with and an underlying bone fracture was found on the head of the deceased. The witnesses of fact have proved the incident and their presence at the spot cannot be doubted. No major contradiction in the statements of witnesses of facts has been found. The learned trial court has considered and analyzed the evidence of witnesses in a right perspective and punished the accused appellant accordingly. The prosecution has proved its case beyond all reasonable doubt. Hence, while going through the evidence on record, it cannot be said that the offence under Section 304 IPC is not made out against he appellant. The learned trial Court has not committed any error in convicting and sentencing the accused- appellant under Section 304 IPC. Hence, there is no merit in the appeal and the same is liable to be dismissed.

18. We have considered the arguments of both the sides and perused the original record of trial court as well as the record of appeal.

Analysis

19. In the light of arguments of both the sides, following questions arise for consideration in present appeal :

(i) Whether the prosecution could be said to have proved its case against the appellant - convict beyond reasonable doubt ?

(ii) Whether the sentence awarded to the appellant is excessive or not ?

Question No.1 : Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

Oral Evidence on Record.

20. In the present case, the prosecution has examined informant Mahendra Singh as P.W.1, informant's son Aadesh Kumar as P.W.2 and informant's wife Kamlesh as P.W.3. On the strength of depositions of these three witnesses, the trial Court has convicted the appellant. Therefore, in the

present criminal appeal against conviction, we need to appreciate the oral evidence of these three witnesses.

21. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365** held the law in the following words :

"**Appreciation of oral evidence**

25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

22. The Hon'ble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537** explained that :

" 19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35,

paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a □partisan□ or □interested□ witness may lead to failure of justice. It is well known that principle □falsus in uno, falsus in omnibus□ has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

31.As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.

32.We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully.

23. The Hon'ble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

24. In the light of above well settled legal position regarding appreciation of oral evidence, we shall now be evaluating the depositions of informant Mahendra Singh as P.W.1, informant's son Aadesh Kumar as P.W.2 and informant's wife Kamlesh as P.W.3.

25. Informant Mahendra Singh, who is the son of the deceased Phool Singh, has been examined by the prosecution as P.W.1. In his deposition, he has stated that the incident is of 29.04.2011 at about 5:15 P.M. At that moment, he was sitting at his doorstep, where his younger brother Narendra, his father and his son Aadesh Kumar were sitting together. His brother Narendra and his father had a dispute regarding chaff wherein his brother Narendra hurled abuses on his father. When his father stopped him from abusing, his brother Narendra assaulted his father with a takora (axe). He (informant), his wife Kamlesh Kumari and his son Aadesh tried to stop and save, but his brother Narendra, with the intention to kill, gave several blows of takora on his father, due to which he was badly injured. On raising noise and shrieks, people of the vicinity reached there who witnessed the incident. His father became unconscious. His brother Harendra and several villagers took his father to District Hospital, Mainpuri where during treatment, his father succumbed to his injuries. On the date of incident, this witness got the written report scribed by his son Aadesh Kumar and gave the same at Police Station Kishni. Whatever he wrote was exactly the same which he had spoken. Aforesaid written report / Tehrir was read out to him and thereafter he signed the same. This witness has proved the written report / Tehrir as Ex.Ka.-1. **This witness (P.W.1) has also stated that prior to this incident, his brother Narendra had committed the murder of his mother by hitting her with a pestle (moosal), the case of which was tried in the Court and in that case by putting pressure upon him, compromise was made and due to which Narendra was acquitted by the Court.**

26. The cross-examination of P.W.1 was deferred on 20.04.2012 and was cross-examined on behalf of the accused at length on 18.04.2013. In his cross-examination, he has stated that he is the eldest one out of five brothers. He resides in Katra Chitayan. His house is in Katra. One of his brothers resides in Delhi and remaining four are the resident of Katra. His father used to live with him in the house. The house at Chitayan is locked and no one lives there. All the five brothers are the co-sharer of that house. **At the time of incident, the son and wife of this witness were present on spot and all the brothers were working in the field.** They came home within 15 - 20 minutes. His father was brought in an injured condition by his brother Harendra and his wife Kamlesh Kumari. He had gone to the police station. This witness came alongwith the Sub-Inspector to the village and from there they had come to the hospital. He got the written report scribed by Aadesh Kumar and gave the same at the police station. When he went to the police station, the Sub-Inspector took his statement as well as statement of his son. The statement of his wife Kamlesh Kumari was not taken, as she had gone to hospital. This witness (P.W-1) has stated that his son had not pelted any brick or stone. **At the time of incident, he was standing nearby. The incident took place at the main door, which is at eastern side**. He and all his brothers live in the same house. At the time of incident, his younger brother Harendra Singh had arrived while other brothers came later on. His father executed a sale deed of ½ Bigha land in favour of his wife Kamlesh Kumari. It is wrong to say that his son Aadesh assaulted his father with axe on his head. It is wrong to say that at the time of incident, he was not in the village. It is also wrong to say that his son and wife injured his father with bricks and stones. **His brother Harendra was not present at the spot at the time of incident and he came there, after the incident**. Several persons of the village were standing at a distance of 20 - 25 steps at the time of incident. P.W.1 also stated that accused Narendra is his real brother, who sometimes becomes a baba and sometimes he shaves his beard. It is wrong to say that accused Narendra was not in the village at the time of incident. **We have carefully perused the whole deposition of this witness and it is clear that this witness**

(P.W.1) was present on spot at the time of incident and had seen the incident. This witness has clearly stated that the incident is of 29.04.2011 at about 5:15 P.M. and on account of dispute regarding chaff, his brother appellant Narendra assaulted his father with a takora, his father sustained injuries and later on succumbed to his injuries. The deposition of this witness as far as date, time, place and manner of incident is concerned, seems to be reliable.

27. Aadesh Kumar, who is the son of the informant and grandson of the deceased, has been examined by the prosecution as P.W.2, who deposed that the incident is of 29.04.2011 at about 5:00 P.M. He was standing in front of his house while his mother, father, grandfather Phool Singh and uncle Narendra Singh were sitting on a chabootra. A dispute regarding chaff had occurred between his grandfather Phool Singh and uncle Narendra. In this dispute, Narendra Singh hurled abuses at his grandfather Phool Singh. When his grandfather stopped him from abusing, his uncle picked up a takora and gave several blows upon his grandfather Phool Singh, who sustained injuries from the blows of takora and in an injured condition, he fell down there. His uncle Harendra and some villagers took his injured grandfather to the hospital. During treatment, his grandfather breathed his last in the hospital. For lodging the report of this incident, he and his father went to Police Station Kishni. His father dictated the report and he wrote it down. Whatever his father told, he wrote exactly the same. Thereafter, he read out the report to his father, got his signature on it and gave it at the police station. **This witness also stated that accused Narendra alias Kante, who is his uncle, had also committed the murder of his grandmother four years back by making assault upon her with a pestle (moosal).**

28. P.W.2 was cross-examined on behalf of the accused and in his cross-examination, he stated that his father has five brothers, whose names are Mahendra Singh, Ravindra Singh, Harendra Singh, Surendra Singh and the youngest one is Narendra Singh alias Kante. Except his uncle Ravindra Singh, all others live in the village. They have their separate divided agricultural land and they all live separately. At present, the brothers have divided the share of land belonging to the accused Narendra alias Kanti after he returned from jail. Nobody cultivates Narendra Singh's share of land and outsiders cultivate his land on sharing basis. **At the time of incident, no person from the village was present. Only Mahendra Singh, the brother of accused Narendra alias Kante, was present on the spot.** (Mahendra Singh is informant and father of this witness). At the time of writing the F.I.R., his father told him the time of incident, however, he did not write the time of incident in the F.I.R. There is a possibility that his father did not tell the time of incident while writing down the F.I.R. and due to this reason, he might not have written it. When Paper No.11A Ex.Ka.-1 was read out to this witness, he stated that the time and place of incident are not marked on it. His father Mahendra Singh, mother and uncle Harendra were not medically examined, as they did not receive any injury. He wrote the written report / tehrir sitting outside Kishni Police Station. Time was about 5:30 in the evening. At the time of writing the report, he along with his father and one Rajesh Kumar of his village were present. They had not taken his grandfather with them to the police station. His grandfather sustained 5-6 injuries on his head from the takora. Injuries were sustained by him only on his head.

29. **This witness (P.W.2) was further cross-examined on behalf of the accused on 20.04.2013 wherein he again affirmed that on the day of incident, his uncle Narendra Singh, his grandfather Phool Singh, his father Mahendra Singh and his mother Kamlesh Kumari**

were sitting. His other uncles Surendra Singh and Harendra Singh were working in the field. On the day of incident i.e. 29.04.2011 at 5:15 O'clock, it was a summer season and the month of April, no abuses were exchanged between them. Talks in regard to chaff were going on. One field was harvested by Narendra Singh and another one was harvested by his father. Narendra Singh wanted to take the chaff of both the fields. Wheat harvesting was done, however, threshing had not taken place. He and his father went to police station and Harendra Singh and his (P.W.2) mother took his grandfather of the hospital. It is wrong to say that they, at that time, threw bricks and stones. He and his father gave the written report at the police station. It is wrong to say that he is giving a false statement. It is wrong to say that the deceased sustained injuries due to bricks and stones thrown by him. **This witness has been cross-examined at length and as per Tehrir Ex.Ka.-1, this witness was present on spot. Inspite of lengthy cross-examination, there is nothing in his evidence raising any doubt over his presence on spot at the time of incident. The narration given by this witness regarding incident seems to be reliable one.**

30. Kamlesh, who is the wife of the informant and daughter-in law of the deceased, has been examined by the prosecution as P.W.3, who deposed that incident is of 29.04.2001 at about 5:15 P.M. At that moment, her father-in-law, husband Mahendra Singh and son Aadesh were present at home. The wheat crop was harvested by accused Narendra Singh in exchange of chaff, as decided. Accused Narendra Singh, after harvesting the crop, was trying to take the chaff of another field also. When her father-in-law objected and asked him that he should take the chaff of that field only, as agreed upon, and not to take the chaff of other field, on this issue the accused caught hold the neck of her father-in-law and with the takora carrying in other hand, made an assault upon his head. Three blows of takora struck on his (father-in-law's) head, to which her father-in-law fell down and became unconscious. People took her father-in-law to the Mainpuri Hospital. Apart from her family, no one else was present there. She and her husband witnessed the incident. Narendra alias Kante fled away from there hurling abuses to her and her husband. **Four years back, Narendra Singh alias Kante had also committed the murder of her mother-in-law Santosh Kumari.**

31. P.W.3 was cross-examined on behalf of the defence and in her cross-examination, she deposed that to the west of her house is Prakash's house. To the north of her house there is vacant land. To the south of her house is Virendra's house. We have carefully perused the site plan Ex.Ka.-5 and a perusal of it reveals that to the north of house of this witness is a vacant land whereas to the south of her house is Virendra's house. Therefore, this witness has proved the site plan and the site plan also corroborates the deposition of this witness. At the time of the incident, her house was not locked and was open. Harvesting was going on in the fields at that time, so there was no one present in the nearby houses. Even the children from neighbouring houses had gone to the fields. Her father-in-law had distributed all his agricultural land among the family members. He kept two fields for himself. I do not know their survey numbers. One of those fields was called the "Dhala field" and the other was near the mango grove. Together they measured about 55 decimals. A field known as "Silanhar" had been given to Harendra. Mahendra and Ravindra were each given half shares in the field near the pond (Tal). She do not know the exact area of that field. Each of them received about 5 ½ bighas. The "Kulhoar" field had been given to Harendra, measuring about 4 ½ bighas. Surendra had received the field known as "Andh". The accused Narendra had received the mango-grove land, the "Nidar" land. Her father-in-law had left about 1 ½ bighas of his own land to the accused Narendra Singh. Phool singh had given the Mangroove land to accused Narendra Singh

on chaff (Bhusa). Out of that field, 1 ½ bighas were given to Narendra Singh and the remaining 3 ½ bighas were given on chaff (Bhusa). She had informed the investigating officer that the mango-grove field was being harvested on chaff (Bhusa). Total field owned by her father-in-law Phool Singh, is about 100 steps from my house. Threshing was not done of the crops / stacks.

32. She further stated that the incident occurred at the house not at the field. Her husband, her son Aadesh and she did not take the injured Phool Singh to Mainpuri Hospital because the investigating officer had taken Mahendra and Aadesh to the police station at about 5:30 PM. The officer saw Phool Singh, however, he could not arrive by that time. Harendra and some villagers took the injured Phool Singh to the hospital. Her husband Mahendra Singh and son Aadesh were present at the spot at the time of the incident. She studied up to Class V. At this time (during testimony), this witness looked at a mobile phone and stated that the time was 12:23. **She saw the injuries on deceased Phool Singh. There were five injuries on his head, but she do not know on which side they were**. Narendra Singh pressed Phool Singh's neck with his left hand and struck him with takora in his right hand. With one hand he held the neck from the side, and with the other hand he kept hitting him. She along with her husband and son Aadesh was watching the incident from a distance of about three to four steps. It is incorrect to say that because of fear she made no effort to catch the accused. At the time of the incident, her father-in-law was wearing a vest and a lungi. Because of fear of Kante Singh, Phool Singh did not eat meals at her house. He lived in a separate house which is located in front of her house. The investigating officer had been visiting their area earlier and therefore was already familiar with the houses. The houses of all four brothers are within the same boundary compound and have a common exit. Narendra alias Kante lived separately outside the house. On the day of the incident, Phool Singh had taken his meal at about 2:30 PM. He had brought his own food and ate it at her doorway. It is incorrect to say that the incident occurred at night. It is also incorrect to say that her husband, her son, and she were not present at the place of occurrence and did not witness the incident. Narendra alias Kante cultivates his own fields himself. It is incorrect to say that Aadesh Kumar made any statement that the land in Narendra's share had been ploughed by his father and his father's brothers. It is incorrect to say that her husband Mahendra Singh and her son Aadesh did not go to the hospital because they were not present at the scene of occurrence. It is also incorrect to say that the police had already taken her husband and son to the police station. **As per first information report, this witness was also present on spot, who had seen the incident and had narrated the same. This witness not only corroborated the contents of site plan, but has specifically stated that deceased Phool Singh suffered five injuries on his head. Therefore, the deposition of this witness as far as manner of incident is concerned, also finds corroboration from post-mortem report of the deceased. We also find that the deposition of this witness is also reliable one.**

33. P.W.1, P.W.2 and P.W.3 have been cross-examined at length. However, inspite of the extensive cross-examination, the defence could not bring out any material contradiction in their deposition. P.W.1 and P.W.2 in their depositions have stated that P.W.3 went to the hospital with the deceased alongwith Harendra Singh. However, P.W.3 has clearly denied the same. The presence of P.W.1, P.W.2 and P.W.3 is established on spot at the time of incident and it has been categorically brought on record that after the incident, P.W.1 and P.W.2 went to the police station for registration of the F.I.R. and at their back, the deceased was taken to hospital, meaning thereby that P.W.1 and P.W.2 could not state correctly that who were the persons who took the deceased to

the hospital. Moreover, this contradiction is a minor contradiction and does not effect the credibility of the basic prosecution story regarding the incident in question. P.W.2 in his examination-in-chief has stated the time of incident as 5:00 P.M., however, in his cross-examination, he has stated the time of incident to be 5:15 P.M. The timings, as narrated by P.W.2, are approximate timings, therefore, this is also not a material contradiction. **We have carefully gone through the depositions of these witnesses, however, their depositions so far as the date, place and manner of incident is concerned, remained consistent and whatever contradictions are there in their depositions, those contradictions are minor contradictions, which do not affect either the credibility of these witnesses or of prosecution story.**

34. Witness Head Constable Arvind Kumar (PW-4) stated in his statement that on 24-04-2011, he was posted as Head Clerk at Kishani Police Station. On that day, based on the written complaint of the informant Mahendra Singh, he prepared FIR No. 60 under sections 308, 323, 504, and 506 of the Indian Penal Code against Narendra Singh alias Kate, son of Phool Singh, in his own handwriting, which is proved as Ex.Ka.-2. This was disclosed in Police Station Report No.26, dated 29 April 2011, at 18:15 PM, copy of which is proved as Ex.Ka.-3. Information about the death of injured Phool Singh was given by RT Set DCR Kotwali Mainpuri, its disclosure was made in the GD on 29-04-11 in report number 33 time 21:15, carbon copy of which is proved as Ex.Ka-4. He is a formal witness.

35. The autopsy surgeon Dr. R.K. Sharma P.W.6 conducted the post-mortem examination of the deceased and prepared his Postmortem Report Ex.Ka.-17. This autopsy surgeon found five ante-mortem injuries on the person of the deceased, which have already been mentioned in paragraph 5 of this judgment. This autopsy surgeon also found that the left temporal and parietal bones of the deceased were fractured and pressed inside. Even the brain membranes were found to be red with blood clotting in several places of the brain. In his opinion, the deceased could have been assaulted with an axe at at 5:15 pm on 29.04.2011 and he (deceased) died due to Coma, as a result of ante-mortem injuries. He also opined that the deceased's probable time of death was approximately one day old. As the post-mortem of the deceased was conducted on 4:30 P.M. on 30.04.2011, therefore, the possibility of assaulting him (deceased) at 5:15 P.M. on 29.04.2011 is there and he could have died during the course of his treatment within a few hours after the incident.

In his cross-examination, this witness (P.W.6) stated that it takes about 3 minutes to 20 minutes to form clotting of blood. He further stated that the injury no.2 could have been caused by a heavy sharp-edged weapon. The lungs of living human being are having light pink colour. He further stated that he cannot tell that in how much time lungs of dead person turn yellowish / pale. This witness is the autopsy surgeon, who has conducted the post-mortem examination of the deceased, and he found a total of five ante-mortem injuries on the body of the deceased and in his considered opinion, those injuries could have been caused by an axe at 5:00 / 5:15 P.M. on 29.04.2011. The axe merely resembles the weapon of offence Takora allegedly used in the present incident.

36. Witness Sub-Inspector Bahadur Singh (PW-5) stated in his deposition that on 29.04.2011, he was posted as Sub-Inspector at Kishani Police Station. On that day, he received the investigation and then inspected the copy of the FIR. He recorded the statement of the informant and chik writer and inspected the

scene of the incident at the informant□s direction and prepared Site Plan Ex.Ka.-5. At the same time, he prepared a recovery memo of blood-soaked and plain soil obtained from the scene. On 29.04.2011, at the police station he received information regarding the death of injured Phool Singh, son of Janak Singh, at the District Hospital, Mainpuri, which was recorded in G.D.No.33 at 21:10 P.M. Constable Sukhveer Singh and Home Guard Pradeep Kumar brought the copy report and other related documents to the village Chitayan where the incident took place. They came to the District Hospital with all the documents of the case to prepare the Panchayatnama (Inquest Report) of the dead body of deceased Phool Singh. The signatures of the witnesses were taken on the Panchayatnama (Ex.Ka.-6) and all the documents of postmortem of the dead body of deceased Phool Singh were handed over to Constable Pratap Singh and Home Guard. He proved the inquest report alogwith carbon copy of chik F.I.R., copy of written report / Tehir, Carbon copy of G.D. No.26 time 18.15 hours, Photo Nash, Letter to Incharge Inspector, Kotwali, Challan Nash, Letter to Reserve Inspector, Letter to C.M.O., G.D. No.48 as Ex.Ka.-6 to Ex.Ka-15. After this, copy of inquest report and statement of witnesses of inquest and other eyewitnesses were recorded in the case diary on 30.04.2011 itself. On 04.05.2011, statement of eyewitness Kamlesh Kumari and copy of postmortem report were recorded. On 13-05-11, Narendra was arrested by the then SHO R.P. Singh, his statement was recorded and after completing all the formalities, charge sheet Ex.Ka.-16 was submitted to the Court on 30.05.2011. This witness has admitted in his cross-examination that the incident took place on 29.04.2011 at around 5:15 pm. On 29.04.2011 itself, he left the police station at 7:15 P.M. and reached the spot of incident on a motorcycle at 7:30 P.M. The informant and his son were found present at the spot of incident.

37. Defense witness Harendra Singh, DW-1, stated in his statement that the incident occurred a year ago. They are five brothers namely, Mahendra, Ravindra, Harendra, Surendra, and Narendra. All of them live in separate rooms in the same barn. There is a room outside the barn in which accused Narendra lives. There is a platform in front of the living room. On the day of the incident, his sister-in-law (Bhabhi) Kamlesh, nephew Adesh, niece Mahapuri and he himself were present at the scene. Ramavatar of the village was also sitting on the platform. A dispute arose over the agricultural land. His father had sold the land to Kamlesh Kumari. Narendra Singh stated that the land has been registered and now you can't register any other land. His father also arrived at the disputed site. His father replied, "It's his land, he can give it to whoever he wants. Who are you?" After this, a verbal exchange broke out between accused and Kamlesh Kumari, Adesh, and his father. At that very moment, his father picked up a brick to hit Narendra. Narendra also picked up a brick. His sister-in-law, nephew, and niece also picked up bricks. His father kicked Narendra, knocking him down. Narendra also tried to intervene. Narendra Singh then shouted, which was audible but not visible. Narendra, who was in front of him, was not holding an axe. He had brought a water container from the tap for lunch. After that, he went inside the house. Narendra Singh's voice could be heard from inside the house. Ten minutes later, his father had fainted. Mahendra Singh was not present on spot. By the time Mahendra Singh arrived, he, Surendra, his sisters Janaki and Shyamlal had taken Father to the Mainpuri District Hospital. At the Mainpuri hospital, an injection was administered after which his father died.

38. D.W.1 in his cross-examination has stated that prior to the incident, his mother had been murdered and the case was being tried against his brother, Narendra Singh alias Kote Singh. The Inspector had prepared the Panchayatnama (Ex.Ka.-6) for his father's body in his presence, which bears his signature. In Ex.Ka-6, the Inspector had written that Narendra Singh had injured him (the deceased) with a Takora. The Inspector had stated that this was a Panchayatnama, and he had signed it. It is true that neither Aadesh or Aadesh's mother Kamlesh Kumari nor Mahendra Singh possessed a Takora. It is also true that Narendra Singh had previously been discharged because Mahendra Singh (P.W.1) had testified in his (Narendra Singh)

favour. It is also true that he had not previously submitted any application or affidavit to any Court stating that Narendra Singh had not murdered Phool Singh.

39. In this regard, informant Mahendra Singh, P.W.-1, is a witness. An examination of the statements of Adesh Kumar (P.W.-2) and Mrs. Kamlesh Kumari (P.W.-3) clearly shows that defense witness Harendra DW-1 was not present at the scene of the incident. Witness P.W.-1 clearly stated in his statement that his brother Harendra Singh and several villagers took his father, who was unconscious, to the Mainpuri District Hospital. P.W.1 clearly stated that at the time of the incident, his son Adesh, his wife Kamlesh Kumari, and he himself were present. Furthermore, all the brothers were working in the fields and arrived 15-20 minutes later. Harendra Singh was not present at the scene at the time of the incident; he arrived after the incident. Witnesses Adesh Kumar (PW-2) and Kamlesh Kumar (PW-3) also denied Harendra Kumar's presence at the scene at the time of the incident.

40. Thus, from the statements of the prosecution witnesses and D.W.-1, it is clear that D.W.-1 Harendra Singh was not present at the spot at the time of the actual assault rather, he arrived some time later, and Harendra Singh himself took the deceased Phool Singh, in an unconscious state, to the District Hospital, Mainpuri. This fact is confirmed by the Panchayatnama and other oral and documentary evidence available on record. As D.W.-1 was not present at the time of actual assault, therefore, the prosecution's story cannot be treated as suspicious and unreliable based on the defence witness Harendra Singh's statement.

41. A careful evaluation of the deposition of this D.W.-1 reveals that at the time of actual incident i.e. assault on his father, he (D.W.-1) was inside his house and his deposition as far as actual assault is concerned, is based on hearing of voices from inside of his house. Meaning thereby that at the time of actual assault, this witness was not present. Therefore, this witness cannot depose about actual manner of incident. From his deposition, it is clear that an incident had happened with his father, in which his father was injured and he took his father to District Hospital, Mainpuri, where his father after being administered an injection succumbed to his injuries. From the deposition of this witness, date, time and place of incident is established. It is also established that on the date, time and place of incident, his father sustained injuries, who finally succumbed to his injuries. It is also evident from his deposition that there was a quarrel between persons present on spot regarding some piece of land, and during which his father picked up a brick to hit the appellant -convict Narendra, on which appellant-convict Narendra also picked up a brick. Therefore, from the deposition of this witness another fact is established that both his father (the deceased) and his brother (appellant-convict) picked up bricks in their hands to hit each other. When this witness entered in his house, the remaining incident had happened, in which his father sustained injuries. We are of the opinion that even the aforesaid deposition of this witness is not helpful to the defence, rather partially corroborates the prosecution story.

42. Admittedly, there is no mention of time of assault in written report / Tehrir Ex.Ka.-1. However, the depositions of P.W.1, P.W.2 and P.W.3 are consistent that the incident had happened at about 5:15 P.M. on 29.04.2011. The first Investigating Officer (P.W.5) in his deposition has also stated that the witnesses to the incident have stated during the course of investigation in their statements recorded under Section 161 Cr.P.C. that the incident took place around 5:15 P.M. on 29.04.2011. It is well settled proposition of law that the first information report is not an encyclopedia. Therefore, in view of consistent and reliable depositions of aforesaid witnesses, it is crystal clear that the incident had happened at about 5:15 P.M. on 29.04.2011 and

FIR has been promptly registered at 6:15 P.M. Therefore, non-mentioning of the time of incident in the written report / Tehrir Ex.Ka.-1 does not make the prosecution story unbelievable.

43. In the present case, the prosecution has been successfully able to prove the date, time, place and manner of incident through consistent and reliable depositions of P.W.1, P.W.2 and P.W.3. Even the defence witness Harendra Singh (D.W.1) has proved the date, time and place of incident, however, he (D.W.1) was not present at the time of actual assault, but his deposition does not belie the basis prosecution story put forth with by the prosecution witnesses. The prosecution has successfully proved that the appellant inflicted several blows with Takora on the head of his father (deceased Phool Singh). The deceased suffered five ante-mortem injuries as a result of aforesaid assault on his head. The force behind this assault was such that left temporal and parietal bones of the deceased were fractured. The oral as well as documentary medical evidence corroborate the manner of incident, as narrated by P.W.1, P.W.2 and P.W.3. The deceased had died as a result of ante-mortem injuries so suffered by him in the assault made by the appellant on his head. Resultantly, the prosecution has successfully proved its case against the appellant-convict beyond reasonable doubt and Question no.1 is answered in affirmative.

Question No.2 : Whether the sentence awarded to the appellant is excessive or not ?

44. Admittedly, the deceased Phool Singh was the father of the appellant-convict. The first information report has been promptly lodged at 6:15 P.M. on 29.04.2011 regarding the present incident, which had occurred at 5:15 P.M. on 29.04.2011. In the written report / Tehrir Ex.Ka.-1, it is clearly stated that the appellant is mentally weak and he committed the incident when his father (the deceased) picked up a brick upon being abused by Narendra Singh. However, P.W.1, P.W.2 and P.W.3, who are the eyewitnesses of the incident, have not stated anything regarding picking up a brick by the deceased in the incident. D.W.1 Harendra Singh, who was not present at the time of actual assault made by the appellant with Takora on the deceased, has deposed that before the actual assault, his father picked up a brick to hit Narendra Singh, which corroborates the prosecution story, as narrated in the written report / Tehrir Ex.Ka.-1 regarding this specific fact of deceased's picking up a brick at the time of incident. It is in this background, the allegedly mentally weak appellant-convict committed this offence, but there is nothing on record to demonstrate that the aforesaid assault was premeditated one. The incident had happened on account of a dispute after harvesting the crop in exchange of chaff. It has also come in the evidence of P.W.1, P.W.2, P.W.3 and D.W.1 that the appellant-convict was earlier tried for the murder of his mother. However, he was acquitted of the charges, as the informant (P.W.1) of this case turned hostile in the said case and deposed in favour of the present appellant-convict. It is also specifically stated in the written report / Tehrir that the appellant was given medical treatment at the Mental Hospital, Agra five years back. Meaning thereby, the appellant was suffering from some form of mental illness and after his recovery, he committed the present incident in a fit of anger arising out a dispute regarding chaff after harvesting of the crops. Initially the deceased picked up a brick, whereupon the appellant-convict struck the deceased with a takora. The details of land-holding, as stated by P.W.3 in her trustworthy deposition, reveal the poor socioeconomic background of the family of the deceased. There was no premeditation on the part of the appellant in the commission of the crime. There was no apparent motive or intention behind this crime. The appellant-convict is the son of the deceased. The appellant was around 38 years of age at the time of incident. In light of the alleged history of mental illness of the appellant-convict coupled with the fact that he was treated for his mental illness at the Mental Hospital, Agra, we are of the opinion that the sentence of life imprisonment imposed upon the appellant-convict by the

trial Court seems to be on a higher side, therefore, the sentence awarded to the appellant is excessive. The Question No.2 is answered in the affirmative.

45. The Hon'ble Supreme Court in the case of **Munna Moyuddin Shaikh v. State of Gujarat (Criminal Appeal No.2686 of 2026, arising out of SLP (Crl.) Diary No.35717 of 2025**) qua awarding fixed sentence replacing life imprisonment by Constitutional Courts has held in the relevant paragraph 16 of **Munna Moyuddin (supra**) as under:-

"16. The underlying ratio of the above quoted judgments is that when a sentence of life imprisonment is imposed, Section 53 with Section 45 the IPC would convey the meaning that it is till the natural life subject to the right of claiming remission. Hence, modifying a sentence of life imprisonment and imposing a fixed sentence is permissible under the interpretation placed in Sriharan (supra) and followed in Shiva Kumar (supra), as long as the period imposed is more than fourteen years of imprisonment."

46. We have perused the custody certificate of the appellant-convict submitted by the jail authorities which shows that the appellant-convict had undergone actual period of 14 years 9 months and 14 days of incarceration as on 26.02.2026 and has served out a total sentence of 17 years 10 months and 29 days as on 26.02.2026 with remission. Therefore, the appellant-convict has already completed more than 15 years of actual incarceration as on today with more than 18 years of sentence including remission.

47. Therefore, considering the totality of circumstances, we are of the considered view that the ends of justice would be adequately met by commuting the sentence of imprisonment for life to a fixed term sentence of 15 years without remission, while maintaining the fine and default sentence.

48. Therefore, while affirming the conviction of the appellant-convict under Section 304 IPC, we modify the sentence of imprisonment for life of the appellant to a fixed term sentence of 15 years without remission. However, we maintain the fine and detault sentence. **The present appeal stands partly allowed,** accordingly.

49. Pending application(s) including bail application, if any, stand disposed of accordingly.

50. Let a copy of the judgment be provided immediately to the appellant through Superintendent Jail, free of cost.

51. The record of the "Trial Court" be sent back immediately with a copy of this judgment for necessary information and compliance and a copy of this judgment be also sent immediately to the concerned Superintendent Jail for compliance.

52. Lastly, the Court records its word of appreciation for the able assistance rendered by Ms. Vishakha Pande, Amicus Curiae for the appellant, who assisted the Court in reaching to its logical conclusion. Ms. Vishakha Pande, learned Amicus Curiae for the appellant shall be paid Rs.20,000/- by the High Court Legal Services Committee as fee, if not already paid in this case and if any amount has already been paid to her the same shall be adjusted.

(2026) 7 ILRA 1132
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 3794 of 2010
& Other Connected Case

Dhanushdhari Singh **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Whether the evidence of the prosecution witnesses could form the basis of conviction?

Headnotes

Indian Penal Code, 1860-Ss. 302/34, 307/34, 504, 506 and 427-Murder-Eye-witnesses-PW-1 to PW-4-their presence at the place and time of occurrence highly doubtful-testimony unreliable-mere fact that witnesses are consistent in what they say is not a sure guarantee of their truthfulness-conduct of prosecution in not adducing and examining any of the injured person creates a reasonable doubt about -evidence of witnesses of facts did not find support and corroboration from medical evidence-no accused person could be convicted on doubtful evidence of prosecution-trial Court relied in cursory and casual manner on evidence of PW-1 to PW-4-judgment of conviction and sentence perverse -set aside-Appellants acquitted.
Appeals allowed. (E-9)

Case Law Cited

1. Badam Singh v. State of M.P., (2003) 12 SCC 792.
2. Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271.

List of Acts

1. Indian Penal Code, 1860—Ss. 302, 307, 504, 506 and 427.
2. Code of Criminal Procedure, 1973—Ss. 82, 83, 161, 311 and 313.
3. Indian Evidence Act, 1872

List of Keywords

Eye-witnesses; projected witnesses; artificial and concocted evidence; imaginary and afterthought; reasonable doubt; injured witnesses; adverse inference; perverse; suspicious and doubtful story; burden of proof.

Appearances of parties

Counsel for the Appellant(s): Amit Kumar, Kameshwar Singh.
Counsel for the Respondent(s): Debee Shanker Pandey, Govt. Advocate, S.K. Shukla, S.K. Singh

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Sri Kameshwar Singh and Sri Amit Kumar, learned counsel for the appellant; Sri Debee Shanker Pandey, learned counsel for the informant; Mohd. Shoeb Khan, learned A.G.A.-I for the State and perused the Trial Court record as well as the judgment.

2. Present **Criminal Appeal No. 3794 of 2010 and Criminal Appeal No. 3925 of 2010**, have been preferred by convict appellant-Dhanushdhari Singh, and Yashwant Singh respectively against the judgment and order of conviction and sentence of the learned Trial Court dated 04.06.2010 passed in Sessions Trial No. 173 of 2008, State of U.P. Vs. Dhanushdhari Singh, Sessions Trial No. 145 of 2009 State of U.P. Vs. Ankur Singh @ Sheru Singh and others arising out of Case Crime No. 42 of 2008 under Sections 302/34, 307/34, 504, 506, and 427 I.P.C.

3. Prosecution story as has been narrated in the written report Exhibit-Ka-1 is as follows; informant Digvijay Singh, has got ascribed written report Exhibit Ka-1 from Dwarika Singh son of late Ram Bhushan Singh and filed Exhibit Ka-1 at police station Rasda, District Ballia. In written report Exhibit Ka-1, PW-1 has stated that informant Digvijay Singh son of Shiv Ji Singh is a resident of Village Sului, Police Station Rasda, district Ballia. Yesterday on 12.03.2008, at the evening time my brother Ved Prakash Singh, told me that today in day, a dispute has arisen between him and Ankur Singh @ Sheru Singh (**since deceased**) son of Tej Bahadur Singh, resident of Village Rasda, Yashwant Singh son of Shivnath Singh, resident of Village Rasda and Agnivesh Singh @ Maan Singh Son of Iqbal Singh, Uttar Patti, Village Rasda, Police Station Rasda, District Ballia and Dhanushdhari Singh, son of Keshav Singh Azad, Village Kasme, Police Station Haldhar, District Mau, on the point of demanding of money previously given by me and they said that they will see him. There is a possibility that today they can quarrel with him or cause any mis-happening. After listening these things, I said that I will proceed with you, you do not make any dispute or quarrel. I by one motorcycle and my brother Ved Prakash Singh, Mayank Singh @ Nikku Singh and Rahul Gupta @ Guddu Gupta on another motorcycle proceeded to appear in the B.A. First year Examination. Today on 13.03.2008, early in the morning at 06:30, we reached at Sului turn, there in a Bolero Car of red colour, the above Mayank Singh @ Nikku Singh and other people were sitting and saw the motorcycle of my brother. Ankur Singh @ Sheru Singh (**since deceased**) and all the above friends of him exhorted that today they will kill him so that matter with regard to money will be finished. In this way, hearing and saying of this, we became surprised. My brother Ved Prakash Singh and both his friends ran away by the above motorcycle then Ankur Kumar Singh @ Sheru Singh (**since deceased**) with his friends driving the Bolero Car himself trying to chase the vehicle behind them and coming near the pond of Hita Ka Pura with intention to kill colluded with Bolero Car. Due to this, my brother Ved Prakash Singh has died on the spot and Mayank Singh @ Nikku Singh, Rahul Gupta @ Guddu Gupta become seriously injured. On making hue and cry by me, nearby people rushed, then Ankur Kumar Singh @ Sheru Singh (**since deceased**) and his friends gave intimidation to kill and firing with firearms have ran away. I have taken the dead body of my brother to the Police Station and injured have been sent to the hospital at Rasda for treatment. I have taken the dead body from the hospital and have came to the police station.

4. On the basis of written report Exhibit Ka-1, Constable Chote Lal Yadav PW-6 has registered the FIR Exhibit Ka-8 against the named accused persons Ankur Kumar Singh @ Sheru Singh (**since deceased**), Dhanushdhari Singh, Yashwant Singh, at Case Crime No. 42 of 2008

under Sections 302/34, 307/34, 504, 506 and 427 I.P.C. After the registration of the F.I.R., investigation of the case was taken by Sub-Inspector Ramashray Prasad-P.W-7, into his hands. The Investigating Officer Ramashray Prasad-P.W.-7 prepared the panchayatnama-Exhibit Ka-10 of the dead body of the deceased Ved Prakash Singh. Thereafter he visited at the place of occurrence and prepared other necessary police papers, such as letter to R.I., letter to C.M.O., again letter to C.M.O., photolash and sample (Namuna) and seal and sample of the stamp and police papers in his handwriting as Exhibit Ka-11 to Exhibit Ka-16. The Investigating Officer has recorded the statement of the informant and other prosecution witnesses and on the pointing out of the informant Digvijay Singh and Kripa Shankar Pandey, prepared the site plan Exhibit Ka-17. The Investigating Officer also took the sample of plain soil and bloodstained soil from the place of occurrence and prepared a fard memo Exhibit Ka-4. He also recovered a pulsar motorcycle and one Bajaj Scooter from the place of occurrence and taken them into his possession and prepared the fard memo as Exhibit Ka-3. The Investigating Officer has recorded the statement of the other prosecution witnesses under Section 161 Cr.P.C., and he tried to arrest the accused persons. However, the accused persons could not be arrested, due to this reason, he prayed for issuance of process of Section 82/83 Cr.P.C. The Investigating Officer also sent the dead body of the deceased for postmortem examination. The Investigating Officer also recovered an admit card from the pocket of the deceased and prepared fard memo as Exhibit Ka-2. In the mid of the investigation, the Investigating Officer Sub-Inspector Ramashray Prasad-P.W-7 has been transferred and the investigation of this case was handed over to Inspector Surya Bhan Singh PW-8. Inspector Surya Bhan Singh PW-8, however, could not complete the work of the investigation. He took the judicial remand of accused Dhanushdhari Singh on 19.06.2008. He was also transferred to other place. Thereafter Circle Officer, Anil Prakash Mishra PW-10, has taken the investigation into his hands. Anil Prakash Mishra PW-10 has again recorded the statement of the informant and other prosecution witnesses under Section 161 Cr.P.C. Anil Prakash Mishra PW-10 has also recorded the statement of other formal witnesses under Section 161 Cr.P.C. Anil Prakash Mishra PW-10 has also visited the place of occurrence and prepared the site plan of the occurrence Exhibit Ka-19. He also requested for process of Section 82/83 against the accused persons in the Court of the CJM, Ballia. After completing all the formalities of the investigation, last I.O. Anil Prakash Mishra PW-10 submitted a charge-sheet Exhibit Ka-21 against the accused persons in the Court concerned. Against accused Dhanushdhari Singh, a charge-sheet was also submitted by the then Inspector Rasda, Hari Prasad Gautam.

5. Dr. Roshan Singh Patel PW-5, has prepared the injury report of Chandan Gupta, Mayank Kumar Singh, Guddu Gupta as Exhibit Ka-5, Exhibit Ka-6, and Exhibit Ka-7 of the injured persons respectively. Dr. Roshan Singh Patel PW-5, has prepared the injury report of injured Chandan Gupta, as Exhibit Ka-5 and found the following injuries on the body of Chandan Gupta:

(1) Lacerated wound approx 5 cm. in length & .5 cm in depth present left to right eye.

(2) A Traumatic swelling with CLW approx 2.5 cm x .5 cm x .5 cm present over occipital region.

(3) A Traumatic swelling with deformity present Rt. leg upper & middle 1/3rd - Adv. X-Ray Rt. leg

Opinion (1) & (2) simple blunt object of fresh abrasion (3) K.U.O."

Dr. Roshan Singh Patel PW-5, has also prepared the injury report Exhibit Ka-6 of Mayank Kumar Singh and he found the following injuries on his body:

(1) Lacerated abrasion present over whole of Rt. scapular region and Rt. shoulder post.

(2) Abrasion & lacerated wound present over post aspect of Rt. elbow joint.

(3) Lacerated wound & abrasion present over Rt. hand palmar aspect.

(4) Multiple abrasion present Rt. foot and ankle Jt. lateral aspect and Lt. Knee Jt.

(5) Abrasion present over Lt. Forearm and Lt. Knee Jt.

On the same date, on 13.03.2008, Dr. Roshan Singh Patel PW-5, has also examined the injured Guddu Gupta, and prepared the injury report as Exhibit Ka-7. The following injuries were found by Dr. Roshan Singh Patel PW-5, on the body of Guddu Gupta :

(1). CLW approx.8 cm x 1 cm x bone deep over Rt. occipitoparietal region.

(2). CLW approx 5 cm x 0.5 cm x 0.5 cm. over Lt. temporal region.

(3). CLW approx 4.5 cm x 0.5 cm x 0.5 cm over Lt. temporal region.

(4). Abrasion c traumatic swelling over Rt. side face.

(5) Abrasion traumatic swelling over Rt. wrist & Lt. Palm CLW

(6) L.W aprox. 4cm x 0.5 cm x upto muscle deep. Adv. X-Ray Rt. F.A. wrist Jt. swelling over mid part of it. Middle finger on post aspect, oozing front Adv. X-Ray Lt Hand & wrist.

(7) LW- aprox 3 cm x 0.5 cm x bone deep on mid part of lt. middle finger on post aspect, oozing front Adv. X-Ray. Lt. hand & wrist.

(8) L.W. aprox. 8 cm x 1 cm x 1 cm over Lt Elbow jt. post aspect.

(9) Ab. L.W. aprox 5 cm x 1 cm x bone deep over occipital region."

6. Dr. Jameel Ahmad PW-9 has conducted the postmortem examination of the dead body of deceased Ved Prakash Singh and prepared postmortem report Exhibit Ka-18. Dr. Jameel Ahmad, PW-9 found the following ante mortem injuries on the dead body of the deceased Ved Prakash Singh.

External Injuries :

1. A lacerated wound measuring 3 cm x 1 cm x bone deep, situated on the left side of the forehead.

2. A lacerated wound measuring 1 cm x 1 cm x bone deep, situated on the eyebrow of the left eye.

3. A lacerated wound measuring 20 cm x 6 cm x bone deep, situated on the left side of the head.

4. Contused abrasion (bruise with scratch) measuring 6 cm x 4 cm, on the outer side of the left arm, just above the elbow joint.

5. Contused abrasion measuring 10 cm x 5 cm, behind the elbow, just below the elbow joint.

6. Multiple abrasions within an area of 12 cm x 8 cm, on the back of the left side.

7. Contused abrasion within an area of 10 cm x 12 cm, on the right side of the chest.

8. A lacerated wound measuring 3 cm x 1 cm x bone deep, situated below the chin.

9. Abrasion measuring 8 cm x 4 cm, on the left knee joint.

10. Abrasion measuring 20 cm x 10 cm, situated on the front side of the right thigh.

Internal examination :

The skull bone was fractured extending from the left parietal bone to the right parietal bone, and from the left ear bone to the right ear bone. The brain and meninges (brain membranes) were torn. A blood clot of about half a liter was present in the brain. The chambers of the heart were empty.

In the opinion of Dr. Jameel Ahmad PW-9, the cause of death was ante mortem injury that was sufficient to cause death in the ordinary course of nature.

7. After the submission of the charge-sheet against the accused persons in the concerned Magistrate Court, case was committed to the Court of Session for trial. The learned Trial Court has framed charge against accused Dhanushdhari Singh on 15.10.2008 under Section 302/34 IPC, 307, 504, 506 and 427 IPC. Accused Dhanushdhari Singh denied from the charge and demanded trial. Charges were also framed against Ankur Kumar Singh @ Sheru Singh (**since deceased**) by the Trial Court on 22.08.2009 under Sections 302, 307, 504, 506 and 427 IPC, accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) denied from the charge levelled against him and demanded trial. Charges were also framed by the Trial Court against accused Yashwant Singh, Agnivesh Singh @ Maan Singh, on 22.08.2009 under Section 302, 307 read with Section 34 IPC, and Section 504, 506 and 427 IPC. Both the accused persons have also denied from the charge levelled against them and demanded trial.

8. To substantiate its case, prosecution has adduced informant Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, as witnesses of the fact and Dr. Roshan Singh Patel PW-5, Chote Lal Yadav PW-6, Ramashray Prasad PW-7, Surya Bhan Singh PW-8, Dr. Jameel Ahmad PW-9, Anil Prakash Mishra PW-10, as formal witnesses of the prosecution. Apart from the above ocular evidence, the prosecution has also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-22 in support of its case.

9. After recording of the evidence of prosecution witnesses, accused persons were examined under Section 313 Cr.P.C., by the Trial Court. All accused persons expressed ignorance about the questions put to them under Section 313 Cr.P.C. They have also stated that police has wrongly and falsely investigated the case and prepared false and illegal documents against them and falsely implicated them and charge-sheeted them in the Court without any evidence. The accused persons have also stated that they are innocent and they are falsely implicated by the informant with the collusion of the police due to enmity and rivalry in the village and locality. They have also stated that they have not committed the crime as alleged against them. They were not present at the place of occurrence or near the place of occurrence. Police has falsely implicate them in collusion with the prosecution due to enmity against them. They have also stated that they will adduce evidence in their defence. They adduced Vijay Bahadur as DW-1 and Virendra Pratap Singh as DW-2. They have also filed documentary evidence as Exhibit Kha-2 to Kha-5 in their defence.

10. After recording the proceedings of evidence of prosecution and defence and hearing of the arguments of both sides, learned Trial Court delivered the judgment and order dated 04.06.2010 in which accused Agnivesh Singh @ Maan Singh was found innocent and he was acquitted by the Trial Court. However, the learned Trial Court has found guilty to accused Yashwant Singh, Ankur Kumar Singh @ Sheru Singh, (**since deceased**) Dhanushdhari Singh in respect of the charge as levelled against them. The learned Trial Court has held guilty and convicted the accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) under Section 302, 307, 504, 506 and 427 IPC. The accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) was convicted for life imprisonment under Section 302 IPC and a fine of Rs. 5,000/-. He was convicted for ten year rigorous imprisonment under Section 307 IPC and by a fine of Rs. 2500/-, for charge under Section 504 IPC, he was convicted by one year rigorous imprisonment. Under Sections 506 and 427 IPC, he was sentenced for each offence by one year rigorous imprisonment. Accused appellant Dhanushdhari Singh and Yashwant Singh were also held guilty and were convicted under Section 302/34 IPC, 307/34, 504, 506 and 427 IPC and each were convicted for life imprisonment and a fine of Rs. 5,000/- each under Section 302/34 and each were also convicted under Section 307/34 IPC by ten years rigorous imprisonment and a fine of Rs. 2500/- each. For the offence under Section 504 IPC, each were convicted by one year rigorous imprisonment and also for the offence under Section 506 IPC, each were convicted by one year rigorous imprisonment and for the charge under Section 427 IPC, each were sentenced by one year rigorous imprisonment. In case of default of payment of fine, each accused appellant were directed to serve six months additional imprisonment. All the sentences were directed to run concurrently for each accused person. Aggrieved by the above judgment and order of conviction and sentence dated 04.06.2010, passed by the learned Trial Court, accused-Ankur Kumar Singh @ Sheru Singh (**since deceased**), Dhanushdhari Singh, Yashwant Singh have preferred Criminal Appeal Nos.3793 of 2010, 3794 of 2010 and 3925 of 2010, respectively. Since the above three criminal appeals have arises from the

same judgment and order of conviction and sentence dated 04.06.2010, passed by the learned Trial Court, hence all the three criminal appeals are being disposed off by a common judgment of this Court.

11. It transpires from the record that, accused Ankur Kumar Singh @ Sheru Singh has died during the pendency of the appeal. Due to this reason, Criminal Appeal No. 3793 of 2010 (Ankur Kumar Singh @ Sheru Singh Vs. State of U.P.) has become **abated** by order of this Court dated 11.01.2023, therefore, we are adjudicating the present Criminal Appeals only in respect of surviving accused-appellants Yashwant Singh and Dhanushdhari Singh respectively.

12. Learned counsel for the accused-appellants have submitted that in the present case, three persons namely Mayank Singh @ Nikku Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta, who received injuries in the incident have not been examined and in this view of the fact, adverse inference must be drawn against the prosecution and as such, conviction is bad in law. There is a conflict between eye-witness account and medical evidence. None of the injuries are grievous injury. The prosecution case is that after the deceased fell down, Ankur Kumar Singh @ Sheru Singh (**since deceased**) ran his vehicle on the body of the deceased with to and fro motion. Allegations did not find corroboration from medical evidence and as such, conviction is bad in law. It is also submitted by the learned counsel for the accused-appellants, that two prosecution witnesses Madan Singh and Chandra Sen Singh have not been mentioned in the FIR and their statements were recorded after eight months from the date of incident that is to say, on 09.11.2008 and the learned Sessions Judge committed a manifest error in placing reliance upon the testimony of Madan Singh and Chandra Sen Singh. Learned counsel for the accused-appellants have also submitted that a memo was sent from the hospital to police station Rasda, District Ballia, which contains a recital to the effect that three injured and deceased have received injuries in the accident. The memo further continued a recital to the effect that the body of the deceased is handed over to police station, Rasda, Kotwali, later on, on the aforesaid words were scored out and it was mentioned that the body was handed over to relatives. These important aspects of the matter were never considered by the learned Sessions Judge. It is also submitted on behalf of the accused-appellant that the incident that happened in this case is purely an accidental case. However, with consideration and afterthought and collusion of other persons, the police has falsely implicated the accused-appellants in this case. All the prosecution witnesses of the fact were not present at the place of occurrence when accident happened. From a perusal of the evidence of the prosecution witness of the fact, it is apparent that all prosecution witnesses of the fact are projected eye-witnesses of the prosecution to support the prosecution case. The learned Trial Court has not appreciated the evidence in this respect as available on the record and without any evidence against the accused-persons wrongly believed on the unreliable and false evidence of the prosecution witnesses of the fact, and held guilty to accused-appellant for the commission of the crime. The finding and reasoning as recorded by the Trial Court is without any evidence on the record and is against the settled principles of law. Therefore, the judgment and order of conviction and sentence as passed by the learned Trial Court dated 04.06.2010 is perverse and bad in law, hence liable to be set aside and the criminal appeals of the appellants deserves to be allowed.

13. Per contra, learned AGA-I for the State and learned private counsel for the informant have vehemently opposed the above arguments and submissions of the appellants. The learned AGA-I

on behalf of the State and learned private counsel for the informant, have submitted that accused persons with a pre-plan, premeditation and pre-concert, with intention to kill the deceased Ved Prakash Singh and other injured persons used four wheeler Bolero Vehicle in commission of the crime. The accused persons intentionally colluded the Bolero with high speed against motorcycle on which injured persons and deceased Ved Prakash Singh were sitting, thereby causing a very grievous and fatal injury by which Ved Prakash Singh died and other persons were injured seriously. The learned Trial Court has appreciated the evidence available on record in a proper perspective. The Trial Court by appreciating the evidence has found the testimony of the prosecution witnesses as reliable and trustworthy. Since the Trial Court found the prosecution case proved by evidence of prosecution behind reasonable doubt, hence held guilty and convicted the accused-appellants in legal way and in accordance with evidence available against them on the record. There is no illegality, perversity in the finding and reasoning of the Trial Court. The Trial Court has appreciated the evidence in accordance with the settled principles of law and delivered cogent finding which is based on evidence and, therefore, held guilty and convicted the accused persons for the alleged crime. Therefore, there is no merit and substance in the criminal appeals as preferred by the accused-appellant persons. Hence, the criminal appeals as preferred by the accused-appellants are devoid of merit and are liable to be dismissed.

14. In the light of the above submission and counter submissions advanced on behalf of both parties, from the perusal of the written report Exhibit Ka-1, it is clear that informant Digvijay Singh PW-1 has lodged a written report naming all accused persons liable for commission of the crime. In written report Exhibit Ka-1, the informant Digvijay Singh PW-1 shows and projected himself as an eye-witness of the incident.

15. From a perusal of the evidence of informant Digvijay Singh PW-1, we find that informant PW-1 has stated in his examination-in-chief, the same things and facts as have been stated by him in written report Exhibit Ka-1, which has been repeated by PW-1 in his evidence, in his examination-in-chief which is covering in four pages. He tried to support the prosecution story. From a perusal of the cross examination, we find that according to this witness, on the date of incident i.e. 13.03.2008, when brother of PW-1 Ved Prakash Singh, who was going to appear in B.A. Part-I Examination at Mathura Degree College, Rasda, Ballia and with him, injured Mayank Kumar Singh and Rahul Gupta were also present. It was time about 06:30 early in the morning. Injured Mayank Kumar Singh was driving the motorcycle and the injured Rahul Gupta was sitting behind Mayank Kumar Singh and deceased Ved Prakash Singh was sitting on the same motorcycle behind Rahul Gupta. Informant was also following them by another motorcycle. According to this witness, Bolero vehicle of the accused persons was standing near village of the informant on the right turn of the Sului village, then this witness had seen that accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) was sitting on the driver seat and accused Yashwant Singh was sitting on the other side of the driver. Another accused persons were sitting in the Bolero vehicle in middle and back sides. According to this witness, this witness heard accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) saying that today finish Ved Prakash Singh because by finishing Ved Prakash Singh the issue about money will also be finished. According to this witness, informant PW-1, accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) moved the Bolero vehicle with high speed and reaching near the village Bheeta Ka Pura and overtakes the motorcycle of Mayank Singh and after overtaking the motorcycle of Mayank Singh, Ankur Kumar Singh @

Sheru Singh (**since deceased**) turned his vehicle again in the direction from which direction Mayank Singh was coming driving his motorcycle with Rahul Gupta and deceased Ved Prakash Singh. After turning his vehicle with intention to kill, Ankur Kumar Singh @ Sheru Singh (**since deceased**) colluded his Bolero vehicle with high speed at the headside of motorcycle of Mayank Singh. Due to this collusion, Mayank Singh, Rahul Gupta have fallen down towards north direction and Ved Prakash Singh fell down towards southern direction. Ved Prakash Singh tried to stand up, then Ankur Kumar Singh @ Sheru Singh (**since deceased**) with his Bolero vehicle again colluded against Ved Prakash Singh and he moved the Bolero vehicle over the body of Ved Prakash Singh, thereby crushed Ved Prakash Singh. Thereafter, accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) by turning his Bolero vehicle proceeded towards Rasda. He also colluded on the scooter of Chandan Gupta. According to this witness, Kripa Shankar Pandey and Madan Singh, Chandra Sen Singh of the village have also witnessed the incident. Number of Bolero vehicle of accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) is UP 54 F 9594.

16. From the evidence of informant Digvijay Singh PW-1, it is revealed that according to this witness motive for the crime was Rs.25,000/- which has been given by deceased Ved Prakash Singh to accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) for the purchase of a motorcycle. However, inspite of receiving Rs.25,000/- in cash, accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) has not delivered a motorcycle as had been agreed upon between Ankur Kumar Singh @ Sheru Singh (**since deceased**) and deceased Ved Prakash Singh since Ankur Kumar Singh @ Sheru Singh (**since deceased**) was holding and running a motorcycle agency and selling motorcycle. However, Ankur Kumar Singh @ Sheru Singh (**since deceased**) has not delivered a new motorcycle to deceased Ved Prakash Singh, then, Ved Prakash Singh began to demand Rs.25,000/- which were given in advance for the motorcycle. However, accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) was not willing to give new motorcycle or return the money to the sum of Rs. 25,000/- as given in advance by Ved Prakash Singh. Due to continuous demand of Rs.25,000/- by deceased Ved Prakash Singh, accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) has caused the alleged crime by his Bolero vehicle when deceased Ved Prakash Singh was going to appear in B.A. Part-I examination with the injured Rahul Gupta and Mayank Kumar Singh.

17. Thus, from the perusal of the evidence of informant PW-1, it is clear that target for the purpose of killing was deceased Ved Prakash Singh. The deceased Ved Prakash Singh was sitting as third person behind the injured Rahul Gupta @ Guddu Gupta and Mayank Kumar Singh. Mayank Kumar Singh was driving the motorcycle. The motorcycle on which deceased Ved Prakash Singh was sitting was going forward and Ankur Kumar Singh @ Sheru Singh (**since deceased**) was behind them with his Bolero vehicle. In this way, deceased Ved Prakash Singh was on the motorcycle in front of the Bolero vehicle of the accused appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**), in this condition it is very easy and convenient to collude his Bolero vehicle from the back side for hitting against the deceased Ved Prakash Singh who was sitting behind Rahul Gupta on the motorcycle, but surprisingly according to this witness, PW-1, accused appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) has not hit and colluded his Bolero from the back side but overtakes the motorcycle of Mayank Singh and from the front side turned his Bolero vehicle and colluded on the front side of the motorcycle when Mayank Singh was driving the motorcycle and cause the accident thereby injuring Mayank Kumar Singh, Rahul Gupta

@ Guddu Gupta, Chandan Gupta and causing death of Ved Prakash Singh. The mode and manner of commission of the crime which is in the form of motor vehicle accident, as has been stated by informant Digvijay Singh PW-1 in this respect, appears to be highly doubtful and suspicious. A number of questions at this stage arises as to why accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) has not hit and colluded the motorcycle from the back side where the deceased Ved Prakash Singh was sitting. Accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) overtakes the motorcycle of Mayank Singh and from the front side of the motorcycle and turned his Bolero vehicle colluded and hit the motorcycle, which was driven by Mayank Kumar Singh, where accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) overtakes the motorcycle of Mayank Kumar Singh, turned back and colluded against the front side of motorcycle of Mayank Kumar Singh so that Mayank Kumar Singh who was driving the motorcycle and Rahul Gupta, who was sitting behind Mayank Kumar Singh on the motorcycle could easily identify the accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) and other persons who were sitting in the Bolero vehicle. The manner and mode in which informant Digvijay Singh PW-1 has narrated the prosecution story creates a reasonable doubt about presence of this witness Digvijay Singh PW-1 at the place of occurrence and also on this fact that this witness has not seen the happening of the incident/accident with his own eyes.

18. From the perusal of the whole evidence of informant Digvijay Singh PW-1, we find that this witness has not stated true facts and story about happening of the incident. It is clear from the evidence of this witness that prosecution with a view to involve and implicate falsely the accused-persons narrated a false story with consideration, deliberation and with afterthought and thereby falsely implicated the accused persons in this case. The evidence of informant Digvijay Singh PW-1 is contrary and creates doubt and suspicion about his veracity and truthfulness. From the perusal and appreciation of the evidence of informant Digvijay Singh PW-1, it is evident and clear that this witness has been stating artificially false, imaginary and concocted story with a view to falsely implicate and prosecute the accused-persons. From the evidence of this witness Digvijay Singh PW-1, we find that the presence of this witness is highly doubtful, suspicious at the place of occurrence. Due to this reason, whole evidence of this witness appears to be concocted and artificially narrating a false and fabricated story against the accused-appellant persons. Thus, we are of the considered view that the evidence of the informant Digvijay Singh PW-1 does not inspires any confidence, therefore, we find the testimony of this witness as unreliable.

19. It is also a fact apparent from the evidence of informant Digvijay Singh PW-1 that even after intimidation given by accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) before a day of incident on 12.03.2008, we find that he has not given any information or lodged any report about intimidation against the accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) at police station. This fact also creates a suspicion about the prosecution story as written in Exhibit Ka-1 and stated by informant Digvijay Singh PW-1 in his evidence.

20. The prosecution has also adduced Kripa Shankar Pandey as PW-2, Madan Singh as PW- 3 and Chandra Sen Singh as PW-4. According to the prosecution, all the above prosecution witnesses are eye-witness of the incident, who had seen the happening of the incident with their own eyes. From the perusal of the evidence of Kripa Shankar Pandey - PW-2, Madan Singh-PW- 3 and Chandra Sen Singh-PW-4, we find that above prosecution witnesses have also stated in their

evidence same statements as have been stated by informant Digvijay Singh PW-1 in his evidence. From the perusal of the evidence of the above witnesses it is amply clear that the above witnesses of the prosecution have also unsuccessfully tried to support and prove the prosecution story. However, inspite of their best attempt, the above prosecution witnesses have miserably failed in their attempt to prove the prosecution story by their evidence. From a perusal of the evidence of the above prosecution witnesses, it is also clear that prosecution witnesses Kripa Shankar Pandey PW-2, Madan Singh PW- 3 and Chandra Sen Singh PW-4 have also been produced by the prosecution as projected witnesses, who had not seen any happening of the incident with their own eyes. The evidence of the above prosecution witnesses itself indicate this fact in clear-cut manner that prosecution witnesses Kripa Shankar Pandey PW-2, Madan Singh PW- 3 and Chandra Sen Singh PW-4 have also stated the prosecution in artificial and concocted manner narrating an imaginary and afterthought way, which was prepared with full consideration and deliberation. The prosecution projected the above prosecution witnesses as an eye-witness of the incident with a view to strengthen and support the prosecution story and also with a view to corroborate the evidence of informant Digvijay Singh PW-1. However, even by adducing Kripa Shankar Pandey PW-2, Madan Singh PW- 3 and Chandra Sen Singh PW-4 as an eyewitness of the incident for proving the prosecution story, the prosecution has itself created a deep and reasonable doubt and suspicion about the truthfulness and trustworthiness of the evidence of the above prosecution witness.

21. In this way, the prosecution adduced PW-1, PW-2, PW-3 and PW-4 as eye-witnesses of the incident, however, from the perusal and appreciation of the whole evidence of the above prosecution witnesses, PW-1, PW-2, PW-3 and PW-4, we find that their evidence and statements does not inspire any confidence about the truthfulness of the prosecution story. All these prosecution witnesses tried to strengthen the case of the prosecution, but from the perusal of the evidence of the above prosecution witnesses, it is clearly revealed from their evidence itself that the above prosecution witnesses have narrated a concocted and false, unbelievable and doubtful story. Due to this reason, we find the evidence of the prosecution witnesses Digvijay Singh PW-1, Kripa Shankar Pandey PW-2, Madan Singh PW- 3 and Chandra Sen Singh PW-4 as unreliable and unworthy of the credit.

22. From the perusal of the evidence of Madan Singh PW-3, it is revealed that Madan Singh PW-3 and Chandra Sen Singh PW-4 have stated in their evidence that accused appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) after causing the incident has also fired from his firearm. They have also stated that they have given this type of statement to the Investigating Officer in their statement under Section 161 Cr.P.C. However, last I.O. Anil Kumar Mishra PW-10, though in the course of the cross-examination by defence, has accepted this fact that the prosecution witnesses have not given any statement to him that accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) has fired from the firearms after committing the incident. From this fact, it is revealed that the above prosecution witnesses have narrated and made a false statement in the evidence in the Court only with a view to make the prosecution story more serious and heinous. From the statement of this witness itself and from the evidence of last Investigating Officer Anil Kumar Mishra PW-10, statement of the above witnesses about firing from firearms by accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) proved to be false and exaggerated. This fact also makes prosecution story to be highly doubtful. This fact also revealed that above prosecution witnesses have given artificial and concocted evidence in the Court against

the accused person Ankur Kumar Singh @ Sheru Singh (**since deceased**) with consideration and afterthought only with a view to falsely implicate the accused persons in the alleged crime.

23. In this respect, Hon'ble Supreme Court in **Badam Singh Vs. State of M.P. (2003) 12 SCC 792** held in paragraph 16 as follows:

"16. The learned Sessions Judge after considering the evidence on record and accepting the evidence of the eye witnesses found the appellant guilty of the offence under Section 302 I.P.C. and sentenced him to imprisonment for life. The High Court by its impugned judgment dismissed the appeal preferred by the appellant. We have perused the impugned judgment of the High Court. The High Court which was the first Court of Appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs-5 and 6 whereas the fact is that the FIR was lodged by PW-4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eye witnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. In our view, the High Court has not approached the evidence in the manner it should have done being the first Court of Appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a Court to hold, that though consistent, their evidence is not acceptable for any other reason. If the Court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eye witnesses is suspect, the Court may reject their evidence. That is why it is necessary for the High Court to critically scrutinize the evidence in some detail, it being the final court of fact. We have therefore gone through the entire evidence on record with the assistance of counsel for the parties."

24. In the light of the legal principles as annunciated by Hon'ble Supreme Court in **Badam Singh (supra**), it is clear that only from this fact that witnesses are consistent in what they say is not a sure guarantee of their truthfulness. If after appreciating the evidence of prosecution witnesses, it transpires that case of prosecution is doubtful, incredible and it is found that their presence at the place of occurrence is doubtful, then the Court may reject their evidence in the light of the above law. The legal principles of the Hon'ble Supreme Court and from the discussions of evidence in the present case, it is clear that presence of the prosecution witnesses Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, at the place of occurrence, at the time of happening of the incident, is highly doubtful, If the presence of the prosecution witnesses Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, found to be doubtful at the place of occurrence, then their evidence in respect of prosecution story, as narrated by them in the Court, would automatically be highly doubtful and unreliable. From the appreciation of evidence of prosecution witnesses, Digvijay Singh PW-1 and Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, we find that evidence of these witnesses indicate that they were not present at the place of occurrence when incident happened. Due to this reason and in the light of the law as laid down by the Hon'ble Supreme Court in **Badam Singh (Supra**), we find that evidence of prosecution witnesses informant Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, are found to be unreliable and unworthy of credit.

25. According to the prosecution story itself, from the written report Exhibit Ka-1 and also from the evidence of Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, this is clearly established fact that in this so-called incident, Mayank Kumar Singh, Rahul Gupta and Chandra Sen Singh have also received fatal injuries. From the record of the file, the injury report of Chandan Gupta Exhibit Ka-5, injury report of Mayank Kumar Singh Exhibit Ka-6 and injury report of Rahul Gupta @ Guddu Gupta Exhibit Ka-7 are available and Dr. Roshan Singh Patel PW-5, who examined the body of above injured persons and prepared their injury reports, as Exhibit Ka-5, 6 and 7. At the time of the incident, injured Mayank Kumar Singh was driving the motorcycle and injured Rahul Gupta @ Guddu Gupta was sitting on the motorcycle behind Mayank Kumar Singh and behind Rahul Gupta @ Guddu Gupta, deceased Ved Prakash Singh was sitting on the motorcycle. In this way, those injured witnesses Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta are best witness of the prosecution for supporting the prosecution case. However, surprisingly the prosecution has not adduced the injured witness Mayank Kumar Singh, who was driving the motorcycle on the date of the incident and also not produced Rahul Gupta @ Guddu Gupta, who was also sitting behind Mayank Kumar Singh on the motorcycle. Both Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta being an injured in the said incident, are natural, real and best witnesses of the case. However, the prosecution has not produced Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta as prosecution witnesses in support of its case. The prosecution was duty bound to produce the injured witnesses Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta in support of its case. However, surprisingly the prosecution withheld the evidence of Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta by not producing them in the Court. If the prosecution would have produced Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta, who are injured witnesses in respect of this case, then in this condition prosecution story would easily be proved behind reasonable doubt against the accused person Ankur Kumar Singh @ Sheru Singh (**since deceased**). There is no answer to this question for prosecution that why and under what circumstances, prosecution has not adduced the injured Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta as prosecution witnesses. It is apparent from the above facts and circumstances that prosecution with a plan and purpose with consideration, afterthought, withheld the valuable evidence of injured Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta from coming into Court. The prosecution on one side withheld the evidence of injured Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta and on the other side tried to project Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4 as an eyewitness with a purpose to falsely, concocted, with consideration and afterthought to implicate the accused persons falsely on their evidence in this case. In this way, prosecution withheld natural witnesses injured Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta for giving their evidence and produced concocted and artificial evidence of Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, of the prosecution witness in support of its case. However, from the evidence of the prosecution witnesses Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, prosecution story itself becomes highly doubtful and suspicious, creating doubt about the veracity and truthfulness of the prosecution story. From the perusal of the evidence of Dr. Roshan Singh Patel PW-5 who prepared the injury report of injured Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta Exhibit Ka-5 and Exhibit Ka-6 and Chandra Sen Singh Exhibit Ka-7, respectively, it is stated by this witness during the course of cross-examination, that paper No.8, which has signature of CHC Superintendent Dr. Kailash Singh addressed to the in-charge Inspector P.S. Kotwali Rasda and handwritten has contained an information that after receiving injuries

in an accident, Mayank Kumar Singh and Rahul Gupta @ Guddu Gupta and one other dead person have been brought by some people at the CHC. Name of the deceased person has been mentioned as Ved Prakash Singh. Paper No.8-Ka, which has endorsed the signatures of CHC Superintendent Dr. Kailash Singh has been proved by Dr. Roshan Singh Patel PW-5 as Exhibit Kha-1. Dr. Roshan Singh Patel PW-5 has stated that I have entered the injuries of the three injured persons in the accidental register. The above evidence and facts as stated by Dr. Roshan Singh Patel PW-5, revealed that injured Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and deceased Ved Prakash Singh, who has received injuries in motorvehicle accident, due to this reason the injuries of the injured persons were entered by this witness in accidental register and intimation has also been sent by paper No.8 Ka, which is Exhibit Kha-1 addressed to the In-charge Inspector, P.S. Kotwali Rasda, district Ballia. This fact also makes the prosecution story suspicious and unreliable.

26. Illustration (g) of Section 114 of the Indian Evidence Act (Act No. 1 of 1872) provides that that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. In the present case, according to the prosecution itself, on the date, time of incident, Mayank Kumar Singh driving the motorcycle on which deceased Ved Prakash Singh was sitting. According to the prosecution itself, Mayank Kumar Singh driving the motorcycle and behind Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta was sitting and behind Rahul Gupta @ Guddu Gupta deceased Ved Prakash Singh was sitting. Accused Ankur Kumar Singh @ Sheru Singh (**since deceased**) driving his Bolero vehicle overtakes Mayank Kumar Singh and returned after turning his Bolero vehicle and with high speed colluded his Bolero vehicle on the front side of the motorcycle, which was being driven by Mayank Kumar Singh. Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta have also received injuries and they were injured persons. Apart from that, it is said that one Chandan Gupta has also received injuries by the Bolero vehicle of accused Ankur Kumar Singh @ Sheru Singh (**since deceased**). In this way, injured Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta were best witnesses of the prosecution, since they have also become injured in this accident. However, prosecution withhold the evidence of injured persons Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta. Prosecution has not adduced any injured person amongst Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta. This is a case of motor-vehicle incident or accident and it is prosecution story that accused Ankur Kumar Singh @ Sheru Singh (**since deceased**), has used his Bolero vehicle as a weapon in killing the deceased Ved Prakash Singh by colluding his Bolero vehicle on the front side of the motorcycle, which was driven by Mayank Kumar Singh. This conduct of the prosecution in not adducing and examining any of the injured person, creates a reasonable doubt about the veracity of the prosecution story, as narrated by informant Digvijay Singh PW-1 and other prosecution witnesses such as Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4.

27. The Hon'ble Supreme Court in **Mohanlal Shamji Soni Vs. Union of India and Another 1991 Supp (1) SCC 271**, has held in paragraph 10 as follows :

"10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. Nonetheless if either of the parties with-holds any evidence which could be

produced and which, if produced, be unfavourable to the party withholding such evidence, the court can draw a presumption under illustration (g) to Section 114 of the Evidence Act. In such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the New Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate,, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

28. In the light of the legal principles, as laid down by the Hon'ble Supreme Court in **Mohanlal Shamji Soni (supra**), we find that learned Trial Court has not tried to summon the injured prosecution witnesses, Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta under Section 311 Cr.P.C. The Trial Court has full power to summon any person as a witness for doing the full and complete justice. On the other side, the Trial Court has not performed its legal duty by summoning as witness the injured persons Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta under Section 311 Cr.P.C., and on the other side, the Trial Court has also not drawn an adverse inference against the prosecution. In the light of Illustration (g) of Section 114 of the Indian Evidence Act, by not adducing injured witnesses Mayank Kumar Singh, Rahul Gupta @ Guddu Gupta and Chandan Gupta as a witness in Court and also not summoning the above witnesses under Section 311 Cr.P.C., the Trial Court committed an error and by misappreciating the evidence of prosecution witnesses against the settled principles of law, wrongly held guilty to the accused appellants for the commission of the crime. It is also settled principles of law that heinous the crime heavier the burden of proof upon the prosecution. In any criminal case, prosecution can prove its case either by direct evidence or by circumstantial evidence. If prosecution completely fails to prove its case by direct evidence or by circumstantial evidence, then in this condition, prosecution story would be automatically fall on the ground as suspicious and doubtful story. It is also settled principles of law that no accused person could be convicted on doubtful evidence of prosecution. For conviction in a criminal case like murder, prosecution in every circumstances, is liable and bound to prove its case behind all reasonable doubts either by direct evidence or by circumstantial evidence. Hence, in the light of the above observations, prosecution story also becomes suspicious and thereby unbelievable.

29. From the perusal of the evidence of Dr. Jameel Ahmad PW-9, who conducted the postmortem examination of dead body of deceased Ved Prakash Singh and prepared postmortem report as Exhibit Ka-18, it is revealed from the statement, as given in his cross-examination, that this witness has accepted in clear-cut words that there was no marks or sign of grouting on the body of the deceased. This witness has also accepted that there was no mark of tyre of motor-vehicle on the body of the deceased. However, the prosecution witnesses are stating in their evidence that accused-appellant Ankur Kumar Singh @ Sheru Singh (**since deceased**) ran his Bolero vehicle over the body of the deceased Ved Prakash Singh and thereby crushed the body of the deceased. However, statement of Dr. Jameel Ahmad PW-9 clearly refuted the

evidence of prosecution witnesses, such as informant Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, in this respect. Therefore, the evidence of the so-called eyewitnesses and medical evidence does not corroborate to each other. The evidence of witnesses of facts does not find support and corroboration from the evidence of Dr. Jameel Ahmad PW-9. This fact also creates a reasonable doubt about the veracity of the prosecution story and reliability of the evidence of prosecution witness. Hence, we are of the considered view in the above facts and circumstances of the case, that this is also a strong ground which throw a cloud of shadow on the truthfulness of the prosecution story.

30. We have also perused and gone through the finding and reasoning as delivered by learned Trial Court in its judgment and order dated 04.06.2010, and find from the perusal of the same that the learned Trial Court has not kept in mind and considered the evidence in this regard in the facts and circumstances of the case. The learned Trial Court in cursory and casual manner wholly believing and relying on the evidence of informant Digvijay Singh PW-1, Kripa Shanker Pandey PW-2, Madan Singh PW-3, Chandra Sen Singh PW-4, delivered a finding of conviction without any cogent and reliable evidence available on the record and also against the settled principles of law. The learned Trial Court has not meticulously analysed and appreciated the prosecution evidence, which are highly doubtful and unreliable and unworthy of credit. In heinous case like a murder in which three persons are convicted for murder, the learned Trial Court has great responsibility and duty to analyse and appreciate, the prosecution evidence very meticulously and on every point and aspect. If on careful and proper appreciation of evidence the learned Trial Court finds that by its evidence, if prosecution is able to prove the prosecution story behind reasonable doubt, only in that condition a finding about guilt should be recorded by the Trial Court. However, in the present case, the Trial Court has not performed his duty as imposed by the provisions of law in this regard. In view of the above facts and legal aspects, we are of the considered view that the judgment of conviction and sentence dated 04.06.2010, as passed by the learned Trial Court is perverse and without any evidence in this regard and also against the settled principles of law in this respect. Due to this reason, judgment of conviction and sentence of the learned Trial Court dated 04.06.2010 is not found sustainable in the eyes of law. Hence, we set aside the judgment of conviction and sentence dated 04.06.2010 as passed by the learned Trial Court.

31. In the light of the above discussions, we find force in the submissions advanced by learned counsel for the appellants in this respect.

32. Accordingly, the present **Criminal Appeal No. 3794 of 2010 and Criminal Appeal No. 3925 of 2010**, preferred by convict appellant- Dhanushdhari Singh and Yashwant Singh, respectively against the judgment and order of conviction and sentence of the learned Trial Court dated 04.06.2010 passed in Sessions Trial No. 173 of 2008 State of U.P. Vs. Dhanushdhari Singh, Sessions Trial No. 145 of 2009 State of U.P. Vs. Ankur Singh @ Sheru Singh and others arising out of Crime No. 42 of 2008 under Sections 302/34, 307/34, 504, 506, and 427 I.P.C. are hereby **allowed**. The judgment and order of conviction and sentence of the learned Trial Court dated 04.06.2010 is hereby set aside.

33. The appellants **Dhanushdhari Singh and Yashwant Singh**, respectively are on bail. Their bail bonds are cancelled and sureties are discharged from their liabilities.

34. Let this judgment and order be sent with Trial Court record to the Trial Court for necessary compliance, forthwith.

(2026) 7 ILRA 1148
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE AJAY BHANOT, J.
THE HON'BLE DIVESH CHANDRA SAMANT, J.

Criminal Appeal No. 4257 of 2018
& Other Connected Case

Gyanmati @ Sangathiya ...Appellant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to the correctness of a conviction under Ss. 302/34 and 328/34 I.P.C. recorded by the trial court on the basis of testimony of interested witnesses, an unreasoned Forensic Science Laboratory report on Aluminium Phosphide poisoning, and the prosecution's failure to establish safe custody of the viscera sample and to confront the post-mortem doctor with the F.S.L. findings, examined in seven sequential heads: (I) prosecution case against the appellants, (II) F.I.R. delay and consequences, (III) reliability and credit of P.W.1 and P.W.2, (IV) admissibility of the F.S.L. report, (V) burden of proof regarding safe keeping of the viscera sample, (VI) consequences of failure to confront the doctor with the F.S.L. report, and (VII) cause of death.(Para 33)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 302/34, 328/34 - delayed lodgement of F.I.R. without good cause found fatal to the prosecution case in the cumulative view of facts and evidences on record. (Para 35).

Criminal Law - Code of Criminal Procedure, 1973 - S. 313 - responses of accused to incriminating circumstances found satisfactory and corroborated by prosecution evidence, credibility of defence upheld. (Para 77).

Evidence Law - Indian Evidence Act, 1872 - S. 45 - opinions of experts - test of admissibility of expert report requires credibility and standing of the expert, reasons for the conclusions, and the conclusions themselves - opinion of expert bereft of reasons or scientific criteria held to be of no avail - applied to F.S.L. report dated 18.09.2014/Exh Ka-14 which recorded only the ipse dixit that Aluminium Phosphide was present without disclosing data, tests or scientific criteria - held inadmissible in evidence and opinion discarded. (Paras 51-56).

Criminal Procedure - Code of Criminal Procedure, 1973 - S. 293 - reports of Government scientific experts - FSL, Lucknow held to fall within ambit of S. 293 Cr.P.C., no formal proof by expert required - report marked as Exhibit without examination of the author. (Paras 49-50).

Evidence Law - reliability of interested/related witnesses - testimonies of P.W.1 and P.W.2 found materially inconsistent on hospitalisation of deceased and on the alleged dying declaration regarding poisoning and illicit relationship, contradicted by documentary evidence (Ex. Ka-4) and deposition of P.W.4 which carried presumption of correctness as an official document - credit of P.W.1 and P.W.2 impeached and their testimony on these aspects disbelieved. (Paras 36-48).

Forensic Medicine - Aluminium Phosphide poisoning - nature, symptoms, detection and post-mortem findings examined with reference to authoritative texts and judicial precedent - consumption of Aluminium Phosphide by accident held to be a remote possibility on account of

its pungent smell, and forcible administration found inconsistent with absence of external injuries on the body - fact held to gravely dent the prosecution case. (Paras 58-68).

Evidence Law - confrontation of medical witness with forensic report - doctor conducting post-mortem never confronted with the F.S.L. report - held incumbent on the prosecution to have done so to verify correspondence between post-mortem findings and F.S.L. opinion - Viscera report held not to be conclusive evidence of poisoning in absence of such confrontation (Paras 69-71).

Criminal Law - cause of death - post-mortem report inconclusive, F.S.L. report discarded as inadmissible, and P.W.4 under cross-examination spoke of symptoms of food poisoning - prosecution evidence on cause of death held to lack certainty and prosecution held to have failed to establish cause of death by poisoning (Para 72).

Evidence Law - burden of proof - safe custody and preservation of viscera/forensic samples - burden lies on the prosecution to prove that storage conditions were safe and appropriate for future testing - absence of evidence regarding manner and conditions of preservation of the viscera sample over a period exceeding one year held to leave a real possibility of degradation - burden held not discharged (Paras 73-76).

Criminal Law - benefit of doubt - acquittal - cumulative effect of delayed and unreliable F.I.R., unreliable witnesses, inadmissible and unreasoned F.S.L. report, absence of confrontation of the doctor with the F.S.L. report, unproved safe custody of viscera sample and uncertain cause of death held to entitle the appellants to acquittal, trial court judgment held perverse and contrary to evidence on record, set aside (Paras 78-82).

Held: The delay in lodgment of the F.I.R. without any good cause shown by the prosecution was found fatal to the prosecution case in the cumulative view of facts and evidences on record, the F.I.R. having been registered belatedly and as an afterthought - the testimonies of P.W.1 and P.W.2 regarding hospitalisation of the deceased were found to be entirely false and were accordingly discarded, being contradicted by Ex. Ka-4 and the deposition of P.W.4, a document drawn up by government doctors in discharge of official duties carrying a presumption of correctness which was reinforced upon proof - there were material inconsistencies on critical issues in the testimonies of P.W.1 and P.W.2 which self-destruct the prosecution case and their credit was impeached, rendering them unreliable witnesses - the motive of illicit relationship introduced by P.W.1 and P.W.2 was found to be an afterthought unsupported by evidence and was disbelieved - though the FSL, Lucknow fell within the ambit of S. 293 Cr.P.C. and no expert proof was required to mark the report, the report dated 18.09.2014/Exh Ka-14 simply recorded the ipse dixit that Aluminium Phosphide was present in the viscera sample without disclosing any data, tests conducted or scientific criteria, and was accordingly found to be in the teeth of the law laid down in Ramesh Chandra Agrawal and Madan Gopal Kakkar, rendering the report inadmissible in evidence and its opinion discarded - reliance upon respected authorities on Toxicology and the credentials of the expert produced before the Court established that consumption of Aluminium Phosphide by accident is a remote possibility on account of its pungent smell, and the post-mortem report recording no external injuries lent merit to the submission that the poison was not administered forcibly, a fact which was found to gravely dent the prosecution case - the doctor who conducted the post-mortem was never confronted with the F.S.L. report though it was incumbent on the prosecution to do so, and in the facts and circumstances the Viscera report could not be treated as conclusive evidence of poisoning by aluminium phosphide - prosecution evidence with regard to cause of death was found to lack certainty and be unreliable, the prosecution having failed to establish the cause of death of the deceased by poisoning - the burden lay on the prosecution to prove that storage conditions of the viscera sample were safe and appropriate for future testing, a burden which the prosecution failed to discharge, there being no evidence on the manner and conditions of preservation of the sample over a period exceeding one year, leaving a real possibility of degradation - the responses of the accused under S. 313 Cr.P.C. were found satisfactory and corroborated by prosecution evidence that they had rushed the deceased to hospital and ensured prompt medical attention - the judgment of the trial court was held to be perverse and contrary to the evidences on record and in the teeth of established principles of criminal law, having erred in believing the unreliable testimonies of P.W.1 and P.W.2, in relying on the inadmissible F.S.L. report, and in neglecting to consider the S. 313 Cr.P.C. responses in proper perspective, and was accordingly set aside, the prosecution having failed to prove the charges under Ss. 328/34 and 302/34 I.P.C. beyond reasonable doubt, and the appellants were

honourably acquitted and directed to be forthwith released from prison unless required in any other criminal case, the Criminal Appeals being allowed. (Paras 35, 41, 44, 47-48, 50, 56, 64, 68-72, 74-77, 78-82). (E-7)

Case Law Cited

Madan Gopal Kakkar Vs. Naval Dubey, **1992 (3) SCC 204***; Ramesh Chandra Agrawal Vs. Regency Hospital Ltd and Others,* **((2009) 9 SCC 709)***; Titli v. Alfred Robert Jones,* **[AIR 1934 All 273];** *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee,* **[(2009) 9 SCC 221 : (2009) 10 Scale 675];** *State of H.P. v. Jai Lal,* **[(1999) 7 SCC 280 : 1999 SCC (Cri) 1184]***; State of Maharashtra v. Damu,* **[(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : AIR 2000 SC 1691]***; State (Delhi Admn.) v. Pali Ram,* **[(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14]***; Jaipal vs. State of Haryana,* **2003 1 SCC 169***; Darshan Singh vs. State of Punjab ,* **2024 (3) SCC 164**

List of Acts

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

List of Keywords

Aluminium Phosphide poisoning; F.S.L. report; expert evidence; unreasoned expert opinion; Government scientific expert; delay in lodgement of F.I.R.; unreliable witnesses; viscera sample; safe preservation of sample; burden of proof; confrontation of doctor with forensic report; cause of death; benefit of doubt; acquittal; perverse judgment.

Case Arising From

APPELLATE JURISDICTION: Appeal against judgment and order dated 27.06.2016 passed by the Additional District and Sessions Judge in Sessions Trial No. 547 of 2013 (State vs. Ashok Kumar and Another), arising out of Case Crime No. 99 of 2013 under Sections 328/34, 302/34 IPC, P.S.-Hathgaon, District-Fatehpur, convicting the appellants under Ss. 302/34 and 328/34 I.P.C. and sentencing them to life imprisonment with fine, and ten years' rigorous imprisonment with fine, respectively.

Appearances for Parties

Advs. for the Appellant:
Ms. Sheeba Jose, learned counsel,
assisted by Shri Mohd. Kaleem, learned counsel
Advs. for the Respondents:
Shri Rishi Chaddha, learned A.G.A.

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

1. The instant appeals arise out of judgement dated 27.06.2016 rendered by the learned Additional District and Sessions Judge in Sessions Trial No. 547 of 2013 (State vs. Ashok Kumar and Another). The FIR which culminated in the criminal trial was registered as Case Crime No. 99 of 2013 under Sections 328/34, 302/34 IPC at P.S.-Hathgaon, District-Fatehpur.

2. The following appellants are before this Court in the respective appeals:

I. Gyanmati @ Sangathiya in Criminal Appeal No. 4257 of 2018.

II. Ashok Kumar @ Putti Lal in Criminal Appeal No. 4349 of 2016.

3. Both these appeals are being heard together and are being decided by a common judgment.

4. The learned trial court by the impugned judgment has found the appellants guilty of the offences under Section 302/34 I.P.C. and has imposed a punishment of life imprisonment along with a fine of Rs. 10,000/-. The appellants are liable to undergo two years additional rigorous imprisonment on default of payment of fine. The learned trial court has also held the appellants guilty of the offences under Sections 328/34 of the IPC and has imposed a punishment of ten years rigorous imprisonment and fine of Rs. 5,000/-. Upon default in payment of fine the accused will undergo further rigorous imprisonment for one year.

F.I.R- Prosecution Case

5. Briefly put the prosecution case set out in the F.I.R. is that Gyanmati @ Sangathiya, wife of first informant□s son Jagdish @ Jagdhar had developed illicit relations with Ashok Kumar. On 20.07.2013 at about 11:00 AM, the two accused persons administered poison to informant□s son after mixing the same in his meal. While partaking his meal Jagdish found the Dal to be bitter. At that time the accused poured milk in the Dal to make it palatable and got the deceased to consume the concoction. One hour after taking the meal the poison took its effect on his body and the deceased began to vomit. News of the incident soon spread. After hearing of the incident Lal Singh, Ram Kumari wife of Lal Singh and other persons from the village brought his son to the hospital at Hathgaon. The attending doctor referred Jagdish @ Jagdhar to a higher facility at Fatehpur. At that point in time, Jagdish @ Jagdhar informed his father and mother that the two accused persons had mixed poison in his food. The deceased died while under treatment at Fatehpur Hospital. The doctor opined that the deceased had consumed a poisonous substance.

Charge:

6. Pursuant to the lodgement of the F.I.R., police investigations were set on foot. A charge sheet was filed against the appellant on 15.10.2013. Cognizance of the offences was taken by the learned trial court on 29.10.2013,

7. The learned trial court framed the following charges against the accused persons on 05.05.2015:

"आरोप

मैं, आदिल आफताब अहमद, अपर जिला एवं सत्र न्यायाधीश, न्यायालय संख्या9, फतेहपुर आप अभियुक्तगण अशोक कुमार उर्फ पुत्तीलाल एवं श्रीमती ज्ञानमती उर्फ संगठिया को निम्नलिखित आरोप से आरोपित करता हूँ:-

1-यह कि दिनांक 27.03.13 को समय 11 बजे स्थान मृतक की ससुराल ग्राम सिठौरा थाना हथगांव जिला फतेहपुर में आपलोगों ने जगदीश उर्फ जगधर पुत्र लाल सिंह को उपहति कारित करने का सामान्य आशय बनाया तथा अपने उक्त सामान्य आशय को अग्रसारित करते हुए जगदीश उर्फ जगधर पुत्र लाल सिंह को बिष/जहर का सेवन कराया जिससे उक्त जगदीश उर्फ जगधर को उपहति कारित हुई। इस प्रकार आपलोगों ने ऐसा कृत्य किया जो भारतीय दण्ड संहिता की धारा 328/34 के अन्तर्गत दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

2- यह कि दिनांक 27.03.13 को समय 11 बजे स्थान मृतक की ससुराल ग्राम सिठौरा थाना हथगांव जिला फतेहपुर में आपलोगों ने जगदीश उर्फ जगधर पुत्र लाल सिंह की हत्या करने का सामान्य आशय बनाया तथा अपने उक्त सामान्य आशय को अग्रसारित करते हुए जगदीश उर्फ जगधर पुत्र

लाल सिंह को बिष/जहर का सेवन कराकर हत्या कारित की। इस प्रकार आपलोगों ने ऐसा कृत्य किया जो भारतीय दण्ड संहिता की धारा 302/34 के अन्तर्गत दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

अतः एतदद्वारा मैं आदेशित करता हूँ कि उक्त आरोप के अन्तर्गत आपका विचारण इस न्यायालय द्वारा किया जाएगा।"

8. The accused-appellant denied the charges and the case went to trial.

Evidences:

9. Tabular charts depicting the evidences adduced by the prosecution during the trial are as under:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

Sr. No.	Witness No.	Witness Name	Nature of Witness
1	PW-1	Lal Singh	First Informant
2	PW-2	Durga Prasad	Author of Tehrir
3	PW-3	Sher Singh	Witness to the Extra Judicial Confession
4	PW-4	Dr. Sudhir Shrivastava	Doctor who conducted the post mortem report
5	PW-5	Gulab Tiwari	Constable Muharrir/Author of Chik
6	PW-6	Ram Autar Singh	Ist Investigating Officer
7	PW-7	Chhavinath Singh	Author of Inquest
8	PW-8	Lallan Singh	IInd Investigating Officer

Documentary Evidences

Sr. No.	Documents	Proved By	Exhibit No.	Date
1	Written Report/Tehrir	PW-1	Ex Ka-01	22.07.2013
2	Inquest Report	PW-7	Ex Ka-02	21.07.2013
3	Post Mortem Report	PW-4	Ex Ka-03	21.07.2013
4	Fauti Soochna of Deceased Jagdhar	PW-4	Ex Ka-04	20.07.2013
5	F.I.R.	PW-5	Ex Ka-05	20.07.2013
6	Carbon Copy of GD	PW-5	Ex Ka-06	22.07.2013
7	Site Plan	PW-6	Ex Ka-07	22.07.2013
8	Challan Nash	PW-7	Ex Ka-08	21.07.2013
9	Photo Nash	PW-7	Ex Ka-09	21.07.2013
10	Letter to CMO	PW-7	Ex Ka-10	21.07.2013
11	Sample Seal	PW-7	Ex Ka-11	21.07.2013
12	Chargesheet	PW-8	Ex Ka-12	15.10.2013

13	Viscera sample sent for Testing	PW-8	Ex Ka-13	16.08.2013
14	Viscera Report		Ex Ka-14	18.09.2014

Tehrir:

10. The tehrir was submitted by Lal Singh/P.W. 1/ deceased's father on 22.07.2013 at 20:45 hours at the police station. P.W.1-Lal Singh has testified that he had dictated the tehrir to Durga Prasad who took it down in writing. P.W.1 identified his signatures on the tehrir and proved the same. The tehrir was marked as Ex. Ka-1.

I. FIR:

11. The F.I.R. was lodged on 22.07.2013 at 08:40 PM at P.S. Hathgaon, District Fatehpur, under Sections 328 and 302 IPC. P.W.1-Lal Singh was the first informant.

12. The Chik F.I.R. was registered by Constable Muharrir Gulab Tiwari/P.W.5. P.W.5 identified his hand writing and signatures and signatures on the Chik F.I.R. and proved the same which was marked as Ex. Ka-5.

13. The entry in the General Diary in respect of the F.I.R. was made by P.W.5 on 20.07.2013 at 20:45 Hours as G.D. No. 29.

14. P.W.5 produced the original G.D. before the Court and stated that carbon copy of the G.D. is in the trial court record and is registered as paper No. 69. After comparing the carbon copy of the GD P.W.5 proved the carbon copy available in the G.D. in the records of the trial court which was then marked as Ex. Ka-6.

II. Inquest Report

15. The inquest report was drawn up by S.I. Chhavinath Singh/PW-7. Inquest report records that the inquest proceedings commenced on 21.07.2013 at 12:00 AM. Information regarding death of the deceased was sent to the police station by Mahindra, Room Attendant, District Hospital, Fatehpur. Father of the deceased Lal Singh, grandfather Ganga Prasad, paternal uncle Gulab Singh, and Gram Pradhan of the village Durga Prasad, were witnesses to the inquest proceedings.

16. The inquest report records that in the opinion of the panchas the death appeared to have been caused by consumption of a poisonous substance. Recitals in inquest report disclose that no injuries were visible on the body of the deceased.

17. PW-7 Chhavinath Singh in his testimony stated that the inquest report was drawn up in his handwriting. The same was proved by him and marked as Exh. Ka-2.

III. Transfer of the body for Post Mortem:

18. The inquest report records that after the inquest proceedings, the body of the deceased was stitched wrapped and sealed and made over to Constable 372 Amrendra Mishra and Home Guard 549 Shiv Mohan for being carried to the mortuary for post-mortem. The documents which were drawn up and sent with the body to the mortuary were Photo Nash, Challan Nash, Letter to C.M.O. and sample seal. The said documents were proved by P.W.7 and then marked as Ex. Ka-8, Ex. Ka-9, Ex. Ka-10 and Ex. Ka-11 respectively.

IV. Medical Opinion

19. The medical report drawn up by the Medical Officer, District Hospital, Fatehpur, and sent to Police Station S.O. Kotwali, depicts the condition of the deceased at the time of admission to the hospital. As per the aforesaid document, the deceased was admitted in Sadar District Hospital, Fatehpur on 20.07.2013 at 06:25 PM.

20. The said medical report further records that the accused-appellant, Gyanmati, who is the deceased's wife had got him admitted to the hospital. The medical report further opines that at the time of admission the deceased was gasping and poisoning was suspected. PW 4 testified that Dr Nalnesh Pandey was the author of the said medical report. The medical report dated 20.07.2013, received by Dr. Sudhir Shrivastava/P.W. 4 identified his signatures on the document and proved the same. The document was marked as Exh. Ka-4.

V. Cause of death and Post Mortem Report

21. Post mortem was conducted by Dr. Sudhir Srivastava/P.W.4 on 21.07.2013 from 03:30 PM to 04:00 PM. The relevant parts of the postmortem report depicting ante mortem injuries, cause of death and time of death are reproduced hereinunder:-

"**Ante Mortem Injuries**: No External Injury seen

Cause of Death: Could Not be ascertained hence viscera preserved

Time of Death: Hospital Death at 7:30 PM on 20.07.2013"

22. The post mortem report dated 21.07.2013 records that, as per relevant documents, the deceased was admitted on 06:25 PM on 20.07.2013 at District Hospital, Fatehpur. Dr. Sudhir Srivastava entered the witness box as P.W.4 and proved the post mortem report and its contents. The post mortem report was marked as Ex. Ka-3.

VI. Site Plan

23. S.I. Ramavtar Singh/I.O./P.W.6 prepared the site plan at the pointing out of the first informant/P.W.1. The P.W.6 identified his hand writing on the site plan and proved the same which was then marked as Ex. Ka-7.

VII. FSL Report

24. The post mortem report did not make any definitive opinion on the cause of death. The preserved Viscera sample was sent to F.S.L. for further examination. The F.S.L. report dated 18.09.2014 (Ex. Ka-14), upon examination of the Viscera sample, opines as under:-

"प्रदर्श का विवरण

(अ) विसरा के अंश

1. स्टमक एण्ड इट्स कन्टेन्ट्स। एक समुदित प्लास्टिक जार में
2. ऑत का टुकड़ा।
3. लिवर का टुकड़ा। एक समुद्रित प्लास्टिक जार में
4. दोनों किडनी के टुकड़े।
5. स्पलीन।

परीक्षण परिणाम

विसरा के भागो (1-5) में अल्युमिनियम फॉस्फाइड विष पाया गया। रासायनिक विधियाँ प्रयोग की गई। अन्य रासायनिक विष के प्रयोग नकारात्मक रहे। प्रयोग के समय समस्त सावधानियाँ ध्यान में रखी गई।"

25. The Viscera sample which was sent by communication dated 13.08.2013 was marked as Ex. Ka-14.

Oral Testimonies

PW-1/ Lal Singh/ First Informant

26. Lal Singh/the first informant and father of the deceased entered the witness box as PW-1. PW-1 while deposing before the trial court testified that Gyanmati @ Sangathiya ,wife of his son Jagdish had developed illicit relations with Ashok Kumar. Gyanmati and Ashok mixed poison in his son□s meal and served it to him on 20.07.2013 at about 11:00 A.M. P.W.1 states that he reached his son□s residence on hearing of the deteriorating health of the latter. The information was given by one person belonging to Sithaura. Jagdish @ Jagdar informed PW 1 that the accused persons had administered poison to him. PW 1 and his party took Jagdish to a hospital at Hathgaon which referred him to Sadar Hospital, Fatehpur. Jagdish died at Sadar Hospital, Fatehpur.

PW-2/ Durga Prasad

27. Durga Prasad was produced by the prosecution as PW-2. PW-2 in his testimony stated that on 20.07.2013, he had accompanied Lal Singh and his wife and others to Sithaura when they learnt that the condition of deceased had deteriorated. On reaching Sithaura at about 12 pm, they found that Jagdish was unwell and had been vomiting. Jagdish told them that the two accused persons had mixed poison in his meal and that they were in an illicit relationship. Thereafter they took Jagdish on a Bolero to Hathgaon Government Hospital at Hathgaon, which referred them to Sadar Hospital,

Fatehpur. They reached Sadar Hospital, Fatehpur with the deceased where he died while under treatment.

Proceedings under Section 313 Cr.P.C.

28. The accused-appellant Gyanmati in the proceedings under Section 313 Cr.P.C. stated that her husband had left his house in the morning. He started to vomit after returning home, and his condition deteriorated. She informed her in-laws and her cousin sister; but no one from her in-laws came over. Her nephew Ashok later arrived and the two took her husband to the Hathgaon Hospital. Thereafter they accompanied her husband to Sadar Hospital, Fatehpur where he was admitted for further treatment. The deceased died at Sadar hospital; and his body was kept there. The next day she went to the police station. Co-accused had also reached the police station. Her father-in-law and the Pradhan took the Sub-Inspector aside and had a conversation with him. She and Ashok were sent to jail. She then explained her aunt and nephew relationship with Ashok.

29. Accused-appellant Ashok stated in proceedings under Section 313 Cr.P.C. that he is the nephew of the co-accused Gyanmati. His mother sent him to his aunt Gyanmati's house when she learnt of his uncle's condition. He and his aunt took Jagdish to the Hathgaon hospital. Thereafter on doctor's advice they went to Sadar Hospital, Fatehpur. They got his uncle Jagdish admitted at Sadar Hospial, Fatehpur for further treatment. During the course of his treatment his uncle died. His aunt informed her in-laws through some villagers. However, no one came when the body was lying in the hospital. Later they were arrested.

Submissions on behalf of the Bar

Submissions on behalf of the appellant

30. Ms. Sheeba Jose, learned counsel assisted by Shri Mohd. Kaleem, learned counsel for the appellant has made the following submissions:

I. The delay in lodgment of F.I.R. is fatal to the prosecution case.

II. P.W.1 and P.W.2 are unreliable witnesses who reached the hospital only after the accused had died.

III. The conduct of the appellant was above board inasmuch as she promptly took her husband to the hospital.

IV. The administration of poison by the appellants to the deceased has not been proved.

V. There was delay in testing the viscera sample. The prosecution failed to establish that the viscera was preserved in safe conditions and was fit for testing at the time it was evaluated.

VI. The F.S.L. report which depicts poison in the Viscera sample is not backed by reasons and hence could not be read in evidence against the appellant.

VII. The doctor conducting the post mortem was never confronted with the FSL report.

VIII. The defence of the appellant taken in the proceedings under Section 313 is credible and supported by the prosecution evidences in the record.

IX. The prosecution has failed to prove its case beyond reasonable doubt.

X. The judgment of the trial is against the weight of evidence and contrary law is liable to be set aside.

Submissions on behalf of the State

31. Shri Rishi Chaddha, learned AGA on behalf of the State contended as under:

I. The accused are named in the F.I.R.

II. There was no delay in lodgment of the FIR.

III. The deceased had the motive to commit the offence.

IV. The postmortem report as well as the F.S.L. report corroborates the prosecution case.

V. The burden of proving the safe keeping of the Viscera sample is not on the prosecution.

VI. The presence of both accused persons at the hospital is established.

VII. The prosecution has proved its case beyond reasonable doubt.

VIII. The judgment of the learned trial court is in conformity and has rightly appreciated the law and is liable to be upheld.

APPRAISAL OF EVIDENCE

32. Heard learned counsels for the parties. The evidence in the record shall be assessed in the following sequence.

Issue arising for consideration

33. The evidence and the issues which arise for consideration will be appraised in he following sequence:

(I) Prosecution case against the appellants

(II) FIR: Delay and Consequences

(III) Reliability and credit of P.W.1 and P.W.2:

(IV) FSL report: Admissibility

(V) Safe preservation of viscera sample: Burden of proof

(VI) Failure to confront the doctor conducting the postmortem with the FSL report: Consequences

(VII) Cause of death

(I) Prosecution case against the appellants:

34. The prosecution case is that the deceased died by poisoning after consuming Aluminium phosphide, and that the poison was administered by the accused persons.

II F.I.R. : Delay

35. The deceased died on 20.07.2013 at about 07:30 P.M. As per the prosecution case, the first informant had reached the site prior to the death of the deceased. The F.I.R. was lodged on 22.07.2013 at 08:45 P.M. According to the first informant, the deceased had told him that he had been poisoned by accused persons. No good cause of the delay in lodgment of the F.I.R. has been shown by the prosecution during the trial. The F.I.R. was registered belatedly and as an afterthought. The delay in lodgment of the F.I.R. will be fatal to the prosecution case in the cumulative view of facts and evidences in the record.

III. Credibility of P.W.1 and P.W.2

A. Hospitalization of the deceased

36. P.W.1 who is the first informant stated that he and his wife reached the house of the deceased prior to his death. According to PW 1 Jagdish had informed them that he had been poisoned by the accused persons. Thereafter, P.W.1 along with others took the deceased to Hathgaon Hospital from where he was referred to Sadar Hospital Fatehpur.

37. However, under cross-examination P.W.1 stated that he learnt about the death of his son at 11 AM in the village from a person who lives in Sithora whose name he could not disclose.

38. Under further cross-examination, PW 1 admitted that he did not go to Hathgaon Hospital. P.W.1 also stated that he reached Sadar Hospital along with Pradhan Durga Prasad, Gaya Prasad, Surendra Ahir and Ram Narayan Ahir. No one else accompanied them to Sadar Hospital. They reached Sadar Hospital two hours before sunset. His son died half and hour after they had reached the hospital. The said statement contradicts the earlier version of P.W.1 that he had reached the house of the deceased and then took the latter to hospital.

39. PW 2 stated that they reached Sithaura at 12 PM. They found that Jagdish was vomiting. Jagdish told them that he had been poisoned by the accused persons who were in an illicit relationship. According to P.W.2 they had taken Jagdish on a Bolero to Hathgaon Govt. Hospital. The doctor at Hathgaon Hospital upon examining the deceased said that he had consumed a poisonous substance and referred him to Sadar Hospital Fatehpur.

40. Under cross-examination, P.W.2 stated that when he reached Sithora, he saw both the accused persons Ashok and Sangathiya. However, the aforesaid people did not accompany them to the hospital at Hathgaon. P.W. 2 deposed that his party left Hathgaon Hospital within half an hour at about 2 PM and they reached Sadar Hospital/District Hospital, Fatehpur at 4.00-4.30 PM. The deceased died at Sadar Hospital/District Hospital, Fatehpur within half an hour to 45 minutes.

41. The deposition of PW 2 regarding hospitalisation of the deceased at Hathgaon Hospital contradicts the testimony of PW 1 on material aspects. The said inconsistencies in the testimonies of PW 1 and PW 2 impeaches the reliability of the prosecution case.

42. The medical report marked as Ex. Ka-4 records that deceased was brought to the District Hospital Fatehpur at about 6.25 PM by his wife Gyanmati alias Sangathiya. Further the post mortem report also contains recitals to the effect that the deceased was admitted at District Hospital, Fatehpur at 6.25 PM.

43. The deposition of P.W.4 affirms the contents of Ex. Ka-4. Document pertaining to hospitalization of the deceased which is marked as Ex. Ka-4 was drawn up by government doctors in the discharge of official duties. There is a presumption of correctness in favour of the aforesaid document. The said presumption was reinforced after the document was proved and its contents reiterated by P.W. 4. There was no challenge to the same.

44. Exh. Ka 4 and P.W. 4 contradict the testimonies of P.W. 1 and P.W. 2 that they had brought the deceased to the hospital. In this wake, the depositions of P.W.1 and P.W.2 regarding the hospitalization of deceased are found to be entirely false and are accordingly discarded.

B. Veracity of P.W.1 and P.W.2 regarding the deceased informing the P.W.1-his wife and P.W.2 about poisoning by the accused persons and motive of accused persons.

45. P.W.1 in his testimony before the trial court has stated that he left for Sithaura after he was informed about the death of the deceased. In these circumstances the testimony of P.W.1 that the deceased informed him and others about the fact of his poisoning by accused persons is evidently false.

46. On the other hand, PW 2 has stated that deceased had informed them of being poisoned by accused and about the illicit relations between the two, when they reached Sithaura at 12:00 pm.

47. The illicit relationship between the accused persons as the motive was introduced by PW 1 and PW 2 as an afterthought. Save the bald statements regarding the extra relationship there is no evidence regarding the same. The statements of PW 1 and PW 2 in regard to the extra marital affair

between the two accused also do not inspire confidence and are disbelieved. The motive of the accused -appellant to commit the offence has not been established.

48. There are material inconsistencies on critical issues in the testimonies of P.W.1 and P.W.2 which self destruct the prosecution case. The credit of P.W.1 and P.W.2 was impeached and they are held to be unreliable witnesses insofar as they state that the deceased had informed them of poisoning by the accused persons before his death, and that they had taken the deceased to the hospital are liable to be entirely disbelieved.

IV. FSL Report

A. FSL Report : Admissibility and Reliability

49. The mainstay of the prosecution case is the FSL report dated 18.09.2014/Exh Ka-14 which records the presence of Aluminium Phosphide in the viscera sample. The FSL report is in the nature of expert evidence. The presence of Government scientific expert who has drawn up the report to prove the report is exempted with under Section 293 CrPC. The provision is extracted hereunder:

"S.293 (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2). The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3). Where any such expert is summoned by a Court and he is unable to attend personally, he may unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4). This section applies to the following Government scientific experts, namely;

(a). any Chemical Examiner or Assistant Chemical Examiner to Government;

(b). the Chief Inspector of Explosives; the Director of the Finger Print Bureau;

(c). the Director, Haffkeine Institute, Bombay;

(d). the Director or Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory;

(e). the Serologist to the Government. any other Government scientific Expert specified by notification by the Central Government for this purpose."

50. It is undisputed that the FSL, Lucknow which had drawn up the said report comes within the ambit of Section 293 CrPC. Hence no expert was required to prove the aforesaid report. The said report was accordingly marked as Exhibit Ka-14 without having been proved by the expert who had drawn the report.

51. Expert reports are made admissible under Section 45 of the Evidence Act. The provision is extracted hereunder:

"45. Opinions of experts. When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

52. Cases in point consistently hold that the sole purpose of an expert report is to assist the Court to form an opinion in a field which belongs to the domain of experts. After the expert report is upheld by a Court, the same becomes the report and the opinion of the Court. The tests of admissibility of an expert report point are as under:

(A) The credibility and the standing of the expert in the field.

(B) The reasons on which the expert raises his conclusions. (C) Conclusions

53. The opinion of the expert which is bereft of reasons or does not disclose the basic scientific criteria which has guided the expert to reach the conclusion is of no avail. The purpose of reasons in an expert report is not far to seek. The reasons stated by the expert in support of the conclusions will enable the Court to independently test the correctness of such opinion. For that purpose the Court may also rely on established authorities and protocols in the concerned field and examine the expert report in the perspective offered in such literature. In absence of reasons the Court will not be able to independently come to the conclusion regarding the correctness or otherwise of the experts opinion.

54. The observations made above are supported by long standing authorities in point. The Supreme Court in ***Madan Gopal Kakkar Vs. Naval Dubey: 1992 (3) SCC 204*** while examining the scope and admissibility of a medical expert report held as under:

"34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court."

55. The issue pertaining to expert opinion also arose for consideration before the Supreme Court in **Ramesh Chandra Agrawal Vs. Regency Hospital Ltd and Others ((2009) 9 SCC 709)**. The well established principles of admissibility of expert evidence were reiterated by the Supreme Court in **Ramesh Chandra Agrawal(Supra)** by holding thus:

"16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed. The other requirements for the admissibility of expert evidence are: (i) that the expert must be within a recognised field of expertise, (ii) that the evidence must be based on reliable principles, and (iii) that the expert must be qualified in that discipline. (See Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 178.)

19. It is not the province of the expert to act as Judge or Jury. It is stated in Titli v. Alfred Robert Jones [AIR 1934 All 273] that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)

Credentials of an expert:

18. The importance of the provision has been explained in State of H.P. v. Jai Lal [(1999) 7 SCC 280 : 1999 SCC (Cri) 1184] . It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

21. In State of Maharashtra v. Damu [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : AIR 2000 SC 1691], it has been laid down that without examining the expert as a witness in court, no reliance can be placed on an opinion alone. In this regard, it has been observed in State (Delhi Admn.) v. Pali Ram [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14] that no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him"."

56. In the case at hand, the expert report submitted by the FSL dated 18.09.2014/Exh Ka-14 simply records the ipse dixit or its conclusion that the Aluminium Phosphide was present in the viscera sample. The report does not disclose any data, tests conducted, scientific criteria or materials which guided the expert to record the aforesaid conclusion. The FSL report dated 18.09.2014/Exh Ka-14 is in the teeth of the law laid down in Ramesh Chandra Agrawal (supra) and Madan Gopal Kakkar (supra). In absence of such relevant data, the expert report is inadmissible in evidence, and the opinion rendered therein is discarded.

IV B. FSL Report- Possibility of consumption of Aluminium Phosphide:

57. The veracity of the prosecution case regarding partaking of milk and food served by the accused person which contained Aluminium Phosphide will now be determined.

58. The attributes of Aluminium Phosphide and the possibility of its voluntary consumption have to be examined in the light of various scientific authorities in point. For the aforesaid purpose,

the Court had summoned scientific experts to assist in the determination of the chemical and other attributes of Aluminium Phosphide.

Credentials of the Expert before the Court

59. Dr. Sapna Sharma, Associate Professor and Dean, School of Forensic Science, U.P. State Institute of Forensic Science, Lucknow appeared before this Court and submitted an affidavit bringing in the record the respected authorities and books holding the field which are used for academic purposes and also cited widely.

60. Dr. Sapna Sharma apart from holding the said post is an academician of high repute. Dr. Sapna Sharma has done her Ph.D. from CSIR, Indian Institute of Toxicology Research, Lucknow. The deponent has worked in the field of Toxicology in various institutes including University of Chicago, United States of America, University of Gothenberg, Sweden, Jawahar Lal University, New Delhi, SRN University, Barabanki, U.P. By virtue of her academic qualifications, experience in the field and her current assignment, this Court finds that Dr. Sapna Sharma is a respected expert in the field of Toxicology. The opinion of Dr. Sapna Sharma regarding authorities and well known books in the field of Toxicology is a reliable opinion which this Court has adopted.

61. According to Dr. Sapna Sharma "Essentials of Forensic Medicine and Toxicology" by Dr. KS Narayan Reddy is a well known authority in the field of Toxicology. The academic excellence of Dr. KS Narayan Reddy are extracted hereunder:

"KS Narayan Reddy MD DCP PhD has been Professor of Forensic Medicine (1965-2017). He was awarded the Degree of Doctor of Philosophy in Medicine, by the International University of Contemporary Studies, Washington, DC, USA, in 1998. He has contributed 31 articles to professional journals, and published 10 books in Forensic Medicine. His name is listed in Reference Asia, Vol. III (1989); Biography International, Vol. III (1990-1991); Learned Asia, Vol. I (1992); Indo-Arab Who's Who, Vol. I (1996); Five Hundred Leaders of Influence, IV Edition (1996), published by American Biographical Institute; Asia-Pacific Who's Who, Vol. II, 1999, Asian/American Who's Who, Vol. I, 1999; Twentieth Century Admirable Achievers (Distinguished) Who's Who 1999; Indo-Asean Who's Who, Vol. I, 2000, Man of Achievement, 2000; and Indo-American Who is Who, Vol. III, 2002. He was awarded Fellowship of Academy of Medical Sciences (India) in 1984. He is also a Fellow of Academy of Forensic Sciences; Fellow of Indian Academy of Medical Specialities, Fellow of United Writers Association, Fellow of Academy of Forensic Medicine and Fellow of International Medical Sciences Academy. He is the recipient of Dr. B.C. Roy National Award (1986), in the category of development of medical specialities, and of Vijaya Shree Award (1989), by India International Friendship Society, in the category of authors, Man of Millennium in Forensic Medicine and Toxicology (2001) by the Medicolegal Society, Delhi and Man of Achievement (2006), by Indian Academy of Forensic Medicine."

62. Dr. Sapna Sharma also cited Forensic Medicine and Toxicology for Police Investigation by Dr. SN Tiwari as a respected work in the field. Relevant parts of the same are extracted hereunder :

"Metal phosphides of Aluminium, Zinc, magnesium and calcium are highly effective insecticides and rodenticides. Aluminium phosphide is abailable as Alphos. Celphos and quick phos in the form of 3 gm tablets or of 0.6 gm pellets of grayish to dark brown in colour and composed of aluminium phosphide (ALP) and aluminium carbonate in the ratio of 56:44. Celphos is frequently used as a grain preservative in stores and during transportation. It is highly poisonous and its effects are due to the liberation of phosphine (PH_3) gas which is toxic to pests, insects and rodents. Its easy availability has led to an epidemic of deaths due to sucides, and accidental ingestion. Many cases even of homicide have been reported in British Journal Lancet, 1988, I : (2598) : 1333, that the number of deaths by ALP. So far exceeded the number of deaths in the Bhopal Gas Tragedy. In fact, it is the most common cause of poisoning in sub urban and rural parts of Northern India.

Exposure to phosphine gas generally occurs by way of accidental or suicidal ingestion. Dermal absorption of aluminium phosphide is rare but it may be absorbed through the lacerated and injured skin causing toxicity. Following the injection of aluminium phosphide, phosphine gas is liberated which is absorbed throughout the gastro intestinal tract, reaches the blood stream, apart of it goes to the liver by portal vein. It is also rapidly absorbed through lungs. Most of the phosphine is excreted unchanged in expired air. while the residue quantity is oxidized to phosphite and hypo-phosphite ions which are excreted in urine [P. Wexler. second ed., Encyclopedia of toxicol- ogy. Vol I and 2. Academic Press, 2005]. Small amounts of zinc phosphide reach liver and kidneys after ingestion and hydrolyse slowly in the tissues to phosphine and zinc salts. It also gets distributed to the brain. [S. Saleki. F.A. Ardslan. A. Javidan-Negad., Liver Histopathology of fatal phosphine poisoning. Forensic sci. Int., 166 (2007). 190 - 193].

Properties of commonly available metal phosphides along with the physical forms and lethal doze (LD 50) of [aluminium ALP- yellow or dark grey crystals; 20 mg/kg); Magnesium Mg_3P_2 - yellow-green crystals; 10.4 mg/kg: Calcium - Ca_3P_2 - Red brown crystalline powder or gray lumps - 8.7 mg/kg and of Zinc - Zn_3P_2 Gray tetragpma; crusta;s grau n;acl [pwder; 4-5 g (toxic dose)] as reported by G.S. Bumbrah etal phosphide poisoning: A review in forensic sci Int. 214/2012).

After ingestion of aluminium phosphide, phosphine gas having garlicky or decaying fish odour is released by the action of dilute hydrochloric acid (gastric juice) content of the stomach. The gas phosphine acts as the respiratory poison. Even 20:100,000 parts of phosphine in air is reported to be fatal. [W. Popp et.al, phosphine poisoning in a German office, Lancet, 359, (2002): 1574] Phosphine is excreted through breath and urine. Phosphine causes wide spread organ damage due to cellular hypoxia as a consequence of non-competitive inhibition of the enzyme cytochrome oxidose of the mitochondria.

The exposure limits of phosphine gas have been defined as:

* Permissible exposure limit (PET): 0.3 ppm ans an 8 hour shift.
* Short term exposure limit (STEEL): 1 ppm.
* Immediately dangerous to life and health: 200 ppm.
* Lethal in 30 min: 400 - 600 ppm.

[A. wahals, M.S Zaheer, S. wahab, R.A Khan. Acute aluminium phosphide poisoning: Hongkong Journal of Emergency Medicine: Vol., 15(3), July: 2008].

Clinical Signs and Symptoms

The symptoms depend on the route of administration. Poisoning by inhalation produces nausea, restlessness abdominal pain, palpitation, pulmonary edema, cyanoses, hypotension, shock and cardiac arrhythemia, diarrhoea, tremors, convulsions, delirium, coma and death from respiratory and cardiac arrest.

Nausea, vomiting and abdominal pain are the earliest symptoms that appear after ingestion. Gastro intestinal symptoms which present in moderate to severe poisoning are excessive thirst, abdominal pain and epigastric tenderness while cardiovascular abnormalities seen are profound hypotension.

Nervous system main manifestations include headache, dizziness, altered mental status, convulsions and coma. Some rare findings in aluminium phosphide poisoning are muscular weakness, wasting tenderness in proximal lower limb muscles, bleeding diathesis due to capillary damage, acute adrenocortical insufficiency and pseudo-shock syndrome due to impaired fluid distribution which results in micro-circulatory failure.

Detection of Phosphine in poisoning cases

1. Viscevial tissues or fluid either self or after addition of 2 ml of dilute hydrochloric acid emit a garlicky or fishy putrid characteristic odour of phosphine gas Limit of sensitivity: 0.1 to 5.0 ppm.

2. Gutzeit Test:- Small quantity of tissues (10g) or 10 ml of body fluids (stomach contents) are taken in a gutzeit apparatus. Two pellets of pure zinc metal are added over the contents followed by 5 ml of dilute sulphuric acid. The evolved gas is purified by passing over lead acetate papers (to absorb sulphide gas) and passed through silver nitrate impregnated papers. A black stain indicates the presence of phosphine gas due to the formation of silver-phosphide.

3. Ammonium Molybdate method

[Manual of Analytical Toxicology - S.N. Tewari, BP.R & D. Publication, Govt. of Indi. New Delhi 1976. pp 59-60]

Minced tissues (10g) or other biological material suspected to contain phosphine or phosphides are taken into a steam distillation flask mixed with an equal amount of water and then acidified with dilute sulphuric acid followed by steam distillation. The distillate is collected in an ice cold receiver containing 5 ml of 1% silver nitrate solution by dipping the adopter into the silver nitrate solution. In the presence of phosphide, the silver nitrate solution turns black forming silver phosphide precipitate. To this black precipitated material is added 5ml of concentrated nitric acid and boiled till the solution becomes practically colourless. Add 5ml of ammonium molybdate

solution and heat for one minute. Appearance of canary yellow precipitate confirms the presence of phosphine (phosphide).

"***Autopsy tissues examination - findings***

"Post mortem examination in cases of suspected aluminium phosphide poisoning reveal a distinct garlic odour from mouth and close to the body. Face shows a lividity with distinct bluish - colouration and blood mixed with froth from and around nostrils. Internal examination reaveals froth in trachia and ademators lungs with haemorrhages in the interlobular areas and at the

Treatment

"To reduce the absorption of phosphine, gastric lavage with potassium per manganate (1:10,000) is done to oxidize phosphine to form non-toxic phosphate. This is followed by a slurry of activated charcoal (1 gm charcoal per kg body weight) given through mesogastric tube. Metabolic acidoses must be treated by administrating sodium becarbonate and shock should be treated with appropriate vasopressors. Milk, fat and saline emetics should not be given orally.

No known specific antidote is however, available for metal phosphide poisoning.

"The average time interval between intake of poison and death is 3 hours with a range of 1 □ 48 hours. 95% of the patients die within 24 hours and the commonest cause of death in this group is arrhythmia (any disturbance in the rhythm of the heart beat). Death after 24 hours is due to shock acedosis. ARDS (acute respiratory distress syndrome and arrhythmia. The mortality rate is highly variable, ranging from 37% - 100% and can reach more than 60% even in experienced and well equipped centres.

Autopsy tissues examination - findings

"Post mortem examination in cases of suspected aluminium phosphide poisoning reveal a distinct garlic odour from mouth and close to the body. Face shows a lividity with distinct bluish - colouration and blood mixed with froth from and around nostrils. Internal examination reaveals froth in trachia and ademators lungs with haemorrhages in the interlobular areas and at the margins of the lungs. Stomach usually contains grayish brown fluid or pasty material. Gastric mucosa becomes slugged and the stomach wall appears thinned out. Lungs, trachia, myocardium, gastric mucosa, kidneys, liver, spleen and brain are congested. Infact almost all the vital organs become clogged in cases of alumunium phosphide poisoning. Heart is fall of dark blood. Tongue, Mouth and Esophagus are adematous and corroded. The mucous membrane of stomach is reudered corrugated, loosened or hardened and enflamed along with intestines. Coagulative necrosis and congestion was observed in brain.

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corrugated, loosened or hardened and enflamed along with intestines. Coagulative necrosis and congestion was observed in brain.

63. Extracts from "Essentials of Forensic Medicine & Toxicology" by Dr K.S Narayan Reddy on Aluminium Phosphide including its symptoms. Method of chemical tests are extracted hereunder:

"Aluminum phosphide (ALP) is a solid fumigant pesticide, insecticide androdenticide. In India it is available as white tablets of Celphos, Alphos, Quickphos, Phostoxin, Phosphotex, etc., each weighing 3 g. and has the capacity to liberate one gram of phosphine (PH_3). On coming in contact with moisture ALP liberates phosphine. Phosphine is a systemic poison and affects all organs of the body. The chemical reaction is accelerated by the presence of HCL in the stomach. ALP has garlicky odour. It is widely used as grain preservative. Phosphite and hypophosphite of aluminium which are non-toxic residues are left in the grains.

Absorption and Excretion: Phosphine is rapidly absorbed from the GI tract by simple diffusion and causes damage to the internal organs. It is also rapidly absorbed from the lungs after inhalation. After ingestion, some ALP is also absorbed and is metabolised in the liver, where phosphine is slowly released accounting for the prolongation of symptoms. Phosphine is oxidised slowly to oxyacids and excreted in the urine as hypophosphite. It is also excreted in unchanged form through the lungs.

Action: Phosphine inhibits respiratory chain enzymes and has cytotoxic action. It acts by inhibiting the electron transport resulting from preferential inhibition of cytochrome oxidase.

Fatal Dose: 1 tablet.

Fatal Period: One hour to four days. Majority die within 24 hours. Inhalation of phosphine at a concentration of 400 to 600 ppm is fatal within one hour.

Signs and Symptoms: They depend on the dose and severity of poisoning.

Inhalation: Mild inhalation exposure produces irritation of mucous membranes and acute respiratory distress. Other symptoms are dizziness, easy fatigue, tightness in the chest, nausea, vomiting, diarrhoea and headache. Moderate toxicity produces ataxia, numbness, paraesthesia, tremors, diplopia, jaundice, muscular weakness, incoordination and paralysis. Concentration of PH_3 in air higher than 0.3 ppm cause severe illness. Severe toxicity produces adult respiratory distress syndrome, cardiac arrhythmias, congestive heart failure, pulmonary oedema, convulsions, and coma.

Ingestion: Mild intoxication produces nausea, vomiting, headache and abdominal pain, and the patients usually recover.

In moderate and severe poisoning, systemic manifestations are early and progressive and mostly fatal. G.I.T.: Nausea, vomiting, diarrhoea, retrosternal pain. C.V.S.: Hypotension, shock,

arrhythmias, myocarditis, pericarditis, acute congestive heart failure. R.S. : Cough, dyspnoea, cyanosis, pulmonary oedema, respiratory failure. Hepatic : Jaundice, hepatitis, hepatomegaly. Renal: Renal failure. C.N.S. : Headache, dizziness, altered mental state, restlessness, convulsions, acute hypoxic encephalopathy, coma. Rare : Muscle wasting and tenderness and bleeding diathesis, due to widespread capillary damage. Cardiogenic shock is the most common cause of death. Complications include pericarditis, actue congestive cardiac failure acute massive gastrointestinal bleeding and ARDS. Mortality is high 35 to 100%.

Post-mortem Appearances : Garlic-like odour is present at the mouth and nostrils and in the gastric contents. Blood-stained froth is found in the mouth and nostrils. Mucous membrane of the lower part of oesophagus, stomach and duodenum are congested. Decreasing congestion of the G.I. tract is seen in the small intestine. The lungs, liver, spleen, kidneys, adrenals and brain are congested. Centrizonal haemorrhagic necrosis of the liver may be seen.

Histopathology : (1) Stomach : Congestion, oedema, leucocytic infiltration, sloughing of gastric mucosa. (2) Lungs : Congestion, oedema, desquamation of respiratory epithelium, thickened alveoli, lymphocytic infiltration. Kidneys : Congestion, necrosis, tubular degeneration and regeneration. Adrenals : Congestion, haemorrhage, necrosis, area of lipid depletion in cortex. Heart : Congestion, oedema, fragmentation of fibres, focal necrosis, leucocytic infiltration. Brain : Congestion, oedema.

Chemical Test: 5 ml. of gastric aspirate and 15 ml. of water are put in a flask and the mouth is covered with a filter paper impregnated with silver nitrate (0.1N). The flask is heated at 50 C for 15 to 20 minutes. If phosphine is present, the filter paper truns black. (2) A piece of filter paper impregnated with 0.1 N silver nitrate solution is used in the form of a mask through which the patient breathes for 5 to 10 minutes. The filter paper turns black, if phosphine is present. (3) The filter paper impregnated with $AgNO_3$ (0.1N) is used in the form of face mask and the patient is asked to breathe in and out of this filter paper for 15 to 20 minutes. Presence of PH_3 is indicated by the blackening of filter paper. In breath, the test is positive only in patients who have ingested more than six gm. of ALP.

Treatment: (1) Gastric lavage with potassium permanganate is done and repeated 2 or 3 times to oxidise the poison. (2) Give activated charcoal 100 g. orally to adsorb phosphine. (3) Antacids reduce symptoms pertaining to the stomach and reduce absorption of phosphine. (4) Liquid paraffin is given for excretion of ALP and phosphine from the gut. (5) There is no specific antidote. (6) Magnesium sulphate reduces organ toxicity, corrects hypomagnesaemia and arrhythmias. The usual dose is one g. repeated for the next two hours, and then 1 to 1.5 g. every 6 hours for 5 to 7 days in the form of continuous i.v. infusion. (7) To treat shock 4 to 6 litres of fluids are to be administered during the first 3 to 6 hours; of this 50% must be normal saline. (8) Low dose dopamine infusion, 4 to 6 microgram/kg/min is useful (9) I.V. hydrocortisone, 400 mg. every 4 to 6 hours is highly effective. It reduces the dose of dopamine. (10) Hypoxia is treated with oxygen. (11) Shock should be treated with fluids and hydrocortisone. (12) Metabolic acidosis should be corrected with i.v. sodium carbonate. Peritoneal or haemodialysis is useful.

Poisoning is usually suicidal, occasionally accidental and rarely homicidal.

64. It is evident that the tests for determining the presence of Aluminium Phosphide as cited in the aforesaid authorities are not depicted in the FSL Report/Exh Ka 14. Further, a notable characteristic of the poison as opined in "Essentials of Forensic Medicine & Toxicology" by Dr. KS Narayan Reddy is that death by consumption of Aluminium Phosphide is mostly suicidal. Consumption of Aluminium Phosphide by accident is a remote possibility in view of the pungent nature of the substance.

65. The discussion also has the benefit of good judicial authorities in point.

66. While discussing the nature of aluminium phosphide the Supreme Court in **Jaipal vs. State of Haryana reported at 2003 1 SCC 169** held as under:

"18. Our attention was invited, as was done in the High Court and the trial court, to a paper entitled "Toxicology Acute Aluminium Phosphide Poisoning in Northern India written by Dr Mitra Basu and Prof. S.B. Siwach, Head, Department of Medicine, Postgraduate Institute of Medical Sciences, Rohtak and published in Current Medical Journal, Vol. I, No. 5, July 1995. The authenticity of this article has not been doubted by the High Court nor questioned either in the High Court or in this Court. The learned authors have noticed the aluminium phosphide having emerged as a major health problem in northern India when these cases first started coming in 1984 and hardly any literature being available earlier on this malady. In Postgraduate Institute of Medical Sciences, Rohtak about 2000 cases were reported which were all suicidal.

19. We may briefly sum up the opinion of the learned authors from their published paper. Phosphine gas (active ingredient of ALP) causes sudden cardiovascular collapse; most patients die of shock, cardiac arrhythmia, acidosis and adult respiratory distress syndrome (ARDS). Aluminium phosphide is available in the form of chalky-white tablets. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating Phosphine gas (PH3) which is the active ingredient of ALP. This gas is highly toxic and effectively kills all insects and thus preserves the stored grains. When these tablets are swallowed, the chemical reaction is accelerated by the presence of hydrochloric acid in the stomach and within minutes phosphine gas dissipates and spreads into the whole body. The gas is highly toxic and damages almost every organ but maximal damage is caused to heart and lungs. Sudden cardiovascular collapse is the hallmark of acute poisoning. Patients come with fast, thready or impalpable arterial pulses, unrecordable or low blood pressure and icy-cold skin. Somehow these patients remain conscious till the end and continue to pass urine despite unrecordable blood pressure. Vomiting is a prominent feature associated with epigastric burning sensation. The patients will be smelling foul (garlic-like) from their breath and vomitus. Many of them will die within a few hours. Those who survive for some time will show elevated jugular venous pressure, may develop tender hepatomegaly and still later adult respiratory distress syndrome (ARDS), renal shutdown and in a very few cases, toxic hepatic jaundice. The active ingredient of ALP is phosphine gas which causes extensive tissue damage. A spot clinical diagnosis is possible in majority of cases of ALP poisoning. However, ALP on account of its very pungent smell (which can drive out all inmates from the house if left open) cannot be taken accidentally.

67. The aforesaid holding in Jaipal as regards aluminium phosphide was reiterated in **Darshan Singh vs. State of Punjab reported at 2024 (3) SCC 164.**

68. The post mortem report records that the body of the deceased did not bear any marks of physical injuries. There is merit in submission on behalf of the appellants that the aluminium phosphide was not administered forcibly. Further in view of above stated authorities there is little likelihood of the same being consumed accidentally. The aforesaid fact gravely dents the prosecution case .

V. Confrontation of the Doctor with FSL

69. The doctor who had conducted the postmortem was never confronted with the F.S.L. report which opines that the Viscera sample contained Aluminium Phosphide. It was incumbent upon the prosecution to confront PW-4 with the F.S.L. report/Exh Ka-14 and verify whether symptoms or effects of poisoning by Aluminium Phosphide were present in the body or not and whether the same were reflected in the Post Mortem report.

70. In the facts and circumstances of this case the Viscera report cannot be treated as conclusive evidence of poisoning by aluminium phosphide. The reliability of FSL report depicting poison is strengthened after the doctor who conducted the post mortem is confronted with the same. During the aforesaid confrontation the doctor will be alerted to the findings in the post mortem report in light of the FSL report. Responses of the doctor will be elicited on whether the post mortem report independently corroborates the opinion of poisoning in the FSL report.

71. P.W.4 has only mentioned in general terms that there was a possibility of the deceased having been poisoned.

VI. Cause of Death

72. The postmortem report opines that the cause of death could not be ascertained. P.W. 4 in his testimony also stated that no conclusion on the cause of death could be derived after the postmortem. The FSL report has been found to be inadmissible in evidence and has been discarded. P.W. 4 was never confronted with the FSL report. Moreover P.W. 4 under cross-examination has testified that there were symptoms of food poisoning. Prosecution evidence with regard to cause of death lacks certainty and is unreliable. The prosecution has failed to establish the cause of death of the deceased by poisoning.

VII. Burden of prosecution regarding safe keeping of viscera sample

73. Viscera sample was preserved at the time of the post mortem on 21.07.2013, and the said Viscera sample was received by the F.S.L. on 16.08.2013. The viscera sample was examined at the FSL on 18.09.2014. There is no evidence in the record regarding the manner of preservation of the aforesaid sample after it was drawn at the time of post mortem. Evidence in the record does not disclose as to whether the Viscera sample was kept under controlled lab conditions so as to render it fit for examination at a later date by the F.S.L.

74. Furthermore, even the F.S.L. report does not disclose the state of the sample at the time of receipt. The lab conditions in which the sample were kept in the F.S.L. are also absent in the prosecution evidence. This fact assumes significance since the Viscera sample was examined after more than one year after it was receipt. The possibility of degradation of viscera sample during this long gap so as to render it unfit for laboratory testing/evaluation is a real one.

75. The F.S.L. was under an obligation of law to record the state of sample at the time of receipt and its fitness for purposes of testing. The laboratory conditions which are conducive for safety and fitness of the sample for future testing should have been certified by the F.S.L. expert. Inappropriate conditions which are unsafe for the viscera sample may render it unfit for future testing.

76. The burden is on the prosecution to prove that storage conditions were safe and appropriate for preservation of the viscera sample for future testing. The prosecution has failed to discharge the said burden. In these circumstances, it cannot be held that the sample was kept in safe and proper lab conditions which were conducive to protecting the sample for the purposes of lab testing at a later date.

VI. Defence 313 Cr.P.C.: Credibility

77. The accused when alerted to the incriminating circumstances in proceedings under Section 313 Cr.P.C. gave satisfactory responses. The accused persons have successfully established that they had rushed the deceased to the hospital and ensured that prompt medical attention was given to him. These facts have been corroborated in the prosecution evidence. Further contrary statements made by the PW 1 and PW 2 have already been disbelieved.

Judgement of the trial court

78. The learned trial court erred in law by believing the testimonies of P.W.1 and P.W.2 who were in fact unreliable witnesses. The trial court also acted contrary to law by relying on the FSL report which as seen earlier was inadmissible in evidence. The learned also neglected to consider the responses of the accused in the proceedings under section 313 CrPC in proper perspective.

79. The judgment rendered by the learned trial court is perverse and contrary to the evidences in the record. The impugned judgment is in teeth of established principles of criminal law. The impugned order dated 27.06.2016 in Sessions Trial No. 547 of 2013 (State Vs. Ashok Kumar and Another) is liable to be set aside and is set aside.

Conclusions:

80. In the wake of the preceding discussion this Court finds that the prosecution has failed to prove the charges under Sections 328/34 IPC and 302/34 I.P.C. against the

appellants, namely, Gyanmati @ Sangathiya and Ashok Kumar @ Putti Lal beyond reasonable doubt. The appellants, namely, Gyanmati @ Sangathiya and Ashok Kumar @ Putti Lal are honourably acquitted of the charges which were laid against them by the trial court and which are the subject matter of these appeals.

81. The Criminal Appeals are **allowed.**

82. The appellants in the respective appeals, namely, Gyanmati @ Sangathiya and Ashok Kumar @ Putti Lal shall be forthwith released from prison and set forth at liberty unless required in any other criminal case.

83. A copy of this judgment translated in Hindi to be served upon the appellant by the Secretary, District Legal Services Authority.

Suggestions:

84. The conduct of investigations and prosecution in the instant case has exposed some of the faultlines in the criminal justice system. Some suggestions are made accordingly to strengthen the process of investigations and conduct of prosecutions and the criminal justice system. The suggestions are as under:

I. Conclusions in the FSL report expert report have to be supported with specific reasons. The reasons include the scientific criteria adopted, laboratory tests, and other material and scientific protocols followed in testing the sample and which form the basis of the conclusions in the FSL/ Expert Report.

II. The credentials/qualifications and experience of the expert who has authored the FSL Report/ expert report will be disclosed in the FSL/expert report.

III. The details of safe preservation of the samples (in the instant case, it was the viscera report) and the fitness of sample for testing shall also be recorded in the expert report.

IV. Strict SOPs for receipt and transfer of samples to be attested by the laboratories/ experts shall be laid down and revealed in the prosecution evidence. The aforesaid procedures shall contain appropriate safeguards against tampering or degradation of the samples.

V. The doctors who have conducted the post mortems shall also be confronted with the findings of the FSL.

VI. The competent authorities including Director General of Police, Directors of Forensic Science Laboratory shall ensure proper training of officials and experts for implementation of the above said safeguards in order to uphold the law and prevent the miscarriage of justice.

(2026) 7 ILRA 1174
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 7189 of 2019

Umesh Yadav **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether conviction for murder under S. 302 IPC can be sustained on the sole testimony of an eye-witness where the evidence contains minor variations, contradictions and omissions, and where there is some difference between the ocular account and the medical evidence, and whether the Trial Court rightly appreciated the evidence and convicted the appellant. (Paras 21-32)

Headnotes

Criminal Law - Indian Penal Code, 1860 - S. 302 - Evidence - Sole eye-witness - Minor contradictions and inconsistencies - Reliability and credibility - Minor variations which do not affect the core of the prosecution case cannot be a ground to reject the evidence - Where the sole eye-witness testified in a very simple and natural language without any exaggeration, embellishment and concoction, and the variations, contradictions and omissions were only minor and trivial, her evidence was found wholly reliable, trustworthy and credible and the conviction was upheld. (Paras 21-27, 30-32)

Evidence - Indian Evidence Act, 1872 - S. 134 - Sole testimony of a single witness - Conviction on sole testimony - Quality of evidence and not quantity of evidence is material - There is no legal impediment in convicting a person on the sole testimony of a single witness where the witness is wholly reliable and the evidence has a ring of truth, is cogent, credible and trustworthy - Conviction based on the sole testimony of the eye-witness upheld. (Paras 28-30)

Criminal Law - Indian Penal Code, 1860 - S. 302 - Ocular evidence and medical evidence - Difference regarding nature and situs of injuries - Ocular testimony that the accused assaulted the deceased with a knife on the neck remained consistent - Medical evidence showing injury to the lungs and puncture of the left lung causing shock and haemorrhage - Difference held immaterial as the assault with knife and resultant death were established - Recovery of bloodstained knife and human blood detected on the knife further established the guilt - Conviction and sentence affirmed. (Para 31)

Criminal Law - Indian Penal Code, 1860 - Ss. 498A, 304B and S. 302 - Dowry Prohibition Act - S. 3/4 - Charges under Ss. 498A, 304B IPC and S. 3/4 Dowry Prohibition Act not established beyond reasonable doubt - Acquittal on those charges by benefit of doubt - Conviction under S. 302 IPC based on cogent and reliable evidence - Criminal appeal dismissed. (Paras 30-33)

Held: The prosecution witness was the sole eye-witness in the case and the entire prosecution case rested on her evidence - the witness testified to the incident in Court in a very simple and natural language without any exaggeration, embellishment and concoction - some minor contradictions, variations and omissions were present in her evidence but those were only minor variation and contradiction that were not material from any point of view - it could not be expected from any witness to tell the happening of the incident in a parrot like

language stating word by word, comma by comma and sentence by sentence - when an incident is narrated by the same person to different persons on different occasions, some difference in the mode of narrating the incident is bound to arise and such difference does not militate against the trustworthiness of the narration unless the variations can be held to so abnormal or unnatural as would not occur if the witness would not really witnessed what he was narrating - reliability, trustworthiness and also credibility of any witness could not be doubted and his/her evidence must not be rejected on the basis of only minor contradictions and inconsistencies, exaggeration and embellishment - minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety - irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions - there is no legal impediment in convicting a person on the sole testimony of a single witness where the witness is wholly reliable - it is not the number, the quantity, but the quality that is material and evidence has to be weighed and not counted - the sole witness was wholly reliable, trustworthy and credible which inspires full confidence - there was no variation, contradiction, omission and embellishment of a kind on the basis of which the evidence of the sole eye-witness could be disbelieved and rejected - the fact that the ocular witness stated that knife injuries were inflicted on the neck whereas injuries found on the lungs, including puncture of the left lung, were the cause of death was immaterial - the ocular witness was consistent in her statement that the deceased was assaulted with a knife and it may happen that during assault, the knife hit the lungs of the deceased in place of the neck - recovery of the knife from the place of occurrence and human blood found on the knife further supported the prosecution case - the reasoning and finding of the Trial Court was based on cogent and reliable evidence and in accordance with the settled principle of law - there was no good ground to interfere with the impugned judgment and order of conviction and sentence - the criminal appeal was devoid of merit and liable to be dismissed and the judgment and order of conviction and sentence deserved to be affirmed. (Paras 21-32) (E-7)

Case Law Cited

Shyam Sundar v. State of Chhattisgarh, **(2002) 8 SCC 39***; Brahm Swaroop and another v. State of Utttar Pradesh,* **(2011) 6 SCC 288***; Sunil Kumar v. State Government of NCT of Delhi,* **(2003) 11 SCC 367.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Dowry Prohibition Act,1961; Indian Evidence Act, 1872

List of Keywords

sole eye-witness; minor contradictions; inconsistencies; exaggeration; embellishment; reliability; trustworthiness; credibility; sole testimony; single witness; quality of evidence; ocular evidence; medical evidence; cogent evidence; bloodstained knife; human blood; murder; conviction; sentence; benefit of doubt; criminal appeal.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order dated 25.10.2019 passed by the learned Sessions Judge, Sant Kabir Nagar in Sessions Trial No. 12 of 2013 arising out of Case Crime No. 817 of 2012, whereby the appellant was convicted under S. 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 20,000/-, with further rigorous imprisonment for a period of one year in default of payment of fine, while being acquitted of the charges under Ss. 498A and 304B IPC and S. 3/4 Dowry Prohibition Act by extending the benefit of doubt.

Appearances for Parties

Advs. for the Appellant:
Mr. S.N. Mishra; Mr. Rakesh Yadav; Mr. Ashutosh Yadav,
learned Amicus Curiae
Advs. for the Respondents:
Mr. Arvind Yadav, learned counsel for the informant;
Mr. Anil Kumar Mishra, learned Additional Government Advocate

appearing on behalf of the State.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. S.N. Mishra and Mr. Rakesh Yadav, learned counsel for the appellant as well as Mr. Ashutosh Yadav, learned Amicus Curiae, who has been appointed in this case, Mr. Arvind Yadav, learned counsel for the informant and Mr. Anil Kumar Mishra, learned Additional Government Advocate appearing on behalf of the State.

2. This criminal appeal has been preferred by the convict, Umesh Yadav, against the judgment and order dated 25.10.2019 passed by the learned Sessions Judge, Sant Kabir Nagar in Sessions Trial No. 12 of 2013 (State v. Umesh Yadav) arising out of Case Crime No. 817 of 2012, under Sections 498A, 304B IPC, alternative Section 302 IPC and Section 3/4 Dowry Prohibition Act, Police Station Kotwali Khalilabad, District Sant Kabir Nagar.

3. Brief facts of the case as stated in the written report, Exhibit Ka-1, lodged by the informant Sadhu Sharan (PW-1) are that he is a resident of Dubauli, Police Station Kotwali Khalilabad, District Sant Kabir Nagar. He got his daughter Sarita married with Umesh Yadav, son of Ramagya Yadav, resident of Mohiddipur, Police Station Khalilabad on 28.05.2011 according to Hindu rites and rituals. After marriage, in April, 2012, his daughter had gone to her in-laws. Her husband Umesh Yadav and his other family members, Dinesh and Ram Avtar, both sons of Ramagya, demanded a motorcycle from his daughter. Upon not fulfilling their demand, all of them began to torture his daughter physically and mentally. After living for four months with her in-laws, his daughter came to her parent's home. On 10.10.2012 at about 10:00 A.M., Umesh Yadav came over to his house. At that time, Anita, elder daughter of the informant, was there at home. Umesh Yadav on the pretext of buying a recharge for his mobile sent her out of the house. Taking benefit of this opportunity, when his daughter Sarita was alone in the room, Umesh Yadav with a knife that he had concealed on him, assaulted Sarita on her neck many times. Upon the informant's daughter calling rescue, his elder daughter came over to intervene. Umesh Yadav pushed her and ran away. The assault by the knife that Umesh Yadav committed, led to the informant's daughter Sarita's death.

4. On the basis of the written report, Exhibit Ka-1, as filed by the informant Shyam Sundar (PW-1) at Police Station Kotwali Khalilabad, a first information report, Exhibit Ka-11, was registered at Case Crime No. 817 of 2012, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act against Umesh Yadav (appellant herein), Dinesh and Ram Avtar, all sons of Ramagya, by Constable Sushil Kumar Mishra (PW-6).

5. The investigation of the case was handed over to Circle Officer, Khalilabad, Rajendra Kumar Sharma (PW-8). The Investigating Officer reached the place of occurrence and commenced investigation. The Investigating Officer recorded the statement of the informant, Sadhu Sharan (PW-1), and inspected the place of occurrence. He recovered a knife (weapon of murder) from the place of occurrence and prepared a recovery memo of the same, marked Exhibit Ka-3. He also took simple and bloodstained soil from the place of occurrence and prepared a recovery memo, marked Exhibit Ka-4. The panchayatnama of the dead body of the deceased, Sarita, was prepared by Naib

Tehsildar, Khalilabad, Rahul Dev Bhatt (PW-3). On the supervision and direction of Rahul Dev Bhatt (PW-3), S.S.I. R.K. Rai prepared the panchayatnama of the dead body of the deceased Sarita, marked Exhibit Ka-2. Along with the panchayatnama, other police papers, such as, letter to C.M.O., Basti; letter to the R.I., Basti; photo lash; police paper no. 13; and sample seal were also prepared as Exhibits Ka-5 to 9, respectively. After the panchayatnama was drawn up, the dead body of the deceased Sarita was entrusted to Constable Ved Prakash Sharma (PW-7), who conveyed the dead body for autopsy. The Investigating Officer Rajendra Kumar Sharma (PW-8) prepared a site plan of the place of occurrence, Exhibit Ka-13. The Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. and after completing all the formalities of investigation, submitted a charge-sheet, Exhibit Ka-14, against the appellant, Umesh Yadav, alone, who was deceased Sarita's husband.

6. Dr. Siya Ram Yadav (PW-4) conducted the post mortem examination of the dead body of the deceased Sarita, and prepared the post mortem report, Exhibit Ka-10. According to Dr. Siya Ram Yadav (PW-4), following ante mortem injuries were found on the dead body of the deceased :

"(i) Stab wound on the jugular notch 2.5 x 1 x 6 cm in size and opening major blood vessels on left lung punctured.

(ii) Incised wound on the lateral aspect of right arm 3 x 1 x 0.3 cm in size. 6 cm. below right shoulder joint.

(iii) Lacerated wound on the lateral aspect of left arm 2.5 x 1 x muscle deep. 7 cm. below left shoulder joint.

In the opinion of the doctor, the cause of the death of the deceased is shock and haemorrhage as a result of ante mortem injuries.

7. The Investigating Officer submitted a charge-sheet against the appellant, Umesh Yadav, in the Court of the concerned Magistrate having jurisdiction.

8. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

9. The charges were framed against the appellant, Umesh Yadav, by learned Trial Court under Sections 498A, 304B IPC on 16.02.2013. Alternative charges under Section 302 IPC and Section 3/4 Dowry Prohibition Act were also framed by learned Trial Court on the same day. The appellant denied the charges and claimed trial.

10. In support of its case, the prosecution adduced Sadhu Sharan (PW-1), Anita (PW-2), Banarasi Yadav (PW-5), Smt. Panmati (PW-9) as witnesses of the facts and Rahul Dev Bhatt (PW-3), Dr. Siya Ram Yadav (PW-4), Sushil Kumar Mishra (PW-6), Ved Prakash Sharma (PW-7) and Rajendra Kumar Sharma (PW-8) as formal witnesses. Apart from the above oral evidence, the prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-15 in support of its case.

11. The evidence of the prosecution witnesses was heard by the Trial Judge. Thereafter, the appellant, Umesh Yadav, was examined by the learned Trial Judge and his statement under Section 313 Cr.P.C. was recorded, where he accepted his marriage to the deceased Sarita. He also accepted the fact that within seven years of marriage, unnatural death of the deceased Sarita occurred at her parent's home. As regards the remaining questions put to him under Section 313 Cr.P.C., the appellant answered these in the negative. He also expressed his ignorance of facts referred to in those questions. He further stated that the police had prepared a false and fabricated document against him. He asserted that he was innocent and had been falsely implicated in the present case. He further stated that he will not adduce any defence evidence.

12. The learned Trial Judge, after hearing the submissions advanced by the prosecution and the defence, held the appellant, Umesh Yadav, guilty of the offence punishable under Section 302 IPC. However, the learned Trial Court acquitted the appellant of the charges under Sections 498A and 304B IPC and Section 3/4 of the Dowry Prohibition Act by extending to him the benefit of doubt. The appellant was accordingly convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 20,000/-. In default of payment of the fine, he was further directed to undergo rigorous imprisonment for a period of one year.

13. Aggrieved by the impugned judgment and order dated 25.10.2019, the appellant, Umesh Yadav, has preferred this criminal appeal.

14. Learned counsel for the appellant has contended that the deceased, Sarita, died an unnatural death at her parent's home. The presence of the appellant at the house of the informant is highly doubtful. Only Anita (PW-2), elder sister of deceased Sarita, is said to be an eye-witness of the occurrence. There are several major and material contradictions in the evidence of Anita (PW-2), which create a reasonable doubt regarding the veracity and truthfulness of this witness. The other prosecution witnesses, namely, Sadhu Sharan (PW-1), Banarasi Yadav (PW-5), and Smt. Panmati (PW-9), are not eye-witnesses of the incident. They did not witness the occurrence themselves. However, the prosecution attempted to project them as eye-witnesses of the incident. Therefore, the conviction of the appellant could not be upheld on the evidence of the sole eye-witness, Anita (PW-2), particularly when her evidence does not find corroboration from the other evidence on record. It is also submitted that there is no motive assigned by the prosecution to the appellant for commission of the crime. However, the learned Trial Judge has not considered this major and legal point in appreciating the evidence of the prosecution and wrongly held the appellant guilty of commission of this crime. The finding and reasoning of the Trial Court is perverse and without any evidence and also against the settled principles of law. Therefore, the judgment and order of the Trial Court dated 25.10.2019 is liable to be set aside and the criminal appeal deserves to be allowed.

15. Per contra, learned A.G.A. for the State and learned counsel for the informant have submitted that it is a case of direct evidence. The deceased Sarita was murdered by her husband Umesh Yadav at her parent's home by causing fatal injuries with a knife to her neck. The deceased, Sarita, died within three years of her marriage to the appellant, Umesh Yadav. In the presence and before the eyes of Anita (PW-2), elder sister of the deceased Sarita, appellant Umesh Yadav has assaulted her with a knife delivering blows to the deceased Sarita's neck and caused her death.

Anita (PW-2) has witnessed the incident with her own eyes. Anita (PW-2) has supported the prosecution case by her testimony. There is no major and material contradictions in her evidence by which her evidence could be doubted and rejected. There is no law of this kind that on the basis of the evidence of the sole witness, an accused cannot be held guilty and convicted. It is a settled principle of the law that conviction can be recorded on the basis of evidence of the sole witness, if his/her evidence inspire confidence and found trustworthy and truthful. The proof of motive by the prosecution is not necessary in a case where eye-witnesses support the prosecution case and role of the appellant Umesh Yadav. Learned A.G.A. for the State and learned counsel for the informant have also contended that Trial Court has appreciated the evidence in the proper perspective and in accordance with law. The finding and reasoning recorded by the learned Trial Court is based on evidence of eye-witness Anita (PW-2), which found support from the prosecution evidence. There is no reason to falsely implicate the appellant, who is a son-in-law of the informant Sadhu Sharan (PW-1) and brother-in-law of Anita (PW-2). No person would falsely implicate the husband of his daughter or husband of her sister in a heinous crime like murder. There is no illegality and perversity in the impugned judgment and order passed by the Trial Court. Therefore, the criminal appeal is devoid of merits and liable to be dismissed and the judgment and order of conviction and sentence dated 25.10.2019 is liable to be affirmed.

16. In the light of the rival submissions of learned counsel for the parties, we have perused the entire documentary and oral evidence available on the record and also gone through the judgment and order passed by the Trial Court dated 25.10.2019.

17. From a perusal of the written report, Exhibit Ka-1, we find that the informant Sadhu Sharan (PW-1) has named the appellant as the author of the crime. In the written report, Exhibit Ka-1, Anita has been mentioned as an eye-witness of the occurrence. The F.I.R. has been registered on the same day, that is, on 10.10.2012 at 13:10 hours and occurrence is said to be happened on 10.10.2012 at 10:00 A.M. The informant Sadhu Sharan (PW-1) is the father-in-law of the appellant, Umesh Yadav. Thus, we find that the appellant, Umesh Yadav, has been named in the written report, Exhibit Ka-1, as the accused responsible for the murder of his wife, the deceased Sarita, in clear-cut words.

18. Upon a perusal of the written report, Exhibit Ka-1, and also the evidence of the informant Sadhu Sharan (PW-1), it is established fact that at the time of the happening of the occurrence, informant Sadhu Sharan (PW-1) was not present at the place of occurrence. After the incident, he received information about the murder of his daughter Sarita by her husband Umesh Yadav at Khalilabad. He then came home and saw the dead body of his daughter Sarita. Thereafter, he lodged the written report, Exhibit Ka-1, at the police station nominating Umesh Yadav as the culprit. Thus, it is clear that Sadhu Sharan (PW-1) is not an eye-witness of the incident. However, from a perusal of the statement of Sadhu Sharan (PW-1), this fact is established that Sadhu Sharan had married his daughter Sarita (deceased) on 28.05.2011 with the appellant, Umesh Yadav. In this way, the fact of marriage of Sarita (deceased) with the appellant, Umesh Yadav, is clearly established. Apart from this, the appellant, Umesh Yadav, has also accepted the fact of his marriage with Sarita (deceased). From a perusal of the evidence of Sadhu Sharan (PW-1), it is also revealed that at the time of the incident, Sarita (deceased) was living with her parents at her parent's home. On the date of the incident, the appellant Umesh Yadav had come over to the house of his father-in-

law, Sadhu Sharan (PW-1). This witness has stated that Anita (PW-2) saw the appellant, Umesh Yadav, assaulting the deceased, Sarita, with a knife with her own eyes. This witness has clearly accepted that he is not an eye-witness of the incident.

19. From a perusal of the evidence of Banarasi Yadav (PW-5), it is clear that at the time of the incident, this witness was working in his fields. Thus, this witness is also not an eye-witness of the incident. However, the testimony of this witness reveals that when he reached home on hearing the hue and cry, the elder sister of the deceased, Anita (PW-2), told him that Umesh Yadav after assaulting Sarita with a knife had escaped towards the west. According to this witness, he tried to catch the appellant, Umesh Yadav, but was unsuccessful. He returned home and found Sarita dead.

20. The prosecution produced Smt. Panmati (PW-9). This witness is deceased Sarita's mother and wife of informant Sadhu Sharan (PW-1). She is also the mother of Anita (PW-2). The appellant, Umesh Yadav, is her son-in-law because her daughter Sarita was married to the appellant, Umesh Yadav. From a perusal of the evidence of Smt. Panmati (PW-9), it is clear that at the time of the incident, this witness had gone to her fields to harvest fodder for cattle. Thus, this witness is also not an eye-witness of the incident. When this incident happened, she was not present at the place of occurrence. Due to this reason, this witness had not seen the incident with her own eyes. However, from a perusal of the evidence of this witness Smt. Panmati (PW-9), this fact is established that her daughter deceased Sarita was married with the appellant, Umesh Yadav. At the time of the incident, Sarita was staying at her parent's home. On the day of the incident, her son-in-law, Umesh Yadav, had come over to the house of the deceased, Sarita.

21. Thus, from a perusal of the records of the case and evidence as available on the record, we find that the prosecution witness Anita (PW-2) is the sole eye-witness in this case. The entire prosecution case thus rests on the sole evidence of Anita (PW-2). The prosecution adduced Anita (PW-2) as a star witness of the prosecution, who had seen the incident with her own eyes.

22. Upon a perusal of the evidence of Anita (PW-2), we find that this witness has stated that Sarita was my younger sister. Marriage of Sarita was got solemnized with the accused Umesh Yadav by my father after giving sufficient dowry as per his capacity two and a half years ago. She has also stated that this incident happened at 10:00 A.M. On that day, Umesh Yadav had come to my parent's home at 09:30 A.M. At that time, I, my sister Sarita and my mother were there at home. My mother said that I am going to get fodder. You give food to Umesh. Both of us sisters had served him food. Umesh told me to go and get recharge for his mobile. I went to get the recharge behind my house but it was not available. I was returning home. Then I heard Sarita's screams from the house and rushed over and saw that accused Umesh was attacking Sarita with a knife to her neck. I rushed to save her. Umesh pushed me and threw the knife in the house and ran away. This incident happened at 09:30 A.M. At that time, my father had gone to work at the shop of Kashi at Khalilabad. Sarita died on the spot after sustaining knife injuries. I had given information of this incident to my father on phone. My father came home upon this information. I had told all things about the incident to him. Upon this, he went to Khalilabad and gave an application. The police came from Kotwali. Members of the police party had seen the dead body of the deceased. According to this witness, from the place of the occurrence, one knife was also recovered and taken into possession by the police and who sealed it.

23. During the cross-examination, Anita (PW-2) has stated that the incident has not happened in southern room of the verandah. No incident happened in the southern room of the verandah. It happened in the western room. She also stated in her cross-examination that when I had gone to fetch recharge then my sister Sarita was serving food to Umesh. I have stated in my main examination that both of us sisters were serving him food was a true statement. She also stated that the police had recovered that knife before me. I had entered into the room of my sister from the west. Umesh fled through the same door from which I had entered. He had pushed me. When I informed my father, the appellant, Umesh, was assaulting my sister at that time. Before me, he had delivered one knife blow on the neck and he had not delivered other knife blows before me. I had seen knife injury in the right hand of my sister. I had seen three knife injuries in the right hand. I had not seen any injury in the left hand of my sister. The injury which I had seen inflicted was on the neck and not on the chest. She denied the suggestion of the defence that she had illicit relation with husband of her younger sister. She also denied the suggestion that it is wrong to say that I had assaulted Sarita with a knife when she was sleeping.

24. Thus, from a perusal and discussion of the evidence of the sole evidence of Anita (PW-2), we find that this witness has testified to the incident in Court in a very simple and natural language without any exaggeration, embellishment and concoction, although some minor contradictions are present in her evidence. In her evidence, she stated that the occurrence happened at 10:00 A.M. However, in the written report, it has also been stated that the incident happened on 10.10.2012 at about 10:00 A.M. From a perusal of the F.I.R., Exhibit Ka-11, it is revealed that in the written report, Exhibit Ka-1, date and time of the incident is mentioned as 10.10.2012 at 10:00 A.M. Thus, we find no major and material variation about the time when the incident happened in the evidence of Anita (PW-2). We also find that in respect of serving food to the appellant, Umesh Yadav, some difference in the evidence of this witness is present. At some place, this witness has stated that both the sisters had served food to Umesh. Elsewhere, she stated that her sister the deceased Sarita served food to accused Umesh. We do not consider this kind of variation as a major and material contradiction in the evidence of this witness. We are of the considered view that whatever omission, variation and contradiction are present in the evidence of this witness Anita (PW-2) those are only minor variation and contradiction that are not material from any point of view. We also find that this witness has stated that the incident happened in the western room and it has not happened in southern room of the verandah. However, at this point, the Investigating Officer Rajendra Kumar Sharma (PW-8) has stated in his cross-examination that the incident happened in southern room of the verandah. Thus, we find that there is little difference on the point that in which room the incident had happened. According to Anita (PW-2), the incident happened in the western room. However, the Investigating Officer Rajendra Kumar Sharma (PW-8) has stated that the incident happened in southern room of the verandah. It appears that during the course of recording of the evidence and also during the cross-examination, this witness could not clearly remember the room when she was giving her evidence in Court that in which room the incident happened. In other words, when evidence of this witness was being heard in Court and this witness was cross-examined by the defence, she could not exactly remember in the Court room the place of occurrence and the room in which the incident happened. It appears that due to this reason as stated the incident happened in the western room. However, from a perusal of the site plan, Exhibit Ka-13, it is apparent that the incident happened in the southern room of the verandah. The verandah is located and marked as Exhibit Ka-13 in the north side and from the verandah behind south, a room

is marked where the incident has happened. In our opinion, this type of minor difference about the direction of the room in which the incident happened is not a major and material contradiction. The prosecution does not stand to benefit on this ground. From an overall perusal and appreciation of the evidence of Anita (PW-2), we find that this witness has testified in a very simple and natural language without any exaggeration, embellishment and concoction. In our opinion, it is also very natural that during the hearing of evidence in Court, some variation is likely to creep in the testimony of any witness. It is also a settled principle of law that it could not be expected from any witness to tell the happening of the incident in a parrot like language stating word by word, comma by comma and sentence by sentence. The Supreme Court in **Shyam Sundar v. State of Chhattisgarh, (2002) 8 SCC 39** has held :

"When an incident is narrated by the same person to different persons on different occasions, some difference in the mode of narrating the incident is bound to arise. However, such difference do not militate against the trustworthiness of the narration unless the variations can be held to so abnormal or unnatural as would not occur if the witness would not really witnessed what he was narrating."

25. In the light of the legal principles as enunciated by the Supreme Court in the case of **Shyam Sundar (supra**), we find that when the incident happened on 10.10.2012, Anita (PW-2) was alone present at the place of occurrence with her sister, the deceased Sarita, and accused-appellant, Umesh. Before Anita (PW-2), the incident happened and the appellant assaulted with a knife on the neck of Sarita. It is immaterial that knife was either carried by the appellant himself or he has taken the same from the place of occurrence. This fact is not material in our considered view. What is material is that the recovery of the knife was made from the place of occurrence by the Investigating Officer, Rajendra Kumar Sharma (PW-8), and it was found bloodstained and marked as Exhibit Ka-3. Thus, Anita (PW-2) was the sole witness before whom the incident happened. After happening of the incident, she first of all informed and narrated about the incident to her father Sadhu Sharan (PW-1). When her father came to the place of occurrence from Khalilabad she narrated the whole story to her father Sadhu Sharan (PW-1). Thereafter, she also gave her statement under Section 161 Cr.P.C. to the Investigating Officer, Rajendra Kumar Sharma (PW-8). Lastly, during trial, she has given evidence regarding the incident in the Trial Court. Therefore, Anita (PW-2) had stated on three occasions and also before three persons/authorities about the happening of the incident. In this way, some minor variations and omissions are likely to occur in her evidence. Hence, those minor variation, omission and contradiction are not found to be a major and material contradiction. In our opinion, whatever variations, contradictions, or omissions are present in the evidence of the sole eye-witness, Anita (PW-2), are only minor and trivial omissions/variations that cannot, in any way, create doubt about the truthfulness, credibility, and trustworthiness of her evidence.

26. The Supreme Court in the case of **Brahm Swaroop and another v. State of Utttar Pradesh, (2011) 6 SCC 288** on the point of contradictions and inconsistencies, exaggeration and embellishment has held :

"32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not

prompt the court to reject the evidence in its entirety. Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions. Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses."

27. Therefore, in the light of legal principles as laid down by the Supreme Court in the case of Brahm Swaroop and another (supra), it is clear that reliability, trustworthiness and also credibility of any witness could not be doubted and his/her evidence must not be rejected on the basis of only minor contradictions and inconsistencies, exaggeration and embellishment. We have also discussed and observed that Anita (PW-2) is a star witness of the prosecution and she is the only eye-witness of the prosecution before whom the incident had happened. Before this witness Anita (PW-2), the appellant assaulted with a knife on the neck of his wife, deceased Sarita, by which she died instantly on the spot. Hence, the appellant is not entitled to get any benefit on this point.

28. From a perusal of the whole evidence of the prosecution, it is clear that Anita (PW-2) is the sole eye-witness of the incident and the Trial Court has held the appellant Umesh Yadav guilty and convicted him on the basis of her testimony.

29. The Supreme Court in the case of **Sunil Kumar v. State Government of NCT of Delhi, (2003) 11 SCC 367** has held :

"As a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

30. There is no cause or reason shown or brought on record by the defence as to why Anita (PW-2), who is the real elder sister of the deceased Sarita, would falsely implicate the appellant, Umesh Yadav, in a heinous crime like murder. There is also no reason or cause shown by the defence as to why the informant, Sadhu Sharan (PW-1), who is the father-in-law of the appellant, Umesh Yadav, would falsely implicate him in a heinous crime like murder. It is also an admitted fact that the appellant, Umesh Yadav, is the son-in-law of the informant, Sadhu Sharan (PW-1). Sadhu Sharan (PW-1) had married his deceased daughter, Sarita, with the appellant, Umesh Yadav. This incident happened within three years of the marriage of Sarita with the appellant, Umesh

Yadav. Although this incident happened at the parent's home of the deceased, Sarita, the appellant, Umesh Yadav, had come there and assaulted his wife, Sarita, with a knife on her neck, causing her death on the spot. The sole witness Anita (PW-2) has clearly testified to the incident in Court. We find by appreciation and discussion of the evidence of this sole witness Anita (PW-2) that her evidence is wholly reliable, trustworthy and credible which inspires full confidence. The evidence of the sole witness Anita (PW-2) in this case is wholly reliable. There is no variation, contradiction, omission and embellishment of a kind on the basis of which we could disbelieve and reject the evidence of the sole eye-witness Anita (PW-2). Upon a perusal of the finding and reasoning of the learned Trial Court, we find that the Trial Court has appreciated the evidence in a proper perspective and in a legal manner. By appreciating the whole evidence of the prosecution, the Trial Court has found that charges in respect of the offences under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act could not be established by the prosecution beyond reasonable doubt.

31. In view of this fact, the Trial Court has acquitted the appellant, Umesh Yadav, in respect of the charges under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act by giving benefit of doubt. However, the Trial Court after a full discussion of the prosecution evidence found that the appellant, Umesh Yadav, has committed the murder of his wife, the deceased Sarita, by assaulting her with a knife to her neck when she was residing at her parent's home. From a perusal of the evidence of Dr. Siya Ram Yadav (PW-4), it is clear that one stab wound on the jugular notch 2.5 x 1 x 6 cm. in size and opening major blood vessels and left lung was found punctured and second injury incised wound on the lateral aspect of the right arm 3 x 1 x 0.3 cm. in size, 6 cm. below the right shoulder joints. In the opinion of the Dr. Siya Ram Yadav (PW-4), the cause of the death of the deceased was shock and haemorrhage as a result of ante mortem injuries. It is immaterial that Anita (PW-2) stated that the appellant had inflicted knife injuries on the neck of the deceased Sarita, whereas the injuries found on the lungs, including the puncture of the left lung, were the cause of death of the deceased Sarita. Anita (PW-2) is consistent in her statement that the appellant, Umesh Yadav, assaulted with knife on the neck of the deceased Sarita. It may happen that during assault, the knife hit the lungs of the deceased Sarita in place of the neck. That fact would not be material and relevant. What is material is the statement of Anita (PW-2) that the appellant, Umesh Yadav, assaulted the deceased Sarita with a knife, as a result of which she died on the spot. From the report of the Forensic Science Laboratory, Exhibit Ka-15, it is revealed that in the examination report of the knife, which is at Sl. No. 6, human blood was found. All these facts establish the guilt of the appellant, Umesh Yadav. The reasoning and finding of the Trial Court is based on cogent and reliable evidence. The Trial Court has delivered its finding based on cogent evidence and in accordance with the settled principle of law. We find no good ground to interfere with impugned judgment and order of conviction and sentence dated 25.10.2019.

32. Hence, in view of the above discussions, we find that the criminal appeal of the convicted appellant, Umesh Yadav, is devoid of merit and it lacks force. Hence, we are of the view that the criminal appeal is liable to be dismissed and the judgment and order of conviction and sentence dated 25.10.2019 deserves to be affirmed.

33. In the result, the criminal appeal is **dismissed**. The impugned judgment and order dated 25.10.2019 passed by the Trial Court is affirmed. The appellant, Umesh Yadav, is in jail. He shall remain in jail to serve out the sentence awarded to him by the Trial Court.

34. Let a copy of this judgment be transmitted to the Trial Court along with the Trial Court records forthwith for necessary compliance.

(2026) 7 ILRA 1185
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.05.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE MRS. BABITA RANI, J.

Capital Cases No. 5 of 2021
& Other Connected Cases

State of U.P. **...Appellant**
Versus
Rajesh Singh & Anr. **...Respondents**

Issue for Consideration

Matter pertains to whether, while deciding a reference for capital punishment and criminal appeals, the appellate Court has power to put questions to the convicts/appellants or to get supplementary statements recorded under S. 313 Cr.P.C. where the statements recorded by the trial Court are in a generic and composite form and specific incriminating circumstances have not been separately put to the accused, and whether such course can be adopted to avoid prejudice, failure of justice and miscarriage of justice. (Paras 10-15, 23-25, 34-36)

Headnotes

Criminal Law - Code of Criminal Procedure, 1973 - S. 313 - Examination of accused - Incriminating circumstances - Opportunity to explain - Valuable right of accused - Questions required to be put in regard to circumstances appearing in prosecution evidence - Appellate Court exercising appellate jurisdiction - Power to put questions or get supplementary statement recorded - Held, contention that appellate Court can put questions only under S. 313(1)(a) and not under S. 313(1)(b) is misconceived and not tenable - Appellate Court, while deciding reference for capital punishment and appeals, has power to put questions to convicts/appellants or to get supplementary statements recorded to avoid failure of justice. (Paras 10, 11)

Criminal Law - Code of Criminal Procedure, 1973 - Ss. 313, 367, 391 - Additional evidence - Supplementary statement of accused - Power of appellate Court - Where additional evidence is required to be recorded, opportunity is required to be given to convicts/appellants to explain circumstances under S. 313 - Provisions of S. 313 embedded in power of appellate Court under Ss. 367 and 391 - Appellate Court empowered to record supplementary statement itself or get it recorded from Sessions Court in interest of justice and to avoid failure of justice. (Para 12)

Criminal Law - Code of Criminal Procedure, 1973 - S. 313 - Generic and composite questions - Specific and separate questions - Entire incriminating circumstances available on record having been put to convicts/appellants - Defence witnesses examined to controvert same - No prejudice shown except passage of time and lingering of proceedings - Supplementary statement at appellate stage - Proper opportunity under S. 313 - Held, supplementary statements may be got recorded where detailed and specific incriminating circumstances are required to be put, particularly when such course may be in the interest of convicts/appellants. (Paras 13-15)

Criminal Law - Code of Criminal Procedure, 1973 - S. 313 - Omission to put material circumstances - Prejudice - Failure of justice - Curable defect - Appellate Court - Where no prejudice or failure of justice is caused, matter may be decided on merits - Where prejudice is caused or likely to be caused, appellate Court may direct retrial from stage of recording statements - Delay and passage of time relevant consideration - In present case, hearing being in mid of arguments, Court not inclined to remand and instead directed supplementary statement to be recorded for fair and just disposal. (Paras 17-23)

Criminal Law - Code of Criminal Procedure, 1973 - S. 313 - Appellate Court - Procedural irregularity - Supplementary statement - A defect in statement under S. 313 can be cured either by High Court recording further statement or by directing Trial Court to record it - Early correction avoids argument of prejudice on account of delay - Present case - Supplementary statement directed to be recorded by Sessions Judge for just and fair disposal of references and appeals and to avoid failure of justice. (Paras 24-25, 34-36)

Criminal Law - Code of Criminal Procedure, 1973 - Ss. 232, 233, 313 - Rights of accused - Objection that supplementary statement would affect right under Ss. 232 and 233 or right to appeal - Held, objection without force - Court required to consider case in totality and answer reference against capital punishment and decide criminal appeals - Detailed and specific incriminating circumstances may be put at stage of arguments where no prejudice or failure of justice is shown. (Paras 14-15)

Held: The opportunity to explain under S. 313 Cr.P.C. to an accused putting all the incriminating circumstances against him, which have come in the evidence of the prosecution, is a valuable right of the accused - in both the contingencies under S. 313(1)(a) and S. 313(1)(b), the Court can put questions to the accused in every enquiry of trial for the purpose of enabling the accused personally to explain every incriminating circumstances appearing in the evidence against him - the contention that this Court can put questions in sub-section (a) of S. 313(1) Cr.P.C. and not under sub-section (b) of S. 313(1) Cr.P.C. under the appellate jurisdiction is misconceived and not tenable and is hereby rejected - while deciding the reference for the capital punishment and the appeals of the convicts/appellants, this Court has power to put questions to the convicts/appellants or to get supplementary statements recorded to avoid failure of justice - the provisions of S. 313 Cr.P.C. are embedded in the power of this Court under S. 367 Cr.P.C. and S. 391 Cr.P.C. and if this power is with this Court, this Court can very well record the supplementary statement of the convicts/appellants or get it recorded from the Session Court in the interest of justice and to avoid failure of justice - the statements recorded by the trial Court were in a generic way and composite form and specifically separate questions had not been framed and put to the convicts/appellants, however, the entire incriminating circumstances available on record against the convicts/appellants, having been put, were well within their knowledge and they had also examined three defence witnesses to controvert the same - the appellate Court has to see that no prejudice is caused to any party from the statement under S. 313 Cr.P.C. and it may not result in failure of justice and the compliance is also to be made not only looking into the accused/convicts but to the victim also - if any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect - considering the overall facts and circumstances of the case, a supplementary statement putting all incriminating circumstances to the convicts/appellants came specifically against them may be got recorded from the Sessions Judge concerned for just and fair disposal of reference of capital punishment/appeals and other appeals to avoid failure of justice - the Sessions Judge, Pratapgarh was accordingly directed to record the supplementary statement under S. 313 Cr.P.C. of the convicts/appellants putting all incriminating circumstances, which have come in the evidence of the prosecution and material on record, specifically against each of the convicts/appellants, expeditiously, and to transmit the statements along with the original records to this Court. (Paras 10-15, 20, 23-25, 34-36) (E-7)

Case Law Cited

Naresh Kumar Vs. State of Delhi; **Criminal Appeal No.1751 of 2017***; Suresh Sahu Vs. State of Bihar (Now Jharkhand); Raj Kumar @ Suman Vs. State* **(NCT of Delhi); 2023 (17) SCC 95***; Aejaz Ahmad Sheikh Vs. The State of Uttar Pradesh and Another;* **(2025) SCC OnLine SC 913***; Chandan Pasi and Others Vs. State of Bihar;* **(2025) SCC OnLine SC 2599***; Chandan Pasi and Others v. State of Bihar,* **2005 SCC OnLine SC 1157***; Nar Singh Vs. State of Haryana;* **(2015) 1 SCC 496***; Fahim Khan Vs. State of Bihar Now Jharkhand;* **(2011) 13 SCC 142***; Satyavir Singh Rathi, Assistant Commissioner of Police and Others Vs. State through Central Bureau of Investigation;* **(2011) 6 SCC 1***; Ghanshyam Mandal and Others Vs. The State of Bihar (Now Jharkhand);* **2026 LiveLaw (SC) 201***; Fainul Khan Vs. State of Jharkhand and Another;* **(2019) 9 SCC 549***; Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra;* **(1973) 2 SCC 793;** *Janak Yadav and Others Vs. State of Bihar;* **(1999) 9 SCC 125***; N.Dev Dass Singha Vs. State,* **Criminal Appeal No.647 of 2010***; Mahendra Vasudeo Gawas Vs. The State of Maharashtra,* Criminal Appeal No.1492 of 2011*; State of Punjab & Anr. Vs. Swaran Singh;* **(2005) 6 SCC 101***.*

List of Acts

Code of Criminal Procedure, 1973; Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

capital punishment; criminal appeals; supplementary statement; incriminating circumstances; natural justice; failure of justice; miscarriage of justice; prejudice; procedural irregularity; generic way; composite form; specific and separate questions; valuable right of the accused; appellate Court; additional evidence; fair and just disposal; interest of justice; curable defect; retrial; material circumstance; statement under Section 313 Cr.P.C.; omission; victim; society at large; correction of deviant behaviour.

Case Arising From

APPELLATE JURISDICTION: Matter arises from two Capital Punishment references and appeals filed by the convicts/appellants, including appeals by other convicts who were awarded life sentences with other punishment, concerning the judgment and order of conviction and sentence.

Appearances for Parties

Advs. for the Appellant:
Dr. V.K. Singh, learned Government Advocate, assisted by Sri Rajdeep Singh, Shri Anurag Srivastava and Shri Ashok Kumar Srivastava, learned A.G.A. for the State.
Advs. for the Respondents:
Sri Avinash Srivastava learned counsel for the complainant. Learned Counsels for the convicts/appellants are also recorded in the judgment, including Sri Naved Ali, learned counsel for the appellants/convicts Rajesh Singh and Naushad @ D.M.

(Delivered by Hon'ble Rajnish Kumar, J.
&
Hon'ble Mrs. Babita Rani, J.)

(1) Heard, learned Counsels for the convicts/appellants, Dr. V.K. Singh, learned Government Advocate assisted by Sri Rajdeep Singh, Shri Anurag Srivastava and Shri Ashok Kumar Srivastava, learned A.G.A. for the State and Sri Avinash Srivastava, learned counsel for the complainant.

(2) These are the two Capital Punishment references and appeals filed by those convicts and the appeals by other convicts, who have been awarded life sentences with other punishment.

(3) This Court had passed the following order on 11.05.2026:-

"1. Heard Sri Naved Ali, learned counsel for the appellants/convicts Rajesh Singh and Naushad @ D.M., who is in mid of his argument.

2. Today, learned counsel for the appellant argued that the statement of the convicts/accused recorded under Section 313 Cr.P.C. is in utter violation of the principles of natural justice as all the incriminating circumstances which ought to have been put to them, were not put and the same was recorded in a very casual manner, therefore, without going into other issues, the impugned judgment and order of conviction and sentence is liable to be set aside solely on the ground of violation of the principles of natural justice in view of judgement of Hon'ble Supreme Court in Chandan Pasi and Others v. State of Bihar, 2005 SCC OnLine SC 1157 and Aejaz Ahmad Sheikh v. State of U.P. and Another, 2025 SCC OnLine SC 913.

3. In view of above and aforesaid judgement of Hon'ble Supreme Court, in the case of Aejaz Ahmad Sheikh (supra), this Court deems it appropriate to consider to direct to the learned Sessions Judge to record a supplementary statement of the accused under Section 313 Cr.P.C. putting all incriminating circumstances and send to this Court at the earliest.

4. It is pertinent to note that this case was nominated to this Bench by Hon'ble the Chief Justice vide order dated 21.04.2026. Thereafter, the case was listed before this Bench, for the first time on 24.01.2026, and on the same date, on being informed by learned counsel for the appellants that the case has been nominated to this Bench pursuant to an order passed by the Hon'ble Supreme Court and order passed by a co-ordinate Bench, we commenced hearing of the case from the said date itself and the hearing is going on, on a day-to-day basis, except on one or two occasions, when the case was fixed after one or two days at the request of learned counsel for the parties and the aforesaid issue has been argued by learned counsel for the convicts Rajesh Singh and Naushand @ D.M. for the first time today.

5. At this stage, learned counsel for the aforesaid convicts submits that if this Court is inclined to call for a supplementary statement of the accused/convicts, then he has instructions to press their application for suspension of sentence.

6. In view of above, learned AGA, learned counsel for the complainant as well as learned counsel for the appellants in all the connected appeals are directed to first argue on the aforesaid issue in view of judgement of the Hon'ble Supreme Court, in the case of Aejaz Ahmad Sheikh (supra), relied by the learned counsel for the appellants.

7. As prayed by the learned counsel for the parties, put up tomorrow i.e. 12.5.2026.

(4) Learned Counsel for the convicts/appellants submits that mere perusal of the statement of accused under Section 313 of the Code of Criminal Procedure, 1973 (here-in-after referred to as

Cr.P.C.) recorded by the trial Court indicates that wrong incriminating circumstances have been put in the shape of question No.1 to the appellants and rest of the questions are generic in nature and have been put in a composite form, whereas all the incriminating circumstances in the evidence of the prosecution should have been put to the appellants specifically and separately in the statement under Section 313 Cr.P.C. to afford proper opportunity to explain. Thus, total failure of non putting all the incriminating circumstances to the convicts/ appellants vitiates the trial itself.

(5) Learned counsels vehemently argued further that it is not a case wherein learned trial Court left over one or two incriminatory circumstances, rather entire statement has been recorded in utmost cavalier and lackadaisical approach, which certainly have prejudiced the interest of appellants and occasioned failure of justice. They further submit that the defect and the illegality committed by the learned trial Court in the instant case is not curable as none of the incriminating circumstances have been put to the appellants, which goes to the root of the case. Lastly, it has been submitted that the sending of appellants to the trial Court only for the purpose of recording of statements and thereafter supplementing it in the present appeal is against very tenets of law and it will also take away right of convicts/appellants for consideration for acquittal under Section 232 Cr.P.C. and defence under Section 233 Cr.P.C. It has also been submitted that the appellate Court can not get a supplementary statement recorded under Section 313(1)(b) Cr.P.C., however, it could have been made under Section 313 (1)(a) Cr.P.C. Thus, it has been submitted by learned counsel for the convicts/ appellants that the appeals are liable to be allowed and references are liable to be rejected only on this ground of violation of the principles of natural justice and providing proper opportunity to convicts/ appellants of being explained the circumstances under Section 313 Cr.P.C., which have been against them in the prosecution evidence. However, if this Court is of the view that the impugned judgment and order could not be set aside on this ground alone, then the references/appeals may be heard and decided on merit.

(6) Learned counsel for the convicts/appellants relies on judgment and order dated 08.07.2024 passed by the Hon ble Supreme Court in the case of Naresh Kumar Vs. State of Delhi; Criminal Appeal No.1751 of 2017, judgment and order dated 27.11.2025 passed by the Hon ble Supreme Court in the case of Suresh Sahu Vs. State of Bihar (Now Jharkhand); Raj Kumar @ Suman Vs. State (NCT of Delhi); 2023 (17) SCC 95, Criminal Appeal No.1471 of 2023, Aejaz Ahmad Sheikh Vs. The State of Uttar Pradesh and Another; (2025) SCC OnLine SC 913, Chandan Pasi and Others Vs. State of Bihar; (2025) SCC OnLine SC 2599 and Nar Singh Vs. State of Haryana; (2015) 1 SCC 496.

(7) Per contra, learned Government Advocate opposing the submissions of learned counsel for the appellants submits that the statements under Section 313 Cr.P.C. have rightly been recorded by the learned trial Court. Even otherwise, once this issue was not raised by appellant at the stage of trial itself, the convicts/appellants cannot be benefitted of this argument at this stage. Further contention is that the convicts/appellants failed to raise this alleged irregularity even before Hon ble Supreme Court, when they approached under Article 32 of the Constitution of India, which is disputed by learned Counsels for the convicts/ appellants, therefore, the contention of learned counsel for the convicts/appellants that the appeals are liable to be allowed on account of violation of the statements recorded under Section 313 Cr.P.C. is misconceived and not tenable. Even otherwise the submission is that the prejudice is to be shown by the leaned counsel for the

convicts/appellants on account of not putting any incriminating circumstances to the convicts/ appellants specifically, which they failed to do. However, the appropriate decision may be taken by this Court. He relies on Fahim Khan Vs. State of Bihar Now Jharkhand; (2011) 13 SCC 142, Satyavir Singh Rathi, Assistant Commissioner of Police and Others Vs. State through Central Bureau of Investigation; (2011) 6 SCC 1, Ghanshyam Mandal and Others Vs. The State of Bihar (Now Jharkhand); 2026 LiveLaw (SC) 201, Fainul Khan Vs. State of Jharkhand and Another; (2019) 9 SCC 549, Nar Singh Vs. State of Haryana; (2015) 1 SCC 496 and Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra; (1973) 2 SCC 793.

(8) Learned counsel for the complainant submits that without commenting on the statements recorded by the learned trial Court under Section 313 Cr.P.C. and reserving his right to argue on it, at this stage, this Court has ample power to get the supplementary statement recorded under Section 313 Cr.P.C. for just and equitable disposal of these references and appeals. He relies on Janak Yadav and Others Vs. State of Bihar; (1999) 9 SCC 125, judgment and order dated 20.09.2013 passed by High Court of Delhi at New Delhi in Criminal Appeal No.647 of 2010; N.Dev Dass Singha Vs. State, and judgment and order dated 10.08.2021 passed by High Court of Judicature at Bombay in Criminal Appeal No.1492 of 2011; Mahendra Vasudeo Gawas Vs. The State of Maharashtra.

(9) We have considered the submissions of learned counsel for the parties and perused the records including statements of the convicts/appellants recorded under Section 313 Cr.P.C.

(10) It is no more res integra that the opportunity to explain under Section 313 Cr.P.C. to an accused putting all the incriminating circumstances against him, which have come in the evidence of the prosecution, is a valuable right of the accused. Section 313(1) Cr.P.C. provides two contingencies, in which, the statements can be recorded. First, in sub-section (a) of Section 313 (1) Cr.P.C. is that the Court may, at any stage, without previously warning the accused put such questions to him as the Court considers necessary and second in sub-section (b) of Section 313(1) Cr.P.C. that the Court shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case. In both the aforesaid contingencies, the Court can put questions to the accused in every enquiry of trial for the purpose of enabling the accused personally to explain every incriminating circumstances appearing in the evidence against him. Thus, the questions are to be put in both the contingencies in regard to the circumstances appearing in the evidence, which may be at any stage i.e. either during the evidence of the prosecution witness or on the conclusion of the prosecution witnesses. Thus, the contention of learned counsel for the convicts/appellants that this Court can put questions in sub-section (a) of section 313 (1) Cr.P.C. and not under sub-section (b) of section 313(1) Cr.P.C. under the appellate jurisdiction is misconceived and not tenable and is hereby rejected.

(11) In view of above and as emerged from the arguments of learned Counsel for the parties, this Court, while deciding the reference for the capital punishment and the appeals of the convicts/ appellants, has power to put questions to the convicts/ appellants or to get supplementary statements recorded to avoid failure of justice.

(12) It can also not be disputed in the light of statutory provisions regarding power of appellate Court while deciding the reference for capital punishment under Section 367 Cr.P.C. and the appeal under Section 391 Cr.P.C., as in both the provisions, this Court, if thinks additional evidence necessary, it may be taken by this Court itself or by directing to the Court of Session to get it recorded. Whenever additional evidence is to be recorded, an opportunity would be required to be given to the convicts/appellants to explain the circumstances under Section 313 Cr.P.C. Thus, the provisions of Section 313 Cr.P.C. are embedded in the power of this Court under Section 367 Cr.P.C. and 391 Cr.P.C. Thus, if this power is with this Court, this Court can very well record the supplementary statement of the convicts/appellants or get it recorded from the Session Court in the interest of justice and to avoid failure of justice. Even otherwise, when this Court/ appellate Court is empowered to record/get the additional evidence recorded on oath, it can also record/get the statement of the accused recorded, which does not come within the strict definition of evidence, as statement under Section 313 Cr.P.C. is recorded without administrating on oath to the accused in order to prevent miscarriage of justice.

(13) Perusal of the statements of the convicts/appellants recorded under Section 313 Cr.P.C. shows that they are in a generic way and composite form and specifically separate questions have not been framed and put to the convicts/appellants. However, the entire incriminating circumstances available on record against the convicts/appellants, having been put, were well within the knowledge of the convicts/appellants as they have also examined three defence witnesses to controvert the same. Since learned Counsel for the complainant has reserved his right for arguments on the statements of the convicts/appellants under Section 313 Cr.P.C. at the relevant stage, if required, we refrain ourselves from recording any further conclusive finding on it at this stage. However, since the day the argument was raised before this Bench that proper opportunity under Section 313 Cr.P.C. has not been afforded, we had called upon learned counsel for the convicts/appellants to argue as to why the supplementary statements of the convicts/appellants may not be got recorded and learned counsels for the convicts/ appellants had submitted that if this Court is inclined to call for supplementary statement of convicts/appellants, in that eventuality, they have got instructions to press application for suspension of sentences. Thus, it shows that there is no objection from the side of the convicts/appellants also. This Court is of the view that the convicts/appellants can also not have any objection as they may show the prejudice if any, cause to them by the incriminating circumstances put to them under Section 313 Cr.P.C. or recording of supplementary statements at this stage, which eventually may be in their interest also, but learned counsels for the convicts/appellants, except for the time period since the date of incident and lingering of these proceedings, could not show any prejudice.

(14) Further objection has been raised that the right provided to them under Sections 232 and 233 Cr.P.C. would be affected and their right to appeal may be frustrated. We do not find any force in the objection of learned Counsel for convicts/appellants, as raised because this Court has to consider the case in totality. It should not be out of mind that this Court have to answer the reference against the capital punishment and decide the criminal appeals as well and we are in mid of final arguments and the present issue has been raised in the mid of arguments by learned Counsels for convicts/appellants in reference of capital punishments and their appeals and other learned Counsels for convicts/appellants have yet to argue and on query they showed reluctance to argue in summer vacations.

(15) In view of above and facts and circumstances of the case and stage of arguments, putting the convicts/appellants in detailed and specific incriminating circumstances against them at this stage, may not cause any prejudice or occasion any failure of justice to the convicts/appellants, rather is incumbent for the judicious and fair dispensation of justice and may be in the interest of convicts/appellants also.

(16) The Hon'ble Supreme Court, in the case of Janak Yadav and others versus State of Bihar (supra), has held that it was open to the High Court to have either examined the accused, whose statements under Section 313 Cr.P.C. had not been recorded, itself and then proceeded with the hearing of the appeal or directed retrial of the case confined to the stage of recording of the statements of the appellants under Section 313 Cr.P.C. onward.

(17) The Hon'ble Supreme Court, in the case of Nar Singh versus State of Haryana (supra), considered the judgement in the case of Shivaji Sahabrao Bobade versus State of Maharashtra (supra), in which the Hon'ble Supreme Court had considered the fall out of the omission to put a question to the accused on vital circumstance appearing against him and it was held that the appellate court can question the counsel for the accused as regards the circumstances omitted to be put to the accused. The Hon'ble Supreme Court has observed in paragraph 26 that this Court has widened the scope of the provisions concerning the examination of the accused after closing prosecution evidence and the explanation offered by the counsel of the accused at the appellate stage was held to be a sufficient substitute for the answers given by the accused himself and summarised the courses available to the appellate court on a plea of omission to put a question to the accused on vital piece of evidence in paragraph 30, which is extracted here-in-below :-

30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:

30.1. Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

30.2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

30.4. The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.

(18) The Hon'ble Supreme Court, in paragraph 30.2 of Nar Singh Vs. State of Haryana (supra) has held that if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

(19) It has further been held in paragraph 32 that when there is omission to put material evidence to the accused in the course of examination under Section 313 CrPC, the prosecution is not guilty of not adducing or suppressing such evidence; it is only the failure on the part of the learned trial court. The victim of the offence or the accused should not suffer for laches or omission of the court. Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties. It has also been held in paragraph 34 that the trial Court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Section 313 Cr.P.C. cannot enure to the benefit of the accused.

(20) Thus, what emerges from the aforesaid judgment of the Hon□ble Supreme Court is that the appellate court has to see that no prejudice is caused to any party from the statement under Section 313 Cr.P.C. and it may not result in failure of justice and the compliance is also to be made not only looking into the accused/convicts but to the victim also.

(21) The Hon'ble Supreme Court, in the case of Ghanshyam Mandal and others versus State of Bihar(Now Jharkhand) (Supra), has held that there will have to be a cumulative balancing of several factors. While the rights of an accused to a fair trial are undoubtedly important, the rights of the victim and the society at large for correction of deviant behaviour cannot be made subservient to the rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial.

(22) The Hon'ble Supreme Court, in the case of Raj Kumar @ Suman versus State (NCT of Delhi) (Supra), has summarised the law laid down by the Hon□ble Supreme Court in regard to Section 313 Cr.P.C. in paragraph 16, which on reproduction, reads as under:-

"22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

(23) The Hon'ble Supreme Court in the aforesaid case in paragraph 22.4 has held that the failure to put material circumstances to the accused amounts to a serious irregularity and in paragraph-22.5, that if any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding as to whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident. In the present case, the hearing on the references/appeals is still going on and we are in the mid of arguments and we are not inclined to remand the matter, rather get the clarifications in detail from convicts/appellants for fair and just disposal of references and appeals to avoid failure of justice.

(24) The Hon'ble Supreme Court, in a recent judgment of Aejaz Ahmad Sheikh (supra), while considering the judgment of Hon'ble Supreme Court in the case of Raj Kumar Vs. State (NCT of Delhi) (supra), has observed that when an appeal against conviction is preferred before the High Court, at the earliest stage, the High Court must examine whether there is a proper statement of the accused recorded under Section 313 of CrPC (Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023). If any defect is found, at that stage, the same can be cured either by High Court recording further statement or by directing the Trial Court to record. If this approach is adopted, the argument of prejudice on account of delay will not be available to the accused.

(25) Adverting to the facts and circumstances of the present case and as recorded in the aforesaid order passed by this Court after nomination of matter to this Bench, the hearing was started on the first date of the listing and learned Counsels for the convicts/appellants while arguing on reference of capital punishment and their appeals, raised the argument in regard to Section 313 Cr.P.C. In order to answer the procedural irregularity, this Court had called upon learned Counsel for the parties to argue on the point as to why supplementary statement under Section 313 Cr.P.C.

may not be got recorded so that either of the parties may not be prejudiced and except delay and if it is to be done suspension of sentence, no prejudice could be shown by the convicts/ appellants, whereas we are in mid of arguments.

(26) A Co-ordinate Bench of Hon□ble Delhi High Court in the case of N. Dev Dass Singha Vs. State (supra) recorded the supplementary statement of the appellant before itself and considered the same.

(27) A Co-ordinate Bench of Hon□ble High Court of Judicature at Bombay, in the case of Mahendra Vasudeo Gawas Vs. the State of Maharashtra (supra), relying on the judgment of the Hon□ble Supreme Court in the case of Janak Yadav and others vs. State of Bihar (supra), directed to the learned Sessions Judge to record the statement and send the statement duly recorded to the Court by the date fixed, holding that appellate Court has power.

(28) The Hon'ble Supreme Court, in the case of Chandan Pasi and Others Vs. State of Bihar (Supra), relying on the judgment of the Hon'ble Supreme Court in the case of Raj Kumar @ Suman Vs. State (NCT of Delhi) (Supra) and Aejaz Ahmad Sheikh Vs. State of U.P. and Another (Supra) has shown displeasure on the questions put to the accused/appellants, which were carbon copy of each other and observed that the statements extracted reveal a sorry state of affairs- an abject failure on the part of the Court in complying with the basic tenets of law and remanded the matter to pass a fresh order after proceeding from the stage of statement under Section 313 Cr.P.C.

(29) The Hon'ble Supreme Court, in the case of Suresh Sahu & Another Vs. The State of Bihar (Now Jharkhand) (Supra), has held that omission to put material circumstances to the accused in the statement under Section 313 CrPC (Section 351 BNSS) would cause grave prejudice and may, in a given case, even prove fatal to the case of the prosecution. Of course, the appellate Court can rectify this error by requiring that a fresh statement under Section 313 CrPC (Section 351 BNSS) be recorded for removing the lacunae, if any.

(30) The Hon'ble Supreme Court, in the case of Naresh Kumar Vs. State of Delhi (Supra), has observed that though questioning under clause (a) of sub-section (1) of Section 313, Cr.PC, is discretionary, the questioning under clause (b) thereof is mandatory and a fatal non-compliance in the matter of questioning under Clause (b) of sub-section (1) thereof, in case resulted in material prejudice to any convict in a criminal case the trial concerned, qua that convict should stand vitiated. However, considering the earlier judgments, it observed that mere defective/improper examination under Section 313, Cr.PC, would be no ground to set aside a conviction of the accused unless it has resulted in prejudice to the accused. The Hon'ble Supreme Court further relying on the State of Punjab & Anr. Vs. Swaran Singh; (2005) 6 SCC 101, has held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial qua the convict concerned.

(31) The Hon'ble Supreme Court, in the case of Fainul Khan Vs. State of Jharkhand and Another (Supra), has held that there cannot be a generalised presumption of prejudice to an accused

merely by reason of any omission or inadequate questions put to an accused thereunder and ultimately it will be a question to be considered in the facts and circumstances of each case including the nature of other evidence available, the kind of questions put to an accused, considered with anything further.

(32) The Hon'ble Supreme Court, in the case of Satyavir Singh Rathi, Assistant Commissioner of Police and Others Vs. State through Central Bureau of Investigation (Supra), has held that prejudice must be shown by an accused before it can be held that he was entitled to acquittal over a defective and perfunctory statement under Section 313 Cr.P.C. It has also been held that if an objection as to the 313 Cr.P.C. statement is taken at the earliest stage, the Court can make good the defect and record an additional statement as that would be in the interest of all.

(33) The Hon'ble Supreme Court, in the case of Fahim Khan Vs. State of Bihar Now Jharkhand (Supra), has observed that no ground has been raised even before the Hon'ble Supreme Court in the SLP and in the absence of any complaint on this score, we must assume that the appellant had suffered no prejudice on account of a defective 313 Cr.P.C. statement. In the present case also, as argued by learned counsel for the respondents, this plea has not been taken by the appellants in their appeals, however, it was argued by learned counsel for the convicts/appellants that it is legal plea and can be taken at any stage.

(34) In view of above and considering the overall facts and circumstances of the case, we are of the view that a supplementary statement putting all incriminating circumstances to the convicts/appellants came specifically against them, may be got recorded from the Sessions Judge concerned for just and fair disposal of reference of capital punishment/appeals and other appeals to avoid failure of justice.

(35) We have noticed that original records are with the Session Court and only the photocopies of the records have been sent to this Court.

(36) We, thus, direct to the Sessions Judge, Pratapgarh to record the supplementary statement under Section 313 Cr.P.C. of the convicts/appellants putting all incriminating circumstances, which have come in the evidence of the prosecution and material on record, specifically against each of the convicts/appellants, expeditiously and for the said purpose, the convicts/appellants shall be summoned from the Jail concerned and if any convict/appellant is on bail, his presence shall be ensured. The statements so recorded along with the original records shall be transmitted to this Court by or before the next date fixed.

(37) The parties Counsel may appear before the Sessions Judge, Pratapgarh on 15.06.2026. Learned Sessions Judge is at liberty to avail the assistance of Counsel of both parties as provided under Section 313 (5) Cr.P.C., for the purpose.

(38) List on 01.07.2026 for further hearing.

(39) The Senior Registrar of this Court is directed to communicate a copy of this order to learned Sessions Judge, Pratapgarh forthwith for compliance.

(2026) 7 ILRA 1197
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 2459 of 2026

Baldev Raj Arora ...Applicant
Versus
CBI/ACB Lko. ...Opposite Parties

Issue for Consideration

Matter pertains to whether an application u/s 482 Cr.P.C. is maintainable for modification/relaxation of a condition imposed in an earlier bail order passed by Court, or whether such an application is barred u/s 362 Cr.P.C., which prohibits a Court from altering or reviewing its judgment or final order except to correct a clerical or arithmetical error and consequently, whether an order granting bail constitutes "a judgment or final order disposing of a case within the meaning of s. 362 Cr.P.C.", or is merely an interlocutory order amenable to modification.

Headnotes

Indian Penal Code, 1860 - ss. 120-B, 420, 468, 471 - Prevention of Corruption Act, 1988 - ss. 13(2), 13(1)(d) - Code of Criminal Procedure, 1973 - s. 362 - Constitution of India, 1950 - Article 215 - Bail - Modification of bail condition - Order granting bail - Interlocutory order or Final order - Maintainability - Barred by provisions - Scope of -The applicant, arraigned as an accused in a charge-sheet arising out of an FIR alleging corruption in submission of forged bills for supply of cement to the Airports Authority of India during execution of an airport expansion project, was enlarged on bail by Court vide order dated 19.12.2013 subject to the condition that he deposit a sum of Rs.64,00,000/- in the form of a fixed deposit in a nationalized bank in favour of Airports Authority of India, to remain renewed till conclusion of trial - Subsequently, the prosecution sanction order and cognizance/summoning order against the co-accused government servants came to be quashed by Court and upheld by Supreme Court, pursuant to which the trial court closed the proceedings and consigned the record without conclusion of trial - The applicant, having attained an advanced age of 77 years and being deprived of his deposited funds with no prospect of early conclusion of trial, filed the instant application seeking revocation of said deposit condition - Prayer was opposed by CBI on the preliminary objection that the bail order, being a final order, could not be altered or reviewed in view of express bar contained in Cr.P.C.

Held*:* The Court was of the considered view that the continuance of the condition of deposit of Rs.64 lakhs put in order dated 19.12.2013 granting bail to applicant, is causing a failure of justice, as the amount was deposited and was to remain deposited till conclusion of trial whereas the trial is not proceeding and trial Court has consigned its records - While waiting for conclusion of trial and release of his money, the applicant has attained an advanced age of 77 years - It is a fit case warranting exercise of inherent powers of Court so as to revoke the condition of deposit of Rs.64 Lakhs put in order dated 19.12.2013 granting bail to applicant - The condition imposed in order dated 19.12.2013, passed in Bail Application No.7625 of 2013, directing the applicant to deposit a sum of Rs.64,00,000/- in the form of fixed deposit in a nationalized bank in favour of Airports Authority of India, is revoked - The amount deposited by applicant and interest accrued thereon, is directed to be released in favour of applicant - **Application allowed**. [Paras 49, 50] (E-13)

Case Law Cited

Aparna Purohit v. State of U.P. and another: **2021 SCC OnLine SC 3467;** *Vinod Kumar Sharma v. CBI:* **2023 (12) ADJ 743;** *Vivek Yadav and another v. State*, **Crl. Misc. Anticipatory Bail Application No.1224 of 2023, decided on 21.02.2024;** *Amar Nath v. State of Haryana*: **(1977) 4 SCC 137;** *V. C. Shukla v. State through CBI:* **1980 Supp SCC 92;** *Usmanbhai Dawoodbhai Memon v. State of Gujarat:* **(1988) 2 SCC 271;** *Ramadhar Sahu v. The State of Madhya Pradesh* **Criminal Appeal No. 3223 of 2023 arising from SLP (Crl.) No. 11130/2023;** *Jagdish Arora v. Union of India:* **2022:MPHC-JBP:15286-DB;** *Vinod Kumar Sharma v. C.B.I.:* **2023:AHC:228832 - 2023 (12) ADJ 743;** *Sumit Mehta v. State (NCT of Delhi):* **(2013) 15 SCC 570;** *Dilip Singh v. State of M.P.:* **(2021) 2 SCC 779;** *Gajanan Dattatray Gore v. State of Maharashtra:* **2025 SCC OnLine SC 1571;** *Simrikhia v. Dolley Mukherjee:* **(1990) 2 SCC 437;** *Prabhu Chawla v. State of Rajasthan:* **(2016) 16 SCC 30;** *Asian Resurfacing of Road Agency (P) Ltd. v. CBI:* **(2018) 16 SCC 299;** *M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.:* **1993 Supp (2) SCC 433 - referred to**

List of Acts

Indian Penal Code, 1860; Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Constitution of India, 1950

List of Keywords

Bail; Director of company; Interlocutory order; Final order; Inherent power of High Court; s. 482 Cr.P.C.; Modification of condition in order; Barred by provisions of s. 362 Cr.P.C.; Cognizance; Sanction for prosecution; Summoning order; Fixed Deposit in a nationalized bank; Forged bills for supply of cement; Airport Authority of India; Varanasi Airport; Condition of deposit; Revocation of condition; Functus officio; Per incuriam; Delay in challenging the condition; Alteration or Review of judgment; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 2459 of 2026

From the FIR dated 15.07.2011 in Case Crime No. 06 of 2013 arising out of Crime No. RC 0062011A00013, Police Station CBI/ACB, Lucknow, District Lucknow.

Appearances for Parties

Advs. for the Applicant(s):
Pranjal Jain, Aishwarya Saxena, Rohit Kanaujiya

Adv. for the Opposite Party(s):
Aakash Prasad

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

1. Heard Sri Purnendu Chakravarty Senior Advocate assisted by Sri Pranjal Jain and Sri Pratyush Shahi Advocates, the learned counsel for the petitioner, Sri Aakash Prasad assisted by Sri Shashwat Dwivedi and Sri Ishan Khanna Advocates, the learned counsel for the opposite party-Central Bureau of Investigation and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C. the petitioner has prayed for modification of a condition imposed in the order dated 19.12.2013, passed in Bail Application No.7625 of 2013, whereby while ordering release of the applicant on bail, he was directed to deposit a sum of Rs.64,00,000/- in the form of a fixed deposit in a nationalized bank in favour of the Airports Authority of India. It was specified that the bail order would be operative

only when the amount of Rs.64,00,000/- is deposited in terms of the order. The fixed deposit was directed to be renewed from time to time till conclusion of trial and it is subject to the orders of the trial court.

3. The present case arises out of F.I.R. No. RC0062011A0013, dated 15.07.20112 alleging corruption in submission of forged bills for supply of cement to the Airports Authority of India during execution of a project called Expansion of Apron, Construction of Additional Taxiway and Allied Works at Varanasi Airport alleging a wrongful loss of Rs.25,74,065/-, which was lodged against seven accused persons, five government servants and a company/consortium. The applicant was not named in the F.I.R.

4. The applicant was a Director of M/s B. R. Arora Private Limited, a Constituent Member of M/s Bright Aracon, which is said to have submitted inflated bills. It came to light during investigation that the applicant had played an important role in commission of the offence and, therefore, he was also arraigned as an accused in the charge-sheet forwarded to the learned trial court on 30.10.2013 for the offences under Sections 120-B, 420, 468, 471 IPC and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The trial court took cognizance of the offences on 12.11.2013. On 19.12.2013 this Court had passed the order enlarging the applicant on bail.

5. On 14.04.2015 the trial court framed charges for offences under Sections 120-B, 420, 468, 471 IPC and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against the five government servants. The petitioner has been charged for commission of offence under Section 420 IPC only and he has been discharged of all the other charges.

6. The CBI has filed a counter affidavit inter alia stating that it had challenged the order dated 14.04.2015 passed by the trial Court by filing Criminal Revision Defective No.176 of 2016 in which notices were ordered to be issued to the opposite parties on 26.02.2016. However, the delay in filing the revision has not been condoned till date, the revision has not been admitted and no interim order has been passed in the said revision.

7. The counter affidavit further states that the then Chairman of Airports Authority of India has been examined as PW-1. He stated that initially he had declined to grant sanction for prosecution of the accused government servants but after three-four months he reviewed his earlier decision on the basis of advisory report of Chief Vigilance Commission and granted sanction for prosecution of the accused government servants vide sanction order dated 01.10.2013. Thereafter, the accused government servants moved an application questioning the validity of the prosecution sanction order. This application was rejected by the trial court by means of an order dated 06.01.2018. Three accused persons challenged the order dated 06.01.2018 by filing an application under Section 482 No.3274 of 2018, which was allowed by means of an order dated 17.12.2021 holding that the prosecution sanction order dated 01.10.2013 was invalid as the sanctioning authority had no power to review or reconsider its earlier order refusing to grant sanction for prosecution and also that no fresh material was placed before the sanctioning authority. This Court quashed the prosecution sanction order dated 01.10.2013 and the cognizance order dated 12.11.2013 as also the order dated 06.01.2018, passed by the trial court. However, this Court did

not interfere with the charge-sheet and left it open for the prosecution / investigating agency, i.e. CBI to take appropriate steps permissible under law.

8. The order dated 17.12.2021 passed by this Court in Application under Section 482 No.3274 of 2018 was challenged by filing S.L.P. Nos. 4006-4008 of 2022, which were dismissed by means of an order dated 01.10.2024.

9. In view of the aforesaid orders passed by this Court and the Hon'ble Supreme Court, the trial Court has passed an order dated 13.05.2022, stating that by means of the order dated 17.12.2021, passed in petition under Section 482 No.3274 of 2018, this High Court has quashed the prosecution sanction order passed in respect of co-accused persons Giriraj Sharma, Bhupendra Singh and Dilip Kumar and has quashed the cognizance and summoning order dated 12.11.2013 and the order dated 06.01.2018 whereby their application was rejected. The trial court held that after the aforesaid orders, it would not be proper to proceed with the matter against the accused persons. The trial court closed the proceedings till further orders and ordered the record to be consigned. The trial court further mentioned in the order that record should not be weeded out and in case of change of circumstances, the records may be called for and trial may commence again.

10. Earlier the petitioner had filed an application under Section 482 Cr.P.C. No. 9674 of 2024, for release of his passport for getting it renewed for enabling the petitioner to travel abroad, which has been deposited in the trial court in compliance of the bail conditions. The aforesaid application was disposed off by means of an order dated 25.10.2024 whereby the learned trial court was directed to return the applicant□s passport to enable him to get it renewed. It was also provided that if the petitioner is willing to travel outside the country, he may do so after getting prior permission from the learned trial court and the learned trial court may not refuse such request in a cursory manner.

11. The Enforcement Directorate has registered ECIR No. 09/PMLA/LZO/2013 under Section 3/4 of the Prevention of Money Laundering Act, 2002 on the basis of the applicant's involvement in F.I.R. No. RC0062011A0013. The applicant has been granted anticipatory bail in that case by means of an order dated 20.07.2023 passed by this Court in Crl. Misc. Anticipatory Bail Application No. 994 of 2023, inter alia, subject to the following conditions: -

"(iii) that the applicant shall surrender his passport, if any, to the concerned trial Court forthwith. His passport will remain in custody of the concerned trial Court;

(iv) that the applicant shall not leave India during the pendency of trial without prior permission from the concerned trial Court."

12. Thereafter the applicant filed application under Section 482 No. 9278 of 2025 praying for modifications of the aforesaid two conditions put in the order dated 20.07.2023 passed by this Court granting Anticipatory Bail to him. The learned Counsel for the Enforcement Directorate raised a preliminary objection that an application for modification of certain conditions put in anticipatory bail order should be filed as a miscellaneous application in the anticipatory bail application itself and a separate application under Section 482 Cr.P.C. for such a prayer would not

be maintainable. This Court rejected the preliminary objection and allowed the application under Section 482 Cr.P.C. by an order dated 06.01.2026 holding that Section 482 Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. When orders can be passed in exercise of inherent powers of this Court by filing a miscellaneous application in a decided case, it cannot be said that this Court has no jurisdiction to entertain a fresh application under Section 482 for securing the ends of justice by securing the ends of justice by relaxing conditions no. (iii) & (iv) putting restraint on the right of travel when the summoning order regarding the scheduled offence already stands set aside and proceedings of trial under PMLA stand stayed by this Court.

13. The counter affidavit filed by CBI refers to the judgment in the case of **Aparna Purohit Vs. State of U.P. and another**: 2021 SCC OnLine SC 3467 wherein the Hon'ble Supreme Court has held that: -

"The inherent powers, however, as much as controlled by principal and precedent as are its express powers by Statutes and if a matter is covered by an express letter of law, the court cannot give a go by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction. Section 362 of the Code prohibits reopening of a final order except in the cases of clerical or arithmetical errors. Such being the position of law and in view of the express prohibition of the code itself in the form of Section 362, exercise of power in the considered opinion of this Court under Section 482 of the Code cannot be exercised to reopen and alter an order, disposing of a petition decided on merits."

14. Sri Aakash Prasad, the learned counsel for respondent-CBI has raised a preliminary objection that the aforesaid prayer for modification of the order dated 19.12.2013 is barred by the provisions contained in Section 362 Cr.P.C., which reads as follows: -

"362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

15. The learned Counsel for the CBI has submitted that although Section 439 Cr.P.C. empowers the High Court to grant bail, it does not permit the High Court to modify the conditions put in an order granting bail. The High Court can modify the conditions put by a Magistrate while granting bail to an accused person but it cannot modify the conditions put by itself in a bail order.

16. Sri. Aakash Prasad has also submitted that the bail order dated 19.12.2013 has remained in operation for the past 12 years and the condition put in it has never been challenged before the Hon'ble Supreme Court and it has attained finality.

17. Sri Prasad has submitted that the bail order is a final order and it is not an interlocutory order. Even if the order dated 19.12.2013 is considered to be an interlocutory order in relation to the trial, so far as the bail application itself is considered the order dated 19.12.2013 decides the

same finally and after decision of the bail application, this court has become functus officio. and it has no jurisdiction to modify the order.

18. The learned Counsel for CBI has submitted that in the case of **Aparna Purohit Vs. State of U.P.,** Application under Section 482 No. 6022 of 2022, decided on 02.11.2022 a coordinate Bench of this court has held that an application under Section 482 Cr.P.C. would not lie to modify the conditions of bail. This judgment was challenged by filing SLP No.4483 of 2023 before the Hon'ble Supreme Court which was disposed of as withdrawn by means of an order dated 10.10.2023. In later judgments in the cases of **Vinod Kumar Sharma Vs. CBI: 2023 (12) ADJ 743 and Vivek Yadav and another Vs. State, Crl. Misc. Anticipatory Bail Application No.1224 of 2023**, decided on 21.02.2024, two different coordinate benches have held that this court can modify the conditions imposed in a bail order. However, the subsequent judgments in the cases of Vinod Kumar Sharma (supra) and **Vivek Yadav(supra)** have not taken into consideration the earlier judgment in the case of Aparna Purohit (Supra).

19. Sri Akash Prasad has submitted that allowing the application for modification order would amount to this court sitting in appeal over the bail order passed by a coordinate Bench, which is not the intent of Section 482 Cr.P.C.

20. Per contra, Sri. Purnendu Chakravarty, the learned Senior Counsel for the petitioner, has submitted that Section 482 Cr.P.C. protects the inherent powers of this court to secure the ends of justice and there are no limitations of this power to be exercised in an appropriate case.

21. Before proceeding to examine the rival contention of the learned Counsel for the parties, it would be appropriate to have a look at Section 362 Cr.P.C., which provides as follows: -

"362. Court not to alter judgment. - Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

(emphasis added)

22. A bare perusal of the aforesaid statutory provision makes it manifest that the bar contained in Section 362 Cr.P.C. is only against alteration or review of a judgment or final order disposing of a case.

23. Section 362 falls in Chapter XVII Cr.P.C., which contains Sections 353 to 365. Section 353 falling in Chapter XXVII Cr.P.C. defines the term "judgment" as follows: -

"353. Judgment - (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,"

(a) by delivering the whole of the judgment; or
(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of Section 465.

24. Sections 356, 357, 357-A, 357-B, 357-C, 358, 359 and 360 falling in Chapter XXVII Cr.P.C. refer to certain orders, which are in the nature of final orders referred to in Section 362 Cr.P.C. The final orders mentioned in various Sections of Chapter XXVII Cr.P.C. do not contain an order allowing a bail application.

25. Section 362 Cr.P.C. bars alteration or review of a judgment or final order disposing of a case, which include a judgment mentioned in Section 353 CrP.C. or a final order mentioned in Sections 356, 357, 357-A, 357-B, 357-C, 358, 359 or 360 Cr.P.C. falling in Chapter XXVII Cr.P.C. An order for release of the applicant on bail is neither a judgment nor a final order disposing off a case, rather it is an interlocutory order.

26. In **Amar Nath v. State of Haryana**: (1977) 4 SCC 137, the Hon'ble Supreme Court held that: -

"6....The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary- "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term interlocutory order in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revison to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

27. The aforesaid judgment was followed by a Bench consisting of four Hon'ble Judges of the Hon'ble Supreme Court in V. C. Shukla v. State through CBI: 1980 Supp SCC 92. The judgment in the case of V.C. Shukla (supra) was followed in Usmanbhai Dawoodbhai Memon v. State of Gujarat: (1988) 2 SCC 271, in which the Hon'ble Supreme Court held that:-

"24. In V.C. Shukla v. State [1980 Supp SCC 92], Fazal Ali, J. in delivering the majority judgment reviewed the entire case law on the subject and deduced therefrom the following two principles, namely, (i) that a final order has to be interpreted in contradistinction to an interlocutory order; and (ii) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties. It was observed that these principles apply to civil as well as to criminal cases. In criminal proceedings, the word "judgment" is intended to indicate the final order in a trial terminating in the conviction or acquittal of the accused. Applying these tests, it was held that an order framing a charge against an accused was not a final order but an interlocutory order within the meaning of Section 11(1) of the Special Courts Act, 1979 and therefore not appealable. It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time.

(Emphasis added)

28. In **Ramadhar Sahu Vs. The State of Madhya Pradesh** Criminal Appeal No. 3223 of 2023 arising from SLP (Crl.) No. 11130/2023, the Appellant was in pre-trial custody on allegation of committing embezzlement of Rs. 1,44,00,000/-. An order was passed by the High Court on

28.04.2022 allowing the Appellant's prayer for bail after recording that he had volunteered to deposit a sum of Rs. 65,92,460/-. The said order carried the condition that the Appellant had to deposit Rs. 10,00,000/- before the Trial Court and Rs. 55,92,460/- was to be deposited under protest within a period of three months from the date of his release. The Appellant was released on bail on deposit of Rs. 10,00,000/-. He failed to deposit the remaining amount and surrendered on 24.07.2023. He applied for bail again mainly citing release of a co-accused by the Hon'ble Supreme Court. The said co-accused had also been released on bail by the High Court on his willingness to deposit certain sum of money but later on failed to make such deposit. The Appellant sought parity with the co-accused in the application which was rejected by the High Court holding that in the event the High Court granted bail to the Appellant without compliance of the conditions specified in the earlier order of a Coordinate Bench, that would constitute modification of the order and Section 362 of the Code prohibits such modification of a judgment or final order. While allowing the appeal and setting aside the order of the High Court, the Hon'ble Supreme Court held that: -

"5. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained Accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the Appellant's application of bail can be sustained...

(Emphasis added)

29. In **Jagdish Arora versus Union of India**: 2022:MPHC-JBP:15286-DB, a Division Bench of Madhya Pradesh High Court consisting of Hon□ble Mr. Justice Sheel Nagu and Hon□ble Mr. Justice Maninder Singh Bhatti held that:-

"8.1. It is also settled that grant of bail is a rule whereas its denial is an exception. Once bail is granted subject to certain conditions by the High Court u/S. 439(1)(a) of Cr.P.C. as is the case herein, the power to modify or delete the conditions subject to which bail is granted, is also inherently vested with the High Court.

8.2. The power of amending or deleting any condition, subject to which bail order u/S. 439(1)(a) of Cr.P.C. is granted, is however not expressly provided in Cr.P.C. Thus, the only course available for seeking and granting modification/deletion of such a condition is by invoking the inherent powers of this Court u/S. 482 of Cr.P.C. to ensure the ends of justice.

8.3. Section 482 of Cr.P.C. saves inherent powers of this Court to be exercised inter alia to secure the ends of justice. The ends of justice can only be secured when in absence of any express provision this Court is not prevented from deleting/modifying any of the conditions subject to which an order of bail u/S. 439(1)(a) of Cr.P.C. is passed. If such inherent powers

are otherwise not available to this Court u/S. 482 of Cr.P.C., then object of insertion of Section 482 of Cr.P.C. would stand defeated and this Court would be rendered a toothless tiger.

9. The Legislature while enacting the Code of Criminal Procedure could never have approved a situation where this superior Court is handicapped to exercise its inherent powers to modify/delete a condition imposed u/S. 439(1)(a) of Cr.P.C. despite existence of compelling circumstances merely because of absence of enabling provision in the Cr.P.C.

9.1. The object behind bestowing inherent powers in this Court is to do complete justice and to prevent miscarriage of justice. The inherent powers are saved with this Court to be exercised in such circumstances where cause for doing complete justice or preventing failure of justice exists, but there is no express provision in Cr.P.C. As such Constitutional Courts are saved with such inherent powers to do complete justice without being inhibited or disabled by absence of enabling provision."

(emphasis added)

30. The judgment in the case of **Jagdish Arora** (supra) has been followed by a coordinate Bench of this Court in Vinod Kumar Sharma Vs. C.B.I.: 2023:AHC:228832 = 2023 (12) ADJ 743.

31. **Vivek Yadav and another versus State of U.P.** and another: is a judgment dated 21.02.2024 given by this Court rejecting I.A. No. 03 of 2024 filed in Criminal Miscellaneous Anticipatory Bail Application No. 1224 of 2023 which already stood decided on 23.05.2023. This Court had rejected the I.A. filed in the decided Anticipatory Bail Application leaving it open to the applicant to file a fresh application under Section 482 Cr.P.C.

32. **In Aparna Purohit Vs. State of U.P**., Application under Section 482 No. 6022 of 2022, decided on 02.11.2022, a coordinate Bench of this court has held that: -

"34. The law cited herein before would reveal that under Section 438 and 439 Cr.P.C. the Sessions Court or the High Court may grant anticipatory bail or regular bail to the accused persons in appropriate cases. Both under Section 438 (U.P. Amendment) as well as under Section 439 Cr.P.C. reasonable conditions may be imposed in order to secure fair trial. The Judge or in the case of the High Court, the Bench after final disposal of the bail or anticipatory bail as the case may be becomes Functus Officio and nothing remained pending before the Bench as the rights have been finally adjudicated. Section 439(2) Cr.P.C. provides that a person released on bail by the High Court or by the Court of Sessions may be committed to custody. However, this power of High Court or the Sessions Court is conferred on account of the happening of subsequent events like the accused not obeying the conditions of Bail, etc. However, if any person is aggrieved by the order of grant of bail, he or she will have to approach the superior court for cancellation of that order and the same could not be moved or cancelled by the same court by virtue of bar contained under Section 362 Cr.P.C.

(Emphasis added)

33. Sri. Aakash Prasad, the learned Counsel for the CBI has submitted that the judgments in the cases of Vinod Kumar Sharma and **Vivek Yadav** (supra) are per incuriam judgments, as the same do not take into consideration the judgment of a coordinate Bench of this Court in the case of Aparna Purohit Vs. State of U.P., Application under Section 482 No. 6022 of 2022. I am unable to accept this submission for the reason that the coordinate Bench has decided **Aparna Purohit** (supra), Application under Section 482 No. 6022 of 2022, without noticing the definition of the term "judgment" given in Section 353 Cr.P.C., and the final orders defined in Sections 356 to 360 Cr.P.C., and without noticing the judgments of the Hon'ble Supreme Court referred to above holding that the orders granting bail are merely interlocutory orders and these cannot be termed as judgments or final orders disposing of a case. Therefore, the judgment in the case of **Aparna Purohit** (supra) is a per incuriam judgment and it is not a binding precedent. The judgments in the cases of **Vinod Kumar Sharma and Vivek Yadav** (supra) given ignoring the per incuriam judgment in the case of **Aparna Purohit** (supra), cannot be termed as per incuriam judgments.

34. Thus, there remains no room to doubt the proposition that an order granting bail is a merely an interlocutory order and it would not fall withing the scope and ambit of the phrase "a judgment or final order disposing of a case" used in Section 362 Cr.P.C. Therefore, the bar contained in Section 362 Cr.P.C will not apply to alteration of a condition put in an order granting bail to an accused person. The preliminary objection raised by the learned Counsel for the respondent CBI is rejected accordingly.

35. Now, I proceed to examine the merits of the claim for relaxation of the condition of depositing a sum of Rs.64,00,000/- in the form of a fixed deposit in a nationalized bank in favour of the Airports Authority of India put in the bail order dated 19.12.2013.

36. **Sumit Mehta v. State (NCT of Delhi):** (2013) 15 SCC 570, was an appeal directed against the order passed by the Delhi High Court whereby while granting anticipatory bail to the appellant in a case registered against him for the offences punishable under Sections 420, 467, 468 and 471 IPC, directed him to deposit an amount of Rs 1,00,00,000 (one crore) in fixed deposit in the name of the complainant in any nationalised bank and to keep the FDR with the investigating officer. The Hon'ble Supreme Court set aside the aforesaid condition holding that: -

"14. Thus, in the case on hand, fixed deposit of Rs 1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

15. The words □any condition□ used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail.

We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

(emphasis added)

37. In **Dilip Singh v. State of M.P**.: (2021) 2 SCC 779, the Hon'ble Supreme Court held that: -

"4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

38. Again, in **Gajanan Dattatray Gore v. State of Maharashtra**: 2025 SCC OnLine SC 1571, the Hon'ble Supreme Court held that: -

"15. We have noticed over a period of time that orders of regular bail and anticipatory bail are being passed by different High Courts subject to deposit of some amount.

16. We have come across cases like the one in hand where accused persons have gone to the extent of filing affidavits in the form of undertaking that they would deposit a particular amount within a particular period and then conveniently resile from such undertakings saying it is an onerous condition.

17. In some cases, perhaps the accused may abide by such undertaking, but our experience so far has been that in many cases the accused later would not abide and flout the undertaking. In many cases it would be argued on behalf of the accused that he had never made such a statement and the court on its own had recorded in the order that the accused is ready and willing to deposit a particular amount. At times the entire blame is thrown on the lawyer in making such statement for the purpose of obtaining order of bail or anticipatory bail as the case may be. In such circumstances, the concerned court would be left with no other option but to cancel the bail either at the instance of the State or the original complainant.

18. The case in hand is one in which the appellant on his own free will and volition filed an affidavit in the form of an undertaking before the High Court that he would deposit an amount of Rs. 25,00,000/- but ultimately resiled to do so and the High Court had to cancel the bail. It was too

much for the lawyer of the appellant to argue before the High Court that asking his client to deposit Rs. 25,00,000/- was unreasonable. It reflects on the professional ethics.

19. By this order, we make it clear and that too in the form of directions that henceforth no Trial Court or any of the High Courts shall pass any order of grant of regular bail or anticipatory bail on any undertaking that the accused might be ready to furnish for the purpose of obtaining appropriate reliefs.

20. The High Courts as well as the Trial Courts shall decide the plea for regular bail or anticipatory bail strictly on the merits of the case. The High Courts and the Trial Courts shall not exercise their discretion in this regard on any undertaking or any statement that the accused may be ready and willing to make.

21. This practice has to be stopped. Litigants are taking the courts for a ride and thereby undermining the dignity and honor of the court.

22. We hope and trust that the High Courts as well as the Trial Courts across the country do not commit the same mistake again.

39. The condition of deposit of Rs.64,00,000/- in a fixed deposit in the name of Airports Authority of India put in the bail order dated 19.12.2013, without even recording a prima facie satisfaction regarding guilt of the applicant, is an unreasonably onerous condition and putting such conditions in the bail orders has been deprecated and prohibited by the Hon'ble Supreme Court. Moreover, the FIR was lodged in the year 2013, the prosecution sanction order in respect of co-accused government servants already stands quashed, the trial is not proceeding and the trial court has consigned the file to record room after closing the proceedings, without conclusion of trial. The condition of deposit of passport put in the bail order has already been recalled by means of order dated 25.10.2024, passed by a coordinate Bench of this court in a petition under Section 482 No.9674 of 2024. Meanwhile, the petitioner has attained an advanced age of 77 years. He is being deprived of the benefit of his own money, which is lying deposited in a fixed deposit in compliance of the bail order dated 9.12.2013, passed in Bail Application No.7625 of 2013 which was for the period till the conclusion of the trial and as the trial is not proceeding, there is no hope of its conclusion at any time soon or even during the lifetime of the petitioner.

40. The learned Counsel for CBI has placed reliance on a judgment in the case of **Simrikhia v. Dolley Mukherjee**: (1990) 2 SCC 437, wherein earlier the High Court had rejected an application under Section 482 Cr.P.C. challenging an order of magistrate issuing process. Thereafter a second application under Section 482 filed with the same prayer was allowed by the High Court. Allowing the appeal, the Hon□ble Supreme Court held that: -

"3. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. **If there had been change in the**

circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

(emphasis added)

41. Thus the Hon'ble Supreme Court has expressly laid down that where there is a change in the circumstances of the case, the High Court may exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court.

42. Regarding the objection raised by learned Counsel for the CBI that the condition is there since the year 2013 and it has been challenged belatedly, suffice it to say that the failure of the applicant to challenge the condition earlier might be for the reason that he might have had a hope of expeditious conclusion of trial and dispensation of justice. However, when the trial Court has passed an order dated 13.05.2022, stating that by means of the order dated 17.12.2021, passed in petition under Section 482 No.3274 of 2018, this High Court has quashed the prosecution sanction order passed in respect of co-accused persons Giriraj Sharma, Bhupendra Singh and Dilip Kumar and has quashed the cognizance and summoning order dated 12.11.2013 and the order dated 06.01.2018 whereby their application was rejected, it would not be proper to proceed with the matter against the accused persons and the trial court has closed the proceedings of trial till further orders and has ordered the record to be consigned, the applicant has rightly approached this Court for revocation of the aforesaid condition in view of the aforesaid factual developments and in these circumstances, the application cannot be said to have been filed after an unreasonable delay. Further, the continuance of the condition has given rise to a continuing cause of action to the applicant and for this reason also, I find no force in the objection of the learned Counsel for the CBI regarding delay in challenging the condition and I turn down this objection.

43. In **Prabhu Chawla v. State of Rajasthan**: (2016) 16 SCC 30, the Hon'ble Supreme Court held that:

"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:

"482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.

"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more.

44. Sri. Aakash Prasad had tried to distinguish the case of **Prabhu Chawla** (supra) by submitting that the aforesaid judgment has been given while comparing the powers under Section 482 Cr.P.C. and the revisional powers under Section 397 Cr.P.C. I am of the view that the aforesaid passage explains the scope of Section 482 irrespective of Section 397 Cr.P.C.

45. Moreover, In **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**: (2018) 16 SCC 299, a Bench consisting of three Hon'ble Judges of the Hon'ble Supreme Court held that: -

"52.... First and foremost, it must be appreciated that the High Courts are established by the Constitution and are courts of record which will have all powers of such courts, including the power to punish contempt of themselves (see Article 215). The High Court, being a superior court of record, is entitled to consider questions regarding its own jurisdiction when raised before it. In an instructive passage by a Constitution Bench of this Court in Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964 [AIR 1965 SC 745], Gajendragadkar, C.J. held:

"138. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [Halsbury's Laws of England, Vol. 9, p. 349].

* * *

54. It is thus clear that the inherent power of a court set up by the Constitution is a power that inheres in such court because it is a superior court of record, and not because it is conferred by the Code of Criminal Procedure. This is a power vested by the Constitution itself, inter alia, under Article 215 as aforestated. Also, as such High Courts have the power, nay, the duty to protect the fundamental rights of citizens under Article 226 of the Constitution, the inherent power to do justice in cases involving the liberty of the citizen would also sound in Article 21 of the Constitution.

(emphasis added)

46. The inherent powers of this Court to secure the ends of justice and prevent the abuse of the process of law do not stem from Section 482 Cr.P.C or for that matter from any other statutory provision. Such a power is an unfettered power which inheres in this Court, because this Court is a Constitutional Court and a Court of record. Section 482 Cr.P.C. does not confer the inherent powers on the High Courts, it merely provides that nothing contained in Cr.P.C. will affect the inherent powers of the High Court, which powers are inherent in the High Court by virtue of it being a Court of record as laid down under Article 215 of the Constitution. The inherent powers are powers of a wide amplitude with only self imposed restrictions, to be exercised in a suitable case to secure the ends of justice. Therefore, the jurisdiction under Section 482 Cr.P.C.

is a statutory manifestation of the wider inherent powers constitutionally recognized under Article 215, to be exercised for securing the ends of justice.

47. In order to fully comprehend and effectively exercise the inherent powers of the High Court, it is pertinent to note the legislative intent and the purpose that was intended to achieved by Section 482 Cr.P.C. and Article 215 of the Constitution of India. The object behind Article 215 is to give power to the High Courts to decide their own jurisdiction, apparently to confer discretionary powers on the High Courts, to be exercised in appropriate cases in which it deems fit to invoke its powers. Without giving the power to decide its own jurisdiction the inherent powers to secure the ends of justice might become meaningless. Similarly, the words "to make such orders as may be necessary to secure the ends of justice" used in Section 482 conclude the aforesaid section in an open ended manner, the underlying object being to save the discretionary inherent powers of the High Courts to decide for itself what would be the appropriate cases in which the inherent power should be invoked. Therefore, the object behind both the provisions appears to be one i.e. to further the cause of substantial justice and undertake all such measures that may be required in this direction.

48. In **M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd**.: 1993 Supp (2) SCC 433, the Hon'ble Supreme Court held that: -

"66. The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. (See "Naresh Shridhar Mirajkar v. State of Maharashtra [(1966) 3 SCR 744 : AIR 1967 SC 1]). As stated in Halsbury's Laws of England, 4th edn., Vol. 10, para 713:

"Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court.

49. I am of the considered view that the peculiar facts of the case noted in paragraph 39 above establish that the continuance of the condition of deposit of Rs.64 lakhs put in the order dated 19.12.2013 granting bail to the applicant, is causing a failure of justice, as the amount was deposited and was to remain deposited till conclusion of the trial whereas the trial is not proceeding and the trial Court has consigned its records. While waiting for conclusion of the trial and release of his money, the applicant has attained an advanced age of 77 years. This is a fit case warranting exercise of the inherent powers of this Court so as to revoke the condition of deposit of Rs.64 Lakhs put in the order dated 19.12.2013 granting bail to the applicant.

50. In view of the foregoing discussion, the instant application under Section 482 Cr.P.C. is ***allowed***. The condition imposed in the order dated 19.12.2013, passed in Bail Application No.7625 of 2013, directing the applicant to deposit a sum of Rs.64,00,000/- in the form of a fixed deposit in a nationalized bank in favour of the Airports Authority of India, is revoked. The amount deposited by the applicant in fixed deposit in a nationalized bank in furtherance of the aforesaid condition and the interest accrued thereon, is directed to be released in favour of the applicant within a period of thirty days from today.

51. The parties shall bear their own costs of this petition.

(2026) 7 ILRA 1213
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Criminal Misc. Anticipatory Bail Application U/S 428 BNSS No. 4807 of 2026

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

Issue for Consideration

Matter pertains to whether the applicant, named as the main accused in Case Crime No. 153 of 2026 registered under sections of B.N.S. for allegedly causing a firearm injury to informant's son, was entitled to be enlarged on anticipatory bail, having regard to the gravity and seriousness of allegations, the specific overt act attributed to him, the necessity of custodial interrogation for recovery of weapon used in the offence, and the explanation offered for delay in lodging the FIR.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss.109, 118, 351(3) – FIR - Allegation of firearm injury - Anticipatory bail - Scope - The applicant, filed an anticipatory bail application u/s 482 B.N.S.S. in connection with Case Crime No. 153 of 2026, registered at Police Station Kotwali Orai, District Jalaun, wherein it was alleged that on 19.03.2026, the applicant, along with three unknown associates, opened fire upon the son of informant on account of a prior dispute dated 22.02.2026 relating to throwing of waste materials, resulting in firearm injuries to injured, who was initially taken to Medical College, Orai, and subsequently referred to Kanpur for further treatment, with the incident having been witnessed by informant's other son and FIR being lodged after a delay of three days, i.e., on 22.03.2026 - The applicant, contended his false implication, absence of corroboration between the ocular and medical evidence, non-explanation of delay in lodging the FIR, and non-fatal nature of injury sustained, sought the anticipatory bail, undertaking to cooperate with investigation and abide by conditions imposed, which prayer was opposed by State and opposite party no. 2 on the ground that the applicant's role was specific and grave, pellets were recovered from injured's body after surgery, and his custodial interrogation was essential for recovery of weapon used in commission of offence.

Held*:* As per the allegations put forth in FIR, serious allegations have been levelled against the applicant - The FIR was registered against him and three unknown persons on the basis of specific and categorical allegations, wherein the first informant alleged that applicant, along with his associates, caused firearm injuries to injured - Pellets were found on the person of injured - Therefore, it cannot be said that the injured did not sustain any firearm injury on his person - In view of specific overt act attributed to applicant and nature of the weapon allegedly used by him, the Court was of the view that it is not a fit case for grant of anticipatory bail - The alleged delay of three days in lodging the FIR also does not merit acceptance, as mere delay in registration of FIR does not entitle the applicant to concession of anticipatory bail, particularly in view of specific allegations and role attributed to him - The investigation is at a preliminary stage, and custodial interrogation of applicant is necessary to unearth the truth - There is no material on record to hold that a prima facie case is not made out against the applicant. The material that has come on record and preliminary

investigation, appear to establish a reasonable basis for accusations - **Accordingly, the anticipatory bail application dismissed**. [Paras 13,14] (E-13)

Case Law Cited

Srikant Upadhyay and Others v. State of Bihar and Another, **(2024) 12 SCC 382;** *P. Chidambaram v. Directorate of Enforcement,* **(2019) 9 SCC 24;** *Kishor Vishwasrao Patil v. Deepak Yashwant Patil and another,* **2022 SCC OnLine SC 2528 - referred to**

List of Acts

Bharatiya Nyaya Sanhita, 2023

List of Keywords

Anticipatory Bail; First Information Report; BNS, 2023; Firearm injury; Previous dispute; Enmity; Waste materials; Medical College, Orai; Ocular version; Medical evidence; Superficial injury; Vital part of body; Custodial interrogation; Investigation; Interim Protection to accused; Overt act; Application dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. - 4807 of 2026

From the FIR dated 22.03.2026 in Case Crime No. 153 of 2026 at Police Station Kotwali Orai, District Jalaun.

Appearances for Parties

Advs. for the Applicant(s):
Sita Ram Nigam, Sushil Kumar

Advs. for the Opposite Party(s):
Ajay Sengar, G.A.

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

1. Heard Sri Sunil Kumar along with Sri Sushil Kumar as well as Sri Sita Ram Nigam, learned counsel for the applicant, Sri Ajay Sengar, learned counsel for the opposite party no.2, Sri Mohd. Afzal, learned counsel for the State and perused the record.

2. The present application has been filed on behalf of the applicant, in Case Crime No.153 of 2026, under Sections 109 and 351(3) B.N.S. (corresponding to Sections 307 and 506 I.P.C.), Police Station - Kotwali Orai, District Jalaun, with a prayer to grant him anticipatory bail.

3. The prosecution case, in brief, is that the First Information Report was lodged on 22.03.2026 at 21:55 hours in respect of an incident dated 19.03.2026 at 21:00 hours. The FIR was registered as Case Crime No. 153 of 2026 under Sections 109 and 351(3) of the BNS at Police Station Kotwali Orai, District Jalaun. The applicant was named in the FIR. It is alleged in the FIR that the applicant, along with three unknown persons, caused firearm injury to the son of the informant on 19.03.2026 at 9:00 p.m. The incident was witnessed by the other son of the informant. The injured was taken to Medical College, Orai, from where he was referred to Kanpur. The incident allegedly took place on account of a previous dispute between the applicant and the injured on 22.02.2026.

4. The statement of the injured was recorded by the Investigating Officer, wherein he stated that on 02.02.2026, a dispute took place between him and the applicant on account of throwing waste materials. On

account of that enmity, the applicant, along with his three associates, opened fire upon the injured. He was rescued by his family members.

5. Learned counsel for the applicant submits that the applicant is absolutely innocent and has been falsely implicated in the present case. He has nothing to do with the alleged offence; in spite of that, the police are trying to arrest the applicant. It is further contended that the allegation of causing injury has been levelled against the applicant and three other co-accused. However, only a single injury was noticed on the body of the injured. There is no repetition of fire; therefore, the ocular version is not corroborated by the medical evidence. It is further contended that no offence under Section 109 of the BNS is made out against the applicant, and the offence would not travel beyond Section 118 of the BNS (corresponding to Section 324 of the IPC). It is next contended that the injuries of the injured were not dangerous to life; rather, he sustained a superficial injury. The injuries are not on a vital part of the body of the injured. It is further contended that the FIR was lodged after a delay of three days, which has not been properly explained by the prosecution, and the non-explanation of the said delay is fatal to the prosecution case. It is also contended that the prosecution has not come with clean hands. The place of the incident has been changed by the prosecution, and there is no consistency in the prosecution case. The allegations levelled against the applicant are not reliable. The applicant is ready to appear before the Investigating Officer if some protection is granted to him by this Court. It is further submitted that the custodial interrogation of the applicant is no longer required in the present matter.

6. Further submission has been made by the learned counsel for the applicant that if the applicant had intended to kill the injured, then in that circumstance, the applicant or any other person would have caused injury on the vital part of the body. Learned counsel for the applicant further submits that the applicant undertakes to cooperate during investigation and trial and shall appear as and when required by the Investigating Agency or the Court concerned. It has also been stated that, in case the applicant is granted anticipatory bail, he shall not misuse the liberty of bail, shall cooperate with the investigation, and shall abide by all the conditions that may be imposed by the Court.

7. On the other hand, learned counsel for the State and learned counsel for opposite party no. 2 have opposed the application for anticipatory bail. It is contended that the main role of firing has been attributed to the applicant, and he is named in the FIR. The names of the three other culprits have come during the course of the investigation. The custodial interrogation of the applicant in the present case is very much required, inasmuch as the Investigating Officer has to recover the weapon used in the commission of the offence. It is further contended that the allegations levelled against the applicant are grave and serious in nature. There are specific and categorical allegations against the applicant to the effect that he opened fire upon the injured. Pellet injuries were found on the person of the injured, which were removed after surgery. The investigation qua the FIR in question is still going on, and the recovery of the alleged weapon has to be effected from the applicant. The custodial interrogation of the applicant is imperative for the purpose of effective and fair investigation and to unearth the case of the prosecution. It is further contended that, in case the applicant is granted the concession of anticipatory bail at this stage, it may impede the ongoing investigation.

8. I have heard the rival submissions of both sides and perused the record.

9. The applicant is the main accused, who is stated to have caused a firearm injury on the person of the injured. It has been held in various judgment of the Hon'ble Supreme Court that bail is a rule but jail is an

exception, but so far as anticipatory bail is concerned, it ought to have been granted in exceptional cases since it is an extraordinary power.

10. In the case of **Srikant Upadhyay and Others vs. State of Bihar and Another, (2024) 12 SCC 382**, the Hon'ble Supreme Court has held that the power to grant anticipatory bail is an extraordinary power. While called upon to exercise the said power, the Court has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice. When warrant of arrest or proclamation is issued, the applicant is not entitled to invoking extraordinary power. The relevant paragraph no. 30 of **Srikant Upadhyay (supra**) is quoted as under:

"30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

11. In the case of **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, the Hon'ble Apex Court has held that arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The power under Section 438 of Cr.P.C./482 of B.N.S.S. has to be exercised sparingly. The privilege of the pre-arrest bail should not be granted only in exceptional cases. The relevant paragraph no. 69 of **P. Chidambaram (supra**) is reproduced as under:

"69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. "

12. It would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as **Kishor Vishwasrao Patil vs. Deepak Yashwant Patil and another, 2022 SCC OnLine SC 2528**, relevant paragraph nos.14 and 15 whereof read as under:

"14.....

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation, Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information..... 6.....

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933], it was held as under: (SCC p. 313, para 19)

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

76. In **Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514],** the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694: (2011) 1 SCC (Crl) 514] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar [Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379: (2012) 2 SCC (Cri) 468], the Supreme Court held as under: (SCC p. 386, para 19)

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran [D.K.

Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434 :(2007) 2 SCC (Cri) 345], State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain [State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176] and Union of India v. Padam Narain Aggarwal [Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305: (2009) 1 SCC (Cri) 1].)"

Economic offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain [Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105: 1998 SCC (Cri) 510], it was held that in economic offences, the accused is not entitled to anticipatory bail."

15. In Sushila Agrawal and others v. State (NCT of Delhi) and Another reported in (2020) 5 SCC 1, Constitution Bench of this Court held that while considering an application for grant of pre-arrest bail the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence or likelihood of fleeing justice. The Court held:-

"92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

13. As per the allegations put forth in the FIR, serious allegations have been levelled against the applicant. The FIR was registered against him and three unknown persons on the basis of specific and categorical allegations, wherein the first informant alleged that the applicant, along with his associates, caused firearm injuries to the injured. Pellets were found on the person of the injured. Therefore, it cannot be said that the injured did not sustain any firearm injury on his person. In view of the specific overt act attributed to the applicant and the nature of the weapon allegedly used by him, this Court is of the view that it is not a fit case for grant of anticipatory bail. The alleged delay of three days in lodging the FIR also does not merit acceptance, as mere delay in the registration of the FIR does not entitle the applicant to the concession of anticipatory bail, particularly in view of the specific allegations and role attributed to him. The investigation is at a preliminary stage, and the custodial interrogation of the applicant is necessary to unearth the truth. Learned counsel for the applicant has failed to demonstrate that the case registered against him is false. At this stage, there is no material on record to hold that a prima facie case is not made out against the applicant. The material that has come on record and the preliminary investigation, appear to establish a reasonable basis for the accusations.

14. Considering the facts and circumstances of the case, nature of allegation and role of the applicant, no case for anticipatory bail is made out. The present anticipatory bail application lacks merit and deserves to be dismissed. Accordingly, the present anticipatory bail application is **dismissed**.

15. Interim order, if any, stands vacated.

(2026) 7 ILRA 1219
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.07.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Appeal Under Section 37 of Arbitration and Conciliation Act 1996 No. 25 of 2025

Union of India, Ministry Of Railway & Ors. ...Appellants
Versus
Gallant Ispat Ltd. ...Respondent

Issues for Consideration

(i) What is the scope of interference by the High Court under Section 37 of the Arbitration and Conciliation Act, 1996?

(ii) Whether, in the facts and circumstances of the case, a "sufficient cause" was made out by the appellants for condoning the delay of 28 days within the further period of 30 days provided under the proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996, and whether the order of the Commercial Court refusing to condone the delay warrants interference?

Headnotes

Arbitration and Conciliation Act, 1996 — Ss. 5, 34, 37 — Appeal against order under Section 34 — Scope of interference.

HELD: The primary object of the Act of 1996 is speedy and inexpensive dispute resolution with minimal Court intervention. The power under Section 37 is more circumscribed than that under Section 34; interference under Section 37 cannot travel beyond the restrictions of Section 34, and the appellate Court can neither undertake an independent assessment of the merits of the award nor interfere merely because an alternative view is possible. The appellate power under Section 37 is more akin to the power of superintendence vested in civil courts while exercising revisional powers, and is exercisable only to find out whether the Court exercising power under Section 34 acted within its limits or exceeded or failed to exercise the power so conferred. [Paras 19-23]

Arbitration and Conciliation Act, 1996 — S. 34(3), proviso — Condonation of delay of 28 days within extended period of thirty days — Sufficient cause — Condition precedent.

HELD: An application for setting aside an award is to be made within three months from receipt of the award; the further period of thirty days is subject to the satisfaction of the Court that the applicant was prevented by sufficient cause. Proof of sufficient cause is a condition precedent for exercise of the discretionary jurisdiction under the proviso; if sufficient cause is not proved, the matter should rest then and there. The expression "sufficient cause" is not a loose panacea for negligent and stale claims; where negligence, want of good faith or a casual approach is discernible, condonation has to be refused. [Paras 25-26, 31-32]

The award being dated 08.12.2023 and the period of three months having lapsed on 07.03.2024, the time-gaps in obtaining legal opinions, nominating counsel, and, in particular, the unexplained period of 17 days taken by the competent authority to sign and send the papers to counsel within the same city of Lucknow, after the limitation had already expired, exhibit a casual and negligent approach. The explanation is inadequate and a lame excuse, and does not constitute sufficient cause. [Paras 29-30, 39]

Arbitration and Conciliation Act, 1996 — Ss. 18, 34(3) — Limitation Act, 1963 — S. 5 — Government entity — No preferential treatment in condonation of delay.

HELD: Different yardsticks cannot be employed for a government entity and a private body in deciding an application for condonation of delay; the law of limitation applies with equal force to both, and this understanding gathers significance in view of Section 18 of the Act of 1996, which mandates equal treatment of parties. The State or its instrumentalities cannot be accorded preferential treatment, and habitual reliance on bureaucratic red tape, procedural bottlenecks or administrative inefficiencies cannot invariably be accepted as sufficient cause. Condonation of delay is an exception and not the rule. [Paras 33-35]

Limitation — Condonation of delay — Strong case on merits — Not a ground for condonation.

HELD: An objection predicated on limitation raises a question anterior to the merits. When an application for condonation of delay is placed before the Court, the inquiry is confined to whether sufficient cause has been demonstrated; the merits of the underlying case are wholly extraneous to this inquiry, and the test of sufficient cause cannot be substituted by an examination of the case on merits. Considering merits at this stage would lead to inequitable and inconsistent application of the law and risk prejudicing the mind of the Court. [Paras 35-37]

Limitation — Condonation of delay — Exercise of discretion — Rights accrued in favour of opposite party.

HELD: A Court, while exercising its discretion to condone delay on the ground of sufficient cause, not only takes into consideration the diligence and genuineness of the cause explained, but also balances the same with the right accrued in favour of the contesting party. The Commercial Court having rightly found that the delay could not be condoned, and having also noticed that the objections were inadequately stamped and the requisite stamp was paid only on 15.02.2025, there is no ground for interference within the limited scope of Section 37. [Paras 40-42]

Appeal dismissed. No order as to costs. (E-14)

Case Law Cited

Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81 — referred to; *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. M/s Borse Brothers Engineers & Contractors Pvt. Limited*, (2021) 6 SCC 460 — relied on; *State of Madhya Pradesh v. Bherulal*, (2020) 10 SCC 654 — referred to; *The State of Madhya Pradesh & Anr. v. Chaitram Maywade*, (2020) 10 SCC 667 — referred to; *State of U.P. v. Succha Singh*, 2019 SCC OnLine All 7737 — referred to; *State of Uttar Pradesh v. Satish Chand Shivhare & Brothers*, 2022 SCC Online SC 2151 — referred to; *Executive Engineer Drainage Division v. M/s Ayush Construction & Another*, Special Appeal Defective No. 89 of 2024, decided on 15.03.2024 — referred to; *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 — relied on; *Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*, (2023) 9 SCC 85 — relied on; *Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani*, (2024) 7 SCC 218 — relied on; *Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills*, 2024 SCC OnLine SC 2632 — relied on; *Shivamma (Dead) by LRs v. Karnatka Housing Board and another*, 2025 SCC OnLine 1969 — relied on; *Postmaster General v. Living Media India Ltd.*, (2012) 3 SCC 563 — relied on; *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366 — referred to; *Lanka Venkateswarlu (D) by LRs v. State of A.P. and ors.*, (2011) 4 SCC 363 — referred to; *State of Rajasthan & Anr. v. Bal Kishan Mathur (Dead) through Legal Representative*, (2014) 1 SCC 592 — referred to; *Sheo Raj Singh v. Union of India*, (2023) 10 SCC 531 — referred to; *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*, (2012) 5 SCC 157 — relied on.

List of Acts / Statutes

Arbitration and Conciliation Act, 1996; Commercial Courts Act, 2015; Limitation Act, 1963.

List of Keywords

Arbitration; Scope of interference; Limitation; Condonation of delay; Sufficient cause; Government litigant; Equal treatment; Administrative delay.

Case Arising From

Order dated 05.06.2025 passed by the Commercial Court, Lucknow, in Misc. Civil Case No. 51 of 2024 (Union of India and others v. Gallant Ispat Limited), dismissing, on the ground of limitation, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the Arbitral Award dated 08.12.2023.

Appearance for Parties

For the Appellant(s): Deepanshu Dass.

For the Respondent(s): Akash Mishra, Akber Ahmad, Gaurav Mehrotra, Utkarsh Vardhan Singh.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. By means of this appeal filed under Section 13 of the Commercial Courts Act, 2015 read along with Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') the appellants-Union of India, through Ministry of Railways have sought to interdict the impugned order dated 05.06.2025 passed by the learned Commercial Court, Lucknow in Misc. Civil Case No.51 of 2024 (Union of India and others Vs. Gallant Ispat Limited) by virtue of which the objections filed by the Appellants under Section 34 of the Arbitration and Conciliation Act, 1996 against the Arbitral Award dated 08.12.2023, was dismissed on the sole ground of Limitation.

2. Briefly stated, the facts essential for the purposes of adjudication of the present Appeal would be that the respondent having an integrated steel plant situated at Tehsil- Sahjanwa, District-Gorakhpur required a private railway siding for movement of raw material from railway station-Sahjanwa towards its Unit. The Respondent for that purpose required land admeasuring about 7702.07 square meters from the Appellant-railways on lease rent/ license fee.

3. Initially, the appellant-Railway Authorities fixed lease rent for an amount of Rs.15,87,527/- per year. However, the respondent realizing that the lease rent allegedly to be excessive, sought reduction of the same and ultimately the appellant-Railway Authorities fixed the lease rent taking into account 3660 sq mt. of the land in village Luchai to be non-agricultural (residential) and 4502 sq. mt. of the land in village Domhermafi to be agricultural and, as such, reduced the lease rent to Rs.9,60,684/- per year for use of the aforesaid land by the respondent-company.

4. Accordingly, an agreement was entered into between the appellant-Railway Authorities and the respondent-company on 16.06.2010 and an amount of Rs.9,60,684/- was also deposited by the respondent.

5. On expiry of tenure of the aforesaid agreement, a new agreement was proposed by the appellant-Railway Authorities on 02.06.2016 in which lease rent was enhanced to Rs.13,47,409/- with 7% service tax per year.

6. However, the aforesaid proposed enhancement of lease rent did not go well with the respondent-company and as such they started agitating the said enhancement and demanded reduction of the lease rent, resulting into dispute between the parties. Since the agreement contained an arbitration clause, the Respondent-company proposed for resolution of its dispute, primarily seeking for fixing of lease rent towards the lower end, through the mechanism of Arbitration.

7. Apparently, the parties failed to reach a common ground for appointment of a Sole Arbitrator and as such on an application filed under Section 11 of the Act of 1996, this Court intervened and a Sole Arbitrator came to be appointed by this Court vide an order 07.04.2022 passed in Civil Misc. Arbitration Application No. 22 of 2021 (Gallant Ispat Limited V/s Union of India, Ministry of railways, New Delhi).

8. The learned Arbitrator entered into reference and after considering the claims, counter-claims and documents relied upon by the parties, passed an Award dated December 08, 2023 wherein the claim of the respondent-Gallant was allowed. The learned Arbitrator in the said Award directed the appellant-Railway Authorities for revision of the lease rent to Rs.1,23,300/- annually and also directed for refund of Rs.1,79,26,701/- with 8% interest on the amount already paid in excess.

9. Being aggrieved by the aforesaid Arbitral Award dated December, 08, 2023 the appellant-Railway Authorities filed application U/s 34 of the Act of 1996 before the competent Commercial Court, which was registered as Misc. Civil Case No.51 of 2024. Apparently, since there was a delay of 28 days in filing the said objection, an application for condonation of delay in terms of proviso to Section 34(3) of the Act of 1996 was also filed by the appellant-Railway Authorities.

10. The learned Commercial Court after considering the submission of the parties, did not find any sufficient cause having been explained by the Appellant-Railway seeking to condone the delay. Thus, the said Application under Section 34(3) of the Act of 1996 seeking condonation of delay was dismissed and consequently the objection itself filed against the impugned Award U/s 34 of the Act of 1996 was also rejected vide the impugned order dated 05.06.2025.

11. Being aggrieved by the aforesaid impugned order dated 05.06.2025 passed by the learned Commercial Court, the appellant-Railway Authorities have preferred the present appeal under section 13 of the Commercial Court Act, 2015 r/w Section-37 of the Arbitration & Conciliation Act, 1996.

12. Sri Deepanshu Dass, the learned Central Government Counsel led the arguments for and on behalf of the Appellant-railways. He would submit that it was neither legal nor proper for the learned Commercial Court to not have condoned the delay of only 28 days in filing the objections to the Award under Section 34 of the Act. He would submit that the said delay of 28 days was within the permissible limit of 30 days as has been permitted by the proviso to Section 34(3) of the Act. According to him, the delay of 28 days was well explainable and was primarily because of administrative exigency, which has been particularly explained in the affidavit filed in support of the Application seeking condonation of delay in preferring the Objections under Section 34 of the

Act. The learned counsel has also strenuously tried to highlight that the Appellant as being a government entity may be given concession in Condoning delay in contrast to a private entity, as government entities are engaged in various statutory functionality and administrative delay in processing of an application is a known procedural bottleneck for causing delay in all government departments.

13. The learned counsel has further submitted that the appellants have a good case on merits and the law of limitation cannot eclipse their meritorious submission in the present Appeal. Mr. Dass went on to explain that the law of limitation being basically a procedural law and a hand-maid of substantive law should not be allowed to over awe the merits of the present case. Highlighting the merits of the present appeal, the learned Counsel has tried to impress upon this Court that in a given case, on merits, a liberal approach has to be adopted for condoning the delay.

14. Rival submissions were made by Mr. Gaurav Mehrotra, learned Senior Counsel appearing for the Respondent-company. According to the learned Senior Counsel, no doubt the delay of 28 days is within the permissible limit of 30 days, however, the law remains that any delay within this permissible limit of 30 days is allowed only in case of 'sufficient cause' having been explained by the Appellant. Mr. Mehrotra after reading the proviso to Section 34(3) of the Act, took this Court on a voyage to the contents of the Affidavit filed by the Appellants in support of their Application seeking condonation of delay, to buttress his submission that neither any plausible nor any cogent grounds for delay have been mentioned therein, which could be qualified to be termed as 'sufficient cause' within the meaning of proviso to section 34(3) of the Act. The learned Senior Counsel has relied on the judgment of the Hon'ble Supreme Court, in the case of **Basawaraj Vs Land Acquisition Officer, reported in (2013) 14 SCC 81**; to fortify his stand that the 'sufficient cause' mentioned in Proviso to Section 34(3) of the Act, would mean that the party ought not to have acted in a negligent manner. It has been submitted that the Appellants had miserably failed to explain and provide adequate reasons which prevented them from approaching this Court within the period of limitation, so that this Court would take an informed decision in exercising its discretion in condoning the delay of 28 days within the permissible limit of 30 days.

15. Thus, according to Mr. Mehrotra, the minimum threshold for triggering this Court or the learned Commercial Court for consideration of the delay application of the Appellants having been not met, the application for delay was rightly rejected vide the impugned order. The learned Senior Counsel has vehemently submitted that merely because the Appellant is a State, no special concession can be accorded in condonation of delay in commercial matters on the ground of administrative bottle-necks. He would submit that the state as a litigating party has to be treated equally with a private party and put to equal terms while considering condonation of delay Application. The Learned Sr. Counsel referred to the judgments passed by the following judgment of the Supreme Court to buttress his aforesaid submission. **(i) Government of Maharashtra (Water Resources Department) represented by Executive Engineer V/s M/S Borse Brothers Engineers & Contractors Pvt. Limited reported in (2021) 6 SCC 460; (ii) State of Madhya Pradesh V/s Bherulal, reported in (2020) 10 SCC 654; (iii) The State of Madhya Pradesh & Anr. V/s Chaitram Maywade, reported in (2020) 10 SCC 667; and (iv) a judgment dated 14.05.2019 passed in (Special Appeal Defective No. 188 of 2019) by a Division Bench of this Court in the case of State of U.P. v. Succha Singh, reported in 2019 SCC OnLine All 7737.**

16. Lastly, it has been submitted by the learned Senior Counsel for the Respondent that considering from any angle, the sole ground of movement of file from one table to another cannot be construed as a sufficient cause to condone delay and in that regard, has relied on the judgment of the Hon'ble Supreme Court **in State of Uttar Pradesh V/s Satish Chand Shivhare & Brothers, reported in 2022 SCC Online SC 2151**; and a judgment dated 15.03.2024 passed by a Division bench of this Court in **Executive Engineer Drainage Division V/s M/s Ayush Construction & Another (Special Appeal Defective No. 89 of 2024).**

17. We have patiently heard the learned Counsels for the parties and perused the material on records. Having given our thoughtful consideration to the contention raised by the parties, we find that the core issues falling for our consideration in this present Appeal is two-fold; (i) What is the scope of interference of this Court under Section 37 of the Arbitration and Conciliation Act, 1996; and (ii) Whether in the facts and Circumstances of the present case, a "sufficient cause" has been made out by the Appellants for exercising discretion of condoning the delay of 28 days within the permissible limit of 30 days, as is provided with in the proviso to Section 34(3) of the Act or in other words whether the impugned order passed by the Learned Commercial court is unsustainable in the eyes of law and requires any interference by this Court.

18. Before proceedings any further, it would be apposite for this Court to refer Section 37 of the Arbitration and Conciliation Act, which inter-alia states as herein under:-

37. Appealable orders.?(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:?

[(a) refusing to refer the parties to arbitration under Section 8;] [(b) granting or refusing to grant any measure under Section 9;] [(c) setting aside or refusing to set aside an arbitral award under Section 34.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

19. First and foremost, we must understand that the primary object of the Arbitration and Conciliation Act, 1996 is to provide speedy and inexpensive dispute resolution through arbitration with minimal Court intervention, as reflected in Section 5 of the said Act. Further, this minimal Court intervention is also to be exercised in a restrictive manner as is

apparent from the provisions of Section 34 of the Act, which provides for limited grounds to challenge an arbitral award, such as incapacity, invalidity of the agreement, lack of notice, inability to present the case, award beyond the scope of arbitration, improper constitution of the tribunal, subject matter not capable of settlement, or conflict with public policy, patent illegality etc. Admittedly, beyond these grounds, the law stands settled that an arbitral award is not open to be challenged under Section 34, and Court intervention is limited.

20. No doubt section 37 of the Act provides for an Appeal against any order passed under section 34 of the Act. However, we find that as far as the scope of Section 37 juxtaposed to Section 34 of the Act is concerned, the power is more circumscribed and the recent trends of the court had been to not travel beyond the impugned order passed under section 34 of the Act. A quick survey of the judgments holding the ground would bring us to the celebrated judgment of **MMTC Ltd. v. Vedanta Ltd**., reported in **(2019) 4 SCC 163**; wherein the Apex court held that interference under Section 37 cannot go beyond the restrictions of Section 34. The Court went on to hold that in an Appeal under section 37, the appellate Court cannot undertake an independent assessment of the merits of the award. Further, interference cannot be made under Section 37 of the Act merely because an alternative view is possible, as has been delineated by the Hon'ble Supreme Court, in the case of **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, reported in (2023) 9 SCC 85**; wherein it was also held that the jurisdiction under Section 37 is akin to Section 34 of the Act.

21. Furthermore, Hon'ble Supreme Court in the case of **Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, reported in (2024) 7 SCC 218**; went on to reiterate its consistent stand that the appellate Court's jurisdiction under Section 37 is more constrained than under Section 34 of the Act. So, as far as power under Section 34 of the Act is concerned, there exists limited power of interference and the said limited power is further restricted and controlled in the appellate stage under Section 37 of the Act. In the same genre, we find that in the case of **Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, reported in 2024 SCC OnLine SC 2632**; the Supreme Court held that intervention in arbitral matters is virtually prohibited except as envisaged under Section 34, and the appellate power under Section 37 is limited to checking if the Section 34, Court acted within its jurisdiction. The appellate Court cannot reappraise evidence or substitute its view for that of the court below.

22. A careful & meaningful reading of the aforesaid judgments passed by the Apex court in **Punjab State case (supra**) brings us to fore the evolution of law on interference at the appellate stage under Section 37 of the Act, as the judgment initially proceeds on the basis that the scope of appeal, which lies against an order setting aside or refusing to set aside an arbitral award, is "naturally akin to" and "limited to" the grounds enumerated under Section 34 of the Arbitration Act. However gradually in the subsequent paragraphs, the Court went on to hold that the appellate power under Section 37 is not akin to the normal appellate jurisdiction vested in the civil Courts owing to the limited scope of interference of the Courts with arbitral proceedings or awards which is confined to the

grounds set out in Section 34 of the Arbitration Act. The Court further holds that the scope of interference in an appeal under Section 37 is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act and that the powers of an appellate Court are not beyond the scope of interference under Section 34. The Hon'ble Supreme Court after tracing the various judgments on the scope of Section 37, went on to conclude as follows:

"20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. **It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.**

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

(emphasis supplied)

23. Therefore, a plain reading of the Punjab State case (supra) would bring us to fore that the recent trend of the Courts had been to more marginalize the power of the Appellate Courts in interfering an Award and has technically switched over from appellate forum to superintendence forum. The Hon'ble Supreme Court clarified that this appellate power is more akin to the power of superintendence as is vested in civil Courts while exercising revisionary powers. Thus, it appears that the Court has in a way further dwindled the power by holding that the appellate power under Section 37 is only exercisable to find out whether the Court exercising power under Section 34 has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. It has also in a way prescribed the condition precedent that it could exercise the power under Section 37 of the Act only where the court exercising jurisdiction under Section 34 fails to

exercise the jurisdiction vested in it or travels beyond its jurisdiction. The Supreme Court in unequivocal terms has held that when these conditions are satisfied that the appellate Court can step in and set aside the order passed under Section 34 of the Arbitration Act.

24. Keeping in view the aforesaid limited scope of interference by this Court under section 37 of the Act, let's examine as to: -

(ii) Whether in the facts and Circumstances of the present case, a "sufficient cause" has been made out by the Appellants for exercising discretion of condoning the delay of 28 days within the permissible limit of 30 days, as is provided with in the proviso to Section 34(3) of the Act or in other words whether the impugned order passed by the Learned Commercial court is unsustainable in the eyes of law and requires any interference by this Court. 25. Section 34 (3) relating to the limitation for laying a challenge or filing an objection to an Arbitral Award says: "(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

Apparently, there is no quarrel over the dates and time taken by the Appellants in preferring the objections to the Arbitral Award dated 08.12.2023. According to this Court the core issue is as to whether the Appellants had been successful in justifying its delay of 28 days in preferring their Objection within the extended period of "thirty days" as contained in proviso to Section 34(3) of the Act.

26. We find that the time period of 'three months" has been ordinarily prescribed for preferring an application (say objection U/s 34 of the Act) for setting aside of an Arbitral Award and a discretion has been provided to the courts to entertain the said Application within a further period of third days, with a condition that the said court exercising its discretion ought to be satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed period of three months. Therefore, we have three major take-away from a reading of the Section 34(3) and its proviso;

Firstly, the limit for filing an application for setting aside an Arbitral Award is three months from the receipt of a signed copy of the said Award;

Secondly, a further period of thirty days has been provided for preferring the aforesaid Application. However, the same is subject to the satisfaction of the court that the applicant was prevented by sufficient cause from making the application within the said period of three months;

Thirdly, the issue boils down to what bundle of facts could be termed as 'sufficient cause'.

27. According to this Court, the third take-away is the bone of contention in the present Appeal, wherein on the one hand the Appellants have contended that there existed sufficient cause to condone the delay whereas on the other hand the Respondent has contested that there is no sufficient cause to condone the delay. Before, we go any further, let us first examine the explanation appended by the Appellants in support of their contention that sufficient cause has been made by them in delaying the filing of the Application. We find that the explanation has been made in four paragraphs of the Affidavit filed in support of the Application seeking condonation of delay. The said relevant paragraphs are being extracted herein below: "4. That after passing of the award dated 08-12-2023, the Learned Counsel for the Respondents/Petitioners Mr. Anuj Dayal duly informed the concerned department of the Railways that Railways has loosed the case and submitted the copy of the award with a Legal opinion dated 29-01-2024. True photocopy of the legal opinion dated 29-01-2024 is being annexed herewith as Annexure No. 1. 5. That after that the Concerned authority of DRM Engineering sent on 12-02-2024 the whole file with copy of award to Law Department of the Railway, Lucknow so that a legal opinion may be for further action. 6. That after that on 29-2-2024 the concerned authority of the Legal Department submitted his opinion that there is need to challenge the impugned order of the award before the Hon'ble Commercial Court. A true photocopy of the decision of the Legal officer dated 29-02-2024 is being annexed herewith as Annexure No.2. 7. That after that the whole file with the opinion of the Legal Officer submitted before the Competent authority who nominated on 13-03-2024 to present counsel Mr. Rajesh Kumar Singh on 14-03-2024. After that the Learned Counsel Mr. Rajesh Kumar Singh the collect the whole file on 18/03/2024 go to whole file and read and prepare the same so that this petition may be filed before Hon'ble Commercial Court. A true photocopy of the nomination dated 14-03-2024 is being annexed herewith as Annexure No.3."

28. Thereafter, we find that even in the present memo of Appeal, the Appellant has tried to explain the condonation of delay in preferring the Objections under section 34 of the Act from paragraph 16 to 20 of the Appeal. Paragraphs 18 and 19 makes for an interesting read, which inter-alia states: "18. That the application under section 34 of Arbitration and Conciliation Act 1996 was prepared by the concerned counsel and the entire paper book was sent to the authorities for signing on 18/03/2024. 19. That the duly signed paper book of application under section 34 of Arbitration and Conciliation Act 1996 was received by the concerned counsel who filed the same on 05/04/2025."

(emphasis supplied)

29. Apparently, the Arbitral Award dated 08.12.2023 was received on the same date as we do not find any submission or averment to the effect that the signed copy or otherwise the Award was not received on the said date or any later date. In the absence of any such contention, it has to be construed that the Award was received on the same date as on 08.12.2023 and the prescribed three months period stands ticking from the said date, which according to this Court lapses on 07.03.2024. From the averment of the aforesaid Affidavit, which has been quoted herein above, we find that it took almost more than 51 days for the learned Counsel, Anuj Dayal to form an opinion and send a legal opinion dated 29.01.2024

for challenging the said Award. Thereafter, it took almost 14 days for the concerned department to send the entire case file to the legal department, Lucknow on 12.02.2024, wherein the department took almost 16/17 days to form a second opinion to challenge the award on 29.02.2024. Admittedly, the department took over more than two weeks to nominate a counsel, namely Mr. Rajesh Kr. Singh, on 14.03.2024 to file the objections/Application, which got prepared on 18.03.2024 and was sent to the authorities for their signing. These time-gaps between the events sufficiently exhibits the casual approach and non-seriousness attitude to challenge the arbitral award dated 08.12.2023.

30. However, the most sterling time-gap and negligence on the part of the authority is still to come, wherein this Court finds that although the objection was sent for signing to the competent authority at Lucknow on 18.03.2024, however the said authority took almost 17 days to sign and send the signed papers to the concerned Counsel, as we see that the application came to be filed only on 05.04.2024 before the commercial court at Lucknow. Thus, it took 17 days for movement of file in the same city and there has been no explanation what so ever from the end of the Appellant for such a lackadaisical attitude, especially when this Court finds that admittedly the prescribed three months had already lapsed on 07.03.2024 and the appellants ought to have sprinted for filing of the said Application within the shortest available time. It is rather deliberate and negligent on the part of the Appellant that when they had full knowledge of the said time-period having lapsed, to have behaved in a very lackluster manner as it took 17 days to send the signed papers across to the Counsel for filing, although the Competent Authority and the Commercial Court were located in the same place i.e. Lucknow. We are afraid this indifferent attitude of the concerned officials in delaying the signing and sending it across for filing and taking almost 17 days cannot be termed to be a sufficient cause for condoning the delay and has to be termed nothing short of negligent.

31. Further, we have also tested the explanation offered by the Appellant in their condonation of delay application as well as the memo of appeal, on the anvil of the recent decision of Hon'ble Supreme Court, in the case of Shivamma (Dead) by LRS vs. Karnatka Housing Board and another, reported in 2025 SCC OnLine 1969; we do not find any reason to condone the said delay. The Hon'ble Supreme Court has held in the case of Shivamma (Dead) (supra) that the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. The expression is to be construed with justice-oriented flexibility so as not to punish innocent litigants for circumstances beyond their control. Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so would undermine the maxim interest reipublicae ut sit finis litium and destabilize the certainty that limitation law seeks to secure. The expression 'sufficient cause' must be construed in a manner that advances substantial justice while preserving the discipline of limitation. The Courts are not to be swayed by sympathy or technical rigidity, but rather by a judicious appraisal of whether the applicant acted with reasonable diligence in pursuing the remedy. Where explanation is bona fide, plausible, and consistent with ordinary human conduct, Courts have leaned towards condonation. Where negligence, want of good faith, or a casual approach is discernible, condonation has to be refused. In the present case, the appellants have not acted with reasonable diligence nor is the explanation

offered by them plausible and consistent with ordinary human conduct. There is negligence, want of good faith and casual approach on their part for the reasons already noticed herein-above in taking 17 days for signing and filing an application, which was already delayed.

32. The summation of our aforesaid discussion is that the proof of sufficient cause is a condition precedent for exercising of the discretionary jurisdiction as provided under proviso to Section 34(3) of the Act. If sufficient cause is not proved the matter should rest, then and there. It is only when sufficient cause is shown then only the Court enquires into the various competing factual matrix to satisfy itself in exercising its discretion of condoning the delay. Alas, in the present facts and circumstances, the Appellants have failed to bring the explanation into the realms of sufficient cause, so as to enable this Court or the learned Commercial Court in exercising its judicial discretion of condoning the delay.

33. There is another aspect of the matter, in as inasmuch the learned Counsel for the Appellant has strenuously tried to highlight that the Appellant as being a government entity may be given concession in Condoning delay, in contrast to a private entity as government entities are engaged in various statutory functionality. We are afraid that we cannot accord any attention to the aforesaid submission of the learned Counsel for the Appellant. Different yard-sticks cannot be employed for a government entity and a private body for deciding an application for condonation of delay. The law of limitation applies in equal force to both the litigating parties. Whether it is a government body or a private, the parties have to show existence of "sufficient cause" in their favour, before the discretionary power of the court could be triggered for condoning the delay. The said understanding of this court gathers specific significance in the wake of section 18 of the Arbitration & Conciliation Act, which mandates for equal treatment of the parties.

34. The Hon'ble Supreme Court in the case of Shivamma (Dead) by LRS (Supra) has also considered as to whether there was any room for largesse for State lethargy and leisure under Section 5 of the Limitation Act. After considering various earlier decisions on the subject, ultimately, the Supreme Court opined that prior to the decision of Postmaster General vs. Living Media India Ltd., reported in (2012) 3 SCC 563; the approach was characterized by judicial sympathy towards the State and its instrumentalities in matters of condonation of delay, owing to the peculiar nature of their functioning. At the same time, there also existed contrary views such as State of W.B. vs. Administrator, Howrah Municipality, reported in (1972) 1 SCC 366; and Lanka Venkateswarlu (D) by LRS vs. State of A.P. and ors., reported in (2011) 4 SCC 363; which held that, irrespective of whether the litigant is a Government entity or a private individual, the provisions of limitation would apply uniformly, and any leeway shown by the Courts would also remain the same. The law as it presently stands post the decision of Postmaster General (supra) as unambiguous and clear. Condonation of delay is to remain an exception, not the rule. Governmental litigants, no less than private parties, must demonstrate bona fide, sufficient, and cogent cause for delay. Absent such justification, delay cannot be condoned merely on the ground of the identity of the applicant. Hon'ble Supreme Court has further observed

that on a combined reading of State of Rajasthan & Anr. vs. Bal Kishan Mathur (Dead) through Legal Representative, reported in (2014) 1 SCC 592; and Sheo Raj Singh vs. Union of India, reported in (2023) 10 SCC 531; it is equally manifest that the ratio of Postmaster General (supra) is, in essence, twofold. First, that State or any of its instrumentalities cannot be accorded preferential treatment in matters concerning condonation of delay under Section 5 of the Limitation Act. The State must be judged by the same standards as any private litigant. To do otherwise would compromise the sanctity of limitation. Secondly, that the habitual reliance of Government departments on bureaucratic red tape, procedural bottlenecks, or administrative inefficiencies as grounds for seeking condonation of delay cannot always, invariably accepted as a "sufficient cause" for the purpose of Section 5 of the Limitation Act. If such reasons were to be accepted as a matter of course, the very discipline sought to be introduced by the law of limitation would be diluted, resulting in endless uncertainty in litigation.

35. This court also finds that the learned Counsel for the Appellant Mr. Depanshu Dass has tried to persuade and also make a last-ditch effort to convince us by submitting that the Appellant has a very good case on merits and as such the discretionary power of this Court in condoning the delay may be exercised liberally. We are clear in our minds that every objection predicated on limitation raises, in one sense, is pertinently a question anterior to the merits. However, the Court is called upon, not to examine whether the challenge is well-founded or not, but whether it is one which the statute permits within the permissible limitation. The Supreme Court in M/s Borse Brothers Engineers & Contractors (Supra) clearly held that merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. The aforesaid proposition had been vividly held by the Supreme Court in the case of Post Master General (Supra), wherein it was held as follows:

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few." 36. Echoing the same principle, recently the Hon'ble Supreme Court in the aforesaid Shivamma (Dead) by LRS (Supra) has also observed that the Courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the Court, the inquiry is confined to whether "sufficient cause" has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation or not. The merits of the underlying case are wholly extraneous to this inquiry. If Courts were to look into the merits of the matter at this stage, it would blur the boundaries between preliminary procedural questions and substantive adjudication, thereby conflating two distinct stages of judicial scrutiny. The purpose is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay. Test of "sufficient cause" cannot be substituted by an examination of the case on merits.

37. Further, if merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain. Yet another practical reason has been given by the Hon'ble Supreme Court as to why merits must not be considered at the stage of delay condonation that is it risks prejudicing the mind of the Court against one party even before the matter is substantively heard. By glancing into merits prematurely, the Court may inadvertently form a view that colours the fairness of the subsequent adjudication. The judicial discipline required at this stage demands that only the cause for delay be scrutinized, and nothing more. Therefore, we cannot consider the merits of the matter at this stage.

38. Thus, now the issue remains as to whether the impugned order is unsustainable in the eyes of law and requires any interference by this court.

39. As aforesaid, we have ourselves taken the arduous task of examining the case on the aspect as to whether the appellants were able to explain a 'sufficient cause", which prevented them in filing the Application for setting aside the Award or not. Unfortunately, we could not subscribe to the cause of taking more than 17 days by the Appellants authority in signing and sending the Application for filing, wherein both the authority and the Court meant for filing were located in the same place i.e. Lucknow. Obviously, the said delay cannot be encompassed within the meaning of "sufficient cause" in view of the aforesaid provisions of law propounded by the Hon'ble Supreme Court in the case of Shivamma (Dead) (supra). The affidavit filed by the appellants explaining the delay is inadequate and insufficient. No effort has been made to

explain the delay of 28 days, so as to come within the periphery of "sufficient cause". The explanation offered is nothing but a lame excuse. The Appellant were negligent in approaching the court and their explanation of delay seems to not bonafide and does not meet the minimum threshold required for this court to exercise its discretion in condoning the delay of 28 days within the extended period of 30 days.

40. We find that the learned Commercial Court has also returned a finding that the delay caused cannot be condoned as it fell foul of being a "sufficient cause'. The learned Commercial Court nowhere missed the woods for the tree in returning a finding that the discretion available in view of proviso to Section 34(3) of the Act cannot be exercised in the given facts and circumstances. Additionally, the cavalier attitude of the Appellants was highlighted further by noting that the objection to the Award were filed with a delay of 28 days and was also inadequately stamped and since the requisite stamp came to be paid only on 15.02.2025 i.e. after more than 10 months and 10 days, the Objections came to be heard and decided only thereafter.

41. Keeping in view the limited scope of its interference under Section 37 of the Arbitration and Conciliation Act, 1996 and the deficient explanation in seeking condonation of delay in filing the Application for setting aside the Award under Section 34 of the Act, we are in complete agreement with the order dated 05.06.2025 passed by the learned Commercial Court, Lucknow.

42. Before we part with, we must also understand that any court while exercising its discretion to condone a delay on the ground of having shown a "sufficient cause" by a party not only takes into consideration the diligence and genuineness of the cause explained by the said party, but also balances the same with the right accrued in favour of the contesting party. The aforesaid view was taken by the Hon'ble Supreme Court in the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157 wherein the Court held that:

"23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

43. As a sequel to our discussion made herein above and for all the reasons, the present Appeal fails and as such the same being devoid of any merit is accordingly **dismissed**.

44. There shall be no order(s) as to cost.

(2026) 7 ILRA 1234
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.07.2026

BEFORE

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

Criminal Misc. Writ Petition No. 9542 of 2026

Saubhangini Shukla & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Matter pertains to whether impugned FIR dated 19.04.2026, alleging kidnapping/enticement of first petitioner (a major) by the second petitioner, is liable to be quashed where two consenting adults have married of their own free will and choice, and whether continuation of investigation and insistence on recording of statements notwithstanding the prosecutrix's stand already recorded before the High Court, amounts to an abuse of process of law and infringement of petitioners' fundamental right to liberty.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - s 87 - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 180 and 183 - Constitution of India, 1950 - Article 21 - FIR - Quashing of - Personal liberty - Consenting adults to marry person of their choice - Police investigation - Continued despite woman's clear statement before High Court - Impermissible - Scope of - Costs imposed - The petitioners, both major and well-educated citizens, having been in a relationship for about a year, solemnised their marriage according to Hindu rites on 18.02.2026 at Arya Vedic Sabha, Prayagraj, whereafter, upon the second petitioner disclosing the said marriage to her father and brother on 17.04.2026, they allegedly assaulted her and threatened to kill her and her husband, on account of which she sent a written application to the Superintendent of Police and Station House Officer seeking protection of her life and liberty - Notwithstanding the same, the fourth respondent, being the first petitioner's father, lodged the impugned FIR dated 19.04.2026, alleging enticement of his daughter, pursuant whereto investigation was set into motion and efforts made to trace the petitioners, until, on 29.04.2026, both petitioners appeared before the High Court, whereupon the statement of first petitioner was recorded viva voce, on the strength of which the Court stayed further investigation and the petitioners' arrest and restrained the fourth respondent from causing harm to them - Despite the said interim order and recorded statement of prosecutrix affirming her free and voluntary marriage to second petitioner, the Superintendent of Police in compliance/counter affidavit, persisted in asserting that the investigation, including recording of petitioners' statements must be completed, occasioning the filing of instant writ petition for quashing of impugned FIR and consequential proceedings.

Held*:* After the prosecutrix/petitioner no. 1 has had her statement recorded by Division Bench of High Court, no Court in the State or police authority have business, in a matter like the present one, to record any further statement for first petitioner and form a different opinion on its basis - If the Police wanted to close the investigation, they could have done it on the basis of prosecutrix's statement recorded in exercise of jurisdiction under Article 226 of Constitution - Petitioners are right that the Police are indeed siding with the fourth respondent and wish to carry on the investigation by recording statements of parties, where they have

already disclosed their mind before High Court viva voce and their stand has been reduced to writing in the orders - The carrying on of this investigation into an adult's free choice of her partner and marriage between two major citizens of country is not only an abuse of process of criminal law, but also gross violation of fundamental right to liberty guaranteed under Article 21 of Constitution - Considering the action of Police in insisting that they would still investigate the marriage, despite earlier detailed order on 29.04.2026, and the act of fourth respondent in lodging an FIR regarding a marriage between his daughter who is a major and a person of her choice, thus, the court imposed costs on the State and fourth respondent - **Accordingly, impugned FIR quashed, petition allowed**. [Paras 14 to 17] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Constitution of India, 1950.

List of Keywords

Writ petition; s. 87 of BNS; ss. 180 and 183 of BNSS; Cognisable offence; Investigation; Blandishment; Arya Vedic Sabha, Prayagraj; Assistant Teacher in primary school; Enticement; Marriage was solemnised; Accomplished persons with good education; Superintendent of Police, Bhadohi; Fundamental right; Constitution of India; Injunction; Interim order; Contumacious; Abuse of process of law; General Diary of Police Station; Red ink; FIR Quashed; Costs imposed on police authority and informant - Petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 9542 of 2026

From the FIR dated 19.04.2026 in Crime No. 108 of 2026, Police Station Suriyavan, District Bhadohi.

Appearances for Parties

Adv. for the Petitioner(s):
Abhishek Kumar Srivstava

Advs. for the Respondent(s):
Vijay Chandra Srivastava, Sunita Sharma, Shashi Shekhar Tiwari

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

This writ petition is directed against the impugned First Information Report dated 19.04.2026, giving rise to Crime No. 108 of 2026, under Section 87 of the Bharatiya Nyaya Sanhita, 2023, Police Station Suriyavan, District Bhadohi.

2. The case of the first and second petitioner is that they are major according to the laws of the country, and were into a relationship for the past one year. They have, therefore, decided to marry and stay together for life. Their marriage has been solemnised on 18.02.2026 at the Arya Vedic Sabha, Prayagraj. Both the petitioners are not only of the age of majority, but well educated. They have passed their M.Sc., BTC. According to the high school certificate, the date of birth of the first petitioner is 06.01.1998, whereas that of the second petitioner, is 20.02.1999. Thus, petitioner no. 1 is aged 28 years, whereas petitioner no. 2, 26 years. A copy of the petitioners' marriage

certificate dated 18.02.2026 from the Arya Vedic Sabha, Prayagraj, and some photographs of the ceremony are on record of the writ petition. It is also asserted that this is the first marriage for both the petitioners and they had not married previously. Petitioner no. 2 is a newly-appointed Assistant Teacher in a primary school at Madhya Pradesh, and can, by himself, support the first petitioner.

3. It is averred in paragraph no. 15 that after her marriage to petitioner no. 1, the second petitioner brought the fact to the notice of her father and brother on 17.04.2026, which annoyed them much. They beat her up and threatened to kill her as well as her husband. She left her parents' home and gave an application to the Superintendent of Police, Bhadohi as well as the Station House Officer, Police Station Suriyavan, District Bhadohi, which she sent through registered post on 17.04.2026 to protect the petitioners' life and liberty from the fourth respondent, who is her father. A copy of the said application is also on record as well as postal receipts of dispatch.

4. It is the further case of the petitioners that both of them are living happily together as husband and wife, but the fourth respondent, who is the first petitioner's father, and the other family members, have not taken kindly to the marriage and, in collusion with the Police, are out to arrest them illegally, separate them forcibly and hand over the first petitioner, an adult and a major, back to her father, against her will and wish. Both the petitioners have expressed apprehension to their life and liberty at the hands of the fourth respondent. It is then said that the petitioners, being of the age of majority, are entitled to marry and stay together as man and wife, and any infraction thereof at the instance of her father, in connivance with the Police, is an abuse of process of law.

5. On 29.04.2026, when this petition came up for admission, both the petitioners appeared and we recorded the stand of the first petitioner viva voce in Court, to which we shall presently allude. On the basis of the first petitioner's stand, we admitted this petition to hearing, and it being a case where two major citizens of the country had married according to Hindu rites, we prima facie found that there was nothing in the FIR to investigate. Therefore, by an interim order of the same date, we stayed investigation by the Police and also the petitioners arrest. By a separate injunction temporary, we restrained the fourth respondent and members his family, friends and associates from causing any injury in life and limb to the first and the second petitioner and obliged the Superintendent of Police to ensure that no harm comes to the petitioners at the hands of the fourth respondent or anyone acting on his behest.

6. Mr. Vijay Chandra Srivastava and Ms. Sunita Sharma, Advocates who appeared on behalf of respondent no. 4, have not filed any counter affidavit. A compliance affidavit has been filed by the Superintendent of Police, Bhadohi, which we have treated as a counter affidavit. The petitioner has waived his right to file a rejoinder.

7. Heard Mr. Abhishek Kumar Srivastava, learned Counsel for the petitioner, Mr. Vijay Chandra Srivastava and Ms. Sunita Sharma, learned Counsel appearing on behalf

of respondent no. 4, and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of the State.

8. In the compliance affidavit, which is taken to be a return in the matter on behalf of the State, the Superintendent of Police has said that the FIR giving rise to the crime disclosed a cognisable offence, and accordingly, it was registered. In Case Diary No. 1 on 20.04.2026, the Investigating Officer recorded the statement of the scribe of the FIR, the informant and conducted a site inspection. The informant reiterated his allegations in the FIR that his daughter has been taken away by blandishment by the second petitioner, and their whereabouts were not known. The Superintendent of Police has said that local inquiries and deployment of informants was done, but no fruitful information was forthcoming. In Case Diary No. 2 dated 22.04.2026, further efforts were made to locate petitioner no. 1, and the nominated accused, that is to say, petitioner no. 2. However, no leads emerged, and informants were again deployed for tracing out both the petitioners.

9. On 24.04.2026, the Investigating Officer received, through registered post, an intimation sent by petitioner no. 1, saying that she had solemnised marriage with petitioner no. 2 at the Arya Vedic Sabha, Prayagraj. This information was entered in Case Diary No. 3 and placed on record.

10. It is next averred in paragraph no. 10 that upon receipt of this Court's order on 29.04.2026, all further investigations and consequential proceedings have been kept in abeyance in strict compliance. The order of this Court, restraining respondent no. 4 from harming the petitioners too has been served, and a copy of the memo has been annexed to the return.

11. The next averment in paragraph no. 12 says that statements of both petitioners have to be recorded under Section 180 and 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Since both petitioners are adults and fully capable of making their own decisions, the Police have no occasion or authority to interfere in their personal life. It is, therefore, asserted that the petitioners may kindly be directed to cooperate with the ongoing investigation by presenting themselves for recording their statements under the aforesaid provisions. Upon cooperation being extended by the petitioners and their statements recorded, the investigation shall be concluded expeditiously, in accordance with law.

12. We may now, at this stage, hark back to the statement of the prosecutrix, the first petitioner before this Court, which is recorded in our order dated 29.04.2026. It reads :

Q. आपका नाम?

A. सौंभागिनी शुक्ला ।

Q. आपके पिताजी का नाम?

A. श्री प्रकाश नारायण शुक्ला ।

Q. आपकी उम्र कितनी है?

A. २७ साल।

Q. आप कहाँ तक पढ़ी हुई हैं?

A. जी मैं पोस्ट ग्रेजुएट हूँ।

Q. क्या डिग्री है आपके पास?

A. B.Sc. की है, M.Sc. (Physics and Math) की है और मैंने D.El.Ed.

B.T.C. किया हुआ है।

Q. आपने शादी की है?

A. Yes.

Q. किससे शादी की है आपने?

A. श्री प्रवि गुप्ता से।

Q. आप इस वक्त कहाँ से आयी हैं?

A. सर मैं श्री प्रवि के साथ आयी हूँ पर कहाँ से आयी हूँ सुरक्षा कारणों के वजह से यह नहीं बता सकती।

Q. आप किसके साथ रहना चाहती हैं?

A. श्री प्रवि के साथ।

Q. आप अपने पिता के पास वापस जाना चाहती हैं?

A. नामर्ली जैसे लड़कियाँ मायका ससुराल करती हैं, अगर वो चाहें तो, पर मैं अपना पूरा फ्यूचर श्री प्रवि के साथ जीना चाहती हूं।

13. Upon a reading of the stand of the first petitioner, about whose identity, there was, no doubt, put forth by learned Counsel appearing for the fourth respondent, Mr. Vijay Chandra Srivastava, who was present on 29.04.2026, we are of opinion that there is absolutely no case worth investigation, and the Police utterly wasting their time in going about the exercise. Two adults have married each other according to Hindu rights and both are accomplished persons with good education. There is absolutely no angle of enticement or blandishment involved in this case, considering the age and the education of parties. The first petitioner is aged 27/28 years.

14. We are utterly disillusioned by the stand taken by the Superintendent of Police, Bhadohi that the investigation has to be completed. This is a case where the matter ought to have been concluded, in view of the statement recorded before us. The insistence of the Superintendent of Police in getting the statement of the prosecutrix recorded under Section 180 BNSS before the Investigating Officer and Section 183 BNSS before the Judicial Magistrate is almost contumacious. After the prosecutrix/petitioner no. 1 has had her statement recorded by a Division Bench of the High Court, no Court in the State or police authority have business, in a matter like the present one, to record any further statement for the first petitioner and form a different opinion on its basis. If the Police wanted to close the investigation, they could have done it on the basis of the prosecutrix's statement recorded in the exercise of our jurisdiction under Article 226 of the Constitution.

15. We are minded to think that the petitioners are right that the Police are indeed siding with the fourth respondent and wish to carry on the investigation

by recording statements of parties, where they have already disclosed their mind before this Court viva voce and their stand has been reduced to writing in our orders. The carrying on of this investigation into an adult's free choice of her partner and marriage between two major citizens of the country is not only an abuse of process of criminal law, but also gross violation of their fundamental right to liberty guaranteed under Article 21 of the Constitution. The liberty, that a person, who is a major, enjoys, includes the liberty to marry a person of his/her choice. The police have no business in the matter to be nosy parkers. We have repeatedly reminded the Police that it is no business of theirs to investigate marriages. They ought investigate crimes. This is no crime, where any investigation is required.

16. Considering the action of the Police in insisting that they would still investigate the marriage, despite our detailed order on 29.04.2026, and the act of the fourth respondent in lodging an FIR regarding a marriage between his daughter who is a major and a person of her choice, we are of opinion that some costs deserve to be imposed on both parties, that is to say, the State as well as the fourth respondent.

17. In the result, this petition **succeeds** and is **allowed**. The impugned FIR dated 19.04.2026, giving rise to Case Crime No. 108 of 2026, under Section 87 BNS, Police Station Suriyavan, District Bhadohi is hereby **quashed**. A cost of **₹1000** shall be payable, jointly and severally, by the Superintendent of Police, Bhadohi and the Station House Officer, Police Station Suriyavan, District Bhadohi, to petitioner no. 1, and a sum of ₹5000 by the fourth respondent, also to the first petitioner. The said costs shall be deposited with the learned Registrar General of this Court within a week of the receipt of this order. In the event, costs are not deposited, the learned Registrar General shall issue a recovery certificate against the defaulting respondent(s), authorising the Collector, Bhadohi to recover the sum of money as arrears of land revenue; and once the costs are received in account by the learned Registrar General, the same shall be paid to the first petitioner. In case the costs are deposited by any of the respondents, as directed, of their own, it would be transmitted in account by the learned Registrar General to the first petitioner immediately.

18. An entry shall be caused to be made in the General Diary of Police Station, Suriyavan, District Bhadohi by the learned Chief Judicial Magistrate, Bhadohi at Gyanpur in red ink that proceedings of Case Crime No. 108 of 2026, under Section 87 BNS, Police Station Suriyavan, District Bhadohi stand quashed under orders of this Court.

19. The Registrar (Compliance) is directed to communicate this order to the learned Chief Judicial Magistrate, Bhadohi at Gyanpur and through her, to the Superintendent of Police, Bhadohi and the Station House Officer, Police Station Surivayan, District Bhadohi.

(2026) 7 ILRA 1240
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.07.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

First Appeal No. 119 of 2025

Syed Mohd. Momin Akhtar **...Appellant**
Versus
Saima Faruqi **...Respondent**

Issues for Consideration

(i) Whether the Family Court was justified in dismissing a suit for declaration of matrimonial status founded on Talaq-e-hasan, on the premise that the Talaq was neither denied nor challenged and that the suit was barred by Section 34 of the Specific Relief Act and Section 20 of the Code of Civil Procedure?

(ii) What is the scope of enquiry by the Family Court under Section 7 of the Family Courts Act, 1984 while endorsing an extra-judicial divorce by Talaq under Muslim Personal Law and declaring the marital status of the parties?

Headnotes

Muslim Personal Law (Shariat) Application Act, 1937 — S. 2 — Muslim Women (Protection of Rights on Marriage) Act, 2019 — Ss. 2(c), 3, 4 — Talaq — Modes — Validity.

HELD: In respect of dissolution of marriage, including talaq, the rule of decision where the parties are Muslims is the Muslim Personal Law (Shariat). Talaq may be effected as Talaq-e-ahsan, Talaq-e-hasan or Talaq-e-bid'at; after the coming into force of the Act of 2019 w.e.f. 31.07.2019, Talaq-e-bid'at or any similar form having the effect of instantaneous and irrevocable divorce is void, illegal and punishable. Talaq is an expressly recognised and valid mode of dissolution of marriage under Muslim Personal Law; it may take place as an extra-judicial divorce and is complete the moment the husband pronounces divorce in accordance with the recognised mode. [Paras 12-19]

Family Courts Act, 1984 — S. 7, Explanation (b) and (d) — Endorsement of extra-judicial divorce by Talaq — Declaration of marital status — Scope of enquiry.

HELD: The endorsement of extra-judicial divorce and consequential declaration of marital status by the Family Court under Section 7(b) is contemplated only to have a public record of the extra-judicial divorce. The Family Court has simply to ascertain whether a valid pronouncement of Talaq was made in accordance with the applicable law; no further enquiry, as in adversarial litigation, is contemplated. Where the other side chooses not to dispute the claim, the Court, on being *prima facie* satisfied of a valid pronouncement of Talaq, may endorse the same and declare the marital status of the parties, treating the proceedings as uncontested. Any aggrieved party may challenge the validity of such divorce in appropriate proceedings, and any declaration under Section 7(b) or 7(d) shall remain subject to the final adjudication of such challenge. Every member of a civilised society is entitled to a clear and definite marital status, and judicial endorsement thereof is, in appropriate circumstances, imperative. [Para 31]

Evidence — Admissions in pleadings — Judicial admission — Fatwa — Evidentiary value.

HELD: Admissions, if clear, are the best proof of the facts admitted; judicial admissions in pleadings stand on a higher footing than evidentiary admissions, and the Court may pass an order on the basis of an undisputed admission. The admission of the respondent-wife in her written statement and in her affidavit as DW-1, wherein she accepted the Talaq and herself prayed for a decree, leaves no room to disbelieve the factum of Talaq. A fatwa is not a verdict of any kind but only an expert opinion based on classical sources. [Paras 25-29]

Family Courts Act, 1984 — S. 7 — Specific Relief Act — S. 34 — Code of Civil Procedure, 1908 — S. 20 — Suit for declaration of matrimonial status dismissed despite Talaq being proved and undisputed — Perversity.

HELD: Where the Family Court itself recorded a categorical finding that Talaq-e-hasan between the parties was proved and undisputed, the respondent having admitted the same in pleadings and evidence, dismissal of the suit on the ground that no one had challenged the Talaq and that the suit was barred by Section 34 of the Specific Relief Act and Section 20 CPC was totally misplaced, perverse and unsustainable; the Family Court ought to have declared the matrimonial status of the parties as 'divorced'. The suit being cognizable under Section 7 of the Family Courts Act, 1984, the Talaq in question is liable to be endorsed. [Paras 30, 32-34]

Appeal allowed. Impugned judgment and order dated 20.05.2025 set aside; suit for declaration decreed and matrimonial status of the parties declared as divorced. (E-14)

Case Law Cited

Shayara Bano v. Union of India, (2017) 9 SCC 1 — relied on; *Asbi K.N. v. Hashim M.U.*, 2021 SCC OnLine Ker 3945 — relied on; *X v. Y*, 2021 (2) KHC 709 — referred to.

List of Acts / Statutes

Family Courts Act, 1984; Muslim Personal Law (Shariat) Application Act, 1937; Miscellaneous Personal Laws (Extension) Act, 1959; Dissolution of Muslim Marriage Act, 1939; Muslim Women (Protection of Rights on Marriage) Act, 2019; Specific Relief Act; Code of Civil Procedure, 1908.

List of Keywords

Talaq; Talaq-e-hasan; Extra-judicial divorce; Muslim Personal Law; Declaration of matrimonial status; Family Court; Uncontested proceedings; Judicial admission; Fatwa; Endorsement of divorce.

Case Arising From

Judgment and order dated 20.05.2025 passed by the Additional Principal Judge, Court No. 8, Family Court, Lucknow, in Matrimonial Case No. 3872 of 2024, Syed Mohd. Momin Akhtar v. Saima Faruqi.

Appearance for Parties

For the Appellant(s): Pramod Kumar Shukla, Anshul Pandey, Ashish Kumar Mishra, Mohd Umar.

For the Respondent(s): Aftab Alam Malik.

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

1. By means of the present Appeal filed under Section 19 of the Family Courts Act, 1984, the appellant/husband has assailed the judgment and order dated 20.05.2025 passed by the learned Additional Principal Judge, Court No.8, Family Court, Lucknow in Matrimonial Case No. 3872 of

2024 (Syed Mohd. Momin Akhtar Vs. Saima Faruqi) and has also prayed for declaration of matrimonial status of parties as 'divorced'.

2. The facts of the case in brief, shorn of unnecessary details, are that the appellant and the respondent are Sunni Muslims, their marriage was solemnized on 01.02.2022 as per the customs and practices recognized under the Muslim Personal law.

3. On account of some matrimonial disputes between the spouse / parties to this appeal, they got separated. The respondent left her matrimonial house on 12.09.2023 and started residing at her mother's house. Since then, the appellant and respondent are living separately. It is the pleaded that the appellant that he tried his level best to save their marriage, but all his efforts went in vain as no amicable settlement could have arrived. Having failed to settle the strife; appellant approached Darul Kaza Faringi Mahal at Aishbagh (herein after referred to as 'Darul Kaza'), Lucknow and sought it's help towards the settlement of discord through conciliation between the parties. On the call of Darul Kaza, the respondent appeared before the same on 22.05.2024 and demanded Talaq from the appellant. Under such circumstances, the appellant, having no other option but to resort to Talaq-e-hasan. Accordingly, the respondent (wife) was conveyed the same by means of three notices, at an interval of about one month each. The first Talaq notice was sent to the respondent, through registered post on 22.07.2024, the second notice on 22.08.2024 and finally the third notice on 25.09.2024. All the said three notices of Talaq, sent through registered post were duly received by the respondent. However, during the aforesaid period the respondent never contacted the appellant nor responded to the said notices in any manner, whatsoever. Thereafter, the appellant sought opinion from the Darul Uloom Nadwatul Ulema. On specific query regarding the status of the matrimonial relationship between the parties, Darul Uloom Nadwatul Ulema, on 07.10.2024 gave the following opinion:

"In the present matter, the matrimonial bond has already come to an end, and there is no possibility of reconciliation or renewal of Nikah. That is all"

4. It is stated on behalf of the appellant that he paid Rs. 1,00,000/- (Rupees one lakh) as Mehar to the respondent.

5. It is pleaded on behalf of the appellant that to get a formal declaration of the dissolution of marriage / Talaq, he approached the competent Court of law by preferring a declaratory Suit under Section 7 of the Family Courts Act, 1984, on 29.10.2024; before the Court of Principal Judge, Family Court, Lucknow. The said Suit was registered as Case No. 3872 of 2024 (Syed Mohammad Momin Akhtar versus Saima Faruqi). The respondent submitted her Written Statement on 24.01.2025, inter-alia admitting the averments made in the plaint. Further, the respondent / defendant in her Statement (as DW-1), filed in evidence by way of an affidavit dated 26.03.2025, showed her willingness for grant of decree of Talaq.

6. The Court of Learned Additional Principal Judge, Family Court, Lucknow vide the impugned judgement and order dated 20.05.2025 dismissed the aforesaid Suit on the premise that since neither the defendant nor any other person had challenged or denied the Talaq given by the plaintiff, and the plaintiff did not state in the plaint or evidence as to why such declaration is

needed; therefore, the suit being barred by Section 34 of the Specific Relief Act and Section 20 C.P.C. is liable to be dismissed.

7. Assailing the impugned judgment and order dated 20.05.2025, the learned counsel asserted that the learned court below has wrongly applied the provisions of section 34 of the Specific Relief Act and Section 20 of the C.P.C. He contended that the plaintiff / appellant did not file the Suit under section 34 of the Specific Relief Act nor the issue of jurisdiction or cause of action was involved in the Suit therefore, the grounds on which the suit has been dismissed is totally baseless, perverse and unsustainable in law.

8. Learned counsel for the appellant has further contended that the learned Family Court did not have taken into consideration the statements of the witnesses wherein both, the appellant as well as the respondent have admitted the Talaq. It is further contended that the suit filed by the plaintiff is for declaration of the Talaq which is undisputed as is evident from the written statement filed by the defendant / respondent.

9. Vakaltnama on behalf of the respondent has been filed by Sri Aftab Alam Malik, Advocate. However, there is nothing on record to indicate that any reply / objection has been filed by him.

10. Heard the learned counsel for the appellant and perused the material available on record.

11. For better appreciation of facts, it would be apposite to have a glance over the law on the subject and principles governing Talaq under Muslim Personal Law.

12. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 provides for the application of personal law to Muslims. Subsequently, the Miscellaneous Personal Laws (Extension) Act, 1959 made it applicable to the whole of India except the State of Jammu and Kashmir. For ready reference, Section 2 of the Act of 1937 is quoted herein below:

"Application of personal law to Muslims.--Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments), the rules of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (Shariat)."

13. A bare reading of the above-quoted provision shows that, in respect of the dissolution of marriage, the rule of decision in cases where the parties are Muslims shall be Muslim Personal Law (Shariat). It further, mentions dissolution of marriage and adds that it will include talaq, ila, zihar, lian, khula and mubaraat. Talaq and Khula are the terms of Muslim matrimonial law meaning divorce by men and at the instance of women respectively, while mubaraat denotes divorce by mutual consent. It would not be out of place to mention that Ila, zihar and lian are pre-Islamic customary concepts abolished by Islamic law.

14. Section 5 of the Act of 1937 dealing with the dissolution of marriage by Court in certain circumstances came to be repealed by the Dissolution of Muslim Marriage Act, 1939 w.e.f. 17.03.1939. The aim and objective of the said Act of 1939, as is reflected from the legislation itself is to clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

15. Under the Muslim Personal Law (Shariat); Talaq may be effected by a husband in any of the following ways:

Modes of talaq:

(i) Talaq-e-ahsan: a single pronouncement of talaq which remains revocable during the iddat period [about three months].

(ii) Talaq-e-hasan: three single pronouncements of talaq made one after the other in a course of at least three months.

(iii) Talaq-e-bid'at: a single pronouncement of talaq adding that it is irrevocable, or three pronouncements made at the same time [repeating the word talaq thrice or saying teen talaq]

16. After the coming into force of the Muslim Women (Protection of Rights on Marriage) Act, 2019 with effect from 31.07.2019, Talaq-e-bid'at, or any other similar form of Talaq having the effect of an instantaneous and irrevocable divorce pronounced by a Muslim husband, has been declared void, illegal, and punishable. For ready reference, Sections 2(c), 3, and 4 of the Act of 2019 are reproduced herein below:

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

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(b) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the married Muslim woman resides; and

(c) "talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

3. Talaq to be void and illegal. Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. Punishment for pronouncing talaq. - Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

17. Talaq may be effected orally (by spoken words) or by a written document called Talaq-nama. No particular form of words is prescribed for effecting a Talaq. If the words are express, or well understood as implying divorce, no proof of intention is required. If the words are ambiguous, the intention of the husband to end the marriage has to be proved. However, under the Shia law, Talaq has to be pronounced using a particular format in the presence and hearing of a religious functionary and competent witnesses.

18. The Hon'ble Supreme Court of India, while dealing with the issue of rights of Muslim women regarding the dissolution of marriage, in the case of **Shayara Bano versus Union of India**, reported in **(2017) 9 SCC 1**, has been pleased to lay down the foundational principles governing the application of Muslim Personal Law to matrimonial matters. For convenience, the relevant paragraph of the said judgment is quoted here-in-below:

"145. A close examination of Section 2, extracted above, leaves no room for any doubt, that custom and usage, as it existed amongst Muslims, were sought to be expressly done away with, to the extent the same were contrary to Muslim Personal Law. Section 2 also mandated, that Muslim Personal Law (Shariat) would be exclusively adopted as " the rule of decision" in matters of intestate succession, specIal property of females, including all questions pertaining to " personal property inherited or obtained under contract or gift or any other provision of "Personal Law", marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, gifts, trusts and trust properties, and wakfs". Section 3 added to the above list, " adoption, wills and legacies", subject to the declaration expressed in Section 3."

.....
.....

291. If the Muslim Personal Law (Shariat) Application Act, 1937, had incorporated the manner in which questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or matters such as marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (as in Section 2 thereof), had to be dealt with, as per Muslim Personal Law"Shariat" according to the petitioners, it would be quite a different matter. All the same, the Shariat Act did not describe how the above questions and subjects had to be dealt with. And, therefore, for settlement of disputes amongst Muslims, it would need to be first determined what the Muslim Personal Law, with reference to the disputation, was. Whatever it was, would in terms of Section 2 of the 1937 Act, constitute "the rule of decision"."

19. In view of the above it is abundantly clear that Talaq is an expressly recognised and valid mode of dissolution of marriage under Muslim Personal Law. The Talaq may take place as an extra-judicial divorce and is complete the moment the husband pronounces divorce in accordance with the recognized mode as prescribed under the Muslim Personal Law . (Shariat).

20. The Family Courts Act, 1984 confers jurisdiction upon the Family Court to entertain suits and proceedings of the nature referred to in the Explanation appended to Section 7. For ready reference the same is quoted herein below:

"7. **Jurisdiction.-**

(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-

The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

21. The High Court of Kerala at Ernakulam, in the case of **Asbi K.N versus Hashim M.U., reported in 2021 SCC OnLine Ker 3945**, has laid down comprehensive guidelines for the Family Court's role in cases of extra-judicial divorce. In Paragraph 4 of the said judgment, the Court has been pleased to hold:

"4. The Division Bench of this Court in X v. Y (2021 (2) KHC 709) has held that the Family Court in exercise of the jurisdiction under Explanation (d) of S.7 of the Act is competent to endorse an extrajudicial divorce to declare the marital status of a person. It was made clear in the said judgment that in the matter of unilateral dissolution of marriage invoking khula and talaq, the scope of enquiry before the Family Court is limited and in such proceedings, the Court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. In the matter of mubaraat, the Family Court shall declare the marital status without further enquiry on being satisfied that the dissolution was effected on mutual consent. It was observed that such matter shall be disposed treating it as uncontested matter without any delay by passing a formal order declaring the marital status. It was further held that if any person wants to contest the effectiveness of khula or talaq, it is open for such person to contest the same in appropriate manner known under the law.

5. The unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by mubaarat mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S.7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the "dower". It could be ascertained by perusal of the recitals in talaq nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaarat, if the Court is prima facie satisfied that mubaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaarat or talaq-e-tafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum. The declaration granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any. We consider it desirable to formulate the following guidelines to be followed by the Family Court in a petition

filed u/s 7(d) of the Act to endorse an extrajudicial divorce under Muslim Personal Law and to declare the marital status of the parties to the marriage.

(i) On receipt of the petition, the Family Court shall issue notice to the respondent.

(ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of both parties. The parties shall also be directed to produce talaq nama/khula nama (if pronouncement/declaration is in writing)/mubaarat agreement.

(iii) The Family Court shall thereafter on perusal of the recitals in talaq nama/khula nama/ communication of talaq, khula or talaq-e-tafweez (if available) and the statement of the parties, ascertain whether there was valid pronouncement of talaq/khula/talaq-e-tafweez. In the case of mubaarat, the Family Court shall ascertain whether the parties have executed and signed mubaarat agreement.

(iv) On prima facie satisfaction that there was valid pronouncement of talaq, khula, talaq-e-tafweez, as the case may be, or valid execution of mubaarat agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.

(v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an uncontested matter.

(vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.

(vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility."

22. In the present case, the facts that stands admitted and undisputed between the parties are that the marriage between the appellant and the respondent was solemnized on 01.02.2022 as per the practice recognized under the Muslim Personal Law. However, on account of matrimonial discord, the parties started living separately since 12.09.2023.

23. The appellant made efforts for reconciliation through Darul Kaza, Faringi Mahal, but the same could not materialize. The respondent / defendant on the call of the Darul Kaza, Faringi Mahal, at Lucknow, appeared and demanded Talaq. Accordingly, the appellant sent three separate Talaq notices dated 22.07.2024, 22.08.2024 and 25.09.2024 through registered post, the same were duly received by the respondent / defendant. Thereafter, the appellant, to ensure his matrimonial status pursuant to the said exercise of Talaq; sought opinion from the Darul Uloom Nadwatul Ulema. In response to the same the Darul Uloom Nadwatul Ulema on 07.10.2024 gave a categorical opinion / Fatwa that **"In the present matter, the matrimonial bond has already come to an end, and there is no possibility of reconciliation or renewal of Nikah".**

24. It is also to be noted that the defendant / respondent apart from the facts as narrated above has also not denied the receipt of amount of Rs. 1,00,000/- as Mehar.

25. From a bare perusal of the Written Statement dated 24.01.2025 filed by the defendant / respondent (Annexure-4) it is abundantly clear that she did not dispute the factum of Talaq nor did she contested the case by disputing the averments made in the plaint. Rather, in paragraph 16 of the same, she not only accepted the claim of the appellant / plaintiff but had stated to the extent that she has no objection if a decree is passed in the Suit. For better appreciation of the case, the contents of the aforementioned Written Statement is reproduced herein below:

" प्रतिवादिनी ने वादी द्वारा दाखिल किये गये दावे को पढ़कर ठीक से समझ लिया है जिसका प्रस्तरवार जवाब निम्न है :-

1. यह कि वाद पत्र की धारा 1 सही है।

2. यह कि वाद पत्र की धारा 2 के जवाब की आवश्यक्ता नहीं है।

3. यह कि वाद पत्र की धारा 3 के जवाब की आवश्यक्ता नहीं है।

4. यह कि वाद पत्र की धारा 4 सही है। अतः धारा 4 स्वीकार है।

5. यह कि वाद पत्र की धारा 5 के जवाब की आवश्यक्त नहीं है।

6. यह कि वाद पत्र की धारा 6 सही है तथा किसी भी टिप्पणी की आवश्यक्ता नहीं है।

7. यह कि वाद पत्र की धारा 7 सही हैं। मैं प्रतिवादिनी मेहर की रकम रू0 1,00,000/- (एक लाख रूपये) वादी से प्राप्त कर चुकी हूँ।

8. यह कि वाद पत्र की धारा 8 सही हैं। वादी व प्रतिवादिनी के कोई सन्तान नहीं है।

9. यह कि वाद पत्र की धारा 9 सही हैं जिस पर किसी भी टिप्पणी की आवश्यक्ता नहीं है।

10. यह कि वाद पत्र की धारा 10 सही है। प्रतिवादिनी मेदान्ता अस्पताल में नौकरी करती है तथा मुझ प्रतिवादिनी को भी तलाक की डिक्री की आवश्यक्ता है।

11. यह कि वाद पत्र की धारा 11 के जवाब की आवश्यक्ता नहीं है।

12. यह कि वाद पत्र की धारा 12 के जवाब की आवश्यक्ता नहीं है।

13. यह कि वाद पत्र की धारा 13 के जवाब की आवश्यक्ता नहीं है।

14. यह कि वाद पत्र की धारा 14 के जवाब की आवश्यक्ता नहीं है।

15. यह कि वाद पत्र की धारा 15 के जवाब की आवश्यक्ता नहीं है।

16. यह कि वादी के उपरोक्त वाद को स्वीकार करते हुए उक्त वाद□में डिक्री पारित की जाती है तो मुझ प्रतिवादिनी को कोई आपत्ति नहीं है।"

26. Further, in her statement on oath as DW-1, in evidence, she not only accepted the Talaq but herself prayed for a decree of divorce. For ready reference, relevant extract of the aforesaid Statement is quoted herein below:

"मेरा निकाह वादी के साथ दिनांक 01.02.2022 को मुस्लिम सुन्नी रीति रिवाज के अनुसार घरवालों एवं रिश्तेदारों की उपस्थिति में जनपद लखनऊ में सम्पन्न हुआ था। निकाह के पश्चात मैं विदा होकर वादी के घर भवन सं0 432/55-4ए/2 कैम्पबेल रोड, न्यू विद्या एकेडमी के सामने, लखनऊ गई और बतौर पत्नी वादी के साथ रहने लगी। शादी के कुछ समय बाद हमारे विचार मेल न खाने के कारण आपसी रिश्ते खराब होने लगे। बात ज़्यादा बढ़ी तो मैं दिनांक 12.09.2023 को वादी को छोड़कर अपने मायके चली गई तब से मैं अपने मायके में रह रही हूँ। दारूल कज़ा फरंगी महल ऐशबाग लखनऊ में बड़े बुजुर्गों के बीच दिनांक 22.05.2024 को एक बैठक हुई, मैंने उस बैठक में वादी के पास जाने से साफ मना कर दिया और खूब सोच समझ कर वादी से तलाक की माँग की।

जब वादी को इस बात का यकीन हो गया कि मैं उसके साथ रहने के लिये तैयार नहीं हूँ तो वादी ने इस्लामी शरीयत में बताए गये "तलाके हसन" की रीति को अपनाते हुए मुझे एक एक माह के अंतराल पर तलाक की तीन लिखित नोटिसें रजिस्टर्ड डाक द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को मैंने प्राप्त कर लिया तथा मुझे वादी द्वारा दी गई तलाक स्वीकार भी है। मैं निकाह में तयशुदा मेहर की रकम रू० 1,00,000/- (एक लाख रूपये) वादी से पहले ही प्राप्त कर चुकी हूँ। हमारी कोई संतान नहीं है। मुझको भी माननीय न्यायालय से तलाक की डिक्री की आवश्यकता है। माननीय न्यायालय द्वारा वादी के साथ मेरा निकाह दिनांक 01.02.2022 को विघटित करते हुये तलाक की घोषणात्मक आज्ञप्ति पारित किया जाना न्यायहित में उचित है।"

27. As is available on record (Annexure-2); the opinion / fatwa accorded by the Darul Uloom Nadwatul Ulema, Lucknow, also certified the Talaq in question as complete and final. It would not be out of place to mention here that although fatwa is not a verdict of any kind but just an expert opinion based on classical sources. The opinion is being sought and the reply is being given to the best of knowledge and belief of the person or body consulted. The Darul Uloom Nadwatul Ulema, Lucknow a widely recognized muslim seminary maintains a department known as Dar-ul-Ifta staffed by experts in religious laws who answer all sorts of queries believed to be of religious significance, their replies / opinions being popularly known as fatwa.

28. The admission made by the respondent / defendant in the Written Statement and in her own affidavit filed as DW-1 in evidence, leaves no room to disbelieve the factum of Talaq.

29. It is trite in law that admission, if clear, are by far the best proof of the facts admitted. Admission in pleadings or judicial admission, if admissible, made by the parties stand on a higher footing even that an evidentiary admission and the court can very well pass an order on the basis of an undisputed admission of a party in accordance with law. On an admission of facts either made in the pleadings or otherwise, whether orally or in writing, the court at any stage of the proceeding may make such order or give such judgment as it may think fit, having regard to such admission.

30. Upon careful reading of the impugned judgment and order, this Court finds that the learned Family Court although found the factum of Talaq between the parties, proved and also recorded categorical finding that the respondent / defendant did not have challenged the Talaq and has admitted the claims of the appellant / plaintiff as have been made in the plaint; yet dismissed the Suit on the premise that since, neither the respondent nor any other person had denied or challenged the Talaq, nor the appellant / plaintiff has disclosed in the plaint that what necessitated him to seek declaratory decree of Talaq, as such, the court is not competent to pass decree under Section 34 of the Specific Relief Act read with Section 20 C.P.C. The relevant part of the impugned judgement and order is extracted herein below for convenience:-

" प्रतिवादिनी की ओर से जवाबदावा कागज सं० ए-8 प्रस्तुत करते हुए कहा गया है ।

उभयपक्ष के अभिवचनों के आधार पर दिनाँक 10.02.2025 को निम्नलिखित वाद बिन्दु विरचित किये गयेः-

1. क्या उभयपक्ष के मध्य हुआ तलाक विधिमान्य है?

2. अनुतोष?

वादी की ओर से स्वयं का साक्ष्य शपथ पत्र पी०डब्लू0-1 के रूप में कागज सं० ए-11 को पत्रावली पर दाखिल किया गया है।

प्रतिवादिनी की ओर से स्वयं का साक्ष्य शपथ पत्र डी०डब्लू0-2 के रूप में कागज सं० ए-13 को दाखिल किया गया है।

वादी की ओर से दस्तावेजी साक्ष्य के रूप में कागज सं० सी-4/4 लगायत सी-4/14 प्रपत्रों की फोटोप्रतियाँ पत्रावली पर दाखिल की गयी हैं।

प्रतिवादिनी की ओर से दस्तावेजी साक्ष्य के रूप में स्वयं के आधारकार्ड की फोटोप्रति कागज सं० सी-9/2 को पत्रावली पर दाखिल किया गया है।

मैंने उभयपक्ष के विद्वान विधिक सलाहकार को सुना तथा पत्रावली का परिशीलन किया।

निस्तारण वाद बिन्दु संख्या-1

वाद बिन्दु सं0-1 इस आशय के विरचित किया गया है कि-क्या उभयपक्ष के मध्य हुआ तलाक विधिमान्य है?

वादी द्वारा अपने वाद पत्र में कथन किया गया है कि उसका निकाह प्रतिवादिनी के साथ दिनांक 01.02.2022 को मुस्लिम सुन्नी रीति रिवाज के अनुसार सम्पन्न हुआ था, निकाह के पश्चात प्रतिवादिनी विदा होकर वादी के घर आई और बतौर पत्नी रहने लगी। वादी ने प्रतिवादिनी का खाने पीने रहने व जरूरत की हर चीज का उचित इंतेजाम किया। शादी के कुछ समय बाद वादी व प्रतिवादिनी के विचार मेल न खाने के कारण आपसी रिश्ते खराब होने लगे और धीरे धीरे प्रतिवादिनी का व्यवहार वादी के प्रति गैर जिम्मेदाराना व क्रूर हो गया। प्रतिवादिनी दिनांक 12.09.2023 को वादी को छोड़कर अपने मायके चली गई तब से प्रतिवादिनी अपने

मायके में रह रही है। वादी ने प्रतिवादिनी को वापस लाने की हर मुमकिन कोशिश की लेकिन दारूल कजा फरंगी महल ऐशबाग लखनऊ में बड़े बुजुर्गों के बीच दिनांक 22.05.2024 को हुई बैठक में प्रतिवादिनी ने वादी के पास आने से साफ मना कर दिया और वादी से तलाक की माँग की। इसलिये वादी ने इस्लामी शरीयत में बताए गये तलाके हसन की रीति को अपनाते हुए 2 गवाहों की मौजूदगी में अपने पूरे होश व हवास में बिना किसी जोर व दबाव नाजायज कें दिनांक 22.07.2024 को प्रथम तलाक की नोटिस रजिस्टर्ड डाक (EU389237556IN) द्वारा प्रतिवादिनी को भेजी। एक माह का समय बीत जाने के बाद वादी ने दिनांक 22.8.2024 को प्रतिवादिनी को द्वितीय तलाक की नोटिस रजिस्टर्ड डाक (EU249507345IN) द्वारा भेजी। वादी ने प्रतिवादिनी को उपरोक्त रीति के अनुसरण में दिनांक 25.09.2024 को तृतीय तलाक की नोटिस रजिस्टर्ड डाक (EU532231755IN) द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को प्रतिवादिनी ने प्राप्त कर लिया है। वादी निकाह में तयशुदा मेहर की रकम रू0 1,00,000/- (एक लाख रूपये) प्रतिवादिनी को पहले ही अदा कर चुका है। मुस्लिम रीति रिवाज के अनुसार वादी एवं प्रतिवादिनी के मध्य तलाक के सम्बन्ध में मर्कजी दारूल कजा नदवतुल उलेमा लखनऊ की राय फतवा के रूप में ली गई है।

प्रतिवादी द्वारा उक्त सभी तथ्यों को अपने प्रतिवाद पत्र में स्वीकार किया गया है।

उभयपक्ष द्वारा पी०डब्लू0-1 व डी०डब्लू0-1 के रूप में भी उक्त तथ्य को स्वीकार किया गया है।

तद्नुसार वाद बिन्दु सं० 1 निस्तारित किया जाता है।

निस्तारण वाद बिन्दु संख्या-2

वाद बिन्दु संख्या-2 इस आशय का विरचित किया गया है कि-

अनुतोष ?

वाद बिन्दु सं० 1 के निष्कर्ष से यह सिद्ध है कि वादी ने इस्लामी शरीयत में बताए गये 'तलाके हसन की रीति को अपनाते हुए 2 गवाहों की मौजूदगी में अपने पूरे होश व हवास में बिना किसी जोर व दबाव नाजायज के दिनांक 22.07 2024 को प्रथम तलाक की नोटिस रजिस्टर्ड डाक (EU389237556IN) द्वारा□प्रतिवादिनी को भेजी। एक माह का समय बीत जाने के बाद वादी ने दिनांक 22.8.2024 को प्रतिवादिनी को द्वितीय तलाक की नोटिस रजिस्टर्ड डाक (EU249507345IN) द्वारा भेजी। वादी ने प्रतिवादिनी को उपरोक्त रीति के अनुसरण में दिनांक 25.09.2024 को तृतीय तलाक की नोटिस रजिस्टर्ड डाक (EU532231755IN) द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को प्रतिवादिनी ने प्राप्त कर लिया है। वादी निकाह में तयशुदा मेहर की रकम रू0 1,00,000/- (एक लाख रूपये) प्रतिवादिनी को पहले ही अदा कर चुका है। मुस्लिम रीति रिवाज के अनुसार वादी एवं प्रतिवादिनी के मध्य तलाक के सम्बन्ध में मर्कजी दारूल कजा नदवतुल उलेमा लखनऊ की राय फतवा के रूप में ली गई है।

प्रतिवादिनी द्वारा उस तथ्य को स्वीकार किया गया है। यहाँ यह उल्लेखनीय है कि विर्निदिष्ट अनुतोष अधिनियम की धारा-34 घोषणा के संबंध में न्यायालय को विवेकाधिकार प्रदान करता है। यह अधिकार तब प्राप्त होता है जबकि कोई व्यक्ति किसी व्यक्ति के किसी हैसियत या अधिकार पर उसके हक का प्रत्याख्यान करता है या प्रत्याख्यान करने में हितबद्ध हो। प्रस्तुत प्रकरण में किसी प्रतिवादिनी अथवा किसी अन्य व्यक्ति द्वारा वादी द्वारा दिए गए तलाक को चुनौती नहीं दी गयी है ना ही उसे अस्वीकार किया गया हैं। वादी द्वारा अपने वाद पत्र अथवा साक्ष्य में यह उल्लेख नहीं किया गया है कि उसे इस उद्घोषणा की आवश्यकता क्यों हुई। अतः चूंकि प्रस्तुत वाद धारा-34 विर्निदिष्ट अनुतोष अधिनियम व धारा-20 सी०पी०सी० से बाधित है, वादी किसी अनुतोष को प्राप्त करने का अधिकारी नहीं है। वादी द्वारा प्रस्तुत वाद बावत तलाक उद्घोषणा निरस्त किये जाने योग्य है।

आदेश

वादी द्वारा प्रस्तुत वाद बावत तलाक उद्घोषणा निरस्त किया जाता है।

पत्रावली नियमानुसार दाखिल दफ्तर की जाए।"

31. The extra-judicial divorce under Muslim Personal Law by way of Talaq is complete when the spouse pronounces Talaq in the manner as prescribed under the Muslim Personal Law (Shariat). The endorsement of extra-judicial divorce and the consequential declaration of the marital-status of the parties by the Family Court invoking Section 7(b) of the Family Courts Act,1984 is contemplated only to have a public record of the extra-judicial divorce. The Family Court has to simply ascertain whether a valid pronouncement of Talaq was made in accordance with the applicable law. No further enquiry, as in the case of adversarial litigation, is at all contemplated in such proceedings. It bears emphasis that proceedings for declaration instituted under Section 7 of the Family Court Act, 1984 wherein a party approaches the competent Court,

seeking declaration of matrimonial status and the other side chooses not to dispute the claim made there under, the Court on being prima-facie satisfied that valid pronouncement of Talaq as per the applicable law has been effected, it may endorse the same and declare the marital-status of the parties accordingly, by treating the same as uncontested proceedings, without adhering to the rigorous procedure attendant upon adversarial litigation. Nothing herein shall preclude any aggrieved party from challenging the validity of an extra judicial divorce by Talaq in appropriate proceeding in accordance with law, before the Court having jurisdiction. Any declaration granted by the Family Court under Section 7(b) or Section 7(d) endorsing such extra-judicial divorce shall remain subject to the final adjudication of any such challenge, if preferred. It would not be out of place to observe that the said provision reflects the legislative intent to address a significant societal need: that every member of a civilised society is entitled to have a clear and definite marital status, particularly where such status arises from the applicable personal laws or through recognised and accepted customary practices. In such circumstances, judicial endorsement of marital status is not merely desirable but, in appropriate circumstances, imperative.

32. Under the given facts and circumstances as narrated herein above, this court finds that although the learned Family Court, recorded categorical finding that the Talaq-e-hasan between the parties is proved and also the same is undisputed as the respondent / defendant has not denied the facts either in evidence or in her written statement; yet dismissed the suit on totally misplaced and unwarranted grounds, thus the impugned judgment and order dated 20.05.2025 is liable to be set-aside being perverse and unsustainable in law.

33. In view of the peculiar facts of the present case and the law as narrated herein above, this Court is of the considered opinion that when the Court of learned Additional Principal Judge, Family Court, Lucknow was satisfied with the validity or otherwise of the Talaq and there was no contest on the subject matter between the parties concerned rather the defendant / respondent herself expressed willingness for a decree of divorce / Talaq; the learned Family Court ought to have declare the matrimonial status of the parties as 'divorced'.

34. Finding the Suit for declaration filed by the appellant / plaintiff cognizable under the provisions of Section 7 of the Family Courts Act, 1984, and the prayer made by the appellant for declaration of his matrimonial status on the basis of the Talaq recognized under the Muslim Personal Law (Shariat) well-founded in law; further, there is no dispute or challenge from the side of the respondent / defendant and the parties are living separately with no sign of reconciliation, this Court is satisfied that the said Talaq in question is liable to be endorsed by this Court.

ORDER

1. The appeal is **allowed**. The impugned judgment and order dated 20.05.2025 passed by the Court of learned Additional Principal Judge, Court No.8, Family Court, Lucknow in Matrimonial Case No.3872 of 2024 is hereby **set-aside**.

2. The suit for declaration preferred by the plaintiff / appellant having Case No.3872 of 2024 is hereby **decreed**.

3. The matrimonial-status of the parties, as prayed for, is hereby declared **divorced**.

(2026) 7 ILRA 1253
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.07.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 388 of 2025

Tushar Agrawal **...Appellant**
Versus
Ganesh Prasad **...Respondent**

Issues for Consideration

(i) Whether the defendant executed a registered agreement to sell dated 30.12.2019 in favour of the plaintiff?

(ii) Whether any consideration was paid by the plaintiff to the defendant towards the execution of the agreement to sell, and whether such consideration related to the business transactions between them?

(iii) Whether the agreement to sell was fraudulently got executed by the plaintiff from the defendant taking advantage of the business relationship between them?

(iv) Whether the plaintiff continuously remained ready and willing to perform his part of the agreement to sell?

(v) Whether the relief of specific performance of contract is still discretionary after the amendment of the Specific Relief Act, 1963 w.e.f. 01.10.2018?

Headnotes

Registration — Registered agreement to sell — Presumption of valid execution — Burden on challenger — Plea of fraud.

HELD: There is a presumption that a registered document is validly executed; the burden to dislodge that presumption lies heavily upon the party assailing it and can be discharged only through clear, cogent and convincing evidence. Where the defendant admitted his presence at the sub-registrar's office, was conversant with registration procedure, levelled only a general allegation of signatures on blank papers without disclosing the manner of the fraud, did not examine the other attesting witness named in his own list of witnesses, lodged no complaint and filed no suit for cancellation, continued business with the plaintiff thereafter, and failed to rebut the sub-registrar's endorsement of admission of execution and consideration, the plea of fraud is not proved and due execution of the agreement stands established. [Paras 87-94]

Specific Relief Act, 1963 — Agreement to sell — Payment of earnest money by cheque — Plea that amount related to business transactions — Burden of proof.

HELD: Where the plaintiff proved through his savings bank account statement that the earnest money was paid by cheque and encashed by the defendant, and the defendant admitted receipt, the burden lay upon the defendant to prove that the amount pertained to business transactions between the parties. The defendant having led no documentary evidence such as GST bills, invoices or income tax returns, while none of the business transactions reflected in the plaintiff's firm account or GST invoices matched the said amount, which was paid from the plaintiff's individual savings account and not from his firm's account, the plea is not established. [Paras 98-99, 111-114]

Specific Relief Act, 1963 — Inadequacy of consideration — Burden to prove market value.

HELD: A bare allegation that the property was valued far in excess of the agreed consideration, unsupported by sale deeds of comparable property, cannot be accepted, particularly where the defendant himself subsequently entered into an unregistered agreement to sell the same house for a considerably lower amount than that alleged. [Paras 95-96, 135]

Specific Relief Act, 1963 — S. 16(c) — Readiness and willingness — No particular phraseology required — Financial capacity — Deficient court fee.

HELD: No specific phraseology or language is required to plead readiness and willingness; compliance has to be in spirit and substance and not in letter and form. The judgment of a Single Judge of this Court insisting upon averments strictly in terms of Forms 47 and 48 of Appendix A to the CPC having been set aside by the Supreme Court, it no longer constitutes good law or a binding precedent. Readiness refers to financial capacity and willingness to the conduct of the plaintiff; it is not necessary for the plaintiff to produce ready money, but he must prove that he has means to generate the consideration. Where the plaint, legal notice and oral evidence consistently asserted readiness and willingness, and the plaintiff's bank statement showed a balance in excess of the balance consideration after execution of the agreement, continuous readiness and willingness stands proved; the mere filing of the suit with deficient court fee, subsequently made good, does not lead to an inference of lack of financial capacity. [Paras 115-127]

Specific Relief Act, 1963 — S. 10 (as amended w.e.f. 01.10.2018) — Specific Relief (Amendment) Act, 2018 — Specific performance no longer discretionary — Applicability.

HELD: After the amendment of Section 10 w.e.f. 01.10.2018, the relief of specific performance of a contract is no longer discretionary and the Court is obliged to enforce specific performance, subject to Sections 11(2), 14 and 16 of the Act. The amending Act being prospective, it does not apply to transactions prior to its coming into force; the agreement to sell in question having been executed on 30.12.2019, after the amendment, the amended provisions apply and the Court is bound to specifically enforce the agreement subject to the said provisions. [Paras 129-134]

Specific Relief Act, 1963 — Hardship pleaded by vendor — Residential-cum-business house — Hardship self-created.

HELD: Where the defendant, being aware from the inception that the house was used by him for residential and business purposes, nonetheless entered into a registered agreement to sell it, the hardship, if any, is due to his own misdeeds, for which the plaintiff cannot be faulted. The plea that the defendant had no financial necessity also stood belied by the sale of his car and of the immovable properties of his wife. There being no fact or circumstance disentitling the plaintiff from the primary relief of specific performance, the decree of the trial court suffers from no perversity. [Paras 136-139]

Appeal dismissed with costs throughout; judgment and decree dated 11.03.2025 affirmed. Defendant-appellant directed to execute the sale deed within two months upon receiving the balance sale consideration of ₹ 10 lakhs, failing which the plaintiff is entitled to get the sale deed executed through Court by depositing the balance consideration. (E-14)

Case Law Cited

Ram Singh v. Sughar Singh, 2010 (83) ALR 547 (All) — held not good law; *Smt. Veena Agarwal @ Veena Garg v. M/s Unjha Ayurvedic Pharmacy & ors.*, 2019 (1) ARC 221 — referred to; *Prem Kumar and others v. Gurudev Singh and others*, Neutral Citation No. 2024:AHC:193613 — referred to; *Sitaram and others v. Radheshyam*, (2007) 14 SCC 415 — referred to; *Azhar Sultana v. B. Rajamani and others*, (2009) 17 SCC 27 — referred to; *C.S. Venkatesh v. A.S.C. Murthy (Dead) through LRs and others*, (2020) 3 SCC 280 — referred to; *R. Kandasamy (Dead) and ors. v. T.R.K. Sarawathy and anr.*, (2025) 3 SCC 513 — referred to; *Shamsher Singh and others v. Rajinder Kumar and others*, (2015) 5 SCC 531 — referred to; *K. Nanjappa (Dead) by LRs v. R.A. Hameed alias Ameersab (Dead) by LRs and another*, (2016) 1 SCC 762 — referred to; *Tulsi and others v. Chandrika Prasad and others*, (2006) 8 SCC 322 — referred to; *Maharaj Singh and others v. Karan Singh (Dead) by LRs and others*, (2024) 8 SCC 83 — referred to; *K. Bhaskaran Nair v. Habeeb Mohd. and others*,

2002 SCC OnLine Ker 17 — referred to; *Kunwar Surendra Bahadur Singh and others v. Thakur Behari Singh and others*, 1939 AIR (PC) 117 — referred to; *B. Santoshamma and another v. D. Sarala and another*, (2020) 19 SCC 80 — relied on; *Prem Singh v. Birbal*, (2006) 5 SCC 353 — relied on; *Sughar Singh v. Hari Singh (Dead) through LRs and others*, (2021) 17 SCC 705 — relied on; *Parswanath Saha v. Bandhana Modak (Das) and another*, 2024 INSC 1022 — referred to; *Manjunath Anandappa Urf Shivappa Hanasi v. Tammanasa & ors.*, (2003) 10 SCC 390 — referred to; *P. Daivasigamani v. S. Sambandan*, (2022) 14 SCC 793 — relied on; *Syed Dastagir v. T.R. Gopalakrishna Setty*, (1999) 6 SCC 337 — relied on; *M/s J.P. Builders and another v. A. Ramadas Rao & anr.*, (2011) 1 SCC 429 — relied on; *Man Kaur (Dead) by LRs v. Hartar Singh Sangha*, (2010) 10 SCC 512 — referred to; *Rattan Singh and others v. Nirmal Gill and others*, (2021) 15 SCC 300 — relied on; *Sarafat Ali (Deceased) Through LRs. and Others v. Deputy Director of Consolidation Haridwar and Others*, 2026 SCC OnLine SC 1190 — relied on; *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao*, (1995) 5 SCC 115 — referred to; *P. D'Souza v. Shondrilo Naidu*, (2004) 6 SCC 649 — referred to; *R.C. Chandiok v. Chuni Lal Sabharwal*, (1970) 3 SCC 140 — referred to; *Hemalatha (D) by Legal Representatives v. Tukaram (D) by Legal Representatives* — referred to; *Jamila Begum (Dead) Through LRs. v. Shami Mohd. (Dead) Through LRs.*, (2019) 2 SCC 727 — referred to.

List of Acts / Statutes

Specific Relief Act, 1963; Specific Relief (Amendment) Act, 2018; Code of Civil Procedure, 1908; Code of Criminal Procedure, 1973.

List of Keywords

Specific performance; Agreement to sell; Registered document; Presumption of execution; Fraud; Earnest money; Readiness and willingness; Financial capacity; Section 10 amendment; Hardship.

Case Arising From

Judgment and decree dated 11.03.2025 passed by the Court of Civil Judge (Senior Division), Bhadhoi, Gyanpur, in O.S. No. 9 of 2022, Ganesh Prasad v. Tushar Agrawal.

Appearance for Parties

For the Appellant(s): Shakti Shanker Tiwari, Subhash Chandra Tiwari, Umesh Chandra Verma.

For the Respondent(s): Ravish Chandra Srivastava.

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

1. The instant appeal has been preferred by the defendant under Section 96 CPC against the impugned judgment and decree dated 11.3.2025 passed by the Court of Civil Judge(Senior Division) Bhadhoi, Gyanpur in O.S. no. 9 of 2022 Ganesh Prasad vs. Tushar Agrawal, whereby the plaintiffs suit for the specific relief of registered agreement to sell dated 30.12.2019 has been decreed.

Plaint case

2. The plaintiff/respondent Ganesh Prasad filed O.S. no. 9 of 2022 against the defendant/appellant with the averments that the defendant is the owner in possession of 2 storeyed building bearing house no.1, facing Gyanpur Road, area 2184 ft*2 or 202.973 m*2 constructed on Arazi no.1, situate in village Poore Gulab(out of town), Pargana Bhadohi, Tehsil Gyanpur, District Sant Ravidas Nagar, the full details of which were described at the foot of the plaint, which is

hereinafter referred to as the 'house'. It is the case of the plaintiff that the defendant was in need of money for increasing his business and for personal needs, hence he decided to sell the above house with land and constructions to the plaintiff. The defendant approached the plaintiff and requested him to purchase the said house which was agreed to be sold by the defendant for a consideration of ₹ 30 lakhs only, out of which a sum of ₹ 20 lakhs was to be paid as earnest money, so as to enable the defendant to meet his immediate financial requirements and it was agreed that the sale deed shall be executed by the defendant after receiving the balance consideration of ₹ 10 lakhs.

3. It was further averred by the plaintiff that in pursuance of the above agreement, a registered agreement to sell was executed by the defendant in favour of the plaintiff on 30.12.2019 which was also registered in the office of sub-registrar, Gyanpur, Bhadohi in Bahi no.1,Zild no. 3053, at pages 103 - 124, at serial no. 4288 on 30.12.2019. It was further averred that the consideration of ₹ 20 lakhs was paid through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, Branch Lahurabir, Varanasi at the time of execution of the agreement to sell by the plaintiff to the defendant. It was further averred that thereafter, the plaintiff personally met the defendant as per his assurance and requested him to execute and register the sale deed, but no heed was paid by the defendant.

4. It was further averred that when inspite of the lapse of considerable period, the defendant did not express his readiness for execution and registration of sale deed , then after waiving previous notices dated 4.5.2021 and 23.8.2021, the plaintiff sent his last registered notice on 11.9.2021 to the defendant on his residential address as well as his business address by registered post requesting him to execute and register the sale deed, which was personally served upon the defendant on 14.9.2021, but the defendant failed to fulfil the terms of the agreement.

5. It was further averred that when the plaintiff came to know that the defendant was negotiating for sale of the house with others, then the plaintiff was compelled to file the suit for specific performance of the registered agreement to sell. It was further averred that the plaintiff was and is still ready and willing to purchase the disputed premises as agreed upon in accordance with the terms and conditions of the registered agreement to sell and to pay the balance amount of ₹ 10 lakhs to the defendant at the time of execution and registration of the sale deed.

6. In view of the above backdrop, the plaintiff claimed the following reliefs against the defendant:-

(A)That by means of a decree of specific performance of contract of sale the defendant be directed to execute and register the sale deed in respect of the 2 storeyed building bearing house no.1, facing Gyanpur Road, area 2184 ft*2 or 202.973 m*2 constructed on Arazi no.1, situate in village Poore Gulab(out of town), Pargana Bhadohi, Tehsil Gyanpur, District Sant Ravidas Nagar, the full details of which were described at the foot of the plaint, as per the terms and conditions of registered agreement of sale deed dated 30.12.2019 on receiving of the balance amount of ₹ 10 lakhs in favour of the plaintiff within the time to be fixed by the court and the plaintiff be put in the actual physical possession thereof failing which, the court may be pleased to execute and register the sale deed on behalf of the defendant in favour of the plaintiff and the plaintiff be put in actual possession over the property detailed and described below.

(B)That the cost of the suit be decreed in favour of the plaintiff as against the defendant.

(C)That any other relief to which the plaintiff is found entitled in the opinion of the court the same also be passed in favour of the plaintiff as against the defendant.

Written statement of the defendant

7. The defendant Tushar Agrawal in his written statement denied the plaint averments. It was averred that the plaintiff is in the business of silver and the defendant obtains his silver from the plaintiff, and thereafter, sells it, in this way, since the year 2016, business was going on between them. It was further averred that the relationship of plaintiff and defendant started in the year 2013, when the defendants father Narendra Kumar was alive, there was a mutual trust between the plaintiff and defendant due to which the defendant, trusted the plaintiff.

8. It was further averred that the defendant is having just one residential house, in which his shop is also situated, besides this house, the defendant has no other house to reside. It was specifically averred that neither any conversation ever took place between him and the plaintiff for selling his house nor he executed any agreement to sell on 30.12.2019 in favour of the plaintiff regarding his house. It was further specifically averred that neither the plaintiff gave him consideration of ₹ 20 lakhs through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, branch Lahurabir nor the above cheque was encashed in plaintiffs bank account. It was further averred that the defendant was not having any financial necessity so as to sell his house.

9. It was further averred that the disputed house was valued not less than ₹ 2 crores, and in order to usurp his house, the plaintiff has managed to get fraudulently executed from him, in collusion with the scribe and witnesses, the alleged agreement to sell dated 30.12.2019, by showing the disputed house to be valued at only ₹ 30 lakhs, whereas at that time, it was valued not less than ₹ 2 crores. It was specifically averred that the defendant never executed the alleged agreement to sell dated 30.12.2019. It was also specifically averred that he never received any legal notice dated 11.9.2021, allegedly sent by the plaintiff. It was also averred that the defendant was not negotiating to sell his sole house to anyone. The plaintiff was not having any cause of action to file the instant suit.

10. It was further averred by the defendant that he used to purchase, after making payment to the plaintiff, raw silver from the plaintiff, and after refining it, used to sell the refined silver to the plaintiff, after receiving its payment from the plaintiff. It was further averred that taking advantage of the above business relations, the plaintiff has fabricated a forged and fraudulent agreement to sell dated 30.12.2019, in collusion with the scribe, witnesses and sub-registrar, which was not binding upon the defendant, which is a void document.

11. It was further averred that the plaintiff 's suit was premature, was also barred by Section 16 and 20 of the Specific Relief Act. It was also averred that the defendant neither negotiated nor had any conversation with Maneesh Kumar Jaiswal for selling his house nor received ₹ 10 lakhs for selling it or has executed any agreement to sell. The plaintiff was never having the financial capacity to purchase the disputed house. The plaintiff was nor is, ready and willing to fulfil the

terms of the agreement to sell. The suit has been improperly valued and insufficient court fees has been paid by the plaintiff. The plaintiff 's suit was not legally maintainable and was liable to be dismissed with special costs under Section 35-A CPC.

Issues framed by the trial court

12. The following issues were framed by the trial court (English translation):-

(i)Whether the plaintiff is entitled to specifically enforce the agreement to sell dated 30.12.2019 ? OPP

(ii)Whether the plaintiff negotiated to purchase the disputed house for a consideration of ₹ 30 lakhs, out of which ₹ 20 lakhs was paid as earnest money to the defendant ? OPP

(iii)Whether the suit is under valued? OPD

(iv)Whether the court fees paid by the plaintiff is insufficient ? OPD

(v)Whether the plaintiff 's suit is barred by Section 16 and 20 of the Specific Relief Act ? OPD

(vi)Whether the defendant is entitled to special costs under Section 35 CPC from the plaintiff ? OPD

(vii)Whether the suit is bad for non-joinder of necessary party ? OPD

(viii)Whether the plaintiff is entitled to any relief ?

Documentary evidence of plaintiff

13. The plaintiff has filed the original agreement to sell dated 30.12.2019, the copy of legal notice dated 11.9.2021, original postal receipts, the certified copy of his bank account statement in Indian Bank, certified copy of the sale deeds dated 8.1.2016, 20.3.2017, 27.11.2018, 29.4.2019, the certified copy of the agreement to sell executed by the defendant in favour of Maneesh Kumar Jaiswal, the bank account statement of M/s Ganesh Jewellers, the report of the handwriting expert, etc.

Documentary evidence of defendant

14. Certified copy of sale deeds, certified copy of khatauni, etc.

Oral evidence of the parties

15. The plaintiff Ganesh Prasad has examined himself as PW-1, Shyamchandra as PW-2 and handwriting expert Mohd. Shahrukh as PW-3, whereas, the defendant Tushar Agrawal has examined himself as DW-1.

Reasoning of the trial court

Issue no. 1 and 2

16. The trial court concluded that the defendant executed an agreement to sell dated 30.12.2019 in favour of plaintiff for a consideration of ₹ 30 lakhs out of which ₹ 20 lakhs was paid by the plaintiff to the defendant as earnest money. The trial court also concluded that no fraud was committed by the plaintiff upon the defendant, taking advantage of business relations between them. The trial court also concluded that the plaintiff always remained ready and willing to get the sale deed executed in his favour. Both the issues were decided in favour of the plaintiff.

Issue no.3 and 4

17. The trial court concluded that the suit has been properly valued by the plaintiff at ₹ 30 lakhs and sufficient court fees of ₹ 2,25,410/- was paid by the plaintiff. Both the issues were decided in favour of the plaintiff vide order dated 7.7.2022.

Issue no. 5

18. The trial court concluded that the plaintiff's suit was not barred by Section 16 and 20 of the Specific Relief Act.

Issue no. 6 and 7

19. The trial court concluded that the defendant was not entitled to special costs from the plaintiff under Section 35 CPC. It also concluded that the suit was not bad for non-joinder of necessary parties since the plaintiff has impleaded the necessary party in the suit.

Issue no. 8

20. The trial court concluded that as per the agreement to sell dated 30.12.2019 the sale deed was to be executed within 3 years in favour of the plaintiff after paying the balance sale consideration of ₹ 10 lakhs but when the defendant, after receiving the legal notice from the plaintiff, failed to execute the sale deed in favour of the plaintiff, then the plaintiff was compelled to file a suit for specific performance of the registered agreement to sell dated 30.12.2019, which was perfectly legal. The trial court also concluded that the suit of the plaintiff was not premature, which was filed within the three-year duration fixed by the parties for specific performance of the agreement to sell. This issue was decided in favour of the plaintiff.

21. Accordingly, the plaintiffs suit for the specific performance of the registered agreement to sell dated 30.12.2019 was decreed and the plaintiff was ordered to pay the remaining consideration of ₹ 10 lakhs to the defendant, and the defendant was directed to execute and register the sale deed within 2 months in favour of the plaintiff and also to hand over the possession of the disputed property to the plaintiff. Aggrieved against which, the defendant has filed the instant appeal under Section 96 CPC.

Submissions of learned counsel of the defendant appellant

22. Sri Pramod Jain learned Senior Counsel for the appellant submitted that there was business relationship between the plaintiff and the defendant since the year 2013. The defendant used to purchase raw silver from the plaintiff and after refining it, used to sell the refined silver to the plaintiff and taking advantage of this business relationship, the plaintiff fraudulently got executed the disputed agreement to sell from the defendant. He further submitted that the defendant was only having one house in which he was residing with his family and in which his shop/firm was also situated, hence the defendant could not have sold this immovable property to the plaintiff. He further submitted that the defendant was not having any financial necessity/stringency to sell his property to the plaintiff.

23. Learned counsel further submitted that the defendant never went to the sub-registrar office on 30.12.2019 to get the agreement to sell executed and registered in favour of the plaintiff. He further submitted that the alleged agreement mentions that cheque no. 223569 for ₹ 20 lakhs was given by the plaintiff to the defendant towards earnest money but the cheque was never encashed by the defendant in his bank account, which implies that the consideration of the alleged agreement was never paid by the plaintiff to the defendant. He further submitted that the amount of ₹ 20 lakhs related to the business transactions which took place between the firms of the plaintiff and the defendant, for sale purchase of silver, which was not the consideration of the disputed immovable property.

24. Learned counsel further submitted that from the recitals of the legal notice given by the plaintiff to the defendant, it is apparent that the plaintiff never remained ready and willing to perform the terms of the alleged agreement. He submitted that it is mandatory to aver and prove that the plaintiff always remained ready and willing, is ready and willing and in future also, the plaintiff has to prove his continuous readiness and willingness till decree is passed in his favour. He submitted that the plaintiff has failed to comply with the requirements of Section 16 of the Specific Relief Act.

25. Learned counsel further submitted that the suit was filed by the plaintiff without proper court fees, which was subsequently made good, which suo-motu proves that the plaintiff was lacking the financial capacity to pay ₹ 10 lakhs to the defendant and was not ready and willing to fulfil the terms of the agreement.

26. Learned counsel further submitted that the market value of the disputed property was more than ₹ 2 crores hence there was no occasion for the defendant to sell it for a paltry consideration of only ₹ 30 lakhs. He submitted that in these circumstances the benefit of Section 20 of the Specific Relief Act should be given to the defendant and the plaintiff may not be granted the primary relief of specific performance of the agreement to sell and he be returned earnest money with interest. With these submissions, it is prayed that the appeal be allowed.

27. In support of his contentions, learned counsel has relied upon the following case law-

(i)Ram Singh vs.Sughar Singh 2010 (83)ALR 547(All)

(ii)Smt.Veena Agarwal @Veena Garg vs.M/s Unjha Ayurvedic Pharmacy & ors.2019 (1) ARC 221

(iii)Prem Kumar and others vs. Gurudev Singh and others Neutral Citation No.2024:AHC: 193613

(iv)Sitaram and others vs. Radheshyam (2007)14 SCC 415

(v)Azhar Sultana vs. B.Rajamani and others (2009)17 SCC 27

(vi)C.S. Venkatesh vs.A.S.C.Murthy(Dead) through Lrs and others (2020)3 SCC 280

(vii)R.Kandasamy(Dead) and ors. vs.T.R.K.Sarawathy and anr.(2025) 3 SCC 513

(viii)Shamsher Singh and others vs. Rajinder Kumar and others (2015)5 SCC 531

(ix)K.Nanjappa(Dead) by Lrs vs.R.A.Hameed Alias Ameersab (Dead) by LRs and another (2016) 1 SCC 762

(x)Tulsi and others vs. Chandrika Prasad and others (2006) 8 SCC 322

(xi)Maharaj Singh and others vs. Karan Singh(Dead) by LRs and others (2024) 8 SCC 83

(xii)K.Bhaskaran Nair vs. Habeeb Mohd.and others 2002 SCC OnLine Ker 17

(xiii)Kunwar Surendra Bahadur Singh and others vs. Thakur Behari Singh and others 1939 AIR(PC)117

28. Per contra, Sri Vijay Kumar Ojha learned counsel for the plaintiff respondent submitted that the defendant was in necessity of money for his personal requirements and for enhancing his business, hence he willingly without any coercion, agreed to sell his house for a consideration of ₹ 30 lakhs to the plaintiff, out of which, earnest money of ₹ 20 lakhs was paid by cheque no. 223569 by the plaintiff to the defendant, which was encashed by the defendant in his savings account, which was proved by the documentary evidence submitted by the plaintiff before the trial court.

29. Learned counsel further submitted that the agreement to sell specifically mentions that the earnest money of ₹ 20 lakhs was given by the plaintiff to the defendant through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, Lahurabir branch, Varanasi and as per the bank statement paper no. 31-C, the above amount was debited on 3.1.2020 from the savings bank account of the plaintiff and credited to the bank account of the defendant, which falsifies the assertion of the defendant that he has not received the consideration of the alleged agreement.

30. He further submitted that from the oral evidence of the defendant it is proved that he went to the sub-registrar office willingly on 30.12.2019, and executed and got registered the disputed agreement to sell in favour of the plaintiff, which was also proved from the oral evidence of the plaintiff Ganesh Prasad PW-1,attesting witness Shyamchandra PW-2 and handwriting expert PW-3. He further submitted that the assertion of the defendant that the plaintiff got fraudulently executed from him the agreement to sell, is false, because neither any complaint in this regard was made to the police or any administrative official nor any criminal complaint was filed in the court. He further submitted that the defendant till date has not taken any steps for getting the disputed agreement to sell cancelled. He further submitted that prior to the disputed agreement to sell, the defendant had got executed sale deed of his house in his favour from his 2 brothers and had also facilitated execution of 3 sale deeds in favour of his wife, hence it is improbable that he was not aware of the procedures applicable and the formalities which are required to be complied at the time of registration of the sale deed in the sub-registrar office. Learned counsel further submitted that the assertion of the defendant that he signed on the blank papers or his signature was

fraudulently obtained on the agreement to sell by the plaintiff, is totally unbelievable and false, which has been rightly rejected by the trial court.

31. Learned counsel further submitted that the plaintiff always remained ready and willing to fulfil the terms of the agreement to sell by paying the balance sale consideration of ₹ 10 lakhs to the defendant, and a legal notice dated 11.09.2021 in this regard was also sent by the plaintiff to the defendant, which was duly received by the defendant on 14.09.2021, and when the defendant failed to execute the sale deed in favour of the plaintiff, then the plaintiff was compelled to file the suit for specific performance of the agreement to sell, which has been rightly decreed by the trial court in favour of the plaintiff.

32. Learned counsel further submitted that the disputed agreement to sell is a registered document, which has been proved in accordance with law by the plaintiff, and there is a presumption also regarding its due execution and registration, which has not been rebutted by the defendant. The defendant could have examined another attesting witness of the sale deed Arun Kumar Jaiswal in support of his contentions, but this witness was not examined by the defendant.

33. Learned counsel further submitted that the disputed property was never valued at ₹ 2 crores. The defendant has not filed any documentary evidence to prove that the disputed house was valued at ₹ 2 crores at the time of execution of agreement to sell.

34. It was further submitted that the part consideration of the agreement amounting to ₹ 20 lakhs was paid by the plaintiff through cheque to the defendant, which was deposited by the defendant in his savings bank account, the receipt of which was also admitted by the defendant DW-1 in his oral evidence. Learned counsel submitted that the assertion of the defendant that the above consideration was towards the business transactions between the plaintiff and the defendant, is false. Learned counsel submitted that between November 2019 and March 2020 only 4 business transactions took place between plaintiff and the defendant, which was proved from the bank account statement of the plaintiff's firm paper no.65-C. Besides the above 4 transactions, no other business transaction ever took place between the plaintiff and the defendant. The defendant could have filed contra documentary evidence, but no such evidence was filed by the defendant. Learned counsel submitted that if the consideration of ₹ 20 lakhs paid by the plaintiff to the defendant was towards business transactions that took place between the plaintiff and the defendant, then the burden of proving this fact was upon the defendant, but no evidence was led by the defendant to prove this fact.

35. It was further submitted that the business transactions between the plaintiff and the defendant were recorded in the bank account statement existing in the name of the firm of the plaintiff and defendant, not in their personal savings account, which was also loaded on the GST portal, which could have been proved by the defendant by leading documentary evidence, but no such evidence was led by the defendant before the trial court. Learned counsel submitted that in view of the above, it cannot be presumed that the consideration of ₹ 20 lakhs paid by the plaintiff to the defendant was towards the business transaction.

36. It was further submitted that the defendant was not willing to execute the sale deed of the disputed house in favour of the plaintiff because he had agreed to sell the disputed house for a consideration of ₹ 50 lakhs to Manish Kumar Jaiswal, and an unregistered agreement to sell was also executed by defendant in favour of Manish Kumar Jaiswal, a certified copy of which was also filed by the plaintiff before the trial court, hence, the plaintiff was compelled to give legal notice dated 11.9.2021 to the defendant and after the defendant failed to execute the sale deed in favour of the plaintiff, the plaintiff had no other option but to file the suit for the relief of specific performance of the agreement against the defendant.

37. Learned counsel further submitted that as per the amended provisions effective from 01.10.2018, the word "aver" has been deleted from Section 16(c) of the Specific Relief Act, 1963. He further submitted that now the grant of specific relief by the Court is not discretionary, but mandatory. With these submissions, it was prayed that the appeal is meritless and be dismissed.

38. In support of his contention, learned counsel has relied upon the following case law:-

(i)B.Santoshamma and another vs. D.Sarala and another (2020)19 SCC 80
(ii)Prem Singh vs. Birbal (2006) 5 SCC 353
(iii)Sughar Singh vs. Hari Singh(Dead) through LRs and others (2021) 17 SCC 705
(iv)Parswanath Saha vs. Bandhana Modak(Das) and another 2024 INSC 1022
(v)Manjunath Anandappa Urf Shivappa Hanasi vs. Tammanasa & ors.(2003) 10 SCC 390
(vi)P.Daivasigamani vs. S.Sambandan (2022)14 SCC 793
(vii)Syed Dastagir vs.T.R.Gopalakrishna Setty (1999) 6 SCC 337 (by 3 Judges)
(viii)M/s J.P. Builders and another vs. A.Ramadas Rao & anr.(2011) 1 SCC 429
(ix)Man Kaur (Dead) by Lrs vs.Hartar Singh Sangha (2010) 10 SCC 512

39. I have heard the learned counsel of both the sides, perused the record of the trial court and the case law submitted by them.

Issues for determination before this Court

40. The following issues arise for determination before this Court :-

(A)Whether the defendant executed a registered agreement to sell dated 30.12.2019 in favour of the plaintiff ?
(B)Whether any consideration was paid by the plaintiff to the defendant towards the execution of the agreement to sell in his favour?
(C)Whether the consideration paid by the plaintiff to the defendant was related to the business transactions that took place between them?
(D)Whether the alleged agreement to sell was got fraudulently executed by the plaintiff from the defendant taking advantage of the business relationship between them ?
(E)Whether the plaintiff continuously remained ready and willing to perform his part of the agreement to sell ?
(F) Whether the relief of specific performance of contract is still discretionary, after the amendment in Specific Relief Act w.e.f 01.10.2018?

Analysis of case law submitted by the parties

By appellant:-

41. A Single Judge Bench of this Court in the case of **Ram Singh** (supra) held that the use of the word ready alone may not be sufficient compliance of the mandatory requirement of Section 16(c) of the Specific Relief Act which postulates specific averment both with regard to readiness and willingness. It was further held that the essentials of pleadings are provided in Order 6 of CPC. Rule 3 of the said Order stipulates that forms as prescribed shall be used for all pleadings. It was further held that format of plaints for suits for specific performance of an agreement are provided in Forms 47 and 48 of Appendix A to the CPC. The aforesaid forms clearly provide for making an averment that the plaintiff has been "and still is ready and willing specifically to perform the agreement on his part " or that " the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant ". It was further held that the aforesaid forms of the suit for specific performance as provided in Appendix A to the CPC clearly demonstrate that the averment must be to the effect that the plaintiff is always and is still " ready and willing " to perform his part of the agreement, which is also a mandatory requirement of Section 16(c) of the Act failing which no contract of specific performance is enforceable. **The aforesaid judgment has subsequently been set aside by the Apex Court in the case of Sughar Singh vs. Hari Singh(Dead) through LRs and others (2021) 17 SCC 705, hence, it no longer constitutes good law and cannot be regarded as a binding precedent.**

42. A Division Bench of this Court in the case of **Smt.Veena Agarwal @Veena Garg** (supra),on facts, held that plaintiffs were throughout not ready and willing to perform the essential terms of contract in terms of Section 16(c) of the Specific Relief Act, because the dues of the bank were cleared belatedly by them.

43. A Single Judge Bench of this Court in the case of **Prem Kumar** (supra), where specific performance of an unregistered agreement to sell dated 31.5.1977 was claimed by the plaintiff, held that since the agreement to sell was mandatorily required to be registered in the State of Uttar Pradesh w.e.f. 1.1.1977 hence, the relief of specific performance cannot be granted of the above unregistered agreement to sell. It was further held that the plaintiff failed to plead and prove that he was continuously ready and willing to perform the terms of the agreement.

44. The Apex Court in the case of **Sitaram** (supra) has held that the basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

45. The Apex Court in the case of **Azhar Sultana** (supra) has held that Section 16(c) of the Specific Relief Act postulates continuous readiness and willingness on the part of the plaintiff and it is condition precedent for obtaining a decree of specific performance of a contract.

46. The Apex Court in the case of **C.S. Venkatesh** (supra) has held that mere plea that plaintiff was ready to pay consideration, without any material to substantiate this plea, cannot be accepted. It was further held that it is not necessary for plaintiff to produce ready money to establish its readiness and willingness to pay the consideration, but it is mandatory on his part to prove that he had the means to generate consideration amount within the time-frame contemplated in the contract. On facts, it was held that the plaintiff could neither establish his ability to pay the consideration amount nor could prove his readiness and willingness to perform his part of the contract, hence the rejection of suit for specific performance by the trial court was upheld by the Apex Court.

47. The Apex Court in the case of **R.Kandasamy(Dead)** (supra), on facts, held that there was no readiness and willingness on the buyers part to pay the balance sale consideration and get the sale deed executed and the buyer despite multiple reminders, did not come forward for execution of the sale deed. It was also held that the buyer was not having enough funds in her bank accounts to pay the balance sale price and thus was not having the financial capacity to perform her part of the contract. On above facts, the discretionary relief of specific performance was not granted to the buyer.

48. The Apex Court in the case of **Shamsher Singh** (supra) on facts, declined to grant decree of specific performance having regard to the inequitable terms of agreement of sale which gave unfair advantage to plaintiff over defendant.

49. The Apex Court in the case of **K.Nanjappa(Dead**) (supra) on facts, declined to grant decree of specific performance in favour of the plaintiff, because the disputed contract was written on a quarter sheet of paper, and not on a proper stamp paper and was also written in small letters.

50. The Apex Court in the case of **Tulsi** (supra) has held that Section 91 of the Evidence Act mainly forbids proving of the contents of a writing otherwise than by writing itself and merely lays down the " best evidence rule". It, however does not prohibit the parties to adduce evidence in a case the deed is capable of being construed differently to show how they understood the same. In this case it was held that the transaction between the parties was a mortgage, not sale.

51. The Apex Court in the case of **Maharaj Singh** (supra) has held that Section 91 and 92 of the Evidence Act do not prevent parties from adducing evidence on the issue of whether the parties to the documents had agreed to contract on the terms set forth in the document. In this case, the original vendor had subsequently sold the property to 3rd parties. In these facts, it was held that the subsequent purchasers, who were not bona fide purchasers, can be directed to execute the sale deed along with the original vendor and there was no necessity to pray for the cancellation of the subsequent sale deeds. It was further held that since the 2nd plaintiff was not interested in getting the specific performance, the decree ought to have been restricted to the undivided one-half share in the suit property in favour of only the 1st plaintiff.

52. The Kerala High Court in the case of **K.Bhaskaran** Nair (supra) has held that no oral evidence can be given to vary the terms of the contract. But, the intention of the parties can be

proved by oral evidence and oral evidence can be given to show that the contract was not intended to be acted upon.

53. The Privy Council in the case of **Kunwar Surendra Bahadur Singh** (supra) has held that where one attesting witness was called to prove execution of the mortgage deed and his evidence was rejected as unreliable, then, further evidence of due execution and attestation is necessary. It was further held that signatures of sub- registrar and identifying witnesses affixed to registration endorsement admitting execution of mortgage deed do not suffice as attestation unless made in the presence of the executant. It was further held that endorsements made at the time of registration are relevant only to the matter of registration and do not prove due attestation under the Transfer of Property Act.

By respondent:-

54. The Apex Court in the case of B.Santoshamma (supra) while considering the provisions of the Specific Relief Act 1963, held as under:-

67. The relief of specific performance of an agreement, was at all material times, equitable, discretionary relief, governed by the provisions of the Specific Relief Act, 1963, hereinafter referred to as the SRA. Even though the power of the court to direct specific performance of an agreement may have been discretionary, such power could not be arbitrary. The discretion had necessarily to be exercised in accordance with sound and reasonable judicial principles.

68. Section 10 of the SRA as it stood prior to its amendment with effect from 1-10-2018 provided:

"10. Cases in which specific performance of contract enforceable. Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced"

(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.-Unless and until the contrary is proved, the court shall presume"

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases"

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff."

69. After amendment with effect from 1-10-2018, Section 10 of the SRA provides:

"10. Specific performance in respect of contracts. The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16.

70. After the amendment of Section 10 of the SRA, the words "specific performance of any contract may, in the discretion of the court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to -. The court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the SRA. Relief of specific performance of a contract is no longer discretionary, after the amendment.

55. The Apex Court in the case of **Prem Singh** (supra) has held that there is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

56. The Apex Court in the case of **Sughar Singh** (supra) has relied on the law laid down by the Apex Court in the case of Syed Dastagir (supra) (by 3 Judges) and has held as under :-

"24. Even otherwise it is required to be noted that as such there were concurrent findings of fact recorded by the learned trial court as well as the learned first appellate court on readiness and willingness on the part of the plaintiff, which were on appreciation of evidence on record. Therefore, in exercise of powers under Section 100CPC the High Court ought not to have interfered with such findings of fact unless such findings are found to be perverse. Having gone through the findings recorded by the learned trial court as well as the learned first appellate court on readiness and willingness on the part of the plaintiff, we are of the opinion that findings recorded cannot be said to be perverse and/or contrary to the evidence on record. On the contrary, the High Court has ignored the necessary aspects on readiness and willingness which are stated hereinabove including the conduct on the part of the parties.

25. Even the observations made by the High Court that Forms 47 and 48 of the Appendix A to the Code of Civil Procedure provide for making an averment that the plaintiff has been "and still is ready and willing specifically to perform the agreement on his part" or that "the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant" and that "there is non-compliance of Section 16(c) of the Specific Relief Act and the plaint does not even contain any averment that the plaintiff ever required Defendant 1 to attend the office of the Sub-Registrar to execute the sale deed within time agreed are too technical in the facts and circumstances of the case. The overall circumstances and the conduct on the part of the parties are relevant consideration

for the purpose of deciding the aforesaid issues and the prayer of the plaintiff in whose favour the execution of the agreement to sell has been held to be proved. The High Court has given unnecessary stress on the word "still".

26. Even while proving the readiness and willingness the plaintiff is not required to make any averment that the plaintiff required executant of the agreement to sell to attend the office of the Sub-Registrar to execute the sale deed within the time agreed. Even as held by this Court in C.S. Venkatesh v. A.S.C. Murthy [(2020) 3 SCC 280 : (2020) 2 SCC (Civ) 90] to adjudge whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit along with other attending circumstances in a particular case. It is also further observed that whether the plaintiff was ready and was always ready to perform his part of contract may be inferred from the facts and circumstances of a particular case. It is further observed that it is not necessary for the plaintiff to produce ready money but it is mandatory on his part to prove that he has means to generate consideration amount.

27. In the present case, even it was not the case on behalf of the defendants and even there is no finding by the High Court that the plaintiff was not having any means to generate consideration amount. It is required to be noted that as per the last extension and the document executed the balance amount of sale consideration i.e. Rs 16,000 was to be paid at the time of execution of the sale deed and earlier out of Rs 56,000 of total sale consideration, Rs 40,000 was already paid and there were two extensions at the instance of the original Defendant 1 who was his father-in-law.

28. Now, so far as the finding recorded by the High Court and the observations made by the High Court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the plaintiff is found to be ready and willing to perform his part of the agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant executant of the agreement to sell, while exercising the discretion judiciously.

29. For the aforesaid, even amendment to the Specific Relief Act, 1963 by which Section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all

pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.

30. Even otherwise it is required to be noted that as such on applicability of Section 20 of the Act, no issue was framed either by the learned trial court or by the learned first appellate court or even by the High Court. The same has been dealt with by the High Court for the first time in a second appeal under Section 100CPC. Even otherwise no cogent reasons have been given as to why the decree of specific performance shall not be passed in favour of the plaintiff."

57. The Apex Court in the case of **Parswanath Saha** (supra) has held that the question of hardship as mentioned in Section 20 of the Specific Relief Act 1963 is to be adjudged in the facts and circumstances of each case. It was further held that mere rise in price subsequent to the date of the contract or inadequacy of price is not to be treated as a hardship entertaining refusal of specific performance of the contract. Further, the hardship involved should be one not foreseen by the party and should be collateral to the contract. In sum, it is not just one factor or two, that is relevant for consideration. But it is the sum total on various factors which is required to enter into the judicial verdict. It was further held that hardship has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract.

58. The Apex Court in the case of **Manjunath Anandappa Urf Shivappa Hanasi** (supra) has reiterated that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made in the plaint as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.

59. The Apex Court in the case of **P.Daivasigamani** (supra) has held that readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff/purchaser, including attending circumstances. Continuous readiness and willingness on the part of the plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance. It has also relied on the interpretation made by the Apex Court previously in **Syed Dastagir's** case whereby the plea of " readiness and willingness to perform " was interpreted. **It is also held that the amending act No. 18 of 2018 whereby the provisions of the Specific Relief Act were amended with effect from 1.10.2018 are prospective in nature which cannot apply to those transactions that took place prior to its coming into force.**

60. The Apex Court in the case of **Syed Dastagir** (supra) has construed the plea of " readiness and willingness to perform " in Section 16(c) of the Specific Relief Act.

61. The Apex Court in the case of **M/s J.P. Builders** (supra) has held as under:-

"22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

23. In N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao [(1995) 5 SCC 115] at SCC para 5, this Court held: (SCC pp. 117-18)

"5. - Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

24. In P. D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] this Court observed: (SCC p. 654, paras 19 and 21)

"19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf.

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21. - The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale.

25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and

prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26. It has been rightly considered by this Court in R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140] that "readiness and willingness" cannot be treated as a straitjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

62. The Apex Court in the case of **Man Kaur (Dead)** (supra) on facts, has declined to grant the relief of specific performance of the agreement to the plaintiff.

Conclusion of this Court

(A)Whether the defendant executed a registered agreement to sell dated 30.12.2019 in favour of the plaintiff ?

(B)Whether any consideration was paid by the plaintiff to the defendant towards the execution of the agreement to sell in his favour?

(D)Whether the alleged agreement to sell was got fraudulently executed by the plaintiff from the defendant taking advantage of the business relationship between them ?

63. It is the case of the plaintiff Ganesh Prasad PW-1 that the defendant Tushar Agrawal DW-1 was in need of money for enhancing his business and also for his personal needs hence the defendant decided to sell his residential house and approached the plaintiff and requested him to purchase the disputed house, which ultimately the plaintiff agreed for a consideration of ₹ 30 lakhs, out of which an earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant through cheque no. 223569 dated 30.12.2019 which was drawn on Indian Bank, Branch Lahurabir,Varanasi. It was agreed between the parties that the remaining amount of ₹ 10 lakhs will be paid by the plaintiff to the defendant at the time of execution of the sale deed. It is the case of the plaintiff that the defendant willingly executed an agreement to sell in the presence of witnesses Shyamchandra PW-2 and Arun Kumar Jaiswal in favour of the plaintiff on receiving the part consideration of ₹ 20 lakhs on 30.12.2019, which was on the same day, subsequently registered in the office of sub-registrar Gyanpur,Bhadohi.

64. The perusal of the plaint shows that the plaintiff has pleaded that he personally met the defendant and requested him to execute and register the sale deed but the defendant failed to do so

hence, the plaintiff gave two registered notices dated 4.5.2021 and 23.8.2021 to the defendant for executing the sale deed in his favour and after waiving these 2 notices, finally a registered legal notice was given dated 11.9.2021 to the defendant to execute the sale deed but when it was not complied by the defendant, the plaintiff was compelled to file the instant suit in the competent court for the specific performance of the registered agreement to sell dated 30.12.2019. It was also pleaded that the intention of the defendant has turned dishonest and malafide, who was negotiating with other persons for selling the disputed property.

65. The perusal of the plaint shows that the plaintiff has specifically pleaded that he was always ready and willing and is still ready and willing to purchase the disputed property in accordance with the terms of the registered agreement after paying the balance consideration of ₹ 10 lakhs to the defendant. From the perusal of the legal notice dated 11.9.2021 it is apparent that it mentions that the plaintiff has arranged the remaining consideration of ₹ 10 lakhs and was ready and willing and the plaintiff has assured that, he will also in the future remain ready and willing to get the sale deed of the disputed house executed and registered in his favour after paying the balance consideration to the defendant.

66. It is apparent that the defendant in his written statement altogether denied the execution of the alleged agreement to sell dated 30.12.2019 in favour of the plaintiff. The defendant has categorically averred that he has not received the alleged earnest money of ₹ 20 lakhs from the plaintiff. The defendant has averred that there was business relationship between him and the plaintiff since the year 2016 in which he purchased raw silver from the plaintiff and after refining it, sold the refined silver back to the plaintiff and taking advantage of this business relationship, the plaintiff has fraudulently managed to get the alleged agreement to sell executed from him. The defendant has further taken a plea that he has only one house, in which he is residing with his family ,in which his firm is also situated, hence he cannot sell this house to the plaintiff. The defendant also pleaded that he was never in necessity of money and as such, there was no occasion for him to sell his house to the plaintiff. The defendant has further pleaded that the disputed house was valued at more than ₹ 2 crores hence there was no justification for him to sell it only for a paltry consideration of ₹ 30 lakhs. Although the plaintiff has alleged that he gave legal notice to the defendant before filing of the suit, which was also received by the defendant, but in the written statement, the defendant has denied this. The defendant has also averred that he was not intending to sell the disputed property to Manish Kumar Jaiswal, and no agreement to sell has been executed in his favour. It was also averred that the plaintiff never remained ready and willing to fulfil the terms of the agreement hence the suit filed by him was not legally maintainable.

67. From the perusal of the registered agreement to sell it is evident that it was contemplated that the plaintiff after arranging the balance sale consideration of ₹ 10 lakhs, in every circumstance will get the sale deed executed from the defendant within a period of 3 years from 30.12.2019, and if the defendant fails to do so, then the plaintiff was given the right to get the sale deed executed from the Court after depositing the balance consideration with it.

68. **PW-1 Ganesh Prasad** in his examination-in-chief has reiterated the plaint averments. He deposed that he always remained ready and willing to get the sale deed executed by paying the balance sale consideration of ₹ 10 lakhs to the defendant, as per the terms of the agreement to sell,

and also requested the defendant personally, but when the defendant procrastinated, then he gave legal notice to the defendant on 4.5.2021, 23.8.2021, and after waiving these notices, a final notice dated 11.9.2021 was given by his counsel Shri Dinesh Kumar Advocate , to the defendant to execute the sale deed in his favour, which was also received by the defendant on 14.9.2021 but still, the sale deed was not executed in his favour. He further deposed that the intention of the defendant had turned malafide. He further deposed that he maintained a balance of ₹ 10 lakhs in his savings bank account to pay the defendant towards remaining consideration of the sale deed but the defendant was busy negotiating with other persons, to sell the disputed house, hence he filed the suit. He further deposed that the agreement was executed by the defendant in the presence of the witnesses.

69. PW-1 further deposed in cross-examination that the disputed agreement of sale was got typed by Tushar Agrawal in Varanasi and was presented to the sub-registrar by the defendant. He gave account payee cheque no. 223569 to the defendant on 30.12.2019 in the sub-registrar office, before the sub-registrar, in the presence of witnesses. The cheque was issued in the name of Tushar Agrawal. Besides this cheque, neither any other cheque was given nor any cash payment was made, to the defendant. He admitted that he was not present at the time when the document was being prepared by Tushar Agrawal. An e-stamp of ₹ 60,000/- was purchased from Central Bank of India, Gyanpur, for the agreement, the amount was paid by him. The agreement to sell was signed by him and the defendant after reading it, thereafter, it was signed by the witnesses. The agreement to sell was of land and house, pertaining to an area of 2184 ft□. The agreement was got typed by Tushar Agrawal.He gave notice to the defendant through his advocate Dinesh Kumar. The notice given to the defendant on 11.9.2021 was received by him on 14.9.2021. The notices were sent to the defendant on his individual address as well as the address of his firm, both were received by Tushar Agrawal.The cheque No. 223569 of ₹ 20 lakhs was issued from his saving account, which was given to the defendant on 30.12.2019 in the presence of witnesses, in the office of sub-registrar.

70. **Shyamchandra PW-2**, the attesting witness of the agreement, deposed in examination-in-chief that the defendant willingly due to financial necessity and for enhancement of his business, agreed to sell the disputed house for a consideration of ₹ 30 lakhs in favour of the plaintiff, out of which ₹ 20 lakhs was paid by the plaintiff as earnest money to the defendant and a registered agreement to sell was executed on 30.12.2019 by the defendant in favour of the plaintiff, which was subsequently registered in the office of sub-registrar Gyanpur at Bhadohi in book no.1, zild no. 3053, at pages 103 - 124 at serial no. 4288 on 30.12.2019. He further deposed that the earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant through cheque before the sub-registrar Gyanpur at Bhadohi and as per the conditions of the agreement to sell, an amount of ₹ 10 lakhs was to be paid by the plaintiff to the defendant at the time of execution of sale deed.

71. He further deposed that the contents of the agreement to sell was read by Advocate Anoop Kumar Srivastava to the defendant Tushar Agrawal , Ganesh Prasad and the 2 witnesses. Besides this, Tushar Agrawal after reading and understanding the agreement to sell, had signed it and also affixed his thumb impression on every page. The agreement was also signed by the buyer plaintiff, witnesses and Advocate Anoop Kumar Srivastava. He further deposed that thereafter, he, plaintiff, defendant, the other witness and Anoop Kumar Srivastava went to the sub-registrar office where the sub-registrar asked Tushar Agrawal whether he had agreed to execute the agreement to sell for

a consideration of ₹ 30 lakhs of his house and whether he had received ₹ 20 lakhs through cheque as earnest money and after getting its confirmation from Tushar Agrawal, the agreement to sell was registered.

72. PW-2 in cross-examination deposed that he met Tushar Agrawal for the 1st time in the sub-registrar office at Gyanpur at about 12 1 p.m. He was accompanied by Ganesh Prasad. The agreement was got typed by Tushar Agrawal and the consideration of the stamp was also paid by Tushar Agrawal. The agreement was not typed in his presence. The document was produced by Tushar Agrawal before the sub-registrar. Arun Kumar Jaiswal had also signed the agreement as a witness. He further deposed that he was a witness of the plaintiff.

73. Handwriting expert **Mohd.Shahrukh PW-3** in his examination-in-chief deposed that the agreement to sell dated 30.12.2019 bears the signature and fingerprint of defendant Tushar Agrawal.

74. **Tushar Agrawal DW-1** in his examination-in-chief denied execution of the disputed agreement to sell dated 30.12.2019 in favour of the plaintiff, denied receiving any consideration for the alleged agreement, denied that he was in need of money for his personal requirement and business. He alleged that the plaintiff fraudulently taking advantage of his business relations with him, had got executed a forged agreement to sell dated 30.12.2019 for inadequate consideration of ₹ 30 lakhs, whereas the disputed house was valued not less than ₹ 2 crores. He also denied receiving any legal notice from the plaintiff. He reiterated that he was having only one house in which he was residing with his wife and children, which was never agreed to be sold to the plaintiff or any other person.

75. He further deposed that he used to purchase raw silver from the plaintiff, which was sold to the plaintiff after refining it and taking advantage of the above business relations, the plaintiff had managed to get fraudulently prepared the alleged agreement to sell dated 30.12.2019 in connivance with the scribe, witnesses and sub-registrar, which was not binding on him. He will also file a suit for the cancellation of the alleged agreement to sell.

76. He further deposed that he never had any talks with Manish Kumar Jaiswal for selling the disputed house to him and the plaintiff has filed fraudulent documents regarding such transaction, which is not binding on him. He specifically denied receiving earnest money of ₹ 10 lakhs for executing an agreement to sell in favour of Manish Kumar Jaiswal. He further deposed that the plaintiff is neither ready and willing nor he has remained so.

77. DW-1 Tushar Agrawal in his cross-examination deposed that he is a businessman. The name of his firm is Ganpati Abhushan Mandir. He deals in sale - purchase of silver. He also files the income tax return. His wife's name is Shweta Agrawal. He had purchased land in village Thanipur, Goppur and Chakparauna in his wife's name. He started business in the year 2013 from his firm Ganpati Abhushan. From this firm, he does business of purchase sale of raw and refined silver. He is having a current account of his firm Ganpati Abhushan Mandir in Union Bank of India, Gopiganj. After perusing paper No. 31-C, he acknowledged that on 3.1.2020 an amount of ₹

20 lakhs has been credited to his account. He feigned ignorance that his photo is affixed on agreement to sell paper no. 43-A. His 2nd firm is named Vinayak Abhushan Mandir.

78. After perusing paper No. 31-C he disclosed that the amount of ₹ 20 lakhs pertains to business transaction hence he deposited it in his firm's current account. He clarified that he utilised this amount in his business. After perusing paper No. 31-C/1 he could not tell, whether cheque No. 223569 was written in it or not. He further deposed that the plaintiff fraudulently taking undue advantage of the business relations with him, obtained his signatures on the blank papers on the pretext of doing business and also obtained 4 cheques of ₹ 25 - 25 lakhs, who obtained his signature on some papers on the pretext of preparing an agreement.

79. He further deposed that the plaintiff obtained his signature on about 15 - 20 blank pages, one of which was a stamp paper of ₹ 100/-. He further deposed that the plaintiff gave him ₹ 20 lakhs towards labour charges, which was a yearly settlement. He could not tell whether the above amount of ₹ 20 lakhs towards labour charges was shown by his chartered accountant in his annual income tax return or not ?

80. The defendant DW-1 was shown paper No. 34-C, a certified copy of the unregistered agreement to sell of the disputed property allegedly executed by the defendant in favour of Manish Kumar Jaiswal for a consideration of ₹ 50 lakhs, to which the witness feigned ignorance and could not tell whether it was signed by him or not. He disclosed that he filed a case against Manish Kumar Jaiswal, but stated that no compromise was reached with him. He deposed that he can examine Arun Kumar Jaiswal, who is included in the list of witnesses, who is a businessman doing business in gold silver.

81. He feigned ignorance that on 30.12.2019 Arun Kumar Jaiswal accompanied him to the sub-registrar office, who was witness of the agreement to sell, on his behalf. He accepted that till date, he has not filed any suit for cancellation of the agreement to sell against the plaintiff. The plaintiff committed fraud on him by taking 4 cheques of ₹ 25 - 25 lakhs, obtained his signature on blank paper and fraudulently got executed the agreement to sell from him. He admitted that he has not lodged a complaint with the police or administrative officials or a case in the court, regarding the above fraudulent acts allegedly committed by the plaintiff. He was under pressure, because he was doing business with the plaintiff. The disputed house is valued at about ₹ 2 crores, because the adjoining houses have been sold for that amount but he cannot file the certified copy of those transactions.

82. He admitted that he read the alleged agreement to sell after 2 - 3 days in which the cheque number was written but he clarified that no such cheque was ever received by him. Since he was under pressure, no written complaint was made to the plaintiff. He also made no complaint to the police regarding non-receipt of ₹ 20 lakhs. He denied having executed an unregistered agreement to sell of his house in the year 2020 for ₹ 50 lakhs in favour of Manish Jaiswal.

83. He disclosed that after the plaintiff committed fraud upon him, after a period of 6 months - 1 year, he stopped doing business with him. He was having business with Ganesh Prasad since the

year 2013. He admitted that paper No. 43-A/10 bears the photo of his witness Arun Kumar Jaiswal. He admitted that he was having no enmity and acquaintance with sub-registrar Sherdendu Mishr.

84. He admitted that he went to the sub-registrar office, where the sub-registrar and other persons were present, where on some papers his signature was fraudulently obtained. His witness, Arun Kumar Jaiswal and the plaintiff Ganesh Prasad was also present. He denied that the sub-registrar asked him anything regarding the disputed agreement to sell as well as its consideration and receipt of earnest money through cheque. He feigned ignorance whether his, Ganesh Prasad and witness Shyamchandra and Arun Kumar Jaiswal's photograph and thumb impression were taken in the sub-registrar office. He admitted that on the day when the agreement to sell was allegedly executed, he went to the sub-registrar office on the asking of the plaintiff Ganesh Prasad for signing some documents, but he is not aware of the nature of the document. He disclosed that his signature and thumb impression was previously obtained on a blank paper, hence what was his necessity of going to the sub-registrar office, only Ganesh Prasad knew. Ganesh Prasad told him that he has to sign some documents in sub-registrar office and campus, these were the same documents on which he had earlier signed and affixed his thumb impression.

85. He further deposed that he had applied for the certified copy of the agreement to sell, thereafter, he read it. When he received the notice, then he read it. Notice was also received on the mobile. Since money was required for initiating litigation, which he did not have, hence he did nothing after receiving the notice. He didn't accompany Arun Kumar Jaiswal to the sub-registrar office. He went to the sub-registrar office on 30.12.2019 for signing documents relating to business. The documents were taken by Ganesh Prasad. What was enquired from him by the sub-registrar, he did not remember because he was suffering from cold. The document on which he signed, he didn't enquire about it, because he trusted him. He neither received any cheque for the agreement to sell nor received any payment of cheque through RTGS. He returned from the sub-registrar office in the evening. He admitted that the document on which he signed, was also signed by Arun Kumar Jaiswal as a witness. He also admitted that his photograph, signature and thumb impression were taken in the sub-registrar office, but on which document it was obtained, he did not knew because he was indisposed. He admitted that the sub-registrar enquired from him but he could not remember it. He disclosed that prior to 30.12.2019 also, he went to the sub-registrar office for getting the sale deed executed from his brothers. He also went to the sub-registrar office for purchasing property in the name of his wife. He got executed 3 sale deeds in favour of his wife.

86. He further deposed that he has sold his car. He has replied to the notice received on his mobile and also filed it in this case. Arun Kumar Jaiswal is not his witness, but he is the witness of Ganesh Prasad. He was having no necessity of money so as to execute the agreement to sell in favour of the plaintiff.

87. From the above oral evidence of PW-1 Ganesh Prasad and PW-2 Shyamchandra and documentary evidence on record, it is evident that the defendant executed an agreement to sell in favour of the plaintiff on 30.12.2019 in presence of the witnesses Shyamchandra PW-2 and Arun Kumar Jaiswal. The defendant DW-1 in his oral evidence has admitted that he went to the office of the sub-registrar on 30.12.2019 where taking advantage of the business relations between him and the plaintiff, the plaintiff got fraudulently executed the disputed agreement from him by obtaining

signatures on some blank papers with the connivance of attesting witnesses, scribe and concerned sub-registrar. The defendant has also admitted that prior to the disputed agreement, he has got executed a sale deed of the disputed house in his favour from his brothers and has also facilitated the execution of 3 sale deeds in his wife's favour, as such, it cannot be said that the defendant was not at all conversant with the procedure and practices prevalent in the concerned sub-registrar office, which were followed at the time of execution and registration of the sale deed.

88. It is also pertinent to mention here that the defendant has failed to mention the manner in which fraud was practised upon him in the office of the sub-registrar by the plaintiff. The defendant has only levelled a general allegation that the plaintiff obtained his signature on some blank papers.

89. It is also evident that the plaintiff has examined himself as PW-1 and attesting witness Shyamchandra as PW-2 to prove the execution of the agreement to sell. The defendant admitted that Arun Kumar Jaiswal was another attesting witness of the agreement to sell, but inspite of mentioning his name in the list of witnesses paper number 107-C, this witness was not examined by the defendant to discredit the evidence of the plaintiff insofar as the execution of the agreement to sell was concerned. The defendant could very well have examined Arun Kumar Jaiswal to create doubt about the veracity of the alleged agreement to sell, but no such effort was made by the defendant.

90. It is also evident that the defendant DW-1 has admitted that he was having no enmity with the concerned sub-registrar Sherdendu Mishr. The defendant has also admitted that neither any complaint regarding the alleged fraudulent act of the plaintiff has been made to the police, administrative official or the Court nor any cancellation of the alleged agreement to sell was sought by filing suit. The defendant has also admitted that even after the alleged execution of the agreement to sell, he continued having business with the plaintiff for 6 months 1 year. It is also evident that the alleged agreement to sell contains the digital photograph of the defendant, plaintiff and the 2 witnesses and their thumb impression. The agreement also contains the endorsement of the concerned sub-registrar that the parties to the agreement have accepted its execution and the consideration mentioned in it, which has not been rebutted by the defendant by leading any cogent evidence.

91. The Apex Court in the case of Prem Singh (supra) has held that there is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

92. Similarly, the Apex Court in the case of **Rattan Singh and others vs. Nirmal Gill and others (2021) 15 SCC 300** held as under:-

“33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be

genuine if the same is registered, as held by this Court in Prem Singh v. Birbal [Prem Singh v. Birbal, (2006) 5 SCC 353] . The relevant portion of the said decision reads as below : (SCC pp. 360-61, para 27)

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.

93. The Apex Court again in the case of Sarafat Ali(Deceased) Through Lrs. And Others vs. Deputy Director of Consolidation Haridwar and Others 2026 SCC OnLine SC 1190, held as under:-

"51....It is trite law that a registered document carries a presumption of valid execution and genuineness unless rebutted by cogent evidence. In this regard, it would be apposite to refer to the recent decision of this Court in Hemalatha (D) by Legal Representatives v. Tukaram (D) by Legal Representatives16, wherein the relevant observation read thus:

"31. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered instrument as a "sham". Adopting the principles enunciated in Prem Singh v. Birbal, (2006) 5 SCC 3531, Jamila Begum (Dead) Through Lrs. v. Shami Mohd. (Dead) Through Lrs., (2019) 2 SCC 727 : (2019) 2 SCC (Civ) 632, and Rattan Singh v. Nirmal Gill, (2021) 15 SCC 3003, this Court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the Deed was never intended to operate as a bona fide transfer of title.

32. The grounds typically accepted to challenge a registered Deed at the instance of the vendee/executant are fraud or want of capacity in any party or mistake of fact or fundamental illegality like where the Deed was executed under deceit or sold by a fraudster who did not own the land or where the Deed was executed without consideration, namely, if no money or value was actually exchanged despite recitals in the Deeds or where there was coercion or intimidation like where the seller was forced to sign without free consent.

33. While the aforementioned grounds are illustrative and not exhaustive, this Court must caution against the growing tendency to challenge registered instruments "at the drop of a hat". If the sanctity of registered documents is diluted, it would erode public confidence in property transactions and jeopardize the security of titles. In a society

governed by the Rule of Law, registered documents must inspire certainty; they cannot be rendered precarious by frivolous litigation.

52. The aforesaid observations leave little room for doubt that a registered conveyance cannot be lightly brushed aside on conjectures or insignificant discrepancies. The burden to dislodge the presumption attaching to such an instrument lies heavily upon the party assailing it, and such burden can be discharged only through clear, cogent and convincing evidence establishing fraud, fabrication, want of execution or any other circumstance striking at the root of the transaction itself.

94. It is evident that in this case the burden was upon the defendant to rebut the above evidence of due execution and registration of the disputed agreement to sell. ***In the absence of any contra evidence, the defendant has failed to prove that the disputed agreement to sell was fraudulently got executed from him by the plaintiff. The plaintiff has duly proved that the disputed agreement to sell was willingly executed on 30.12.2019 by the defendant.***

95. The defendant has also alleged that the disputed house was at the relevant time valued at about ₹ 2 crores hence there was no occasion for him to execute the alleged agreement in favour of the plaintiff for a paltry consideration of ₹ 30 lakhs. The defendant could have filed the sale deeds of the comparable immovable property to prove the above fact but no such evidence has been filed by the defendant.

96. It is further pertinent to mention that the defendant entered into an unregistered agreement to sell of the disputed house for a consideration of ₹ 50 lakhs with Manish Kumar Jaiswal in the year 2021, a certified copy of which was filed by the plaintiff before the trial court as paper no. 34-C. The defendant alleged that the above agreement was forcibly got executed from him by Manish Kumar Jaiswal and hence moved an application under Section 156 (3) CrPC before the Court of Chief Judicial Magistrate, Bhadohi for getting a FIR registered against Manish Kumar Jaiswal in which subsequently compromise was reached between the parties on 29.6.2021. The plaintiff has also filed the certified copy of the compromise reached between the parties in which the defendant has agreed to return the consideration of ₹ 50 lakhs to Manish Kumar Jaiswal. Although, the defendant has denied the above transaction of his house with Manish Kumar Jaiswal, but the denial of the defendant is unbelievable. It is evident that even the defendant has not sold his property to Manish Kumar Jaiswal for ₹ 2 crores in the year 2021, hence, by no stretch of imagination it can be presumed that at the relevant time on 30.12.2019, the disputed house was valued at about ₹ 2 crores.

97. It is also evident that the defendant DW-1 although in his written statement denied the receipt of legal notice from the plaintiff but in the oral evidence, he has accepted that he received the legal notice from the plaintiff. The defendant has also stated that he received the notice on his mobile also to which he had replied.

98. It is also evident that the earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, branch Lahurabir, Varanasi, which was also proved by the plaintiff by filing the account statement of his bank before the trial court, which was paper no. 31-C. The above bank statement proves that on 3.1.2020 through cheque No. 223569 amount of ₹ 20 lakhs has been paid to Tushar Agrawal. It is also evident that the above bank account of the plaintiff is the savings bank account.

99. The defendant DW-1 in his cross-examination after perusing the above bank statement paper no. 31-C has accepted that he has received an amount of ₹ 20 lakhs from the plaintiff. The defendant has neither filed any statement of his bank account nor given any legal notice to the plaintiff to prove that he has not received the above payment from the plaintiff. **Hence, in view of the above oral and documentary evidence on record, it is proved that the earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant for executing the disputed agreement to sell in his favour on 30.12.2019 through cheque no.223569 which was encashed by the defendant on 3.1.2020.**

100. Accordingly, issues A, B and D are decided in favour of the plaintiff.

(C)Whether the consideration paid by the plaintiff to the defendant was related to the business transactions that took place between them?

101. It is the contention of the defendant that since the year 2013 he was having business relationship with the plaintiff. He used to purchase raw silver from the plaintiff and after refining it, used to sell refined silver back to the plaintiff and the alleged consideration of ₹ 20 lakhs paid by the plaintiff was towards the business transactions that took place between him and the plaintiff. It has been specifically pleaded by the defendant that the above amount was not paid by the plaintiff as earnest money of the alleged agreement to sell executed by him in favour of the plaintiff. The above fact was denied by the plaintiff by stating that only 4 business transactions took place between him and the defendant during the period November 2019 March 2020. The plaintiff also filed the bank statement of his firm paper no. 65-C2 to prove the above business transactions.

102. On the contrary, the defendant has not filed any documentary evidence to prove that the above consideration of ₹ 20 lakhs was paid by the plaintiff towards the business transactions that took place between him and the plaintiff.

103. PW-1 Ganesh Prasad in his examination-in-chief reiterated the plaint averments. PW-1 in cross-examination deposed that he does business of silver ornaments in the name and style of M/S Ganesh Jewellers, which is a registered firm, and his shop is situated in Varanasi. He is in this business since the year 2014 15. He admitted that the defendant Tushar Agrawal was purchasing silver ornaments from him since November 2019, which was sold by issuing receipt to the defendant. His firm had no dealing with Narendra Agrawal. He admitted that there were 4 transactions of silver between him and the

defendant, during the period November 2019 March 2020. Tushar Agrawal is the proprietor of M/s Ganapathi Abhushan Mandir, with which he had transactions.

104. He further deposed that Tushar Agrawal used to purchase silver and ornaments from him, bill of which was issued to him, which was being paid by him, before purchase. Tushar Agrawal never purchased raw silver from him, only silver ornaments were purchased from him, regarding which bill was issued to him. The defendant paid through his(plaintiff) bank account in the name of Ganesh Jewellers. The bills were generated through GST portal. The bill of silver ornaments was signed both by him and Tushar Agrawal.

105. He further deposed that paper no. 65-C2 pertains to account No. 02251131002137 in which transaction dated 30.12.2019 was not conducted. The above account contains transactions made on GST portal. The transactions made with Tushar Agrawal on the GST portal, contain bill number also. Paper no. 65-C2 records 4 transactions between him and the defendant, from November 2019 March 2020. There are 4 transactions with Ganpati Abhushan Mandir which are bill No. 34 dated 29.11.2019, invoice No. 38 dated 18.12.2019, invoice No. 43 dated 27.02.2020 and invoice No. 50 dated 6.3.2020. Besides the above transactions, no other transaction took place.

106. Tushar Agrawal DW-1 in his examination in chief reiterated the averments made in his written statement. He further deposed that he used to purchase raw silver from the plaintiff, which was sold to the plaintiff after refining it .

107. DW-1 Tushar Agrawal in his cross examination deposed that he is a businessman. The name of his firm is Ganpati Abhushan Mandir. He deals in sale - purchase of silver. He also files the income tax return. He started business in the year 2013 from his firm Ganpati Abhushan. From this firm, he does business of purchase - sale of raw and refined silver. At present he is not doing the business of refining raw silver. He is having a current account of his firm Ganpati Abhushan Mandir in Union Bank of India, Gopiganj. His 2nd firm is named Vinayak Abhushan Mandir.

108. After perusing paper No. 31-C he disclosed that the amount of ₹ 20 lakhs pertains to business transaction hence he deposited it in his firm's current account. He clarified that he utilised this amount in his business.

109. He further deposed that he used to have business with Ganesh Prasad, and due to this, the plaintiff gave him ₹ 20 lakhs, he used to supply silver to the plaintiff after refining it. He cannot give any evidence regarding the supply of silver to the plaintiff. He was shown paper No. 65-C the bank statement, according to which 4 business transactions took place between him and the plaintiff on 29.11.2019, 18.2.2020, 26.2.2020 and finally on 3.3.2020 and asked whether any other transaction took place between them? The witness replied that he has got no knowledge about paper No. 65-C.

110. He further deposed that the plaintiff gave him ₹ 20 lakhs towards labour charges, which was a yearly settlement. He could not tell whether the above amount of ₹ 20 lakhs towards labour

charges was shown by his chartered accountant in his annual income tax return or not? He was having business with Ganesh Prasad since the year 2013. He denied the suggestion that he never supplied silver ingots and refined silver to the plaintiff. He accepted that he did labour work with the plaintiff.

111. From the oral and documentary evidence on record it is evident that the plaintiff was having firm in the name and style of M/S Ganesh Jewellers whereas, the defendant is having firm in the name and style of M/S Ganpati Abhushan Mandir and M/S Vinayak Abhushan Mandir. The plaintiff has specifically asserted that only 4 business transactions took place between him and the defendant between November 2019 - March 2020, and in order to prove the above transactions, the plaintiff also filed the copy of statement of current bank account no. 02251131002137 of his firm M/S Ganesh Jewellers before the trial court as paper no. 65-C, from the perusal of which it is evident that on 29.11.2019, 18.2.2020, 26.2.2020 and 3.3.2020 transactions of ₹ 14 lakhs, 5 lakhs, 7.47 lakhs and 2 lakhs took place with M/S Ganpati Abhushan Mandir, which is the firm of the defendant. The plaintiff has received the above amount in his firm's current account from the defendant's firm.

112. The plaintiff has also filed the statement of invoices generated on the GST portal between his firm M/S Ganesh Jewellers and defendant's firm M/S Shree Ganpati Abhushan Mandir, which disclose that the following transactions took place between the above firms invoice No. 43 dated 27.2.2020 for ₹ 10 lakhs, invoice No. 50 dated 6.3.2020 for ₹ 4.47 lakhs, invoice No. 34 dated 29.11.2019 for ₹ 4 lakhs and invoice No. 38 dated 18.12.2019 for ₹ 10 lakhs.

113. It is evident that none of the above transactions mentioned in the bank statement as well as the transactions generated on the GST portal is of ₹ 20 lakhs, which was the earnest money paid by the plaintiff to the defendant towards execution of registered agreement to sell dated 30.12.2019 by the defendant in his favour. It is apparent that the burden is upon the defendant to prove that the above amount of ₹ 20 lakhs was towards the business transactions that took place between him and the plaintiff, but that burden has not at all been discharged by the defendant. The defendant could have filed the GST bills, invoices, GST return and his firms income tax return to prove that the above amount of ₹ 20 lakhs was paid to him by the plaintiff towards business transactions but the defendant has not led any evidence to contradict the above evidence led by the plaintiff. It is further pertinent to mention here that the consideration of ₹ 20 lakhs was paid by the plaintiff from his individual savings bank account, not from his firms bank account, hence it cannot be presumed that the above amount was paid by the plaintiff towards business transactions with the defendant.

114. In view of the above evidence on record, the defendant has failed to prove that the consideration of ₹ 20 lakhs was paid to him by the plaintiff towards the business transactions that took place between him and the plaintiff. On the contrary, the plaintiff has successfully proved that the above consideration, was the earnest money paid by him to the defendant for the execution of the registered agreement to sell dated 30.12.2019 in his favour. Accordingly, issue C is decided in favour of the plaintiff against the defendant.

(E)Whether the plaintiff continuously remained ready and willing to perform his part of the agreement to sell ?

115. It has been vehemently contended by the learned Senior Counsel for the appellant that the plaintiff never remained ready and willing to perform his part of the agreement because the plaintiff never mentioned in his legal notice that he was ready and willing and was still ready and willing to perform his part of the agreement. Learned counsel by relying upon the Single Judge Bench precedent of this Court in the case of **Ram Singh** (supra) vehemently contended that the plaintiff has to strictly aver and prove that he was always ready and willing and was still ready and willing to perform his part of the agreement and such assertion should be in the form 47 and 48 prescribed in Appendix 'A' of the CPC, but in this case, the plaintiff has not submitted his pleading in the above format which is also a mandatory requirement of Section 16(c) of the Specific Relief Act failing which no contract of specific performance is enforceable. The learned Senior counsel failed to disclose to this Court that the above precedent was challenged by filing appeal before the Apex Court and in appeal it has not been affirmed and **subsequently set aside by the Apex Court, which is reported as Sughar Singh vs. Hari Singh(Dead) through LRs and others (2021) 17 SCC 705 hence it cannot be considered as good law and binding precedent.** In view of the above facts, the contention of the learned Senior counsel cannot be accepted, and is liable to be rejected.

116. The plea " ready and willing to perform his part under the contract " with reference to Section 16(c) of the Specific Relief Act, 1963 has been construed by a 3 Judge Bench of the Apex Court in the case of Syed Dastagir (supra). It was held as under :-

"9. ..... In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still would be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test, whether he has performed his obligations one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. Same plea may be stated by different persons through different words then how could it be constricted to be only in any particular nomenclature or word. Unless statute specifically require for a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of " Readiness and willingness " has to be in spirit and substance and not in letter and form. So to insist for mechanical production of the exact words of an statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded."

117. From the above law laid down by the Apex Court in the case of **Syed Dastagir** (supra) it is evident that no specific phraseology or language is required to prove that the plaintiff always remained ready and willing to perform his part of the contract and is still ready and willing to do so. The above compliance of " readiness and willingness " has to be in spirit and substance and not in letter and form.

118. In the context of the above law, it is to be examined in the instant case whether the plaintiff has complied with the requirement of "readiness and willingness " in spirit and substance?

119. From the perusal of the legal notice dated 11.9.2021 given by the plaintiff to the defendant, plaint and the oral evidence of the plaintiff PW-1 it is evident that the sale deed was to be executed within 3 years from the date of the registered agreement to sell dated 30.12.2019 and the plaintiff was supposed to pay the balance sale consideration of ₹ 10 lakhs to the defendant at the time of execution of the sale deed in his favour. The plaintiff specifically mentions in his above legal notice that he has arranged the remaining consideration of ₹ 10 lakhs and he is ready and willing and will also remain ready and willing in future to get the sale deed executed and registered in his favour by paying the above consideration to the defendant. The plaintiff requested the defendant to intimate the date and time when he proposed to execute the sale deed in favour of the plaintiff but the defendant never communicated that date to the plaintiff. The receipt of the above legal notice has been accepted by the defendant DW-1 in his cross-examination.

120. The plaint also discloses that the plaintiff personally met the defendant and requested him to execute and register the sale deed in his favour but the defendant failed to do so. The plaint also discloses that a legal notice was issued by the plaintiff dated 11.9.2021 to the defendant which was received by the defendant, but still the defendant failed to execute and register the sale deed in favour of the plaintiff. The plaint also discloses that the defendant turned dishonest which was apparent from his conduct and was also negotiating to sell the disputed premises to others, which was proved by the evidence submitted by the plaintiff during trial. The plaintiff produced the certified copy of the unregistered agreement to sell executed by the defendant in the year 2021 in favour of Manish Kumar Jaiswal, whereby the defendant agreed to sell the disputed house for a consideration of ₹ 50 lakhs to him. The plaint specifically mentions that the plaintiff was and is still ready and willing to purchase the disputed premises as agreed upon and in accordance with the terms and conditions of the registered agreement to sell dated 30.12.2019 and was ready and willing to pay the balance consideration of ₹ 10 lakhs to the defendant at the time of execution and registration of the sale deed. The plaintiff in his oral evidence also reiterated that he always remained ready and willing and was still ready and willing to perform his terms of the agreement and get the sale deed executed in his favour by paying the balance consideration of ₹ 10 lakhs to the defendant.

121. The Apex Court in the case of ***Syed Dastagir*** (supra) specifically held as under:-

" 11..... Explanation(i) uses the words " it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. This speaks in negative term what is not essential for the plaintiff to do..... This does not mean that unless the court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. Plaintiff can always tender the amount to the defendant or deposit it in court, towards performance of his obligation under the contract. Such tender rather exhibits willingness of the plaintiff to perform his part of the obligation. What is not essential only means need not do but does not mean he cannot do so....."

122. It is well settled that the word "readiness" refers to financial capacity and the word "willingness" to the conduct of the plaintiff wanting performance and generally, readiness is backed by willingness. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance.

123. The Apex Court in the case of **Sughar Singh** (supra) has held that while proving the readiness and willingness the plaintiff is not required to make any averment that the plaintiff required executant of the agreement to sell to attend the office of the sub-registrar to execute the sale deed within the time agreed. It was held that whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit alongwith other attending circumstances in a particular case. Whether the plaintiff was ready and was always ready to perform his part of contract may be inferred from the facts and circumstances of a particular case. **It was further held that it is not necessary for the plaintiff to produce ready money but it is mandatory on his part to prove that he has means to generate consideration amount.**

124. In the instant case, the plaintiff was required to pay the balance consideration of ₹ 10 lakhs to the defendant at the time of execution of the sale deed in his favour. The plaintiff has filed the statement of his savings bank account no. 6089807462 with the Indian Bank, Lahurabir branch, Varanasi from 1.1.2020 till 24.3.2022 which is paper no. 31-C on record, which discloses that the plaintiff was maintaining balance in excess of ₹ 10 lakhs after the execution of the agreement in his above bank account, which proves the financial capacity of the plaintiff.

125. It was submitted by the learned Senior counsel for the appellant that the suit for specific performance of the registered agreement to sell was filed by the plaintiff before the trial court with the deficient court fees, which was subsequently made good, and this fact itself proves that the plaintiff was lacking the financial capacity to pay the balance sale consideration of ₹ 10 lakhs to the defendant.

126. It is apparent from the record of the trial court that the suit was filed by the plaintiff with the deficient court fees on 14.12.2021 but the deficiency of court fees was made good on 13.1.2022. The plaintiff was always having a balance in excess of ₹ 10 lakhs in his savings bank account and was also in a position to arrange the funds, since he was a jeweller, hence merely on the basis that the suit was filed by the plaintiff with deficient

court fees, it cannot be inferred that the plaintiff was always lacking the financial capacity to pay the defendant the balance sale consideration of ₹ 10 lakhs.

127. In view of the above facts, it is apparent that the plaintiff was always ready and willing and is still ready and willing to perform his part of the contract. It is further apparent that to the contrary, the defendant was not ready and willing to execute the sale deed in favour of the plaintiff, hence the plaintiff was compelled to file the suit for the relief of specific performance of the registered agreement to sell dated 30.12.2019 against the defendant.

128. Accordingly, issue E is decided in favour of the plaintiff against the defendant.

(F) Whether the relief of specific performance of contract is still discretionary, after the amendment of Specific Relief Act w.e.f 01.10.2018?

129. The amended Section 10 of the Specific Relief Act 1963 w.e.f. 1.10.2018 reads as under:-

" 10. Specific performance in respect of contracts The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16."

130. The Apex Court in the case of P.Daivasigamani (supra) has held that the amending act No. 18 of 2018 whereby the provisions of the Specific Relief Act were amended with effect from 1.10.2018 are prospective in nature which cannot apply to those transactions that took place prior to its coming into force.

131. In the instant case, the disputed registered agreement to sell has been executed by the defendant in favour of the plaintiff on 30.12.2019, which is after the enforcement of the amended provisions of the Specific Relief Act with effect from 1.10.2018, hence the amended provisions of the Act are applicable in the facts and circumstances of this case.

132. The Apex Court in the case of **B.Santoshamma** (supra) has also held that after the amendment with effect from 1.10.2018, the relief of specific performance of contract is no longer discretionary. The Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of Section 11(2), 14 and 16 of the Specific Relief Act.

133. In view of the above facts and the legal position prevailing now, it is apparent that in this case, the Court is bound to specifically enforce the registered agreement to sell dated 30.12.2019 subject to the provisions of Section 11(2),14 and 16 of the Specific Relief Act.

134. Accordingly, issue F is decided.

Conclusion

135. In view of the above analysis, it is proved that a registered agreement to sell dated 30.12.2019 of his residential house was executed by the defendant in favour of the plaintiff, for a consideration of ₹ 30 lakhs, out of which ₹ 20 lakhs was paid as earnest money by the plaintiff to the defendant. It is also proved that the market value of the residential house was not ₹ 2 crores, as alleged by the defendant. It is also proved that the above registered agreement was not got fraudulently executed by the plaintiff from the defendant, taking advantage of the business relations between them.

136. The defendant has asserted that he was not having any financial necessity to sell his house to the plaintiff but the plaintiff has filed evidence on record to prove that the defendant's wife Shweta Agrawal was the owner of 3 immovable properties, the certified copies of the sale deeds dated 20.3.2017, 27.11.2018 and 29.4.2019 in favour of the defendants wife have been filed by the plaintiff before the trial court. To counter the above assertion, the defendant has disclosed that his wife has sold the above 3 immovable properties before the filing of the suit and has also filed the certified copies of 3 sale deeds executed by his wife on 06.3.2021.Besides that, the defendant DW-1 has admitted in his cross-examination that he has sold his car. The above fact also disclose that the defendant was in need of money, otherwise there was no necessity to sell his car and for his wife, to sell the above 3 immovable properties.

137. It is also evident that the plaintiff always remained ready and willing to fulfil his terms of the agreement, who was having the financial capacity to pay the balance consideration of ₹ 10 lakhs to the defendant.

138. The hardship pleaded by the defendant cannot be considered because from the very inception the defendant was aware that the disputed house was being used by him for residential purposes and for business purposes, hence he should not have sold it but still, the defendant entered into a registered agreement to sell it with the plaintiff. The hardship, if any, is due to the own mis-deeds of the defendant, for which the plaintiff cannot be faulted in any manner whatsoever.

139. In view of the above facts, since the relief of specific performance is no longer discretionary and even otherwise, there is no fact or circumstance which disentitles the plaintiff from getting the primary relief of specific performance, hence, the trial court has not erred in decreeing the plaintiff's suit for the relief of specific performance of the registered agreement to sell dated 30.12.2019. There is no perversity in the judgment of the trial court warranting interference by this Court in exercise of its appellate jurisdiction. Accordingly, this appeal lacks merit, and is liable to be dismissed with costs.

140. **For the aforesaid reasons, the instant appeal is dismissed with costs throughout**. Consequently, the impugned judgment and decree dated 11.3.2025 passed by the trial court in O.S. 9 of 2022 is affirmed.

141. The defendant- appellant is directed to execute the sale deed of the disputed house within a period of 2 months from today in favour of the plaintiff-respondent after receiving the balance sale consideration of ₹ 10 lakhs, failing which, the plaintiff is entitled to get the sale deed executed through Court, by depositing the balance consideration in the Court, in accordance with law.

(2026) 7 ILRA 1288
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 7436 of 2026

Murti Markandeshwar Ji Maharaj Gopal Ki Bagiya City Jhansi ...Petitioner(s)
Versus
Smt. Jyoti Gangwani & Anr. ...Respondent(s)

Issue for Consideration

Whether a third party claiming an independent right or title adverse to the landlord can seek impleadment under Order I Rule 10 of the Code of Civil Procedure in eviction proceedings instituted under Section 21(2) of the U.P. Regulation of Urban Premises Tenancy Act, 2021?

Headnotes

U.P. Regulation of Urban Premises Tenancy Act, 2021 — S. 21 — Code of Civil Procedure, 1908 — O. I R. 10 — Eviction proceedings — Impleadment of third party claiming independent title — Neither necessary nor proper party.

HELD: Proceedings under Section 21 of the Act of 2021 are confined to adjudication of disputes arising out of the jural relationship of landlord and tenant, and do not contemplate adjudication of complicated questions relating to title or ownership of the premises. Such questions cannot be permitted to be raised through an application for impleadment under Order I Rule 10 CPC, as their adjudication lies beyond the statutory jurisdiction of the Rent Authority. A person claiming an independent right or title adverse to the landlord cannot, by seeking impleadment, enlarge the scope of eviction proceedings, and neither qualifies as a necessary party nor as a proper party thereto; such disputes are required to be agitated before the competent civil court in appropriately instituted proceedings. Any contrary view would convert the summary remedy provided under the Act into a forum for adjudication of complex civil disputes relating to title, a course neither contemplated by nor permissible under the statutory scheme. [Paras 6-9]

Constitution of India — Art. 227 — Supervisory jurisdiction — Scope.

HELD: The supervisory jurisdiction under Article 227 is confined to ensuring that subordinate courts and tribunals act within the bounds of their jurisdiction. Unless the impugned order suffers from patent lack of jurisdiction, manifest perversity, or an error apparent resulting in grave miscarriage of justice, interference is not warranted merely because another view is possible. The Rent Tribunal having rightly held that the petitioner's claim, founded upon an alleged independent title, falls outside the ambit of proceedings under Section 21, no interference is called for. [Paras 8, 10]

Petition dismissed. (E-14)

Case Law Cited

Nil.

List of Acts / Statutes

Constitution of India; U.P. Regulation of Urban Premises Tenancy Act, 2021; Code of Civil Procedure, 1908.

List of Keywords

Impleadment; Necessary party; Proper party; Third party; Independent title; Eviction proceedings; Landlord-tenant relationship; Rent Authority; Supervisory jurisdiction.

Case Arising From

Order dated 13.03.2026 passed by the Rent Tribunal in Rent Appeal No. 05 of 2026 (Smt. Jyoti Gangwani v. Vinod Rawat and another), setting aside the order dated 14.08.2025 passed by the Rent Authority in Rent Case No. 110 of 2024 allowing the petitioner's application for impleadment.

Appearance for Parties

For the Petitioner(s): Rajendra Prasad Tiwari, Vinay Kumar Tiwari, Vineet Tiwari.
For the Respondent(s): Rishabh Agarwal.

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Rajendra Prasad Tiwari, learned counsel for the petitioner and Sri Atul Dayal, learned Senior Counsel appearing along with Sri Rishabh Agarwal, learned counsel for the respondent.

2. By means of the present petition, the petitioner seeks to assail the order dated 13.03.2026 passed by the Rent Tribunal in Rent Appeal No. 05 of 2026 (Smt. Jyoti Gangwani vs. Vinod Rawat & another), whereby the appellate authority has allowed the appeal preferred by the respondent-landlord and has set aside the order dated 14.08.2025 passed by the Rent Authority in Rent Case No. 110 of 2024, whereby the application moved by the present petitioner under Order I Rule 10 of the Code of Civil Procedure seeking impleadment had been allowed.

3. A perusal of the impugned order indicates that the Rent Tribunal has held that the proceedings instituted by the respondent-landlord under Section 21(2) of the U.P. Regulation of Urban Premises Tenancy Act, 2021 are confined to adjudication of the landlord-tenant dispute arising between the parties to the tenancy and are limited to consideration of the grounds pleaded in support of the prayer for eviction.The Tribunal has further recorded that the petitioner, claiming to be a third party, sought impleadment solely for the purpose of disputing the title and ownership of the respondent-landlord over the premises in question. Such a dispute, according to the Tribunal, falls wholly outside the scope of the proceedings contemplated under the Act of 2021 and cannot be permitted to be introduced in proceedings which are intended to determine only the rights and obligations arising out of the relationship of landlord and tenant. On the aforesaid reasoning, the Tribunal has concluded that the petitioner is neither a necessary nor a proper party to the rent proceedings and, consequently, the order of the Rent Authority permitting impleadment was liable to be set aside.

4. When the matter was taken up, learned counsel appearing for the petitioner was unable to dispute the settled legal position that proceedings under Section 21(2)(b) of the Act of 2021 do not contemplate adjudication upon complicated questions relating to title or ownership of the premises and that any rival claim to ownership has to be agitated before the competent forum in appropriately instituted proceedings. It has also not been disputed that a third party claiming an independent right adverse to the landlord cannot insist upon being impleaded in eviction

proceedings merely to canvass questions of title, which are wholly foreign to the limited scope of such proceedings.

5. In view of the aforesaid position, learned counsel for the petitioner fairly does not dispute that the impugned order does not suffer from any patent jurisdictional error, manifest illegality, or perversity warranting exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

6. The aforesaid submission is in accord with the settled legal position. The statutory scheme of the U.P. Regulation of Urban Premises Tenancy Act, 2021 makes it evident that proceedings under Section 21 thereof are confined to adjudication of disputes arising out of the jural relationship of landlord and tenant. Questions relating to title or ownership of the premises cannot be permitted to be raised through an application for impleadment under Order I Rule 10 of the Code of Civil Procedure, as adjudication thereof lies beyond the statutory jurisdiction of the Rent Authority.

7. A person claiming an independent right or title adverse to the landlord cannot, by seeking impleadment, enlarge the scope of eviction proceedings or invite the Rent Authority to adjudicate disputes relating to ownership. Such disputes are required to be agitated before the competent civil court in appropriately instituted proceedings. Consequently, a third party asserting an independent title neither qualifies as a necessary party nor as a proper party to proceedings instituted under Section 21 of the Act. Any contrary view would have the effect of converting the summary remedy provided under the Act into a forum for adjudication of complex civil disputes relating to title, a course neither contemplated by nor permissible under the statutory scheme of the Act.

8. Applying the aforesaid principle to the facts of the present case, this Court finds no infirmity in the view taken by the Rent Tribunal. The Tribunal has correctly appreciated the nature and scope of the proceedings under the Act of 2021 and has rightly held that the petitioner's claim, being founded upon an alleged independent title, falls outside the ambit of adjudication in proceedings under Section 21 of the Act. The order impugned neither travels beyond the statutory framework governing such proceedings nor suffers from any jurisdictional error, patent illegality, or perversity so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

9. It is well settled that proceedings under the U.P. Regulation of Urban Premises Tenancy Act, 2021 are intended to provide an expeditious and efficacious remedy for adjudication of disputes arising out of the jural relationship of landlord and tenant. The Rent Authority exercises a limited statutory jurisdiction and is not expected to embark upon adjudication of complicated questions of title between the landlord and a stranger to the tenancy. A person asserting an independent proprietary right over the premises has an efficacious remedy before the competent civil forum, and the pendency of such a claim cannot enlarge the scope of proceedings instituted under Section 21 of the Act by permitting such person to intervene therein.

10. Equally, the supervisory jurisdiction of this Court under Article 227 of the Constitution is confined to ensuring that the subordinate courts and tribunals act within the bounds of their jurisdiction. Unless the impugned order is shown to suffer from patent lack of jurisdiction, manifest perversity, or an error apparent resulting in grave miscarriage of justice, interference is not warranted merely because another view may also be possible. No such infirmity has been demonstrated in the present case.

11. The petition, being devoid of merit, is accordingly **dismissed**.

(2026) 7 ILRA 1291
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482. No. 3198 of 2026

Tulsiani Construction & Dev. Ltd. & Ors. ...Applicant(s)
Versus
State of U.P. & Anr. ...Opposite Party(s)

Issue for Consideration

Matter pertains to whether the order passed by Special Judge, Anti-Corruption, CBI taking cognizance of offence and summoning the applicants was sustainable in law, particularly having regard to whether impugned order was vitiated for non-application of mind in as much as it failed to deal with applicants' objections against proposed cognizance, the underlying scheduled offences were in substance, civil/commercial disputes given a cloak of criminality so as to constitute an abuse of process of Prevention of Money Laundering Act and property attached as proceeds of crime, having been acquired in year 2012 long prior to registration of FIR, could be said to bear any nexus with proceeds of crime as defined u/s 2(u) of PMLA.

Headnotes

Prevention of Money Laundering Act, 2002 - ss. 2(u), 2(v), 2(zb), 2(1)(y), 3/4 - Indian Penal Code, 1860 - ss. 409, 420 - Quashing of criminal proceedings - Proceeds of crime - Property acquired prior to scheduled offence - Flat purchased in 2012, alleged scheduled offence occurred in 2022 - No nexus with proceeds of crime - Such property could not be attached - PMLA proceedings arising out of civil/commercial disputes - Loan accounts substantially settled - Proceedings used to coerce settlement of civil claims - Abuse of process - The applicants, invoked the inherent jurisdiction of High Court u/s 482 Cr.P.C. seeking quashing of order dated 30.01.2026 passed by Special Judge, Anti-Corruption, CBI West/E.D., Lucknow, in Criminal Misc. Case No.4851 of 2025, arising out of ECIR No.ECIR/LKZO/43/2023 registered by Directorate of Enforcement pursuant to directions issued by a Coordinate Bench of High Court while rejecting the bail application of applicant No.3, as well as entire consequential proceedings - FIR lodged by Punjab National Bank alleging that applicants had fraudulently availed home loans for buyers of flats in their housing project, failed to deliver possession or execute sale deeds within stipulated period - Caused a financial loss of Rs.4.63 crores to bank, culminating in charge-sheet and Enforcement Directorate complaint alleging siphoning of proceeds of crime to tune of Rs.9.948 crores across multiple FIRs, including one lodged by intervener, and provisional attachment of properties including a flat purchased by applicants in 2012 - It was applicants' case that impugned cognizance order failed to consider their objections, that underlying disputes were essentially civil/commercial in nature already resolved through One Time Settlements and No Dues Certificates - The attached flat, having been acquired years before alleged scheduled offence, could not constitute proceeds of crime, rendering entire PMLA prosecution an abuse of process of law.

Held: The dispute arising out of failure of applicants to complete the project, hand over possession of flats and execute its transfer deeds or their failure to refund consideration amount to flat buyers, predominantly

appears to be of civil nature - The proceedings under PMLA have been instituted on the basis of applicants' involvement in a criminal case instituted by Punjab National Bank regarding four loan accounts having turned NPA, when in fact one of four accounts was regular and it had not been declared NPA, the Bank has already issued No Dues Certificates in respect of two loan accounts and has entered into a One Time Settlement in respect of fourth loan account and has received first installment of OTS amount, indicates that there was merely a commercial dispute between Bank and applicants which already stands settled - Regarding the FIR lodged by intervener, it has been instituted with an oblique motive to coerce the accused persons to redress the civil grievances of veiled commercial corporate entity being represented by intervener - The other FIRs of scheduled offences are also of similar nature - Therefore, all the alleged scheduled offences are commercial disputes and are bad in view of law laid down by Supreme Court in *Indian Oil Corpn. v. NEPC India Ltd (infra)* and *Sarabjeet Kaur v. State of Punjab & Another (infra)* and observations made in *Anil Kumar Tulsiani v. State of U.P.* (infra) - The phrase 'or the value of such property' used in s. 2(u) of PMLA does not include value of Flat which had been acquired in year 2012, long before the Punjab National Bank lodged FIR in year 2022 alleging commission of scheduled offence and which has not been acquired from proceeds of crime - The Enforcement Directorate had no authority to attach Flat that had been acquired in year 2012, much before commission of alleged scheduled offences and attachment of Flat is absolutely illegal and without jurisdiction - The proceedings under PMLA is maliciously instituted with an ulterior motive for wreaking vengeance on the applicants and thereby coercing them to redress the grievances of Flat buyers to transfer in their favour the flats and / or refund their money, without their resorting to remedies available under laws and same are liable to be quashed - **Accordingly, application allowed**. [Paras 57, 58, 60, 63, 64] (E-13)

Case Law Cited

Seema Garg v. Deputy Director, Directorate of Enforcement: **2020 SCC OnLine Punjab & Haryana 738;** *HDFC Bank Ltd. v. Government of India;* **2021 SCC OnLine Patna 4222;** *Kumar Pappu Singh v. Union of India;* **2021 SCC OnLine AP 983;** *Deputy Director, Directorate of Enforcement v. Seema Garg;* **SLP (civil) No.14713-14715/2020 decided on 30.04.2021;** *Pavana Dibbur v. Directorate of Enforcement;* (**2023) 15 SCC 91;** *Shyam Sundar Agarwala v. State of Odisha* **2025 SCC OnLine Odisha 566;** *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.;* **(2023) 12 SCC 1;** *Inox Air Products Ltd. v. State of Andra Pradesh;* **2025 SCC OnLine SC 209**; *Satish Motilal Bidri v. Union of India and Others;* **2024 SCC OnLine Ker 3410;** *Vijayraj Surana v. Assistant Director, ED;* **2024 MHC 3345;** *Dilip Singh v. State of M.P.*: **(2021) 2 SCC 779;** *Pavana Dibbur v. Directorate of Enforcement:* **(2023) 15 SCC 91;** *HDFC Bank v. Govt. of India & Others* **2021 SCC OnLine Pat 4222;** *Kumar Pappu Singh v. Union of India* **(2021) 1 HCC (AP) 556;** *S.N. Mukherjee v. Union of India:* **(1990) 4 SCC 594;** *Kranti Associates (P) Ltd. v. Masood Ahmed Khan:* **(2010) 9 SCC 496;** *State of Haryana v. Bhajan Lal:* **1992 Supp (1) SCC 335;** *Sajjan Kumar v. CBI:* **(2010) 9 SCC 368 - referred to**

Indian Oil Corporation v. NEPC India Ltd.; **(2006) 6 SCC 736;** *Sarabjeet Kaur v. State of Punjab;* **(2023) 5 SCC 360;** *Anil Kumar Tulsiani v. State of U.P.:* **2023 SCC OnLine All 733 - followed**

List of Acts

Indian Penal Code, 1860; Prevention of Money Laundering Act, 2002

List of Keywords

s. 482 Cr.PC.; IPC; Cognizance of offence; Home loans; Sushant Golf City, Lucknow; Residential flats; Punjab National Bank; Sale deeds of immovable properties; Financial loss; Tripartite agreements; Personal gains; Builder; Defrauding the bank; Loss of public money; Prevention of Money Laundering Act; Summoning order; Scheduled offence; Predicate offence; Proceeds of crime; SIDBI; COVID-19; Embezzlement of funds; Prevention of Money Laundering; Provisional attachment; Complaint; Charge-sheet; Enforcement Directorate; Special Judge; Non-application of mind; Quasi-judicial functions; Civil dispute; Oblique motive; Discharge; Framing of charges; One Time Settlement; No Dues Certificate; NPA; Value of property; Fraud; Intervener; Breach of trust; Cheating; Impugned order quashed; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 3198 of 2026

From the Judgment and Order dated 30.01.2026 passed by Special Judge, Anti-Corruption, CBI West/E.D., Lucknow in Criminal Misc. Case No.4851 of 2025 arising out of ECIR No.ECIR/LKZO/43/2023.

Appearances for Parties

Adv. for the Applicant(s):
Abhinav Mishra

Adv. for the Opposite Party(s):
G.A., Rohit Tripathi

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

1. Heard Sri Vaibhav Kalia Senior Advocate assisted by Sri Abhinav Mishra Advocate, the learned counsel for the applicant, Sri. Ganesh Dutt Bhatt, the learned A.G.A. - I representing the State of U.P., Shri Rohit Tripathi, the learned counsel for the Enforcement Directorate and Sri. Anuuj Tandon, the learned counsel for the intervener Sri. Sanjeev Agarwal.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant- Tulsiani Constructions and Developers Ltd. and its Directors Mahesh Kumar Tulsiani and Anil Kumar Tulsiani have challenged the validity of an order dated 30.01.2026 passed by the learned Special Judge, Anti-Corruption, CBI West/E.D., Lucknow in Criminal Misc. Case No.4851 of 2025 arising out of ECIR No.ECIR/LKZO/43/2023 whereby the trial Court has taken cognizance of the offence under Section 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA) and has summoned the applicants to face the trial. The applicants have also challenged the validity of the entire proceedings of the case.

3. Briefly stated, facts of the case are that the applicant No.1 is a Company carrying on the business of real estate and is engaged in construction of various housing and commercial projects. On 24.09.2022, Punjab National Bank filed FIR No.336 of 2022 under Sections 409 and 420 IPC in Police Station- Hazratganj, District Lucknow against the applicants stating that it had sanctioned home loans to four buyers for purchasing residential flats in a project of the applicants in Sushant Golf City, Lucknow. The project was not completed within the stipulated time and the flats were not delivered to the borrowers who in turn did not repay the loan amount to the Punjab National Bank.

4. The applicant No.-3 Anil Kumar Tulsiani had filed Criminal Bail Application No.1993 of 2023 before this Court seeking his release on bail in FIR No.336 of 2022. A Co-ordinate Bench of this Court rejected the bail application by means of an order dated 03.03.2023 wherein this Court recorded that: -

"10. It is evident from the record that a tripartite agreement was executed in between the Company and the borrowers, and Rs.4,63,10,000/- was transferred in the account of the Company. It is further evident that the applicant is the Director of the Company, managing all its affairs and as per tripartite and quadripartite agreements dated 27.10.2015 and 31.12.2015 respectively, it was obligatory that the sale deed was to be executed in favour of the borrowers and the same was

to be handed over to the Bank within 30 days. It is admitted by the learned counsel for the applicant that the property was to be handed over in the year 2016, but till today, neither the property has been shown to the Bank officials nor the sale deed has been executed and handed over to the Bank. Coupled with the aforesaid facts, the applicant is also having criminal antecedents of so many cases, which are mentioned in paragraphs 46 and 47 of the bail application.

11. In view of above, the application stands rejected.

12. Now-a-days, it has become a trend that the money of the public financial institution is being taken away by committing fraud or breach of trust, as a result of which, the Banks are suffering loss, and beyond doubt, such type of loss is a National loss.

Evidently, several F.I.R.s were lodged against the applicant with the incidental allegations and in the present case, Rs.4,63,10,000/- was transferred in the account of the Company, in which, the applicant is a Director and as per the tripartite and quadripartite agreements, it was obligatory that the sale deed was to be executed within 30 days, but even after 7 years, neither the property was provided to the Bank to inspect nor the sale deed was executed as well as provided to the Bank.

In view of above facts and circumstances, I find it a fit case to be examined by the Enforcement Directorate. Hence, the Joint Director, Enforcement Directorate, Lucknow is directed to look into the facts of the case and take appropriate action, considering the aspect of money laundering with the intention to syphon the money of the public financial institution/Bank and submit an affidavit before this Court by 15th May, 2023.

Shri Rao Narendra Singh, learned A.G.A. is directed to communicate this order to the Joint Director, Enforcement Directorate, Lucknow for necessary compliance, forthwith.

A copy of this order be also sent to Director, Enforcement Directorate, Lucknow for necessary compliance.

Bench Secretary is directed return the photocopy of the case diary to the learned A.G.A."

5. The applicant No. 3 challenged the aforesaid order by filing SLP (Crl.) No.4117 of 2023 which was disposed of by the following order passed on 29.03.2023: -

"Heard learned senior counsel for the petitioner.

This Court is of the opinion that the impugned order does not call for interference. The special leave petition is accordingly dismissed.

It is open to the petitioner to seek relief after charges are framed. The Enforcement Directorate pursuant to the impugned order shall examine the materials before it on their merits uninfluenced by the observations of the High Court."

6. It is in furtherance of the aforesaid direction that the Directorate of Enforcement registered the aforesaid ECIR and has filed the aforesaid complaint. It is stated in the complaint that based on the complaint of Punjab National Bank, the Police registered FIR No.336 of 2022, dated 24.09.2022, at Police Station Hazratganj, District Lucknow, alleging that the applicants have defrauded the bank. They got home loans sanctioned in the names of their clients/buyers and later the clients failed to repay the outstanding home loan amount to the bank. Further, they did not deposit the sale deeds of the immovable properties against which the home loans had been sanctioned by the bank, thereby causing a financial loss of Rs.4.63/- Crores to the bank. Punjab National Bank had sanctioned the following home loans: -

S.No.	Name of Borrower	Amount Borrowed from Bank
1	Mr. Narendra Singh Verma with Smt. Shashi Verma	Rs.2,80,00,000/-
2	Baldeep Arora with Smt. Jaya Arora	Rs.90,50,000/-
3	Hemant Tulsiani with Manohar Kumar Tulsiani	Rs.75,00,000/-
4	Tarun Shekhar Singh with Smt. Sarika Singh	Rs.40,00,000/-
	Total Amount	Rs.4,63,10,000/-

7. Four flats booked by the aforesaid buyers were mortgaged with the bank on the basis of tripartite agreements. The Applicant No.1 did not execute the sale deeds in favour of the buyers.

8. The FIR alleges that the applicants siphoned off the loan amount for their personal gains with the intention of defrauding the bank. It is alleged that the fraudulent act of the applicants caused a loss of public money to the extent of Rs.463 lakhs.

9. The complaint further states that the Tulsiani Constructions, M/s Ansal Properties and Infrastructure Ltd. and Punjab National Bank had entered into tripartite and quadri-partite agreements with the customers on 28.02.2014, 15.12.2015, 29.12.2015 and 31.10.2015. The conditions of the agreements inter alia provided that: -

(a) In the event of default by the Borrowers in repayment of the Bank's dues, the bank will be entitled to sell the flats.

(b) The society shall not transfer the dwelling unit/flat of the borrower to another member of the society without prior written consent of the bank.

(c) The Builder and FSI purchaser shall not hand over the actual physical possession of the Property to the Borrower before execution and registration of the said sale deed and the Builder and FSI purchaser shall submit the original registered deed to PNB, and PNB shall keep the same as security for repayment of their loan, interest and other incidental charges towards perfection of its security interest for the said loan.

(d) The property shall form a part of security for the housing loan granted by PNB in the hands of the Builder and the purchasers till such sale deed is executed in favour of the borrowers.

10. The possession of the flats was to be offered within 30 months from sanction of the building plan, subject to force majeure clause and on receipt of complete sale consideration and other charges.

11. After investigation, a charge-sheet dated 30.01.2023 and supplementary charge-sheets dated 27.04.2024 and 22.07.2024 have been filed in furtherance of FIR No.336 of 2022 against the applicant Nos.2 and 3, who are the Directors of Tulsiani Constructions.

12. The complaint filed by the Enforcement Directorate states that multiple FIRs have been registered against M/s Tulsiani Constructions and its Directors by various flat buyers alleging that the flats were not transferred to them in violation of the agreements.

13. The complaint states that certain immovable properties worth Rs.3,06,95,700/- belonging to M/s Tulsiani Constructions have been attached as property obtained indirectly/equivalent to the proceeds of crime vide provisional attachment order dated 07.06.2024 and another provisional attachment order dated 28.11.2024 was passed attaching immovable property worth Rs.1.5 Crores belonging to the applicant No.3- Anil Kumar Tulsiani. The provisional attachment orders have been confirmed.

14. The complaint further alleges that the amounts paid by the three prospective flat buyers to M/s Tulsiani Constructions have been transferred to other banks to meet the liabilities of M/s Tulsiani Constructions, which shows that the amounts taken from buyers for completing the project were utilized either for investment in other projects run by the sister concerns of M/s Tulsiani Constructions or for paying loans taken from SIDBI.

15. The complaint refers to the statement of the applicant No.2Mahesh Kumar Tulsiani recorded under Section 50 of PMLA wherein he stated that multiple bank accounts of M/s Tulsiani Constructions turned irregular/became NPA due to increase in financial liabilities of the company because of litigation, COVID-19 and delay in execution and delivery of the projects. As many as 9 FIRs were lodged against the Company for its inability to handover the projects. In several matters, the parties have arrived at settlements and the proceedings of criminal cases against the applicants stands quashed. Out of the four loan accounts mentioned in the FIR No.336 of 2022, there is no irregularity in one account and in two accounts one time settlements have been entered into.

16. The applicant No.3 Anil Kumar Tulsiani stated that 20 FIRs of similar nature had been lodged against him out of which 10 FIRs have been quashed and in two matters, the dispute has been referred to the Mediation and Conciliation Center of this Court. The applicant No.3 further stated that numerous sale deeds have been executed in favour of the buyers who had taken loans from Punjab National Bank, the particulars whereof are mentioned in the complaint itself.

17. The complaint summarizes the result of investigation by stating that various FIRs have been lodged against M/s Tulsiani Constructions and its Directors alleging embezzlement of funds of banks and investors/buyers for their personal gains, which are as follows: -

Sr. No.	**FIR No. & Date**	**Amount involved and laundered in Rs.(Crores)**
1	336/2022 dated 24.09.2022 at Hazratganj PS, Lucknow	4.63
2	0595 dated 08.11.2021, 0457 dated 18/07/2019, 834 dated 26.12.2018, 0527 dated 09.08.2019, 0434 dated 27.08.2021, 655 dated 10.10.2022 at Vibhuti Khand PS, Lucknow	1.93
3		30.24
4		0.554
5		1.534
6		0.01
7		1.05

	Total Amount	**9.948**

18. The complaint alleges that the applicants have siphoned off the proceeds of crime amounting to Rs.9.948 Crores for their personal gains by investing/diverting the amount in their other real estate projects without completing the other projects for which the money was acquired.

19. Upon the complaint having been filed, the learned Special Judge issued notices to the applicants for pre-cognizance hearing. The applicants filed written submissions stating that vide order dated 30.01.2023 passed in Bail Application No.1993 of 2023, this Court had directed the Enforcement Directorate to conduct investigation after looking into the 'facts of the case' which arose out of FIR No.336/2022 under Section 409, 420 IPC registered at Police Station Hazratganj, District Lucknow only. The Hon'ble Supreme Court clarified in the order dated 29.03.2023 that the Enforcement Directorate should examine the material before it on their merits, uninfluenced by the observations of the High Court. The Enforcement Directorate has illegally merged FIR No.595 of 2021 under Sections 409/420/504/506/467/468/471/120-B IPC, Police Station Vibhuti Khand, District Lucknow lodged by the intervener Mr. Sanjeev Agarwal illegally, with a mala fide intention.

20. The applicants further stated that FIR No.336/2022 had been lodged alleging that four loan accounts had turned NPA. The applicants stated that accounts of borrowers turning NPA is purely a civil dispute. Moreover, one of the four loan accounts had not been declared NPA and it is a regular account, two loan accounts already stand settled on 23.04.2024 and 09.08.2024 and negotiations for settlement of the fourth loan account were going on. The Enforcement Directorate has illegally calculated the proceeds of crime by including the loan accounts which already stands settled/closed.

21. The Enforcement Directorate has filed a short counter affidavit stating that investigation under PMLA was initiated on the basis of multiple FIRs lodged against the applicant for having defrauded Punjab National Bank and the home buyers and utilizing the proceeds of crime for its own purposes. The counter affidavit states that in many cases, the applicant has not cleared the payment liability even after entering into one-time settlements with the concerned bank. The predicate cases are still alive and therefore, proceedings under PMLA cannot be quashed.

22. The learned counsel for the applicant submitted that the entire dispute between the applicant and its flat buyers is a civil dispute regarding which litigation are pending in various fora. The monetary transactions do not fall within the scope and ambit of Section 2(u) r/w Section 2(1)(y) of PMLA to be termed as proceeds of crime, the complaint itself alleges that the money received in lieu of sale consideration was used by the applicant No.1 in repaying the loan amount of SIDBI which loan was taken for construction of the project/flats and, therefore, it does not attract Section 2(1)(u) r/w Section 2(1)(y) of PMLA.

23. The learned Special Judge took cognizance of the offences by means of the impugned order 30.01.2026. A perusal of the impugned order indicates that although the trial Court has briefly mentioned the objections of the applicants against the proposed cognizance order, the same have not been dealt with by the trial Court. The trial Court has merely narrated the case set-up by

the Enforcement Directorate and has stated that the objections of the applicants are not maintainable.

24. Assailing validity of the aforesaid order, the learned Counsel for the applicants has submitted that an order passed without dealing with the objections of the applicants suffers from the vice of unreasonableness and non-application of mind. He has submitted that out of the four loans disbursed by the Punjab National Bank, only three had become NPA and out of those three two had already been settled prior to passing of the impugned summoning order. Regarding the only remaining loan account also, the Bank has entered into a one time settlement and has received the first installment amount as per the OTS.

25. The learned Counsel for the applicants has further submitted that this court has observed in its order dated 23.08.2023 passed in Crl. Misc. Bail Application No.14783 of 2022 that the dispute between the parties is essentially of civil nature. He has also submitted that the offence under Section 420 alleged in the scheduled offence, is not made out as the allegation in the FIR is regarding a delay in delivery of the project, which was for the reasons mentioned in the statement of Mahesh Kumar Tulsiani recorded under Section 50 of PMLA that the bank accounts have turned irregular/NPA due to increase financial liability incurred due to litigation, COVID-19 and delay in execution of the projects.

26. The learned counsel for the applicants has placed reliance upon the decisions in the cases of **Seema Garg v. Deputy Director, Directorate of Enforcement**: 2020 SCC OnLine Punjab & Haryana 738, **HDFC Bank Ltd. v. Government of India**; 2021 SCC OnLine Patna 4222, **Kumar Pappu Singh v. Union of India;** 2021 SCC OnLine AP 983, **Deputy Director, Directorate of Enforcement v. Seema Garg;** SLP (civil) No.14713-14715/2020 decided on 30.04.2021, **Sarabjeet Kaur v. State of Punjab;** (2023) 5 SCC 360, **Pavana Dibbur v. Directorate of Enforcement**; (2023) 15 SCC 91, **Indian Oil Corporation v. NEPC India Ltd.;** (2006) 6 SCC 736, **Shyam Sundar Agarwala v. State of Odisha** 2025 SCC OnLine Odisha 566, **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.;** (2023) 12 SCC 1 and **Inox Air Products Ltd. v. State of Andra Pradesh**; 2025 SCC OnLine SC 209 and **Satish Motilal Bidri v. Union of India and Others**; 2024 SCC OnLine Ker 3410.

27. Per contra Shri Rohit Tripathi, the learned counsel for the Enforcement of Directorate has submitted that it is established that the applicants have transferred the amount taken from the borrowers of Punjab National Bank to SIDBI and there is no averment that the applicants had taken the loans from SIDBI for this project. He has placed reliance on the following observations made by the Hon'ble Supreme Court in the cases of **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.;** (2023) 12 SCC 1. Shri Tripathi has also placed reliance on a decision of the Madras High Court in the case of **Vijayraj Surana v. Assistant Director, ED;** 2024 MHC 3345.

28. Shri Anuuj Tandon, the learned counsel for the intervener Sanjeev Agarwal has also opposed the application and he submitted that the intervener is a bona fide claimant whose interest is recognized by Section 8 of PMLA. As Section 8(8) of the Act empowers the Special Court to restore the confiscated property to a person who has a legitimate interest and has suffered a quantifiable loss as result of offence of money laundering.

29. In **Indian Oil Corpn. v. NEPC India Ltd. :** (2006) 6 SCC 736, the Hon'ble Supreme Court held that:-

"13. While on this issue, ***it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors.*** *Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families.* ***There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged****. In G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 this Court observed:*

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. ***Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter.*** *This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

14. ***While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.*** *One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."*

30. The learned counsel for the applicant has next placed reliance on **Sarabjeet Kaur v. State of Punjab & Another** (2023) 5 SCC 360, wherein it was held that: -

"13. ***A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.*** *From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint.* ***The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly***

three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court."

31. In **Dilip Singh v. State of M.P.:** (2021) 2 SCC 779, the Hon'ble Supreme Court held that- it is well settled by a plethora of decisions of the Supreme Court that criminal proceedings are not for realisation of disputed dues.

32. The Enforcement Directorate has stated in the complaint that FIR No.336 of 2022, dated 24.09.2022 was lodged on the complaint of Punjab National Bank, alleging that the applicants got the following four home loans sanctioned in the names of their clients/buyers, and later the clients failed to repay the outstanding home loan amount to the bank: -

S.No.	Name of Borrower	Amount Borrowed from Bank
1	Mr. Narendra Singh Verma with Smt. Shashi Verma	Rs.2,80,00,000/-
2	Baldeep Arora with Smt. Jaya Arora	Rs.90,50,000/-
3	Hemant Tulsiani with Manohar Kumar Tulsiani	Rs.75,00,000/-
4	Tarun Shekhar Singh with Smt. Sarika Singh	Rs.40,00,000/-
	Total Amount	Rs.4,63,10,000/-

33. In the rejoinder affidavit, the applicants have stated that Punjab National Bank has approved a One Time Settlement dated 20.03.2026 proposal in respect of the loan amount in the name of Narendra Singh Verma and Shashi Verma and a part of payment in furtherance of the One Time Settlement has already been made. The Bank has issued a No Dues Certificate dated 09.08.2024 in respect of the housing loan facility of Rs.90,50,000/- sanctioned on 29.10.2015 in favour of Baldeep Arora. Another No Dues Certificate dated 23.04.2024 has been issued by Punjab National Bank in respect of the loan facility of Rs.75,00,000/- sanctioned on 18.12.2015 in favour of Hemant Tulsiani. The loan account of Tarun Shekhar Singh and Smt. Sarika Singh was a regular account and it had not been declared NPA. These facts establish that the dispute pertained to settlement of financial liabilities and the same have already been settled. Delay in repayment of loan or even non-payment of loan gives rise to a dispute which is essentially of civil/commercial in nature and the same has wrongly been given a colour of criminality.

34. Regarding FIR No.595 of 2021 lodged by the intervener Mr. Sanjeev Agarwal, it is to be noted that the applicant No.3 Anil Kumar Tulsiani had filed Criminal Misc. Bail Application No.14783 of 2022 for his release on bail in the aforesaid case. The bail application was allowed by means of an order dated 03.08.2023 passed by this Court in **Anil Kumar Tulsiani v. State of U.P.:** 2023 SCC OnLine All 733, wherein it has been observed that: -

"3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 08.11.2021 against the applicant and his brother Mahesh Tulsiyani, alleging that the complainant had booked three flats in the name of his company in Golf View Apartment Scheme in the year 2012. The flats were not constructed within the stipulated period and the flats had not been finished properly. No penalty was paid for the delay in handing over the flats. The complainant had sold away one flat in the year 2015. ***The FIR categorically states that some consideration remains to be paid by the***

complainant. *It is further alleged that the entire building had been mortgaged by the accused persons with a bank and the loan account was declared N.P.A. and the bank took over possession of the flats.*

* * *

11. What prima facie appears from the averments made in the FIR is that the complainant's company had entered into an agreement to purchase three flats in Golf View Apartment Scheme launched by Tulsiani Construction and Developers Private Limited, of which the applicant is a director. The complaint has not disclosed the name of the company which had booked the flats, although the allottee company would be a separate juristic person. From the material available before the Court at this stage prima facie it appears that no registered agreement had been executed between the parties regarding purchase of flats where any agreement for purchase of immovable property of value exceeding Rs. 100/- can only be made through a registered agreement, after payment of the prescribed stamp duty and registration fee.

12. The corporate entity which had entered into agreement for purchasing three flats and evaded payment of stamp duty and registration fee payable in respect of the agreement for purchase of the flats, and which has kept itself veiled, has committed an offence of evasion of stamp duty payable to the public exchequer, thereby illegally depriving the public at large of the benefits of that amount, which affects every single citizen of the country.

13. Although the amount of stamp duty and registration fee payable in respect of three agreements may prima facie appear to be small, the Court cannot restrain itself from observing that now-a-days a trend is developing very fast that persons acquire interest in immovable properties evade payment of stamp duty and registration fee and the cumulative effect thereof causes a significant loss to the public exchequer. Thereafter when some disputes occur, the purchasers initiate criminal prosecution for putting pressure on the seller to transfer the property or to repay their amount, because they cannot invoke the civil remedies for the reason that the unregistered agreement is inadmissible in evidence and no rights can be claimed in respect thereof in civil proceedings.

16. This tendency of misusing the criminal proceedings for claiming enforcement of civil rights by indirect methods and evading payment of stamp duty, registration fee and court fee cannot be appreciated by the Courts and it should not be encouraged. It is nothing but cheating committed against the public exchequer and the persons who would stand benefited thereby.

17. Although the acts alleged in the F.I.R. may make out commission of some offence punishable under criminal law, the dispute between the parties predominantly appears to be of the civil nature. The law provides civil remedies for redressal of grievances alleged in the FIR that the possession of the flats was not delivered within the stipulated period and that the flats were not finished in a proper manner. It is not that the complainant has initiated the criminal proceedings for merely punishment of the accused persons and he has initiated civil proceedings separately for enforcement of his rights, the complainant has initiated criminal proceedings only which prima facie indicates that the criminal proceedings have been initiated with an oblique motive to coerce the accused persons to redress the civil grievances of the veiled commercial corporate entity being represented by the complainant."

35. After this Court passed the order in **Anil Kumar Tulsiani v. State of U.P.:** 2023 SCC OnLine All 733, the provisional attachment order dated 28.11.2024 was issued attaching a flat

which had been purchased by means of the registered sale deed dated 02.03.2012 i.e. almost 10 years before the Punjab National Bank had lodged the FIR No.336 of 2022.

36. The applicants have submitted that by no stretch of imagination the sale consideration paid for purchasing a flat in the year 2012 can be termed as proceeds of crime as defined under Section 2(u) of PMLA because the transactions relating to FIR No.336/2022 took place much later.

37. The learned counsel for the opposite parties have submitted that Section 2(u) of PMLA also includes "value of any such property". They have submitted that during investigation, the proceeds of crime have been assessed to the tune of Rs.9.5 Crores which has been diverted either in other projects or for personal gains of the accused persons. They have further submitted that Section 23 of PMLA established a legal presumption regarding interconnected transactions. If one transaction in a series is proved to involve money laundering, the adjudicating authority or the Special Court can presume that other connected transactions are part of the same money laundering activity.

38. The offence of money laundering is defined in Section 3 of PMLA as follows: -

3. ***Offence of money-laundering.-****Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*

Explanation. -For the removal of doubts, it is hereby clarified that,-

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely-

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

39. "Proceeds of crime" is defined in Section 2(u) of PMLA as follows: -

"2 (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.-For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence"

40. Property is defined in Section 2(v) of PMLA as follows: -

(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

Explanation. -For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

41. "Value" is defined in Section 2(zb) of PMLA as follows: -

"(zb) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person."

42. In **Vijay Madanlal Choudhary v. Union of India**: (2023) 12 SCC 1, the Hon□ble Supreme Court held that: -

*"109. Tersely put, **it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime.** The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, **the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished**. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now."*

(emphasis added)

43. Sri. Rohit Tripathi has placed reliance on the following passage from the judgment in the case of **Vijay Madanlal Choudhary** (supra): -

"162. As a matter of fact, prior to the amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 PMLA registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including to prevent and regulate the commission of offence of money laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act.

163. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.

* * *

169. As aforesaid, in this backdrop Amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. ***The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence****. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act."*

(emphasis added)

44. Following the aforesaid law laid down in **Vijay Madanlal Choudhary** (supra), in **Pavana Dibbur v. Directorate of Enforcement**: (2023) 15 SCC 91, the Hon"ble Supreme Court has held that a property which was acquired before the acts constituting the scheduled offence were committed, cannot be said to have any connection with the proceeds of the crime.

45. The learned counsel for the applicant has placed reliance on the following passages of **Seema Garg v. Deputy Director, Directorate of Enforcement** 2020 SCC OnLine P&H 738: -

*"35. In our considered opinion, to understand true meaning of second limb of definition of "proceeds of crime", it must be read in conjunction with Section 3 and 8 of the PMLA. If all these sections are read together, phrase "**value of such property" does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity. "Value of such property" means property which has been converted into another property or has been obtained on the basis of property derived from commission of scheduled offence e.g. cash is received as bribe and invested in purchase of some house.** House is value of property derived from scheduled offence. Cash in the hands of an accused of offence under Prevention of Corruption Act, 1988 is property directly derived from scheduled offence, however if some movable or immovable property is purchased against said cash, the movable or immovable property would be "value of property" derived from commission of scheduled offence. If a person gets some land or building by committing cheating (Section 420 of IPC) which is a scheduled offence and said building or land is sold prior to registration of FIR or ECIR, the property derived from scheduled offence would not be available, however money generated from sale or transfer of said property in the form of cash or any other form of property may be available. The cash or any other form of property movable or immovable, tangible or intangible would be "value of property" derived from commission of scheduled offence.*

36. Andhara Pradesh High Court in the case of Satyam Computer Services (Supra) has expressed view similar to our above expressed view, however Delhi High Court in the case of Axis Bank (Supra) has expressed contrary view which we do not subscribe because Delhi High Court has declared/treated words "value of such property" and "property equivalent in value held within country" at par which cannot be countenanced in view of scheme and object of the Act.

*37. There may be a case where a person accused of commission of scheduled offence, on account of destruction or disposal of property, is having no property. Non-availability of property derived from scheduled offence does not immune an accused from offence of money laundering committed under Section 3 of the PMLA. As per scheme of the Act, there is criminal liability of an accused apart from civil liability of attachment of property, thus object of the Act is not defeated merely on the ground that property derived from crime is not available for attachment. **The property derived from legitimate source cannot be attached on the ground that property derived from scheduled offence is not available.** There are so many scheduled offences where property may or may not be involved because every scheduled offence is not committed for the sake of property e.g. offence relating to wild animals, waging war against Government of India, murder, attempt to murder, offences under Arms Act. There is a long list of offences under different enactments where property is normally not involved still these are scheduled offences and punishable under Section 3 & 4 of PMLA.*

*38. Accordingly, **we find and hold that phrase "value of such property" does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity."***

(emphasis added)

46. The judgment of Punjab and Haryana High Court in the case of **Seema Garg v. Deputy Director, Directorate of Enforcement** 2020 SCC OnLine P&H 738 has been followed by the Patna High Court in **HDFC Bank v. Govt. of India & Others** 2021 SCC OnLine Pat 4222. The Andhra Pradesh High Court has also followed it in the case of **Kumar Pappu Singh v. Union of India** (2021) 1 HCC (AP) 556.

47. In view of the law laid down by the Hon"ble Supreme Court in the cases of **Vijay Madanlal Choudhary and Pavna Dibbur** (supra) and by the Punjab and Haryana High Court in **Seema Garg v. Deputy Director, Directorate of Enforcement** (supra), which has been followed by Patna and Andhra Pradesh High Courts, I am of the considered view that attachment of the flat acquired as early as in 2012 i.e. almost a decade before the commission of the alleged offence was wholly improper and unsustainable in view of law.

48. The applicants had filed objections against the proposed summoning order but the trial Court has taken cognizance without dealing with the objections and without assigning any reason for discarding the applicants' objections. It is settled law that the reasons are the soul of any judicial order and a judicial order passed without recording reasons is unsustainable in law.

49. In **S.N. Mukherjee v. Union of India:** (1990) 4 SCC 594□, the Hon'ble Supreme Court held that:-

"39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. ***Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities……"***

(emphasis added)

50. In **Kranti Associates (P) Ltd. v. Masood Ahmed Khan:** (2010) 9 SCC 496, the Hon'ble Supreme Court examined various precedents on the point and summarised the law as follows:-

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) ***Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.***

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) ***Insistence on reason is a requirement for both judicial accountability and transparency.***

(k) ***If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.***

(l) ***Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.***

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37].)

(n) ***Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights*** *and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,* ***"adequate and intelligent reasons must be given for judicial decisions".***

(o) ***In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."***

(Emphasis added)

51. It is not that the principles of natural justice apply only where an order having adverse civil consequence is proposed to be passed. The requirement of observing the principles of natural justice is even higher in criminal proceedings, where the Fundamental Right to personal liberty is at stake.

52. In **Inox Air Products Ltd. v. State of Andra Pradesh**; 2025 SCC OnLine SC 209 the Hon'ble Supreme Court held that: -

"33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.

34. In this respect, it will be relevant to refer to the following observations of this Court in the case of Pepsi Foods Ltd. (supra):

"28. ***Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course……"***

53. Therefore, I am of the considered view that the impugned order passed by the learned trial Court rejecting the applicants objections against taking cognizance of the offences without assigning any reason, is unsustainable in law for this reason alone. Normally the impugned order would be quashed on this limited ground and the matter would be remanded for being decided afresh after assigning reasons. However, as this Court has already examined the merits of the case and has come to a conclusion that no case is made out for taking cognizance of the offences, there is no need to remand the matter to the trial Court for being decided afresh.

54. The scope of interference in a petition under Section 482 Cr.P.C. was explained by the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal:** 1992 Supp (1) SCC 335, in the following passage: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."***

(emphasis added)

55. In **Sajjan Kumar v. CBI: (**2010) 9 SCC 368, the Hon'ble Supreme Court laid down the following principles regarding scope of inquiry at the time of framing charges and while considering a request for discharge: -

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

56. The aforesaid principles laid down by the Hon'ble Supreme Court in the case of **Sajjan Kumar** (supra) regarding scope of scrutiny by the trial Court at the time of considering an application for discharge or framing charges, can also be taken as guiding principles for the High Court while considering a request for quashing of the charge-sheet and the proceedings based thereon. Therefore, this Court can sift and weigh the prosecution evidence, without conducting a roving inquiry into the pros and cons of the matter by assessing the probative value of the evidence on record, for the limited purpose of finding out whether or not the uncontroverted allegations levelled in the complaint and the evidence collected in support of the same disclose the commission of any offence and make out a case against the applicant. This Court can certainly evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence, as it cannot be expected even at this stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

57. Thus this Court has already held that the dispute arising out of failure of the applicants to complete the project, hand over possession of the flats and execute its transfer deeds or their failure to refund the consideration amount to the flat buyers, predominantly appears to be of the civil nature. The law provides civil remedies for redressal of grievances alleged in the FIR. The complainant has initiated the criminal proceedings with an oblique motive to coerce the accused persons to redress the civil grievances of the veiled commercial corporate entity being represented by the intervener Sanjeev Kumar Agarwal.

58. The proceedings under PMLA have been instituted on the basis of the applicants' involvement in a criminal case instituted by Punjab National Bank regarding four loan accounts having turned NPA, when in fact one of the four accounts was regular and it had not been declared NPA, the Bank has already issued No Dues Certificates in respect of two loan accounts and has entered into a One Time Settlement in respect of the fourth loan account and has received the first installment of the OTS amount, indicates that there was merely a commercial dispute between the Bank and the applicants which already stands settled. Regarding the FIR lodged by the intervener Sanjeev Kumar Agarwal, this Court has already held that the same has been instituted with an oblique motive to coerce the accused persons to redress the civil grievances of the veiled commercial corporate entity being represented by the intervener Sanjeev Kumar Agarwal. The other FIRs of the scheduled offences are also of similar nature. Therefore, all the alleged scheduled offences are in fact merely commercial disputes which have been given a color of criminality to coerce the applicants to redress the grievances of the complainants without them taking recourse to the remedies available under the civil law and are bad in view of the law laid down by the Hon'ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd. :** (2006) 6 SCC 736 and **Sarabjeet Kaur v. State of Punjab & Another** (2023) 5 SCC 360 and the observations made by this Court in **Anil Kumar Tulsiani v. State of U.P.:** 2023 SCC OnLine All 733.

59. Institution of proceedings under PMLA on the basis of the applicants' involvement in the alleged scheduled offences which are in fact merely commercial disputes which have been given a color of criminality to coerce the applicants to redress the grievances of the complainants without them taking recourse to the remedies available under the civil law, is a gross abuse of the process of law in view of the law laid down by the Hon'ble Supreme Court in the aforesaid cases. The the object and purpose underlying the PMLA is not extraneous resolution of civil disputes. the present case is a clear case of the abuse of the PMLA.

60. The phrase 'or the value of such property' used in Section 2(u) of the PMLA does not include the value of the Flat which had been acquired in the year 2012, long before the Punjab National Bank lodged the FIR in the year 2022 alleging commission of the scheduled offence and which has not been acquired from the proceeds of crime. The Enforcement Directorate had no authority to attach the Flat that had been acquired in the year 2012, much before the commission of the alleged scheduled offences and which had not been acquired from any proceeds of crime and the attachment of the Flat purchased in the year 2012 is absolutely illegal and without jurisdiction.

61. Moreover, the Enforcement Directorate falsely projected that the quantum of the alleged proceeds of crime is Rs. 9,94,80,000/- by including the amount of Rs.4.64 Crores, which already stands settled by the complainant Punjab National Bank. The ED has wrongly included the amount which was the subject matter of 9 out of 20 cases, which have already been quashed.

62. Additionally, there can be no settlement of a crime especially when the offence alleged is that of economic nature. The fact that the complainants have entered into settlements resolving their monetary disputes makes it manifest that the disputes in fact were essentially of civil nature and the criminal law is merely being weaponised by the complainants in their favour to make it easier for them to achieve their ends.

63. In view of the foregoing discussion, I am of the considered view that the proceedings under PMLA is maliciously instituted with an ulterior motive for wreaking vengeance on the applicants and thereby coercing them to redress the grievances of the Flat buyers to transfer in their favour the flats and / or refund their money, without their resorting to the remedies available under the laws and the same are liable to be quashed.

64. Accordingly, the application under Section 482 Cr.P.C. is **allowed**. The order dated 30.01.2026 passed by the learned Special Judge, Anti-Corruption, CBI West/E.D., Lucknow in Criminal Misc. Case No.4851 of 2025 arising out of ECIR No.ECIR/LKZO/43/2023 taking cognizance of the offence under Section 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA) and has summoned the applicants to face the trial and the entire proceedings of the aforesaid case are **quashed**. All necessary consequences shall follow.

(2026) 7 ILRA 1312
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482. No. 11817 of 2024

Neeraj Malik ...Applicant(s)
Versus
State of U.P. ...Opposite Party(s)

Issue for Consideration

Matter pertains to whether on the material collected during investigation and placed on record, the charge-sheet, the cognizance order passed by Special Judge, Anti-Corruption, CBI (Central), Lucknow, and consequent criminal proceedings against the applicant for offences under various sections of IPC and Prevention of Corruption Act, 1988, disclosed any prima facie case against him, or whether continuance of trial amounted to an abuse of process of court warranting exercise of inherent jurisdiction u/s 482 Cr.P.C.

Headnotes

Indian Penal Code, 1860 - ss. 201, 420, 467, 468, 471, 120-B - Prevention of Corruption Act, 1988 - s. 13(1)(d) - Code of Criminal Procedure, 1973 - ss. - U.P. Water Supply and Sewerage Act, 1975 - ss. 7(3), 8 - Quashing of charge-sheet criminal proceedings - Second petition - Maintainability - Earlier petition dismissed as withdrawn - Subsequent change in circumstances - Judgment of High Court upholding validity of recruitment process - Recruitment examination - SIT inquiry - CFSL report - Examination data - Cloud server - Answer keys - Alleged manipulation of marks - Specific role - The applicant, an Executive Vice President of M/s Aptech Ltd., was arrayed as an accused in a supplementary charge-sheet dated 24.05.2021 arising out of F.I.R. No. 02/2018 registered by Special Investigation Team, U.P., alleging large-scale irregularities in recruitment process conducted by U.P. Jal Nigam for 1,300 posts of Assistant Engineer, Junior Engineer, and clerks/stenographers through M/s Aptech Ltd., including delayed publication of answer keys, deletion of primary examination data from cloud server, and inflation of marks of 169 candidates to favour ineligible candidates, allegedly pursuant to a criminal conspiracy between officials of Jal Nigam and functionaries of examination agency - The applicant, having earlier withdrawn a similar petition u/s 482 Cr.P.C., filed the instant second application seeking quashing of charge-sheet, cognizance order and entire consequent criminal proceedings - He contended that subsequent developments namely, the judgment dated 04.10.2024 of High Court in Writ A No. 7076 of 2021 upholding the validity of selection process and holding that no conspiracy or fraud was established, coupled with the absence of any specific role or incriminating material attributable to him constituted changed circumstances justifying a fresh petition and warranting quashing of proceedings against him - A plea resisted by State on grounds of non-maintainability of successive petition and sufficiency of material disclosing his involvement.

Held: There is absolutely no allegation against the applicant and there is no material which may establish that the applicant has by deceiving any person, fraudulently or dishonestly induced him to deliver any property to any person, or he has intentionally induced the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and that the applicant's act or omission has caused or was likely to cause damage or harm to that person in body, mind, reputation or property - There is no allegation

that applicant had forged any document, more particularly, a document of the categories mentioned in s. 467 I.P.C, namely a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for delivery of any movable property or valuable security - The prosecution has failed to specify the role played by applicant in process of preparation or publication of answer keys. Question papers and answer keys were prepared by third party subject matter experts comprising of renowned professors and teachers. The applicant is neither a subject matter expert nor a part of any team of company which was involved in process of publication of answer keys. The applicant claims that answer-keys were not published promptly pursuant to specific instructions of Jal Nigam, which Aptech and its employees were contractually bound to follow - There is no allegation of any prior meeting of minds between the applicant and officials of Jal Nigam and no quid pro quo has been established. There is no material indicating that applicant has acted mala fide against the Jal Nigam or any unsuccessful candidate or that the applicant had extended any undue favour to any candidate for gaining any undue benefit - As there is absolutely no specific allegation of commission of any act by applicant which may amount to commission of any offence and there is no material prima facie establishing commission of any offence by applicant, the applicant cannot be made to face the trial and continuance of trial of applicant in these circumstances would be an abuse of process of law - **Accordingly, application allowed**. [Paras 54, 57, 58, 59, 67] (E-13)

Case Law Cited

Ajit Singh Patel v. State of U.P.: **2018 (1) ADJ 166;** *U.P. Jal Nigam v. Ajit Singh Patel:* **(2019) 12 SCC 285;** *Bhisham Lal Verma v. State of Uttar Pradesh* **(2024) 15 SCC 282;** *Anil Khadkiwala v. State (Government of NCT of Delhi) & Ors.:* **(2019) 17 SCC 294;** *Ashwinbhai Kantibhai Patel v. State of Gujarat & Ors.:* **Crl. Appeal No. 552 of 2022 decided on 04.04.2022;** *Devendra & Ors. v. State of U.P. & Ors.:* **(2009) 7 SCC 495;** *State of W.B. v. Mohan Singh:* **(1975) 3 SCC 706;** *Supt. and Remembrancer of Legal Affairs v. Mohan Singh:* **(1975) 3 SCC 706;** *Samrah Ahmad v.State of U.P.:* **Writ A No.7076;** *Ravindranatha Bajpe v.Mangalore Special Economic Zone Ltd.:* **(2022) 15 SCC 430;** *Narendra Kumar v. State of Karnataka:* **2022 INSC 301;** *Sunil Bharti Mittal v. CBI:* **(2015) 4 SCC 609;** *State of Karnataka v. L. Muniswamy:* **AIR 1977 SC 1489;** *Neelu Chopra v. Bharti:* **(2009) 10 SCC 184;** *Mirza Iqbal v. State of U.P.:* **AIR 2022 SC 69;** *C.B.I. v. Aryan Singh and Others:* **(2023) 18 SCC 399;** *Manik B. v. Kadapala Sreyas Reddy and Another:* **2023 SCC OnLine SC 2540;** *Ramveer Upadhyay & Anr. v. State of UP and Anr:* **Special Leave Petition (Crl.) No. 2953 of 2023;** *Dharambeer Kumar Singh v. State of Jharkhand and Another:* **(2025) 1 SCC 392;** *State of Odisha v. Nirjharini Patnaik and Anr.:* **2024 SCC Online SC 657;** *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and Anr:* **(2019) 18 SCC 19;** *C.B.I. v. Arvind Khanna:* **(2019) 10 SCC 686;** *State of Haryana v. Bhajan Lal:* **1992 Supp (1) SCC 335;** *Sajjan Kumar v. CBI:* **(2010) 9 SCC 368;** *Pradeep Kumar Kesarwani v. State of U.P.:* **2025 SCC OnLine SC 1947;** *Sajal Bose v. State of W.B.:* **2026 SCC OnLine SC 525 - referred to**

List of Acts

Indian Penal Code, 1860; Prevention of Corruption Act, 1988; U.P. Water Supply and Sewerage Act, 1975

List of Keywords

s. 482 Cr.PC.; Quashing of charge-sheet, cognizance; Prevention of Corruption Act; U.P. Water Supply and Sewerage Act; Special Investigation Team, UP; Chairman, U.P. Jal Nigam; Recruitments on the posts of Assistant Engineers, Junior Engineers, clerks and stenographers; Computer Based Test; CFSL; 169 ineligible candidates; Criminal conspiracy; Question papers; Cheating; Forgery; Fabrication; Answer key; Cloud server; Data retention policy; Archives; Tampering of result; Manipulation; Ineligible candidates; Selection process; Maintainability; Abuse of process; Supplementary charge-sheet; Sterling and impeccable quality; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 11817 of 2024

From the Judgment and Order dated 15.07.2021 passed by Special Judge, Anti-Corruption, CBI (Central), Lucknow in Crl. Misc. Case No. 336/2021 in Case Crime No. 2 of 2018, Police Station SIT, District Lucknow.

Appearances for Parties

Advs. for the Applicant(s):
Gantavya

Adv. for the Opposite Party(s):
G.A.

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

1. Heard Sri S.C. Mishra Senior Advocate assisted by Ms. Meha Rashmi Advocate, the learned counsel for the applicant and Sri Ashok Kumar Shukla, the learned Additional Advocate General assisted by Sri Shivendra Shivam Singh Rathore, the learned State Law Officer for the State of U.P.

2. By means of the instant petition filed under Section 482 Cr.P.C., the applicant has sought quashing of a charge-sheet dated 24.05.2021 submitted in furtherance of F.I.R. No. 02/2018, under Sections 409, 420, 120-B, 201 I.P.C. and Section 13(1)(d) of Prevention of Corruption Act 1988. The applicant has also challenged the validity of the order dated 15.07.2021 passed by the learned Special Judge, Anti-Corruption, CBI (Central), Lucknow in Crl. Misc. Case No. 336/2021, taking cognizance of the aforesaid offences and the entire proceedings of the criminal case instituted on the basis of the aforesaid charge-sheet, have also been challenged through this petition.

3. The Inspector-in-charge of Special Investigation Team, UP (SIT) had lodged the aforesaid FIR on 25.04.2018 against- (i) Mohd. Azam Khan, the then Chairman, U.P. Jal Nigam; (ii) Syed Aafaak Ahmed, the then Officer on Special Duty, U.P. Jal Nigam, (iii) Prakash Singh, the then Secretary, Urban Development, Government of U.P., (iv) P. K. Asudani, the then Managing Director, U.P. Jal Nigam, (v) Anil Kumar Khare, the then Chief Engineer, U.P. Jal Nigam and unnamed officers and employees of Jal Nigam and unnamed representatives of M/s Aptech Ltd., who were involved in the recruitment process and some unspecified other persons, stating that Sri Ram Sevak Shukla, retired Executive Engineer, U.P. Jal Nigam had given a complaint dated 22.03.2017 in furtherance of which, the State Government had issued a letter dated 13.07.2017 directing an inquiry to be conducted by the SIT regarding irregular appointments made on 1,300 posts in Jal Nigam.

4. The complainant Inspector-in-charge SIT had conducted an inquiry and had submitted a report to the Government on 28.03.2018. The inquiry revealed that Notifications were issued on 19.11.2016 for making recruitments on the posts of Assistant Engineers, on 28.10.2016 for the posts of Junior Engineers and on 18.06.2016 for the posts of clerks and stenographers. The total posts advertised were 1,300 and the applications and examination fee were to be submitted online.

5. The inquiry report states that the Chairman, Jal Nigam had granted approval to selection of M/s Aptech Ltd. for conducting the recruitment examination, although he had got no authority for

the same as Section 7(3) of U.P. Water Supply and Sewerage Act, 1975 does not confer any managerial rights upon the Chairman of U.P. Jal Nigam. The Act does not contemplate appointment of any Officer on Special Duty. Section 8 of the Act confers power of recruitment on the Board of Jal Nigam. The Managing Director of Jal Nigam did not put the matter of recruitment before the Board of Jal Nigam and he forwarded it directly to OSD/Chairman, without obtaining sanction from the Board or the State Government. There are only nine sanctioned posts of Assistant Engineer (electrical/mechanical) but approval was granted for making appointment of candidates possessing Computer Science/ Electrical/ Electronic Engineering degrees on four posts although these posts were not sanctioned by the Government. The Managing Director and Chairman of Jal Nigam do not have the authority to convert the posts.

6. The inquiry report also stated that interview of candidates for stenographers was arbitrarily canceled by the Chairman, Jal Nigam by means of an order dated 20.12.2016, thereby causing a loss of Rs. 37,50,000/- to the Government Exchequer. One of the conditions of the agreement between Jal Nigam and M/s Aptech Limited, was that immediately after completion of the examinations, the answer keys would be displayed, but it was not done. When the candidates demanded the answer keys under the Right to Information Act, it was uploaded on the website of Jal Nigam on 28.02.2017, two months after the examination, due to which the discrepancies in the answer keys and the response sheets could not be highlighted within time and the candidates could not get opportunity to file their objections. The result was declared on 03.01.2017, appointment letters were issued and the appointed candidates were permitted to join the duties on the same date.

7. 43 representations were sent to U.P. Jal Nigam raising objections against the questions and answers after the answer keys and the response sheets were uploaded on the website. In the report submitted by Aptech Ltd. 22.07.2017, it was admitted that seven questions asked in the examination for making appointments of Assistant Engineer and the answers of 20 questions were incorrect. Even after the aforesaid fact coming to his knowledge, the Managing Director did not correct the result and under a conspiracy with M/s Aptech Ltd., the primary data of the examination saved on the cloud server, was deleted.

8. The Inquiry report further stated that it was brought to the knowledge of the High Court through various petitions that the appointments were void ab initio. Candidates who had obtained lesser marks in Computer Based Test (CBT) were awarded maximum marks i.e. 90% in interview whereas the candidates who were awarded the highest marks in CBT were awarded 58% marks in interview and were declared unsuccessful. The entire recruitment process was conducted in an irregular and arbitrary manner, under a criminal conspiracy. Admission of M/s Aptech Ltd. regarding error in 27 questions/answers prima facie established commission of criminal acts by all the officers and other persons involved in the recruitment process.

9. The inquiry report further stated that four candidates selected on the post of Assistant Engineer (Electrical/Mechanical) had given identical 58 correct answers and 22 wrong answers in response to 80 questions. 58 correct answers being the same is natural but 22 wrong answers being the same is not a natural thing. It shows that the responsible officers of U.P. Jal Nigam and the representatives of M/s Aptech Ltd. had committed the offence in connivance with each other. Interviews for the post of Assistant Engineer were conducted on 30.12.2016 and 31.12.2016 and

the result was declared on 03.01.2017, appointment letters were issued on the same date, joining was also done on the same date.

10. The inquiry report further stated that 6 questions and 16 answers of questions in the Computer Based Test conducted for making selections to the post of Junior Engineer (Civil and Electrical/Mechanical) are wrong. It shows that the accused persons did not prepare a correct merit list and benefited ineligible candidates. The evidence collected during inquiry revealed that the then Managing Director, U.P. Jal Nigam, other officers, Officer-on-Special Duty, Secretary, Urban Development and Chairman, Jal Nigam abused their official positions and conducted the recruitment process in an irregular/illegal manner, in violation of the rules under a conspiracy with the representatives of M/s Aptech Ltd. and the primary data of the examination was deleted from the cloud server thereby destroying valuable evidence.

11. After investigation, initially a charge sheet dated 12.08.2021 was submitted against four accused persons- (i) Anil Kumar Khare, (ii) Bhavesh Jain, (iii) Aftab M. Khan and (iv) Hemant Kandpal.

12. A copy of the applicant□s statement recorded by the Investigating Officer on 11.09.2019 has been annexed with the counter affidavit, which shows that the applicant had stated that at the time of recording the statement, he was working as Chief Business Officer of M/s Aptech Ltd. and at the time of the recruitment in question, he was working as Executive Vice President of the company. It was his responsibility to provide training services, business development solutions, engineering, infrastructure, management, content services, finance and operations to the Government and private organizations both within the country and outside the country. He was authorized to execute the agreement for conducting the examination in the recruitment process in question on behalf of M/s Aptech Ltd. He had performed the obligations under the contract through his subordinate employees and he had supervised the entire recruitment process. The Investigating Officer had put a question as to when was the contract executed and the applicant answered that it was executed on 15.12.2016. The Investigating Officer pointed out that the applicant had signed the contract on 13.12.2016 in response to which the applicant stated that he would have inadvertently mentioned the date as 13.12.2016 but the contract was in fact executed on 15.12.2016. The applicant further stated that guidance was sought from Anil Kumar Khare, Chief Engineer, Jal Nigam and P.K. Asudani, Managing Director, Jal Nigam to upload the answer key whereupon oral instructions were issued for not uploading the answer key and for making the examination results available and letters were also received from U.P. Jal Nigam in this regard. In response to another question, the applicant stated that he had ensured transparency in the examination process and no candidate had made any complaint to M/s Aptech Ltd.

13. The Investigating Officer submitted a supplementary charge sheet dated 24.05.2021 against (1) Mohammad Azam Khan, (2) Girish Chandra, (3) Neeraj Malik (the applicant) and (4) Vishwajeet Singh, in which the allegations against the applicant and co-accused Mohammad Azam Khan are regarding commission of the offences under Sections 201, 420, 467, 468, 471 I.P.C. read with Sections 120-B I.P.C. and Section 13 of the Prevention of Corruption Act, 1988. He surrendered before the trial court in October, 2021 and he was enlarged on bail on the same day.

14. It has been pleaded in the petition filed under Section 482 Cr.P.C. that on 19.05.2016, Jal Nigam had selected M/s Aptech Ltd. for conducting the examination and the first work order was issued on 19.05.2016. The applicant joined M/s Aptech Ltd. on 01.06.2016. The applicant was not even employed in M/s Aptech Ltd. when Jal Nigam had selected the company to conduct the examination. The applicant had no interaction with any official of the Jal Nigam and he was not a part of the sales team which had secured the contract for the company. Thereafter, contracts between Jal Nigam and M/s Aptech Ltd. were executed on 17.06.2014, 28.10.2016 and 15.12.2016. The applicant further claims that when the examination in question was conducted, the applicant had just joined M/s Aptech Ltd. and his induction process was going on and he was still on probation. The applicant was remotely supervising administrative activities of the company. The applicant has further claimed that he has never worked at Lucknow. His role is confined to sales and business development and he had no role in software development, setting the question papers, tabulation of scores, preparation of merit list etc. and he did not have access to either the question papers or the result of the examination or the marks awarded to the candidates, which were confidential documents/information stored in password protected files with strict access controls. The applicant had no role in running the Information Technology Department or the company's data centers. He had no interaction with the officials of Jal Nigam or any candidate appearing in the examination. The applicant had no role, whatsoever, in the conduct of examinations on behalf of U.P. Jal Nigam.

15. It has also been pleaded in the petition that Jal Nigam had issued the appointment letters on 03.01.2017 and the applicant or M/s Aptech Ltd. had no role to play in issuance of the appointment letters. On 11.08.2017, Jal Nigam canceled all the 1,300 appointments made in the recruitment process in question. The cancellation order was challenged and the same was dismissed by means of a judgment and order dated 28.11.2017 passed in **Ajit Singh Patel v. State of U.P.:** 2018 (1) ADJ 166, wherein this High Court has held that no irregularity, fraud or malpractice was committed in the selection process and it was directed that the Jal Nigam should correct the minor discrepancies, if any, rather than canceling the entire process. This judgment was affirmed by the Hon'ble Supreme Court in **U.P. Jal Nigam v. Ajit Singh Patel:** (2019) 12 SCC 285.

16. After submission of the SIT report, the Jal Nigam again canceled the appointments by means of an order dated 02.03.2020. This order was challenged by filing Writ A No. 7076 of 2021 and other connected matters in this Court. The writ petitions were allowed by means of an order dated 04.10.2024 holding that no ground existed for cancellation of the selections and on the basis of material mentioned in the SIT report, it cannot be said that there was any irregularity committed in conducting the computer based test or that there was any large scale conspiracy or fraud in the selections. This court upheld the validity of the selection process and directed Jal Nigam to reappoint the untainted candidates in accordance with the result prepared by M/s Aptech Limited.

17. The learned Additional Advocate General Sri Ashok Kumar Shukla has raised a preliminary objection that this is the second petition filed by the applicant under Section 482 Cr.P.C. Earlier, the applicant had filed Application U/S 482 No. 6538 of 2022 and it was dismissed as withdrawn by means of an order dated 13.12.2022. He has submitted that the aforesaid first petition having been dismissed, another petition seeking the same relief of quashing of proceedings against the accused is not maintainable. In support of his objection, he has placed reliance on the

judgment of the Hon'ble Supreme Court in **Bhisham Lal Verma v. State of Uttar Pradesh** (2024) 15 SCC 282, wherein it has been held that a second petition under Section 482 Cr.P.C is not maintainable on the grounds that were available for challenge at the time of filing of the first petition. The learned Additional Advocate General has also submitted that the trial has already commenced and this Court should refrain from entertaining the petition at this stage.

18. In response to this objection, the learned counsel for the applicant has submitted that a second petition filed after change of circumstances and on fresh grounds which have arisen on account of the judgment and order dated 04.10.2024 passed by this Court in Writ A No. 7076 of 2021, is maintainable. In support of this submission, the learned counsel for the applicant has placed reliance on a judgment in the case of **Anil Khadkiwala v. State (Government of NCT of Delhi) & Ors.:** (2019) 17 SCC 294. The learned counsel for the applicant has further submitted that the first petition under Section 482 Cr.P.C. was dismissed as withdrawn and it was not decided on merits. Therefore, this petition is not barred in view of the law laid down in the cases of **Ashwinbhai Kantibhai Patel v. State of Gujarat & Ors.:**Crl. Appeal No. 552 of 2022 decided on 04.04.2022 and **Devendra & Ors. v. State of U.P. & Ors.:** (2009) 7 SCC 495.

19. It is necessary to deal with the preliminary objection against maintainability of the second application before proceeding to examine the merits of the case.

20. In this regard, Sri. Ashok Kumar Shukla, the learned Additional Advocate General has placed reliance upon the judgment of the Hon'ble Supreme Court in **Bhisham Lal Verma v. State of U.P.:** (2024) 15 SCC 282. In that case, the Hon'ble Supreme Court has referred to an earlier decision in the case of **State of W.B. v. Mohan Singh**: (1975) 3 SCC 706, wherein it was held that entertainment of the second petition is permissible where the circumstances existing at the time of the subsequent petition were different from what they were at the time of the earlier one. The Hon'ble Supreme Court held in **Bhisham Lal Verma v. State of U.P.** (supra) that there can be no blanket rule that a second petition under Section 482 CrPC would not lie in any situation and it would depend upon the facts and circumstances of the individual case. The Supreme Court held that it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482CrPC, though all such pleas were very much available even at the first instance.

21. In **Anil Khadkiwala v. State (NCT of Delhi):** (2019) 17 SCC 294, a complaint was filed under Section 138 of the Negotiable Instruments Act, 1881 against the appellant who was the Director of a Company, alleging that the appellant had issued the cheques, which were dishonored upon presentation. The appellant filed a petition for quashing the complaint pleading that he had already resigned from the Company. However, the appellant had not adduced any evidence in support of this contention. The application was dismissed solely on the ground that the cheques were issued under the signature of the appellant. The appellant then preferred a fresh application under Section 482 annexing therewith Form 32 issued by the Registrar of Companies in proof of resignation by the appellant prior to the issuance of the cheques. The High Court dismissed the petition. Allowing the appeal, the Hon'ble Supreme Court held that: -

7….. the appellant had taken a specific objection in his earlier application under Section 482 CrPC that he had resigned from the Company on 20-1-2001 and which had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued by the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques and the effect thereof in the facts and circumstances of the case. The High Court in the fresh application under Section 482 CrPC initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.

8. In Mohan Singh [Supt. and Remembrancer of Legal Affairs v. Mohan Singh, (1975) 3 SCC 706], it was held that a successive application under Section 482 CrPC under changed circumstances was maintainable and the dismissal of the earlier application was no bar to the same, observing:

"2. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561-A of the Criminal Procedure Code to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one-and-a-half years without any progress at all and it was in these circumstances that Respondents 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances, it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of Respondents 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one-and-a-half years."

22. In the present case, the allegations against the appellant are that he was responsible to ensure execution of the recruitment examination and the answer keys were not published immediately after the examination, under a criminal conspiracy to fabricate the marks obtained by 169 ineligible candidates thereby ensuring their selection, which has resulted in deserving candidates being deprived of their rightful selection. The applicant had earlier filed Application

U/S 482 No. 6538 of 2022, which was dismissed as withdrawn by means of an order dated 13.12.2022 and it was not decided on merits. Subsequently, After submission of the SIT report, the Jal Nigam again canceled the appointments by means of an order dated 02.03.2020. This order was challenged by filing Writ A No. 7076 of 2021 and other connected matters in this Court. The writ petitions were allowed by means of an order dated 04.10.2024 holding that on the basis of material mentioned in the SIT report, it cannot be said that there was any irregularity committed in conducting the computer based test or that there was any large scale conspiracy or fraud in the selections. This court upheld the validity of the selection process and directed Jal Nigam to reappoint the untainted candidates in accordance with the result prepared by M/s Aptech Limited.

23. The aforesaid subsequent finding recorded by this High Court that it cannot be said that there was any irregularity committed in conducting the computer based test or that there was any large scale conspiracy or fraud in the selections, certainly gives a ground to the applicant to challenge the criminal proceedings against him on the same set of allegations, as per the law laid down by the Hon'ble Supreme Court in **Supt. and Remembrancer of Legal Affairs v. Mohan Singh:** (1975) 3 SCC 706 and followed in **Anil Khadkiwala v. State (NCT of Delhi):** (2019) 17 SCC 294.

24. Even as per the law laid down in **Bhisham Lal Verma v. State of U.P.:** (supra) relied upon by the learned Additional Advocate General, entertainment of the second petition is permissible where the circumstances existing at the time of the subsequent petition were different from what they were at the time of the earlier one. Therefore, the preliminary objection raised by the learned Additional Advocate General against maintainability of the second petition filed on new grounds, which accrued after dismissal of the first petition as not maintainable and not on merits, is misconceived and the same is turned down.

25. Substantially the SIT inquiry report levels the following allegations:-

a. Aptech was required to publish the Answer Key but it failed to do so. Hence, Aptech breached the contract and connived with the officers of the Jal Nigam, as a consequence whereof the candidates did not get an opportunity to submit their objections against the question papers.

b. Aptech deleted the primary data of the examination from the cloud server and thus destroyed valuable evidence, under a criminal conspiracy with Jal Nigam.

c. Marks of 169 candidates were increased for unfair gains, as a consequence whereof ineligible candidates were selected and eligible candidates were deprived of selection.

26. The applicant has submitted that he had no role in or concerned with the process of preparation or publication of answer keys. Question papers and answer keys in any examination are prepared by third party subject matter experts comprising of renowned professors and teachers and the same are published by the infrastructure team of the company, if instructed by the client. The applicant is neither a subject matter expert nor a part of any team of the company which was involved in the process of publication of answer keys. Regarding non-publication of answer keys, the applicant claims that it was done pursuant to specific instructions of Jal Nigam, which Aptech and its employees were contractually bound to follow. It does not amount to committing any offence.

27. The applicant has further pleaded that there is no allegation of any prior meeting of minds between the applicant and the officials of the Jal Nigam and no quid pro quo has been established. There is no material indicating that the applicant has acted mala fide against the Jal Nigam or any unsuccessful candidate or that the applicant had extended any undue favour to any candidate for gaining any undue benefit. As soon as Jal Nigam demanded the answer keys after certain candidates had sought information under the Right to Information Act, Aptech Ltd. had provided the answer keys in a CD-Rom to Jal Nigam. Thereafter, the Jal Nigam instructed Aptech Ltd. to publish the answer keys and it was also done promptly.

28. The applicant has placed reliance on the judgment dated 04.10.2024 passed by this Court in **Samrah Ahmad v. State of U.P.:** Writ A No. 7076 of 2021, wherein this Court has held that there was only a minuscule number of wrong questions and answers which are bound to creep-in in a multiple choice question format question paper and they cannot be said to have vitiated the examination process. This Court has further held that Aptech was not involved in the process of preparation of question papers/answer keys which were prepared by third party subject matter experts and Aptech has revised the results and identified the candidates who should not have been called for interview. Therefore, the allegation of conspiracy between the company and Jal Nigam does not appeal to reason.

29. Regarding the third allegation that marks of 169 candidates have been increased to give benefit to ineligible candidates, it has been submitted that there is not even an iota of evidence linking the applicant to the allegation, who was not a part of the result processing team and who did not have access to the marks of the candidates and had no role, whatsoever in actual tabulation of marks of the candidates or preparation of the results. After conclusion of the computer based test, the result was prepared by the result processing team of the company and the same was handed over in control and custody of the officials of the Jal Nigam in a password protected secured file. There is no allegation of any irregularity having been committed or manipulation having taken place till conclusion of CBT. In this regard also, the applicant has placed reliance on the judgment dated 04.10.2024 passed by this Court in Writ A No. 7076 of 2021, wherein it has been held that the CFSL report does not record any finding that the data retrieved from the hard disk seized from the office of local environment of Aptech had been manipulated or modified. This Court has held that Aptech had followed all security measures and handed over the result to Jal Nigam officials in password protected secured files with login ID. Manipulation, if any, crept in after the result had been handed over to Jal Nigam and Aptech was not involved in this process. The CFSL has not found the record maintained by Aptech as having been tampered with. The applicant has submitted that there is absolutely no specific allegation of commission of any act by the applicant which may amount to commission of any offence and, therefore, he cannot be made to face trial without any basis.

30. The State has filed a counter affidavit opposing the petition, wherein it has inter alia been stated that the applicant was responsible to ensure execution of the recruitment examination and the answer keys were not published immediately after the examination, under a criminal conspiracy to fabricate the marks obtained by 169 ineligible candidates thereby ensuring their selection, which has resulted in deserving candidates being deprived of their rightful selection. It has further been stated in the counter affidavit that this Court has observed in the order dated 04.10.2024 passed in

Writ A No. 7076 of 2021 that the examination was conducted under the supervision of the accused persons who continued with the recruitment process despite the answer key having not been published online immediately after the examination. This establishes collusion between Jal Nigam and Aptech Ltd.

31. The counter affidavit further states that this Court had framed the following issue in the judgment dated 04.10.2024 passed in Writ A No. 7076 of 2021: -

"Whether the material discussed in the orders impugned were cogent enough to reach out to a conclusion that entire selection process in respect of vacancies of AE/JE/RGC in question was so much compromised that there left no possibility to segregate tainted from untainted candidates, and therefore, taking a holistic view of the matter, it became imperative to cancel the entire selections and appointments made in respect of those very posts."

32. It has been stated in the counter affidavit that the findings returned in respect of the issue framed is solely based on the CFSL Report obtained during the investigation which has established beyond reasonable doubt the culpability and the prosecution case.

33. A supplementary affidavit has been filed by the applicant inter alia stating that a co-accused Bhavesh Jain, who was working as a Software Engineer in Aptech Ltd., had filed Application U/S 482 No. 2235 of 2022 challenging the validity of the charge-sheet, the summoning order and the entire pending proceeding against him. The petition has been allowed by means of a judgment and order dated 02.06.2022 passed by a Co-ordinate Bench of this Court and the entire proceedings against Bhavesh Jain have been quashed. The aforesaid judgment dated 02.06.2022 was challenged by filing S.L.P. (Criminal) No. 6827 of 2022 and the Hon'ble Supreme Court has dismissed the SLP by means of the following order dated 16.09.2025: -

"1. Since the High Court has given elaborate reasoning as to why it found no case to be made out against the respondent-accused herein, we find no reason to interfere with those findings.

2. However, the said findings will have no bearing on the cases of the other accused, which will be independently considered by the trial Judge during trial or in respect of application(s)/petition(s) filed by other accused persons seeking discharge or quashing.

3. Needles to state that any application/petition by the State for quashing or discharge will be considered by the High Court or the Trial Court on the basis of availability or non-availability of material against the concerned accused.

4. The special leave petition is, accordingly, dismissed.

5. Pending application(s), if any, stand disposed of."

34. The State has filed a supplementary counter affidavit sworn by an Additional Superintendent of Police, EOW (SIT) U.P., Lucknow stating that the applicant was involved right from the inception of the selection process and he has actively participated in commission of the offence knowing fully and having been aware of the fact that increasing marks will amount to tampering of the result, which in itself is forgery and fabrication of the valuable security. It has been stated that the applicant's case is different from that of co-accused Bhavesh Jain who was Manager Software Development and was responsible for development of software for Jal Nigam

Project whereas the applicant is Executive Vice President and he was responsible for the delivery of the entire project.

35. Challenging the proceedings against the applicant, the learned counsel for the applicant has further submitted that CFSL report does not record any finding that the data recovered from the Aptech was manipulated or had been modified. The marks of 169 candidates were inflated by Jal Nigam and not by Aptech as Aptech has not been found to have committed any tampering in the marks recorded in the original database.

36. The learned counsel for the applicant has placed reliance on a judgment in the case of **Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd.:** (2022) 15 SCC 430 and **Narendra Kumar v. State of Karnataka:** 2022 INSC 301, wherein it has been held that a senior employee of a company cannot be made an accused, without any specific allegation and specific role attributed to him.

37. The learned Counsel for the applicant has also relied on a judgment in the case of **Sunil Bharti Mittal v. CBI:** (2015) 4 SCC 609, wherein it has been held that when a company is accused, its directors can be roped in only if (a) there is sufficient incriminating evidence against them coupled with criminal intent or (b) the statutory regime attracts the doctrine of vicarious liability. He has submitted that no specific role has been assigned to the applicant and, prima facie, there is no incriminating material against the applicant.

38. The learned counsel for the applicant has lastly submitted since there is no material on record against the applicant, exercise of inherent powers of this Court in his favour under Section 482 is justified. In support of this contention he has relied upon the decision of the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy**: AIR 1977 SC 1489, where it has been held that where the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed, in such a case the Court is entitled to quash the proceedings in exercise of its inherent powers.

39. Relying on a decision of the Hon'ble Supreme Court in the case of **Neelu Chopra v. Bharti**: (2009) 10 SCC 184, the learned counsel for the applicant has submitted that the particulars of the offence committed by each and every accused and role of the accused must be clearly demonstrated in the charge-sheet, which has not been done in the present case.

40. The learned counsel for the applicant has next submitted that when no specific allegation has been levelled against the applicant, he cannot be tried on the basis of vague and bald allegations and in support of this submission the learned counsel for the applicant has placed reliance on the decision of the Hon'ble Supreme Court in **Mirza Iqbal v. State of U.P.:** AIR 2022 SC 69, wherein it has been held that where the contents of the FIR do not disclose specific allegations against the accused and the case appears to be a case of over implication aimed at settling scores then such a proceeding being an abuse of the process of the Court, the Court will be justified in quashing it.

41. Placing reliance upon the judgments of the Hon'ble Supreme Court in **C.B.I. v. Aryan Singh and Others**: (2023) 18 SCC 399, **Manik B. v. Kadapala Sreyas Reddy and Another**: 2023 SCC OnLine SC 2540, **Ramveer Upadhyay & Anr. V. State of UP and Anr:** Special Leave Petition (Crl.) No. 2953 of 2023, **Dharambeer Kumar Singh v. State of Jharkhand and Another**: (2025) 1 SCC 392, **State of Odisha v. Nirjharini Patnaik and Anr.:** 2024 SCC Online SC 657, **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and Anr:** (2019) 18 SCC 19 and **C.B.I. v. Arvind Khanna**: (2019) 10 SCC 686, the learned counsel for the respondent has submitted that while exercising the power of quashing under Section 482 Cr.P.C or Article 226 of the Constitution, the High Court must not conduct a mini trial. The scope of inquiry at this stage being limited, the correctness of all the allegations and defenses thereto ought not to be considered at this stage and proceedings at such stage may be quashed only where no case at its face value is made out against the accused. He has submitted that inherent powers under Section 482 ought to be exercised sparingly, carefully and with caution only when such exercise is justified by the tests specifically laid down by the Section itself.

42. It is correct that the High Court cannot conduct a mini trial at the stage of examining the validity of the charge-sheet by conducting a detailed scrutiny of the probative value of the prosecution material, but it is equally correct that the Court has to examine whether the allegations against the applicant and the material relied upon by the prosecution in support of the charges makes out a case for trial of the applicant. The scope of interference in a petition under Section 482 Cr.P.C. was explained by the Hon□ble Supreme Court in **State of Haryana v. Bhajan Lal**: 1992 Supp (1) SCC 335, in the following passage: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

43. In **Sajjan Kumar v. CBI:** (2010) 9 SCC 368, the Hon'ble Supreme Court laid down the following principles regarding scope of inquiry at the time of framing charges and while considering a request for discharge: -

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

44. The aforesaid principles laid down by the Hon'ble Supreme Court in the case of **Sajjan Kumar** (supra) regarding scope of scrutiny by the trial Court at the time of considering an application for discharge or framing charges, can also be taken as guiding principles for the High Court while considering a request for quashing of the charge-sheet and the proceedings based thereon. Therefore, this Court can sift and weigh the prosecution evidence, without conducting a roving inquiry into the pros and cons of the matter by assessing the probative value of the evidence on record, for the limited purpose of finding out whether or not the uncontroverted allegations levelled in the FIR and the evidence collected in support of the same disclose the commission of any offence and make out a case against the applicant. This Court can certainly evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence, as it cannot be expected even at this stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

45. Therefore, I proceed to examine the prosecution allegations and the material in support thereof to examine whether the same make out a case for trial of the applicant for the offences under Sections 201, 420, 467, 468, 471 I.P.C. read with Sections 120-B I.P.C. and Section 13 of the Prevention of Corruption Act, 1988 is made out.

46. Section 201 IPC reads as follows: -

"201. Causing disappearance of evidence of offence, or giving false information to screen offender *- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,*

if a capital offence.- *shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

if punishable with imprisonment for life-*. and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*

if punishable with less than ten years- *imprisonment. and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.*

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine."

47. The allegation to attract this offence is that Aptech has deleted the primary data of the examination from the cloud server and thus destroyed valuable evidence, under a criminal conspiracy with Jal Nigam. The charge-sheet does not specify the role of the applicant in removal of the primary data from the cloud server. The applicant has pleaded that he was not concerned with the storage of data and he did not have access to / control of the computer systems or computer network where the data of the examination is stored. It has further been stated that the original data has not been deleted and continues to be stored in the archives of the company in hard disks in its original format, under strict access control. This was informed to SIT but SIT never bothered to collect the data and filed the charge-sheet in ignorance of the aforesaid fact.

48. When the primary data has not been deleted and it has merely been shifted from the cloud server to the archives of the company, it cannot be said that the evidence of the commission of the alleged offences has been made to disappear and the offence under Section 201 IPC is not made out.

49. The applicant has justified shifting of the data from the cloud server to the company's archives by pleading that Clause 10 of the Data Retention Policy of Aptech dated 21.01.2015 (on the basis of which ISO: 27001 certification has been granted to the company) provides that any data pertaining to an examination conducted by the company has to be stored on the primary data center for a period of 30 days. This primary data center is on the 'cloud' and is owned by a company called 'Ctrl-S' which is one of the best data centers in the country with a 'Tier-IV Certification' and which provides data retention facility to many companies, including Aptech. After 30 days, the data gets shifted to the secondary data center, a Tier-III data center (which in this case was 'Net Magic', located at Noida) for a period of six months. Thereafter, the data moves to the Archives of Aptech, which is maintained at its Data Center at Noida, where it is ultimately stored in various physical storage devices, i.e. hard disks/NAS (a cluster of hard disks). This 'original data' is untampered and contains the complete audit trail/logs, individual mouse clicks of the candidates and candidate wise/ center wise response logs.

50. In the judgment dated 04.10.2024 passed in Writ A No. 7076 of 2021, this Court has held that the company has not breached the contract in any manner by shifting the primary data from the cloud in accordance with its Data Retention Policy, as there was no obligation under the contract to save the data on the cloud alone. The primary data continues to be stored in the archival server of the company and it was always available to the investigating agency.

51. Therefore, no case for trial of the applicant for the offence under Section 201 IPC is made out.

52. Sections 420 IPC reads as follows: -

"420. Cheating and dishonestly inducing delivery of property. - *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with*

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

53. The offence of cheating is defined in Section 415 IPC as follows: -

"415. Cheating - *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.*

Explanation.-A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats."

54. There is absolutely no allegation against the applicant and there is no material which may establish that the applicant has by deceiving any person, fraudulently or dishonestly induced him to deliver any

property to any person, or he has intentionally induced the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and that the applicant's act or omission has caused or was likely to cause damage or harm to that person in body, mind, reputation or property. Therefore, the offence under Section 420 IPC is also not made out against the applicant.

55. Sections 467 and 468 IPC provide as follows: -

"467. Forgery of valuable security, will etc. *Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

468. Forgery for the purpose of cheating. - *Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

56. Section 120-B IPC contains punishment for criminal conspiracy, which is defined in Section 120-A as follows: -

"120-A. Definition of Criminal Conspiracy - When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

57. There is no allegation that the applicant had forged any document, more particularly, a document of the categories mentioned in Section 467 I.P.C, namely a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security.

58. The prosecution has failed to specify the role played by the applicant in the process of preparation or publication of answer keys. Question papers and answer keys were prepared by third party subject matter experts comprising of renowned professors and teachers. The applicant is neither a subject matter expert nor a part of any team of the company which was involved in the process of publication of

answer keys. The applicant claims that answer-keys were not published promptly pursuant to specific instructions of Jal Nigam, which Aptech and its employees were contractually bound to follow. In any case, the delayed publication of answer-keys does not make out commission of offences under Sections 420, 477, 468 and 471 IPC.

59. Further, there is no allegation of any prior meeting of minds between the applicant and the officials of the Jal Nigam and no quid pro quo has been established. There is no material indicating that the applicant has acted mala fide against the Jal Nigam or any unsuccessful candidate or that the applicant had extended any undue favour to any candidate for gaining any undue benefit. Therefore, the offence of criminal conspiracy is also not made out.

60. In the judgment dated dated 04.10.2024 passed in Writ A No. 7076 of 2021 **Samrah Ahmad v. State of U.P**., this Court has held that there was only a minuscule number of wrong questions and answers which are bound to creep-in in a multiple choice question format question paper and they cannot be said to have vitiated the examination process. This Court has further held that Aptech was not involved in the process of preparation of question papers/answer keys which were prepared by third party subject matter experts and Aptech has revised the results and identified the candidates who should not have been called for interview. Therefore, the allegation of conspiracy between the company and Jal Nigam does not appeal to reason. The relevant portion of the judgment is being reproduced below: -

"326. From the perusal of the entire report of the SIT, I have found that the Special Investigation Team has broadly discussed the doubtful questions and doubtful answers in its report on the basis of challenges made to the questions and answers by the different candidates after the master answer key and response sheet were published. The Special Investigation Team has arrived at this conclusion that this was the duty of the M/s Aptech Ltd. to prepare the questions papers as well as to provide the answers in the master answer key for its final verification. After the response sheets were published, the challenges that were laid to various questions and answers and the revised result that was prepared by M/s Aptech Ltd was sufficient to demonstrate that the agency failed to perform its duty properly and as a matter of fact these wrong questions and wrong answers resulted in calling for undeserving candidates for interview and placing them in the select list. This according to SIT was also a result of conspiracy that was hatched by the then senior Minister who happened to be the Chairman of the corporation in connivance with officials in the upper echelons of the corporation and with those of M/s Aptech Ltd.

327. This above finding merely on the basis of the revised result cannot be sustained for the simple reason that only a very few number of questions and answers were found to be doubtful. ***It is true that the result came to be revised and, therefore, candidates stood identified who in fact should not have been called for interview and yet were called but this is nothing exceptional. In any examination which is a competitive in nature in which the papers are prepared on the format of multiple choice questions, some questions and some answers are bound to fall in doubtful category. This is also apparent from the report submitted by the service provider agency in which 19 answers in respect of certain questions were still doubtful as two experts had given two different options to be the correct answers of same questions.***

* * *

331. Thus, ***there is only a very minuscule percentage or number of doubtful questions and doubtful answers and this cannot be said to be sufficient ground itself to hold that the entire selection process insofar as conduct of CBT is concerned was compromised****.*

332. Still further, M/s Aptech Ltd. has taken its clear stand taken before the Court that the agency itself outsourced preparation of questions to a third party/ persons who are experts in their field and, therefore, M/s Aptech Ltd. did not have expertise to evaluate the questions and answers for every questions asked and answers given by the said experts and it is all further put to test by way of notification for the experts of the concerned subject when the challenges are made. Therefore, to come to the conclusion and hold that there was a conspiracy by the Minister concerned and the M/s Aptech Ltd. was a part of it in preparing question papers and answers to benefit poorer candidates does not appeal to reason in the given facts and circumstances of the case."

(Emphasis added)

61. The accused applicant is relying upon the findings recorded in the aforesaid judgment of this Court.

62. In **Pradeep Kumar Kesarwani v. State of U.P.:** 2025 SCC OnLine SC 1947, the Hon'ble Supreme Court has laid down the guidelines to be followed while examining the prayer for quashing of the proceedings under Section 482 Cr.P.C.. The relevant passage of the judgment is being reproduced below: -

"20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:

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

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

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

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

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr. P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]

63. The judgment in the case of **Pradeep Kumar Kesarwani** (supra) has been followed in **Sajal Bose v. State of W.B.:** 2026 SCC OnLine SC 525.

64. Undoubtedly, a judgment of the High Court recording findings that there is only a very minuscule percentage or number of doubtful questions and doubtful answers and this cannot be said to be sufficient ground itself to hold that the entire selection process insofar as conduct of the CBT is concerned was compromised and that it cannot be held that there was a conspiracy by the Minister concerned and M/s Aptech Ltd. was a part of it in preparing question papers and answers to benefit poorer candidates, is a material of sterling and impeccable quality. The aforesaid findings recorded by this Court rule out the charges levelled against the applicant that there was a conspiracy in holding the recruitment examination and the

applicant was a part of it. The State / CBI have not refuted the aforesaid findings recorded by this Court. In these circumstances, proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice.

65. Regarding the third allegation that marks of 169 candidates have been increased to give benefit to ineligible candidates, there is not even an iota of evidence linking the applicant to the allegation, who was not a part of the result processing team and who did not have access to the marks of the candidates and had no role, whatsoever in actual tabulation of marks of the candidates or preparation of the results. There is no allegation of any irregularity having been committed or manipulation having taken place till conclusion of CBT. In the judgment dated 04.10.2024 passed by this Court in Writ A No. 7076 of 2021, it has been held that the CFSL report does not record any finding that the data retrieved from the hard disk seized from the office of local environment of Aptech had been manipulated or modified. This Court has held that Aptech had followed all security measures and handed over the result to Jal Nigam officials in password protected secured files with login ID. Manipulation, if any, crept in after the result had been handed over to Jal Nigam and Aptech was not involved in this process. The CFSL has not found the record maintained by Aptech as having been tampered with.

66. In the counter affidavit filed by the State, it has been stated that the applicant was responsible to ensure execution of the recruitment examination and the answer keys were not published immediately after the examination, under a criminal conspiracy to fabricate the marks obtained by 169 ineligible candidates thereby ensuring their selection, which has resulted in deserving candidates being deprived of their rightful selection, without specifying the role of the acts of the applicant which may make out commission of any offence by him.

67. As there is absolutely no specific allegation of commission of any act by the applicant which may amount to commission of any offence and there is no material prima facie establishing commission of any offence by the applicant, the applicant cannot be made to face the trial and the continuance of trial of the applicant in these circumstances would be an abuse of the process of law. It would result in the unwarranted persecution of the applicant, which would cause a failure of justice to the applicant.

68. In view of the foregoing discussion, I am of the considered view that the charge-sheet dated 24.05.2021 submitted against the applicant for offences under Sections 201, 420, 467, 468 and 471 IPC read with Section 120-B I.P.C. and Section 13(1)(d) of Prevention of Corruption Act 1988, in Case Crime No. 2 of 2018, Police Station SIT, District Lucknow, the order dated 15.07.2021 passed by the learned Special Judge, Anti-Corruption, CBI (Central), Lucknow in Crl. Misc. Case No. 336/2021, taking cognizance of the aforesaid offences and the entire proceedings of the criminal case instituted on the basis of the aforesaid charge-sheet against the applicant, are liable to be quashed.

69. Accordingly, the application under Section 482 Cr.P.C. is **allowed**. The charge-sheet dated 24.05.2021 submitted against the applicant for offences under Sections 201, 420, 467, 468 and 471 IPC read with Section 120-B I.P.C. and Section 13(1)(d) of Prevention of Corruption Act 1988, in Case Crime No. 2 of 2018, Police Station SIT, District Lucknow, the order dated 15.07.2021 passed by the learned Special Judge, Anti-Corruption, CBI (Central), Lucknow in Crl. Misc. Case No. 336/2021, taking cognizance of the aforesaid offences and the entire proceedings of the criminal case instituted on the basis of the aforesaid charge-sheet against the applicant, are **quashed**.

(2026) 7 ILRA 1333
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Application U/S 528 BNSS No. 44666 of 2025

Rahul Sharma & Ors. ...Applicant(s)
Versus
State of U.P. & Ors. ...Opposite Party(s)

Issue for Consideration

Matter pertains to whether the application u/s 528 B.N.S.S. filed by applicants, who stood declared as proclaimed absconders (through the sister of applicant no.1), was maintainable at all, given that they had not surrendered before the trial court and had evaded the process of law and also at the pre-trial stage, the High Court, in exercise of its extraordinary/inherent jurisdiction u/s 528 B.N.S.S., could quash charge-sheet, cognizance/summoning order, and entire consequent proceedings, on the ground that no prima facie case of alleged offences was made out against the applicants.

Headnotes

Indian Penal Code, 1860 - ss. 419, 420, 467, 468, 471 and 474 - Code of Criminal Procedure, 1973 - ss. 82, 83 - Allegation of misappropriation of Rs. 28.07 crores from bank account - Altered customer details in CBS - Closed several fixed deposits - Diverted the proceeds to different bank accounts including his wife and mother - RTGS/NEFT/UPI - Abused official position - Criminal conspiracy - Quashing of criminal proceedings - Proclaimed absconder - Application filed through relative - Maintainability - Applicants left India and did not cooperate with investigation - Non-bailable warrants issued - Failure to challenge proclamation - The applicants, Rahul Sharma (applicant no.1), formerly posted as Assistant Manager at the Sector-22, Noida Branch of South Indian Bank Ltd., and his wife Bhumika Sharma (applicant no.2), were arrayed as accused pursuant to an F.I.R. lodged on 18.12.2023 by Deputy General Manager of said Bank, alleging that applicant no.1, in criminal conspiracy with his wife, mother and other unknown persons, had dishonestly misappropriated approximately Rs. 28.07 crore belonging to M/s Associated Electronics Research Foundation (AERF) by manipulating the Core Banking System, unauthorisedly closing fixed deposits, diverting proceeds through multiple bank accounts and creating fictitious entries to conceal the defalcation - The applicants having left Indian territory for United Arab Emirates prior to registration of F.I.R. and remaining unapproachable during investigation, proceedings u/ss. 82/83 Cr.P.C. were initiated declaring them proclaimed absconders - The Investigating Officer submitted a charge-sheet against them in absentia, upon which Magistrate took cognizance and issued summons, followed by non-bailable warrants - The applicants, without surrendering before the trial court, instituted instant application u/s 528 B.N.S.S., through the real sister of applicant no.1, seeking quashing of charge-sheet, cognizance/summoning order and entire criminal proceedings, contending false implication at instance of Bank in collusion with actual wrongdoers, while opposite parties opposed application both on ground of non-maintainability at instance of proclaimed absconders and on merits, asserting that FIR and material collected disclosed a prima facie cognizable offence.

Held: The applicants deliberately left India after making complaint by Bank and before lodging of first information report against them, knowing that they could be arrested in the case. This act of applicants appears that they are deliberately flouting the process of law of India. When the passports of applicants have been impounded by Indian Government, they approached the High Court challenging the said order of impounding of passports and citing that impoundment as the reason, they contend in this application that they did not deliberately evade due process of law - Thus, the present application filed on behalf of applicants (through sister of applicant no.2), who have been declared to be proclaimed absconder is not maintainable - After considering the totality of facts of case and keeping in mind the position of law, there is no merit in present application. Apart from that there is no material to show that complaint/FIR is malafide, frivolous and vexatious. The version as unfolded in first information report is supported by witnesses including the informant and independent witnesses and also by police papers. It is also cropped up from records that public money have been transferred in the accounts of applicants and other named accused persons, which needs a detail inquiry. The interference at the threshold of quashing of criminal proceedings cannot be said to be exceptional as it discloses prima facie commission of cognizable offence - **Accordingly, application dismissed**. [Paras 36, 37, 43, 45] (E-13)

Case Law Cited

Srikant Upadhayay and other v. State of Bihar and another **(Special Leave Petition (CRL.) No .7940 of 2023;** *B. Lovejot Kaur v. Harbhinder Singh* **reported in A.I.R. online 2022 P&H 1029;** D. *Central Bureau of Investigation v. Aryan Singh etc.* **reported in AIR online 2023 SC 252;** *Abhishek v. State of Maharashtra and Ors.,* **reported in (2022) 8 SCC 282;** *R.P. Kapur v. State of Punjab,* **A.I.R. 1960 S.C. 866 ;** *Kurukshetra University v. State of Haryana,* **(1977) 4 SCC 451;** *State of West Bengal Vs. Swapan Kumar Guha,* **(1982) 1 SCC 561;** *Dhanalakshmi v. R. Prasanna Kumar,* **1990 Supp SCC 686;** *State of Haryana & Others v. Bhajan Lal,* **1992 Supp (1) SCC 335;** *State* of *Bihar v. P.P. Sharma,* **1992 Supp (1) SCC 222;** *B.S. Joshi v. State of Haryana,* **(2003) 4 SCC 675;** *Sanapareddy Maheedhar Seshagiri & another v. State of Andhra Pradesh & another,* **(2007) 13 SCC 16;** *State of Telangana v. Habib Abdullaha Jilani & others,* **(2017) 2 SCC 779;** *M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & others,* **2021 AIR SC 1918;** *Priyanka Jaiswal v. State of Jharkhand* **reported in 2024 SCC Online SC 685 - referred to**

List of Acts

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

List of Keywords

ss. 82, 83 Cr.P.C.; Charge-sheet; Summoning order; Criminal conspiracy; South Indian Bank Ltd; Dishonestly misappropriate; M/s Associated Electronics Research Foundation (AERF); RTGS/NEFT/UPI/IMPS; Defalcated amount; Cheating; Forgery, Criminal breach of trust; Embezzled; United Arab Emirates; Fictitious entries; Core Banking System; Fixed deposits; Beneficiaries; Proclaimed absconder; Non-bailable warrants; Passport of applicants impounded; Anticipatory bail; Cognizable offence; Maintainability; Malafide; Frivolous; Vexatious; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 44666 of 2025

From proceedings of Criminal Case No. 4461 of 2024 arising out of Case Crime No. 579 of 2023, Police Station-Sector-24, District-Gautam Budh Nagar pending in Court of Additional Chief Judicial Magistrate-I, Gautam Budh Nagar.

Appearances for Parties

Advs. for the Applicant(s):
Vidit Narayan Mishra, J.B.Singh

Adv. for the Opposite Party(s):
Gautam Srivastava, A.G.A.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard Mr. Gopal Chaturvedi, learned Senior Advocate assisted by Mr. V.N. Mishra and Mr. J.B. Singh, learned counsel for the applicants, Mr. Sagir Ahmad, learned Senior Advocate assisted by Mr. Gautam Srivastava, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The instant application under Section 528 B.N.S.S. has been preferred by the applicants with a prayer to quash the charge-sheet dated 8th October, 2024, cognizance/summoning order dated 6th November, 2024 as well as the entire proceedings of Criminal Case No. 4461 of 2024 (State Vs. Seema & Others) arising out of Case Crime No. 579 of 2023 under Sections 420, 409, 467, 468, 471 and 120-B I.P.C. Police Station-Sector-24, District-Gautam Budh Nagar pending in the Court of Additional Chief Judicial Magistrate-I, Gautam Budh Nagar.

3. The prosecution case, in brief, is that Renjith R. Nair, the Deputy General Manager, Regional Head of **South Indian Bank Ltd.** lodged the present F.I.R. on 18th December, 2023 against three named and others as unknown including the applicants. In the said FIR it has been alleged that **Rahul Sharma (applicant no.1 herein),** while posted as Assistant Manager at the Sector-22, Noida Branch, entered into a criminal conspiracy with his wife, mother and other unknown persons to dishonestly misappropriate approximately **Rs. 28.07 crore** belonging to **M/s Associated Electronics Research Foundation (AERF).** It is alleged that although applicant no.1 Rahul Sharma initially complained to the Bank as well as the local police that he was being threatened by the directors of AERF and that they were involved in illegal financial transactions, an internal vigilance inquiry conducted by the Bank disclosed that he himself had manipulated the banking system and carried out unauthorised transactions.

4. The Bank alleges that applicant no.1 Rahul Sharma altered the customer details in the Core Banking System (CBS), linked AERF's Customer Identification File (CIF) with another account, unauthorisedly closed several fixed deposits, and diverted the proceeds to different bank accounts through RTGS/NEFT/UPI/IMPS transactions. The inquiry further revealed that the account opening forms and banking records contained serious irregularities and that several transactions were verified by applicant no.1 Rahul Sharma himself in abuse of his official position. It is also alleged that fictitious entries were made to create an impression that the fixed deposits were still intact by crediting interest amounts to AERF's account.

5. The investigation further disclosed that the diverted funds were routed through multiple bank accounts maintained in nearly twenty different banks. Out of the defalcated amount, substantial sums were allegedly transferred to the accounts of **Bhumika Sharma** (applicant no.2 herein) (wife of applicant no.1 Rahul Sharma) and **Seema Rani** (mother of Rahul Sharma), besides other beneficiaries. The Bank also alleged that Rahul Sharma had been suspended from service, was absconding, and had allegedly obtained a duplicate passport, giving rise to an apprehension that he intended to leave the country. On these allegations, the present F.I.R. was registered for offences relating to cheating, forgery, criminal breach of trust and criminal conspiracy.

6. After lodging of the above first information report, the investigation proceeded and since the applicants left the Indian territory, as is admitted by the applicants themselves and they are unapproachable for the Investigating Officer, after completion of statutory investigation under Chapter XII Cr.P.C., the Investigation Officer has submitted the charge-sheet against the applicants as proclaimed absconder on which the order of cognizance/summoning has been passed. Hence the present application under Section 528 B.N.S.S. has been filed before this Court through the real sister of applicant no.1, namely, Annu Rani, who has also sworn the affidavit in support of the present application.

7. It is pertinent to mention here that when after passing of the order of summoning the applicants did not appear before the court below thereafter, for ensuring their presence, bailable and non-bailable warrants have been issued against the applicants. Despite the non-bailable warrants having been issued against the applicants, they did not appear and thereafter proceedings under Sections 82 and 83 Cr.P.C. have been initiated against the applicants and they have been declared as proclaimed absconder.

8. The contention of the learned counsel for the applicants is that in the aforesaid case concerned police after completing investigation, submitted 3 charge sheets in different dates against different accused persons but so far as the charge sheet against the applicants is concerned, they were neither charge sheeted in the aforesaid 3 charge sheets and the investigating officer of the said case after initiated proceeding under Sections 82/83 Cr.P.C. submitted charge sheet in absconding against the applicant No. 1 in under Section- 420,409,467,468,471,120 B IPC & applicant No.2 in under Section- 420, 467,468,471,120-B IPC.

9. It is further contended that since the applicants are presently not residing in Indian territory, as such, the proceedings under Sections 82 Cr.P C. and 83 Cr.P.C. have been initiated against the applicants and thereafter charge-sheet dated 08.10.2024 has been filed by the investigating officer against the applicants. In the charge-sheet dated 08-10-2024, it has been mentioned by the Investigating Officer that the KYC documents and sample signatures of the fake account numbers, have already been obtained and sent to F.S.L Niwadi, Ghaziabad and results of which have not been received and at this stage it can't be proved that the applicants have committed said offence, as alleged by the prosecution.

10. It is then contended that before lodging present first information report dated 18-12-2023 applicant no.1 himself filed a complaint against the directors of Associated Electronics Research Foundation (AERF) before higher authorities of the bank on 03-12-2023 and also moved complaint before concerned police station on 04-12-2023 for lodging the first information report against the directors of Associated Electronics Research Foundation (AERF). On the basis of said complaint of applicant No.1 dated 03-12-2023, an internal investigation was conducted by the bank in which it was found that a dummy Joint Account Number as saving account no. 1013053000000165 and another saving account no. 1013053000000267 and one current account no. 1013073000000088 were opened in the name of AERF & Gaurav Agrawal was closed the FD of 28.07 Crore of the company Associated Electronics Research Foundation(AERF) and transferred the same in the said saving account bearing No 1013053000000165, 1013053000000267 and current account No.

1013073000000088 and thereafter huge amounts were transferred to 96 different beneficiaries after closing fixed deposits without seeking any permission from AERF.

11. It is also contended that it is surprising that a detail investigation was conducted but who was misappropriated the funds and in whose name and favor, dummy account was opened and from that account different amounts were transferred to different accounts holders have even not been charge-sheeted, though the entire alleged misappropriation of funds was transferred from the account of Mr. Gaurav Agarwal to the different beneficiaries. At the time of alleged incident, one Sri Gaurav Devgan was the Branch Manager and applicant No.1 was Assistant Manager in South Indian Bank and the applicant no.1 has no authority to open or close the fixed deposits of Associated Electronics Research Foundation (AERF) and after the transfer the Branch Manager Sri Gaurav Devgan, Ms. Annu Arora joined in the said branch as Branch Manager and in her tenure, some fixed deposits of Associated Electronics Research Foundation(AERF) were also opened and closed and transferred the amount in the account of company.

12. So far as the allegations made in the first information report are concerned, it has been contended by the learned counsel for the applicants that neither the applicant no.1 has opened any such type of Saving Bank/ Current account bearing No. 1013053000000165, 1013053000000267 and current account No. 1013073000000088 in the name of AERF & Gaurav Agrawal nor any amount has been credited in the account of applicant no. 1 form the said Saving Bank/ Current account of AERF & Gaurav Agrawal and not even a single penny has been credited in the account of applicant No. 1 form the bank itself.

13. It is next contended that after lodging complaint regarding threat faced by the applicant no.1 dated 03-12-2023 and before lodging present first information report dated 18-12-2023, applicant no.1 left the Indian territory and started residing at United Arab Emirates (UAE) with his wife (applicant No.2) on 04-12-2023 and during that period, passports of the applicants were impounded by the authority concerned and against the order of impounding the passport of the applicants, they challenged before this Hon'ble High Court by means Writ-C No.1593 of 2025 (Rahul Sharma Vs. Union of India and another) and Writ-C No. 1597 of 2025 (Smt. Bhumika Sharma Vs. Union of India and another) which are pending for its disposal.

14. It is further contended by the learned counsel for the applicants that infact a joint account of saving account 1013053000000165 & 1013053000000267 and one current account No. 1013073000000088 was opened in the name of AERF & Gaurav Agrawal by the said Gaurav Agrawal, who is one of the director of aforesaid company, and with the help of branch manager of said bank, closed the FD of 28.07 Crore of the company Associated Electronics Research Foundation (AERF) and transfer the same in the aforesaid 03 accounts on different dates and the said Gaurav Agrawal and his associates has making pressure upon the applicant no. 1 to help in their illegal activities, and when the applicant no. 1 has made complaint against the directors of aforesaid company Associated Electronics Research Foundation (AERF) before the higher officer of the bank and concern police station, then the directors of aforesaid company with the collusion of bank concerned, implicated the applicants in the instant case while the applicant no.1 has never committed any such type of offence as alleged in the present first information report. The applicant no.1 is only an Assistant Manager in the aforesaid South Indian Bank and he has no authority to

open/close fixed deposit accounts of AERF but on the basis of statements recorded of informant and other witnesses, the applicants have been charge sheeted in the aforesaid matter, whereas applicant no.1 has no authority either to change the password or closed the fixed deposits accounts of the aforesaid company. The applicant no.2 has no concern with fraud of the bank as alleged by the informant but she has only been implicated in the aforesaid matter due to wife of the applicant no.1

15. So far as the preliminary objection raised by the learned Senior Counsel appearing on behalf of opposite party no.2 with regard to the maintainability of present application at the behest of the applicants as they are absconder because after initiating proceedings Under Sections 82/83 Cr.P.C./ Sections 84/85 of BNSS, concerned police has submitted charge sheet against the applicants as absconder, is concerned, it is contended by the learned counsel for the applicants that they are not absconder on the ground that before lodging present first information report dated 18-12-2023, applicant no.1 left the Indian territory and started residing at U.A.E. with his wife (applicant No.2) on 04-12-2023 and during that period passport of the applicants were impounded by the authority concerned and against the order of Impounding the passports of the applicants, they challenged same before the Hon'ble High Court, which are pending for its disposal and the applicants are not deliberately absconding in the present case.

16. Learned counsel for the applicants submits that co-accused, namely, Seema Rani (mother of applicant no.1) has been granted anticipatory bail on 25th April, 2024, whereas other co-accused persons, namely, Jairijeshan, Bibinsebastian and Vicky Kumar against whom first information report has been lodged as unknown persons, who are class-III and Class-IV employees of the Bank have also been enlarged on bail.

17. It is lastly contended that applicants are humble, innocent and law abiding persons having no criminal antecedent upon them nor they are prior convicts but they have been falsely implicated in the present case, when as a matter of fact they have not committed any offence as alleged by opposite party no.2.

18. On the above premise, learned counsel for the applicants submits that the present criminal proceedings against the applicants may be quashed.

19. On the other-hand, learned counsel for opposite party no.2 and the learned A.G.A. have opposed the submissions made by the learned counsel for the applicants.

20. The learned counsel for the opposite party no.2 submits that applicant no.1 was posted as Assistant Manager, South Indian Bank, Branch Sector -22, Noida, Gautam Budh Nagar, who had fraudulently and dishonestly withdrawn an amount of Rs. 28.07 crores from the account of customer of the Bank, namely M/s. Associated Electronics Research foundation (AERF) in collusion with other accused persons. Applicant no.2 is the wife of applicant no. 1, and several huge amounts, which the applicant no.1 had fraudulently and dishonestly withdrawn, had been transferred by him in the account of Applicant no. 2.

21. It is further submitted by the learned counsel for opposite party no.2 that upon an inquiry conducted by the Bank when it was found that a huge amount/public money has been embezzled by the applicants and other accused, the Bank lodged the instant first information report against them. The applicants deliberately did not co-operate with the investigation and the Investigating Officer even his best efforts could not succeed to apprehend the applicants, when as a matter of fact such arrest of the applicants was necessary according to Section 157 (1) of CrP.C. When all the best efforts made by the Investigating Officer to arrest the applicants went in vain, proceedings under Sections 82/83 of Cr.P.C. were initiated against them and at last, applicants were declared as proclaimed absconder. The Investigating Officer after being legal and logical end of the investigation forwarded a police report against the applicants in a capacity of a proclaimed absconder, before the learned concerned court according to Section 173 (2) of CrPC. On 08.10.2024. and 06.11.2024, the learned Magistrate has taken cognizance of offence upon a police report in an abscondence of the applicants according to Section 190 (1) (b) of Cr.P.C. The applicants are still proclaimed absconder, as they do not believe in the majesty of the Hon'ble Court.

22. It is then submitted that the applicants through Smt. Annu Rani (sister of applicant no.1) have filed the instant application under Section 528 B.N.S.S. for quashing of the entire proceedings of the instant criminal case by invoking the extra ordinary power of this Hon'ble Court. However, the instant application under Section 528 B.N.S.S. is not maintainable, as the applicants are proclaimed absconder. The present application filed under Section 528 of BNSS by a Proclaimed Absconder is not maintainable. In support of his case, learned counsel for opposite party no.2 has relied upon the judgment of the Apex Court in the case of ***Srikant Upadhayay and others Versus State of Bihar and another (Special Leave Petition (CRL.) No. 7940 of 2023,*** wherein it has been held that any relief cannot be granted to proclaimed absconder (accused).

23. To highlight the aforesaid issue, learned counsel for the opposite party no.2 has also referred to the judgments of the Punjab & Haryana High Court in the ***case B. Lovejot Kaur Versus Harbhinder Singh reported in A.I.R. online 2022 P & H 1029 and Uttrakhand High Court in the case of C. Rakesh Mehra Versus State of Uttrakhand and others passed in Criminal Misc. Application No. 135 of 2024, decided on 17th June, 2026.***

24. So far as the merits of the present application is concerned, learned counsel for opposite party no.2 submits that from the allegations made in the First Information Report cognizable offence is made out against the applicants. The defence of the applicants cannot be taken into consideration, at this stage. Therefore, the applicants do not deserve any indulgence. This Court in exercise of powers under Section 528 B.N.S.S. cannot exercise its powers to interfere in the matter at this stage of the proceedings. At this stage of the criminal proceedings, only prima faice case has to be seen.

25. To buttress the aforesaid submission, learned counsel for the opposite party no.2 has relied upon the judgment of the Apex Court in the case of ***D. Central Bureau of Investigation Versus Aryan Singh etc. reported in AIR online 2023 SC 252,*** wherein the Apex Court has held that at the stage of discharge and / or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the court has a very limited jurisdiction, and the court is not required to conduct the mini trial, as the charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency.

26. On the cumulative strength of the aforesaid, it has been urged by the learned counsel for the opposite party no.2 that in view of the aforesaid facts and judgments quoted herein above, it is evident that

the aforesaid case is liable to be dismissed outrightly, on the ground that (i) the present application has been filed by the proclaimed absconder (applicants), (ii) the High Court in exercise of powers under Section 528 Cr.P.C., cannot evaluate the evidence collected by the Investigating Officer during course of investigation, according to Section 2 (h) of Cr.P.C, meticulously and also the High Court cannot not conduct a mini trial, (iii), since the applicants are residing in U.A.E i.e. United Arab of Emirate, the proceedings initiated under Sections 82/83 of CrPC, has attained its finality as the applicants have not sought any relief against order passed under Sections 82/83 of CrPC. Therefore, the applicants until and unless, not surrendered before the learned concerned court, till then the applicants cannot seek any remedy.

27. On the above premise, it has been urged by the learned counsel for the applicants that since the applicants have been completely failed to make out any case for interference by the Hon'ble High Court in order to exercised its power under section 528 of BNSS, therefore, the instant application being without sans of merit is liable to be rejected.

28. I have considered the facts and circumstances of the case, submissions made by the learned counsel for the applicants, learned counsel for opposite no.2 and the learned A.G.A. and also perused the material available on record.

29. Two issues are up for consideration before this Court, the first is whether the present criminal application under Section 528 B.N.S.S. filed by the applications (through sister of applicant no.1), who are declared to be proclaimed absconder is maintainable or not and second is that at this stage, this Court while exercising its extra ordinary power can quash the impugned charge-sheet, summoning order as well as the entire proceedings of the aforementioned criminal case at the pretrial stage or not.

30. First Issue i.e. whether the present application under Section 528 B.N.S.S. filed by proclaimed absconders like the present applicants is maintainable or not?

31. In **Abhishek Vs. State of Maharashtra and Ors.,** reported in (2022) 8 SCC 282, Hon'ble Supreme Court has held as follows:

"68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an 'absconder' and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence'"

32. In **Srikant Upadhyay (Supra)** relied upon by the learned counsel for opposite party no.2, the Apex Court in paragraph nos. 24 and 25 has held as under:

"We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts' and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We

shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But'then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

25. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as 'bail-cum-surrender application' on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non- bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 482 Cr.PC., they did not take any steps to challenge the same'or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail."

33. Similarly, in the case of **Rakesh Mehta (Supra),** which has also heavily relied upon by learned counsel for the opposite party no.2, the Uttarakhand High Court in paragraph no. 39 has held as under:

"..it is settled principle of law, as has been held by the Hon'ble Apex Court as well as by different High Courts in the catena of decisions that an accused, who is declared to be a proclaimed offender cannot seek leave for quashing of an FIR or any such proceeding arising thereof without surrendering, the court will not exercise its extraordinary or inherent jurisdiction in favour of an individual, who is intentionally evading the process of law and is absconding, or has been declared a proclaimed offender and such an accused person cannot execute a power of attorney in favour of a power of attorney holder to invoke the jurisdiction of the High Court under Section 482'of the Cr.P.C.

"As viewed from another angle, neither the lookout circular nor the declaration of proclaimed offender put to challenge, therefore, in such eventuality, the petition filed by Rakesh Mehra through power of attorney holder cannot be held to be maintainable."

34. It is also necessary for this Court to highlight the fact here that in the present case also the applicants have not taken any steps to challenge the non-bailable warrants and proclamation under Sections 82 and 83 Cr.P.C. In paragraph no.10 of the written submission filed on behalf of the applicants, it has been stated that after lodging of the complaint regarding threat faced by the applicant no.1 dated 3rd December, 2023 and before lodging of the instant first information report dated 18th December, 2023, the applicant no.1 left the Indian territory and started residing in United Arab Emirates along with his wife i.e. applicant no.2.

35. From the aforesaid statement it reveals that when the applicants left the Indian territory and did not cooperate with the investigation, the authorities have no other option but to pass an order for impounding the passports of the applicants against which they filed civil writ petition before this Court wherein no interim protection has been granted in their favour.

36. The applicants deliberately left India after making complaint by the Bank and before lodging of the first information report against them, knowing that they could be arrested in this case. This act of the applicants appears that they are deliberately flouting the process of law of India. When the passports of the applicants have been impounded by the Indian Government, they approached the High Court challenging the said order of impounding of passports and citing that impoundment as the reason, they contend in this applicantion that they did not deliberately evade the due process of law.

37. In view of the aforesaid facts and settled principles of law, this Court finds substance in the submission made by the learned counsel for the opposite party no.2 that the present application filed on behalf of the applicants (through sister of applicant no.2), who have been declared to be proclaimed absconder is not maintainable.

38. Now this Court comes on the second issue whether this Court in exercise of powers under Section 528 B.N.S.S. can quash the impugned charge-sheet, summoning order as well as entire proceedings of aforementioned criminal case at the pretrial stage.

39. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen where the allegation made in the FIR/complaint, even of they are taken at their entirety, prima facie constitutes cognizable offence against the accused.

40. Position of law for invoking the jurisdiction of inherent power of High Court has been settled by the Apex Court in following judgments:-

1. **R.P. Kapur Vs. State of Punjab,** A.I.R. 1960 S.C. 866;
2. **Kurukshetra University Vs. State of Haryana,** (1977) 4 SCC 451;
3. **State of West Bengal Vs. Swapan Kumar Guha,** (1982) 1 SCC 561;
4. **Dhanalakshmi Vs. R. Prasanna Kumar,** 1990 Supp SCC 686;
5. **State of Haryana & Others Vs. Bhajan Lal,** 1992 Supp (1) SCC 335;
6. **State of Bihar Vs. P.P. Sharma,** 1992 Supp (1) SCC 222;
7. **B.S. Joshi Vs, State of Haryana,** (2003) 4 SCC 675;
8. **Sanapareddy Maheedhar Seshagiri & another Vs. State of Andhra Pradesh & another,** (2007) 13 SCC 165;
9. **State of Telangana Vs. Habib Abdullaha Jilani & others,** (2017) 2 SCC 779;
10. **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others,** 2021 AIR SC 1918.

41. **Apart from the above, in Priyanka Jaiswal Vs. State of Jharkhand reported in** 2024 SCC Online SC 685, Hon'ble Supreme Court observed that the Court exercising extraordinary jurisdiction under' Section 482 'of Cr.P.C. cannot conduct a mini trial or enter into appreciation of evidence of a particular case. The following observations were made:

"This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary

jurisdiction can neither undertake to conduct a mini trial'nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. "

42. In **Central Bureau of Investigation Vs. Aryan Singh Etc. (Supra)** relied upon by the learned counsel for the opposite party no.2 the Apex Court in paragraph nos. 4 and 4.1 has held as under:

"4. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482'Cr.P.C. and/or in exercise of the powers under' Article 226 of the Constitution of India.

4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of' discharge and/or quashing of the criminal proceedings, while exercising the powers under' Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under'Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not."

43. After considering the totality of facts of the case and keeping in mind the position of law, there is no merit in the present application. Apart from that there is no material to show that the complaint/FIR is malafide, frivolous and vexatious. The version as unfolded in the first information report is supported by the witnesses including the informant and independent witnesses and also by the police papers. It is also cropped up from the records that the public money have been transferred in the accounts of the applicants and other named accused persons, which needs a detail inquiry. The issue as to why such public money has been transferred in their accounts can be more appropriately examined during the course of trial. The interference at the threshold of quashing of the criminal proceedings of the present case cannot be said to be exceptional as it discloses prima facie commission of cognizable offence.

44. In the result, the prayer for quashing of entire proceeding, charge sheet and cognizance order is refused. The second issue is also decided against the applicants.

45. The present application under Section 528 of B.N.S.S is devoid of merits and is accordingly, **dismissed**.

(2026) 7 ILRA 1344
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.07.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 22566 of 2026

Sarvesh @Chhotu @ Chhotelal ...Applicant(s)
Versus
State of U.P. ...Opposite Party(s)

Issue for Consideration

Matter pertains to whether a person who performed a second marriage during the lifetime of his first (subsisting) wife would come within the definition of "husband" for the purposes of ss. 80 and 85 of Bharatiya Nyaya Sanhita, 2023 and consequently, whether the presumption u/s 118 of Bharatiya Sakshya Adhiniyam, 2023 would stand attracted against such a person qua his second wife.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 80(2), 85 (corresponding to ss. 304B, 498A) – Bharatiya Sakshya Adhiniyam, 2023 - s. 118 - Dowry Prohibition Act, 1961 - ss. 2, ¾ - Prevention of women from Domestic Violence Act 2005 - s. 2(f) - Bail - Dowry death - Cruelty - Second marriage during subsistence of first marriage - Void marriage - Meaning of husband - Interpretation of - The applicant, sought bail during trial in Case Crime No. 24 of 2026, wherein it was alleged that the deceased, who was admittedly the applicant's second wife married to him during the subsistence of his first marriage with his first wife (who was alive and residing with them), had died by consuming poison - The applicant contended that since the second marriage was void ab initio on account of subsisting first marriage, he did not fall within the statutory definition of "husband," and hence the provisions of s. 80 of BNS, along with the presumption u/s 118 of Bharatiya Sakshya Adhiniyam, were not attracted against him, further submitting that no specific allegation had been levelled against him, that he possessed no criminal antecedents, that the charge-sheet had already been filed obviating the need for custodial interrogation, and that he had been in judicial custody since 28.01.2026, whereas the State, while opposing the bail application, did not dispute the aforesaid factual position.

Held*:* In view of the analysis, it is clear that the presumption of dowry death in case of unnatural death within seven years of marriage as per s. 80 B.N.S. (s. 304B I.P.C.) read with s. 118 of B.S.A. should be interpreted strictly in such a manner which favours to an accused, therefore, the Court is of the view that the word "husband" in s. 80 BNS as well as s. 85 B.N.S. will cover person only when he is legally married to a women, not the person whose marriage is itself void with a women - This is also in consonance with a view taken by a three-judge bench of Apex Court in the case of *Shivcharan Lal Verma (infra)* - However, the Court further observes that in case there is a doubt about the first marriage, then a person living as "husband" in an alleged second marriage will be covered in the definition of husband for the purpose of ss. 80 and 85 BNS, because it is not possible in criminal proceedings to determine the issue of validity of marriage - Similarly when a person performed second marriage to a woman without disclosing his validly married living spouse and continued to live with his second wife as her husband and second wife is also not aware about this fact till commission of this offence, in that case also he will be deemed as husband for the purpose of ss. 80 and 85 of BSA - **Application disposed of.** [Para 28] (E-13)

Case Law Cited

Dr. Lokesh B H v. State of Karnataka, **Criminal Application under Section 528 No.8134 of 2024;** *Reema Aggarwal v. Anupam and others* **(2004) 3 SCC 199;** *Aluri Venkata Ramana v. Aluri Thirupathi Rao,* **SLP (Crl.) No. 9243 of 2024 / Criminal Appeal No. 5239 of 2024, decided on 12.12.2024;** *P. Sivakumar v. State,* **2023 SCC OnLine SC 1737;** *Akhilesh Kesari and 3 others v. State of U.P. and another* **in Application u/s 482 No.38288 of 2023 dated 28.03.2024;** *Adarsh Yadav v. State of U.P. & another,* **Application u/s 482 No.27734 of 2024, decided on 20.09.2024;** *Dr. Lokesh B H and others v. State of Karnataka* **(2025) SCC Online 21706;** *M/s. Balaji Traders v. State of U.P. & Anr.,* **SLP (Crl.) No.3159 of 2025;** *Tolaram Relumal and another v. State of Bombay* **(1954) 1 SCC 961;** *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence,* **(2021) 2 SCC 485;** *Kapil Wadhawan vs Central Bureau of Investigation* **reported in 2025 SCC OnLine SC 3038;** *Maya Tiwari Vs. State of U.P.*, **2024 SCC Online All 6765;** *Policy Strategy for Grant of Bail, In Re: Suo Motu* **Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023 reported in (2024) 10 SCC 685;** *Pila Pahan@Peela Pahan and others v. State of Jharkhand and another,* **in Writ Petition (Criminal) No. 169 of 2025, decided on 29.05.2026 - referred to**

Shivcharan Lal Verma v. State of Madhya Pradesh, **reported in (2007) 15 SCC 369 - relied on**

Books and Periodicals Cited

Black Law Dictionary **- referred to**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023; Dowry Prohibition Act, 1961; Prevention of women from Domestic Violence Act, 2005

List of Keywords

Bail; Husband; Deceased second wife; Subsistence of earlier marriage; Second marriage; Void marriage; Voidable marriage; Dowry death; Cruelty; Harassment; Presumption; Domestic relationship; Shared household; Live-in Relationship; Relative; Legally wedded wife; Marital relationship; Bigamy; Custodial interrogation; Suicide; Poison; Application disposed of.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 22566 of 2026

From the Case Crime No. 24 of 2026, Police Station - Madhautanda, District - Pilibhit.

Appearances for Parties

Adv. for the Applicant(s):
Suneel Kumar

Adv. for the Opposite Party(s):
G.A.

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

1. Heard Mr. Suneel Kumar, learned counsel for the applicant, Ms. Mayuri Mehrotra, learned State Law Officer for the State, Mr. Rakesh Kumar Mishra, learned A.G.A. for the State and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No.24 of 2026, under Sections 85, 80(2) of BNS and Section 3/4 of the Dowry Prohibition Act, Police Station-Madhautanda, District-Pilibhit.

3. This matter was heard on 06.07.2026, on that date, counsel for the applicant submitted that the deceased was his second wife as the marriage was performed with the deceased during subsistence of earlier marriage and his first wife was also alive, therefore, second marriage was void, therefore, the applicant will not come in the definition of husband, therefore, definition of Section 80 of BNS as well as presumption of Section 118 of the BSA are not attracted against the applicant, therefore, the applicant is entitled to be released on bail.

4. Considering the above submission, a preliminary legal issue was framed whether a person who performed a second marriage during the lifetime of the first wife would come within the definition of husband for the purpose of Section 80 BNS as well as Section 118 of BSA. On that date, considering the legal issue, this Court directed Mr. Rakesh Kumar Mishra, learned A.G.A. as well as Ms. Mayuri Mehrotra, learned State Law Officer to prepare the case and address the Court on the issue on the next date.

5. Today, Ms. Mayuri Mehrotra, learned State Law Officer submitted that this issue was considered by Karnataka High Court in Criminal Application under Section 528 No.8134 of 2024 (Dr. Lokesh B H vs. State of Karnataka), wherein the Court after framing the specific issue whether an offence under Section 498-A could be committed only a valid marriage, relationship or could it be committed or void or voidable marriage or relationship in the nature of marriage like live in relationship.

6. The Hon'ble Single Bench of the Karnataka High Court, after considering the issue, observed that the expression of husband under Section 498-A cannot formed again in a legal marriage to extent to enter into a marital relationship, which is void for voidable as also to live in relationship, which bears the attributes of marriage so long as essential ingredients of cruelty as defined in section are satisfactory. This judgment of the Karnataka High Court was challenged before the Apex Court through SPL Criminal No. 2240-2241 of 2026. The Apex Court, by order dated 13.02.2026, stayed the order of the Karnataka High Court; the matter was heard on 28.05.2026, and judgment was reserved.

7. Ms. Mehrotra further relied upon the judgment of a co-ordinate Bench of this Court in 482 No.27734 of 2024, wherein the court observed that the husband who performed a second marriage during the lifetime of his first wife will also come within the definition of husband for the purpose of Section 498-A. In this judgment, the co-ordinate bench of this Court also relied upon the judgment of the Apex Court in the case of **Reema Aggarwal v. Anupam and others (2004) 3 SCC 199.**

8. Mr. Rakesh Kumar Mishra, learned A.G.A., also submitted that two husbands have not been defined in statute; however, domestic relationship has been defined under Section 2(f) of the Prevention of women from Domestic Violence Act 2005 (hereinafter will be referred as Domestic violence Act) and as per the definition, even if a person male or female has been residing in share

household and related by marriage or through relationship in the nature of marriage. This shows that even if two persons are living together in a void marital relationship, they will be treated as husband and wife for the purpose of Section 80 BSA 2023. They will be treated as husband and wife. Section 2(f) of the Domestic Violence Act is quoted as under:

"domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family".

9. After considering the submissions of learned counsel for the parties, the legal question which has to be decided is:

Whether any person who performed a second marriage during the lifetime of his first wife would come within the definition of "husband" for the purpose of Sections 80 and 85 of the Bharatiya Nyaya Sanhita, 2023 with regard to the second wife?

10. To decide the aforesaid issue, it would be appropriate to quote Section 80 of the BNS. Section 80 of the BNS is being quoted as under:

"Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

11. From the perusal of Section 80 of the BNS, it is clear that the cruelty or harassment by the husband to the woman should be f**or, or in connection with, any demand for dowry.** Likewise, Section 85 of the BNS also contemplates cruelty by the husband or his relatives. The word "dowry" has been defined under Section 2 of the Dowry Prohibition Act, 1961. As per Section 2 of the Dowry Prohibition Act, 1961, "dowry" means any property or valuable security given or agreed to be given by one party to the marriage to the other party to the marriage or by the parents of either the bride or the bridegroom or by any other person to either party to the marriage or to any other person, at or before or any time after the marriage, **in connection with the marriage of the said parties**, except dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies. Section 2 of the Dowry Prohibition Act, 1961 is being quoted as under:

"In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before 1[or any time after the marriage] 2[in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

12. From the perusal of Section 2 of the Dowry Prohibition Act, 1961, it is clear that dowry means any property or valuable security which is related to or given in connection with the marriage of the said parties. Therefore, if any demand is made by one party from the other party which is not related to or in connection with the marriage of the said parties, the same will not come within the ambit of dowry.

13. Section 85 of the BNS provides punishment where a woman is subjected to cruelty by her husband or the relatives of her husband. The word "**cruelty**" has been defined in the **Explanation** to Section 85 of the BNS, which includes any wilful conduct of the husband or his relative which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or physical or mental health of the woman, even though there is no unlawful demand.

14. Apart from this, harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or on account of failure by the woman or her relative to meet such demand, also amounts to cruelty. Such unlawful demand of property or valuable security is not necessarily with regard to dowry. Therefore, cruelty committed upon a woman by her husband may be an offence under Section 85 of the BNS even though the same is not with regard to dowry, as observed by the Hon'ble Apex Court in **Aluri Venkata Ramana v. Aluri Thirupathi Rao,** SLP (Crl.) No. 9243 of 2024 / Criminal Appeal No. 5239 of 2024, decided on 12.12.2024.

15. Therefore, the question arises whether a person who performed a second marriage during the lifetime of his first wife with a woman having knowledge of and consenting to the subsistence of the first marriage would come within the **ambit of the expression "husband"** for the purpose of Sections 80 and 85 of the BNS.

16. The Hon'ble Supreme Court in case **Reema Aggarwal v. Anupam and others** (2004) 3 SCC 199 considered all these issues and observed that while interpreting the word "husband" mentioned under Sections 498A and 304B I.P.C miship rule on handerson's case can be pressed into service with a view to press the miship which would suppress literal rule being allowed to cover the field and further observed that it would be appropriate to construe the expression "husband" to cover a husband who enter into marital relationship under the colour of such proclaimed status of husband, such the women concerned but cruelty or coarse her in any manner for any of the purpose enumerated under Section 304B/498B I.P.C., irrespective of legitimacy of the marriage itself for limited purpose of Section 498A and 304B I.P.C. Paragraph 18 of **Reema Agarwal** (supra) is being quoted as under:

"18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite

public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

17. This issue was considered by the Hon'ble Apex Court in **Shivcharan Lal Verma v. State of Madhya Pradesh, reported in (2007) 15 SCC 369,** wherein a Bench of three Hon'ble Judges observed that where the marriage itself is null and void, the prosecution under Section 498-A IPC against the husband is not maintainable at the instance of the alleged wife in respect of cruelty meted out to her. Paragraph 2 of **Shivcharan Lal Verma** (supra) is being quoted as under:

"2. This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 IPC to be unconstitutional was under reconsideration by the Constitution Bench. The Constitution Bench [Ed.: Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 SCC (Cri) 374] finally disposed of the matter in Criminal Appeal No. 274 of 1984 and batch and set aside the earlier judgment [Ed.: P. Rathinam v. Union of India, (1994) 3 SCC 394: 1994 SCC (Cri) 740] of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid Constitution Bench decision two questions arise for consideration in this appeal. One, whether the prosecution

under Section 498-A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr Khanduja, learned counsel for the appellant so far as conviction under Section 498-A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of a valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498-A IPC. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, makes it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned Sessions Judge as well as the High Court have appreciated the evidence of the aforesaid three witnesses and on going through the evidence of these three witnesses, we do not find any error committed by the courts below either in the matter of appreciation or in their approach relating to the evidence in question. We, therefore, do not find any infirmity with the conviction of the appellants under Section 306 IPC. So far as the sentence is concerned, they have been sentenced to undergo rigorous imprisonment for seven years but having regard to the facts and circumstances of this case, we reduce the sentence to five years. This appeal is accordingly disposed of. Bail bonds of the appellants would stand cancelled and they must surrender to undergo the remaining period of sentence."

18. The aforesaid judgment was considered by the Hon'ble Apex Court in **P. Sivakumar v. State, 2023 SCC OnLine SC 1737**, and the Hon'ble Apex Court observed that where the second marriage is void, the alleged husband of such second marriage cannot be convicted under Section 498-A IPC (corresponding to Section 85 of the BNS). Paragraph 7 of P. Sivakumar (supra) is being quoted as under:

"7. Undisputedly, the marriage between the appellant No. 1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible."

19. This issue was also considered by the Allahabad High Court in the case of **Akhilesh Kesari and 3 others v. State of U.P. and another** in Application u/s 482 No.38288 of 2023 dated 28.03.2024, wherein the Court observed that for interpreting the word "husband" enshrined under Section 498A, strict interpretation is required being a penal provision, therefore, proceedings under Section 498A I.P.C. will not be maintainable against an alleged husband of marriage which is itself void. Paragraph 10 of **Akhilesh Kesari** (supra) is being quoted as under:

"10. From the perusal of the judgments mentioned above of the Apex Court, it is clear that strict interpretation is required when interpreting the word husband in Section 498-A I.P.C. as the I.P.C. is a penal provision, not beneficial legislation where the liberal interpretation is permissible. Therefore, this Court holds that proceeding under Section 498-A I.P.C. by the opposite party no. 2, who is not the legally wedded wife of applicant no. 1, is not maintainable against applicants."

20. This issue was again considered by a single Bench of this Court in **Application u/s 482 No.27734 of 2024, (Adarsh Yadav v. State of U.P. & another), decided on 20.09.2024,** wherein the court took contrary view to the judgement of Akhilesh Kesari (supra) and it was observed that to attract the provision of Sections 304B and 498B I.P.C., it is sufficient to show that the victim women and accused husband were residing as a husband and wife at the relevant point of time. As the validity of the marriage cannot be decided in criminal proceedings. Paragraph 8 of **Adarsh Yadav** (supra) is being quoted as under:

"8. Following the aforesaid judgment, the Hon'ble Chhattisgarh High Court in case of Mohitram vs. State of Chhattisgarh 2004(3)MPHT22(CG) has held that the intention of legislature behind inserting the provisions of Section - 304-B I.P.C. was that husband and his relatives, who are responsible for the dowry death of a woman should be brought into mischief of dowry death whether the marriage in question was valid or not. It was observed that in order to attract provisions of Section - 304-B and 498-A of I.P.C., it is sufficient to show that victim woman and accused husband were residing as husband and wife at the relevant point of time. In the instant case, for the sake of arguments even if it is assumed that the deceased does not fall within the ambit of legally wedded wife, there is ample evidence on record that applicant and deceased were residing together as husband and wife at the relevant point of time."

21. A single Bench of the Karnataka High Court in the case of **Dr. Lokesh B H and others v. State of Karnatka (2025) SCC Online 21706,** a view was taken that the expression "husband" under Section 498A I.P.C. is not confined to a man to in a legally valid marriage, but explains to one who enters into a marital relationship which is void or voidable, as also to a live-in-relationship which bears the attributes of marriage. However, this judgment was challenged before the Apex Court in S.L.P. No.2240-2241 of 2026, in which judgment was reserved on 20.05.2026 and further proceedings pending before the District Court were stayed.

22. From the above mentioned judgments, it is clear that though in the year 2024, the Hon. Apex Court in the case of **Reema Aggarwal** (supra) observed that Section 498A and Section 304B I.P.C. (Sections 85 and 80 of BNS) were enacted with policy and curved an evil rampant among people of the society, therefore, these provisions have to be construed liberally considering the object of the legislature as per handerson's case, therefore, the word "husband" should not be strictly construed but it should be interpreted in such a manner even a person having living spouse started living with another women or contract marriage with with a women ostensibly cohabited with such women would fall within the

category of husband for the purpose of Section 304B and 498A I.P.C. However, the three-judge bench of the Apex Court in the case of **Shivcharan Lal Verma** (supra) (2007) took a view that the second marriage is void; therefore, the person living with a woman in a second marriage will not come within the premises of husband for the purpose of Section 304B and 498A I.P.C. This three-judge bench judgment was again relied on by the Hon. Apex Court in **P. Shivakumar v. State, 2023** (supra), wherein it was observed that even if a marriage is null and void, then the alleged husband cannot be convicted under Section 498A I.P.C.

23. This Court is of the view that though there was a detailed reasoning in the case of **Reema Aggarwal** (supra) for including the alleged husband of void marriage for the purpose of Section 498A/ 304B I.P.C. but subsequent judgement of larger bench in the case of **Shivcharan Lal Verma** (supra) took a different view, therefore, that must prevail and the same was again reiterated in the year 2023 by the Apex Court in the case of **P. Shivakumar v. State, 2023** (supra).

24. The word "husband" has not been defined in any statute, but as per the Black Law Dictionary, the word "husband" means a married man who has a lawful spouse living; therefore, a person who does not have a lawful spouse living in the marriage in question will not be included in the category of husband.

25. The Hon. Apex Court has already observed in the case of **M/s. Balaji Traders v. State of U.P. & Anr., SLP (Crl.) No.3159 of 2025** that there is a scope of the provision which is penal in nature and that cannot be extended by reading into words which are not there; therefore, it has to be strictly interpreted. Para 24 of the M/s. Balaji Traders (supra) is being quoted as under:

"24. The scope of the provision cannot be extended by reading into it words which are not there. Section 387IPC, being a penal provision, has to be strictly interpreted, and no condition/essential ingredient can be read into it that the statute/section does not prescribe. Since there is no ambiguity in the ingredients of Section 387IPC, the observations of Tolaram Relumal [Tolaram Relumal v. State of Bombay, (1954) 1 SCC 961] as contended by the learned counsel appearing for Respondent 2 would not come to his rescue."

26. It is also settled law that if there are two views possible, then the Court must lean towards that construction which exempts the subject from penalty when one imposes a penalty. This issue was considered by the Apex Court in the case of **Tolaram Relumal and another v. State of Bombay (1954) 1 SCC 961**. Para 8 of the **Tolaram Relumal** (supra) is being quoted as under:

"The question that needs our determination in such a situation is whether Section 18(1) makes punishable receipt of money at a moment of time when the lease had not come into existence, and when there was a possibility that the contemplated lease might never come into existence. It may be here observed that the provisions of Section

18(1) are penal in nature and it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It if; not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by Lord Macmillan in London and North Eastern Railway Co. v. Berriman:

"where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

27. The Hon. Apex Court in the case of **M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485** again observed that when there appears to be ambiguity in the construction of a penalty, then the court must interpret towards protecting the rights of an accused. Paragraph 17.9 of **M. Ravindran** (supra) is being quoted as under:

"17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused."

28. In view of the above analysis, it is clear that the presumption of dowry death in case of unnatural death within seven years of marriage as per Section 80 B.N.S. (Section 304B I.P.C.) read with Section 118 of B.S.A. should be interpreted strictly in such a manner which favours to an accused, therefore, this Court is of the view that the word "husband" in section 80 BNS as well as Section 85 B.N.S. will cover person only when he is legally married to a women, not the person whose marriage is itself void with a women. This view is also in consonance with a view taken by a three-judge bench of the Apex Court in the case of **Shivcharan Lal Verma** (supra). However, this Court further observes that in case there is a doubt about the first marriage, then a person living as "husband" in an alleged second marriage will be covered in the definition of husband for the purpose of section 80 and 85 BNS, because it is not possible in criminal proceedings to determine the issue of validity of marriage. Similarly when a person performed second marriage to a woman without disclosing his validly married living spouse and continued to live with his second wife as her husband and second wife is also not aware about this fact till commission of this offence, in that case also he will be deemed as husband for the purpose of section 80 and 85 of BSA as he can not be allowed to take advantage of his wrong.

29. However, it is mentioned here that this second marriage is void if same is performed during subsistence of first marriage as per following laws:

(i) Special Marriage Act, 1954;
(ii) Foreign Marriage Act, 1969;
(iii) Christian Marriage Act, 1872;
(iv) Parsi Marriage and Divorce Act, 1936;
(v) Hindu Marriage Act, 1955.

30. Therefore, if the first marriage is performed under any of the above mentioned acts, then the second marriage would be void. However, in the case of Muslim, if the marriage is performed as per Sharia law, second, third and fourth marriage shall also be valid and in such cases if a Muslim person is living as a husband whether with second, third or fourth wife would also cover under the definition of husband for the purposes of Section 80 and 85 BNS.

(Arun Kumar Singh Deshwal,J.)

After delivery of the judgment on preliminary legal issue this court further proceeds to decide this bail on merit.

1. Learned counsel for the applicant submitted that it is admitted to the first informant that the marriage of the applicant with the deceased was the second marriage of the applicant, solemnized during the subsistence of his first marriage, and his first wife was alive and residing with them. Therefore, as the marriage itself was void and the issue has already been decided in the first part of this judgment, the applicant would not come within the definition of "husband", and consequently, the provisions of Sections 80 and 85 of BNS cannot be invoked against him. It is further submitted that deceased committed suicide by consuming poison and no specific allegation has been made against the applicant. Therefore, the applicant is entitled to be released on bail. It is further submitted that the applicant has no criminal history. It is also submitted that the charge sheet has already been filed in the present case; therefore, no custodial interrogation of the applicant is required. The applicant is a law-abiding citizen and has been languishing in jail since 28.01.2026. In case he is granted bail, he will not misuse the liberty of bail and shall cooperate in the trial proceedings.

2. Per contra, learned State Law Officer for the State has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

3. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC OnLine SC 3038** as well as guideline of this Court in the case of **Maya Tiwari Vs. State of U.P., 2024 SCC Online All 6765** regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the

applicant is entitled to be enlarged on bail. Accordingly, the present application is **allowed**.

4. Let the applicant- **Sarvesh Alias Chhotu Alias Chhotelal**, involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

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

ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

5. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

6. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

7. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

8. It is made clear that the applicant shall be released on the basis of computer generated copy of this order, downloaded from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

9. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

10. Office is directed to send a copy of this order to the applicant through **Jail Superintendent, Pilibhit** via e-mail or on e-prison portal and Trial Court via e-mode within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023** reported in **(2024) 10 SCC 685** as well as **Pila Pahan@Peela Pahan and others Vs. State of Jharkhand and another, in Writ Petition (Criminal) No. 169 of 2025**, decided on **29.05.2026**.

11. Application, if any, stands **disposed of.**

(2026) 7 ILRA 1356
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.07.2026

BEFORE

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

Writ C No. 21943 of 2012

Mohd. Yaseen & Ors. ...Petitioner(s)
Versus
Mohd. Asif & Ors. ...Respondent(s)

Issue for Consideration

Whether the competent authority had jurisdiction to apportion compensation between the parties where there is a serious contention between them on facts and law regarding their respective shares in the acquired land, or, in such a case, the competent authority is required to make a reference to the Principal Civil Court of original jurisdiction within whose jurisdiction the land acquired is situate.

Headnotes

National Highways Act, 1956 – s.3H(3), (4) – Acquisition of land – Apportionment of compensation – Dispute between co-sharers regarding their respective shares – Scope of power of Competent Authority vs. Reference to Principal Civil Court – Competent authority apportioning compensation between rival branches – Validity

Held: The competent authority can distribute compensation under Section 3H(3) according to the shares of the parties where their respective shares are substantially settled and non-contentious. However, where a serious dispute arises between the parties regarding their shares, based on past transactions and the applicable law, the competent authority has no jurisdiction to decide the dispute or apportion the compensation. It is required to refer the dispute to the Principal Civil Court of original jurisdiction within whose jurisdiction the acquired land is situated.[Paras 12] (E-5)

Case Law Cited

Mohammad Ali v. Board of Revenue, 2001 (92) RD 282;
Vinod Kumar and others v. District Magistrate, Mau and others, AIR 2023 SC 3337.

List of Acts

National Highways Act, 1956;
U.P. Zamindari Abolition and Land Reforms Act, 1950;
Transfer of Property Act, 1882;
Muslim Personal Law (Shariat) Application Act, 1937;
Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Acquisition of land; Apportionment of compensation; Non-contentious entitlement; Disputed entitlement; Compensation under National Highways Act, Competent Authority; Reference to Principal Civil Court.

Case Arising From

Challenge to the order passed by the competent authority under the National Highways Act, 1956 (for short, the Act of 1956), apportioning compensation between the parties.

Appearances for Parties

Advs. for the Petitioners: Dushyant Singh, M.C. Singh, Mohit Kumar, Rahul Srivastava
Advs. for the Respondent: C.S.C., Mahesh Narain Singh.

(Delivered by Hon'ble J.J. Munir, J.
&
Hon'ble Indrajeet Shukla, J.)

Order on Civil Misc. Delay Condonation Application No. Nil of 2026 and Civil Misc. Substitution Application No. Nil of 2026

1. Both these applications have been moved in Court today. These applications are taken on record. Let them be numbered by the Office.

2. The delay condonation application has been moved seeking to condone the delay in making the application for substitution seeking to bring on record the heirs and LRs of respondent nos. 3 and 5, who have since passed away.

3. Mr. M.N. Singh, Advocate, who appears for the contesting respondents and has instructions on behalf of the heirs and LRs states that he does not wish to file a counter affidavit to the delay condonation application.

4. We have perused the delay condonation application and the affidavit in support thereof. Respondent no. 3, Smt. Shagufta passed away on 11.04.2026 leaving behind her heirs and LRs as respondent nos. 1 and 2, who are already on record.

5. Likewise, respondent no. 5, Smt. Mahmoodan died on 28.11.2013 leaving behind respondent no. 4, her son, Mohammad Hashim, as her heir and LR. Mohammad Hasim too passed away and his heirs have already been substituted pursuant to our orders passed yesterday.

6. The cause shown for the delay is sufficient. The application is allowed.

7. The delay in preferring the substitution application is condoned and the substitution application is treated to be within limitation.

8. So far as substitution application goes, it has been moved to bring on record the heirs and LRs of respondent nos. 3 and 5. We notice that the heirs of respondent no. 3 are already on record as respondent nos. 1 and 2 and those of respondent no. 5 are also on record presently as the heirs and LRs of respondent no. 4, who too has passed away in the meanwhile.

9. There is good ground to grant substitution. The substitution application is allowed.

10. Let a note be made in the cause title against the names of respondent no. 3 that her heirs and LRs are already on record as respondent nos. 1 and 2 and a similar note against the name of respondent no. 5 be also made that her heirs and LRs are already on record as respondent nos. 4/1, 4/2 and 4/3.

11. Let the substitution be carried out by the office forthwith.

Order on WRIT - C No. - 21943 of 2012

Mohd. Yaseen and others ..Petitioner(s)

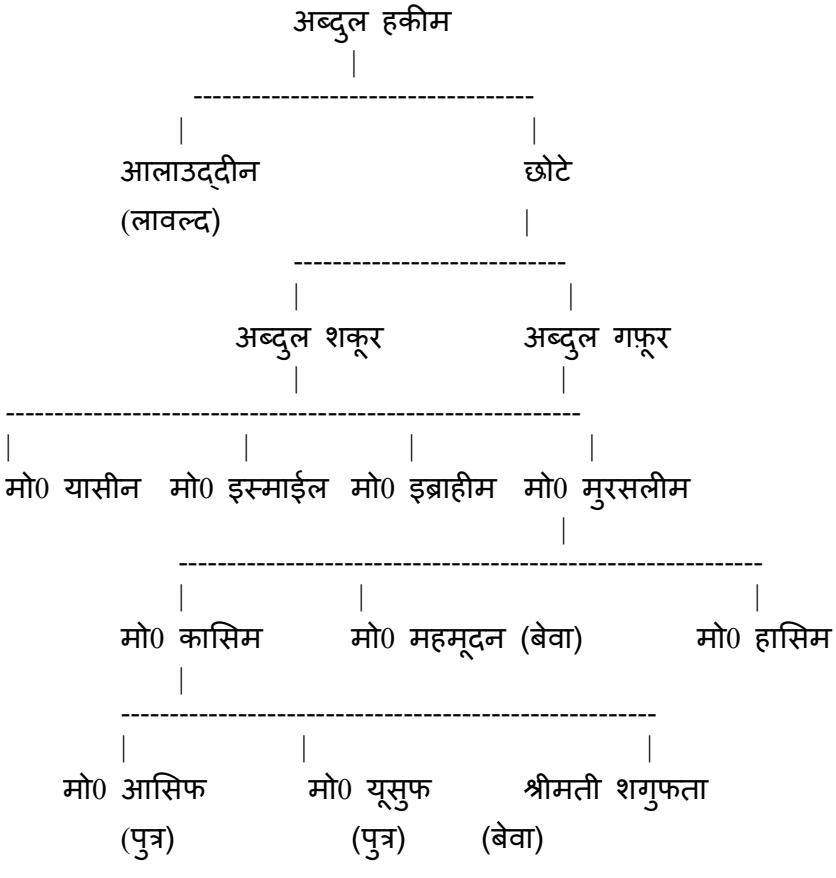
Versus

Mohd. Asif and others ..Respondent(s)

1. This writ is directed against an order dated 23.04.12 passed by Additional District Magistrate (Administration) acting as the competent authority under the National Highways Act, 1956 (for short the Act of 1956), apportioning compensation between the petitioners on one hand and the original respondent nos. 1 to 5 on the other, granting them a moiety each.

2. Heard learned Counsel for the petitioner, Mr. M.N. Singh, learned Counsel appearing on behalf of respondent nos. 1 to 5 and Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of respondent nos. 6 and 7.

3. The case of the petitioners is that the land in regard to compensation whereof the dispute has arisen was originally held by one Abdul Hakeem. He was succeeded by generations after him and the property devolved upon parties according to following pedigree:



4. We notice that Abdul Hakeem had two sons, namely, Alauddin and Chhote. Alauddin died issue-less and his line failed. The dispute here has arisen amongst heirs of Abdul Hakeem descended through his son Chhote. Chhote had two sons Abdul Shakur and Abdul Gafur. The petitioners represent Abdul Shakur s branch, whereas respondent nos. 1 to 5, represent the branch of Abdul Gafur.

5. The land in dispute was acquired under the National Highways Act,1956 vide notification under Section 3A published on 04.12.2009 and 3(B) published in the gazette on 16.06.2010. A notice under Section 3G was issued, which was published in Hindi Daily 'Amar Ujala' and Dainik Hindustan , both dated 23.07.2010. An award was passed on 28.02.2011, awarding a total sum of Rs. 25,35,29,509/-.

6. The dispute arose between the petitioners on one hand and respondent nos. 1 to 5 on the other regarding apportionment of compensation. The petitioners contented that the late Alauddin had transferred his agricultural holdings by way of oral gift (Hiba) in favour of the late Abdul Shakur, one of his two nephews, whose branch is represented by the petitioners. The petitioners, therefore, say that they would have a 3/4th share in the land acquired, and a fortiori, the compensation payable. The respondents would be entitled to a 1/4th. One of the principal questions that arose for consideration, therefore, was whether, in the case of tenure land governed by the U.P. Zamindari Abolition and Land Reforms Act, 1956 (U.P.Z.A. & L.R. Act, 1956), an oral gift could be made under the personal law of parties. The contention was that the U.P.Z.A. & L.R. Act, 1956 is uniformally applicable to all the tenure holders regardless of their religion and the personal laws governing other properties of theirs. The U.P.Z.A. & L.R. Act carries provisions regarding making of gift under Section 152 of the said Statute and gift of a transferable tenure can be made by a bhumidhar in accordance with Section 154 of the U.P. Z.A. & L.R. Act alone.

7. On the other hand, it was urged that there is no specific provision in the U.P.Z.A. & L.R. Act providing for gift of a bhumidhari land. Section 154 of the said Act does not contemplate the gift of such land. It was urged that since there was no specific mode of gift provided under the U.P.Z.A. & L.R. Act, Section 129 of the Transfer of the Property Act, 1882 would apply, entitling a bhumidhar, who was a Muslim to transfer his land by making an oral gift in accordance with the Mohammadan law. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, did not abrogate or override this rule of Mohammedan law. In support of this contention, reliance was placed on a decision of this Court in **Mohammad Ali vs. Board of Revenue, 2001 (92) RD 282.**

8. From the aforesaid state of things, what we find is that there was a serious contention between parties on facts and law about their shares in the land since acquired, and a fortiori, regarding apportionment of compensation between them. It was a full-fledged lis and not merely a case, where the shares of parties were, more or less, agreed upon and the matter one where the competent authority could determine the shares almost as non-contentious business.

9. The Act of 1956 makes provision in regard to apportionment of compensation under Section 3H, which reads:

" 3H. Deposit and payment of amount.

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

10. Learned Counsel for the petitioner invited our attention to Sub-section (4) of Section 3H and submitted that in the event of a dispute arising between co-sharers of the land acquired under the Act, apportionment of compensation or any part thereof or to any person to whom the same or any part thereof is payable, could not be done by the competent authority. The competent authority would have to refer the dispute for decision of the principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situate. This, according to the learned Counsel for the petitioner, is the inescapable effect to Sub-section (4) of Section 3H.

11. On the other hand, Mr. M.N. Singh, learned Counsel appearing on behalf of respondent nos. 1 to 5 submits that Sub-section (3) of Section 3H of the Act of 1956 provides that where several persons claim to be interested in the amount deposited under Sub-section (1), the competent authority is empowered to determine the persons, who in opinion of the authority, are entitled to receive compensation payable to each of them. This power, according to Mr. M.N. Singh, learned Counsel for respondent nos. 1 to 5, entitles the competent authority to apportion shares between parties. We do not agree.

12. The power under Sub-section (3) of Section 3H is a power given to the competent authority to distribute compensation according to the shares of parties so long as the entitlement to the compensation with reference to the shares of each largely remains a non-contentious issue. If shares of parties are apparently well settled, there is no difficulty for the competent authority to proceed under Sub-Section (3) of Section 3H and pay compensation according to each co-sharer s entitlement. However, if a dispute arises between parties in the

sense of a lis with each party propounding a different share for himself based on past transactions and the law applicable, it is a matter which can alone be determined by the principal Civil Court of original jurisdiction within whose jurisdiction the land acquired is located. The competent authority in a situation of the latter kind would have no jurisdiction to decide upon entitlement of shares of parties and distribute compensation according to his opinion. The only course left open to the competent authority would be to make a reference of the dispute for the decision of competent Civil Court within whose jurisdiction the acquired land is located. We are fortified in the view that we take by the authority of the Supreme Court in **Vinod Kumar and others vs. District Magistrate, Mau and others, AIR 2023 SC 3337.** In **Vinod** (supra), it has been held:

"33. We are of the view that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. Principal Civil Court means the Court of the District Judge.

34. Our final conclusion is as under: If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court."

13. In the circumstances, we are of opinion that the competent authority/Additional District Magistrate had no jurisdiction to apportion compensation between the petitioners on one hand and respondent nos. 1 to 5 on the other. He had to make a reference of the dispute to the principal Civil Court of original jurisdiction within whose jurisdiction the land acquired is situate.

14. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 23.04.02012 is hereby **quashed**. The competent authority/Additional District Magistrate Bulandshahr is ordered to **forthwith** make a reference of the dispute to the principal Civil Court of original jurisdiction within whose jurisdiction the land is acquired.

15. There shall be no order as to costs.

16. Let this order be communicated to the Additional District Magistrate, Bulandshahr through the learned Chief Judicial Magistrate, Bulandshahr by the Registrar (Compliance) **by Monday next**.

(2026) 7 ILRA 1362
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.07.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 22251 of 2018

M/s Sardar Baldev Singh ...Petitioner
Versus
I.O.C.L. & Ors. ...Respondents

Issue for Consideration

Whether termination of a retail outlet dealership under Clause 5.1.4 of the Marketing Discipline Guidelines, 2012, on the allegation of tampering with dispensing units can be sustained merely on the basis of taped joints in pulsar cables, broken or irregular Weights and Measures seals, or non-functional machinery, in the absence of cogent and reliable technical evidence establishing that such irregularities were capable of manipulating fuel delivery and were attributable to the dealer.

Headnotes

Marketing Discipline Guidelines, 2012 – Cls. 5.1.2, 5.1.3, 5.1.4 – Dealership Agreement – Termination of retail outlet dealership – Alleged tampering of dispensing units – Taped joints in pulsar cables and irregularity in Weights and Measures seals – No additional electronic device, chip, gear or unauthorized fitting found – No short delivery, excess delivery or adulteration detected – Dispensing unit itself non-functional – Termination based on presumption and suspicion – Validity.

Held: Clause 5.1.4 contemplates unauthorized manipulation of the dispensing mechanism in a manner capable of affecting fuel delivery. Every irregularity noticed in a dispensing unit does not, by itself, amount to tampering. Proceedings under Clause 5.1.4 of the Marketing Discipline Guidelines are penal in nature and must, therefore, satisfy a higher standard of proof than mere suspicion. The burden lies upon the Corporation to establish by credible and cogent material that the dispensing unit had in fact been tampered with in a manner capable of manipulating fuel delivery and that such manipulation could reasonably be attributed to the dealer. In the instant case, respondents proceeded on the assumption that because there existed taped joints in the pulsar cables and irregularity in the Weights and Measures seals, the petitioner must necessarily have indulged in tampering. No laboratory analysis or scientific examination was brought on record demonstrating that the taped joints or the alleged irregularities had any nexus with manipulation of the dispensing mechanism. The Corporation was required to establish, through cogent technical evidence, that the alleged irregularities were capable of manipulating delivery and that such manipulation was attributable to the petitioner. No additional electronic device, chip, gear or unauthorized fitting was recovered and no short delivery, excess delivery or adulteration was detected. Respondents have not produced any material establishing unauthorized access of the petitioner to the internal electronic components of the dispensing unit. An inference, in the absence of supporting technical evidence, cannot be accepted as a substitute for proof. Clause 1.4.2 of the MDG-2012 obligates the dealer to conduct daily visual inspection of the Weights and Measures seals and immediately report any irregularity. However, the breach of a duty to report a visible irregularity cannot automatically lead to the conclusion that the dealer himself tampered with the dispensing mechanism. Failure to consider the specific defence of the dealer amounts to violation of the principles of natural justice. Respondents failed to establish the essential ingredients of tampering by cogent technical evidence and rested their conclusions primarily upon presumptions arising from taped joints and the condition

of the seals. The findings recorded in the impugned orders, therefore, cannot be said to be legally sustainable. Impugned orders set aside/quashed. [Paras 30–33, 40, 44–47, 50, 52, 55, 60–64, 70–76, 78, 81, 82] (E-5)

Case Law Cited

Chairman, Indian Oil Corporation and others v. M/s Lallite Filling Centre and another, Special Appeal Defective No. 145 of 2026;
Indian Oil Corporation Ltd. and others v. M/s Modern Service Station, Special Appeal No. 456 of 2023;
M/s Aliganj Kisan Seva Kendra and another v. Indian Oil Corporation Ltd. and others, Writ-C No. 16998 of 2023;
M/s Prakash Automobiles Indian Oil Dealer v. Indian Oil Corporation Ltd., Writ-C No. 558 of 2020.

List of Acts

Constitution of India;
Marketing Discipline Guidelines, 2012.

List of Keywords

Termination of dealership; Marketing Discipline Guidelines (MDG-2012); Clause 5.1.4; Dispensing unit tampering; Pulsar cables; Taped joints; Weights and Measures seals; Short delivery; Non-functional dispensing unit; OEM opinion; Technical/Scientific evidence; Second-hand machine; Natural justice; Burden of proof; Penal consequences; Article 226; Judicial review; Manifest arbitrariness.

Case Arising From

From the order terminating the petitioner's retail outlet dealership and the appellate order dismissing the statutory appeal preferred under Clause 8.9 of the Marketing Discipline Guidelines, 2012.

Appearances for Parties

Advs. for the Petitioners: Radhika Singh, Richa Mishra, Tushar Hirwani
Advs. for the Respondent: Ratnesh Chandra, Manish Jauhari

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Ms. Radhika Singh, learned counsel for the petitioner with Ms. Richa Singh, Advocate and Sri Manish Johari, learned counsel appearing for the respondents.

2. By means of the present writ petition, the petitioner has challenged the order dated 04.07.2017 passed by respondent No.3 whereby the retail outlet dealership of the petitioner situated at Tulsipur, District Balrampur, has been terminated. The petitioner has also assailed the appellate order dated 15.05.2018 passed by respondent no.2 dismissing the statutory appeal preferred under Clause 8.9 of the Marketing Discipline Guidelines, 2012 (hereinafter referred to as "MDG-2012").

3. The facts giving rise to the present writ petition, as pleaded by the petitioner, are that the petitioner has been running the aforesaid retail outlet since the year 1973 and claims to have maintained an unblemished record throughout the tenure of the dealership. According to the petitioner, at no point of time was any allegation of adulteration, short delivery or any other malpractice established against him. A dealership agreement governing the rights and obligations of the parties came to be executed on 16.05.2011.

4. It is the case of the petitioner that pursuant to the Government Order dated 02.05.2017, a joint inspection of the retail outlet was conducted on 10.05.2017 by the authorities concerned. During inspection, in one Tokheim dispensing unit, certain pulsar cables were found joined by adhesive tape and a joint was noticed in the Weights and Measures seal affixed to the motherboard. In another Gilbarco dispensing unit, the Weights and Measures seal of the pulsar at the MS unit was found broken. However, according to the inspection report itself, no additional electronic device, chip or any unauthorized fitting was found inside either of the dispensing units and no discrepancy in the quantity of fuel delivered was detected.

5. Thereafter, the respondent Corporation issued a fact-finding letter dated 02.06.2017 alleging violation of Clauses 5.1.2, 5.1.3 and 5.1.4 of the MDG-2012. The petitioner submitted a detailed reply denying the allegations. Subsequently, a show cause notice dated 13.06.2017 was issued, to which the petitioner submitted his reply on 29.06.2017. The competent authority, not being satisfied with the explanation furnished by the petitioner, passed the order dated 04.07.2017 terminating the dealership. The statutory appeal preferred by the petitioner also came to be dismissed on 15.05.2018. Aggrieved thereby, the present writ petition has been filed.

6. Learned counsel for the petitioner submits that both the impugned orders are arbitrary, illegal and unsustainable in law inasmuch as they proceed merely on suspicion without there being any legally admissible evidence establishing tampering of the dispensing units or manipulation of fuel delivery. It is submitted that the respondents have failed to establish the essential ingredients contemplated under Clause 5.1.4 of the MDG-2012.

7. Elaborating the submissions, learned counsel contends that the dispensing machines, including their motherboard, pulsar card, pulsar cables, seals and other internal components, exclusively belonged to the respondent Corporation. Their installation, calibration, repairs, maintenance and sealing were carried out only by the engineers of the Corporation, its authorized service agencies and officials of the Weights and Measures Department. The petitioner had neither technical access to nor control over the internal mechanism of the dispensing units and, therefore, no presumption of tampering could legally be drawn against him.

8. Learned counsel further submits that the Tokheim dispensing unit bearing Serial No. D425A104 was an old machine manufactured in the year 2003 and was installed at the petitioner's retail outlet in the year 2008 after being shifted from another outlet. It is submitted that the said machine had repeatedly developed technical defects and had remained non-functional for considerable periods. The respondent Corporation itself had undertaken repairs on several occasions. It is further submitted that even prior to the inspection dated 10.05.2017, the dispensing unit had remained out of order since 23.03.2017 and complaints in that regard had already been lodged by the petitioner. The inspection report itself records that the dispensing unit was not dispensing fuel on the date of inspection. It is, therefore, contended that there existed neither any opportunity nor any motive for the petitioner to manipulate a machine which was admittedly lying defective.

9. Learned counsel next submits that although the inspection team noticed taped joints in certain pulsar cables and a broken seal in another dispensing unit, no additional electronic chip,

foreign device or unauthorized fitting was recovered from either of the dispensing units. Likewise, no short delivery, excess delivery or adulteration of fuel was detected during inspection. It is urged that in the absence of these essential features, the respondents could not have concluded that the dispensing mechanism had been tampered with.

10. It is also contended that much before the inspection, the petitioner had addressed a written communication dated 28.04.2017 requesting the respondent Corporation to replace the old and rusted sealing wire. Thus, the condition of the seal was already within the knowledge of the Corporation. According to the petitioner, during inspection the seal was handled roughly by the inspecting officials, resulting in its breakage, which was thereafter wrongly attributed to the petitioner.

11. Learned counsel for the petitioner further submits that the inspection proceedings themselves stood vitiated for non-compliance with the Government Order dated 02.05.2017 as well as the provisions of the MDG-2012. It is submitted that the inspection team was not constituted in accordance with the prescribed procedure; independent witnesses were not properly associated; mandatory procedure relating to opening, seizure and resealing of the dispensing units was not followed; videography of the inspection was not supplied despite repeated requests; and the recovery memo did not bear the signatures of all mandatory officials, including representatives of the Original Equipment Manufacturer and police personnel.

12. It is further submitted that the respondents have relied only on the presence of joints in the pulsar cable and the condition of the seals to allege tampering. However, neither of these circumstances, by itself, is sufficient to conclusively establish that any unauthorized manipulation or tampering had taken place. In support of the said submission, reliance has been placed upon the technical opinion furnished by the Department of Electronics and Communication Engineering, National Institute of Technology, Karnataka, wherein it has been opined that visual inspection revealing soldering marks, jumper wires or cable joints is insufficient to conclude tampering unless supported by scientific examination, as such features may also arise during repairs or maintenance carried out by authorized personnel.

13. Learned counsel submits that despite seizure of the relevant components during inspection, neither laboratory testing nor any conclusive expert examination was undertaken to establish actual tampering of the dispensing mechanism. According to her, in the absence of scientific evidence, actual short delivery or recovery of any unauthorized electronic device, the impugned orders rest merely upon conjectures and suspicion and, therefore, deserve to be quashed.

14. In support of the submissions advanced, learned counsel for the petitioner has placed reliance upon the following judgments :-

(i) **Chairman Indian Oil Corporation and others Vs. M/s Lallite Filling Centre and another [Special Appeal Defective No.145 of 2026].** Relevant paragraphs 24, 28, 29, 30 and 31 are being quoted as under :-

"24. The other limb of the submission of the learned counsel for the appellants, touching the merit of the dispute, if examined, would reveal that Clause 5.1.4 of the MDG refers to an

additional/unauthorized fittings/gears found in dispensing units/tampering with dispensing units. It further provides that any mechanism or fitting or gear found fitted in the dispensing unit which is likely to manipulate delivery or any addition, removal, replacement or manipulation of any part of the dispensing units including any mechanism, gear, micro-processor chip, electronic parts/OEM Software, if found will be deemed to be tampering of the dispensing units.

28. The learned Single Judge also noticed that even earlier the respondent had complained regarding irregular functioning of the said dispensing unit and it was found that the said unit was making excess delivery. In such circumstances, no benefit could accrue to the respondent and it is admittedly, not a case of short dispensing of fuel. The only unit which was said to have been tampered was actually a non-functional unit from which no sales were carried out.

29. The learned Single Judge also noticed that the inspection of the outlet was carried out on 08.06.2017 whereas the dealership was terminated on 15.07.2017. It also noticed that at the time of termination, the appellants had not even obtained the report from its Original Equipment Manufacturer (OEM). The report of the OEM was obtained by the appellants on 18.12.2017, almost after 5 months of the termination.

30. The learned Single Judge has also noticed that the basic premise upon which the dealership was terminated was based on tampering of dispensing unit which was clearly arbitrary for the reason that the Unit which was found to be tampered was already non-functional, from which no sales were made. Coupled with the fact that the other units were all found to be intact with the seals of the Weights and Measures Department. Without even waiting for the report of the OEM, the termination order was passed which clearly amounted to pre-judging the issue and thus on the basis of such findings, the writ petition was allowed. It also considered the earlier litigation inter se the parties and thereafter taking a holistic view, it allowed the writ petition.

31. This Court having considered the aforesaid judgment find that the appellants could not dispute the fact that the seals of the Weights and Measures Department was found intact. The appellant also could not dispute that merely upon the basis of the inspection report, the agreement was terminated while the report from the OEM came almost 5 months thereafter."

(ii) **Indian Oil Corporation Ltd. Vs. M/s Modern Service Station [Special Appeal No.456 of 2023].** Relevant paragraphs 24 to 27 are being quoted as under :-

"24. Having considered the rival submissions of the parties, we are definitely of the view that the learned Single Judge while dealing with the case of the petitioner correctly came to the conclusion that when a particular defence which was taken by the petitioner was not considered then that itself becomes a violation of the principles of natural justice. In the instant case, the petitioner had taken a definite stand that when on 16.9.2020, the engineer of M/s. GVR Mr. Girendra had opened the unit and had broken the seal then the dispensing unit was no longer in the control of the petitioner/respondents and there was every possibility of the seal being tampered and the unit being fiddled with by the engineer of M/s. GVR Mr. Girendra. When the defence of the petitioner was not considered the learned Single Judge correctly came to the conclusion that the petitioner was wronged inasmuch as there was a definite violation of principles of natural justice. Also the learned Single Judge rightly put an end to the matter and did not remand the case for a fresh appraisal. He, therefore, rightly relied upon the decision in M/s Chaudhary Filling Point, Kazipur through its Prop. And another vs. State of U.P. through Prin. Secy. Food & Civil Supplies and Ors. reported in 2019 (3) ADJ 345 the relevant paragraph no. 39 is being reproduced here as under:

"39. As seen from the reading of the impugned order, the only reason assigned for being not satisfied with the explanation offered by the petitioner was that there was tampering in the DU and pulsar card contains certain soldering marks. However, what was not considered by the competent authority was that at what point of time this unauthorized tampering/soldering was done in the dispensing unit and how the dealer is manipulating the distribution of fuel. No material, much less credible one has been brought on record by the respondents to disclose the unauthorized access to the equipment by the petitioner. It was specific stand of the petitioner that periodically the Weights and Measurements Department officials inspected the seals and they were found to be intact. Further more, what is the impact on tampering/soldering in delivery unit is not disclosed. How the dealer can manipulate delivery of fuel by inserting such unit is not explained. The only objective of a dealer to tamper with dispensing unit is to manipulate delivery of fuel. In this case, the delivery of fuel was found to be accurate prior to checking of unit and after the checking. Furthermore, the defence of the petitioner that it is possible that the supplier himself might have done soldering while repairing for proper functioning of the unit by supplier himself cannot be brushed aside."

25. This Appellate Court, thus, finds that when the main defence of the petitioner that i.e. the tampering was, in fact, a result of the act of the Original Equipment Manufacturer and that the petitioner had no hand in it was not considered then definitely the petitioner's interest was prejudiced.

26. We are thus of the view that the writ petition was rightly allowed and the matter was also rightly not remanded back. This we say as the appellants definitely had not been able to bring on record any fact by which it could be ascertained that the dealer had an authorized access to the equipment after the M/s GVR engineer had opened the dispensing unit and had fiddled with the motherboard and that the dealer was in any way responsible for the tampering etc.

27. For the reasons stated above, the Special Appeal stands dismissed."

(iii) **M/s Aliganj Kisan Seva Kendra and another Vs. Indian Oil Corporation Ltd. and others [Writ-C No.16998 of 2023].** Relevant paragraphs 40 and 45 to 48 are being quoted as under :-

"40. For appreciating the controversy involved in the writ petition, it would be apt to quote relevant clauses 16, 44 & 58(m) of the dealership agreement, which is as follows:-

"16. No repairs to the outfit shall be done by the Dealer unless preciously authorized by the Corporation in writing. The Dealer shall not interfere with or attempt to adjust the outfit or any apart thereof but shall notify the Corporation immediately of the necessary of any repair or adjustment and thereby ensure that the outfit is in proper working order and delivering full and proper, measure at all times. The Dealer shall not operate the outfit while it is out of order.

44. The Dealer undertakes faithfully and promptly to carry out, observe and perform all direction or rules given or made from time to time by the Corporation for the proper carrying on of the Dealership of the Corporation. The Dealer shall scrupulously observe and comply with all laws, rules regulations and requisitions of the Central/State Governments and of all authorities appointed by there or either of them including in particular the Chief Controller of Explosive, Government of India, and/or any other local authority with regard to the storage and sale of such petroleum products.

58(m). If the Dealer shall either by himself or by his servants or agents commit or suffered to be committed any act which in the opinion of the General Manager of the Corporation for the time being in NOIDA whose decision shall be final, is prejudicial to the Interest or good

name of the Corporation or its products, the General Manager shall not be bound to give reasons for such decision."

45. It is also evident from the perusal of the impugned order that it is admitted to the parties that the dispensing unit was not a new unit. It is also not in dispute that the dispensing unit installed at the petitioners' retail outlet was earlier used by Quality Retail Outlet and in the running condition, the same was installed at the petitioners' retail outlet, which was dispensing oil till the date of survey, i.e., 06.05.2017 without any discrepancy.

46. It is admitted fact between the parties that the dispensing unit installed at the petitioners' retail outlet was not new and it is also not in dispute that before reinstalation of dispensing unit of the petitioner site any certificate was issue certifying the fact that the mother board was not tampered or any repair was being undertaken by the Corporation or its agencies. Further before reinstalling the dispensing unit at the petitioners' retail outlet a certificate was ever issued duly certifying the fact that control card was in confermity with the MIDOC standard design.

47. It is also not in dispute that at the time of survey, the dispensing unit was not in working condition or it was not dispensing oil. Therefore, negative onus cannot be fastened upon the petitioners as alleged by the Corporation.

48. Bare reading of the relevant clauses of the dealership agreement and the Marketing Discipline Guidelines, presumption will be drawn against the petitioners that some manipulation has been done, but the presumption has to be proved by the Corporation by cogent materials to show that there was irregularity in dispensing unit, but the report submitted by the OEM does not say so. In absence of such finding against the petitioner, the impugned termination order cannot be sustained in the eyes of law."

(iv) ***M/s Prakash Automobiles Indian Oil Dealer Vs. Indian Oil Corporation Ltd. [Writ-C No.558 of 2020].*** *Relevant paragraphs 24, 25 and 28 are being quoted as under :-*

"24. It is also relevant to notice that the only basis for passing the impugned orders is the report by the OEM and as noticed above, the report of the OEM is also inconclusive for the reason the OEM also could not state with certainty that the said alien part as detected in the pulsar card was responsible for any short delivery. The report merely draws a conclusion but it does not indicate how and what tests were done to arrive at such a conclusion, apart from the fact that the said report of the OEM was not even put or given to the petitioner before passing of the impugned order of termination.

25. Learned counsel for the IOC could not dispute that the show cause notice was based merely on the basis of the inspection report and at that point of time, the report of the OEM was not there and the show cause notice also did not indicate that the Corporation would be relying upon the said report and even if they proposed to do so then it was a duty of the Corporation to have provided the copy of the report to the petitioner prior to the passing of the order to enable the petitioner to meet the reasons or contest the same and having not done so it has resulted in deprivation of an opportunity of hearing especially when the proposed action was in the nature of termination which impacted the rights of the petitioner to run the dealership which was a right to do business and earn livelihood.

28. It will be worthwhile to mention that in a similar matter, a coordinate Bench of this Court in M/s Mishra Automobiles Vs. Union of India and others;2024:AHC-LKO:53503 and dealing with similar issue and relying upon Clause 5.1.4 of the MDG, in paragraphs 14 to 18 has held as under:-

"14. From the aforesaid provision, it is clear that when any mechanisms, fitting, gear found fitted in dispensing unit with the intention of manipulation of delivery would amount to invite proceedings under the said sections and lead to cancellation of the license. Therefore, from a bare reading of Clause 5.1.4 of the MDG Guidelines, it is clear that any mechanism or fitting in the dispensing unit should result in manipulation of delivery or such additional fitting should at least the capable of manipulating the delivery. There is no dispute with regard to the fact that the foreign component was in fact found on the pulsar cards but the dispute in the present case is only with regard to the fact that as to whether discovery of a foreign component on the pulsar card would automatically lead to the conclusion that same has been installed with an intention of manipulation of delivery. In the present case, the peculiar facts are that seals of the dispensing units were intact at the time inspection. The foreign component found in the pulsar card has been reported by the OEM. Thee is no clear finding that such foreign component would led to the short supply of diesel in its original report dated 11.05.2017 or in subsequent clarification issued on 17.05.2017.

15. To return a finding with regard to the intention of manipulating the delivery, the basic fact which has to be established that the installation of the foreign component had in fact led to manipulating the delivery meaning thereby that on installation of foreign component on the pulsar cards, the dispensing unit had dispensed lesser quantity of fuel than it was supposed to dispense.

16. We do not agree with the submission of the counsel for the respondent that mere finding of the foreign component of the pulsar cards is sufficient in itself to come to a conclusion that the same has been done with an intention to manipulate the delivery. In case there is manipulation in delivery meaning thereby short supply of the fuel dispensed from the dispensing unit is a question of fact and can not be assumed. Only when it is established that the dispensing unit had in fact dispensed lesser quantity of fuel, coupled with the fact that foreign component was found in the pulsar card, can a person be held responsible for violating provisions of 5.1.4 of the MDG Guidelines and consequential cancellation of his license can be done. Apart from finding a foreign component on the Pulsar Cards there should have been categorical finding with regard to the intention to manipulate the delivery.

17. On perusal of the relevant provision i.e. 5.1.4 of MDG Guidelines, it is found to be substantially penal in nature and its essential ingredients, prima facie, consist of:

(1) The finding of the foreign objects in the dispensing unit, which is only a ground for inquiry and inspection.

(2) Intention of manipulating the delivery.

Mere presence of foreign elements does not ipso facto show intention unless there is evidence to show that the foreign components are capable of or in fact affecting the fair dispensation of fuel.

In the present case, there is no evidence with regard to the second necessary ingredient, which is 'intention of manipulating the delivery' and also the inquiry fell short of returning any finding as to show any such manipulation. Therefore, the petitioner cannot be said to have violated 5.1.4 of the MDG Guidelines.

18. In the aforesaid circumstances, firstly, it is not the case of the respondent Oil Company that there was any shortfall of the delivery, coupled with the fact that even the OEM has never reported, the result of the foreign body attached to the pulsar card and secondly, the benefit of doubt of the seal being intact during the time of inspection has to be given to the petitioner as the foreign component cannot be inserted without breaking the seal of the dispensing unit. Counsel for the respondent also could not confirm as to whether the foreign component can be inserted on

pulsar card without breaking the seals. Therefore, reading the inspection report dated 05.05.2017 wherein in paragraph 2, it has clearly been found that the delivery was found to be correct, coupled with the fact that in paragraph-5, it has been stated that seals were broken in presence of the inspecting team leads to have irrebuttable conclusion that the seals were intact and there was no short supply of the fuel and consequently, in the aforesaid circumstances, it cannot be concluded that there was intention to manipulate the delivery, and hence any violation of Clause 5.4.1. of the MDG Guidelines.""

15. In support of his submissions, learned counsel has placed reliance upon the judgment of the Division Bench of this Court in ***Chairman, Indian Oil Corporation*** (Supra), wherein it has been held that Clause 5.1.4 of the MDG contemplates tampering by way of unauthorized fittings or manipulation capable of affecting delivery. The Division Bench held that where the dispensing unit alleged to have been tampered with was itself non-functional and no short delivery was detected, termination of dealership merely on suspicion could not be sustained. It was further held that passing the termination order without even awaiting the report of the Original Equipment Manufacturer amounted to pre-judging the issue.

16. Reliance has also been placed upon another Division Bench judgment in Indian Oil Corporation Ltd. and others versus M/s Modern Service Station (Supra), wherein the Court held that failure to consider the specific defence of the dealer amounts to violation of the principles of natural justice. The Division Bench further held that unless cogent material is brought on record to establish that the dealer had unauthorized access to the dispensing unit after it had been handled by the Corporation's engineers or authorized personnel, liability cannot be fastened upon the dealer.

17. It is submitted that mere soldering marks or tampering noticed in the dispensing unit do not by themselves establish manipulation unless it is shown when such tampering occurred, how the dealer gained unauthorized access to the equipment and how such alteration affected the delivery of fuel. It was observed that where delivery was found to be accurate and no material existed connecting the dealer with the alleged tampering, the extreme penalty of termination could not be justified.

18. Learned counsel has further relied upon the judgment in ***M/s Aliganj Kisan Seva Kendra*** (Supra), wherein this Court held that where the dispensing unit supplied by the Corporation was an old or previously used machine and no certificate regarding its integrity prior to installation was produced, the burden could not automatically be shifted upon the dealer. It was further held that if the dispensing unit was itself non-functional, adverse presumption against the dealer could not be drawn merely on the basis of the condition of the machine, unless supported by cogent material establishing manipulation.

19. Reliance has lastly been placed upon the judgment of this Court in ***M/s Prakash Automobiles*** (Supra), wherein it was held that an inconclusive OEM report, which neither established that the foreign component resulted in short delivery nor disclosed the basis of its conclusion, could not furnish sufficient material for terminating a dealership. The Court further held that Clause 5.1.4 of the MDG requires not merely the existence of a foreign component but also material demonstrating its capability or intention to manipulate delivery and that mere

presence of a foreign object, without proof of its effect on fuel delivery, is insufficient to sustain termination.

20. Per contra, learned counsel appearing for the respondents submits that the writ petition is wholly misconceived and deserves to be dismissed. According to him, both the termination order as well as the appellate order have been passed strictly in accordance with the provisions of the MDG-2012, the dealership agreement and after affording full opportunity of hearing to the petitioner.

21. Learned counsel submits that during the inspection conducted on 10.05.2017, serious irregularities were detected at the petitioner's retail outlet. The Weights and Measures seal of the pulsar unit was found broken and a joint secured by tape was noticed in the pulsar cable, constituting critical irregularities under the MDG-2012. Consequently, sale from the concerned dispensing unit was immediately suspended and, after completion of the fact-finding inquiry and consideration of the petitioner's reply to the show cause notice, the competent authority rightly terminated the dealership.

22. Learned counsel for the respondents submits that the explanation furnished by the petitioner in response to the show cause notice was duly considered by the competent authority but was found wholly unsatisfactory. It is contended that the irregularities detected during inspection were of a critical nature attracting the provisions of the Marketing Discipline Guidelines, 2012 and, therefore, in exercise of powers conferred under Clauses 15, 16, 19 and 44 read with Clause 58 of the Dealership Agreement, the competent authority rightly terminated the dealership by order dated 04.07.2017.

23. It is further submitted that the petitioner thereafter preferred a statutory appeal under Clause 8.9 of the MDG-2012. The appellate authority afforded the petitioner an opportunity of personal hearing on 27.03.2018, examined the memorandum of appeal, the written submissions and the entire material available on record and thereafter, by a reasoned order dated 15.05.2018, affirmed the order of termination. It is, therefore, submitted that the petitioner has already availed of the statutory remedy and no procedural infirmity survives.

24. Learned counsel contends that the petitioner's reliance upon his alleged satisfactory conduct since the year 1973 is wholly misconceived. According to him, past conduct cannot wipe out or dilute the effect of a critical irregularity detected during inspection. Similarly, the annual stamping and calibration certificates issued by the Weights and Measures Department merely certify the condition of the dispensing units at the time of inspection and do not rule out subsequent tampering or manipulation.

25. It is further submitted that during inspection a joint secured by adhesive tape was found in the pulsar cable. As per the opinion of the representative of the Original Equipment Manufacturer, no such joint ought to exist in the cable. Consequently, the pulsar unit was sealed and handed over to the Supplies Inspector for further examination. It is submitted that although no additional electronic device or fitting was noticed, the existence of the joint itself constituted a serious irregularity and the same was duly recorded in the inspection report.

26. Learned counsel further submits that a joint was also noticed in the sealing wire of the Weights and Measures seal affixed to the motherboard, thereby clearly indicating interference with the sealing mechanism. According to him, after considering the inspection report, the reports submitted by the Government officers, the show cause notice, the petitioner's reply and the grounds raised in appeal, the appellate authority has recorded a categorical finding that the dealership had rightly been terminated.

27. It is further contended that the termination order was issued only after obtaining the approval of the competent authority, namely, the State Head (Executive Director, UPSO-I), and, therefore, the decision-making process does not suffer from any procedural irregularity. It is also submitted that Clause 1.4.2 of the MDG-2012 casts a continuing obligation upon every dealer to carry out daily visual inspection of the dispensing units, immediately report any broken Weights and Measures seal to the Oil Company and ensure proper maintenance of the dispensing units. According to the respondents, the petitioner failed to discharge these obligations and is consequently responsible for the irregularities detected during inspection.

28. Learned counsel lastly submits that the allegations made by the petitioner regarding violation of the Government Order dated 02.05.2017, procedural lapses during inspection, absence of tampering and non-compliance of the Marketing Discipline Guidelines are wholly baseless and unsupported by any material on record. It is urged that both the disciplinary authority and the appellate authority have considered each of the petitioner's objections and have recorded concurrent findings of fact. Such findings, according to the respondents, do not warrant interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

29. I have considered the rival submissions advanced by learned counsel for the parties and have perused the material brought on record.

30. The controversy in the present case essentially revolves around the interpretation and application of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012 and whether the material collected during inspection constituted sufficient evidence to establish tampering of the dispensing units so as to justify the extreme penalty of termination of the dealership.

31. Before adverting to the rival submissions, it would be appropriate to notice Clause 5.1.4 of the Marketing Discipline Guidelines, 2012. The said clause treats as a critical irregularity any additional or unauthorized fitting, gear or mechanism found in the dispensing unit which is likely to manipulate delivery. It further provides that any addition, removal, replacement or manipulation of any part of the dispensing unit, including its electronic components, software or microprocessor chip, shall be deemed to amount to tampering of the dispensing unit.

32. A plain reading of the aforesaid provision shows that every irregularity noticed in a dispensing unit does not automatically amount to tampering within the meaning of Clause 5.1.4. The provision contemplates unauthorized manipulation of the dispensing mechanism or such alteration which is capable of affecting the quantity of fuel delivered through the dispensing unit. Since termination of dealership visits the dealer with serious civil consequences, the ingredients of the clause must be established by cogent and reliable material.

33. It is well settled that although the scope of judicial review under Article 226 of the Constitution does not permit this Court to re-appreciate evidence as an appellate authority, the Court is nevertheless required to examine whether the findings recorded by the authorities are based upon some legally admissible material, whether the decision-making process is fair, and whether the conclusion arrived at is so arbitrary or unreasonable that it warrants interference.

34. In Chairman, Indian Oil Corporation (Supra), the Division Bench of this Court examined the scope of Clause 5.1.4 of the Marketing Discipline Guidelines. The Court held that the clause contemplates unauthorized fittings or mechanisms capable of manipulating delivery. It was noticed that although certain irregularities had been detected, the dispensing unit itself was non-functional and no short delivery had been established. The Division Bench further held that termination without even awaiting the report of the Original Equipment Manufacturer amounted to pre-judging the issue and could not be sustained.

35. The aforesaid judgment assumes significance in the present case because the inspection report itself records that the Tokheim dispensing unit was not dispensing fuel on the date of inspection. The petitioner has consistently asserted that the machine had remained defective since 23.03.2017 and that complaints regarding its malfunction had already been lodged with the respondent-Corporation. These assertions have not been specifically disputed by placing any material to the contrary.

36. Equally relevant is the judgment of the Division Bench in Indian Oil Corporation Ltd. and others versus M/s Modern Service Station. The Court held that failure of the competent authority to consider the specific defence raised by the dealer amounts to violation of the principles of natural justice. The Division Bench further observed that unless there exists material demonstrating unauthorized access of the dealer to the dispensing unit after it had been handled by the Corporation's engineers or authorized personnel, liability cannot be fastened merely on assumptions.

37. While affirming the judgment of the learned Single Judge, the Division Bench approved the principles laid down in M/s Chaudhary Filling Point, wherein it was held that mere existence of soldering marks or signs of repair on the dispensing unit does not establish manipulation unless the respondents are able to demonstrate when such tampering took place, how the dealer gained unauthorized access to the equipment and, more importantly, how such alteration resulted in manipulation of fuel delivery.

38. In M/s Aliganj Kisan Seva Kendra versus Indian Oil Corporation Ltd., this Court also dealt with a case where the dispensing unit supplied by the Corporation was an old machine previously installed elsewhere. The Court held that where no certificate regarding the integrity of the dispensing unit prior to installation was produced by the Corporation and the dispensing unit itself was not functioning properly, adverse presumption could not be drawn against the dealer merely because certain irregularities were noticed during inspection. The burden continued to remain upon the Corporation to establish the alleged manipulation by cogent evidence.

39. Likewise, in M/s Prakash Automobiles versus Indian Oil Corporation Ltd., this Court reiterated that mere presence of a foreign component or any alteration in the dispensing unit is not sufficient to establish violation of Clause 5.1.4 unless it is further shown that such component was capable of affecting delivery or had actually resulted in manipulation of the quantity of fuel dispensed. The Court also emphasized that an expert report, if relied upon, must be supplied to the dealer so as to enable him to effectively meet the allegations.

40. The consistent principle emerging from the aforesaid decisions is that proceedings under Clause 5.1.4 of the Marketing Discipline Guidelines are substantially penal in nature. Consequently, the burden lies upon the Corporation to establish by credible material that the dispensing unit had in fact been tampered with in a manner capable of manipulating fuel delivery and that such manipulation could reasonably be attributed to the dealer.

41. It is in the light of the aforesaid legal principles that the evidence available on record and the findings recorded by the disciplinary authority as well as the appellate authority are required to be examined.

42. The principal question which arises for consideration before this Court is whether the material collected during the inspection dated 10.05.2017 constituted sufficient evidence to establish tampering of the dispensing units so as to justify termination of the petitioner's dealership under the provisions of the Marketing Discipline Guidelines, 2012 and the Dealership Agreement.

43. From a perusal of the inspection report, the termination order dated 04.07.2017 and the appellate order dated 15.05.2018, it is evident that the respondents have principally relied upon three circumstances, namely, (i) taped joints found in three pulsar cables of the Tokheim dispensing unit, (ii) a joint found in the Weights and Measures seal affixed to the motherboard of the said dispensing unit, and (iii) the broken Weights and Measures seal of the pulsar in the Gilbarco dispensing unit.

44. Equally significant is the fact that both the disciplinary authority and the appellate authority have themselves recorded that no additional fitting, chip, electronic device or unauthorized gear was found inside either of the dispensing units. The termination order specifically records that although no additional fittings were found during inspection, the cut in the pulsar cable established that it was made to connect additional fittings. The appellate authority has reiterated the same reasoning.

45. The aforesaid finding, in the considered opinion of this Court, is based upon an assumption rather than upon any technical material. Neither the termination order nor the appellate order refers to any expert opinion demonstrating that the taped joints in the pulsar cable were actually connected with manipulation of the dispensing mechanism or that such joints were capable of affecting the quantity of fuel delivered through the dispensing unit.

46. The respondents have repeatedly relied upon the opinion of the OEM engineer that there should not be any joint in the pulsar cable. However, the record does not disclose that the OEM ever opined that the taped joints had resulted in short delivery of fuel or that they were capable of

manipulating delivery. Merely because an OEM engineer opined that there ought not to be a joint in the cable cannot, by itself, constitute proof of tampering within the meaning of Clause 5.1.4 of the MDG-2012.

47. The respondents have also not disputed that no discrepancy in delivery of fuel was noticed during the inspection. There is no allegation in the inspection report that either short delivery or excess delivery was detected. Likewise, there is no allegation of adulteration of fuel. The absence of any discrepancy in delivery assumes considerable significance, particularly when the allegation is one of tampering with the dispensing mechanism.

48. The petitioner has consistently asserted that the Tokheim dispensing unit was manufactured in the year 2003, had been shifted from another retail outlet and was installed at the petitioner's outlet in the year 2008. The respondents have not disputed these facts. On the contrary, both the termination order and the appellate order acknowledge that the dispensing unit was an old machine. The respondents have merely observed that the age of the dispensing unit is immaterial.

49. The petitioner had also specifically pleaded that the said dispensing unit had remained non-functional since 23.03.2017 and complaints regarding its malfunction had already been lodged with the Corporation. The appellate authority has itself noticed this defence. However, the said defence has been rejected merely by observing that the recovery of the taped joint was sufficient irrespective of whether the dispensing unit was functional or not.

50. This Court finds that such reasoning overlooks an important factual aspect. If the dispensing unit had admittedly remained out of order and was not dispensing fuel on the date of inspection, the respondents were required to establish, by cogent technical evidence, as to how the alleged irregularity was intended to manipulate delivery or confer any advantage upon the dealer. Neither of the impugned orders deals with this aspect.

51. Another aspect which cannot be ignored is that the Dealership Agreement itself provides that repairs, calibration and maintenance of the dispensing units are to be undertaken by the Corporation or its authorized agencies. The petitioner has consistently pleaded that he was neither technically competent nor authorized to open the dispensing units or interfere with their internal mechanism. This defence has not been examined with the degree of scrutiny which the seriousness of the consequence demanded.

52. The respondents have sought to fasten liability upon the petitioner by relying upon Clause 1.4.2 of the MDG-2012, which obligates the dealer to conduct daily visual inspection of the Weights and Measures seals and immediately report any irregularity. Undoubtedly, such an obligation exists. However, the breach of a duty to report a visible irregularity cannot automatically lead to the conclusion that the dealer himself tampered with the dispensing mechanism.

53. Significantly, the petitioner has placed reliance upon a written communication dated 28.04.2017 requesting replacement of the old and rusted sealing wire. If such a communication had indeed been submitted prior to the inspection, the respondents were required to examine its effect while considering the allegation relating to the broken seal. Neither the disciplinary authority nor

the appellate authority has dealt with this contention except by observing that it was an afterthought.

54. The Court further notices that the petitioner had specifically relied upon the technical opinion of the Department of Electronics and Communication Engineering, National Institute of Technology, Karnataka, wherein it has been opined that visual inspection revealing soldering marks, cable joints or jumper wires cannot by itself establish tampering unless supported by scientific examination. The impugned orders are conspicuously silent on this material, although the said opinion directly addressed the technical issue involved in the present case.

55. Equally, despite seizure of the relevant components, no laboratory analysis or scientific examination has been brought on record demonstrating that the taped joints or the alleged irregularities had any nexus with manipulation of the dispensing mechanism. The respondents have proceeded on the premise that because a taped joint ought not to exist, it necessarily follows that the same was introduced for manipulating delivery. Such an inference, in the absence of supporting technical evidence, cannot be accepted as a substitute for proof.

56. The appellate authority has observed that recovery of three pulsar cables with joints "amounts to tampering with the dispensing unit." In the opinion of this Court, such conclusion is merely a reiteration of the allegation and not the result of any independent analysis. The appellate authority has neither discussed the essential ingredients of Clause 5.1.4 nor recorded any finding that the alleged irregularity was capable of affecting delivery or that the petitioner had unauthorized access to the internal mechanism of the dispensing unit. The appellate order, therefore, substantially affirms the disciplinary authority without independently addressing the core issues raised in appeal.

57. The controversy involved in the present case is no longer res integra. This Court, as well as the Division Bench, has on several occasions interpreted the scope of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012 and has consistently held that the drastic consequence of termination of dealership can follow only when the Corporation establishes, on the basis of cogent material, that the dispensing unit had been tampered with in a manner contemplated by the said clause.

58. In *Chairman, Indian Oil Corporation, New Delhi and others versus M/s Lallite Filling Centre,* the Division Bench examined an identical controversy where the dispensing unit alleged to have been tampered with was itself lying non-functional and no discrepancy in fuel delivery had been detected. The Division Bench observed that Clause 5.1.4 contemplates additional or unauthorized fittings or manipulation capable of affecting delivery. The Court further held that termination of dealership merely on the basis of suspicion, particularly where the dispensing unit was not in operation and no short delivery had been established, could not be sustained in law.

59. The ratio of the aforesaid judgment squarely applies to the facts of the present case. Here also, the respondents do not dispute that the Tokheim dispensing unit had remained out of order prior to the inspection and was not dispensing fuel on the date of inspection. More importantly, no discrepancy in delivery was found and no additional electronic fitting or device was recovered.

Thus, the factual foundation of the present case is substantially similar to the one considered by the Division Bench.

60. Equally important is the observation of the Division Bench in Lallite Filling Centre that the Corporation ought not to prejudge the issue without obtaining reliable technical material. Although the respondents have referred to the opinion of the OEM representative, neither the termination order nor the appellate order discloses any scientific opinion establishing that the taped joints in the pulsar cable had actually affected or were capable of affecting the quantity of fuel delivered.

61. The Division Bench in Indian Oil Corporation Ltd. and others versus M/s Modern Service Station reiterated another equally important principle, namely, that failure to consider the specific defence raised by the dealer amounts to violation of the principles of natural justice. The Court further held that unless credible material exists to demonstrate unauthorized access of the dealer to the dispensing unit after it had been handled by the Corporation's engineers or authorized personnel, liability cannot be fastened merely on assumptions.

62. In the present case, the petitioner specifically pleaded that the dispensing units belonged to the Corporation, that all repairs and maintenance were undertaken by the Corporation through its authorized agencies, that the Tokheim dispensing unit was an old second-hand machine repeatedly repaired by the Corporation, and that no additional device was recovered during inspection. Although these submissions have been noticed in the impugned orders, there is no meaningful discussion as to how, despite these facts, the respondents concluded that the petitioner himself had manipulated the dispensing unit.

63. The Division Bench in Modern Service Station approved the earlier judgment in M/s Chaudhary Filling Point, wherein it was held that the mere existence of soldering marks or signs of repair does not establish manipulation unless it is further shown when such tampering took place, how the dealer gained unauthorized access to the dispensing unit and in what manner the alleged tampering affected delivery of fuel. The Court also observed that where delivery was found to be correct, the allegation of manipulation cannot be accepted merely on suspicion.

64. These observations fully support the petitioner's contention in the present case. The respondents have not brought on record any material to indicate as to when the taped joints came into existence, whether they were introduced during any repair undertaken by the Corporation or its authorized agencies, or how the petitioner gained unauthorized access to the internal mechanism of the dispensing unit. The entire finding rests upon the assumption that the existence of taped joints necessarily establishes tampering.

65. This Court also finds considerable force in the ratio laid down in *M/s Aliganj Kisan Seva Kendra versus Indian Oil Corporation Ltd.* In the said case also, the dispensing unit supplied by the Corporation was an old machine which had earlier been installed elsewhere. The Court held that unless the Corporation establishes that the dispensing unit was free from defects or unauthorized alterations at the time of installation, adverse inference cannot automatically be drawn against the dealer merely because certain irregularities are noticed subsequently.

66. In the present case, the respondents themselves admit that the Tokheim dispensing unit was manufactured in the year 2003 and was installed at the petitioner's retail outlet in the year 2008 after being shifted from another location. No material has been produced to demonstrate that before its installation at the petitioner's outlet the Corporation had certified the integrity of its motherboard, pulsar cables or electronic components. This aspect assumes significance particularly when the petitioner has consistently pleaded that the machine had undergone repeated repairs.

67. The judgment in *M/s Prakash Automobiles versus Indian Oil Corporation Ltd.* also lends support to the petitioner's case. This Court held therein that mere recovery of a foreign component or any alteration in the dispensing unit does not automatically establish violation of Clause 5.1.4. What is further required to be established is that the alleged alteration was capable of manipulating delivery or had actually resulted in manipulation of fuel supply. It was also held that an inconclusive expert report cannot form the sole basis for terminating a dealership.

68. Applying the aforesaid principle to the present case, this Court finds that neither the OEM opinion nor the findings recorded by the respondents explain the technical impact of the taped joints. The respondents have merely stated that there should not have been a joint in the pulsar cable. They have not established by any scientific or technical evidence that the alleged joint either manipulated or was capable of manipulating the quantity of fuel delivered.

69. The respondents have repeatedly emphasized that Clause 5.1.2 read with Clause 8.2 of the MDG-2012 permits termination even where delivery is found correct, provided the Weights and Measures seal is found tampered. There can be no quarrel with the proposition that tampering with a statutory seal is a serious irregularity. However, before invoking the penal consequences flowing from the said clause, the Corporation must first establish, on the basis of reliable material, that the seal had in fact been tampered with by or at the instance of the dealer. Such foundational facts cannot be presumed merely because a broken seal or a joint in the sealing wire was noticed during inspection.

70. The respondents have also relied upon Clause 1.4.2 of the MDG-2012 to contend that the petitioner failed to report the alleged irregularity. In the opinion of this Court, breach of the obligation to carry out visual inspection or to report a damaged seal may constitute a lapse on the part of the dealer. However, such omission cannot, in the absence of independent evidence, be elevated to proof that the dealer himself manipulated the dispensing mechanism or inserted unauthorized fittings so as to attract the extreme penalty of termination.

71. The cumulative effect of the aforesaid decisions leaves no manner of doubt that proceedings under Clause 5.1.4 of the Marketing Discipline Guidelines are penal in nature and must, therefore, satisfy a higher standard of proof than mere suspicion. Since the respondents have failed to establish the essential ingredients of tampering by cogent technical evidence and have rested their conclusions primarily upon presumptions arising from taped joints and the condition of the seals, the findings recorded in the impugned orders cannot be said to be legally sustainable.

72. Having examined the rival submissions, the pleadings on record, the inspection report, the termination order dated 04.07.2017, the appellate order dated 15.05.2018 and the authorities relied

upon by the parties, this Court is of the considered opinion that the respondents have failed to establish the charge of tampering in the manner contemplated under the Marketing Discipline Guidelines, 2012.

73. It is not in dispute that during inspection no additional electronic device, chip, gear or any other unauthorized fitting was recovered from either of the dispensing units. Both the disciplinary authority as well as the appellate authority have accepted this factual position. Thus, one of the principal circumstances ordinarily associated with manipulation of dispensing units is admittedly absent in the present case.

74. Equally undisputed is the fact that no discrepancy in delivery of fuel was detected during the inspection. The respondents have neither alleged nor established that the petitioner indulged in short delivery, excess delivery or adulteration of fuel. The absence of any such finding considerably weakens the foundation upon which the allegation of manipulation has been built.

75. The disciplinary authority has proceeded on the premise that since there existed taped joints in the pulsar cables, the same must have been intended for connecting additional fittings. Such conclusion is purely inferential. Neither the OEM representative nor any other technical expert has opined that the taped joints were capable of manipulating delivery. No technical report explaining the functioning of the pulsar cable or the impact of such joints upon fuel delivery has been placed on record.

76. The appellate authority has merely affirmed the aforesaid reasoning by observing that recovery of three pulsar cables with joints amounts to tampering of the dispensing unit. Such observation, in the opinion of this Court, is again conclusory in nature. A conclusion unsupported by technical analysis cannot substitute proof, particularly when the allegation entails civil consequences of a serious nature.

77. It is also noteworthy that the petitioner consistently pleaded that the Tokheim dispensing unit was an old machine manufactured in the year 2003, shifted from another retail outlet and installed at the petitioner's outlet in the year 2008. The respondents have admitted these facts. The petitioner further pleaded that the said dispensing unit had remained under repeated repairs and had become non-functional since 23.03.2017. The inspection report itself records that the dispensing unit was not dispensing fuel on the date of inspection. These circumstances were relevant considerations while appreciating the allegation of tampering, but neither authority has examined them in their proper perspective.

78. The respondents have repeatedly relied upon Clause 1.4.2 of the MDG-2012 to contend that the petitioner was under an obligation to conduct daily visual inspection of the seals and report any irregularity. While such obligation undoubtedly exists, failure to discharge the same may constitute negligence on the part of the dealer. However, negligence cannot automatically be equated with deliberate tampering of the dispensing mechanism unless supported by independent evidence establishing the dealer's involvement.

79. The petitioner also specifically pleaded that prior to the inspection he had requested replacement of the rusted sealing wire. Whether the said explanation ultimately deserved acceptance or not, it required objective consideration by the authorities. The impugned orders reject the explanation merely by describing it as an afterthought without assigning any convincing reasons. Administrative authorities exercising quasi-judicial functions are expected to deal with every material defence in a reasoned manner, particularly when the consequence is termination of a long-standing dealership.

80. Another significant aspect which weighs with this Court is that the respondents have not produced any material establishing unauthorized access of the petitioner to the internal electronic components of the dispensing unit. Under the dealership arrangement, installation, calibration, maintenance and repairs were admittedly carried out by the Corporation through its engineers or authorized agencies. In the absence of any evidence demonstrating when and by whom the alleged taped joints came into existence, the finding that the petitioner himself manipulated the dispensing unit remains unsupported by tangible material.

81. This Court is conscious that the scope of judicial review under Article 226 of the Constitution is confined to examination of the decision-making process and does not extend to re-appreciation of evidence as an appellate authority. However, where findings are founded upon assumptions rather than legally admissible evidence, or where relevant material has not been considered, the writ court would be justified in exercising its power of judicial review to prevent manifest arbitrariness.

82. The impugned orders reveal that the respondents have proceeded on the assumption that because there existed taped joints in the pulsar cables and irregularity in the Weights and Measures seals, the petitioner must necessarily have indulged in tampering. Such presumption overlooks the settled legal position that suspicion, however strong, cannot take the place of proof. The Corporation was required to establish, through cogent technical evidence, that the alleged irregularities were capable of manipulating delivery and that such manipulation was attributable to the petitioner. No such evidence is forthcoming.

83. This Court is, therefore, of the considered opinion that the findings recorded by the disciplinary authority as well as the appellate authority suffer from the vice of non-consideration of relevant material, reliance upon presumptive conclusions unsupported by scientific evidence and misapplication of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012. Consequently, both the impugned orders cannot be sustained.

83. Accordingly, the writ petition succeeds and is **allowed**.

84. The order dated 04.07.2017 passed by respondent no.3 terminating the petitioner's retail outlet dealership and the appellate order dated 15.05.2018 passed by respondent no.2 affirming the said order are hereby quashed.

85. The respondents are directed to restore the petitioner's dealership and all consequential benefits flowing therefrom within a period of six weeks from the date of production of a certified copy of this order, subject to there being no other legal impediment.

86. There shall be no order as to costs.

(2026) 7 ILRA 1381
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.07.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Application U/S 482 No. 4446 of 2009

Ritesh Jaiswal **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Matter pertains to whether the chargesheet along with consequent criminal proceedings pending before the 2nd Additional Chief Judicial Magistrate, Meerut, disclosed a prima facie case against the applicant so as to warrant continuation of trial, or whether, even taking the entire prosecution allegations and material collected during investigation at their face value, no offence was made out against the applicant, thereby rendering the continuance of criminal proceedings against him an abuse of process of law liable to be quashed in exercise of inherent jurisdiction of High Court u/s 482 CrPC.

Headnotes

Indian Penal Code, 1860 - ss. 420, 467, 468 and 471 - Code of Criminal Procedure, 1973 - ss. 161 - Bank loan - Power-of-attorney - Forged documents - Applicant act as guarantor - Criminal conspiracy - Forgery and cheating - Deceived by co-accused - No evidence of participation in fabrication or impersonation - Criminal proceedings - Quashing of - The applicant, filed the instant application seeking quashing of Chargesheet No. 112A of 2008 dated 18.03.2008, filed against him under various sections of IPC in Case Crime No. 200 of 2007, arising out of an FIR lodged by respondent no. 2, alleging that his parents, Vinod Jaiswal and Smt. Aarti Jaiswal, along with co-accused Vikram Asthana, had attempted to fraudulently obtain a loan of Rs. 10 lakhs from the State Bank of Patiala, by submitting forged and fabricated documents, including a power-of-attorney purportedly executed by one Moolchand, who, along with his brothers Natthu Singh and Sohanlal, had in fact died around the year 1990, in favour of Vikram Asthana, on the strength of which an agreement to sell was executed in favour of Smt. Aarti Jaiswal - The applicant named as a guarantor to the proposed loan - Upon investigation, police submitted a chargesheet against Smt. Aarti Jaiswal, applicant and Vikram Asthana, upon which cognizance was taken - Further the applicant approached High Court contending that he, being merely a guarantor and not privy to preparation, fabrication or execution of documents - Acted bona fide on the strength of a registered power-of-attorney, a certificate of title issued by bank's advocate, and other documents furnished by power-of-attorney holder - Also no evidence of criminal intent, active role or conspiracy existed against him.

Held: There is no evidence on record which suggests that applicant and his parents were involved in any manner whatsoever, in fraudulently fabricating or making of power-of-attorney in favour of Vikram Asthana - The parents of applicant were befooled by Vikram Asthana, since he was able to convince them, that he was having the authority to execute the sale deed of disputed property in their favour and consequently, he can pass a valid title of disputed property in their favour - Both the borrowers as well as learned counsel of bank, were befooled in believing that the documents/title deeds of disputed property was genuine and Vikram Asthana was the power-of-attorney holder of Moolchand, who was competent to execute the sale deed of

disputed property on behalf of Moolchand, in favour of borrowers i.e., the parents of applicant - It is apparent that the alleged offence of cheating and fabrication of fraudulent documents has been prima-facie committed by Vikram Asthana - It is apparent that even if, all the prosecution allegations are presumed to be correct, even then, prima -facie no offence is made out against the applicant - **Accordingly, application allowed, chargesheet and incidental proceedings quashed, thus, interim order vacated**. [Paras 33, 35, 39 to 41] (E-13)

Case Law Cited

Sheila Sebastian v. R.Jawaharaj and anr. **(2018) 7 SCC 581;** *Naresh Aneja@ Naresh Kumar Aneja v. State of U.P. and anr.* **(2025) 2 SCC 604;** *Manchu Mohan Babu v. State of A.P. and anr.* **2025 SCC OnLine SC 1573;** *Vishal Noble Singh v. State of U.P. and Another* **2024 SCC OnLine SC 1680;** *Mariam Fasihuddin and Another v. State By Adugodi Police Station and Another* **(2024) 11 SCC 733 - referred to**

List of Acts

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

List of Keywords

s. 482 Cr.P.C.; Chargesheet; Cognizance; Branch Manager; Loan on land; FIR; Deceived by co-accused; Guarantor; Registered power-of-attorney; Agreement to sell; Fraudulent documents of land; Forged signatures; Cheating; Forgery; Impersonated; Mala fide; Bona fide; Criminal conspiracy; Statement of witnesses; Certificate of Title; Property to be mortgaged with bank; Sale deed of disputed land; Memorandum of family settlement; Incidental proceedings quashed; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 4446 of 2009

From the FIR dated 26.9.2007, Police Station Railway Road, District Meerut in Criminal Case No. 1303/9 of 2008, Case Crime No. 200 of 2007, pending in Court of 2nd Additional Chief Judicial Magistrate, Meerut.

Appearances for Parties

Adv. for the Applicant(s):
Anil Mullick

Advs. for the Opposite Party(s):
Abhitab Kumar Tiwari, Govt. Advocate

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

1. The instant application under Section 482 CrPC has been filed by the accused/applicant Ritesh Jaiswal for the following reliefs:-

"It is, therefore, most respectfully prayed that the Hon'ble Court may graciously be placed to admit and allow the application, and to quash the chargesheet No. 112A of 2008 dated 18.03.2008 filed against the applicant under Section 420, 467, 468, 471 IPC, relating to police station Railway Road, District Meerut in connection with Case No. 1303/9 of 2008(State vs. Aarti Jaiswal and others) pending in the court of 2nd Additional Chief Judicial Magistrate, Meerut."

2. It is the case of the 1st informant/respondent No. 2 Dhan Singh that about 3 - 4 days back at his house situated in Nai Basti Sofipur, police Station Daurala, the Branch manager of State Bank of Patiala, Railway Road, Branch Meerut came and enquired from him whether he is taking loan on

his land. Then he contacted all his brothers and enquired from them whether they are taking loan on their land, but all of them refused. He was informed by the above Branch manager that some person intends to obtain loan on their land by fabricating some documents in his name. The Branch manager further informed that 2 persons will arrive at about 4 PM on 26.9.2007 in his bank than he will inform them. Today, on getting the information at about 4:15 PM on the phone of Naresh Saini from the Branch manager, he along with Naresh Saini, Rajvir Singh Saini,Ajay Kumar Saini,Uttam Kumar Saini, Amit Kumar Saini and 2 - 4 other persons on their motorcycle reached the above bank at about 4:45 PM, then he saw that 4 persons were sitting with the bank manager. On seeing them, the bank manager disclosed that, these are the same persons who intend to obtain loan on the basis of the documents pertaining to your land. On hearing this, the above persons who were sitting in the bank with the manager, tried to flee but 2 persons were forcibly apprehended by them but 2 other persons managed to flee from the bank. The apprehended persons disclosed their names as Vinod Jaiswal and Thakurji, who threatened them with dire consequences. The apprehended persons as well as the persons who fled from the bank, were trying to obtain loan on the basis of fraudulent documents of their land. All the above documents relating to the land as well as the fraudulent documents are in the possession of the manager of the bank.

3. The apprehended persons were taken to the police station Railway Road, Meerut on 26.9.2007 and thereafter, an FIR was registered on 26.9.2007 at 17:45 hours being Case crime No. 200 of 2007 under Section 420, 467, 468, 471,506 IPC at police station Railway Road, Meerut in which after investigation chargesheet has been submitted against **Smt.Aarti Jaiswal, Ritesh Jaiswal and Vikram Asthana** under Section 420, 467, 468, 471 IPC on which cognizance has been taken on 13.6.2008 by the Judicial Magistrate 2nd, Meerut.

4. Learned counsel for the accused/applicant submitted that prima-facie even if all the allegations levelled against the applicant in the 1st information report are taken to be true, even then no case is made out against the applicant. The applicant is alleged to be the guarantor of the proposed loan which was to be obtained by his parents Vinod Jaiswal and Aarti Jaiswal. He submitted that the applicant is a young man of 24 years who has got nothing to do in the entire transaction as he runs his own business and has no criminal history. The FIR was registered only against 2 persons namely Vinod Jaiswal, Thakurji and against 2 unknown persons. The applicant is not named in the FIR and his name appeared in the statement of Ajay Kumar Saini, Uttam Kumar Saini, Amit Kumar Saini, Ramesh Saini who have stated that they came to know that the applicant and his mother Smt. Aarti Jaiswal are also involved in conspiracy along with Vikram Asthana, except this, there is no other evidence against the applicant.

5. It was further submitted by the learned counsel that from the statements of above witnesses it is apparent that no active role or part has been played by the applicant. Moreover, there is no whisper of source of knowledge, as for participation of applicant, as such no case is made out and the chargesheet is liable to be quashed.

6. It was further submitted that one Mool Chand, was the owner of the disputed land, who on 20.6.2007 executed a registered power-of-attorney in favour of Vikram Asthana, who subsequently entered into an agreement to sell with Smt.Aarti Jaiswal on 06.9.2007 and an advance of ₹ 50,000/- was paid by her. It was further submitted that a valuation report dated 6.8.2007 as well as

certificate of title dated 14.8.2007 was also given by the advocate of the bank relating to property in dispute.

7. It was further submitted that the applicant is wholly innocent, since the agreement was entered by Vinod Jaiswal with Vikram Asthana, who was the holder of power-of-attorney, as such cheating, if any, was done by Vikram Asthana and not by the applicant, as such, the chargesheet as well as criminal proceedings in the court below are abuse of process of law, hence liable to be quashed.

8. It was further submitted that the action of the accused/applicant had all through been bona fide. On 14.8.2007 the applicant obtained the certificate of title, which was given by concerned advocate, after verifying the documents and obtaining such certificate from sub-registrar Meerut, which stated that Vinod Jaiswal, the co-accused shall acquire, an absolute, clear and marketable title over the property. It was further certified that the title deeds were genuine and a valid mortgage could be created, which would be enforceable.

9. It was further submitted that the co-accused bonafidely believed the version of power-of-attorney holder Vikram Asthana that he possesses a genuine power-of-attorney. The decision to take loan was arrived at after obtaining the opinion of lawyer regarding equitable mortgage. In the legal opinion, it was clearly stated that khasra number 162m, situated at village Pilna, Sofipur, Pargana tehsil and District Meerut was owned by Mool Chand,Natthu and Sohanlal. Natthu died leaving behind his sons namely Dhan Singh, Tilak Ram, Dharmveer Singh, Rajveer, Vinod, Mohanveer, and their names were mutated in the revenue record. Thereafter, a house was constructed, which came in the share of Mool Chand, who executed the power-of-attorney in favour of Vikram Asthana.

10. It was further submitted by the learned counsel that the applicant was in bona fide belief regarding the correctness of all the documents and had no criminal intention to defraud the bank. It was further submitted that since the bank has not advanced any loan to any person hence no question of giving guarantee arises. The applicant had no role in preparation of the power-of-attorney or any of the documents.

11. It was further submitted that the arrest of the applicant was stayed during investigation by this Court in Criminal Miscellaneous Writ Petition No. 988 of 2008 vide order dated 5.2.2008. With these submissions it was prayed that the application be allowed and the criminal proceeding pending against the applicant be quashed. In support of his submission learned counsel has relied upon the following case law:-

(i)Sheila Sebastian vs. R.Jawaharaj and anr. (2018) 7 SCC 581
(ii)Naresh Aneja@ Naresh Kumar Aneja vs. State of U.P. and anr. (2025) 2 SCC 604
(iii)Manchu Mohan Babu vs. State of A.P. and anr. 2025 SCC OnLine SC 1573

12. Service on 1st informant/respondent No. 2 is sufficient and his counter affidavit is also on record, but none is present to argue the case on his behalf.

13. The counter affidavit of respondent No. 2 mentions that during the investigation bank authority supplied some documentary evidence to the investigating officer which are part of the case diary in which there are 2 application for loan and in 1st application, applicant mentions his name as applicant and puts his signature over it and in the 2nd application he mentions his name as guarantor and puts his signature over it and it is also relevant that aforesaid application for loan was applied/submitted on the basis of forged document. It was further stated that Sohanlal has died on 17.01.1990, Natthu Singh has died on 01.08.1999 and Moolchand Saini has died in the year 1990 and after their death, property was owned by their heirs, but in the year 2007 applicant and other 2 accused persons prepared forged documents only for the purpose of obtaining loan and grabbing the property from dead persons and also prepared forged compromise and affidavit by putting forged signatures of aforesaid dead persons and some other persons, which is clear from the perusal of aforesaid documents. It was further stated that copies of alleged power-of-attorney and agreement to sell has already been filed by the applicant along with his affidavit for kind perusal of this Court. The photocopies of the death certificates of Sohanlal, Natthu Singh and Moolchand Saini and the alleged agreement to sell were also filed by the respondent.

14. It was admitted by the respondent in his counter affidavit that the alleged certificate given by advocate was also based upon forged documents which was also produced before him by the applicant and other co-accused therefore, from this certificate also bonafide intention of accused persons is not proved but it shows their malafide intention. It was also stated that from the investigation it is clear that the applicant and other co-accused persons prepared forged documents in the name of dead persons and applied for loan and specific evidence is available against applicant also, hence primafacie offence is made out against applicant and investigating officer has rightly submitted chargesheet in this case and learned Magistrate has also rightly taken cognizance thereon. It was further stated that no ground is made out for quashing the chargesheet and hence, the application of the applicant is liable to be dismissed and the interim order dated 3.3.2009 is liable to be vacated.

15. On behalf of State of Uttar Pradesh, counter affidavit of Shri S.D.Sharma, Sub Inspector, police Station Railway Road, Meerut has been filed which opposes the prayer of the applicant for quashing of the chargesheet in the criminal case on the ground that the applicant can raise his grievance before the trial court at the time of framing of the charges.

16. A rejoinder affidavit has also been filed by the applicant.

17. I have heard the learned counsel for the applicant, AGA and perused the documents on record.

Statement of witnesses

18. As per the statement of witness Naresh Kumar Saini, Rajbeer Singh, Ajay Kumar, Uttam Kumar Saini, Amit Kumar Saini given to the investigating officer under Section 161 of the CrPC, the accused persons were trying to obtain loan on their land by getting prepared fraudulent documents in the name of Moolchand Saini, which were deposited with the Branch manager, whereas Moolchand had already died in the year 1990.

19. As per the statement of witness Tilakram, Mohanveer,Vinod Kumar, Ramesh Saini, Tejkaran Saini,Umesh Saini under Section 161 of the CrPC their predecessors Natthu Singh, Moolchand and Sohanlal were real brothers, who have died around the year 1990, who were the owners of the agricultural land bearing Gata number 161/1,161/2,162m,164/1,164/2,163/1 situated in village Sofipur, and after their(predecessors) demise, the land came into their and their cousin brothers share and some portion of the land of the above Gata and 165/1,178m also came to the share of their relative Manoj Kumar and Bhela Devi. On 26.9.2007 the Branch manager of the State Bank of Patiala, Railway Road, Meerut city and the field officers of the bank came to them and inquired whether they are obtaining loan on the basis of documents belonging to Moolchand, on which after inquiring from one another, they told the Branch manager that they have not moved any such application for obtaining loan. They further gave to the Branch manager a notarised affidavit executed on ₹ 10/- stamp paper that they have neither applied to the bank for any such loan nor they are guarantor in it. On getting information on 26.9.2007 at about 4:15 PM on the mobile phone of Naresh Kumar Saini from the bank, that the persons who are intending to take loan of ₹ 10 lakhs on their land on the basis of forged documents are present in the bank, they along with others went to the bank, where 2 persons were apprehended after applying some force at about 5:15 PM, who were taken to the police station Railway Road, Meerut city and the case was also registered. The documents filed by the accused persons as well as the affidavit given by them, could be obtained from the bank. They further stated that the accused persons have impersonated themselves to be deceased Moolchand and they were illegally trying to take loan on their land on the basis of forged documents.

20. Pinada Jagdish the Asst manager working at State Bank of Patiala, Railway Road, Meerut city branch in his statement to the I.O. disclosed that he received an application of Vinod Jaiswal, Smt. Aarti Jaiswal and Ritesh Jaiswal on 2.8.2007 for a loan of ₹ 10 lakhs for purchase of a plot. On 11.8.2007 Vinod Jaiswal came to bank and requested to accept Smt.Aarti Jaiswal as borrower and Ritesh Jaiswal as guarantor for the said loan and submitted another application for loan. She was asked to produce all the necessary documents regarding the loan as per the bank norms, such as - their identity proof, income tax and documents related to property to be purchased. The applicants and guarantor submitted their documents such as - PAN card, election card, driving licence of Ritesh Jaiswal , income tax return, a mutual settlement by all others in favour of Moolchand that the land has come in his share and he can enter into an agreement for sale of such property, a certificate issued by Meerut Development Authority regarding land use dated 13.9.2007, an affidavit dated 19.9.2007 by legal heirs of Natthu and Sohanlal in favour of Moolchand, a power-of-attorney executed by Moolchand in favour of Vikram Asthana dated 23.6.2007, an agreement to sell dated 6.9.2007 executed by Vikram Asthana power-of-attorney holder of Moolchand in favour of Smt.Aarti Jaiswal for a consideration of ₹ 12.50 lakhs, an affidavit from Smt. Aarti Jaiswal regarding the property ownership dated 14.9.2007. On 7.9.2007, he along with another Assistant Manager Yoginder Singh Negi, visited the residence and the site of property to be purchased by the applicant as shown by Vinod Jaiswal, for making independent discreet enquiries regarding the seller and purchaser. On 24.9.2007 he along with Yogendra Singh Negi and the Branch manager Mukesh Kumar Sharma again visited the site of the property to be purchased and met the legal heirs of late Natthu ,who disclosed that Moolchand and Sohanlal have expired long ago. They also confirmed of neither having entered into any agreement with anybody nor giving any affidavit in this regard to anybody. On 26.9.2007 he received an affidavit from legal

heirs of late Natthu regarding the facts narrated to him. On 26.9.2007 at around 4 PM Vinod Jaiswal came with a person introducing him as Moolchand but on enquiry the so-called Moolchand, failed to give satisfactory reply regarding his identity as Moolchand. Meanwhile legal heirs of late Natthu reached the bank, who were asked to identify the alleged Moolchand. Seeing the gravity of the situation Vinod Jaiswal and so-called Moolchand escaped from banks premises.

21. Mukesh Kumar, Branch manager, State Bank of Patiala, Meerut city in his statement to the I.O. disclosed that on 07.9.2007 he had sent his Assistant Manager Pinara Jagdish and Yogendra Singh Negi to conduct enquiry on the loan application moved by Vinod Jaiswal and Smt.Aarti Jaiswal, seeking loan of ₹ 10 lakhs for inquiring the seller and purchaser of the land. He was not satisfied with the documents submitted by Vinod Jaiswal for obtaining the loan ,hence he along with Assistant Manager Pinara Jagdish and Yogendra Singh Negi went to the site of land on 24.9.2007 for making enquiries and then he came to know that in reality the land belonged to late Natthu, Moolchand and Sohanlal Saini, who had died around the year 1990, and now the land had devolved to their children namely Dhan Singh and others. He further stated that regarding the documents submitted by Vinod Jaiswal with the bank, he was informed that the legal heirs of the deceased have neither sold the land nor had executed any power-of-attorney, in favour of any person. The legal heirs also disclosed that they have not moved any application for obtaining loan. After knowing the reality, he directed Vinod Jaiswal to come to the bank along with Moolchand and the legal heirs of Natthu. On 26.9.2007 he obtained affidavit of the legal heirs of late Moolchand and Natthu namely Dhan Singh, Mohanveer Singh, Tilakram, Rajveer, Vinod and others. On 26.9.2007 at about 4 PM Vinod Jaiswal came along with Moolchand and introduced another person, as Moolchand. On enquiry, the alleged Moolchand could not satisfactorily give answers to the querries, who turned out to be forged Moolchand. At about 4:45 PM Dhan Singh and others arrived at the bank. He disclosed to them that these are the persons who want to take loan on your land. On seeing them, Vinod Jaiswal and the alleged Moolchand(in reality Thakurji) escaped from the bank but were apprehended and assaulted by Dhan Singh and others, taken to the police station, where a case was registered against them. Vinod Jaiswal and others have tried to fraudulently take loan of ₹ 10 lakhs from the bank by fraudulently preparing documents of land belonging to some other person.

Documentary evidence on record

22. The investigating officer has also collected the power of attorney(revocable) executed by Moolchand in favour of Vikram Asthana regarding the house situated in an area of 251.61 square yard = 211.21 square metre, in khasra number 162 village Peelna,Sofipur Pargana tehsil and District Meerut, on 20.6.2007. The power-of-attorney gives right to Vikram Asthana to sell the house to anyone, which was subsequently registered in the office of sub-registrar tehsil Khekhra, District Baghpat on 23.6.2007.

23. The unregistered/notorized agreement to sell dated 6.9.2007 executed by power-of-attorney holder Vikram Asthana in favour of Smt.Aarti Jaiswal has also been collected by the investigating officer which discloses that the above immovable property situated in khasra number 162m was agreed to be sold by Vikram Asthana to Smt.Aarti Jaiswal for a consideration of ₹ 12.50 lakhs and an earnest money of ₹ 50,000/- was also received by Vikram Asthana in cash. It was

agreed between the parties that within the next 3 months, the sale deed of the disputed land would be executed in favour of the buyer after receiving the balance sale consideration.

24. It is also apparent from the valuation report that the immovable property proposed to be purchased by Smt.Aarti Jaiswal was conservatively valued by the registered valuer Satyaprakash Bansal, after inspecting the property, vide his report dated 6.8.2007, at ₹ 24.08 lakhs.

25. According to the prosecution, an affidavit was submitted before the State Bank of Patiala, Railway Road Branch, Meerut city disclosing that on 21.6.2007 a family settlement took place between Sohanlal s/o Chetram, the sons of late Natthu namely Dhan Singh, Tilakram, Dharamveer Singh, Rajveer, Vinod, Mohanveer and Moolchand s/o Chetram according to which, the disputed immovable property came to the share and possession of Moolchand, regarding which, others do not have any objection if it is sold. This affidavit has neither been signed by the applicant nor his parents. It bears the signature of Sohanlal and Moolchand, who had died way back in the year 1990.

26. The certificate of title report submitted by Shri Ashutosh Garga, Advocate dated 14.8.2007 to the Branch manager, State Bank of Patiala, Meerut discloses that the records of title of the disputed property were examined by him. A search certificate was also obtained from the office of sub-registrar, Meerut. The report mentions that if mortgage is created, it will be available to the bank for the liability of the intended borrowers Vinod Jaiswal and Smt.Aarti Jaiswal, who shall acquire absolute, alienable and marketable title in respect thereof in case either the vendor Moolchand or his power-of-attorney holder Vikram Asthana executes the sale deed in favour of the borrowers/intended mortgagors.The report specifically states:-

"I certify that aforesaid borrowers Shri Vinod Jaiswal and Smt.Aarti Jaiswal shall acquire an absolute, clear and marketable title over the schedule property on execution of the sale deed by vendor. I further certify that the above title deeds are genuine and a valid mortgage can be created and the said mortgage would be enforceable."

27. It is pertinent to mention here that the above advocate Shri Ashutosh Garga gave his report dated 14.8.2007 after perusing the following documents:-

(i) Original registered power-of-attorney dated 23.6.2007, registered in the office of sub-registrar Khekhra, District Baghpat.

(ii) Certified extract of khasra and khatauni of Khata khatauni no. 00075, situated at village Pilna,Sofipur, Pargana tehsil and District Meerut.

(iii) Original memorandum of family settlement dated 21.6.2007 in respect of the property to be mortgaged with the bank.

(iv) Agreement to sell dated 9.8.2007 entered into in between Vikram Asthana for and on behalf of Moolchand in favour of borrowers.

(v) Original sale deed to be executed by Moolchand in favour of Vinod Jaiswal and Smt.Aarti Jaiswal.

28. The report of Shri Ashutosh Garga, Advocate further discloses that the disputed property was situated in khasra number 162m, situated at village Pilna,Sofipur, Pargana tehsil and District Meerut, which was originally owned by Moolchand, Natthu and Sohanlal. Natthu had died leaving behind his sons namely Dhan Singh, Tilakram, Dharamveer Singh, Mohanveer Singh, Rajveer, Vinod, whose names had been duly mutated in the revenue records in place of late Natthu. Thereafter, the house was constructed in the said khasra and in the family settlement, the house to be mortgaged with the bank came into the share of Moolchand, who had executed a power-of-attorney in favour of Vikram Asthana.

Analysis of case law

29. The Apex Court in the case of ***Sheila Sebastian*** (supra) while interpreting provisions of Section 463 and 464 of the IPC, has held as under:-

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 IPC. As Collin, J., puts it precisely in Dickins v. Gill [(1896) 2 QB 310 (DC)], a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

21. It is observed in Mohd. Ibrahim v. State of Bihar [(2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] that: (SCC p. 756, para 14)

"14. .... a person is said to have made a "false document", if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practising deception, or from a person not in control of his senses."

22. In Mohd. Ibrahim, this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467 IPC) and using of forged document as genuine (Section 471 IPC). While considering the basic ingredients of both the offences, this Court

observed that to attract the offence of forgery as defined under Section 463 IPC depends upon creation of a document as defined under Section 464 IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471 IPC even if title of property did not vest in the executant.

23. The Court in Mohd. Ibrahim observed that: (SCC p. 757, paras 16-17)

"16. .... There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

24. In Mir Nagvi Askari v. CBI [(2009) 15 SCC 643 : (2010) 2 SCC (Cri) 718] , this Court, after analysing the facts of that case, came to observe as follows: (SCC p. 687, para 164)

"164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document."

25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.″

30. The Apex Court in the case of ***Vishal Noble Singh vs. State of U.P. and Another 2024 SCC OnLine SC 1680***, while discussing the power of the High Court under Section 482 CrPC, has held as under:-

"11. In this regard, reliance was placed on the judgment of this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ("Bhajan Lal") with particular reference to para 102 therein and sub-paras (1), (3), (5) and (7), which read as under: (SCC pp. 578-79)

"102. ... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

***

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

***

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

***

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

*** *** ***

19. In this regard, our attention was drawn to paras 42-44 and 46 of Inder Mohan Goswami v. State of Uttaranchal [(2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259], dealing with Sections 420 and 467IPC, which are extracted hereunder with regard to Section 420IPC, it was observed thus:

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

43. We shall now deal with the ingredients of Section 467IPC. ....

44. The following ingredients are essential for commission of the offence under Section 467IPC:

1. the document in question so forged;

2. the accused who forged it;

3. the document is one of the kinds enumerated in the aforementioned section.

***

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."

20. On a careful consideration of the aforementioned judicial dicta, we find that none of the offences alleged against the appellant-accused herein are made out. In fact, we find that the allegations of criminal intent and other allegations against the appellant-accused herein have been made with a mala fide intent and therefore, the judgment of this Court in Bhajan Lal and particularly sub-paras (1), (3), (5) and (7) of para 102, extracted above, squarely apply to the facts of these cases. It is neither expedient nor in the interest of justice to permit the present prosecution to continue.

21. This Court, in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , reasoned that the criminal process cannot be utilised for any oblique purpose and held that while entertaining an application for quashing an FIR at the initial stage, the test to be applied is whether the uncontroverted allegations prima facie establish the offence. This Court also concluded that the court should quash those criminal cases where the chances of an ultimate conviction are bleak and no useful purpose is likely to be served by continuation of a criminal prosecution. The aforesaid observations squarely apply to this case.

22. We find that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and

agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud."

31. The Apex Court in the case of ***Mariam Fasihuddin and Another vs. State By Adugodi Police Station and Another (2024) 11 SCC 733*** while interpreting the provisions under Section 415,420,468 and 471 IPC, has held as under:-

"21. Section 420IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415IPC distinctly defines the term "cheating". The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as "cheating" if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

22. It is thus paramount that in order to attract the provisions of Section 420IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence i.e. (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

23. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420IPC. It must also be understood that a statement of fact is deemed "deceitful" when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss."Cheating" therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

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32. The offence of "forgery" under Section 468IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

33. There are two primary components that need to be fulfilled in order to establish the offence of "forgery", namely: (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury."

Conclusion of this Court

32. It is evident from the above evidence collected by the investigating officer that the disputed property originally belonged to Moolchand, Natthu Singh and Sohanlal. Natthu Singh and Sohanlal died on 01.8.1999 and 17.1.1990 respectively. Moolchand also died around the year 1990. Although his death certificate is not on record but from the oral evidence of the prosecution witnesses, it is evident that he died sometime around the year 1990. It is also evident that the parents of the accused/applicant namely Vinod Jaiswal and Smt.Aarti Jaiswal believed the documents of the disputed property shown to them by co-accused Vikram Asthana, who was the alleged power-of-attorney holder of Moolchand, the original power-of-attorney of Moolchand dated 20.6.2007, which was registered on 23.6.2007, was also produced before the parents of the applicant and after perusing the above documents they bonafidely believed that Vikram Asthana was the power-of-attorney holder of Moolchand, as such they negotiated to purchase the disputed property for consideration of ₹ 12.50 lakhs by entering into an agreement to sell dated 06.09.2007 with Vikram Asthana, and an amount of ₹ 50,000/- in cash was also paid as advance to Vikram Asthana, by them.

33. It is apparent that since Moolchand had died way back around the year 1990, his alleged power-of-attorney, which was registered on 23.6.2007 in favour of Vikram Asthana at sub-registrar office tehsil Khekhra District Baghpat, was a forged and fabricated document. There is no evidence on record which suggests that the applicant and his parents were involved in any manner whatsoever, in fraudulently fabricating or making of the above power-of-attorney in favour of Vikram Asthana. It is further apparent that the applicant and his parents were not going to be benefited in any manner whatsoever, by purchasing the disputed immovable property from the alleged power-of-attorney holder Vikram Asthana, who in reality was not the power-of-attorney holder of Moolchand, and by purchasing the property of Moolchand through power-of-attorney holder Vikram Asthana, no lawful title would have been devolved in the disputed property in favour of the parents of the applicant. No prudent person would have purchased the disputed property from Vikram Asthana knowing that he was not the valid power-of-attorney holder of Moolchand. It is apparent that the parents of the applicant were befooled by Vikram Asthana, since he was able to convince them, that he was having the authority to execute the sale deed of the disputed property in their favour and consequently, he can pass a valid title of the disputed property in their favour.

34. It is further apparent that the parents of the applicant approached the State Bank of Patiala, Railway Road Branch, Meerut city for obtaining a loan of ₹ 10 lakhs for purchasing the above immovable property, and the sale deed of the disputed property,

which was proposed to be executed on behalf of Moolchand, by his power-of-attorney holder Vikram Asthana in favour of the borrowers, was to be equitably mortgaged in favour of the bank, for securing and obtaining the above loan. It is further apparent that the above bank also obtained legal opinion regarding the title of the disputed property from its lawyer Shri Ashutosh Garga, Advocate, who also, after perusing all the above documents, in his report dated 14.8.2007 opined that if the sale deed was executed by Vikram Asthana, being the power-of-attorney holder of Moolchand, then the borrowers i.e., the parents of the applicant will acquire absolute, alienable and marketable title in respect of the disputed property, which can be equitably mortgaged with the bank. The advocate has specifically certified the genuineness of the title deeds in his report. It is apparent that the advocate also believed the genuineness of the documents submitted to him by the bank/borrowers. Not an iota of doubt has been expressed by the advocate in his legal report. It is pertinent to mention here that if with all his experience and legal acumen the learned Advocate Shri Ashutosh Garga could not detect any illegality and fabrication in the title documents submitted by the borrowers/bank, then how it was possible for the layman borrowers to detect any such illegality or fabrication ?

35. From the above analysis it is apparent that both the borrowers as well as the learned counsel of the bank, were befooled in believing that the documents/title deeds of the disputed property was genuine and Vikram Asthana was the power-of-attorney holder of Moolchand, who was competent to execute the sale deed of the disputed property on behalf of Moolchand, in favour of the borrowers i.e., the parents of the applicant.

36. It is apparent that the applicant was only a guarantor for the proposed loan which was to be sanctioned to his parents by the State Bank of Patiala, Railway Road Branch, Meerut city. If the alleged sale deed would have been executed by Vikram Asthana in favour of the parents of the applicant, then neither any valid title would have devolved on his parents nor the applicant could have benefited from that transaction. In these circumstances, neither the parents of the applicant nor the applicant could be deemed to be involved in any criminal conspiracy. It is further apparent that no loan has been disbursed by the bank to the borrowers as yet, as such, there is no liability of the borrower/applicant. It is further apparent that there is no evidence on record which suggests that the alleged power-of-attorney in favour of Vikram Asthana, which is a registered document, and the certified copy of khatauni of the disputed property, have been forged and fabricated by the applicant and his parents, to their advantage, in order to create any title in the disputed property in their favour. It is also apparent that the alleged family settlement dated 21.6.2007, which was allegedly submitted before the bank for obtaining the loan, has not been signed by the applicant or his parents. It bears the signature of Sohanlal and Moolchand, who had died way back in the year 1990. It is apparent that the factum of death of Sohanlal and Moolchand was concealed by co-accused Vikram Asthana from the applicant and his parents, which is also evident from the legal opinion of Shri Ashutosh Garga, Advocate. Vikram Asthana only disclosed that Natthu Singh has died. It is also apparent that co-accused Thakurji, impersonated himself as Moolchand, who was arrested in the bank on 26.9.2007, whose forged identity was also believed by the parents of the

applicant. It is not the case of the prosecution that the applicant impersonated himself as Moolchand, before the bank.

37. It is also apparent that Sohanlal and Moolchand had died way back in the year 1990, but the khatauni did not reflect this and even after 17 years, the names of their legal heirs were not mutated in the revenue record, which created an impression that Sohanlal and Moolchand are alive, which was also believed by the applicant, his parents and Shri Ashutosh Garga, the learned counsel of the bank. It is pertinent to mention here that in order to avoid fraud, it was the bounden duty of the legal heirs of the deceased to get their names mutated in the revenue records, and if, they had done so, then certainly, this fraud could not have been perpetrated.

38. It has been disclosed by the learned counsel for the applicant that during the pendency of the case, co-accused Vinod Jaiswal and Thakurji have died. If that is true, it may be verified by the trial court, in accordance with law.

39. It is apparent that the alleged offence of cheating and fabrication of fraudulent documents has been prima-facie committed by Vikram Asthana whereas, the applicant and his parents, were in reality befooled by Vikram Asthana. It is apparent that even if, all the prosecution allegations are presumed to be correct, even then, prima-facie no offence is made out against the applicant Ritesh Jaiswal. In view of the above facts, the continuation of the criminal proceedings against him would be an abuse of the process of law. No useful purpose would be served by either keeping the trial of the criminal case pending against him or ordering him to face the trial at this late stage, prolonging his agony, since the matter is already about 19 years old.

40. **For the aforesaid reasons, the application preferred by the applicant under Section 482 CrPC is allowed**. Consequently, the chargesheet in criminal Case No.1303/9 of 2008,case crime No. 200 of 2007 under Section 420, 467, 468, 471 IPC police Station Railway Road, Meerut city **against the applicant Ritesh Jaiswal** and all incidental proceedings arising thereto against the applicant, **are hereby quashed**.

41. Interim order of this Court dated 03.03.2009, stands vacated. The concerned trial court is directed to proceed with the trial against the remaining surviving accused, in accordance with law and conclude it, preferably within a duration of one year from the date a certified copy of this order is produced before it.

42. The case of co-accused Smt. Aarti Jaiswal stands on the same footing as her son/applicant Ritesh Jaiswal but since she is not a party to this proceeding, hence no relief can be granted to her. In these circumstances, liberty is granted to Smt. Aarti Jaiswal to move a discharge application before the trial court, if so advised, and if any such application is preferred by her, then it shall be disposed by the trial court on merits in accordance with law, in the light of the observations made in this order, **within two months**. Till the disposal of the discharge application, no coercive action shall be taken against her.

(2026) 7 ILRA 1397
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.07.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 4696 of 2026

Ashish Khemka ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Matter pertains to whether the order of Special Judge, P.C. Act, Ayodhya, rejecting the applicant's application u/s 233 Cr.P.C. for summoning Jetharam as a defence witness, was legally sustainable, and whether the trial court had correctly applied the three statutory grounds vexation, delay, or defeating the ends of justice as prescribed u/s 233(3) Cr.P.C. for refusing such an application.

Headnotes

Code of Criminal Procedure, 1973 - s. 233 - Application - Summoning of - Defence witness - Fair adjudication of trial - Rejected - Scope of - The applicant, a contractor, was allotted the work of digging, deepening and embankment of a nallah at Kursi Road, Lucknow, pursuant to being the successful low bidder, and received a sum of Rs. 40 lakh towards the said work - However, a preliminary inquiry revealed that the work of filling soil and embankment had not been executed in terms of the contract, leading to registration of an FIR alleging cheating, fraud and misappropriation of public exchequer against the applicant - The applicant's defence was that the soil-filling work had been given to Jetharam, who supplied the soil through tractor-trolley, and embankment was subsequently washed away due to heavy rain and flood, absolving him of any fault - Applicant also moved a representation before Superintendent of Police on 20.02.2026 highlighting Jetharam's role - After framing of charges and recording of his statement, the applicant produced defence witnesses - Thereafter filed an application dated 29.04.2026 seeking summons to Jetharam as a material defence witness - Application was rejected by trial court vide order dated 13.05.2026 on the ground that the relevance of Jetharam's testimony had not been substantiated, prompting the applicant to file instant case before High Court.

Held: It is apparent that while rejecting the request of applicant for calling the witness Jetharam, it has been observed that it has not been explained that how the oral evidence of said witness would be relevant evidence for trial - It seems that trial court has failed to test the application or request of accused for calling the witness, on three grounds as prescribed u/s 233(3) of CrPC - The application was moved for issuing process for calling the witness, who, in fact, supplied the soil for embankment and construction work - The allegation is that soil work was not got done and defence has been taken that due to heavy rain, the soil work was washed away and therefore, the statement of witness, seems to be relevant/important - Three defence witnesses have been produced by accused and thereafter, the application u/s 233 CrPC has been moved - The provision fills the gap, where the important defence witness has been left to be deposed, which would hamper the proper adjudication of matter - Trial court should always kept open its mind while considering an application u/s 233 of CrPC, that no defence witness should left to be examined/produced, which would effect the proper and fair adjudication of trial - Accordingly, impugned order set aside, matter remitted back to trial court for passing fresh order - **Application allowed.** [Paras 12 to 15, 17, 18] (E-13)

Case Law Cited

Nil

List of Acts

Code of Criminal Procedure, 1973

List of Keywords

s. 482 Cr.PC.; s. 233 Cr.P.C.; Special judge P.C. Act, Ayodhya; Defence witness; Summons; Contractor; Digging and deepening gutter; Embankment; Misappropriated the public exchequer; Terms and conditions of bid; Oral evidence; Cheat; Fraud; FIR; Charges; Heavy flood and rain; Vexation; Delay; Defeating the ends of justice; Attendance of any witness or production of any document; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 4696 of 2026

From the Judgment and Order dated 13.05.2026 passed by Special Judge, P.C. Act, Ayodhya in Special Sessions Trial No. 12 of 2026.

Appearances for Parties

Advs. for the Applicant(s):
Prashant Kumar, Sarvesh Kumar Tiwari, Satish Gulati

Adv. for the Opposite Party(s):
G.A.

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

1. Heard Mr. Prashant Kumar assisted by Mr. Sarvesh Kumar Tiwari and Mr. Satish Gulati, learned counsel for the applicant and Mr. Nirmal Kumar Pandey and Mr. Susheel Kumar Pandey, learned AGA for the State.

2. Present application has been filed with the following prayers:-

"i. Quash/set aside the impugned order dated 13.05.2026 passed by the learned Special Judge, P.C. Act, Ayodhya in Special Sessions Trial No. 12 of 2026; (contained in ANNEXURE NO. 3)

ii. Direct the Learned Trial Court to issue summons to defence witness Shri Jetharam, resident of B-71, Raghuveer Nagar, Shikargarh, Jodhpur, Rajasthan-30001, in mis of the application dated 29.04.2026 moved under Section 223 Cr.P.C.; and"

3. As per the prosecution story, for digging and deepening gutter (nallah) at Kursi Road, Lucknow, the work was undertaken by the applicant showing false work of digging and embankment with soil and in lieu thereof, he received Rs.40 lakh and, thus, he has misappropriated the public Exchequer by committing cheat and fraud.

4. Submission of the learned counsel for the applicant is that the applicant is a contractor and after he was found the low bidder, the work of filling up soil and embankment were allocated to him. He next submitted that for filling up the soil, the applicant has given the said work to one Jetharam and Jetharam with the tractor and trolley had supplied the soil over there. He also submitted that a preliminary inquiry was conducted in a cursory manner and it was found that work of filling up soil and embankment have not been done as per the terms and conditions of the contract and, therefore, the FIR has been lodged wherein the applicant has been made an accused.

5. He argued that in fact, because of the heavy flood and rain, the soil was shifted and, therefore, the authority erroneously came to the conclusion that the work of embankment was not got done, though there is no fault on the part of the applicant. He further contends that after the charges are framed and the statement of the applicant under Section 313 CrPC is recorded, he produced the witnesses. He also submitted that since the applicant had already moved an application before the Superintendent of Police concerned for taking the evidence of Jetharam who supplied the soil, but the same was ignored and, therefore, at the stage of trial, he moved application under Section 233 of CrPC for calling and summoning the important witness Jetharam as a defence witness, which has been declined on an unfounded ground, which has been mentioned in the order impugned.

6. Adding his arguments, he submitted that deposition of the statement of Jetharam as a witness is one of the important material, which is essential for proper and fair adjudication of the matter. He added that the only reason for rejection of the application is that the applicant has failed to substantiate that how the statement of Jetharam is relevant in the matter, though fact remains that the crux of the allegation is that the soil, which is filled up to make the embankment, was not found over there and the soil was filled up/supplied by Jetharam. He contends that in the application, specific plea was taken, which has been ignored and that has been rejected. He submitted that the accused has right to move such application and since the stage of defence starts from the deposition of the statement of accused under Section 313 CrPC, it is the important stage for an accused to file such application. He argued that the application has been rejected in a very cursory manner and, therefore, the same is liable to be set aside.

7. On the other hand, learned counsel for the state has opposed the contention and submitted that while providing the list of defence witnesses, the name of Jetharam was not transcribed over there and after passing of certain period of time, at the subsequent stage , the application under Section 233 CrPC has been placed. He added that the reason has been assigned for rejection of the application under section 233, therefore, submission is that no interference is warranted.

8. Upon considering the submissions of the learned counsel for the parties and after perusal of the records, it emerges that the allegations against the applicant in the FIR is that being a contractor, he has not executed the soil work for embankment as was provided in the terms and conditions of the bid. The fact remains that after lodging of the FIR, the applicant moved an application to the Superintendent of Police on 20.2.2026 while mentioning in paragraph 14 of the said application that the soil was supplied by one Jetharam and, therefore, the statement of Jetharam is important to be recorded, thus, he may be summoned.

9. It is worth consideration that the provision of section 233(3) CrPC provides right to accused for making application for issue of process for compelling the attendance of witness or the production of any document and the same may be refused, in the event that if the same has been filed for the purpose of vexation, delay or defeating the ends of justice. For ready reference Section 233 CrPC is given as follows:-

"233. Entering upon defence.-(1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

10. Provision of Section 233 of CrPC has been given under Chapter XVIII i.e., regarding the trial before the Sessions Court, which is an inseparable provision of sessions trial. This provision can be invoked after prosecution evidence is complete and the accused is afforded an opportunity to depose the witnesses in its defence.

11. I have noticed that in the Code (CrPC), there are repeated power given to the trial court for issuing process but herein, the exclusive right has been given to the accused for making application for issuance of process, for attendance of any witness or production of any document or thing. On such application, the trial court will proceed and there are three exigencies/grounds particularly given, to consider such application for rejection of such request. The three grounds are that if such application is made for the purpose of vexation, delay or for defeating the ends of justice. Meaning thereby that the scope of rejection of application moved by the accused under above noted provision, is limited to three exigencies, mentioned as above.

12. While coming to the present case and having at glance over the order impugned dated 13.5.2026, it is apparent that while rejecting the request of the applicant for calling the witness Jetharam, it has been observed that it has not been explained that how the oral evidence of the said witness would be relevant evidence for the trial. It seems that learned trial court has failed to test the application or request of the accused for calling the witness, on three grounds as prescribed under section 233(3) of CrPC. There is no finding or any whisper in the order impugned that how there is vexation, delay or defeating would attract.

13. Apart from the above, it is also worth consideration that the application was moved for issuing process for calling the witness Jetharam, who, in fact, supplied the soil for embankment and construction work. The allegation is that soil work was not got done and the defence has been taken that due to heavy rain, the soil work was washed away and therefore,the statement of the witness, namely, Jetharam seems to be relevant/important.

14. It is apt to say here that Section 233 of Cr.P.C. in fact, has been envisaged taking due care and caution of the right of an accused. After the statement of an accused is recorded, the defence version starts and prior to that, there is no opportunity to the accused to raise any defence. In the case in hand, three defence witnesses have been produced by the accused and thereafter, the application under section 233 CrPC has been moved. In fact this provision fills the gap, where the important defence witness has been left to be deposed, which would hamper the proper adjudication of the matter.

15. This Court is of considered opinion that the trial court should always kept open its mind while considering an application under Section 233 of CrPC, that no defence witness should left to be examined/produced, which essentially would effect the proper and fair adjudication of the trial.

16. In view of the aforesaid submissions and discussions, this Court finds merit in the application moved by the applicant.

17. Consequently, the order impugned dated 13.5.2026, passed by the trial court, is hereby set aside.

18. The matter is remitted back to the trial court concerned to pass fresh order, considering the application of the applicant dated 29.4.2026, in the light of the observations made herein above.

19. The application **stands allowed accordingly**.

(2026) 7 ILRA 1402
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 4710 of 2026

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

Issue for Consideration

Matter pertains to whether the order dated 26.9.2024, passed by Chief Judicial Magistrate, Gonda, rejecting the applicant's discharge application filed u/s 239 CrPC, was a valid and sustainable order having been passed upon due application of judicial mind to the material on record, or whether the same was a mechanical, non-speaking order passed without properly considering the parameters governing discharge, thereby warranting interference by High Court in its inherent jurisdiction u/s 482 CrPC.

Headnotes

Indian Penal Code, 1860 - ss. 419, 420, 467, 468, 471 and 474 - Code of Criminal Procedure, 1973 - ss. 173, 239, 313 - FIR- Discharge application - Rejected by trial court - Not considered ground - Non application of judicial mind - Duty of magistrate - Examine material available on record - Prima facie - Scope of - The instant application was preferred by applicant seeking quashing of entire proceedings of Case No. 5084/2020, arising out of Case Crime No. 385/2020, registered under various sections of IPC pending before Chief Judicial Magistrate, Gonda, which proceedings originated from a complaint lodged by one Anamika Shukla on 9.6.2020 alleging that her educational certificate had been fraudulently misused by certain persons to secure an appointment in Kasturba Gandhi Balika Vidyalaya, a post she had never actually served, and regarding which she had further informed the District Basic Education Officer, Gonda, of such misuse - Pursuant whereto, applicant, upon being charge-sheeted and summoned, moved an application for discharge on 30.5.2023, which was rejected by trial court on 26.9.2024 on the ground that truthfulness of facts urged by applicant could only be assessed upon evidence being led during trial, without any charges having been framed thereafter even till the filing of supplementary affidavit - Aggrieved whereby, applicant approached High Court and challenged the said order.

Held: It emerges from the impugned order that there is non-application of mind by Magistrate as he has not examined the material available before him with scrupulous measure to find out that whether the same discloses the presence of necessary ingredient to constitute the offence - The finding recorded reveals that the trial court had given his findings into two paragraphs - The first paragraph is narration of facts regarding the charge-sheets sent to trial court and order of cognizance including the summons, while in second paragraph it has been observed that after examining the evidentiary value of material, the court can reach to conclusion which, in fact, is impermissible under the law as Apex court, time and again, has reiterated that the material available before the trial court shall be looked into prima facie and evidentiary value of such evidence cannot be examined as the same would warrant proceeding of trial - Impugned order is unsustainable, thus, set aside - Matter remitted back to trial court concerned to pass fresh order on application of discharge - **Accordingly, application allowed**. [Paras 23 to 26] (E-13)

Case Law Cited

State v. S. Selvi **reported in (2018) 13 SCC 455;** *Vikram Johar v. State of UP* **reported in (2019) 14 SCC 207;** *State of Bihar v. Ramesh Singh,* **reported in (1977) 4 SCC 39;** *Union of India v. Prafulla Kumar Samal* **reported in (1979) 3 SCC 4;** *State By Karnataka Lokayukta, Police Station Bengaluru v. M.R. Hiremath* **reported in (2019) 7 SCC 515;** *Dr. Anand Rai v. State of Madhya Pradesh and another,* **reported in 2026 SCC Online SC 187 - referred to**

List of Acts

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

List of Keywords

s. 482 Cr.PC.; s. 239 Cr.P.C.; Educational certificate of complainant; Appointment; Kasturba Gandhi Balika Vidyalaya; District Basic Education Officer, Gonda; Discharge application; Quashing of entire proceedings; Cognizance order; Charge-sheet; Investigating Officer; Suspicion; Framing of charges; Non-speaking order; Non-application of mind by Magistrate; Police Report; Summons; Remitted back to trial court; Inherent Jurisdiction; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 4710 of 2026

From the Complaint dated 26.9.2024 in Case No. 5084/2020, P.S.- Kotwali Nagar, District - Gonda, pending in Court of Chief Judicial Magistrate, Gonda arising out of Case Crime No. 385/2020, P.S. Kotwali Nagar, District- Gonda.

Appearances for Parties

Advs. for the Applicant(s):
Dr. Pooja Singh, Anshuman Singh, Shivangi Paliwal

Adv. for the Opposite Party(s):
G.A.

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

1. Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.

2. Heard Dr. Pooja Singh, learned counsel for the applicant and Mr. Nirmal Kumar Pandey and Mr. Susheel Kumar Pandey, learned AGA for the State.

3. Notice to the opposite party no.2 is hereby dispensed with.

4. Present applicant has been filed with the prayer to quash the entire proceedings of Case No. 5084/2020, "State Vs. Raj @ Pushpendra Jatav @Guru Ji @ Sushil @ Neetu and other", Under Sections-419, 420, 467, 468, 471 and 474 IPC, at P.S.- Kotwali Nagar, District- Gonda, pending in the Learned Court of Chief Judicial Magistrate, Gonda arising out of case crime no. 385/2020, Under Sections-419, 420, 467, 468, 471 and 474 IPC, at P.S. Kotwali Nagar, District- Gonda, against the applicant.

5. Brief factual matrix of the prosecution story is that a complaint was made by Anamika Shukla on 9.6.2020 alleging that educational certificate of the complainant has been misused by some persons for getting appointment in Kasturba Gandhi Balika Vidyalaya though the complainant never served in such Vidyalaya. It has further been alleged that the complainant had informed on 9.6.2022 to the District Basic Education Officer, Gonda, regarding misuse of the academic certificate of the complainant, for the alleged appointment, in Kasturba Gandhi Vidyalaya.

6. Submission of the learned counsel for the applicant is that the applicant is innocent and has been falsely implicated. She submits that the applicant moved an application under Section 239 of CrPC on 30.5.2023, which was heard by the learned trial court and in a cursory manner, without application of judicial mind, the order dated 26.9.2024 has been passed. She contends that the finding itself transpires that the trial court has not considered the discharge application in right perspective, as it has been held by the trial court that the truthfulness and genuineness of the facts will be considered after the evidence are furnished as the applicant/defence can furnish the evidence once the trial is committed. She argued that in such a way, the stage of discharge has been made redundant by the trial court. She also submits that after rejection of the discharge application on 26.9.2024, no further proceedings has been undertaken and even the charges have not been framed as yet, as is mentioned in paragraph 3 of the affidavit filed in support of the supplementary affidavit.

7. In addition, she argued there is no cogent evidence against the applicant regarding his involvement in commission of offence and it started from the very initial stage that is the stage of investigation. The things have been done in very negligent and lethargic manner. Concluding her arguments, she submits that since the order impugned dated 26.9.2024 has been passed without application of mind and without any finding given thereof, the same may be set aside.

8. Per contra, learned counsel for the State has opposed the contention aforesaid, but he has failed to controvert the fact regarding the non-speaking order passed by the trial court and adverse finding recorded in the order impugned.

9. Upon considering the submissions of the learned counsel for the parties and after perusal of records, it transpires that the applicant moved an application for discharge in the month of May 2023, which is considered and decided by the trial court in the month of September 2024.

10. Relevant portion of the order impugned, is quoted herein under:-

“"उन्मोचन प्रार्थना पत्र में अभियुक्त द्वारा जिन तथ्यों का उल्लेख किया गया है, उनकी सत्यता के सम्बन्ध में साक्ष्य के उपरान्त ही कोई निष्कर्ष दिया जा सकता है। अभी इस स्तर पर मात्र विवेचक द्वारा संकलित साक्ष्य का ही मूल्यांकन किया जाना है। विवेचक द्वारा संकलित साक्ष्य से अभियुक्त के विरुद्ध धारा-419,420,467,468,471,474 भा०दं०सं० का अपराध होना पाया गया है। 'इस स्तर पर अभियुक्त को उन्मोचित किये जाने का आंधार पर्याप्त नहीं है। अतएव अभियुक्त द्वारा प्रस्तुत उन्मोचन प्रार्थना पत्र स्वीकार किये जाने योग्य नहीं है। तदनुरूप निरस्त किये जानें योग्य है।"

11. From the perusal of the finding recorded by the trial court, it reveals that the trial court did not consider the ground raised by the applicant in the discharge application. The trial court on place of considering the material available before it, proceeded and observed that the facts mentioned in the discharge application would be considered after the evidences are produced before it.

12. The procedure for discharge has been prescribed under Section 239 of the CrPC, which is extracted herein under:-

"239. When accused shall be discharged.?If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

13. From bare reading of the above noted provision, it transpires that while considering the discharge of an accused, it is incumbent upon the Magistrate to consider the police report and the documents sent with it under Section 173 CrPC. It further provides that if the Magistrate thinks necessary, he can examine the accused. The consideration of police report and the documents sent with the police report are not mere formality but such Magistrate, while considering the discharge of an accused, will consider those materials and in case, it is found that the charges against the accused are groundless, such accused shall be discharged.

14. It is long settled law that the trial court while dealing with the application of discharge, would not act as a rubber stamp or post office rather he will substantially apply his judicial mind, upon the material, i.e., the police report and the documents sent along with it. In fact, the trial Judge will be empowered to discharge the accused without being influenced with the fact that the trial would end in conviction or acquittal.

It is discernible that there can be no strait jacket formula for consideration of discharge rather it depends upon the facts and circumstances of each case. The stage of discharge is very significant stage as trial starts after the discharge request is rejected and the stage of defence would come only when the statement of accused is recorded under Section 313 CrPC. In between the framing of charges to the stage of recording the statement of the accused under 313 CrPC, there is no say of the accused regarding his defence.

15. The scope of discharge as prescribed under section 227 of the CrPC (which is akin to Section 239 CrPC, pertaining to warrant cases), as is held in the case of **State Vs. S. Selvi** reported **in (2018) 13 SCC 455**, followed by **Vikram Johar Vs. State of UP** reported in **(2019) 14 SCC 207**, and subsequently considered by the Apex Court in the case of **State of Bihar Vs. Ramesh Singh**, reported in **(1977) 4 SCC 39**, wherein in paragraph 4, it has been held as under:-

4. …. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient

ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

16. It has been observed by the Apex Court that the strong suspicion may not take place of proof, at the trial stage, but yet it is sufficient for the satisfaction of the trial judge in order to frame charge against the accused.

17. In the case of **Union of India Vs. Prafulla Kumar Samal** reported in **(1979) 3 SCC 4**, certain principles for consideration on discharge, has been enunciated, which are extracted as follows:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

18. While formulating the guidelines, it is held that while exercising power under section 227 of the CrPC, the trial court cannot act as mouthpiece or rubber stamp of the prosecution, but the broad probabilities and the cumulative effect of evidence and documents produced before such court shall be considered. In fact, the thin difference is that while considering such documents, the trial court shall know the limits that there will be no indulgence like a trial, but it is to prima facie

look into the materials available, that whether those constitute the sufficient ground for proceeding with the trial or not.

19. It is trite that the evidentiary value of the materials placed by the prosecution cannot be entered into, at the stage of discharge, rather, prima facie consideration is permitted under the law. This view has been taken by the Apex Court in the case of **State By Karnataka Lokayukta, Police Station Bengaluru Vs. M.R. Hiremath** reported in (2019) 7 SCC 515, wherein in paragraph 25, it has been held as under:-

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

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

20. It emerges from the above noted observations that while dealing with discharge application, the court must determine whether the facts borne out from the material discloses existence of necessary contents to constitute the offence. This law has been reiterated in the recent judgment rendered in the case of **Dr. Anand Rai Vs. State of Madhya Pradesh and another**, reported in 2026 SCC Online SC 187. Paragraph 21 of the said judgment is extracted herein under:-

"21. Before parting with the matter, it is observed that at the stage of framing of charge or considering discharge, the Court is not dealing with an abstract legal exercise. It is dealing with real people, real anxieties, and the real weight of criminal prosecution. Judicial responsibility at this stage calls for care, balance, and an honest engagement with the facts on record. The power to frame a charge is not meant to be exercised by default or out of caution alone. When the material placed before the Court, taken at face value, does not disclose the ingredients of an offence, the law expects the Court to have the clarity and courage to say so and to keep such a case aside.

Discharge, in that sense, is not a technical indulgence but an essential safeguard. The Court must consciously distinguish between a genuine case that warrants a trial and one that rests

only on suspicion or assumption or for that matter without any basis. To allow a matter to proceed despite the absence of a prima facie case is to expose a person to the strain, stigma, and uncertainty of criminal proceedings without legal necessity. Fidelity to the rule of law requires the Court to remember that the process itself can become the punishment if this responsibility is not exercised with care.

This responsibility weighs heaviest on Trial Courts, which are the first courts most people ever step into. For a litigant or an accused, the Trial Court is not just one level in a hierarchy. It represents the face of the judiciary itself. The sensitivity, fairness, and legal discipline shown at this stage shape how ordinary citizens understand justice. The impression a Trial Court creates, through its approach to facts and law, often becomes the impression people carry of the entire judicial system. That is why, at every stage and especially at the threshold, Trial Courts must remain alive to the human consequences of their decisions and to the trust that society places in them."

21. The view earlier taken by the Apex Court has been reiterated in the present matter and it has been held that discharge cannot be considered in a technical way, but the consideration has to go to the limit of the distinction between suspicion and assumption, groundlessness and material, which warrants the trial. It is apt to say here that the consideration of discharge application cannot be undertaken as a formality, but the material, which is available before the trial court, has actually been considered to reach the fine line distinction between the sufficient ground, which indicates prima facie insufficiency of leading the trial.

22. Now, coming to the present case, it emerges from the order impugned that there is non-application of mind by the Magistrate as he has not examined the material available before him with scrupulous measure to find out that whether the same discloses the presence of necessary ingredient to constitute the offence. The finding recorded reveals that the trial court had given his findings into two paragraphs. The first paragraph is narration of the facts regarding the charge-sheets sent to the trial court and the order of cognizance including the summons, while in the second paragraph it has been observed that after examining the evidentiary value of the material, the court can reach to the conclusion which, in fact, is impermissible under the law as the Apex court, time and again, has reiterated that the material available before the trial court shall be looked into prima facie and the evidentiary value of such evidence cannot be examined as the same would warrant proceeding of the trial.

23. In view of the abovenoted submissions and discussions, this Court finds that the order impugned herein, is unsustainable, consequently, the same is hereby set aside.

24. Eargo the matter is remitted back to the trial court concerned to pass fresh order on the application of discharge, within a period of eight weeks.

25. Present application stands **allowed accordingly, at the admission stage**.

(2026) 7 ILRA 1409
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 15.07.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 5373 of 2026

Gulzar Ali **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Matter pertains to whether the trial court had erred in rejecting, without proper application of mind, the applicant's application u/s 311 Cr.P.C. seeking the summoning of P.W.1 (the victim's mother) and two experts of the BSA Office who had assisted in recording the mentally challenged victim's statement u/s 164 Cr.P.C., and consequently, whether the impugned order dated 15.05.2026 warranted interference in exercise of inherent jurisdiction of High Court u/s 482 Cr.P.C.

Headnotes

Indian Penal Code, 1860 - ss. 376, 323, 506 - Code of Criminal Procedure, 1973 - ss. 161, 164, 311 - Rape - Mentally challenged victim - Statement recorded with assistance of experts - Experts not examined by prosecution - Summoning of material witness - At any stage of trial - Scope - The applicant, through the present application assailing the order dated 15.05.2026 passed by Additional Sessions Judge, FTC, Unnao, whereby his application dated 23.03.2026 for summoning P.W.1, namely Smt. Iddan (mother of victim), along with two experts, Ms. Kiran Shukla and Ms. Meenu Tiwari of BSA Office, before whom the statement of mentally challenged victim had been recorded came to be rejected - The applicant contended that although the First Information Report contained only an allegation of outraging modesty, the victim, in her subsequent statement recorded with assistance of said experts, improved upon her version by levelling, for the first time, an allegation of rape, thereby rendering the examination of said experts essential for a just adjudication of trial, which was then pending at the stage of arguments - The State opposed the application on the ground of belated filing, the statement of P.W.1 having been recorded on 01.08.2023 and application having been moved nearly three years thereafter - Further contended that since examination-in-chief of proposed witnesses had not been conducted, they could not be permitted to be cross-examined at that stage.

Held: The statement of mentally challenged victim was recorded with assistance of two experts, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari, who, while making her statement made certain serious allegations, which were not narrated in First Information Report - Even the age and other descriptions have also been made with the help of experts, who assessed the statement of victim - The fact remains that the prosecution has failed to produce the material witnesses, though the statement of victim was recorded by Investigating Officer in their presence and with their assistance - The trial court, while passing the impugned order, has failed to record any finding regarding the irrelevance of witnesses - The only finding recorded is that since the examination-in-chief has not been conducted, therefore cross-examination cannot be permitted - Such a finding is erroneous and groundless as, if trial court reaches to the conclusion that examination of a witness is necessary, such witness can be summoned at any stage, prior to pronouncement of judgment - Therefore, there can be no legal bar of summoning the witnesses only because their examination-in-chief has not yet been conducted - The statements of experts constitute relevant evidence, particularly in view of fact that the

victim introduced the allegation of rape for the first time, in her statement - Consequently, impugned order set aside - Matter remitted to trial court to decide the application afresh – **Accordingly, application allowed**. [Paras 10, 11, 19, 22 to 25] (E-13)

Case Law Cited

Natasha Singh v. Central Bureau of Investigation (State), **reported in (2013) 5 SCC 741 - referred to**

Manju Devi v. State of Rajasthan and another, **(2019) 6 SCC 203 - relied on**

List of Acts

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

List of Keywords

s. 482 Cr.PC.; ss. 164, 161, 311 Cr.P.C.; Material witness; Mentally challenged victim; Assistance of two experts; First information report; Examination-in-chief; Cross-examination; Summoning mother of victim; Recall; Re-examine; Belated stage; Rape; Outraging the modesty; Remitted to trial court; Impugned order set aside; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 5373 of 2026

From the Judgment and Order dated 15.05.2026 passed by Additional and Session Judge, FTC, Unnao in Case Crime No. 405 of 2022, arising out of Session Trial No. 1345 of 2022, P.S.- Gangaghat, District - Unnao.

Appearances for Parties

Adv. for the Applicant(s):
Rahul Kumar Singh
Adv. for the Opposite Party(s):
G.A.

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

1. Heard Mr. Rahul Kumar Singh, learned counsel for the applicant, Mr. Nirmal Kumar Pandey and Mr. Sushil Kumar Pandey, learned counsels for the State and perused the record.

2. Notice to opposite party no. 2 is hereby dispensed with.

3. The present application under Section 482 Cr.P.C. has been filed with the following main relief:-

"For the facts, reasons and circumstances mentioned in the accompanying affidavit, it is most respectfully prayed that this Hon'ble court may kindly be pleased to call the witnesses PW1 namely Smt Iddan as well as Kiran Shukla(I.D.) BSA Office and Menu Tiwari(I.D.) BSA Office and set aside the order dated 15.05.2026 passed by Additional and Session Judge, FTC, Unnao."

4. Submission of learned counsel for the applicant is that while passing the impugned order dated 15.05.2026, on an application moved on 23.03.2026, under Section 311 Cr.P.C., the request of the applicant for summoning P.W.1 (mother of the victim), as well as the two experts, before whom the statements of the victim were recorded, under Sections 161 and 164 Cr.P.C., has been rejected, without proper application of mind.

5. He submits that the victim is mentally challenged and her statements were recorded with the assistance of the experts, namely, Ms. Kiran Shukla and Ms. Meenu Tiwar and the victim has improved upon her earlier version, by alleging that rape had been committed upon her, though such an allegation was not made in the First Information Report, wherein the allegation was only of outraging the modesty, therefore, the summoning/examination of the said experts are very much required for proper adjudication of the matter.

6. Further submission is that the case is at the stage of arguments and even the application, which was moved on 23.03.2026, was decided after two months, i.e., on 15.05.2026, therefore, there is no delay on the part of the applicant.

7. It is argued that without recording the statements of the experts, the trial court would not be able to reach the correct conclusion. He also submits that no sufficient reason has been assigned as to why the statements of the experts, before whom the statement of the mentally challenged victim was recorded, are not relevant for adjudication of the matter.

8. Concluding his arguments, he submits that the case of the applicant is covered with the ratio laid down in case of Natasha Singh versus Central Bureau of Investigation (State), reported in (2013) 5 SCC 741. Thus, submission is that the impugned order may be set aside.

9. On the other hand, learned A.G.A. has opposed the aforesaid submissions and argued that the applicant approached the trial court at the belated stage, as the statement of P.W.1 was recorded on 01.08.2023 and the application under Section 311 Cr.P.C. was filed after about three years. He further submits that since the examination-in-chief of the proposed witnesses has not been conducted, thus, they cannot be permitted to be cross-examined, at this stage.

10. Having heard learned counsel for the parties and after perusal of the records, it emerges that the statement of the mentally challenged victim was recorded with the assistance of two experts, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari, who, while making her statement under Section 164 Cr.P.C., made certain serious allegations, which were not narrated in the First Information Report. For the first time, the allegation of rape was levelled by the victim, against the applicant, in her statement under Section 164 Cr.P.C. Even the age and other descriptions have also been made with the help of the experts, who assessed the statement of the victim.

11. The fact remains that the prosecution has failed to produce the material witnesses, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari, though the statement of the victim was recorded by the Investigating Officer in their presence and with their assistance.

12. The provision of Section 311 of CrPC provides to summon the material witness and examine the person present. Section 311 of CrPC is quoted here-in-under:

"Section 311: Power to summon material witness, or examine person present

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

13. A bare reading of the aforesaid provision indicates that 'the trial court may, at any stage of any inquiry, trial or other proceeding, summon any person as a witness'. This shows that before pronouncing the judgment, if the trial court reaches to the conclusion that for proper and just adjudication of the trial, examination of any witness is required, such witness may be summoned. The provision also mandates that such witness may be examined or re-examined, as the case may be.

14. This Court is conscious of the fact that before recording a finding of conviction against an accused, all relevant possibilities bearing upon the innocence of the accused, are required to be explored. In the present matter, two material witnesses have not been produced by the prosecution. The applicant moved an application in the month of March, 2026 for summoning those witnesses, which came to be decided after two months by the trial court.

15. This Court is also aware that an application under Section 311 Cr.P.C. can be refused to entertain, if it is filed only to cause delay in trial proceedings, but at the same time, the interest of the accused cannot be left to be jeopardize merely on unfounded presumption of delay.

16. Hon'ble Supreme Court, while dealing with the identical issue, has held that age of a case by itself cannot be decisive when a request is made for calling of a material witness for his examination, which is rendered in case of **Manju Devi vs. State of Rajasthan and another, (2019) 6 SCC 203**. Paragraph 12 and 13 of the judgment is referred herein:-

"12. The peculiar facts and circumstances of the case have either been ignored or have been cursorily dealt by the trial court with the observations that the effect of non-availability of the original post-mortem report would be considered at the time of the final disposal of the matter. In fact, the principal reason weighing with the trial court in declining the prayer for examination of the said witness had been that the case was pending since the year 2010. The High Court, on the other hand, chose not to exercise its powers under Section 482 CrPC, with the only observation that the discretion so exercised by the trial court was not to be interfered with.

13. Though it is expected that the trial of a sessions case should proceed with reasonable expedition and pendency of such a matter for about 8-9 years is not desirable but then, the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness."

17. It has been observed by the Hon'ble Apex Court that the pendency of the length and duration of a case cannot come into the way for ensuring the justice for taking all necessary and material evidence and, therefore, it has been held that while dealing with the situation where a request for calling of a witness for examination is made, the same should not be ignored or dealt with cursorily.

18. In this regard, it is trite that the power vest in terms of Section 311 of CrPC, to the Court, to summon and examine or recall and re-examine any material witness at any point of time/stage, could not be curtailed merely because of any delay in filing the application for recall of such material witness as the uses of the words in Section 311 such as "any court", "at any stage", or "any inquiry or trial or other proceeding", "any person", and "any such person" apparently discernible that the provision itself expresses the widest possible term and there is no limit of the discretion of court in any way.

19. I have also considered that the trial court, while passing the impugned order, has failed to record any finding regarding the irrelevance of the witnesses, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari. The only finding recorded is that since the examination-in-chief has not been conducted, therefore cross-examination cannot be permitted. Such a finding is erroneous and groundless as, if the trial court reaches to the conclusion that the examination of a witness is necessary, such witness can be summoned at any stage, prior to the pronouncement of the judgment. Therefore, there can be no legal bar of summoning the witnesses only because their examination-in-chief has not yet been conducted.

20. I am also aware of the law rendered by the Apex Court in the case of ***Natasha Singh (supra)***. Paragraph 15 of the above-noted judgment is extracted as under:

"15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as 'any court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

21. The Hon'ble Supreme Court has categorically held that for discovering the relevant facts and obtaining proper proof so as to arrive at a just decision, the power under Section 311 Cr.P.C. must be exercised judicially and not capriciously.

22. It is long settled law that examination of a witness cannot be refused merely on the ground that the evidence of such witness may not be conclusive, if the evidence is otherwise relevant. In the present case, this Court is of the considered opinion that the statements of the experts, with whose assistance, the statement of the mentally challenged victim was recorded under Section 164 Cr.P.C., constitute relevant evidence, particularly in view of the fact that the victim introduced the allegation of rape for the first time, in her statement, under Section 164 Cr.P.C.

23. In view of the aforementioned submissions and discussions above, this Court finds merit in this present application. Consequently, the impugned order dated 15.05.2026 is hereby set aside.

24. The matter is remitted to the trial court concerned to consider and decide the application of the applicant, under Section 311 Cr.P.C. afresh, in accordance with law and in the light of the observations made hereinabove, within a period of eight weeks, from the date of production of a certified copy of this order.

25. The application is **allowed** at the admission stage.

(2026) 7 ILRA 1414
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

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

Application U/S 528 BNSS No. 11578 of 2026

Smt. Saroj Goyal **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Matter pertains to whether the concurrent orders passed by Chief Judicial Magistrate, Aligarh, rejecting the applicant's protest petition against the Final Report, and by Additional District & Sessions Judge, Aligarh, dismissing the consequent Criminal Revision, were legally sustainable particularly, whether the Magistrate had duly applied judicial mind to material available on record before accepting the final report and rejecting the protest petition, in light of settled legal position governing the Magistrate's duty at the stage of considering a final report vis-à-vis a protest petition.

Headnotes

Indian Penal Code, 1860 - ss. 420, 467, 468, 471, 504, 506, 120B - Code of Criminal Procedure, 1973 - ss. 190(1)(a) (corresponding to s. 210(1)(a) BNSS), 2(d) (corresponding to s. 2(1)(h) BNSS), 200 Cr.P.C. (corresponding to s. 223(1) BNSS) - FIR - Allegations of cheating and forgery - Investigation - Final Report - Protest Petition - Rejected by Magistrate - Criminal Revision - Dismissed - Impugned order - The applicant had lodged FIR under various sections of IPC at Police Station Banna Devi, District Aligarh, alleging that Respondent Nos. 2 and 3, in connivance with employees of Bank of Baroda, Malkhan Nagar Branch, Aligarh, had transferred the Fixed Deposit amount deposited in bank by preparing a forged consent letter purportedly executed by her father after his demise - Upon completion of investigation, a Final Report was submitted, against which the applicant preferred a protest petition, which was dismissed by Chief Judicial Magistrate, Aligarh - The applicant's subsequent Criminal Revision challenging the said dismissal was also rejected by Additional District & Sessions Judge, Aligarh, giving rise to present application u/s 528 B.N.S.S. seeking quashing of both the orders.

Held: The Magistrate has considered the protest petition dated 05.07.2023 and rejected the same after considering the material available on record - Hence, there is no illegality in the impugned order - From the perusal of record, it transpires that there are certain lacuna in protest petition filed by applicant and does not fulfill requirements of a complaint case as the list of witnesses to be examined has not been disclosed - In case, the applicant moves a fresh complaint inviting the attention of Magistrate to take cognizance u/s 190(1)(a) Cr.P.C. (corresponding to s. 210(1)(a) BNSS) satisfying the requirements of complaint as defined in s. 2(d) Cr.P.C (corresponding to s. 2(1)(h) BNSS) containing the facts that constitute the offence and all necessary particulars and details of witnesses to be examined preferably within six weeks from the date of the order, the same be proceeded with u/s 200 Cr.P.C. (corresponding to s. 223(1) BNSS) in accordance with law - **Application disposed of.** [Paras 7 to 10] (E-13)

Case Law Cited

Vishnu Kumar Tiwari v. State of Uttar Pradesh, **(2019) 8 SCC 27 - referred to**

List of Acts

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

List of Keywords

s. 528 BNSS; Protest Petition; Rejected; Bank of Baroda; Final Report; Investigation; Cognizance by Magistrate; Judicial Mind; Criminal Revision; Sessions Judge; Complainant; Requirement of complaint case; Witnesses to be examined; Fixed Deposit amount; Forged consent letter; Illegality in impugned order; Disposed of.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 11578 of 2026

From the Judgment and Order dated 05.07.2025 passed by Additional District & Sessions Judge, Court No.11, Aligarh in Criminal Revision No. 188 of 2024 as well order dated 13.03.2024 passed by Chief Judicial Magistrate, Aligarh in Misc. Case No. 197/12 of 2023, arising out of Crime No. 515 of 2022, Police Station Banna Devi, District Aligarh.

Appearances for Parties

Adv. for the Applicant(s):
Avnish Kumar Srivastava

Adv. for the Opposite Party(s):
G.A.

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

1. Heard Sri Avnish Kumar Srivastava, learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application under section 528 B.N.S.S. has been filed with a prayer to allow this application and to quash the order dated 05.07.2025 passed by the learned Additional District & Sessions Judge, Court No.11, Aligarh in Criminal Revision No. 188 of 2024 (Saroj Goyal vs. State of U.P. & Others) as well order dated 13.03.2024 passed by the learned Chief Judicial Magistrate, Aligarh in Misc. Case No. 197/12 of 2023, arising out of Crime No. 515 of 2022 under sections 420, 467, 468, 471, 504, 506, 120B IPC, Police Station Banna Devi, District Aligarh whereby the protest petition filed by the applicant was rejected.

3. Briefly stated, the applicant Saroj Goyal lodged an FIR No. 0515 of 2022 dated 09.07.2022 under sections 420, 467, 468, 471, 504, 506, 120B IPC, Police Station Banna Devi, District Aligarh against the respondent nos. 2 and 3 and certain Bank officials alleging that Respondent No. 2, Yash Agarwal and Respondent No. 3, Vibha Agarwal in connivance with the concerned employees of the Bank of Baroda, Malkhan Nagar Branch, Aligarh had transferred the Fixed Deposit amount deposited in the Bank by preparing forged consent letter of her father after his demise. After completion of the investigation, the Final Report dated 08.05.2023 was submitted. Aggrieved by the said Final Report, the applicant/first informant preferred a protest petition to the learned Magistrate which was registered as Criminal Misc. Case No. 197/12 of 2023. However, the learned Magistrate dismissed the protest petition of the applicant against which a Criminal Revision No.

188 of 2024 was filed before the learned Sessions Judge, Aligarh and the same was also dismissed. Hence, this application.

4. The main submission of learned counsel for the applicant is that the learned Magistrate while rejecting the protest petition dated 05.07.2023 did not consider the material available on record and without application of judicial mind accepted the final report.

5. The learned State Counsel could not dispute the aforesaid facts.

6. Recently, the Hon'ble Apex Court in **Vishnu Kumar Tiwari Vs. State of Uttar Pradesh, (2019) 8 SCC 27** has held that *"before a Magistrate proceeds to accept a final report under section 173 Cr.P.C. and exonerates the accused, it is incumbent upon the Magistrate to apply his mind to the contents of protest petition and arrive at a conclusion thereafter - while Investigating Officer may rest content by producing the final report, which according to him, is the culmination of his efforts - the duty of the Magistrate is not one limited to readily accept the final report - it is incumbent upon Magistrate to go through the materials, and after hearing the complainant and considering the contents of protest petition, finally decide the future course of action to be, whether to continue with the matter or to close the case. Further, held that dependent upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report - that is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under section 190(1)(b) Cr.P.C. for which there is no necessity to examine the witnesses under section 200 Cr.P.C. In a majority cases when a final report is submitted, a Magistrate has to simply consider whether on the material in the case diary, no case is made out so as to accept the final report or whether case diary discloses a prima facie case so as to take cognizance - protest petition in such situation simply serves the purpose of drawing of Magistrate's attention to the material in the case diary and invite careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case. If a protest petition fulfills the requirement of a complaint, Magistrate may treat protest petition as a complaint and deal with the same as required under sections 200/202 Cr.P.C."*

7. In the case in hand, the Magistrate has considered the protest petition dated 05.07.2023 and rejected the same after considering the material available on record. Hence, there is no illegality in the order impugned.

8. From the perusal of record, it transpires that there are certain lacuna in the protest petition dated 05.07.2023 filed by the applicant and does not fulfill the requirements of a complaint case as the list of witnesses to be examined has not been disclosed.

9. However, in case, the applicant moves a fresh complaint inviting the attention of the Magistrate to take cognizance under section 190(1)(a) Cr.P.C./210(1)(a) BNSS satisfying the requirements of a complaint as defined in Section 2(d) Cr.P.C/2(1)(h) BNSS containing the facts that constitute the offence and all necessary particulars and details of the witnesses to be examined preferably within six weeks from the date of the order, the same be proceeded with under section 200 Cr.P.C./223(1) BNSS in accordance with law.

10. With the aforesaid direction, the application u/s 528 B.N.S.S. is disposed of.

(2026) 7 ILRA 1417
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.07.2026

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 482 No. 32928 of 2012

Beni Prasad & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Matter pertains to whether the order dated 28.08.2012 passed by Sessions Judge, Kaushambi, rejecting the applicants' discharge application u/s 227 Cr.P.C. in a case u/s 414 IPC, was legally sustainable, specifically, whether the applicants could be validly implicated and put to trial solely on strength of a confessional statement made by a co-accused during investigation, in the absence of any independent recovery, arrest, or corroborative evidence connecting the applicants to alleged offence of dishonestly receiving stolen property.

Headnotes

Indian Penal Code, 1860 - ss. 302, 201, 414 - Code of Criminal Procedure, 1973 - ss. 161, 164, 227 - Discharge - Application for discharge - Rejection of - Challenge - Applicants not named in FIR - Implication on basis of statement of co-accused - No recovery of stolen property from applicants - Chargesheet - Evidentiary value of confession of co-accused - Confession made before police - The instant application arose from Case Crime No. 376 of 2011, registered at P.S. Saini, District Kaushambi, initially lodged against unknown persons upon discovery of an unidentified dead body, and subsequently clubbed with Case Crime No. 381 of 2011 in respect of theft from a truck whose cleaner had allegedly been murdered - During investigation, co-accused Chander Prakash and Dharmender were arrested along with recovery of stolen property, and their statements led to further recoveries from other co-accused, while co-accused Dharmender and Amarnath, in their statements, named the present applicants as persons at whose premises certain stolen property had been temporarily kept - Chargesheet filed against applicants without any arrest or recovery being effected from their possession - The applicant's subsequent discharge application despite the trial court's own finding that no evidence other than co-accused's statement existed against them, was rejected by Sessions Judge, giving rise to present application seeking its quashing.

Held: In view of facts and circumstances as well as in light of judgments rendered by Apex Court in the cases of *Hari Charan Kurmi (infra) and Dipakbhai Jagdishchndra Patel (infra)*, the case is of no evidence other than statement so recorded by one of co-accused in which names of applicants were surfaced and same was taken as a confessional statement in respect of applicants - The reasoning so recorded by trial court concerned while dismissing the discharge application, is altogether bad in eye of law, specifically in absence of any distinction between the statement, confessional statement and evidence whatsoever are mandatory to implicate the applicants and put them into trial - Once the applicants have been implicated at the stage of preferring chargesheet and they submitted the discharge application in pursuance to s. 414 IPC only, the same would have been decided in a most careful manner since the matter relates to implication of applicants for trial which includes certain other crime related to heinous one and accomplished with same in a little offence, may also be stigmatic for them to live normal life in society - Trial court has not given weightage to

procedure as well as law defined by the higher courts and summarily dismissed the discharge application which is not at all sustainable in eye of law - **Impugned order set aside, accordingly, application allowed.** [Paras 13 to 15] (E-13)

Case Law Cited

Hari Charan Kurmi and Jogia Hajam v. State of Bihar **,1964 AIR 1184;** *Dipakbhai Jagdishchndra Patel Vs. The State of Gujrat* **[AIR 2019 Supreme Court 3363] - followed**

List of Acts

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

List of Keywords

s. 227 Cr.P.C.; s. 414 IPC; Discharge Application; Driver of DCM; Session Trial; Chargesheet; Confessional statement; Recovery memo of stolen property; Statement recorded by co-accused; Mandatory to implicate; Summoned for commission of offence; Entire material; Not given weightage to procedure; Impugned order set aside; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 482 No. - 32928 of 2026

From the Judgment and Order dated 28.08.2012 passed by Sessions Judge, Kaushambi in Case Crime No. 376 of 2011 arising out of Session Trial No. 232 of 2012, Police Station Saini, District Kaushambi.

Appearances for Parties

Advs. for the Applicant(s):
Hakim Kumar Kushwaha, Kamlakar Pal, Zafar Abbas

Adv. for the Opposite Party(s):
Govt. Advocate

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

1. Heard Sri Kamlakar Pal, learned counsel assisted by Sri Himanshu Pal along with Sri Hakim Kumar Kushwaha, learned counsel for applicants and learned.

2. The present application has been preferred seeking quashing of order dated 28.08.2012 passed by learned Sessions Judge, Kaushambi in Session Trial No.232 of 2012 (State Vs. Chandra Prakash and others), under Section 414 IPC, P.S. Saini, District Kaushambi, whereby discharge application preferred at the behest of applicants under Section 227 Cr.P.C. was rejected.

3. Brief facts of the present case are that opposite party no.2, namely, Lavkush, Chaukidar saw a dead body of 25 years old man on dated 28.09.2011 in a paddy field of one Prajapati over which, he lodged an FIR on the same day against unknown person which was registered at Case Crime No.376 of 2011, under Section 302, 201 IPC. On 30.10.2011, concerned police of Police Station Pipari arrested one co-accused, namely, Chander Prakash with certain stolen property which were loaded on DCM No.UP 70 AT 3649 who stated before the concerned police that he is driver of the said DCM and the stolen property was loaded by co-accused persons, namely, Dharmender Maurya, Amarnath Maurya and Dileep. Chander Prakash also told the police that this property was stolen from a truck bearing Registration No.HR 38 L 4908 after killing the cleaner of the said truck

whose body was thrown away in Saini. When concerned police inquired, it was came into their knowledge that one FIR bearing Case Crime No.376 of 2011, under Section 302 IPC has already been registered against unknown person. Thereafter, the concerned police also arrested co-accused persons, namely, Dharmender with some stolen property who also told the police which were stated by co-accused, Chander Prakash. Thereafter, recovery memo of the stolen property, which were recovered from Chander Prakash and Dharmender, was prepared by concerned police. On 10.11.2011, the police also recovered the remaining stolen property from the possession of other co-accused persons, namely, Amarnath Maurya, Dileep Kushwaha and Mahendra Kushwaha and recovering the same, prepared recovery memo.

4. The Investigating Officer of the said case recorded statements of co-accused Chander Prakash, Dharmender, Amarnath, Dileep and one Mahendra (driver of Truck No.HR 38 L 4908) wherein Dharmender and Amarnath disclosed the names of applicants herein by way of stating that some stolen property were kept at their house for some time and after conclusion of the inquiry, the concerned police submitted chargesheet under Section 414 IPC against applicants herein and under Sections 394, 323, 302, 201, 34, 411, 414, 420, 467, 468, 471 IPC against other co-accused persons.

5. Truck owner of Truck No.HR 38 L 4908 also lodged an FIR on dated 29.09.2011 against unknown person for the said offence which was registered at Case Crime No.381 of 2011, under Section 394 IPC, P.S. Bilhaur, Kanpur Nagar and during investigation of Case Crime No.376 of 2011, Case Crime No.381 of 2011 was also merged in Case Crime No.376 of 2011.

6. Learned counsel for applicants submitted that applicants herein were not named in the FIR but after arrest of prime offenders against whom charges were framed under Sections 394, 323, 302, 201, 34, 411, 414, 420, 467, 468, 471 IPC, one of them introduced the applicants in his confessional statement and on that basis, applicants were chargesheeted and summoned for commission of offence under Section 414 IPC. He also submitted that neither the applicants were arrested at any point of time nor any recovery was assigned or recovered from their possession in respect of stolen property, therefore implication of applicants for assisting the stolen property, cannot be fastened once it has been crystal clearly observed by learned trial court concerned that no credible evidence has been collected and submitted against them at the stage of passing order impugned. Learned counsel for applicants further argued that implication of the applicants on the basis of confessional statement is also bad in the eye of law as per the judgment rendered by Hon'ble the Apex Court in the case of **Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar [1964 AIR 1184]**.

7. Learned counsel for applicants submitted that the said judgment rendered by Hon'ble the Apex Court is still holding the field and also relied in so many judgments rendered by Hon'ble the Apex Court itself and the same is being followed by several High Courts in catena of the judgments.

8. By way of assailing the impugned order, learned counsel for applicants tried to demonstrate the connection of evidence with offence which is mandatory to be established by prosecution for putting accused for trial. Learned counsel for applicants strongly relied upon

the conclusive finding recorded by learned trial court concerned while dismissing application under Section 227 Cr.P.C. preferred by applicants wherein it is mentioned that no other material evidence available apart from the evidence led through chargesheet collected during investigation by the concerned Investigating Officer. At the time of concluding the arguments, learned counsel for applicants also relied upon the judgment rendered by Hon'ble the Apex Court in the case of **Dipakbhai Jagdishchndra Patel Vs. The State of Gujrat [AIR 2019 Supreme Court 3363]**, wherein the proceedings arising out of denial of discharge application preferred at the behest of appellants, was allowed on the ground that a confession made to a police officer is clearly inadmissible.

9. Per contra, Sri Sandip Kumar, learned AGA vehemently opposed the prayer sought through the instant application and rebutted the stands taken up by learned counsel for applicants but at the same time, he showed his agreement with the dictum of law pronounced by Hon'ble the Apex Court in the case of **Hari Charan Kurmi (supra)**.

10. During course of arguments, learned AGA clarified the position of law with the corresponding procedure of law that once the statement has been recorded during investigation under Section 161 Cr.P.C. along with 164 Cr.P.C., the same cannot be termed as confession in respect of attributing or saddling the commitment of offence upon some other person, rather it has to be taken up in respect of the person who is making the statement only.

11. After hearing the rival contentions raised by learned counsel for parties along perusal of entire material available on record including the order impugned, this Court finds force in the submission made by learned counsel for applicants which is the core argument that once it has been recorded by learned trial court itself while passing the order impugned that no other evidence is available apart from the evidences collected and submitted by the concerned Investigating Officer at the time of preferring chargesheet, therefore the applicants are rightfully claimants of discharge since the evidence collected by concerned Investigating Officer was only in shape of so called confessional statement made by one of the co-accused, whereas the pronouncement of Hon'ble Apex Court is crystal clear in respect of confession which may not be taken as evidence as strictly defined under Section 3 of the Evidence Act, it might be an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. The relevant part of **Hari Charan Kurmi (supra)** is being quoted herein below:-

"Technically construed. this definition will not apply to a confession. Part (1) of the definition refers to oral statements which the court permits or requires to be made before it; and clearly, a confession made by an accused person is not such a statement. it is not made or permitted to be made before the court that tries the criminal case. Part (2) of the definition refers to documents produced for the inspection of the court; and a confession cannot be said to fall even under this part. Even so, s. 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by

the criminal court and in that sense, it may be described as evidence in a non- technical way. But it is significant that like other evidence which is produced before the Court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the Court, it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the Court in dealing with a confession, because Section 30 merely enables the Court to take the confession into account."

12. It has also been dealt with by Hon'ble the Apex Court in the same judgment that if in any case, other evidence was produced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence, but in the instant matter, once it has been crystal clearly mentioned by learned trial court concerned that there in no other evidence apart from the evidences which were collected during course of investigation and the same were only the statement so recorded by other co-accused in respect of allegations fastened against the applicants.

13. In view of the aforementioned facts and circumstances as well as in light of the judgments rendered by Hon'ble the Apex Court in the cases of **Hari Charan Kurmi (supra)** and **Dipakbhai Jagdishchndra Patel (supra)**, this case is of no evidence other than the statement so recorded by one of the co-accused in which names of applicants were surfaced and the same was taken as a confessional statement in respect of the applicants. The reasoning so recorded by learned trial court concerned while dismissing the discharge application, is altogether bad in the eye of law, specifically in absence of any distinction between the statement, confessional statement and the evidence whatsoever are mandatory to implicate the applicants and put them into trial. Once the applicants have been implicated at the stage of preferring chargesheet and they submitted the discharge application in pursuance to Section 414 IPC only, the same would have been decided in a most careful manner since the matter relates to the implication of applicants for trial which includes certain other crime related to heinous one and accomplished with the same in a little offence, may also be stigmatic for them to live normal life in the society. Learned trial court concerned has not given weightage to the procedure as well as law defined by the higher courts and summarily dismissed the discharge application which is not at all sustainable in the eye of law.

14. In view thereof, order dated 28.08.2012 passed by learned Sessions Judge, Kaushambi in Session Trial No.232 of 2012 (State Vs. Chandra Prakash and others), under Section 414 IPC, P.S. Saini, District Kaushambi, is hereby set aside. Applicants are hereby discharged in respect of Session Trial No.232 of 2012 (State Vs. Chandra Prakash and others), arising out of Case Crime No.376 of 2011, P.S. Saini, District Kaushambi.

15. Accordingly, the instant application stands **allowed**.

(2026) 7 ILRA 1422
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Application U/S 528 BNSS No. 35906 of 2025

Naushad Ali Alias Kari Naushad & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Matter pertains to whether cognizance taken by Additional Chief Judicial Magistrate-I, Saharanpur on the charge-sheet in Criminal Case No. 1617 of 2025, insofar as it related to offences u/ss. 221 and 223 B.N.S., was legally sustainable in the absence of a written complaint by concerned public servant as mandated u/s 215(1)(a) B.N.S.S., and, further, whether such non-compliance would vitiate the entire charge-sheet and remaining proceedings under other charging sections, or whether it would only affect the cognizance qua sections of B.N.S., leaving the prosecution under the remaining sections intact.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 121(1), 125, 126(1), 221, 223, 190, 191(2), 351(3), 352 - Criminal Law (Amendment) Act, 1932 - s. 7 - Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 215(1)(a) - (corresponding to s. 195(1)(a) Cr.P.C.) - Cognizance of offence - FIR registered by police officer on his own - Absence of complaint by public servant - Cognizance on police report/charge-sheet - Jurisdiction - Cognizance/summoning order - Quashing of - The applicants, preferred an application u/s 528 B.N.S.S. seeking quashing of charge-sheet dated 19th January, 2025, the cognizance/summoning order dated 8th April, 2025, and entire proceedings of Criminal Case No. 1617 of 2025, arising out of Case Crime No. 425 of 2024, registered at Police Station-Kotwali Dehat, District - Saharanpur under various sections B.N.S. and Criminal Law (Amendment) Act, 1932, pending before the Additional Chief Judicial Magistrate-I, Saharanpur - It was the applicants' case that First Information Report, insofar as it invoked ss. 221 and 223 B.N.S. (corresponding to ss. 186 and 188 I.P.C.), was registered by Head Constable of said police station suo motu on 6th October, 2024, without any written complaint by competent public servant as statutorily required under provision of B.N.S.S. - The charge-sheet was consequently submitted on strength of such an unsustainable FIR - Magistrate mechanically and without application of judicial mind took cognizance thereon on 8th April, 2025, rendering the cognizance order and by extension, the entire prosecution, without jurisdiction and an abuse of process of law.

Held: The Investigating Officer has submitted the impugned charge-sheet under various sections of B.N.S. and s. 7 of Criminal Law (Amendment) Act, 1932 - Out of mentioned sections. i.e. ss. 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and s. 7 of Criminal Law (Amendment) Act, 1932, only ss. 221 and 223 B.N.S. are barred by s. 215 (1) (a) B.N.S.S. and Trial Court has committed error in taking cognizance u/ss. 221 and 223 B.N.S. along with other charging sections on the ground that trial court has taken cognizance to said offence on charge-sheet submitted by Police without any complaint in writing of public servant concerned - For the alleged offence maximum punishment to be awarded is upto 7 years, which cannot be washed out by Court only on the ground that trial court has committed error in taking cognizance u/ss. 221 and 223 B.N.S. along with other charging sections against the applicants without any complaint in writing of public servant

concerned - The inherent jurisdiction of Court u/s 528 B.N.S.S. is intended to prevent abuse of process of Court and to secure the ends of justice within the four corners - Accordingly, cognizance/summoning order set aside and prayer of applicants for quashing charge-sheet and entire criminal proceedings refused - Matter remitted back to court concerned to pass a fresh order - **Application partly allowed**. [Paras 17, 18, 20, 21,22] (E-13)

Case Law Cited

Devender Kumar v. State (NCT of Delhi) & Another **reported in 2025 SCC OnLine SC 1753;** *Sumit & Another v. State of U.P. & Others,* **Criminal Misc. Writ Petition No. 17560 of 2023, dated 08.01.2024;** *Sheel Prakash Gupta v. State of U.P. Thru. Prin. Secy. Home LKO & Another,* **Application U/S 482 No. 5131 of 2024, dated 26.09.2024;** *Sanjay Kashyap @ Sanjay Kumar v. State of U.P. & Others,* **Application U/S 482 No. 9486 of 2025, dated 12.11.2025;** *D.K. Rajendran and Ors. etc. etc. v. State of T.N.*, **reported in AIR 2010 SC 3718;** *B.N. John v. State of U.P. & Another*, **Criminal Appeal No...of 2025/Special Leave Petition (Crl.) No. 2184 of 2024 decided on 02.01.2025 reported in 2025 SCC OnLine SC 7 - referred to**

Daulat Ram v. State of Punjab, **AIR 1962 SC 1206;** *Ramendra Sharma and 2 Others v. State of U.P. and Another,* **Application U/S 482 No.18403 of 2021 decided on 09.09.2022;** *Yogeshwar Sood and Another v. State of U.P. and Others,* **Criminal Misc. Writ Petition No.12772 of 2020; followed**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Criminal Law (Amendment) Act, 1932; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

s. 528 BNSS; Quashing of charge-sheet, cognizance and summoning order; Head constable of police station; Proceedings are vitiated from inception; Abuse of process of law; No written complaint; Public Servant; Prosecution initiated on basis of police report; Statutory embargo; Mandatory requirement prescribed u/s 215(1)(a) B.N.S.S; Inherent lack of jurisdiction; Application of judicial mind; Cryptic; Mechanical order; Heinous offences; Remitted back to pass fresh order; Partly Allowed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 528 BNSS No. - 35906 of 2025

From the charge-sheet dated 19.01.2025, cognizance/summoning order dated 08.04.2025 in Criminal Case No. 1617 of 2025, arising out of Case Crime No. 425 of 2024, Police Station-Kotwali Dehat, District-Saharanpur pending in the Court of Additional Chief Judicial Magistrate-I, Saharanpur.

Appearances for Parties

Advs. for the Applicant(s):
Anurag Mishra

Adv. for the Opposite Party(s):
G.A.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard learned counsel for the applicants, learned A.G.A. for the State-opposite parties and perused the record.

2. The present application under Section 528 B.N.S.S. has been filed praying for quashing the charge-sheet dated 19th January, 2025, cognizance/summoning order dated 8th April, 2025 as well

as the entire proceedings of Criminal Case No. 1617 of 2025 (State of U.P. Vs. Kari Naushad & Others), arising out of Case Crime No. 425 of 2024, under Sections 121 (1), 125, 126 (1), 221, 223, 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932, Police Station-Kotwali Dehat, District-Saharanpur pending in the Court of Additional Chief Judicial Magistrate-I, Saharanpur.

3. Learned counsel for the applicants submits that the impugned proceedings are wholly without jurisdiction and constitute an abuse of the process of law. It is submitted that the FIR under Sections 221 and 223 B.N.S. (Sections 186 and 188 I.P.C.) along with other charging sections, was registered by the Head Constable of Police Station-Kotwali Dehat, District-Saharanpur on 6th October, 2024 on his own without there being any written complaint by the public servant concerned as contemplated under Section 215 (1) (a) B.N.S.S. [Section 195(1)(a) Cr.P.C.]. It is further submitted that the charge-sheet was submitted on the basis of the said FIR and the learned Additional Chief Judicial Magistrate-I, Saharanpur mechanically took cognizance on 8th April, 2025 without considering the statutory embargo contained in Section 215 B.N.S.S. (Section 195 Cr.P.C.).

4. Learned counsel for the applicants further submits that the very foundation of the prosecution is illegal inasmuch as an FIR under Sections 221 and 223 B.N.S. (Sections 186 and 188 I.P.C.) along with other charging sections could not have been registered at the instance of the police without a written complaint of the competent public servant. The proceedings, therefore, are vitiated from their inception.

5. In support of his submissions, learned counsel for the applicants has placed reliance upon the judgment of this Court in Application U/S 482 No.18403 of 2021 (**Ramendra Sharma and 2 Others vs. State of U.P. and Another**) decided on 09.09.2022, the judgment of this Court in Criminal Misc. Writ Petition No.12772 of 2020 (Yogeshwar Sood and Another vs. State of U.P. and Others) and the judgment of the Hon'ble Supreme Court in Daulat Ram vs. State of Punjab, AIR 1962 SC 1206.

6. Besides the above, learned counsel for the applicants has also relied upon the judgment of the Apex Court in the case of Devender Kumar Vs. State (NCT of Delhi) & Another reported in 2025 SCC OnLine SC 1753, judgment of the Division Bench of this Court 8th January, 2024 passed in Criminal Misc. Writ Petition No. 17560 of 2023 (Sumit & Another Vs. State of U.P. & Others), judgment of the Coordinate Benches of this Court dated 26th September, 2024 passed in Application U/S 482 No. 5131 of 2024 (Sheel Prakash Gupta Vs. State of U.P. Thru. Prin. Secy. Home LKO & Another, and dated 12th November, 2025 passed in Application U/S 482 No. 9486 of 2025 (Sanjay Kashyap @ Sanjay Kumar Vs. State of U.P. & Others).

7. Per contra, learned counsel for opposite party no.2 and the learned A.G.A. could not dispute the legal position laid down in the judgments relied upon by the learned counsel for the applicants.

8. I have considered the rival submissions advanced by learned counsel for the parties and have perused the material available on record.

9. For adjudicating upon the aforesaid issue raised by the learned counsel for the applicants, it would be worthwhile to reproduce Section 215 (1) (a) B.N.S.S. which is quoted hereunder: "215. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or(ii) of any abetment of, or attempt to commit, such offence; or(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

..."

10. The **Hon'ble Supreme Court in Daulat Ram vs. State of Punjab** reported in AIR 1962 SC 1206 has categorically held that where the statute mandates a written complaint by the competent public servant, cognizance taken on the basis of a police report or charge-sheet is wholly without jurisdiction and the entire proceedings stand vitiated ab initio.

11. This Court in **Ramendra Sharma and Others (supra)**, after considering the provisions of Section 195 Cr.P.C. as well as the judgment of the Hon'ble Supreme Court in Daulat Ram (supra), has held that an FIR registered by a police officer and the consequent charge-sheet under Section 174-A I.P.C. without there being a written complaint by the competent public servant are legally unsustainable and liable to be quashed.

12. The same principle was reiterated by this Court in **Yogeshwar Sood and Another (supra)** wherein it was held that registration of an FIR under Section 174-A I.P.C. prima facie amounts to an abuse of the process of law in view of the statutory embargo contained in Section 195 Cr.P.C.

13. The Apex Court in the case of **D.K. Rajendran and Ors. etc. etc. Vs. State of T.N.**, reported in AIR 2010 SC 3718, in Para 25 has held as follows:

"25. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the pubic servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction."

(Emphasis supplied)

13. In the recent judgment, the Apex Court in the case of **B.N. John Vs. State of U.P. & Another** passed in Criminal Appeal No...of 2025/Special Leave Petition (Crl.) No. 2184 of 2024 decided on 2nd January, 2025 (reported in 2025 SCC OnLine SC 7) has opined has follows:

"...

A bare perusal of Section 195 (1) of the CrPC clearly indicates that there is a bar on the court to take cognizance of any offence punishable under Section 172 to 188 (both inclusive) of the IPC except on a complaint in writing made by the concerned public servant to the court. Therefore, if it is found as contended by the appellant that in respect of the offence under Section 186 of the IPC against him, no such complaint was filed by the concerned public servant as contemplated under Section 195 (1) (a) CrPC, the CJM could not have taken cognizance of the offence under Section 186 of the IPC.

In this regard, the appellant has specifically pleaded to which there is no rebuttal from the State that no such complaint was made in writing by a public servant as required under Section 195 (1) of the CrPC relating to the commission of offence by the appellant under Section 186 of the IPC.

.....

Under the circumstances, we are of the opinion that taking cognizance by the CJM, Varanasi, of the offences under Section 353 of the IPC and 186 of the IPC was not done by following the due process contemplated under the provisions of law, and accordingly, the same being contrary to law, all the orders passed pursuant thereto cannot be sustained and would warrant interference from this Court."

14. In the present case, the record reveals that the FIR dated 6th October, 2024 under Sections 221 and 223 B.N.S. (Sections 186 and 188 I.P.C.) along with other charging sections, was registered by the Head Constable of Police Station-Kotwali Dehat, District-Saharanpur on his own. No written complaint by the competent public servant, as required under Section 215 (1) (a) B.N.S.S./195(1)(a) Cr.P.C., has been brought on record. The prosecution was initiated solely on the basis of the police report, followed by submission of the charge-sheet and passing of the cognizance order dated 8th April, 2025.

15. Once the mandatory requirement prescribed under Section 215 B.N.S.S./195 Cr.P.C. has not been complied with, the learned Additional Chief Judicial Magistrate-I, Saharanpur could not have legally taken cognizance upon the police report. The impugned cognizance order, therefore, suffers from inherent lack of jurisdiction.

16. Apart from the above, the cognizance and summoning order dated 8th April, 2025 does not disclose application of judicial mind. The order neither specifies the penal provision nor mentions the names of the accused persons. It is a cryptic and mechanical order which cannot be sustained in law.

17. So far as the prayer made by the learned counsel for the applicants for quashing of the impugned charge-sheet and entire proceedings of the aforesaid criminal case is concerned, this Court has not doubted the law laid down by Apex Court and the judgments passed by this Court, which have heavily been relied upon by the learned counsel for the applicants referred to above, even though this Court always pays respects to the judgment passed by any Court of Law. However, on the issue for the quashing charge-sheet and the

entire proceedings as opined in the aforesaid judgments, the opinion of this Court is otherwise. This Court is of the considered opinion that the Investigating Officer has submitted the impugned charge-sheet under Sections 121 (1), 125, 126 (1), 221, 223, 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932. It has already been discussed above that out of the aforesaid Sections i.e. Sections 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932, only Sections 221 and 223 B.N.S. are barred by Section 215 (1) (a) B.N.S.S. and the concerned Trial Court has committed error in taking cognizance under Sections 221 and 223 B.N.S. along with other charging sections on the ground that trial court has taken cognizance to the said offence on the charge-sheet submitted by the Police without any complaint in writing of the public servant concerned.

18. The fault on the part of the Police to lodge the first information report and also to submit charge-sheet under Sections 221 and 223 B.N.S. along with other charging Sections 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932 as well as the fault on the part of the trial court which has taken cognizance thereon including Sections 221 and 223 B.N.S. without any complaint in writing of the public servant concerned or of some other public servant, which hits the statutory provisions of Section 215 (1) (a) B.N.S.S., the alleged offence committed by the accused like the applicants under Sections 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932 and under one of the aforesaid charging Sections, the maximum punishment to be awarded is upto 7 years, cannot be washed out by this Court only on the ground that the trial court has committed error in taking cognizance under Sections 221 and 223 B.N.S. along with other charging Sections against the applicants without any complaint in writing of the public servant concerned. The inherent jurisdiction of this Court under Section 528 B.N.S.S. is intended to prevent abuse of the process of the Court and to secure the ends of justice within the four corners.

19. Let us assume, for the sake of argument, that in a case where, after lodging of the first information report, the Investigating Officer submits charge-sheet involving heinous offenses (such as Sections 109, 103, 80, 309, 63, 64 and 310 B.N.S.) alongside offenses under Sections 206 and 223 B.N.S., and the Magistrate takes cognizance of all that Sections including Sections 206 to 223 B.N.S. without any submission of complaint as mandatory under Section 215 (1) (a) B.N.S.S., then in such a scenario, can the Court quash the entire charge-sheet and criminal proceedings because the concerned Magistrate has not complied the provisions Section 215 (1) (a) B.N.S.S., while washing out the alleged heinous offenses committed by the accused i.e. offences under Sections 109, 103, 80, 309, 63, 64 and 310 B.N.S.

20. In view of the deliberation and discussion made above, cognizance/summoning order dated 8th April, 2025 passed by the Additional Chief Judicial Magistrate-I, Saharanpur in Criminal Case No. 1617 of 2025 (State of U.P. Vs. Kari Naushad & Others), arising out of Case Crime No. 425 of 2024, under Sections 121 (1), 125, 126 (1), 221, 223, 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932, Police Station-Kotwali Dehat, District-Saharanpur is hereby set aside. The prayer of the applicants for quashing the charge-sheet and entire criminal proceedings is refused.

21. The matter is remitted back to the court concerned to pass a fresh order on the question of taking cognizance, if required, in light of the law laid down by the Hon'ble Supreme Court as well as this Court referred to above.

22. Accordingly, the present application stands partly **allowed**.

(2026) 7 ILRA 1428
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.07.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 5334 of 2026

Mashu @ Aman Joshi ...Applicant
Versus
State of U.P. ...Opposite Party

Issue for Consideration

Matter pertains to whether the applicant, who had been declared a proclaimed offender u/s 82 Cr.P.C. for non-cooperation with the investigation and non-appearance before the Investigating Officer despite an earlier assurance recorded by Court, was entitled to be enlarged on anticipatory bail u/s 482 B.N.S.S. in connection with an offence u/s 108 B.N.S. (abetment of suicide), and whether such an application for anticipatory bail was maintainable in view of applicant's status as an absconder/proclaimed offender.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - s. 108 - Code of Criminal Procedure, 1973 - s. 82 - Anticipatory bail - Maintainability - Non-cooperation with investigation - Declared proclaimed offender - Despite assurance to Court - Scope - Against the applicant it was allegation that he had established a physical relationship with the victim on the false promise of marriage, and upon her discovering that he was already married and confronting him, he threatened her with dire consequences, refused to marry her, and subjected her to continuous mental cruelty, explicitly stating during a telephonic conversation that he would never marry her, consequent upon which the victim committed suicide by hanging on 31.01.2026 - Post-mortem confirming asphyxia as cause of death - It was further the case of informant that applicant's earlier writ petition for quashing of FIR had been dismissed by Division Bench with liberty to seek bail before the court concerned, that the applicant thereafter neither appeared before the Investigating Officer nor filed any bail application, pursuant to which proceedings u/s 82 Cr.P.C. were initiated against him, that upon his application u/s 528 B.N.S.S. the said notice was earlier set aside on his assurance to cooperate with the investigation, but that despite such assurance, the applicant continued to remain non-cooperative and did not appear before the Investigating Officer, rendering him liable to be treated as an absconder/proclaimed offender.

Held*:* The deliberate oblivion to the process issued by Court on the part of applicant denudes his claim to treat his application for grant of anticipatory bail as maintainable under the roof of a 'rare and exceptional case' and thereby to grant anticipatory bail to him - The wilful defaulter, who does not cooperate with the trial court or investigation at all, is not entitled to get any relief by way of anticipatory bail - **Accordingly anticipatory bail application rejected.** [Paras 20 to 22] (E-13)

Case Law Cited

Ayyub and Others v. State of U.P. and Another, **2025 INSC 168;** *Prabhu v. The State Rep. By The Inspector of Police and Another,* **2024 SCC Online SC 137, decided on 30.01.2024;** *Satender Kumar Antil v. Central Bureau of Investigation and Another* **(2021) 10 SCC 773;** *Prem Shankar Prasad v. State of Bihar and Another,* **2021 SCC OnLine Supreme Court 955;** *Lavesh v. State (NCT of Delhi)* **(2012) 8 SCC 730;** *State*

of Madhya Pradesh v. Pradeep Sharma, **(2014) 2 Supreme Court Cases 171;** *Srikant Upadhyay and Others v. State of Bihar and Another,* **(2024) 12 SCC 382;** *P. Chidambaram v. Directorate of Enforcement,* (**2019) 9 SCC 24;** *State of Haryana v. Dharamraj,* **2023 SCC Online SC 1085 - referred to**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Code of Criminal Procedure, 1973.

List of Keywords

Anticipatory Bail; Police Station Chhatta, Agra; Physical relationship; False promise of marriage; Applicant was already married; Marital status; Dire consequences; Refused to marry; Mental cruelty; Telephonic conversation; Ligature mark; Asphyxia; Ante-mortem hanging; Abetment of suicide; Instigate; Incitement; Quashing of FIR; Proclaimed offender; Absconding; Notice u/s 82 of Cr.P.C; Prima facie case against accused; Wilful defaulter; Application rejected.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. - 5334 of 2026

From the FIR dated 01.02.2026 in Case Crime No. 20 of 2026 at Police Station Kotwali Chhatta, District Agra.

Appearances for Parties

Advs. for the Applicant(s):
Amar Nath, Deepak Singh

Advs. for the Opposite Party(s):
G.A., Manoj Mishra, Shashank Mishra

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

1. Heard Sri Deepak Singh, learned counsel for the applicant, Sri Shashank Mishra, learned counsel for the informant and Sri Rabindra Kumar Singh, learned A.G.A. for the State and perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No. 20 of 2026, under Sections 108 of B.N.S., Police Station - Chhatta, District Agra, with a prayer to grant him anticipatory bail.

3. The prosecution case, in brief, is that a First Information Report was lodged on 01.02.2026 at 19:20 hours in respect of alleged incident dated 31.01.2026, at Police Station Chhatta, District Agra. The F.I.R. was registered as Case Crime No. 20 of 2026, under Section 108 of B.N.S. The applicant was nominated in the F.I.R. which was lodged by the first informant in respect of the offence, allegedly committed by the applicant. It is stated in the F.I.R. that a physical relationship was established by the applicant with the victim on the false promise of marriage. Upon discovering that the applicant was already married, the victim confronted him regarding his marital status. In response, the applicant threatened the victim with dire consequences and refused to marry her. The applicant subjected the victim to continuous mental cruelty. Furthermore, during a telephonic conversation, the applicant explicitly stated that he would not solemnize marriage with the victim under any circumstances, regardless of the consequences. The applicant further admitted that he established physical relationship on the pretext of marriage. After hearing this, the victim committed suicide on 31.01.2026.

4. The post-mortem report was prepared on 01.02.2026 and ligature mark of size 30 cm X 02 cm was found all around the upper part of neck. The cause of death was asphyxia as a result of ante-mortem hanging.

5. The investigating officer commenced investigation and recorded statements of the informant, wherein he reiterated the F.I.R. version.

6. It is submitted by the learned counsel for the applicant that the applicant is an innocent person and has no concern with the present offence. The allegations levelled against the applicant, are false. It is further submitted that the applicant has falsely been implicated in the present case. It is further submitted that the applicant has apprehension of his arrest by the police. It is also contended that no offence whatsoever is made out against the applicant. It cannot be said that the applicant, by breaking up the relationship with the deceased, had intended to abet the deceased to commit suicide. The deceased came under mental stress and thereafter on 31.01.2026, she herself committed suicide and the applicant had nothing to do with the act of the deceased. It is further submitted that the basic ingredients to constitute the offence under Section 108 of B.N.S. are missing inasmuch as the intention of the accused to aid or instigate or to abet the deceased to commit suicide is must for attracting section 108 of B.N.S. In cases of abetment of suicide, there must be proof of direct or indirect acts of incitement to commit suicide. The alleged harassment meted out to her should have left the victim with no other alternative but to put an end to her life. It is further contended that the deceased had option to settle down in her life with some other boy. There is no nexus between the act of the applicant and act of suicide of the deceased.

7. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ayyub and Others vs. State of U.P. and Another, 2025 INSC 168** and **Prabhu vs. The State Rep. By The Inspector of Police and Another, 2024 SCC Online SC 137**, decided on 30.01.2024.

8. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer and submitted that the applicant filed a Crl. Misc. Writ Petition No. 9763 of 2026, for quashing of the F.I.R. The aforesaid writ petition was not entertained by the Division Bench of this Court and the same was dismissed vide order dated 14.05.2026 with a direction that in case the applicant/petitioner appears before the court concerned and applies for bail, then in that eventuality his bail application shall be considered by the court concerned in the light of law laid down by Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and Another (2021) 10 SCC 773**.

9. It is further submitted by the learned counsel for the informant that in pursuance of order dated 14.05.2026, the applicant did not appear and no bail application was filed before the court concerned. Thereafter, the proceedings were initiated against him under Section 82 of Cr.P.C. Being aggrieved by the initiation of the proceedings under Section 82 of Cr.P.C., the applicant filed an application under Section 528 B.N.S.S. No. 22011 of 2026, which was disposed of vide order dated 27.05.2026 on the assurance of applicant that he will cooperate with the concerned investigating officer for concluding the investigation. Upon assurance extended by the learned counsel for the applicant, this Court set-aside the impugned notice under Section 82 of Cr.P.C. which was attached by the police personnel of Police Station Chhatta, District Agra, in connection with the present case.

10. Learned counsel for the informant has drawn attention of this Court on the notice dated 28.06.2026, issued by the Sub-Inspector Abhay Singh of Police Station Chhatta, Commissionerate Agra, wherein it is mentioned that the applicant is neither cooperating with the investigation nor is appearing before the investigating officer. It is next submitted that the applicant did not appear before the investigating officer in pursuance of aforesaid order dated 27.05.2026 and proceedings under Section 82 of Cr.P.C. has been initiated against the applicant, therefore, the present anticipatory bail application is not maintainable and deserves to be dismissed.

11. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

12. It is not a disputed fact that the proceedings were initiated against the applicant under Section 82 of Cr.P.C. in connection with the present case crime number. The applicant was declared as a proclaimed offender and the impugned notice under Section 82 of Cr.P.C. was challenged by the applicant by way of filing of an application U/S 528 B.N.S.S. No. 22011 of 2026. It was ordered by this Court that the applicant will cooperate with the concerned investigating officer for concluding the investigation, but as per the police report, the applicant has not appeared before the investigating officer for recording his statement.

13. The conduct of the applicants drags them under the umbrella of the law promulgated by the Hon'ble Apex Court in **Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955**. In the facts of that case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it revealed that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this-

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually."

14. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi)(2012) 8 SCC 730** has held that "Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

15. Further, the judgment passed in **Lavesh (supra)** was referred by the Hon'ble Apex Court in **State of Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171** and referring to paragraph 12 of the judgment of **Lavesh (supra)**, in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

16. In the case of **Srikant Upadhyay and Others vs. State of Bihar and Another, (2024) 12 SCC 382**, the Hon'ble Supreme Court has held that the power to grant anticipatory bail is an extraordinary power. While called upon to exercise the said power, the Court has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice. When warrant of arrest or proclamation is issued, the applicant is not entitled to invoking extraordinary power. The relevant paragraph no. 30 of **Srikant Upadhyay (supra)** is quoted as under:

"30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

17. In the case of **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, the Hon'ble Apex Court has held that arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The power under Section 438 of Cr.P.C./482 of B.N.S.S. has to be exercised sparingly. The privilege of the pre-arrest bail should not be granted only in exceptional cases. The relevant paragraph no. 69 of **P. Chidambaram (supra)** is reproduced as under:

"69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule

and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. "

18. Further, in the pronouncement of the Hon'ble Apex Court in State of **Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023 the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesh (supra) is the decision in State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v. State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v. State of Maharashtra, (2022) 8 SCC 282, this Court concluded:

'68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529, 2021 SCC OnLine SC 955] ...'"

19. Hence, the law is discernible on the point that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court without offering any legal or plausible justification for his abscondence and consequently has been declared a proclaimed offender.

20. The deliberate oblivion to the process issued by the Court on the part of the applicant denudes his claim to treat his application for grant of anticipatory bail as maintainable under the roof of a 'rare and exceptional case' and thereby to grant anticipatory bail to him.

21. In view of the above, declaring the present application for grant of anticipatory bail as not maintainable, I deem it not a fit case to grant anticipatory bail to the present applicant. The wilful defaulter, who does not cooperate with the trial court or investigation at all, is not entitled to get any relief from this Court by way of anticipatory bail.

22. The anticipatory bail application is, accordingly, **rejected**.

(2026) 7 ILRA 1434
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.07.2026

BEFORE

THE HON'BLE MANISH KUMAR, J.

Criminal Misc. Bail Application No. 5947 of 2026

Brijesh Pandey @ Pintu ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Issue for Consideration

Matter pertains to whether the applicant, booked under BNS, 2023 and POCSO Act, was entitled to be enlarged on bail, having regard to the fact that he was not named in the FIR, his implication surfaced only through the victim's subsequent statement recorded under s. 183 BNSS, and the allegation of rape stood unsupported by the medical evidence on record.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - s.64(2)(m) (corresponding to s. 376(AB), IPC), 137(2) (corresponding to s. 363 IPC) - POCSO Act, 2012 - s. 5(I)/6 - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 180, 183 - Bail - Grant of - Allegation against the applicant was that on 23.03.2026 he had enticed and eloped with fourteen-year-old daughter of informant - Subsequently, upon recording of victim's statement, the Investigating Officer added s. 64(2)(m) BNS and s. 5(I)/6 of POCSO Act, arraigning the present applicant, whose name did not figure in FIR or in statements of other witnesses but surfaced for first time in victim's statement, wherein it was alleged that he lured her to his residence under the pretext of showing his house and outraged her modesty in the garage - However, the applicant, a married man residing with his wife and two children and possessing no criminal antecedents, has remained incarcerated since 08.04.2026, and allegation of sexual assault is stated to be unsupported by supplementary medico-legal report, which recorded the absence of spermatozoa in the examined smears, while the complainant and victim have resiled from allegations, asserting that the applicant's name was introduced under pressure exerted by local police and that he has been falsely implicated.

Held*:* Considering the submissions of learned counsel for the parties and going through the record of case, the applicant has made out a case for grant of bail - The applicant is not named in the F.I.R - The allegation of rape against the applicant does not find support from the medical report of victim - The complainant and the victim filed short counter affidavit in support of applicant, thus, prima facie, no case is made out against the applicant **- Accordingly, bail application allowed.** [Paras 11, 12] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; POCSO Act, 2012

List of Keywords

Bail; Complainant; Daughter of informant; Not named in FIR; Police Station Khodare, District - Gonda; POCSO Act; BNS, 2023; BNSS, 2023; Enticed and eloped; Medical examination; Medico Legal Report; Spermatozoa; Garage; Outraged her modesty; Sexual abuse; Wrongly Implicated; Rape; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 5947 of 2026

From the FIR dated 24.03.2026 in Case Crime No. 55 of 2026 at Police Station Khodare, District Gonda.

Appearances for Parties

Adv. for the Applicant(s):
Abhiuday Pratap Singh

Advs. for the Opposite Party(s):
G.A.

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

1. Shri Shashank Singh, learned Advocate has put in appearance and filed his Vakalatnama alongwith short counter affidavit on behalf of complainant, which is taken on record.

2 . Heard learned counsel for the applicant, learned counsel for the complainant and learned AGA for the State and perused the record.

3. By means of this application, the applicant, who is involved in Case Crime No. 55 of 2026, under sections 64 (2) m of BNS, 2023 (old sections 376 (AB) IPC) and under Section 5(I)/6 of POCSO Act, Police Station Khodare, District- Gonda, is seeking enlargement on bail.

4. The brief facts of the present case are that on 24.03.2026 an FIR has been lodged by the informant under Sections 137 (2) of BNS, 2023 (old Section 363 IPC) against the named accused person alleging therein that on 23.03.2026 the applicant has enticed and eloped with the 14 years old daughter of the informant. After recording the statement of the victim under Sections 180 and 183 BNSS the Investigating Officer added sections 64(2)m BNS (Old Section 376 IPC) and Section 5(I)/6 POCSO Act.

5. Learned counsel for the applicant has submitted that the applicant is neither named in the F.I.R. nor his name has been taken in the statement of the other witnesses, but his name has been cropped up for the first time in the statement of victim recorded under Section 183 of BNSS, 2023, wherein she has stated that when the named accused person did not turn up, the applicant came and asked the victim to come with him to his house where in the garb of showing his house he took her to the Garage, where he outraged her modesty.

6. It is further submitted that the statement of the victim recorded under Section 183 BNSS, 2023 and the allegation of rape against the applicant does not find support from the medical evidence as the doctor, who conducted the medical examination of the victim has opined that no definite opinion could be given regarding sexual abuse. As per supplementary medico legal report, "*Dead or living spermatozoa are "not" seen in the received examined smears*", whereas the medical

was held on the very next date when the victim was found or alleged to be released by the applicant on 28.03.2026.

7. It is further submitted that the applicant is a married man having two children and the family of the applicant i.e. wife and two children are residing in the same house.

8. It is further submitted that applicant has no criminal history and he is in jail since 08.04.2026.

9. Learned counsel for the informant and the victim has stated on the basis of counter affidavit that the victim has taken the name of the applicant during course of investigation solely under pressure exerted by the local police and the applicant has never committed any act as alleged against him and he has been wrongly implicated in the present case.

10. On the other hand, learned AGA on the basis of instructions received has opposed the prayer for grant of bail but unable to dispute the submissions advanced on behalf of applicant.

11. Considering the submissions of learned counsel for the parties and going through the record of the case, the applicant has made out a case for grant of bail on the following grounds :

i) the applicant is not named in the F.I.R.;
ii) the allegation of rape against the applicant does not find support from the medical report of the victim as discussed above;
iii) the complainant and the victim filed short counter affidavit in support of the applicant, as discussed above, thus, prima facie, no case is made out against the applicant.

12. Accordingly, the instant bail application is allowed.

13. Let the applicant- ***Brijesh Pandey @ Pintu*** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant will not tamper with the evidence during trial.
(ii) The applicant will not pressurize/intimidate the prosecution witness(es).
(iii) The applicant shall not commit an offence.
(iv) The applicant shall remain present before the trial court on each date fixed, either personally or through counsel.

14. In case of default of above conditions it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

15. As this order relates to enlargement of the applicant on bail, it is clarified that observations made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observations made in this order.

(2026) 7 ILRA 1437
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.07.2026

BEFORE

THE HON'BLE SAMEER JAIN, J.

Criminal Misc. Bail Application No. 25838 of 2026

Mohit Pal **...Applicant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the applicant, named in the FIR and facing charges u/s 103(1) BNS and ss. 9(1)A(1)/25(2) of Arms Act for the alleged murder of deceased, was entitled to be released on bail during the pendency of trial, particularly in light of credibility of sole eye-witness whose statement was recorded by Investigating Officer two days after the incident, and in the absence of informant himself being an eye-witness to the occurrence.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - s.103(1) - Arms Act, 1959 - ss. 9(1)A(1)/25(2) - Murder - FIR - Suspicion - No eye witness - Bail - The instant bail application was preferred by applicant seeking release on bail in Case Crime No. 69 of 2026, registered at Police Station Girwa, District Banda, wherein it was alleged that on the intervening night of 24/25.2.2026, the applicant, along with unknown associates, committed the murder of deceased - However, the informant who lodged the FIR was not an eye-witness to the occurrence and FIR appeared to have been lodged on mere suspicion - Sole purported eye-witness, one Monu Nishad, whose statement was recorded by Investigating Officer only after a delay of two days on 27.2.2026, claimed to have witnessed the applicant holding a pistol and fleeing the scene after being awakened by noise - A version that, prima facie, appeared doubtful and suggestive of a planted witness, and applicant, having no previous criminal antecedents and having remained in judicial custody since 27.2.2026, sought enlargement on bail during pendency of trial.

Held*:* Applicant is named in the FIR but admittedly informant of case was not the eye witness and it reflects, he lodged the FIR against the applicant on basis of suspicion - It reflects, after two days Investigating Officer recorded the statement of one Monu Nishad and he stated that on date of incident he was sleeping nearby the deceased and after hearing some noise when he woke up then witnessed that applicant was having pistol in his hand and he was going from the place of incident and he also threatened him but the manner in which he narrated the story, prima facie, creates doubt on his statement and considering the fact that his statement was recorded after two days, argument advanced by learned counsel for the applicant that actually even Monu Nishad could not see the real incident and after two days Investigating Officer planted him as witness, cannot be ruled out - Further, except, Monu Nishad there is no other eye-witness account - **Accordingly, without expressing any opinion on merits of case, instant bail application allowed**. [Paras 10 to 12, 15] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nyaya Sanhita, 2023; Arms Act, 1959

List of Keywords

Bail; FIR; Suspicion; Informant was not eye-witness; Murder; Investigating Officer; Pistol; Deceased; Threatened; No criminal history; BNS, 2023; Arms Act, 1959; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 25838 of 2026

From the FIR dated 25.02.2026 in Case Crime No. 69 of 2026 at Police Station Girwa, District Banda.

Appearances for Parties

Adv. for the Applicant(s):
Ajay Kumar

Adv. for the Opposite Party(s):
G.A.

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

1. Supplementary affidavit filed today, on behalf of the applicant is taken on record.

2. Heard Sri Ajay Kumar, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 69 of 2026, under Sections 103(1) BNS & Section 9(1)A(1)/25 (2) Arms Act, Police Station Girwa, District Banda, during pendency of the trial in the court below.

4. Learned counsel for the applicant submitted that however, applicant is named in the FIR and according to the FIR on 25.2.2026 in the night applicant alongwith his unknown associates committed the murder of the deceased but it reflects, FIR of the present case was lodged on the basis of suspicion and admittedly, informant of the case was not the eye-witness.

5. He further submitted that however during investigation when Investigating Officer after two days i.e 27.2.2026 recorded the statement of one Monu Nishad then he very casually stated that in the intervening night of 24/25.2.2026 when he was sleeping nearby the deceased then after hearing some noise, he woke up and witnessed that applicant was having pistol in his hand and he was going from the place of incident and even applicant threatened him but his statement, prima facie, does not appear to be convincing and it reflects, as there is no eye-witness account therefore, Investigating Officer, planted this witness and no reliance can be placed on his statement.

6. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 27.2.2026.

7. Per contra, learned AGA opposed the prayer for bail and submitted that witness-Monu Nishad is the sole eye-witness and from his statement it reflects, applicant committed the murder of the deceased and there is no reason to disbelieve his statement, at this stage.

8. He further submitted that therefore, considering the facts of the case and statement of witness Monu Nishad, applicant does not deserve to be enlarge on bail.

9. I have heard learned counsel for the parties and perused the record of the case.

10. However, applicant is named in the FIR but admittedly informant of the case was not the eye witness and it reflects, he lodged the FIR against the applicant on the basis of suspicion.

11. It reflects, after two days Investigating Officer recorded the statement of one Monu Nishad and he stated that on the date of incident he was sleeping nearby the deceased and after hearing some noise when he woke up then witnessed that applicant was having pistol in his hand and he was going from the place of incident and he also threatened him but the manner in which he (Monu Nishad) narrated the story, prima facie, creates doubt on his statement and considering the fact that his statement was recorded after two days, argument advanced by learned counsel for the applicant that actually even Monu Nishad could not see the real incident and after two days Investigating Officer planted him as witness, cannot be ruled out, at this stage.

12. Further, except, Monu Nishad there is no other eye-witness account.

13. Further, applicant is having no previous criminal history to his credit and he is in jail in the present matter since 27.2.2026.

14. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

15. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

16. Let the applicant-**Mohit Pal**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.
(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.
(iii) The applicant shall not indulge in any criminal and anti-social activity.

17. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

18. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

(2026) 7 ILRA 1440
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 3845 of 2026

Udayveer Singh **...Petitioner**
Versus
Rent Tribunal & Ors. **...Respondents**

Issue for Consideration

Whether disputed signatures appearing on a photocopy of an alleged rent agreement can legitimately be referred for scientific examination by a handwriting expert in the absence of the original document?

Headnotes

Evidence — Opinion of handwriting expert — Nature and evidentiary value.

HELD: The opinion of a handwriting expert is a relevant fact under the law of evidence, but such opinion is merely advisory in character and does not conclude the issue. The Court is not bound by the opinion of the expert, which is only one piece of evidence to be evaluated in conjunction with the entire material available on record; expert evidence is intended to assist the Court and not to supplant its judicial function. [Para 13]

U.P. Regulation of Urban Premises Tenancy Act, 2021 — S. 21(2) — Eviction proceedings — Application for examination by handwriting expert of disputed signatures on photocopy of rent agreement — Original not produced — Rejection upheld.

HELD: Handwriting examination ordinarily involves examination of line quality, pen pressure, rhythm, speed, natural variations, pen lifts, retouching, ink flow and other microscopic characteristics which are ordinarily discernible only from the original writing. A photocopy merely reproduces the visual image of a document and inevitably obliterates these intrinsic forensic features; an opinion founded solely upon a photocopy is, therefore, inherently less dependable than one based upon the original document. The Court is not required to direct an expert examination where the material itself is inherently unsuitable for reliable scientific comparison. Where the alleged rent agreement was available only as a photocopy, the petitioner's own case being that the original remained with the deceased landlord, the Rent Authority could not be faulted for concluding that the proposed exercise would not materially assist the adjudicatory process. [Paras 14-16]

Though some decisions recognise that, in exceptional cases, an expert may express an opinion on the basis of a clear photocopy, those authorities do not lay down a rule that every disputed photocopy must invariably be referred for forensic examination. The decisive consideration remains whether the material proposed to be examined is capable of furnishing dependable scientific assistance, an assessment which lies within the judicial discretion of the Court concerned. [Para 20]

Evidence — Admissions — Whether admissions of opposite party confer a right to seek expert examination of a document unavailable in original.

HELD: Admissions constitute relevant evidence, but do not confer upon a party an indefeasible right to seek expert examination of a document which is unavailable in its original form. Collateral admissions cannot

improve the forensic reliability of a secondary reproduction. Such statements are matters of evidence whose probative value is to be assessed by the Rent Authority on merits; no amount of admissions can dispense with the foundational requirement that the material proposed for forensic examination must itself be capable of reliable scientific scrutiny. An expert opinion cannot be directed merely to undertake a speculative exercise. [Paras 17, 19, 24]

Indian Stamp Act, 1899 — S. 35 — Objection regarding admissibility of unstamped rent agreement — Relevance to prayer for expert examination.

HELD: Refraining from expressing any final opinion on the question of admissibility, which is to be determined at the appropriate stage, where the document is not only unavailable in its original form but is also confronted with an objection regarding its admissibility, the authorities below cannot be said to have acted unreasonably in declining to direct an expert examination. [Paras 18, 22]

Constitution of India — Art. 227 — Supervisory jurisdiction — Scope.

HELD: The jurisdiction under Article 227 is supervisory and not appellate. The High Court does not reappreciate evidence or substitute its own view merely because another view is possible; interference is warranted only where the subordinate court or tribunal has acted without jurisdiction, has failed to exercise jurisdiction vested in it, or where the impugned order suffers from patent illegality, manifest perversity or has occasioned a grave miscarriage of justice. Rejection of the application for expert opinion does not foreclose the petitioner's right to establish the tenancy or its terms through rent receipts, oral evidence or other admissible material; the impugned orders merely decline one particular mode of proof. [Paras 21-23, 25]

Petition dismissed. No order as to costs. (E-14)

Case Law Cited

Murari Lal v. State of Madhya Pradesh, (1980) 1 SCC 704 — relied on; *T. Lakshmi v. State of Andhra Pradesh*, Writ Petition No. 24159 of 2016, decided on 12 November 2021 (Andhra Pradesh High Court) — relied on; *Bidyut Sarkar v. Kanchilal Pal*, 2024 SCC Online SC 2603 — referred to.

List of Acts / Statutes

Constitution of India; U.P. Regulation of Urban Premises Tenancy Act, 2021; Indian Stamp Act, 1899; Registration Act, 1908; Transfer of Property Act, 1882.

List of Keywords

Handwriting expert; Expert opinion; Photocopy; Disputed signature; Original document; Forensic examination; Rent agreement; Admissions; Admissibility; Supervisory jurisdiction.

Case Arising From

Order dated 20.11.2025 passed by the Rent Authority, Etah, in Rent Case No. 629 of 2024, instituted under Section 21(2) of the U.P. Regulation of Urban Premises Tenancy Act, 2021, as affirmed by judgment and order dated 07.01.2026 passed by the District Judge/Rent Tribunal, Etah, in Misc. Appeal (RCA)-Nil of 2026.

Appearance for Parties

For the Petitioner(s): Jahar Singh (Kashyap), Stuti Singh.

For the Respondent(s): C.S.C., Prem Chandra, Sudhanshu Kumar.

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Ram Lakhan Kashyap, learned Advocate holding brief of Sri Jahar Singh (Kashyap), learned counsel for the petitioner and Sri Swapnil Kumar, learned Senior Counsel assisted by Sri Sudhanshu Kumar, learned counsel appearing for the respondent.

2. The present petition under Article 227 of the Constitution of India questions the legality of the order dated 20.11.2025 passed by the Rent Authority, Etah in Rent Case No.629 of 2024 instituted under Section 21(2) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, as affirmed by the judgment and order dated 07.01.2026 passed by the District Judge/Rent Tribunal, Etah in Misc. Appeal (RCA)-Nil of 2026. By the aforesaid orders, the petitioner's application seeking examination by a handwriting expert of the disputed signatures appearing on a photocopy of the alleged rent agreement dated 22.09.2005, by comparison with the admitted signatures of late Ansar Hussain, predecessor-in-interest of respondent, has been rejected.

3. The controversy is narrow, but it raises an issue of evidentiary reliability of considerable importance. The principal question that arises for consideration is whether disputed signatures appearing on a photocopy of an alleged rent agreement can legitimately be referred for scientific examination by a handwriting expert in the absence of the original document.

4. The petitioner's case, in brief, is that a rent agreement dated 22.09.2005, which was subsequently notarized on 16.12.2005, was executed between him and late Ansar Hussain in respect of the shop in dispute. It is asserted that, pursuant thereto, the petitioner entered into possession of the premises, established his tailoring business therein, and has continued to occupy the premises as a tenant upon payment of rent in terms of the said agreement.

5. The respondent instituted proceedings before the Rent Authority on 29.04.2024 under Section 21(2) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, seeking eviction of the petitioner from the shop in dispute. The proceedings were registered as Rent Case No.629 of 2024. In his written statement, the petitioner relied upon the aforesaid rent agreement and pleaded that the signatures appearing thereon were those of late Ansar Hussain, the predecessor-in-interest of the respondent. On that basis, it was contended that the provision under sub-sections (3) and (6) of Section 4 of the Act, 2021 were inapplicable to the facts of the case.

6. During the pendency of the proceedings, the petitioner moved an application praying that the disputed signatures appearing on the photocopy of the alleged rent agreement be referred to a handwriting expert for comparison with the admitted signatures of late Ansar Hussain available on the rent receipts and other admitted documents.

7. The Rent Authority rejected the application principally on the ground that the original rent agreement had not been produced and that the proposed comparison was sought to be undertaken solely on the basis of a photocopy. It held that, in the absence of

the original document, no useful purpose would be served by referring the disputed signatures for scientific examination by a handwriting expert.

8. Aggrieved thereby, the petitioner preferred an appeal before the Rent Tribunal. By the impugned judgment dated 07.01.2026, the Tribunal affirmed the order of the Rent Authority, holding that an expert opinion founded upon a photocopy could not furnish dependable scientific assistance for adjudication. The Tribunal further noticed the respondents' objection regarding the admissibility of the alleged rent agreement under Section 35 of the Indian Stamp Act, 1899 and found no ground warranting interference with the order passed by the Rent Authority.

9. Learned counsel for the petitioner submits that the authorities below have committed manifest illegality in rejecting the application seeking examination by a handwriting expert. It is contended that the respondent, while deposing before the Rent Authority, admitted that he was acquainted with and could identify the signatures of his deceased father, late Ansar Hussain. He is also stated to have admitted the initial rate of rent and the agreed mode of its enhancement. In view of these admissions, it is urged that there existed sufficient foundational material to justify comparison of the disputed signatures appearing on the alleged rent agreement with the admitted signatures of late Ansar Hussain available on the rent receipts. It is, therefore, submitted that denial of such opportunity has caused serious prejudice to the petitioner and has resulted in failure of justice.

10. *Per contra*, learned Senior Counsel appearing for the respondent supports the impugned orders and submits that no interference is warranted in exercise of the supervisory jurisdiction under Article 227 of the Constitution. As a preliminary objection, it is contended that the appeal preferred against the order of the Rent Authority itself was not maintainable, the order under challenge being purely interlocutory in nature. On merits, it is submitted that scientific comparison of handwriting or signatures cannot ordinarily be undertaken on the basis of a mere photocopy, since the original characteristics of the writing, including line quality, pen pressure, ink flow, stroke formation and other microscopic features essential for forensic examination, are not preserved in such a reproduction. Reliance in this regard has been placed upon the decision of the Andhra Pradesh High Court in **T. Lakshmi v. State of Andhra Pradesh**.

11. It is further submitted that the factum of tenancy is not in dispute and, therefore, no material prejudice would be caused to the petitioner by refusal of the prayer for expert examination. It is also contended that the alleged rent agreement is neither registered nor duly stamped and is consequently confronted with objections regarding its admissibility under Section 35 of the Indian Stamp Act, 1899 and Section 49 of the Registration Act, 1908 read with Section 107 of the Transfer of Property Act, 1882. According to the respondents, directing expert examination of a document suffering from such foundational infirmities would be an exercise in futility.

12. The controversy lies in a narrow compass; nevertheless, it raises an issue of evidentiary reliability of considerable significance. The principal question that falls for consideration is whether disputed signatures appearing on a photocopy of an alleged rent agreement constitute a proper foundation for seeking examination by a handwriting expert in the absence of the original document, which alone preserves the characteristics necessary for a meaningful scientific comparison.

13. It is trite that the opinion of a handwriting expert is a relevant fact under the law of evidence. Equally well settled, however, is the principle that such opinion is merely advisory in character and does not conclude the issue. The Court is not bound by the opinion of the expert, which is only one piece of evidence to be evaluated in conjunction with the entire material available on record. **In Murari Lal v. State of Madhya Pradesh**, the Supreme Court reiterated that expert evidence is intended to assist the Court and not to supplant its judicial function.

14. The aforesaid principle necessarily proceeds on the assumption that the material forwarded for examination is itself capable of scientific scrutiny. A handwriting expert does not merely compare the visual appearance of letters or signatures. The exercise ordinarily involves examination of line quality, pen pressure, rhythm, speed, natural variations, pen lifts, retouching, ink flow and other microscopic characteristics which are ordinarily discernible only from the original writing. A photocopy merely reproduces the visual image of a document and inevitably obliterates these intrinsic forensic features. Consequently, an opinion founded solely upon a photocopy is inherently less dependable than one based upon the original document.

15. The objection in the present case is, therefore, not merely technical but goes to the very reliability of the proposed exercise. If an expert is required to compare disputed signatures appearing on a photocopy with admitted signatures available on original documents, he is deprived of the very *indicia* which render handwriting examination scientifically meaningful. The risk of distortion, blurring, reduction, shadowing and loss of pressure marks inherent in a photocopy renders the exercise incapable of yielding dependable forensic assistance. In **T. Lakshmi v. State of Andhra Pradesh**, the Andhra Pradesh High Court observed that comparison of a disputed signature appearing on a photocopy with original signatures is susceptible to mechanical error and defective reproduction. The principle emerging therefrom is that the Court is not required to direct an expert examination where the material itself is inherently unsuitable for reliable scientific comparison.

16. The position assumes greater significance in the facts of the present case where the alleged rent agreement is available only in the form of a photocopy. The petitioner's own case is that the original remained with late Ansar Hussain. The document sought to be examined is, therefore, merely a secondary reproduction. In such circumstances, the Rent Authority cannot be faulted for concluding that the proposed exercise would not materially assist the adjudicatory process.

17. The petitioner has placed considerable reliance upon the alleged admissions made by the respondent, during his deposition, namely, that he could identify the signatures of his deceased father and had admitted the initial rate of rent together with the agreed mode of its enhancement. Those assertions, even if accepted at face value, do not alter the legal position. Admissions undoubtedly constitute relevant evidence, but they do not confer upon a party an indefeasible right to seek expert examination of a document which is unavailable in its original form. Whether a document should be referred for forensic examination depends upon its intrinsic evidentiary worth and the feasibility of obtaining reliable scientific assistance. Collateral admissions cannot improve the forensic reliability of a secondary reproduction.

18. The Rent Tribunal has also noticed the objection regarding the admissibility of the alleged rent agreement under Section 35 of the Indian Stamp Act, 1899. This Court refrains from expressing any final opinion on that question, which shall be determined at the appropriate stage in accordance with law. Nevertheless, where the document is not only unavailable in its original form but is also confronted with an objection regarding its admissibility, the authorities below cannot be said to have acted unreasonably in declining to direct an expert examination. In **Bidyut Sarkar v. Kanchilal Pal**, the Supreme Court reiterated the legal consequences flowing from statutory defects affecting the enforceability of documents under the Stamp Act.

19. The contention that the respondent had admitted certain terms relating to the rent or had stated that he could identify the signatures of his deceased father also does not carry the matter any further. Such statements are matters of evidence whose probative value shall be assessed by the Rent Authority while adjudicating the proceedings on merits. They cannot compel the Court to direct an expert examination which is otherwise rendered impracticable by the non-production of the original document.

20. It is true that some decisions have recognised that, in exceptional cases, an expert may express an opinion on the basis of a clear photocopy. Those authorities, however, do not lay down a rule that every disputed photocopy must invariably be referred for forensic examination. The decisive consideration remains whether the material proposed to be examined is capable of furnishing dependable scientific assistance. That assessment lies within the judicial discretion of the Court concerned. In the facts of the present case, the discretion exercised by the authorities below neither suffers from perversity nor discloses any jurisdictional error warranting interference under Article 227 of the Constitution.

21. The limits of the supervisory jurisdiction of this Court under Article 227 of the Constitution also deserve emphasis. The jurisdiction is supervisory and not appellate. This Court does not reappreciate the evidence or substitute its own view merely because another view may also be possible. Interference is warranted only where the subordinate court or tribunal has acted without jurisdiction, has failed to exercise jurisdiction vested in it, or where the impugned order suffers from patent illegality, manifest perversity or has occasioned a grave miscarriage of justice.

22. Tested on the aforesaid touchstone, the impugned orders disclose no such infirmity. The Rent Authority declined the petitioner's application principally because the original rent agreement had not been produced and the proposed comparison was sought to be undertaken solely on the basis of a photocopy. The Rent Tribunal affirmed that view while also noticing the objection regarding the admissibility of the document under the Indian Stamp Act, 1899. These are manifestly relevant considerations bearing directly upon the feasibility and evidentiary worth of the proposed expert examination. Neither authority ignored any material circumstance nor took into account any irrelevant consideration. The discretion exercised by them is informed by sound legal principles and does not suffer from any jurisdictional error warranting interference under Article 227 of the Constitution.

23. Significantly, rejection of the application seeking expert opinion does not foreclose the petitioner's right to establish the existence of the alleged tenancy or the terms thereof through other legally admissible evidence. The petitioner remains at liberty to rely upon rent receipts, oral evidence or any other admissible documentary material available on record. The impugned orders merely decline one particular mode of proof which, in the facts and circumstances of the present case, has been found incapable of yielding reliable evidentiary assistance.

24. The contention advanced on behalf of the petitioner that the respondent had admitted certain terms relating to the rent or had stated that he could identify the signatures of his deceased father also does not carry the matter any further. Such statements constitute matters of evidence whose probative value shall fall for consideration by the Rent Authority while deciding the proceedings on merits. They cannot, by themselves, confer upon the petitioner a right to seek expert examination of a document where the foundational requirement for such an exercise, namely production of the original document, is absent. No amount of admissions can dispense with the foundational requirement that the material proposed for forensic examination must itself be capable of reliable scientific scrutiny. An expert opinion cannot be directed merely to undertake a speculative exercise or to overcome the inherent limitations arising from examination of a photocopy of a disputed document.

25. For the reasons recorded hereinabove, this Court is satisfied that the Rent Authority, as affirmed by the Rent Tribunal, exercised its discretion upon relevant and germane considerations. The impugned orders neither suffer from any jurisdictional infirmity nor disclose any patent illegality, manifest perversity or failure of justice warranting interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

26. The petition, being devoid of merit, is, accordingly, **dismissed**.

27. There shall be no order as to costs.

(2026) 7 ILRA 1447
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS. No. 28703 of 2025

Rajvir & Anr. **...Applicants**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Matter pertains to whether the Magistrate could validly take cognizance of offence and summon the applicants to face trial on the basis of material collected during investigation, including the statements of victim recorded, despite the Investigating Officer having submitted a final report exonerating the applicants on the ground of alibi; and further, whether the plea of alibi, along with disputed questions of fact and reliability of witnesses, could be examined at the pre-trial stage so as to quash the summoning order.

Headnotes

Indian Penal Code, 1860 - ss. 363, 366, 376D, 342 - POCSO Act, 2012 - ss. 3/4 - Code of Criminal Procedure, 1973 - ss. 161, 164, 173(2), 190 - Allegation of gang rape - FIR - Cognizance - Investigating officer submitted Final report - Protest petition - Plea of alibi by accused - Burden of proof on accused - Summoning order - Non-bailable warrant - Impugned - Quashing of - The applicants filed the instant application seeking quashing of order dated 17.02.2025 passed by Special Judge (POCSO Act)/Additional District and Sessions Judge, Aligarh, whereby, upon allowing the protest petition filed by informant against the final report submitted by Investigating Officer, the applicants were summoned to face trial, arising out of a case registered on the allegation that minor daughter of informant had been kidnapped from a market and subjected to gang rape by applicants, which allegations were consistently reiterated by victim in her statements - However, the Investigating Officer, relying upon call detail records, mobile location data, and statements of independent witnesses suggesting that the applicants were present elsewhere at the relevant time and that the informant's family had a history of lodging false cases, submitted a final report holding the applicants to be falsely implicated - Further final report was rejected by trial court on the ground that statements of victim and informant made out a prima facie case, leading the applicants to challenge the summoning order primarily on the plea of alibi and false implication.

Held*:* The 'plea of alibi' can be proved by leading evidence in the trial court and not by relying on material collected by Investigating Officer during the course of investigation - In such a case, the prosecution would have to be given opportunity to cross-examine the defence witness to demonstrate that his testimony was not correct - The Court cannot consider the 'plea of alibi' of an accused at the stage of taking cognizance or framing of charges or summoning the accused - The applicant will have ample opportunity to place their evidence including 'plea of alibi' at the appropriate stage - A finding on veracity of a material relied on by prosecution in a case where the allegations levelled by prosecution disclose a cognizable offence, is not a consideration for High Court while exercising its power u/s 482 Cr.P.C. - **Accordingly, application dismissed**. [Paras 26, 28, 33] (E-13)

Case Law Cited

Minu Kumari and another v. State of Bihar and others **2006 (4) SCC 359;** *Sunil Bharti Mittal v. Central Bureau of Investigation* **2015 (4) SCC 609;** *Dr. Nupur Talwar v. C.B.I. Delhi & another,* **A.I.R. 2012 SC 87;** *Mahendra K.C. v. State of Karnataka and Ors.* **reported in AIR 2021 SC 5711;** *Shafiya Khan @ Shakuntala Prajapati v. State of U.P.,* **reported in (2022) 4 SCC 549;** *Ramveer Upadhyay and Another v. State of UP and another* **reported in 2022 SCC online SC 484 - referred to**

List of Acts

Indian Penal Code, 1860; POCSO Act; Code of Criminal Procedure, 1973

List of Keywords

BNSS; IPC; POCSO Act; Cr.P.C; Cognizance of offence; Entice away the minor daughter; Kidnapped; School certificate of victim; Magistrate; Final Report; Investigating officer; Protest petition; Summoned; Non-bailable warrant; Gang rape; Sufficient evidence in case diary; Plea of alibi; Statement of first informant; Quashing of criminal proceedings; Atrauli (Aligarh); Call detail records; Mobile location; Independent witnesses; Circumspection; Application dismissed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 528 BNSS No. - 28703 of 2025

From the Judgment and Order dated 17.02.2025 passed by Special Judge (POCSO Act)/ Additional District and Session Judge, Aligarh in Session Trial No.288 of 2025, arising out of Case Crime No.888 of 2023, Police Station Atrauli, District Aligarh and also order dated 12.06.2025, whereby non-bailable warrant has been issued.

Appearances for Parties

Advs. for the Applicant(s):
Anupama Parashar, Satendra Kumar Upadhyay

Advs. for the Opposite Party(s):
Devesh Kumar Shukla, Dharmesh Kumar Shukla, G.A.

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

1. Heard Sri Satendra Kumar Upadhyay, learned counsel for the applicants, Sri Abhishek Kumar Shukla, Advocate holding brief of Sri Devesh Kumar Shukla, learned counsel for the opposite party no.2/ informant and Sri Prashant Kumar Singh, learned A.G.A. for the State.

2. The present application under Section 528 of B.N.S.S. has been filed for quashing the impugned order dated 17.02.2025 passed by the Special Judge (POCSO Act)/ Additional District and Session Judge, Aligarh in Session Trial No.288 of 2025 (State Versus Rajvir and another), arising out of Case Crime No.888 of 2023, under Sections 363, 366, 376D, 342 I.P.C. and Section 3/4 of POCSO Act, Police Station Atrauli, District Aligarh and the order dated 12.06.2025, whereby non-bailable warrant has been issued against the applicants.

3. The brief facts of the case are to the effect that a First Information Report was lodged against an unknown person on 23.12.2023 at 07:11 hours in respect of an alleged incident dated 21.12.2023 at 14:00 hours. The FIR was registered as Case Crime No.888 of

2023, under Sections 363 and 366 IPC at Police Station Atrauli, District Aligarh. It is alleged by the first informant in the FIR that she went to the market along with her daughter. While there, the victim/ daughter of the informant went to get some food but did not return. It appears that an unknown person has enticed away the minor daughter of the first informant. The Investigating Officer recorded the statement of the first informant, who supported the prosecution case and provided the school certificate of the victim, wherein her date of birth was mentioned as 21.08.2008. Therefore, the victim was above 15 years of age at the time of the alleged incident.

4. The victim of the present case was recovered by the police on 13.01.2024 and her statement under Section 161 Cr.P.C. was recorded, wherein she stated that she was about 16 years of age and educated up to Class-8th. She went to the market along with her mother. She was forcibly kidnapped by the applicant no. 2 in a Maruti car. Thereafter, she was gang raped by both the applicants. The statement of the victim was recorded under Section 164 Cr.P.C. on 29.01.2024 and she again reiterated her earlier statement. She deposed in her statement that she was kidnapped by the applicant No. 1 on 21.12.2023 and she was kept inside a room where gang rape was committed by the applicants. She was set free on 12.01.2024.

5. The victim was medically examined on 13.01.2024 and no external or internal injury was seen on the body of the victim. She was advised for x-ray for age determination. As per the report of the Chief Medical Officer, Aligarh dated 16-01-2024, the victim was about 16-17 years of age.

6. The Investigating Officer recorded statements of the independent witnesses during the course of investigation. The independent witnesses stated that a false case was lodged by the first informant. Earlier, the husband of the present first informant had already lodged another FIR against the applicants alleging therein that his elder daughter was subjected to rape by the applicants. However, after due investigation, the case of rape was found to be false. Now, the present case has been lodged alleging therein that the younger daughter of the informant has been gang raped by the applicants. In fact, the victim stayed at the house of a relative, and a false story was concocted by the father of the victim. In fact, the applicants did not commit any offence as alleged by the victim.

7. The Investigating Officer collected the call detail records of the applicants and found that they were not present at the place of the incident at the relevant time. On the basis of mobile location, the Investigating Officer opined that the applicant no.2-Dauji Ram was present in the Patparganj Industrial Area, New Delhi, and thereafter, on 21.12.2023, he was present in District Bulandshahr and again he returned to Anand Vihar, Delhi on 21.12.2023 at 20:33 hours. On 13.01.2024, the applicant no.2-Dauji Ram was present in Roorkee, Haridwar and Muzaffar Nagar.

8. The victim, as per her mobile location, was found in District Muzaffarnagar on 12.01.2024, and thereafter she was present in Haridwar on 13.01.2024. On the date of the alleged incident i.e. 21.12.2023, applicant no. 2 was present in District Bulandshahr, and

on 13.01.2024, he was present in Roorkee, Haridwar and Muzaffarnagar. Similarly, applicant no.1- Rajvir was present in Khurja (Bulandshahr) on 21.12.2023. He was not present in Atrauli (Aligarh) on the date of the alleged incident i.e. 21.12.2023.

9. The Investigating Officer further recorded the statement of Dr. Prabhanshu Sharma, who stated that the applicant no. 1 had been working with him for the past three years, and his attendance record was also verified by the Investigating Officer. It was found by the Investigating Officer that the applicants were present in District Bulandshahr on the date of the alleged incident. Thereafter, the Investigating Officer submitted a final report in this case on 19.05.2024, mentioning therein that the applicants were not present in Atrauli (Aligarh) on the date of the alleged incident.

10. Being aggrieved by the submission of the final report dated 19.05.2024, the first informant/opposite party no. 2 filed a protest petition on 31.01.2025, wherein she prayed that the protest petition be accepted and the final report be rejected. She further prayed that the accused persons be summoned to face the criminal trial.

11. The learned trial court, after hearing the counsel for the informant, allowed the protest petition and summoned applicant no. 1 to face trial under Sections 376D and 342 IPC and Sections 3/4 of the POCSO Act, and applicant no. 2 under Sections 363, 366, 376D, and 342 IPC and Sections 3/4 of the POCSO Act, vide order dated 17.02.2025. It was observed by the learned trial court that the case would run as a State case inasmuch as the victim and the informant, in their statements recorded during the course of investigation, had supported the prosecution case and a prima facie case was made out against the applicants.

12. Being aggrieved by the order dated 17.02.2025, the applicants have filed the present application under Section 528 BNSS.

13. It is submitted by the learned counsel for the applicants that the applicants have been falsely implicated in the present case. The Investigating Officer, after due investigation, found that the applicants were falsely implicated and, therefore, no charge sheet was submitted against them. There is no direct or indirect evidence against the applicants to prosecute them in this case. The informant and her husband Kumar Pal used to lodge false cases against the applicants. Earlier an FIR No.144 of 2022 under Section 376-D IPC was registered against applicant Dauji Ram and his brother Bheesm at Police Station Pali Mukimpur, District Aligarh, wherein elder daughter of the informant, namely, Babita stated that a false case was registered by her family members. Therefore, final report no.34 of 2022 was filed on 12.08.2022. The informant has again lodged a false case against the applicants and there are ample evidence on recorded which makes it clear that the applicants were not present at the place of incident. The leaned court concerned has wrongly and illegally summoned the applicants to face criminal trial vide order dated 17.02.2025.

14. On the other hand, learned A.G.A. as well as the learned counsel for the prosecution have vehemently opposed the prayer and submitted that there is no illegality in the impugned order dated 17.02.2025. The victim, in her statements recorded under Sections 161 and 164 Cr.P.C., had categorically stated that she was subjected to rape by the applicants. In spite of that, the Investigating Officer wrongly and illegally submitted a final report in the case. There was sufficient evidence in the case diary against the applicants, and the learned trial court has rightly and correctly allowed the protest petition and summoned the applicants to face criminal trial. It is further submitted that there is no illegality, impropriety, or jurisdictional error in the impugned order dated 17.02.2025. Therefore, the present application lacks merit and is liable to be dismissed.

15. I have heard the rival submissions of learned counsel for the parties and perused the record.

16. Now this Court has to examine as to whether or not, the Magistrate may take cognizance of offence after submission of the final report by the Investigating Officer. Before proceeding further, it is apposite to give reference to Section 190 Cr.P.C., which deals with conditions requisite for initiation of proceedings and also the power of the Magistrate to take cognizance under Section 190 Cr.P.C. Section 190 Cr.P.C. reads as under:-

"*190. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-*

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

17. If Magistrate finds that police has not made proper investigation and submitted final report then the following recourse is available to the concerned Magistrate. He may adopt any one of them as the fact and circumstances of the case may require.

I. He may agree with the conclusion arrived at by the police, accept the report and drop the proceedings but before so doing, he shall give opportunity of hearing to the complainant.

II. He may take cognizance under Section 190(1)(b) of Cr.P.C. and issue process straightaway to the accused without being bound by the conclusion of the Investigating Agency where he is satisfied upon the facts discovered or narrated by the police, there is sufficient ground to proceed.

III. He may order further investigation after he is satisfied that investigation was made in perfunctory manner.

IV. Or he may without issuing process or dropping the proceedings may decide to take cognizance under Section 190(1)(a) upon the original complaint or protest petition treating the same as a complaint and proceed to examine the complainant and his witnesses under Section 200 Cr.P.C. and thereafter decide whether complaint should be dismissed or process should be issued.

18. The Hon'ble Supreme Court in the case of Minu Kumari and another Vs. State of Bihar and others 2006 (4) SCC 359 has held as under:-

"11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. In this case Magistrate rightly summoned the accuse under Section 190(1)(b) Cr.P.C."

19. The Hon'ble Supreme Court in the case of **Sunil Bharti Mittal Vs. Central Bureau of Investigation 2015 (4) SCC 609**, has held as under:-

"... even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See ***Union of India v. Prakash P. Hinduja and Anr. 2003 (6)***

***SCC 195)**. Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer."*

20. The Hon'ble Supreme Court in the case **of Dr. Nupur Talwar Vs. C.B.I. Delhi & another, A.I.R. 2012 SC 87**, has held that where the Magistrate, while rejecting the final report submitted by Investigating Officer, has taken cognizance under Section 190(1)(b) Cr.P.C., the order of Magistrate should not be interfered with unless it is perverse or based on no material. The Superior Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate otherwise the holding of trial will be stalled. The Superior Court should maintain this restrain to uphold the rule or law and sustain the faith of the common man in the administration of justice.

21. Reverting to the facts of the present case, the learned Magistrate has taken cognizance of the offence, considering the statements of the victim recorded during the course of investigation under Sections 161 and 164 Cr.P.C. No other material except the material collected by the Investigating Officer was taken into consideration.

22. The cognizance of the offence can be taken on the basis of the police reports as envisaged in Clause (b) of Section 190(1) Cr.P.C. irrespective of the opinion of the Investigating Officer that prima facie no case is made out, if the material collected and the statements of the witnesses recorded under Section 161 Cr.P.C., in the opinion of the Magistrate, are sufficient to make out a prima facie case against the accused persons.

23. Thus the position is very clear and well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issuance of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and may take cognizance of the case, if he thinks fit in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.

24. The Investigating Officer did not submit charge-sheet in this case against the applicants on the basis of their call detail records and statements of some witnesses, who stated that the applicants were not present at the place of incident and they have been

falsely implicated by parents of the victim due to ulterior motives. The plea of alibi was considered by the Investigating Officer and he completely ignored the statements given by the victim under Sections 161 and 164 Cr.P.C. The Investigating Officer committed gross illegality by filing final report, relying upon the statements of the witnesses who supported plea of alibi of the applicants. The investigation cannot unilaterally decide an alibi is true just because a few witnesses say so, especially if there is a prima facie evidence linking the accused to the crime.

25. In fact, the burden to prove the 'plea of alibi' is upon the accused, which they would do by way of adducing evidence in the trial proceedings and not by filing some affidavits or statements purported to have been recorded under Section 161 Cr.P.C. The inconsistency or contradictions in the statement of the witnesses, cannot be examined / appreciated at this stage.

26. The 'plea of alibi' can be proved by leading evidence in the trial court and not by relying on the material collected by the Investigating Officer during the course of the investigation. In such a case, the prosecution would have to be given opportunity to cross-examine the defence witness to demonstrate that his testimony was not correct. This Court also in exercise of its inherent powers under Section 482 Cr.P.C. / 528 B.N.S.S. cannot consider the 'plea of alibi' of an accused at the stage of taking cognizance or framing of charges or summoning the accused. The applicant-accused will have ample opportunity to place their evidence including 'plea of alibi' at the appropriate stage.

27. Therefore, the 'plea of alibi' of the applicant cannot be considered at this stage in view of the settled law. The 'plea of alibi' taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case, said condition is yet to come. The defence is at liberty to raise such plea before the trial court at the appropriate stage.

28. It is trite law that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in **Mahendra K.C. v. State of Karnataka and Ors. Reported in AIR 2021 SC 5711.**

29. In recent relevant judgement of the Apex Court in the case of **Shafiya Khan @ Shakuntala Prajapati vs. State of U.P.,** reported in **(2022) 4 SCC 549**, it was observed as under;-

"16. It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare

cases and it was not justified for the Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies."

30. In another judgment of the Apex Court in the case of **Ramveer Upadhyay and Another Vs. State of UP and another reported in 2022 SCC online SC 484**, it has been held as under:-

"39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."

31. In view of the aforesaid, this Court finds that the submissions made by the learned counsel for the applicants call for adjudication on pure disputed questions of fact which may adequately be adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. The prayer for quashing the entire proceedings is **refused** as I do not see any abuse of the Court's process either.

32. This Court, however, may clarify that whatever is said in this judgment is purely tentative and limited to the purpose of judging the worth of the prayer to quash the impugned orders. It is and ought not be regarded by the Trial Court as any kind of a comment or evaluation about evidence, which is yet to surface during trial. The truth of the prosecution case has to be established beyond doubt at the trial in accordance with law. However, this Court is of opinion that this is not a case, where the prosecution ought to be scuttled at the threshold in the exercise of powers under Section 482 Cr.P.C./ 528 BNSS.

33. With the aforesaid observations, the present application under Section 528 BNSS is, accordingly, **dismissed**.

(2026) 7 ILRA 1456
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.07.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Criminal Misc. Writ Petition No. 2700 of 2026

Anil Chaudhary **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether the Appellate Authority (Commissioner) constituted u/s 6 of U.P. Control of Goondas Act, 1970, while hearing an appeal against an externment order passed u/s 3/4 of said Act, possesses the power to remand the matter back to District Magistrate for fresh adjudication on merits, when s. 6(3) of Act only empowers the Appellate Authority to either confirm the order, with or without modification, or to set it aside.

Headnotes

U.P. Control of Goondas Act, 1970 - ss. 3/4, 6 - Appeal - Commissioner - Power of - Remanded matter - Scope - The petitioner, against whom a report of DCRB, District Aligarh dated 05.03.2024 disclosed a criminal history of nineteen criminal cases pending since 2009, 2012 and 2021, was first proceeded against under aforesaid section on the basis of only two of said cases, which proceedings culminated in an order dated 25.09.2024 of Additional District Magistrate (Administration), Aligarh holding that the petitioner did not fall within the definition of 'Goonda', pursuant whereto the show cause notice was withdrawn and the proceedings closed without any appeal being preferred by the State - After a gap of about three months, a second round of proceedings was initiated on 17.12.2024 on the basis of four different criminal cases out of above nineteen cases, culminating in an order dated 01.11.2025 passed by Additional District Magistrate (Administration), Aligarh externing the petitioner for six months - The petitioner, aggrieved thereby, preferred an appeal u/s 6 of Act before the Commissioner, who, by order dated 17.12.2025, while noting the contradictory stands taken by District Magistrate on the basis of the same set of criminal antecedents, set aside the externment order dated 01.11.2025 but remanded the matter back to District Magistrate for fresh adjudication after affording opportunity of hearing to the parties - The said order of remand has been assailed by petitioner in the instant writ petition on the ground that s. 6 of the Act confers no power of remand upon the Appellate Authority.

Held*:* It is very much apparent that the appellate authority has exceeded its jurisdiction in remanding the matter back to the District Magistrate, since, no such power has been vested in it and only on this short technical ground the appeal of petitioner deserves to be allowed - The appellate authority has deemed appropriate to quash the impugned order of District Magistrate dated 01.11.2025, which is perfectly legal - It is beyond comprehension, if the petitioner was having a criminal history of 19 cases way back in the year 2021 why only 2 and 4 cases were considered for initiating proceedings against the petitioner - Nothing had stopped the State from proceeding against the petitioner by taking all the above 19 cases into consideration, but the State has not chosen to do so - It is further pertinent to mention that after the year 2021, no criminal history of petitioner has been brought to the knowledge of the Court - It is further apparent that the

petitioner is on bail in all the mentioned cases and has not been convicted in any criminal case to date - Therefore, the order of appellate authority i.e. the Commissioner remanding the matter back to District Magistrate is unsustainable and liable to be set aside but the order of appellate authority setting aside the impugned order dated 01.11.2025 is perfectly sustainable and liable to be upheld - **Accordingly, petition allowed**. [Paras 15 to 18] (E-13)

Case Law Cited

Nil

List of Acts

U.P. Control of Goondas Act, 1970

List of Keywords

Writ petition; Certiorari; Quashing of Commissioner order; Remanded; DCRB, Aligarh; Criminal history of 19 cases; Additional District Magistrate (Administration); s. 6 of U.P. Control of Goondas Act, 1970; Externed for six months by District Magistrate; Goonda; Mentioned two cases in first round of litigation; Appeal; Appellate Authority; Selectively decided; Sustainability of impugned order; Petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 2700 of 2026

From the Judgment and Order dated 17.12.2025 passed by the Commissioner, Aligarh Division, Aligarh in Case No.1782 of 2025.

Appearances for Parties

Advs. for the Petitioner(s):
Manish Kumar, Shivendra Raj Singhal

Adv. for the Respondent(s):
G.A.

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

1. The instant writ petition under Article 226 of the Constitution of India has been filed for the following reliefs:

"(i) To issue a writ, order or direction in the nature of certiorari, quashing the order of the Commissioner dated 17.12.2025, to the extent, the case has been remanded back to the Additional District Magistrate Administration, District Aligarh for fresh adjudication along with the further proceedings initiated in pursuance of the order of the Commissioner."

2. Learned counsel for the petitioner submits that the proceedings under Section 3/4 of the U.P. Control of Goondas Act, 1970 were initiated against the petitioner by instituting Case No.2586 of 2024, Computerized Case No.D202418020002586 (State vs. Anil Kumar), on the basis of only two criminal cases i.e. Case Crime No.147 of 2021, under Sections 417, 420 I.P.C. and 6(2)(d) /9(1)/23 and 37 U.P. Regulation of Cold Storage Act, 1976 and Case crime No.148 of 2021 under sections417,420 I.P.C. and 6(2)(d)/9(1)/23 and 37 U.P. Regulation of Cold Storage Act, 1976. Learned counsel submitted that besides the above criminal cases, no other criminal case was taken into consideration by the State and the Additional District Magistrate (Administration),

Aligarh vide order dated 25.09.2024 concluded that the petitioner does not fall within the category of Goonda defined under the Act, 1970, hence, a show cause notice dated 22.03.2024 issued to the petitioner was taken back and the proceedings was closed. Learned counsel further submitted that the order dated 25.09.2024 was not challenged by filing appeal by the State.

3. It was further submitted that again after a duration of about three months on 17.12.2024, fresh proceedings on the basis of Case Crime No.230 of 2021, under Section 420 I.P.C., Section 60(1) of U.P. Excise Act, 1910, P.S. Gonda, District Aligarh, Case Crime No.232 of 2021, under Section 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, P.S. Gonda, District Aligarh, Case Crime No.269 of 2021, under Section 272, 273, 420, 467, 468, 471, 120-B, 304 I.P.C. and Section 60 (A) of U.P. Excise Act, P.S. Khair and Case Crime No.276 of 2021, under Section 272, 273, 420, 467, 468, 471 I.P.C. and Section 60 (A) of U.P. Excise Act, P.S. Khair, District Aligarh were initiated against the petitioner and by impugned order dated 01.11.2025 passed by the Additional District Magistrate (Administration), Aligarh, the petitioner was externed for six months from the limits of District Aligarh. This order was challenged by the petitioner by filing appeal being Case No.1782 of 2025, Computerized Case No.C202518000001782 (Anil Kumar vs. State of U.P.), under Section 6 of the U.P. Control of Goondas Act, 1970 before the Commissioner, Aligarh Division, Aligarh, which was partly allowed and it was concluded that the District Magistrate has passed contradictory orders, as such, the impugned order dated 01.11.2025 was set aside but the case was remanded back to the District Magistrate for deciding it afresh on merits after giving opportunity of hearing to the parties.

4. Learned counsel submitted that under the provisions of Section 6 of the U.P. Control of Goondas Act, 1970, there is no provision to remand the matter by the appellate authority. The appellate authority can either confirm the order, with or without modification or set it aside, and may, pending disposal of the appeal, stay the operation of the order but it cannot remand the matter back to the District Magistrate for deciding it afresh on merits after giving opportunity of hearing to the parties.

5. Learned counsel further submitted that as per the report of the DCRB, District Aligarh dated 05.03.2024, the petitioner has the criminal history of following 19 cases:-

i. Case Crime No.220/2021 under Section 272,273,420,467,468,471 IPC and 60(A) UP Excise Act, PS Akrabad, District Aligarh.

ii. Case Crime No.269/2021 under Section 272,273,304 IPC and 60(A) UP Excise Act, PS Khair, District Aligarh.

iii. Case Crime No.143/2021 under Section 272,273,304 IPC and 60(A) UP Excise Act, PS Gabhana, District Aligarh.

iv. Case Crime No.147/2021 under Section 417,420 IPC, PS Gonda, District Aligarh.

v. Case Crime No.148/2021 under Section 417,420 IPC, PS Gonda, District Aligarh.

vi. Case Crime No.188/2021 under Section 272,273,304 IPC and 60(A) UP Excise Act, PS Jawon, District Aligarh.

vii. Case Crime No.70/2021 under Section 272,273,304 IPC and 60(A) UP Excise Act, PS Pisawa, District Aligarh.

viii. Case Crime No.276/2021 under Section 272,273 IPC and 60(A) UP Excise Act, PS Khair, District Aligarh.

ix. Case Crime No.165/2021 under Section 272,273,304 IPC and 60(A) UP Excise Act, PS Laudha, District Aligarh.

x. Case Crime No.370/2012 under Section 60 UP Excise Act, PS Gonda, District Aligarh.

xi. Case Crime No.80/2009 under Section 60,62,63,64 UP Excise Act, Section 102/103 Trademark Act and Section 255,259,260,272,273,467,468,471,419,420 IPC, PS Iglas, District Aligarh.

xii. Case Crime No.108/2009 under Section 2/3 Gangster Act, PS Iglas, District Aligarh.

xiii. Case Crime No.232/2021 under Section 2/3 Gangster Act, PS Jawon, District Aligarh.

xiv. Case Crime No.343/2021 under Section 2/3 Gangster Act, PS Khair, District Aligarh.

xv. Case Crime No.91/2021 under Section 2/3 Gangster Act, PS Pisawa, District Aligarh.

xvi. Case Crime No.232/2021 under Section 2/3 Gangster Act, PS Gonda, District Aligarh.

xvii. Case Crime No.302/21 under Section 2/3 Gangster Act, PS Akarabad, District Aligarh.

xviii. Case Crime No.30/2021 under Section 420 IPC and 60(A) UP Excise Act, PS Gonda, District Aligarh.

xix. Case Crime No.250/2021 under section 120B,195,506 IPC, PS Gabhana, District Aligarh.

6. Learned counsel submitted that all the above cases relate to the year 2009, 2012 and 2021, prior and subsequent to it no criminal act has been committed by the petitioner. He further submitted that in the first proceeding initiated under the Act, 1970, only two criminal cases being Case Crime No.147 of 2021 and 148 of 2021, Police Station Gonda, District Aligarh were considered for initiating proceedings under Section 3/4 of the Act, 1970 whereas at that time also the petitioner was having a criminal history of the above 19 cases as mentioned in the report of DCRB, District Aligarh. Learned counsel further submitted that again the second proceedings under the Act, 1970 were initiated on 17.12.2024 whereby only four cases namely Case Crime No.230 of 2021, 232 of 2021 both of Police Station Gonda, District Aligarh, Case Crime No.269 of 2021 and Case Crime No.276 of 2021 both of Police Station Khair, District Aligarh were considered for initiating the proceedings under Section 3/4 of the Act, 1970 against the petitioner and by order dated 01.11.2025, the petitioner was externed for a duration of six months from the limits of District of Aligarh, which has been subsequently set aside by the Commissioner Aligarh Division, Aligarh by order dated 17.12.2025 but the matter has also been remanded back to the District Magistrate, Aligarh for considering it afresh on merits after giving opportunity of hearing to the parties.

7. Learned counsel submitted that it is apparent that the State has selectively decided to take up cases against the petitioner and has only mentioned two cases in the first round of litigation and only mentioned four cases in the second round of litigation whereas the State was aware of the criminal history of the accused whereby 19 criminal cases were pending against him till the year 2021. Learned counsel submitted that the State cannot selectively decide to proceed against the petitioner by taking few cases and leaving the other and by repeatedly initiating proceedings

against the petitioner under the Act, 1970, which only proves that the petitioner was politically prosecuted for the alleged acts. He further submitted that the petitioner has not been convicted in any case and he is on bail in all the cases. With these submissions, it was prayed that the order of remand is illegal and in view of this, the order of the appellate authority setting aside the impugned order of the District Magistrate dated 01.11.2025 be sustained and accordingly, the writ petition be allowed.

8. Per contra, learned A.G.A. submitted that from the documents annexed with the writ petition, it is apparent that the petitioner is having a long criminal history and till the year 2021, 19 criminal cases for different offences were pending against the petitioner, which is apparent from the report of DCRB, District Aligarh.

9. Learned A.G.A. submitted that in view of the long criminal history of the petitioner, it would be fair to assume that the petitioner is a Goonda, who has already been externed for a duration of six months by the District Magistrate, Aligarh by impugned order dated 01.11.2025. Learned counsel could not dispute that under Section 6 of the Act, 1970, there is no power to remand the case to the District Magistrate for deciding it afresh on merits.

10. I have heard learned counsel for the parties and perused the documents submitted with the writ petition.

11. It is apparent from the report of DCRB, District Aligarh that 19 criminal cases for different offences were pending against the petitioner till the year 2021 but only two cases being Case Crime No.147 of 2021 and 148 of 2021, Police Station Gonda, District Aligarh were chosen to initiate proceedings against the petitioner under Section 3/4 of the Act, 1970, which were ultimately dropped by the Additional District Magistrate (Administration), Aligarh, vide order dated 25.09.2024. It is further apparent that again after only a gap of about three months on 17.12.2024, a second round of proceedings under the Act, 1970 were initiated against the petitioner on the basis of only four cases being Case Crime No.230 of 2021, 232 of 2021, both registered at Police Station Gonda, District Aligarh, Case Crime No.269 of 2021 and 276 of 2021, both registered at Police Station Khair, District Aligarh. It is apparent that all the 19 cases pending against the petitioner till the year 2021 were in the knowledge of the State at the time of initiating first round of proceedings under the Act, 1970 against the petitioner but 17 of them were deliberately not taken into consideration at that time. It is further evident that the appellate authority i.e. the Commissioner Aligarh Division, Aligarh has duly considered the above facts and vide impugned order dated 17.12.2025, it has specifically recorded that on the basis of same criminal cases, two contradictory orders could not have been passed by the District Magistrate, Aligarh.

12. In view of this contradictory stand of the District Magistrate, the appellate authority has set aside the impugned order of the District Magistrate dated 01.11.2025 and remanded back the matter to him for deciding it afresh on merits after giving opportunity of hearing to the parties.

13. Section 6 of the Act, 1970 reads as under:-

***6.Appeal**:-(1) Any person aggrieved by an order made under section 3,section 4 or section 5 may appeal to the Commissioner within fifteen days from the date of such order.*

(2) The appellant or his counsel shall not be entitled to inspect or to be informed of any record which was not disclosed to him at the inquiry, if any, held under section 3.

(3) The Commissioner may either confirm the order, with or without modification, or set it aside, and may, pending disposal of the appeal, stay the operation of the order subject to such terms, if any, as he thinks fit.

14. It is apparent that Section 6 of the Act, 1970 only vests the appellate authority the jurisdiction to either confirm the order, with or without modification, or to set it aside but the appellate authority cannot remand the matter back to the District Magistrate for deciding it afresh on merits under Section 3/4 of the Act, 1970.

15. It is very much apparent that the appellate authority has exceeded its jurisdiction in remanding the matter back to the District Magistrate, since, no such power has been vested in it and only on this short technical ground the appeal of the petitioner deserves to be allowed. The appellate authority has deemed appropriate to quash the impugned order of District Magistrate dated 01.11.2025, which is perfectly legal. It is beyond comprehension, if the petitioner was having a criminal history of 19 cases way back in the year 2021 why only 2 and 4 cases were considered for initiating proceedings under the Act, 1970 against the petitioner. Nothing had stopped the State from proceeding against the petitioner by taking all the above 19 cases into consideration, but the State has not chosen to do so.

16. It is further pertinent to mention here that after the year 2021, no criminal history of the petitioner has been brought to the knowledge of this Court. It is further apparent that the petitioner is on bail in all the above mentioned cases and has not been convicted in any criminal case to date. Therefore, the order of the appellate authority i.e. the Commissioner Aligarh Division, Aligarh remanding the matter back to the District Magistrate, Aligarh, is unsustainable and is liable to be set aside but the order of the appellate authority setting aside the impugned order dated 01.11.2025 is perfectly sustainable and is liable to be upheld.

17. In view of the above, the writ petition preferred by the petitioner deserves to be allowed and is accordingly, **allowed.**

18. Accordingly, the impugned order dated 17.12.2025 passed by the Commissioner Aligarh Division, Aligarh whereby the matter has been remanded back to the District Magistrate, Aligarh is set aside and the impugned order, whereby the order passed by the District Magistrate,Aligarh dated 01.11.2025 has been set aside, is upheld.

(2026) 7 ILRA 1462
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Misc. Writ Petition No. 4846 of 2026

Rubi & Ors. **...Petitioners**
Versus
State of U.P.& Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether the impugned FIR registered against the petitioners, who obstructed and assaulted the Police and Child Line Team while the latter were attempting to prevent the child marriage of a minor Muslim girl aged about 16 years, is liable to be quashed on the ground that, under the Muslim Personal Law (Shariat) Application Act, 1937, a girl who has attained puberty is competent to marry, notwithstanding the provisions of Prohibition of Child Marriage Act, 2006 and Protection of Children from Sexual Offences Act, 2012.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 191(2), 132, 121(1), 352 and 351(2) - Muslim Personal Law (Shariat) Application Act, 1937 - s. 2(a) - Majority Act, 1875 - s. 3 - Age of marriage - Muslim Personal Law - Police and Child Line Team acted to rescue minor and prevent child marriage - Validity of - Allegations of assault, abuse, threats - Prima facie offence disclosed - FIR - Quashing of - The impugned FIR dated 15.02.2026 was lodged by Sub-Inspector upon an occurrence wherein he, along with members of the Child Line Team had proceeded to Village Sunpeda Baksuwa upon receiving information of an impending marriage of Sonam, daughter of Taufiq, a minor aged about 16 years, and, upon the Child Line Team disclosing their intention of producing the minor before the Child Welfare Committee, the petitioners, nineteen in number, along with about fifty unidentified persons, abused and threatened the police personnel and members of Child Line Team and forcibly took away the victim from the custody of case worker, compelling the police party and the Child Line Team to escape to save their lives, whereafter the victim was eventually rescued and produced in safekeeping - The petitioners, aggrieved by registration of FIR, instituted the instant writ petition seeking its quashing.

Held*:* There was a determined attempt to marry a girl of by her parents and community while she was below 18 years of age - She was being married contrary to mandate of PCMA, and if married, in all likelihood and even logically, would have led to a transgression of POCSO Act - If, therefore, in a position as the present one, the Police and Child Line Team swung into action and rescued the victim, they were indeed acting within the four corners of law and most certainly in the bona fide discharge of their duties under the law - The Police and Child Line Team were conscious of their duties under PCMA and acting to prevent a possible violation of POCSO Act - While they were about their task in rescuing the victim, they were abused and threatened, and according to allegations in FIR, had to save their lives from the aggression of petitioners and other unnamed offenders - The victim was forcibly taken away from their care and custody, till she was finally rescued - This is certainly a case where obstruction in the performance of duties of a government servant is prima facie made out - There is no medical report on record to justify the invocation of ss. 121(1) and 132 BNS, no overt

acts having been assigned - The ingredients of s. 351(2) BNS are not disclosed as no alarm was caused in mind of informant - **Accordingly, writ petition dismissed, interim stay order vacated**. [Paras 12 to 15] (E-13)

Case Law Cited

Moidutty Musliyar and others v. Sub Inspector Vadakkencherry Police Station and others, **2024 SCC OnLine Ker 4188;** *Independent Thought v. Union of India and another,* **(2017) 10 SCC 800;** *Society For Enlightenment & Voluntary Action v. Union of India,* **2024 SCC OnLine SC 2922;** *Javed v. State of Haryana and others,* **CRWP No. 7426-2022 (O&M) dated 30.09.2022;** *National Commission For Protection Of Child v. Javed and others,* **Special Leave Petition (criminal) Diary No.35376 of 2022, order on 13.01.2023;** *Mohd. Amaan Malik v. State (NCT of Delhi),* **2023 SCC OnLine Del 3870;** *National Commission For Protection Of Child Rights (NCPCR) v. Gulaam Deen & Ors.,* **Special Leave to Appeal (Crl.) No(s). 10036/2022, order dated 19.08.2025 - referred to**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Muslim Personal Law (Shariat) Application Act, 1937; Majority Act, 1875; Prohibition of Child Marriage Act, 2006; Protection of Children from Sexual Offences Act, 2012.

List of Keywords

Writ petition; Cognizable; Non-bailable; Personal Laws; Shariat Law; Puberty; Majority; Marriage; Minor; Voidable and not void; Custody; Rescue; Sub-Inspector; Child Line Team; Abused and threatened; Corpus delicti; Investigation; Quashing of FIR; Interdict investigation; Jurisdiction under Articles 226/227; Interim stay order vacated; Petition dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 4846 of 2026

From the FIR dated 15.02.2026 in Crime No. 54 of 2026, Police Station Kakor, District Bulandshahr.

Appearances for Parties

Adv. for the Petitioner(s):
Pooja

Adv. for the Respondent(s):
G.A.

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

1. This writ petition has been instituted with a prayer that the First Information Report (for short, 'FIR') dated 15.02.2026, giving rise to Crime No. 54 of 2026, under Sections 191(2), 132, 121(1), 352 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS', in short), Police Station Kakor, District Bulandshahr, be quashed.

2. The petitioners are nineteen in number. The FIR in this case has been lodged by Sub-Inspector Vinay Kumar, posted at P.S. Kakor, District Bulandshahr. The FIR is about the Police and the Child Line Team endeavouring to prevent the petitioners from going ahead with the marriage of a minor, Sonam daughter of Taufiq and the offence that was allegedly committed by the petitioners, vis-a-vis the police personnel and the Child Line Team as they went about the enterprise of preventing this child marriage. According to the Sub-Inspector Vinay Kumar, in his FIR addressed to the Station House Officer, P.S. Kakor, District Bulandshahr, he has said that the

informant along with the In-charge of the Child Line Team, Bulandshahr, Abhishek Kumar, Neeraj Kumar Sharma, case worker, Km. Gulista, case worker and Sub-Inspector Dhani Ram, also from P.S. Kakor, Bulandshahr, proceeded together to Village Sunpeda Baksuwa, the place about which they had received information of the impending child marriage of Sonam daughter of Taufiq aged about 16 years. They left P.S. Kakor vide G.D. Entry No.18 dated 15.02.2026 at 11.29 a.m. Their object was to prevent the child marriage. They reached the victim's house in Village Sunpeda Baksuwa and members of the Child Line Team spoke to Sonam's parents, besides the victim herself. After inquiries into the matter, the members of the Child Line Team disclosed their intention of producing her before the Child Welfare Committee, Bulandshahr, and asked the victim and her parents to come along with them for the purpose of the aforesaid production. Thereupon, men and women present there, nineteen of whom are named and are the writ petitioners here, besides fifty others unknown, abused the Police and the Child Line Team personnel, threatened them and forcibly took away the victim from the custody of Km. Gulista of the Child Line Committee.

3. The Police and members of the Child Line Team, facing aggression of the petitioners, somehow escaped in order to save their life. This act of the petitioners, according to the informant, constituted obstruction in the discharge of duties by a public servant. The Police and the Child Line Team, tiding over these odds, somehow managed to rescue Sonam and in the safekeeping of Km. Gulista (Member, Child Line Team), brought her away. The nineteen of the petitioners are nominated in the FIR, as already said, besides the fifty other offenders, whose identity could not be ascertained. It is said by the first informant that he has video-graphed the entire occurrence, which is available with him. It is on these allegations that the impugned FIR has been registered against the petitioners.

4. Heard Ms. Pooja, learned Counsel for the petitioners in support of the motion to admit this petition to hearing and Mr. Ghanshyam Kumar, learned Additional Government Advocate-I along with Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, who have opposed the motion.

5. Ms. Pooja, learned Counsel for the petitioners, has been at pains to show to us that under the Shariat Law applicable to Muslims, a girl, after she attains the age of puberty generally regarded as 15 years, is competent to marry. The Prohibition of Child Marriage Act, 2006 (for short, 'the PCMA') would not affect the personal law of the petitioners about marriage. It has been pointed out that under Section 3 of the Majority Act, 1875, though the age of majority stipulated for a person is 18 years, Section 2 thereof carries a non obstante clause, excluding laws relating to marriage, dower, divorce and adoption from the purview of the said Act. Learned Counsel for the petitioners has also referred to us Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 (for short, 'the Shariat Law') to submit that the aforesaid provision too carries a non obstante clause, which reads:

"2. **Application of Personal Law to Muslims**-.Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal properly inherited or obtained under contract or gift or any other provision of Personal Law. marriage, dissolution of marriage, including

talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

6. Speaking for ourselves, though we are aware that there is division of opinion amongst the High Courts, whether a minor who is married under the Muslim Law, would be governed by the provisions of the Personal Law or the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and the PCMA. If we may dare say, we are in complete agreement with the reasoning of P.V. Kunhikrishnan, J. in **Moidutty Musliyar and others v. Sub Inspector Vadakkencherry Police Station and others, 2024 SCC OnLine Ker 4188** that no personal law can wipe out the prohibition of child marriage brought about by the PCMA, and the effect of the POCSO Act, which renders sexual intercourse with a child, that is a person below 18 years, a crime under that statute. The age of marriage, in our considered opinion, for every citizen of the country, irrespective of religion, is that, that is spelt out by the PCMA. Also, it is equally true that if the marriage of a person below 18 years were permitted, carnal relations being inseparable almost form the institution of marriage, it would be an acknowledged violation of the POCSO Act. The PCMA and the POCSO Act are statutes that are based on public health and national policy in this regard. They have a scientific understanding to them, legislatively translated into prohibitory statutes and there can be no escape from it for anyone.

7. Given the fact that the Majority Act by Section 2(a) makes the stipulated age inapplicable to the capacity of persons to act in the matter of marriage, amongst others, is besides the point because the PCMA is a much later statute and so is the POCSO Act. By Section 1(2) of the PCMA, it extends to the whole of India and apply also to all citizens of India, without and beyond India. A later statute, which is all encompassing, that is for all citizens, would prevail over the exception made in the Majority Act, 1875. It may also be noted that the marriage performed in violation of the PCMA may be viodable and not void, but the act of performing such a marriage by different parties is punishable by law. The offences under the PCMA are cognizable and non-bailable by virtue of Section 15 thereof. Despite the clear exposition of the law by the Supreme Court in Independent Thought v. Union of India and another, (2017) 10 SCC 800, the controversy has continued with some High Courts opining that age of majority and the capacity to marry for Muslims would be governed by the Shariat Law, nonetheless. This question again arose before the Supreme Court in **Society For Enlightenment & Voluntary Action v. Union of India, 2024 SCC OnLine SC 2922.** In that case, their Lordships have struck a note of doubt pending passage of the Prohibition of Child Marriage (Amending) Bill 2021, introduced in Parliament on 21st December 2021. The following remarks of their Lordships in **Society For Enlightenment** *(supra)* are relevant:

"**X. Suggestions**

212. In the course of this judgment, we have traced the full breadth of the law against child marriage. The PCMA is the central legislation governing the issue on the subject. In light of the Constitutional guarantees accruing to children, we observe certain gaps in the PCMA. Absent a Constitutional challenge or a case being argued, we resist from making declarations and restrict

ourselves to making suggestions for the scrutiny of the Union. The legal question on these issues, however, is kept open if it were to come before a Constitutional court in an appropriate proceeding.

213. The issue of the interface of personal laws with the prohibition of child marriage under the PCMA has been a subject of some confusion. The Union in its note of submission filed after the judgment was reserved in the case has stated that this Court may direct that the PCMA prevails over personal law. The note states as follows:

"9. As a way forward, Ministry of Women & Child Development has following inputs to provide for kind consideration of the Hon'ble Court

i. There are conflicting pronouncements by various High Courts about the precedence of the Prohibition of Child Marriage Act (PCMA), 2006 over the personal laws. Hence, Hon'ble Court may consider issuing directions pronouncing that the PCMA will prevail over the personal laws governing marriage.

…."

214. Details of the conflicting opinions were not furnished in the submissions by either party to these proceedings. The PCMA states nothing on the validity of the marriage as we have noted above. The Prohibition of Child Marriage (Amending) Bill 2021 was introduced in Parliament on 21 December 2021. The Bill was referred for examination to the Department Related Standing Committee on Education, Women, Children, Youth and Sports. The Bill sought to amend the PCMA to expressly state the overriding effect of the statute over various personal laws. The issue, therefore, is pending consideration before Parliament.

215. Lastly, we note that while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals. Marriages fixed in the minority of a child also have the effect of violating their rights to free choice, autonomy, agency and childhood. It takes away from them their choice of partner and life paths before they mature and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used to evade penalty under the PCMA. While a betrothed child may be protected as a child in need of care and protection under the JJ Act, the practice also requires targeted remedies for its elimination.

XI. Conclusion

216. A copy of this Judgment will be transmitted to the Secretaries of all concerned Ministries, the Government of India which includes the Ministry of Home Affairs, Ministry of Women and Child Development, Ministry of Panchayati Raj, Ministry of Education, Ministry of Information and Broadcasting, Ministry of Rural Development, statutory authorities, institutions, and organizations under the control of the respective ministries.

217. The Ministry of Women and Child Development is directed to circulate this judgment to the Chief Secretaries/Administrators of all the States and Union Territories, as well as

NALSA, and NCPCR for strict compliance with the directions. This shall be done within a period of four weeks from the date of delivery of this judgment.

218. The writ petition is disposed of.

219. Pending application(s), if any, stand disposed of."

8. We were informed during the hearing and we believe not without basis that the Prohibition of Child Marriage (Amending) Bill 2021 has lapsed with the dissolution of the 17th Lok Sabha. We have not been shown anything that the Bill is still pending consideration before the Parliament. The controversy has again surfaced before the Supreme Court, when the Punjab & Haryana High Court in **Javed v. State of Haryana and others, CRWP No. 7426-2022 (O&M) dated 30.09.2022** held that a Muslim female aged 15 years could marry a person of her choice, on her own willingness and consent, and the marriage would not be affected by Section 12 of the PCMA. This judgment has been impugned before the Supreme Court in **National Commission For Protection Of Child v. Javed and others, Special Leave Petition (criminal) Diary No.35376 of 2022**, where their Lordships issued notice and passed the following order on 13.01.2023:

"UPON hearing the counsel the Court made the following

O R D E R

1 We are inclined to entertain the Special Leave Petition which has been instituted by the National Commission for Protection of Child Rights (NCPCR) with a view to resolving the question of law which is raised.

2 Issue notice.

3 Mr Rajshekhar Rao, senior counsel, who has been appointed as Amicus Curiae in SLP (Crl) No 10036 of 2022 raising a similar issue, is requested to assist the Court in the present case as well.

4 Tag with SLP (Crl) No 10036 of 2022.

5 SLP (Crl) No 10036 of 2022 is de-tagged from Item No 31 [TP (C) Nos 1249- 1250 of 2020].

6 Pending further orders, the impugned judgment of the High Court dated 30 September 2022, shall not be relied on as a precedent in any other case.

7 List the Special Leave Petitions on 6 February 2023.

Diary No 1156/2023, Diary No 1205/2023 and Diary No 1208/2023

1 On mentioning, these matters are taken on Board.

2 Tag with SLP (Crl) Diary No 35376/2022."

9. Taking note of the development and the law until that time, the Delhi High Court in Mohd. Amaan Malik v. State (NCT of Delhi), 2023 SCC OnLine Del 3870 observed:

"12. It is also the case of the petitioner that the parties in the present case will be governed by the Muslim personal laws and the POCSO Act will have no applicability in the present case. In this regard, this Court notes that this issue has been a contentious one and remains at the heart of controversy in several cases decided by the High Courts across the country. The Hon'ble Karnataka High Court in Aleem Pasha v. State of Karnataka, 2022 SCC OnLine Kar 1588 observed that the POCSO Act, being a special legislation to protect children from sexual offences, will have an overriding effect on Muslim personal law. Earlier also, similar observations were made by Hon'ble Karnataka High Court in Rahul v. State of Karnataka, 2021 SCC OnLine Kar 12728. Recently, the Hon'ble Kerala High Court in Khaledur Rahman v. State of Kerala, 2022 SCC OnLine Ker 5833 also held that the marriage between Muslims under personal law is not excluded from the scope of the POCSO Act and if one of the parties to the marriage is a minor, irrespective of the validity or otherwise of the marriage, offences under the POCSO Act will apply. The Court, while referring to Section 42-A of the POCSO Act observed that the POCSO Act will prevail over personal laws and customary laws. To the contrary, this Court in Fija v. State (NCT of Delhi), 2022 SCC OnLine Del 2527 had observed that where the accused, who was a Muslim, had sexual intercourse during the course of marriage with his wife who was a minor Muslim, he was not guilty under the POCSO Act as the personal law has an overriding effect on special laws. Further, the Hon'ble Punjab and Haryana High Court in case of Gulam Deen v. State of Punjab, 2022 SCC OnLine P&H 1485 had taken a view that the marriage of a Muslim girl is governed by Muslim personal law, and a Muslim girl above 15 years of age is competent to enter into marriage. However, in Special Leave Petition (Criminal) No. 26834/2022 filed by National Commission for Protection of Child Rights (NCPCR) against the said decision, the Hon'ble Apex Court had agreed to examine the question if a minor Muslim girl can marry on attaining puberty. Similarly, the Hon'ble Punjab and Haryana High Court in Javed v. State of Haryana CRWP-7426-2022(O&M) also had held that Muslim female aged 15 years and above could marry a person of her choice on her own willingness and consent, and such a marriage would not be void in terms of Section 12 of the Prohibition of Child Marriage Act, 2006. However, vide order dated 13.01.2023 in Special Leave Petition (Criminal) No. 35376/2022 filed by NCPCR, the Hon'ble Apex Court ordered that the judgment in case of Javed (supra) should not be relied upon as a precedent in any other case. In a nutshell, as on date, the issue as to whether a girl attaining age of majority as per puberty after 15 years of age would be governed by the provisions of the POCSO Act/Child Marriage Restraint Act or not, is pending for consideration and adjudication before the hon'ble Apex Court."

10. If one were to take note of the remarks in **Mohd. Amaan Malik** *(supra),* Swarana Kanta Sharma, J. has taken note of the flux in the state of law on the subject because of the pending question before the Supreme Court and the conflict of opinion amongst the High Courts. We note that neither the Parliament have legislated in terms of what the Supreme Court was expecting in **Society For Enlightenment & Voluntary Action** *(supra)* nor the question seems to have been

settled by an authoritative pronouncement of the Supreme Court so far. What the Delhi High Court noticed to be a pending question before the Supreme Court in **Mohd. Amaan Malik** *(supra)* does not appear to have been decided finally. A number of connected matters, which include the Special Leave Petition arising out of the judgment and order of the Punjab and Haryana High Court in CRWP No. 7426 of 2022 (O&M), Javed v. State of Haryana and others, decided on 30.09.2022, came to be dismissed by the Supreme Court mostly on the question of locus standi vide order dated 19.08.2025. The only case where the question seems to be involved is W.P. (C) No. 814/2023 (PIL-W), which, by the order dated 19.08.2025, was adjourned to 26.08.2025. The order dated 19.08.2025 passed in Special Leave to Appeal (Crl.) No(s). 10036/2022, **National Commission For Protection Of Child Rights (NCPCR) v. Gulaam Deen & Ors**., reads:

"UPON hearing the counsel the Court made the following

O R D E R

SLP (Crl.) Nos. 10036/2022 and 2206/2023

The petitioners herein are National Commission for Protection of Child Rights (NCPCR) and National Commission for Women (NCW) respectively.

The writ petition before the High Court, being CRWP No.5744/2022, was filed by Gulaam Deen and another under Articles 226/227 of the Constitution of India seeking a writ of Mandamus directing respondent nos.2 to 4 therein to protect their life and liberty owing to their apprehensions as a result of threats at the instance of private respondent nos.5 and 7 therein. The High Court has granted the prayer(s) of the petitioner(s) therein.

We fail to see as to how the petitioners herein can be aggrieved by such an order. If the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India seeks to extend protection to two individuals, it is strange that the petitioners are challenging such an order. The petitioners herein, in fact, have no locus standi to challenge the same.

It is strange that if the High Court has extended relief to minor children, the NCPCR, which is meant for protection of children assails such an order of the High Court. Hence, the special leave petitions are dismissed.

Pending application(s) shall stand disposed of.

Diary No. 35376/2022 and SLP(Crl) No. 2207/2023

Permission to file Special Leave Petition(s) is granted.

The petitioners herein are National Commission for Protection of Child Rights (NCPCR) and National Commission for Women (NCW) respectively.

The writ petition before the High Court, being CRWP No.7426/2022, was filed by Javed under Articles 226/227 of the Constitution of India seeking a writ in the nature of Habeas Corpus directing respondent nos.2 and 3 therein to release the detenue, who was stated to be in the custody of Ashiana, Sector 16, Panchkula. The High Court in exercise of its jurisdiction under Articles 226/227 of the Constitution of India directed that the custody of detenue be handed over to the petitioner therein. The said order has been assailed by the petitioners herein. We find that the petitioners have no locus standi to challenge the same.

Hence, the special leave petitions are dismissed.

Pending application(s) including the application for intervention/impleadment shall stand disposed of.

SLP(Crl) No. 1934/2023

The petitioner herein is National Commission for Women (NCW).

The writ petition before the High Court being W.P. (Crl.) No.763/2022 was filed by Fija and another seeking a writ of Mandamus or any other writ directing respondent nos.1 to 3 therein to grant protection to the petitioners therein and further directing them to ensure that nobody separates the petitioners therein from each other.

We fail to see as to how the petitioner herein can be aggrieved by such an order. If the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India seeks to grant the prayer(s) sought for by the petitioner(s) therein, it is strange that the petitioner is challenging such an order. The petitioner herein has no locus standi to challenge the same.

Learned counsel for respondent nos.1 and 2 submitted that the said respondents are happily married and also have a girl child of two years. The said fact is also placed on record.

Hence, the special leave petition is dismissed.

Pending application(s) shall stand disposed of.

We place on record our sincere appreciation to the assistance rendered by Shri Rajshekhar Rao, learned senior counsel as Amicus Curiae of this Court in these matters.

W.P.(C) No. 814/2023

De-tagged from rest of the matters.

Learned senior counsel for the petitioner submitted that he would place on record the judgments/orders passed by this Court in the context of the prayers sought for by the petitioner herein and on that basis possibly the writ petition could be disposed of.

Hence, list on 26.08.2025."

11. It, therefore, appears that there is no authoritative pronouncement by the Supreme Court on the point, but that does not preclude us from holding on the question involved the correct view of the law. We have already expressed it and we say it again in tune with the line of authority that has held likewise, and that is that the Shariat Law providing for puberty as the competent age under the law permissible for a girl to marry or be married, runs clearly in the teeth of the PCMA as well as the POCSO Act.

12. Turning to the facts of the present case, what we find is that there was a determined attempt to marry a girl of by her parents and the community while she was below 18 years of age. She was being married contrary to the mandate of the PCMA, and if married, in all likelihood and even logically, would have led to a transgression of the POCSO Act. Marriages solemnized are consummated as well, and once consummated, the POCSO Act comes into play. If, therefore, in a position as the present one, the Police and the Child Line Team swung into action and rescued the victim, they were indeed acting within the four corners of law and most certainly in the bona fide discharge of their duties under the law. The Police as well as the Child Line Team were conscious of their duties under the PCMA and also acting to prevent a possible violation of the POCSO Act. While their action is certainly commendable, what lies at the bottom of the FIR here is, is an assault on the police party and the Child Line Team. While they were about their task in rescuing the victim, they were abused and threatened, and according to the allegations in the FIR, had to save their lives from the aggression of the petitioners and the other unnamed offenders. The victim was forcibly taken away from their care and custody, till she was finally rescued. This is certainly a case where obstruction in the performance of duties of a government servant is prima facie made out. The other offences disclosed also require thorough investigation.

13. It has been argued that there is no medical report on record to justify the invocation of Sections 121(1) and 132 BNS, no overt acts having been assigned. It is also argued that the ingredients of Section 351(2) BNS are not disclosed as no alarm was caused in the mind of the informant. The submission is that there is no independent witness of the incident. We regret, we cannot agree. The offences are clearly disclosed. It maybe not one offence more or one less, but, that ultimately would be the subject matter of the charge-sheet submitted after investigation, or may be, the charge, if framed by the Trial Court. It is also possible that some of the petitioners might not be found involved in the occurrence. But, whatever it is, the nature of the allegations and the corpus delicti is such that it is not at all a fit case, where we ought interdict investigation at an incipient stage by quashing the FIR and setting at naught the process of investigation.

14. In the result, we do not find any good ground to interfere with the FIR impugned. This writ petition is **dismissed.**

15. The interim stay order dated 06.04.2026 is hereby vacated.

16. Let this order be communicated to the Senior Superintendent of Police, Bulandshahr and the Station House Officer, P.S. Kakor, District Bulandshahr, both through the learned Chief Judicial Magistrate, Bulandshahr by the Registrar (Compliance).

(2026) 7 ILRA 1472
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Writ Petition No. 5363 of 2026

Rahul @ Rahul Saroj **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether the petitioner could be validly declared a "Goonda" on the basis of his involvement in only two criminal cases (one registered in 2021 and another in 2025) along with two beat information reports and a prohibitory report, without there being material to establish that he was a "habitual" offender within the meaning of s. 2(b)(i) of Act and consequently, whether the externment order dated 25.02.2026 passed by Additional District Magistrate, Finance and Revenue, Amethi, and the appellate order dated 06.05.2026 passed by Commissioner, Ayodhya Division, affirming the same, were sustainable in law.

Headnotes

U.P. Control of Goondas Act, 1970 - ss. 2(b), ¾ - Goonda - Declaration of - Sustainability of - Habitual Criminality - Requirement of - Beat reports - Evidentiary value - Validity of - The petitioner, invoked the writ jurisdiction and assailing the order dated 25.02.2026 passed by Additional District Magistrate, Finance and Revenue, Amethi, in Case No. 730 of 2025, whereby he was declared a "Goonda" u/s 3/4 of U.P. Control of Goondas Act, 1970, on the strength of his purported involvement in two criminal cases, namely, Case Crime No. 343 of 2021 and Case Crime No. 57 of 2025 both registered at Police Station Musafirkhana, coupled with two beat information reports dated 13.04.2025 and 14.04.2025 and a prohibitory report dated 14.04.2025 - Aggrieved thereby, the petitioner preferred a statutory appeal u/s 6 of Act, which came to be dismissed by Commissioner, Ayodhya Division, Ayodhya, vide order dated 06.05.2026, and validity of both the original and appellate orders was thereafter assailed by petitioner in the instant petition.

Held*:* Involvement of the petitioner in two criminal cases - one instituted in year 2021 and the other instituted in year 2025, does not establish that he is a habitual offender - The petitioner is already facing prosecution for the two criminal cases in which he is involved and it is not that the petitioner cannot be dealt with under the ordinary penal law - There is no allegation that the petitioner is a threat to maintenance of public order. The learned Additional District Magistrate has declared the petitioner to be 'a Goonda' merely on the basis of his involvement in two cases - Registration of beat reports without any complaint having been filed by any person, when no investigation follows a beat report and no prima facie satisfaction of involvement of a person in commission of offence is recorded in furtherance of beat reports, and the person would not have an opportunity to rebut the allegations made in beat reports, would not provide a ground for declaring a person to be a Goonda - Thus, The impugned order dated 25.02.2026 passed by the Additional District Magistrate, Finance and Revenue, Amethi, declaring the petitioner to be 'Goonda' is not sustainable in law and the order dated 06.05.2026 passed by Commissioner, Ayodhya Division, Ayodhya affirming the said order **is also not sustainable in law, accordingly quashed**. [Paras 14 to 17] (E-13)

Case Law Cited

Parvindra v. State of U.P.: **2020 SCC OnLine ALL 51;** *Bharat Singh v. State of U.P. and 3 Ors.*: **2023:AHC:171107;** *Shankar Ji Shukla v. Ayuqt Allahabad Mandal and Ors:* **(2005) 52 ACC 633;** *Vijai Narayan Singh v. State of Bihar,* **(1984) 3 SCC page 14;** *Lalani Pandey @ Vijay Shankar Pandey v. State of U.P.*: **2010 SCC OnLine All 2411;** *Pavan v. State of U.P.*: **2021 SCC OnLine All 231;** *Govardhan v. State of U.P.*: **2023 SCC OnLine All 780;** *Satendra v. State of U.P.:* **2026 SCC OnLine All 3129;** *Bharat Singh v. State of UP:* **2023:AHC:171107 - referred to**

Imran Alias Abdul Quddus Khan v State Of U.P. And Ors.; **1999 SCC OnLine All 1636 - relied on**

List of Acts

U.P. Control of Goondas Act, 1970

List of Keywords

Writ petition; Goonda; Goonda act; Habitual offender; Habitual criminal; Externment order; Punitive; Right to reputation; Right to life; Article 21; Public order; Public disorder; Anti-social; Desperate; Dangerous to community; Tout; Indecent remarks; Beat information report; Prohibitory report; Criminal case; Appellate order; Impugned orders quashed; Petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 5363 of 2026
From the Order dated 25.02.2026 passed by the Additional District Magistrate, Finance and Revenue, Amethi in Case No.730 of 2025 and also Order dated 06.05.2026 passed by Commissioner, Ayodhya Division, Ayodhya in Appeal No.994 of 2026.

Appearances for Parties

Adv. for the Petitioner(s):
Nisha Srivastava

Adv. for the Respondent(s):
G.A.

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

1. Heard Ms. Nisha Srivastava, the learned counsel for the petitioner and Shri Vishal Agarwal, the learned AGA for the State.

2. By means of the instant petition, the petitioner has challenged the order dated 25.02.2026 passed by the Additional District Magistrate, Finance and Revenue, Amethi in Case No.730 of 2025 under Section 3/4 U.P. Control of Goondas Act, 1970 (which will hereinafter be referred to as 'the Goonda Act') whereby the petitioner has been declared to be a 'Goonda' on the basis of his involvement in the following two criminal cases: -

(i) Case Crime No.343 of 2021, under Sections 376/306 IPC, Police Station-Musafirkhana,

(ii) Case Crime No.57 of 2025, under Sections 115(2)/352/351/317(2) BNS, Police Station Musafirkhana.

The order also mentions two beat information reports dated 13.04.2025 and 14.04.2025 and a prohibitory report dated 14.04.2025.

3. The petitioner had challenged the aforesaid order by filing Appeal No.994 of 2026, under Section 6 of the Goonda Act, which was dismissed by means of an order dated 06.05.2026 passed by Commissioner, Ayodhya Division, Ayodhya and validity of the appellate order has also been challenged in this petition.

4. The learned counsel for the respondent submits that the involvement of the petitioner in one criminal case instituted in the year 2021 and another criminal case instituted in the year 2025, does not establish that the petitioner is a habitual offender. She has relied upon the judgments rendered by two different coordinate Benches of this Court in the cases of **Parvindra v. State of U.P.:** 2020 SCC OnLine ALL 51 and **Bharat Singh v. State of U.P. and 3 Ors**.: 2023:AHC:171107.

5. The word 'Goonda' is defined in Section 2(b) of the Goonda Act, as follows: -

"(b)Goonda" means a person who—

(i)either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable under Section 153 or Section 153-B or Section 294 of the Indian Penal Code or Chapter XV, Chapter XVI, Chapter XVII or Chapter XXII of the said Code; or

(ii) has been convicted for an offence punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or

(iii) has been convicted not less than thrice for an offence punishable under the U. P. Excise Act, 1910 or the Public Gambling Act, 1867 or Section 25, Section 27 or Section 29 of the Arms Act, 1959; or

(iv) is generally reputed to be a person who is desperate and dangerous to the community; or

(v) has been habitually passing indecent remarks or teasing women or girls; or (vi)is a tout."

6. In **Imran Alias Abdul Quddus Khan vs State Of U.P. And Ors**.; 1999 SCC OnLine All 1636, a Division Bench of this Court held that:-

"*11. Ex facie,* ***a person is termed as a 'goonda' if he is a habitual criminal.*** *The provisions of Section 2(b) of the Act are almost akin to the expression 'anti social element' occurring in Section 2(d) of Bihar Prevention of Crimes Act, 1981. In the context of the expression 'anti social element' the connotation 'habitually commits' came to be interpreted by the apex Court in the case of Vijay Narain Singh v. State of*

Bihar, (1984) 3 SCC 14. The meaning put to the aforesaid expression by the apex Court would squarely apply to the expression used in the Act, in question. The majority view was that ***the word 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions****. Even the minority view which was taken in Vijay Narain's case (supra) was that the word 'habitually' means 'by force of habit'. It is the force of habit inherent or latent in an individual with a criminal instinct with a criminal disposition of mind, that makes a person accustomed to lead a life of crime posing danger to the society in general. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences punishable under the specified chapters of the Code, he should be considered to be a 'anti social element'. There are thus two views with regard to the expression 'habitually' flowing from the decision of Vijay Narain's case (supra). The majority was inclined to give a restricted meaning to the word 'habitually' as denoting 'repetitive' and that on the basis of a single act cannot be said to be forming the habit of the person. That is to say, the act complained of must be repeated more than once and be inherent in his nature. The minority view is that a person in habitual criminal who by force of habit or inward disposition inherent or latent in him has grown accustomed to lead a life or crime. In simple language, the minority view was expressed that the word 'habitually' means 'by force of habit'. The minority view is based on the meaning given in Stroud's Judicial Dictionary, Fourth Ed. Vol. II-1204 -* ***habitually requires a continuance and permanence of some tendency, something that has developed into a propensity, that is, present from day to day. Thus, the word 'habitual' connotes some degree of frequency and continuity.***

12. The word 'habit' has a clear, well understood meaning being nearly the same as 'accustomed' and cannot be applied to a single act. When we speak of habit of a person, we prefer to his customary conduct to pursue, which he has acquired a tendency from frequent repetitions. In B.N. Singh v. State of U.P., AIR 1960 All 754 it was observed that it would be incorrect to say that a person has a habit of anything from a single act. In the Law Lexicon - Encyclopedic Law Dictionary, 1997 Ed. by P. Ramanatha Aiyer, the expression 'habitual' has been defined to mean as constant, customary and addicted to a specified habit; formed or acquired by or resutling from habit; frequent use or custom formed by repeated impressions. The term 'habitual criminal', it is stated may be applied to any one, who has been previously more than twice convicted of crime, sentenced and committed to prison. ***The word 'habit' means persistence in doing an act, a fact, which is capable of proof by adducing evidence of the commission of a number of similar acts. 'Habitually' must be taken to mean repeatedly or persistently. It does not refer to frequency of the occasions but rather to the invariability of the practice.***

13. The expression 'habitual criminal' is the same thing as the 'habitual offender' within the meaning of Section 110 of the Code of Criminal Procedure, 1973. This preventive Section deals for requiring security for good behaviour from 'habitual offenders'. The expression 'habitually' in the aforesaid section has been used in the sense of depravity of character as evidenced by frequent repetition or commission of offence. It means. repetition or persistency in doing an act and not an inclination by nature, that is, commission of same acts in the past and readiness to commit them again where there is an opportunity.

14. Expressions like 'by habit' 'habitual' 'desperate' 'dangerous' and 'hazardous' cannot be flung in the face of a man with laxity or semanitics. ***The Court must insist on specificity of facts and a consistent course of conduct convincingly enough to draw the rigourous inference that by confirmed habit, the petitioner is sure to commit the offence if not externed or say directed to take himself out of the district****. It is not a case where the petitioner has ever involved himself in committing the crime or has adopted crime as his profession. There is not even faint or feeble material against the petitioner that he is a person of a criminal propensity. The case of the petitioner does not come in either of the clauses of Section 2(b) of the Act, which defines the expression 'Goonda'. Therefore, to outright label a bona fide student as 'goonda' was not only arbitrary capricious and unjustified but also counter productive. A bona fide student who is pursuing his studies in the Post Graduate course and has never seen the world of the criminals is now being forced to enter the arena.* ***The intention of the Act is to afford protection to the public against hardened or habitual criminals or bullies or dangerous or desperate class who menace the security of a person or of property. The order of externment under the Act is required to be passed against persons who cannot readily be brought under the ordinary penal law and who for personal reasons cannot be convicted for the offences said to have been committed by them. The legislation is preventive and not punitive. Its sole purpose is to protect the citizens from the habitual criminals and to secure future good behaviour and not to punish the innocent students. The Act is a powerful tool for the control and suppression of the 'Goondas'; it should be used very sparingly in very clear cases of 'public disorder' or for the maintenance of 'public order'. If the provisions of the Act are recklessly used without adopting caution and descretion, it may easily become an engine of operession. Its provisions are not intended to secure indirectly a conviction in case where a prosecution for a substantial offence is likely to fail. Similarly the Act should not obviously be used against mere innocent people or to march over the opponents who are taking recourse to democractic process to get their certain demands fulfilled or to wreck the private vengeance'"***

(emphasis added)

7. In **Shankar Ji Shukla v. Ayuqt Allahabad Mandal and Ors**: (2005) 52 ACC 633, this Court has relied upon the decision in the case of **Imran Alias Abdul Quddus Khan** (Supra) as well as the judgment of the Hon'ble Supreme Court in the case of **Vijai Narayan Singh v. State of Bihar,** (1984) 3 SCC page 14 and held that a single or two acts of the accused will not be sufficient to hold that he is habitually involved in commission of offences referred to in the Act.

8. A coordinate Bench of this Court in the case **of Lalani Pandey @ Vijay Shankar Pandey v. State of U.P.:** 2010 SCC OnLine All 2411, held as under: -

"14….In this case the accused has not been treated as 'goonda' on the grounds mentioned in Clause 2(b) (ii) to (vii) of the Act as referred above. He has been treated as goonda under Clause 2(b) (i) of the Act. As per definition of goonda as contained in Clause 2(b) (i) of the Act, a person can be teated as goonda only when he is habitually involved in commission of offence as mentioned therein. The word goonda carries on the meaning that a person who by habit is involved to commit repeated offences as mentioned above will be treated as 'goonda'. ***One or two criminal cases against a person will not be sufficient to hold him that he is habitually involved in commission of such offences and he is a 'goonda'.***

9. In **Pavan v. State of U.P.**: 2021 SCC OnLine All 231, a coordinate Bench of this Court held that: -

"7. Considering the scheme and object of the Act of 1970, an order of externment cannot be compared to a preventive detention under the National Security Act, 1980, which may cast no stigma, or be explained consistent with a person's upright character. Once a person is proceeded with against under the Act of 1970, and externed under Section 3(3), classifying him as a goonda, the order is certainly stigmatic. It is for this reason also that an order of externment envisages provision of opportunity to show cause, under Section 3(2). This is not to say that the provision for opportunity is engrafted in the Statute, for the reason alone of its stigmatic effect; it is also there because an order of externment is a serious inroad on a citizen's liberty.

8. ... This Court must remark that the petitioner is not a convict so far, and every man has a right to his reputation and good name in society. Every person is presumed to be an honourable and respectable man, unless that presumption is dislodged in accordance with law. Therefore, dubbing some citizen as a goonda and externing him under the Act of 1970, is an act that would afford a cause of action to the person who suffers that order, which enures beyond its physical consequences. In the opinion of this Court, it would not be a sound legal proposition to say that a man may suffer the slur of being called a goonda, because he could not bring the order of externment passed against him to test within the term of its life. In the opinion of this Court, the petitioner is entitled to question the externment order, notwithstanding that order outrunning its life.

9. The right to one's reputation is now unquestionably regarded as a facet of the Right to Life, guaranteed under Article 21 of the Constitution. The horizon of the right guaranteed under Article 21 has been given its true meaning and content over the years that our polity has flourished under the constitutional umbrella. Right to Life has long been expanded to mean immensely more than mere physical, animal or biological existence. It has been interpreted by the Supreme Court and the High Courts over the years, to bring within its fold, all that it means and requires to elevate the mere physical existence of an individual to the position of a human being, who has all opportunity and facility to realise his potential to its fullest. In the quest to realise the wholesome

guarantee of life in its varied facets, the right to one's reputation has been regarded as an inseperable part.

* * *

14. In the context of how the Right to Reputation is viewed by the law, it would be almost preposterous to suggest that the physical consequences of an externment order having come to an end, no cause of action survives to the petitioner to assail it. An externment order, under the Act of 1970, has clearly two facets. One is that which relates to the tangible consequence of forbidding the person proceeded with against, from entering the district for a certain period of time. This consequence of the externment order is indeed preventive in nature, and, may be, of immense importance in a given case to the maintenance of public order. So far as the person against whom the order of externment is made is concerned, it certainly does curtail his liberty, by preventing his movement in a defined territory. But, the inconvenience stemming from the abridgment of liberty, that comes in the wake of an externment order, prohibiting entry in the district, is of trivial consequence to the one externed, if this consequence were to be weighed against the harm that it brings to the individual's reputation.

15. The order of externment proceeds on an innate declaration that the person externed is a goonda. A goonda has been defined under the Act of 1970, and otherwise also, has an understandable connotation in ordinary parlance. A goonda is the anti-thesis of what a respectable or honourable man is. An externment order, which, thus, works as an innate declaration about the man externed being a goonda, is irreversibly ruinous of his reputation. It has been said time over again that reputation once lost can never been redeemed. The physical consequences of an externment order that last only for a period of six months, with the limited effect of abridgment of some liberty, are trivial when compared to the timeless consequence of ruining a reputation, that can perhaps never be regained..."

10. In the case of **Govardhan v. State of U.P.:** 2023 SCC OnLine All 780, a Division Bench of this Court held as under: -

"9. It is a fundamental right of every citizen to reside peacefully and profess his business, but if the executive authorities are issuing notice under this deterrent law, then they must be doubly sure about the individual's past image, his past credentials, his family, social educational back ground and after assessing all these factors if the executive authorities comes to the conclusion that individual is a "Goonda" or a potential threat to society at large and should be thrown out from the municipal limits, then only by well reasoned order, after applying his own independent judicial mind pass a well reasoned order for externment of that individual or even issue notice to that individual calling upon him to justify his past conduct.

10. The public perception regarding the individuals' image carries weight. If the individual is enjoying a bad reputation and name in the area and coupled with the fact that

he has got a chequered past then executive authorities are well within their right to issue notice to that individual or to pass an externment order for that individual. ***Trivial and insignificant offences having one or two in number would not make the person branded as a "Goonda". This adjective "Goonda" itself carries bundle load of bad name, and the executive authorities casually and irresponsibly brand a person as a Goonda, goes without saying, that his entire future and reputation would go to dogs and cause irreparable damage to his name and reputation of his family."***

(Emphasis added)

11. The aforesaid judgments have been followed by a coordinate Bench of this Court in **Satendra v. State of U.P.:** 2026 SCC OnLine All 3129.

12. In **Bharat Singh v. State of UP:** 2023:AHC:171107, a Coordinate Bench of this Court held that: -

"6. It is to note that for the act of the accused to come under the definition of Goonda there must be material to show that the accused was a habitual offender and committed the offence as aforesaid repeatedly and his general reputation is desperate and dangerous to the community or he habitually passes indecent remarks on women or girls. It is also to note that ***there must be reasonable nexus between the act of the accused and its impact on the society. There must not be time gap between the proceedings under this Act and the acts said to be committed by the accused must show relation between the two.*** *The material on record must also show that the accused-person was a habitual offender and he committed the offences under Chapter 16, 17 and 22 of the Indian Penal Code."*

(emphasis added)

13. From a collective reading of the aforesaid judgments, the following principles emerge: -

(i) A person is termed as a 'goonda' if he is a habitual criminal. The word 'habitually' means 'repeatedly' or 'persistently'. 'Habit' means persistence in doing an act, i.e., the commission of a number of similar acts. The word 'habitual' connotes some degree of frequency and continuity. Habitually requires a continuance and permanence of some tendency, something that has developed into a propensity, that is, present from day to day. Repeated, persistent and similar but not isolated, individual and dissimilar acts are necessary to justify an inference of habit.

(ii) One or two acts of the accused will not be sufficient to hold that he is habitually involved in commission of offences referred to in the Act.

(iii) There must be reasonable nexus between the act of the accused and its impact on the society. There must not be time gap between the proceedings under this Act and the acts said to be committed by the accused must show relation between the two.

(iv) It must be evident from the facts that by his confirmed habit, the petitioner is sure to commit more offences, if he is not externed.

(v) The legislation is preventive and not punitive. Its sole purpose is to protect the citizens from the habitual criminals and to secure future good behaviour and not to punish the innocent persons.

(vi) The Goonda Act is a powerful tool for the control and suppression of the 'Goondas', it should be used very sparingly in very clear cases of 'public disorder' or for the maintenance of 'public order'. The Act should not be allowed to be misused as a tool of oppression of innocent persons.

(vii) The Goonda Act is not intended to secure punishment of a person without his conviction for a substantial offence. (viii) The intention of the Act is to afford protection to the public against hardened or habitual criminals or bullies or dangerous or desperate class who menace the security of a person or of property. The order of externment under the Act is required to be passed against persons who cannot readily be brought under the ordinary penal law and who cannot be convicted for the offences said to have been committed by them.

14. Involvement of the petitioner in two criminal cases - one instituted in the year 2021 and the other instituted in the year 2025, does not establish that he is a habitual offender. The petitioner is already facing prosecution for the two criminal cases in which he is involved and it is not that the petitioner cannot be dealt with under the ordinary penal law. There is no allegation that the petitioner is a threat to maintenance of public order. The learned Additional District Magistrate has declared the petitioner to be 'a Goonda' merely on the basis of his involvement in two cases.

15. Registration of beat reports without any complaint having been filed by any person, when no investigation follows a beat report and no prima facie satisfaction of involvement of a person in commission of the offence is recorded in furtherance of the beat reports, and the person would not have an opportunity to rebut the allegations made in the beat reports, would not provide a ground for declaring a person to be a Goonda.

16. Accordingly, I am of the view that the impugned order dated 25.02.2026 passed by the Additional District Magistrate, Finance and Revenue, Amethi, declaring the petitioner to be 'Goonda' is not sustainable in law and the order dated 06.05.2026 passed by Commissioner, Ayodhya Division, Ayodhya affirming the said order is also not sustainable in law.

17. Accordingly, the writ petition is **allowed**. The order dated 25.02.2026 passed by the Additional District Magistrate, Finance and Revenue, Amethi in Case No.730 of 2025 under Section 3/4 U.P. Control of Goondas Act, 1970 and the order dated 06.05.2026 passed by the Commissioner, Ayodhya Division, Ayodhya are hereby **quashed.**

(2026) 7 ILRA 1481
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Misc. Writ Petition No. 8465 of 2026
Alongwith Criminal Misc. Writ Petition No. 2789 of 2026,3132 of 2026 & 6019 of 2026

Tayyab **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether the FIR dated 09.12.2025 as registered under various provisions of BNS, 2023, the Muslim Women (Protection of Rights on Marriage) Act, 2019, and Protection of Children from Sexual Offences Act, 2012, was liable to be quashed, particularly where the allegations disclosed that the prosecutrix had been subjected to sexual intercourse first as a minor, and subsequently as an adult under the guise of "nikah halala," and whether recourse to personal (Muslim) law could operate as a shield against the applicability of penal provisions, including those under the POCSO Act, in respect of acts alleged to constitute statutory rape and gang rape.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 85, 115(2), 64, 351(2), 61(2)(a), 70(2) - Muslim Women (Protection of Rights on Marriage) Act, 2019 - ss. 3/4 - Protection of Children from Sexual Offences Act, 2012 - ss. 5(l)/6 and 17/18 - Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 183 - Constitution of India, 1950 - Articles 14, 21 - FIR - Quashing of - Triple Talaq - Retrospective operation - Personal law - Applicability of - Sexual Intercourse by deceitful means - Consent obtained by fraud - The petitioners, along with other co-accused, were named in an FIR lodged by prosecutrix alleging that she was coerced into marrying one Azhar Nawaz in 2015 while a minor, that the marriage was dissolved by a pronouncement of Triple Talaq in 2016, whereafter she was made to undergo a "halala nikah" with a co-accused under threat and without valid consent, resulting in her being ravished while still a minor, following which she remarried Azhar Nawaz in 2017 and bore a daughter - Further after a second Triple Talaq in 2021 and Azhar Nawaz's intervening marriage to another woman, the prosecutrix was persuaded to reconcile with him, whereupon she was told that a second halala was required, under the pretext of which two of co-accused forcibly ravished her on 19.02.2025, followed by a sham/bogus nikah with Azhar Nawaz performed by other co-accused, whereafter she discovered that no valid nikah had in fact taken place and that she had been fraudulently made to cohabit with him - The petitioners, sought quashing of FIR, which was resisted by State and informant on the ground that the material on record, including the prosecutrix's statement u/s 183 BNSS and the medico-legal reports, disclosed a prima facie case of statutory rape and gang rape perpetrated under the colorable devise of "halala."

Held: This is a case, prima facie, where the crime of ravishing a minor girl, taking refuge behind halala, and then, much later in life, of gang rape behind the same veil of doing a halala, has been committed, on the second occasion, in a far more crude and outlandish manner - When it comes to criminal law, unless the law itself makes exception, which it rarely does, there is absolutely no place for pleading personal laws governing

marriage, etc., if, interlaced with a matrimonial relationship, a crime were committed - The constitutionality of halala is not under challenge before the court, but, if, under the garb of doing a halala, a minor girl is subjected to carnal relations, relying on her desire to marry a man who has already divorced her, it would certainly attract the provisions of POCSO Act - After all, sexual relations with a minor have been absolutely prohibited by Supreme Court in Independent Thought (infra) - All the accused here, some of whom whose names have surfaced during investigation, were involved in an enterprise, playing whatever roles they did, which, put together, constitute, prima facie, crimes by the laws of land - Some may have marginal roles as abettors or conspirators, but that would not entitle them to have the FIR quashed at the threshold and the investigation against them terminated at an incipient stage - **Accordingly, petitions dismissed, interim orders vacated**. [Paras 20, 26 to 28] (E-13)

Case Law Cited

Independent Thought v. Union of India, **(2017) 10 SCC 800;** *Neeharika Infrastructure Private Limited v. State of Maharashtra and others,* **(2021) 19 SCC 401;** *Punit Beriwala v. The State of NCT of Delhi and others,* **2025 SCC Online SC 983 - referred to**

Books and Periodicals Cited

Convention on the Elimination of all forms of Discrimination Against Women, 1993 **- referred to**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Muslim Women (Protection of Rights on Marriage) Act, 2015; Constitution of India, 1950.

List of Keywords

Writ petition; Quashing of First Information Report; Nikah halala; Triple Talaq; Prosecutrix; Iddat; Minor girl; Ossification test; Medico-legal examination; Medical Board; Statutory Rape; Gang rape; Personal law; Shariat; Sunnat; Consent; Fraud; Cruelty; Right to dignity; Custody of minor daughter; CEDAW, 1993; Kari; Colorable devise; Petitions dismissed; Interim order vacated.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 8465 of 2026

Connected with other matters

Criminal Misc. Writ Petition No. 2789 of 2026

Criminal Misc. Writ Petition No. 3132 of 2026

Criminal Misc. Writ Petition No. 6019 of 2026

From the FIR dated 09.12.2025, giving rise to Crime No. 348 of 2025, Police Station Saidnagli, District Amroha.

Appearances for Parties

Advs. for the Petitioner(s):
Shashi Kant Shukla, Senior Advocate along with Mr. Mohd. Shakib

Advs. for the Respondent(s):
Shyam Kumar Yadav, Shashi Shekhar Tiwari

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

This judgment will decide the present petition and connected Criminal Misc. Writ Petitions Nos. 6019 of 2026, 2789 of 2026, and 3132 of 2026. All these writ petitions lay challenge to the same First Information Report1 and have, therefore, been heard together.

2. This writ petition, along with the connected writ petitions, has been instituted seeking to quash the FIR dated 09.12.2025, giving rise to Crime No. 348 of 2025, under Sections 85, 115(2), 64, 351(2), 61(2)(a), 70(2) of the Bharatiya Nyaya Sanhita, 20232, Section 3/4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 and Sections 5(l)/6 and 17/18 of the Protection of Children from Sexual Offences Act, 20123, Police Station Saidnagli, District Amroha.

3. The first informant, according to the FIR, was forced to marry one Azhar Nawaz, a resident of Village Dhakka, Tahsil Hasanpur, Mohalla Mahal, District Amroha. The informant4, as she says, was coerced to enter into this marriage under threat and by force on 25.04.2015, when her nikah was performed with Azhar Nawaz. She says that she was aged barely 15 years at the time. After the marriage of parties, Azhar would beat up the prosecutrix. In the month of January, 2016, Azhar ended the marital bond with the pronouncement of a Triple Talaq. After the passage of a few months, Azhar Nawaz came back to the prosecutrix with a proposal to marry her a second time. Next, in the month of November, 2016, Azhar got the informant to perform a halala nikah with co-accused Maulana Qayyum. The nikah was performed by Murtza alias Kari Murtza son of Sageer Ahamad5 at Town Siyana, District Bulandshahr. Azhar had come along with a cousin of his, one degree removed, Tayyab son of Amjad Hussain6, and a cousin, Asim son of Mohammad Ghufran7. After the halala nikah, a second nikah of the prosecutrix with Azhar Nawaz was performed in the month of April, 2017. The parties cohabited, and of the wedlock of parties, a daughter was born on 01.04.2018 at Moradabad.

4. After birth of the daughter, Azhar's behaviour towards the prosecutrix changed for the worse and went downhill. He resumed beating her. On 24.01.2021, he divorced the informant a second time, and during the period of her iddat and within eleven days of the divorce, he married another woman, Nayab Akhtar. The prosecutrix says that she was aware of the illicit relationship between Azhar Nawaz and the other woman, while the two were married. After the second divorce with the prosecutrix and his own second marriage, Azhar would find pretexts to resume his relationship with the prosecutrix, sometimes citing their daughter as the cause and at others, the matter of paying maintenance etc. Sometimes, he would say that his other wife (Nayab Akhtar) was barren. It was also said by the informant that Azhar told her that he had divorced his second wife and that he wishes to stay with her and their daughter, resuming their family. His brothers and co-accused Shahnawaz Chaudhary and Hakim Nishat alias Nishat8 would convince the prosecutrix about the wisdom of Azhar's proposal. The prosecutrix, bearing in mind her daughter's future, besides being a broken woman on account of the trauma of two divorces and financial stringency, agreed to a third marriage between the parties, which she has mentioned in the FIR as a second marriage. As soon as the prosecutrix agreed to this proposal, Azhar's brothers told her that since her marriage with Azhar had already ended twice, it would require a halala twice over. Under the pretext of doing a halala, the prosecutrix says that co-accused Shahnawaz Chaudhary and Hakim Nishat ravished her and upon resistance, threatened her with death. And they also said that her dead body and that of her daughter would not be recovered if she endeavoured to stop them. This

offence happened on 19.02.2025. In the evening, the same day, Azhar, Shahnawaz, Maulana Nadim son of Masroor, Aquil son of Mohammad Gufran and Hakim Nishat did the show of a nikah with Azhar, which the prosecutrix says was bogus. It was represented to her that a nikah with Azhar had been performed, but later on, she came to know that the represented nikah was falsehood and it was just a pretext to resume carnal relations with her. So long as this fraud was believed to be true by the prosecutrix, she and Azhar Nawaz lived together as man and wife. The prosecutrix also says that her consent to the nikah was given in a false belief, rendering her consent as one obtained by fraud. The prosecutrix says that all these accused, to wit, Azhar Nawaz, Shahnawaz Chaudhary, Maulana Nadim, Aquil, Hakim Nishat, Kari Murtza and Maulana Qayyum had come together to defraud the prosecutrix, threaten her, treat her with cruelty and taking advantage of her helplessness, made, what the prosecutrix says, a □dirty□ use of her. She requested registration of a crime against all the named men and strict action in accordance with law.

5. There is mention of a medico-legal examination, where there is an ossification test report dated 12.12.2025 and a dental evaluation dated 16.12.2025 on record. In the year 2025, the prosecutrix has been estimated to be above 25 years. The statement of the prosecutrix was also recorded under section 183 of the Bharatiya Nagarik Suraksha Sanhita, 20239 before the Judicial Magistrate. We would allude to it later in this judgment.

6. After the prosecutrix's statement under Section 183 as also under Section 180 BNSS were recorded vide C.D. No. 6 dated 24.12.2025, the Investigating Officer added six other co-accused, including the petitioner. Section 61(2)(a) BNS and Sections 5(l)/6 and 17/18 POCSO Act were added to the cart of offences. The number of accused went up to nine. C.D. No. 6 records the names of the nine accused, and they are, Azhar Nawaz, Shahnawaj Chaudhary, Hakim Nishat, Asim, Maulana Qayyum, Tayyab, Maulana Nadim, Aquil and Kari Murtza. It is on this profile of the accused, five of whom are petitioners in the present writ petition and the connected petitions, the contents of the FIR, the medico-legal reports, the statement of the prosecutrix under Section 183 and 180 BNSS, besides other relevant documents, that we have heard these matters. Of course, the petitions have been admitted to hearing, with parties, including the State and the informant, exchanging affidavits in the present writ petition as also some of the writ petitions, all of which stand more or less on common edifice, except for the admitted distinction based on roles of individual petitioners endeavoured to be drawn during the very detailed submissions advanced by learned Counsel for parties.

7. Heard Mr. Shashi Kant Shukla, learned Senior Advocate assisted by Mr. Mohammad Sakir, learned Counsel for the petitioner in support of this petition, Mr. Shyam Kumar Yadav, learned Counsel for respondent no. 5 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of respondents nos. 1 to 4. The same learned Counsel have addressed us in Criminal Misc. Writ Petitions Nos. 2789 of 2026 and 3132 of 2026. In Criminal Misc. 6019 of 2026, we have heard Mr. Sandeep Kumar Srivastava, learned Counsel for the petitioner, Mr. Shyam Kumar Yadav, learned Counsel appearing for respondent no. 5 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of respondents nos. 1 to 4.

8. It is submitted by Mr. Shashi Kant Shukla, learned Senior Advocate appearing on behalf of the petitioner in the present writ petition, besides Criminal Misc. Writ Petitions Nos. 2789 of 2026 and 3132 of 2026, that the allegation against the petitioner, Tayyab is that in the month of November, 2016, when the first

halala nikah was performed with Maulana Qayyum, then along with the prosecutrix and her husband, co-accused Azhar Nawaz, the petitioner also went to Town Siyana, Bulandshahar. The allegation against Murtza alias Kari Murtza is that when the first halala nikah was performed with Maulana Qayyum, he acted as the Qazi to perform the halala nikah. The allegations against petitioners Shahnawaz Chaudhary and Hakim Nishat alias Nishat are that when the prosecutrix wanted to solemnise a nikah again with her ex-husband, Azhar Nawaz, they told her that as she had been divorced twice over, she would have to perform halala also twice over. It is the prosecutrix□s allegation that on the pretext of halala, Shahnawaz Chaudhary and Hakim Nishat ravished her on 19.02.2025.

9. It is argued by Mr. Shashi Kant Shukla, learned Senior Advocate that in the year 2016, by the time all this had happened, Triple Talaq (Talaq-e-Biddat) was permissible as per Shariat law in India, and now, it has been abolished by the Act of 2019, which came into force with retrospective effect on 19.09.2018. He points out that nikah halala is a valid ritual, according to the Islamic Law. It is treated a Sunnat, if a Muslim woman wants to remarry her husband. It is also pointed out that in the year 2021, while securing a divorce decree by mutual consent, the prosecutrix has mentioned her age to be 24 years, and therefore, working it back in time, at the time of her nikah in the year 2015, she was 18 years old. It is also argued that the Quran does not specify a minimum numerical age for marriage.

10. It is next urged that if a marriage is solemnised during minority and, after attaining majority, a Muslim woman does not repudiate the marriage by filing a petition within one year, then the marriage, which was initially voidable, ipso facto becomes valid and binding on the parties upon the expiry of one year from the date she attains majority. It is submitted that marriage with a minor is never void.

11. It is next urged that because some disputes arose between Azhar Nawaz and the prosecutrix relating to the custody of their daughter, though it is still with Azhar Nawaz, the prosecutrix created disturbance, leading Azhar to move complaints on the Integrated Grievance Redressal System10 Portal on 02.12.2025 and 04.12.2025. Acting on these complaints, it is pointed out by the learned Senior Advocate that the Police, after inquiry, have made reports that both the husband and the wife have separated and a divorce decree has been passed by the Court. It is also reported that custody of the daughter is with Azhar Nawaz. It is also urged that once the ex-husband of the prosecutrix made an IGRS complaint against her, the impugned FIR has been lodged as an abuse of process of Court to implicate him and his distant relatives in order to bring oblique pressure upon the husband to give custody of the minor daughter as also annex five bigha of land that Azhar Nawaz owns, and to which, the prosecutrix has no right. So far as the petitioner Murtza alias Kari Murtza is concerned, he is a respected man in society, with no criminal antecedents. He gives tuitions to students in Islamic studies. He is not a Qazi who solemnises a nikah. He is a Kari, which the learned Senior Advocate describes as one who holds a degree in Islamic studies.

12. It is next contended that the dispute between the prosecutrix and her ex-husband, co-accused Azhar Nawaz, has been going on for the last ten years. For the sake alone that the petitioners in the connected writ petitions, namely, Shahnawaj Chaudhary and Hakim Nishat are the brother and nephew, respectively of the prosecutrix's ex-husband, they have been falsely implicated in the present case in order to harass them and bring oblique pressure upon Azhar Nawaz to fulfill the prosecutrix's unjust demands. The petitioner, Tayyab, is said to be a super senior citizen, aged 71 years, with no criminal antecedents. He has been falsely implicated in the present case, because, he is a collateral of the prosecutrix's ex-husband one degree removed (in common parlance, an uncle).

13. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, has opposed the submissions of the learned Senior Advocate appearing on behalf of the petitioner and submits that serious offences, involving rape and gang rape, against the petitioners are disclosed, including those under the POCSO Act, going by the victim's age, when determined arithmetically, working it backwards. He submits that it is not a case which warrants relief of quashing the FIR, but one which requires to be thoroughly investigated.

14. Mr. Shyam Kumar Yadav, learned counsel appearing for the informant/respondent no. 5 has also been at considerable pains to address us on all aspects of the matter. He submits that in the month of November 2016, the informant was a minor, aged 16 years. The petitioner in the present petition, Tayyab, as well as co-accused Azhar Nawaz, the prosecutrix's ex-husband, Asim, Kari Murtza and Maulana Qayyum orchestrated a halala for her. It is submitted that Maulana Qayyum acted as the principal offender and rapist, while others abetted him and acted as conspirators. It is emphasised that the allegations in the FIR, put in the proper temporal context, clearly show a pattern of sexual exploitation under the guise of nikah halala, involving a minor, at the time of the first incident, and subsequently, a case of gang rape, masked as a double halala in order to enable the prosecutrix to remarry her husband with whom her marital bond had been ruptured twice over.

15. It is argued that at the inception of it all, the halala in November, 2016 involved the prosecutrix, then a minor of 16 years. Learned Counsel for the informant says that going by the settled law in **Independent Thought v. Union of India11**, any sexual act with a minor, even under the umbrella of a personal law, constitutes rape. Consent obtained from a minor is no consent. The marriage on 19.02.2025, a third one with her husband, is described by learned Counsel for the informant as a colorable devise, intended to facilitate sexual access to the prosecutrix by multiple men, acting in concert. He submits that under Section 69 BNS, sexual intercourse by deceitful means is an offence. He argues that whatever the prosecutrix has gone through is the result of inherently tainted acts constituting offences that are mala in se, and not merely mala prohibita. (wrongs because they are prohibited by the statute). Such acts offend the collective conscience of the society and violate the right to dignity, which flows to a person from Article 21 of the Constitution. It is argued that the defense of personal law is inapplicable here, because the mandtory period of iddat was not observed, rendering the subsequent relations a nullity, even under the personal laws. Personal Laws cannot be used as a shield to commit acts that constitute gang rape under the BNS. The civil decree for divorce would not ameliorate the rigour of the offence of rape, which affects the life and dignity of a woman. It is a crime against a person as well as the society and humanity.

16. Learned counsel for respondent no. 5 has drawn our attention to the **Convention on the Elimination of all forms of Discrimination Against Women12,** in particular, CEDAW, 1993, Article 1 whereof says :

"For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

17. Article 2 of CEDAW, 1993 provides :

"Violence against women shall be understood to encompass, but not be limited to the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs."

18. Reference has also been made to Article 5 of the CEDAW.

19. It is next argued that the petitioner and the other co-accused have consistently pressurised and threatened the prosecutrix, leading to the filing of another FIR, being Crime No. 122 of 2026. Learned Counsel has relied on the guidelines of **Neeharika Infrastructure Private Limited v. State of Maharashtra and others13,** where it has been observed that the High Court should be extremely slow to quash an FIR, where a prima facie case of serious cognisable offences (especially those involving sexual violence) is established. It is also argued that the practice of halala, as applied here, is a tool of cruelty and gender-based discrimination. It violates the victim's right under Article 21 of the Constitution, the right, in its facet of the right to dignity and Article 14. It is further urged that some important material facts have been suppressed from this Court, disentitling the petitioners to relief. It is pointed out that Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. 2417 of 2026 preferred by co-accused, Nadim has been dismissed, and Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. 2522 of 2026 preferred by Tayyab, the petitioner in the present petition, too been dismissed. It is also urged that the petitioners and the other accused continue to exert pressure upon the prosecutrix and threaten her, which has led her to lodge another FIR, giving rise to Crime No. 122 of 2026, under Sections 352(4) and 232 BNS on 30.04.2026. This demonstrates the petitioners' criminal intent and the fact that they are, by nature, outlaws. The prosecutrix has no previous animosity against the accused. Learned counsel for the informant/fifth respondent has relied upon **Punit Beriwala v. The State of NCT of Delhi and others14**.

20. Upon hearing learned counsel for parties, we are of opinion that this is a case, prima facie, where the crime of ravishing a minor girl, taking refuge behind halala, and then, much later in life, of gang rape behind the same veil of doing a halala, has been committed, on the second occasion, in a far more crude and outlandish manner. When it comes to criminal law, unless the law itself makes exception, which it rarely does, there is absolutely no place for pleading personal laws governing marriage, etc., if, interlaced with a matrimonial relationship, a crime were committed. The constitutionality of halala is not under challenge before us, but, if, under the garb of doing a halala, a minor girl is subjected to carnal relations, relying on her desire to marry a man who has already divorced her, it would certainly attract the provisions of the POCSO Act. After all, sexual relations with a minor have been absolutely prohibited by the Supreme Court in **Independent Thought** *(supra).* In **Independent Thought**, Exception 2 to Section 375 of the Indian Penal Code, 1860 was read down and the provisions of the POCSO Act were given overriding effect over all other laws to mean that there was absolutely no possibility of any carnal relations, within or without marriage,

between a man and a woman below the age of 18 years. This view of the law still holds field, and by falling back upon personal laws, the clear mandate of a penal statute, which virtually makes carnal relations statutory rape or violation of a special statute, being the POCSO Act, cannot be warded off. It must be noted that under Exception 2 to Section 63 BNS, in deference to what was read down in Independent Thought, the new Code enacts Exception 2, in the following words :

"Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

21. A true copy of the report of the Medical Board, dated 16.12.2025 comprising three doctors, based on an ossification test, amongst others, opines the prosecutrix to be above 25 years. Admittedly, the prosecutrix was married for the first time in the year 2015. At that time, she would have been aged above 16 years or so, and definitely a minor.

22. The calendar of events shows that the prosecutrix was married on 25.04.2015 and in January, 2016, she suffered the first of her triple divorces. In the month of November 2016, she was made to undergo halala with one of the co-accused, Maulana Qayyum. By December, 2016, there can be little doubt that the prosecutrix would have still been a minor. She underwent the halala in order to remarry her husband a second time, which happened in April 2017, two years after her first marriage. By this time, she could be regarded as a major; but not at the time when she underwent the halala. These are all matters which we gather from the FIR, because, after all, we are hearing a petition to quash the FIR. We cannot undertake an examination of events to determine the truth or falsehood of the allegations. The statement of the prosecutrix under Section 183 BNSS, being a very vital part of the investigation, we have examined in order to determine if there is anything incredible about the prosecution meriting interference. In her statement under Section 183 BNSS, the prosecutrix says that after her first nikah, followed by divorce, the principal accused, Azhar Nawaz, perhaps realising his mistake, thought of remarrying the prosecutrix, a second time. She has said in her statement aforesaid that at the time, her age was 16 years and she was told by Azhar Nawaz that the Mufti had advised that she would have to undergo a halala. She did not understand what halala was at the tender age of 16 years. She was taken to Kasba Siyana by Azhar Nawaz, Asim and Tayyab (the petitioner here). She also said that she did not know about halala nor was it done with her consent. Maulana Qayyum forcibly did the halala and forcibly established carnal relations with her. The halala nikah was performed by Kari Murtza. She has also said that when all that happened, she cried in protest, but to no avail. She was then conveyed to Dhakka, and a second nikah was performed with Azhar in the year 2017. In the year 2018, a daughter was born to the parties. After the second nikah, Azhar Nawaz's treatment of the prosecutrix again turned foul. After the daughter was born, the treatment became worse. She was taunted with not bearing a male child. Azhar Nawaz□s ill-treatment of the prosecutrix became worse in order to marry a woman called Nayab Akhtar.

23. When the prosecutrix was at Aligarh, Azhar Nawaz pronounced a Triple Talaq a second time in the year 2021. In the year 2021, a Court-annexed mediation took place, resulting in a decree of divorce etc. While she was in her iddat, Azhar Nawaz married Nayab Akhtar. After some time, Azhar Nawaz came to know that Nayab Akhtar could not bear a child. He then contacted the prosecutrix again and told her that he wanted his daughter and that he would divorce Nayab Akhtar. It was on account of her daughter that the prosecutrix started living with Azhar Nawaz again. This time,

Shahnawaz Chaudhary and Hakeem Nishat gave her assurance that everything would be alright. It is for this reason she came back to Azhar Nawaz. Shahnawaz Chaudhary, Hakeem Nishat and Azhar Nawaz asked her to perform halala again. On occasion, Shahnawaz and Nishat forcibly ravished her in the name of halala. This happened on 19.02.2025. Next, a bogus nikah was performed with Azhar Nawaz. This bogus nikah was performed by Maulana Nadim with the aid of Aquil, Shahnawaz Chaudhary, Hakim Nishat and Azhar Nawaz, all of whom were involved in the process, and all of them present. Next, the two started cohabiting as man and wife. However, when the daughter's school documents were brought up, the prosecutrix□s name was absent. When the prosecutrix demanded her name to be there, Azhar Nawaz warded off the demand. Then one day, Azhar Nawaz told the prosecutrix that she was not his wife. She then explored the matter and found out that the nikah, that was performed a third time, was bogus, and virtually, Azhar Nawaz was establishing carnal relations with her, making her falsely believe that she was his wife.

24. From all this account that figures in the FIR and the statement of the prosecutrix, her age at the time when she was first married and did the first halala prima facie constitute statutory rape and offences under POSCO Act, and then, the allegations about the second halala, which, prima facie, constitutes a case of gang rape, we are of opinion that this matter requires thorough investigation. It is certainly not a case where the prosecution can be quashed at the threshold.

25. In the totality of circumstances, we are minded to say that this case presents the picture of a part of our society, that is far removed from the constitutional values and the constitutional aspirations of equality, privacy, personal dignity and whatever Articles 21 and 14 of the Constitution stand for. We do not, by any means, intend to say that in this petition, that is not framed that way, that we propose or suggest anything about the constitutionality of a given practice, but the circumstances of this case, and whatever has happened, we say, prima facie again, militates against the constitutional aspirations and guarantees, of which we have just now spoken. In fact, the entire facts, that have so far come on record, are shocking to the conscience.

26. We must notice, at this stage, the very persuasive arguments advanced by Mr. Shashi Kant Shukla, learned Senior Advocate appearing for the petitioner in the present petition as also two other connected writ petitions, and Mr. Sandeep Kumar Srivastava, learned Counsel for the petitioner in one of the connected writ petitions, that whatever be the allegations against Azhar Nawaz and the two men initially nominated in the FIR, the others have a marginal role. Some of them performed a nikah and some of them are very venerable men. We do not wish say anything about those issues, as all those matters would be thrashed out during investigation. All that we say is that all the accused here, some of whom whose names have surfaced during investigation, were involved in an enterprise, playing whatever roles they did, which, put together, constitute, prima facie, crimes by the laws of the land. Some may have marginal roles as abettors or conspirators, but that would not entitle them to have the FIR quashed at the threshold and the investigation against them terminated at an incipient stage.

27. In the result, all the writ petitions **fail** and stand **dismissed**.

28. The interim orders, wherever granted, stand **vacated.**

(2026) 7 ILRA 1490
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 1605 of 2026

Satish Gupta **...Petitioner**
Versus
Praveen Kumar Singhal **...Respondent**

Issue For Consideration

When the right to file written statement has been closed, defendant has no right to lead independent evidence.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order VIII Rule 1 & Order XVIII Rule 4- No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court- If a party omits to plead a material fact, he will not be allowed to give evidence on that fact at the trial unless the court gives him leave to amend his pleading under Rule 17 of Order VI C.P.C. In case there is no written statement in the suit, the defendant cannot be permitted to lead evidence of facts as there is no pleading. There cannot be any evidence in absence of pleading, therefore, the defendant cannot be permitted to lead evidence once he has been denied to file written statement.

Held- That court below has not committed any illegality in rejecting the evidence filed by the petitioner as the right to file written statement of the defendant was closed and there was no pleading regarding the evidence sought to be adduced by the petitioner. In this case, petitioner has been permitted to cross-examine the witnesses adduced by the plaintiff and beyond that, permission cannot be granted to the petitioner to lead evidence for want of pleadings.
Petition dismissed. (E-15)

(Para 16, 17 & 27)

Case Law Cited

Pandit Gopi Charan Bajpai and others vs. Pandit Ram Prasad Awasti and others; 1957 SCC Online ALD 238;Ranjit Singh Vs. State of Uttarakhand and others, 2024 SCC Online SC 2932;Siddik Mohamed Shah Vs. Mt. Saran and others; 1929 SCC Online PC 79;Bachhaj Nahar vs Nilima Mandal and another; 2008 (17) SCC 491;Syed and Company and others Vs. State of Jammu and Kashmir and others: 1995 Supp (4) SCC 422;Abdul Jalil Vs. Jalil Beg and others: 2011 (7) ADJ 292;Chuni Lal Chowdhry Vs. Bank of Baroda and others; AIR 1982 J& K 93;Siai Sinha Vs. Shivadhari Sinha and others; AIR 1972 Pat 81,;Sangram Singh Vs. Election Tribunal, Kotah and others; (1955) 1 SCC 323;Modula India Vs. Kamakshya Singh Deo; 1988 (4) SCC 619;Kaushik Narsinhbhai Patel and others Vs. M/S. S.J.R. Prime Corporation Private Limited and others; (2024) 9 SCC 462

List of Acts

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

List of Keywords

No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. ; If a party omits to plead a material fact, he will not be allowed to give evidence on that fact at the trial

Case Arising From

Order dated 11.11.2025 passed by the Additional District Judge, Court No. 12, Ghaziabad in Original Suit No. 1029 of 2019, whereby learned trial court has returned the evidence affidavit filed by the defendant-petitioner and has closed his right to lead evidence.

Appearances For Parties

Counsel for Petitioner(s): Abhishek Kumar Singh, Devid Kumar Singh, Prateek Rai
Counsel for Respondent(s) :

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

1. This petition has been filed challenging an order dated 11.11.2025 passed by the Additional District Judge, Court No. 12, Ghaziabad in Original Suit No. 1029 of 2019, Praveen Kumar Singhal vs Satish Kumar Gupta, whereby learned trial court has returned the evidence affidavit filed by the defendant-petitioner and has closed his right to lead evidence.

2. Brief facts of the case are that plaintiff-respondent (hereinafter referred as 'plaintiff'), instituted Original Suit No. 1029 of 2019 for a decree of specific performance of an agreement to sell dated 20.04.2017. After being noticed, defendant-petitioner entered appearance but did not file written statement within the statutory period prescribed under Order VIII Rule 1 C.P.C. On an application moved by the defendant-petitioner, the trial court vide order dated 17.05.2022, granted one more opportunity to the defendant-petitioner to file written statement by 30.05.2022. The petitioner did not file written statement within the extended time. By its order dated 17.05.2022 and finally by order dated 05.07.2022 passed by the trial court, right to file written statement of the defendant-petitioner was closed. Thereafter, the evidence of the plaintiff was recorded. The counsel for the defendant-petitioner cross-examined the plaintiff-witnesses and subsequently filed an affidavit under Order XVIII Rule 4 of C.P.C. along with list of witnesses to lead evidence. He also filed the affidavit of his witnesses. The plaintiff opposed the leading of evidence by defendant-petitioner and filed an application dated 07.07.2025 being paper No. 49-Ga on the ground that since right to file written statement has been closed, defendant has no right to lead independent evidence. The said application filed by the plaintiff was allowed by the order impugned and the affidavits filed by the petitioner were directed to be returned to the petitioner. Hence the present writ petition.

3. Contention of learned counsel for the petitioner is that non-filing of the written statement does not render defendant the persona non grata in the eyes of the law, rather, the defendant retains the statutory and equitable right to participate in the trial, cross-examine witnesses of the plaintiff and address to demolish the case of the plaintiff on the basis of the material on record. It has been submitted by learned counsel for the petitioner, the right to demolish the plaintiff's case necessarily includes the right to lead evidence for the limited purpose of proving that the transactions sued upon is prohibited by statute and are void ab initio, as opposed to leading of evidence to prove factual "positive defense". It has been further submitted that the defendant-petitioner through the proposed evidence (which was returned by the impugned order) sought only to bring on record the material to demonstrate the suit agreement involves a transaction prohibited by the Income Tax Act

and therefore, forbidden by law and opposed to public policy within the meaning of Section 23 of Indian Contract Act, 1872. Learned counsel also submitted that in a given set of circumstances, the defendant whose right to file written statement has been closed, can be permitted to lead evidence to demolish the case of the plaintiff. In this connection, learned counsel for the petitioner relied upon the judgment of this Court in the case of **Pandit Gopi Charan Bajpai and others vs. Pandit Ram Prasad Awasti and others; 1957 SCC Online ALD 238**.

4. Before considering the submissions made by learned counsel for the petitioner, it would be useful to note the relevant provisions of the C.P.C. regarding right of defendant to file written statement as well as the right of the plaintiffs in case defendant fails to file the written statement.

5. Order IV, Rule 1 of C.P.C. provides, every suit shall be instituted by presenting (plaint in duplicate to the court) or such officer as it appoints in this behalf. Order V provides for issuance of summons when a suit has been duly instituted.

6. Order VIII provides for written statement. Rule 1 of Order VIII is quoted as under:-

"1. Written Statement.- The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]"

7. Rule 10 of Order VIII provides for consequences when party fails to present written statement within a time limit. Rule 10 of Order VIII is quoted as under:-

"10. Procedure when party fails to present written statement called for by Court. Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:"

8. It would also be relevant to look into the provisions of Order IX, Rules 6 and 7. Rules 6 and 7 of Order IX is quoted as under:-

"6. Procedure when only plaintiff appears.- (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then”

(a) When summons duly served.- if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;]

(b) When summons not duly served.-if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.-if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."

9. Elaborating his submissions, learned counsel for the petitioner submitted that in case written statement is not filed by the defendant in the suit, the court may proceed in accordance with Rule 10 of Order VIII C.P.C. Rule 10 of Order VIII C.P.C. provides where any party from whom a written statement is required fails to present the same, the court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit, and on the pronouncement of such judgment, a decree shall be drawn. It has been further submitted by learned counsel for the petitioner that the provisions of Rule 10 of Order VIII C.P.C. are not mandatory. The provisions of Rule 10 of Order VIII C.P.C. are enabling provisions, and in case the court does not pronounce the judgment against the defendant and passes an order otherwise, then the defendant will have a right to participate in the hearing of the proceedings. Right to participate in hearing will include right to cross-examine the witnesses of the plaintiff as well as right to lead evidence to demonstrate the falsity of the plaintiff's case. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of Ranjit Singh Vs. State of Uttarakhand and others, 2024 SCC Online SC 2932. Learned counsel for the petitioner relied upon the observations made by the Hon'ble Supreme Court in paragraph No. 5 of the judgment, which is quoted as under:-

"5.....At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex-parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation....."

10. It has been further submitted by learned counsel for the petitioner that once in absence of written statement, court has not proceeded to pronounce judgment in exercise of powers under Rule 10 of Order VIII C.P.C., the court can proceed against the defendant ex parte in exercise of powers under Order IX Rule 6 of C.P.C. Sub-rule (a) of Rule 6 of Order IX provides if it is proved that summons were duly served, the court can make an order that suit shall be heard ex parte, meaning thereby, the court will fix a date for ex parte evidence of the plaintiff to prove his case. Rule 7 of Order IX provides where the court has adjourned the hearing of the suit, ex parte, and the

defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court may directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the date fixed for his appearance. It has been further submitted, even if no application under Rule 7 of Order IX is made by the defendant, it has been interpreted by this Court as well as by Hon'ble Supreme Court and various other High Courts that the defendant can be permitted to appear and contest the proceedings even without filing the written statement. Once the defendant is permitted to contest the proceedings, which includes cross-examination of witnesses of the plaintiff, then there is no impediment in permitting the defendant to lead evidence to the effect that the suit filed by the plaintiff was not maintainable or was barred by law. He may not be permitted to lead evidence on the factual aspect of the case, but he can always be permitted to lead evidence that the suit filed by the plaintiff as such was not maintainable. It has been further contended by learned counsel for the petitioner that in the present case, the evidence which was led by the petitioner, which has not been allowed, was to the effect that the suit filed by the plaintiff was barred under the provisions of Income Tax Act and therefore the court below has erred in law in rejecting the evidence filed by the petitioner.

There is no dispute to the proposition of law as argued by learned counsel for the petitioner to the extent that the defendant who has not filed the written statement can be permitted to participate in the proceedings where the proceedings are taken ex parte against him. He may also be permitted to cross-examine the plaintiff witnesses in case the evidence of the plaintiff witnesses is still to be recorded at the time when defendant choose to contest the proceedings by putting appearance in the suit. But whether this right will include to permit the defendant to lead evidence is a bit doubtful and has to be examined in the light of relevant statutory provisions as well as law as laid down by Hon'ble Supreme Court as well as by this Court and various other High Courts. And in this regard, it would be relevant to note the provisions of Order VI and Order VII.

11. Order VI defines "pleadings" which means plaint or written statement. Order VI Rule 1 and 2(1) are quoted as under:-

"1. Pleading.- “Pleading” shall mean plaint or written statement.

2. Pleading to state material facts and not evidence. (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved....."

12. Rule 2 of Order VIII C.P.C. provides that in the written statement new facts must be specifically pleaded by the defendant. Rule 3 of Order VIII provides that defendant must deal specifically with each allegation of fact of which he does not admit the truth. Rule 5 of Order VIII further provides that in case any allegation of fact made in the plaint is not denied specifically or by necessary implication in the pleading of the defendant, shall be taken to be admitted. Rules 2, 3 and 5 of Order VIII are quoted as under:-

"2. New facts must be specially pleaded.-The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of

law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. Denial to be specific.-It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

5. Specific denial.-[(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

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

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

13. From the bare reading of the provisions of C.P.C. quoted above, it is apparent that parties to the suit in their pleading has to state the material fact on which they rely and they are not supposed to plead the evidence by which they are to be proved.

14. The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules (relating to pleadings), was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on from trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side of hearing. To attain this end, the plaintiff should state in his plaint all the facts which constitute his cause of action. No amount of proof can substitute pleadings which are foundation of the claim of a litigating party. The defendant should also state in his written statement all the material facts on which he relies for his defence. When the result of the pleading on both sides is that a material fact is firm on one side and denied on the other, the question thus raised between the parties is called an issue of fact. When one party answers his opponent's pleadings by stating an objection in point of law, the legal question thus raised between the parties is called an issue of law.

15. In case **of Siddik Mohamed Shah Vs. Mt. Saran and others; 1929 SCC Online PC 79**, the privy council has held it was a gift made by the widow herself but that claim was never made in

the defence presented and the learned Judicial Commissioners therefore, very truly find that no amount of evidence can be looked into upon a plea which was never put forward.

16. In case of **Bachhaj Nahar vs Nilima Mandal and another; 2008 (17) SCC 491**, the Hon'ble Supreme Court held that no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court.

17. If a party omits to plead a material fact, he will not be allowed to give evidence on that fact at the trial unless the court gives him leave to amend his pleading under Rule 17 of Order VI C.P.C. In case there is no written statement in the suit, the defendant cannot be permitted to lead evidence of facts as there is no pleading. There cannot be any evidence in absence of pleading, therefore, the defendant cannot be permitted to lead evidence once he has been denied to file written statement.

18. In **Syed and Company and others Vs. State of Jammu and Kashmir and others: 1995 Supp (4) SCC 422**, in paragraph No. 10 of the judgment, Hon'ble Supreme Court has held as under:-

"10. We have carefully considered the above submissions. We are of the view that no exception could be taken to the judgment of the High Court. No doubt a prayer was made before the prescribed authority by the State requesting that a decree might be granted for the amount of price of timber extracted by the party. But that prayer alone was not enough. The pleadings ought to have been there as to what exactly was the basis of the prayer. We are afraid that the entire case of the State before the prescribed authority proceeded only with reference to royalty and interest thereof, but not with reference to the price of the timber. It is true that in Malik Abdul Ahmad Shah Jalil Ahmad Akhtar AIR 1982 J & K 16 it has been held that the prescribed authority under Section 52 is empowered to determine the price of timber extracted. The State at that stage, should have amended the pleading and incorporated the basis for the claim for the price of timber. But for reasons best known the State merely took out an application under Order 41 Rule 27 to lead in evidence. Of course, evidence could have been allowed if there were pleadings to that effect. In this case, there was none. It is settled law that no evidence can be let in without the pleading. The High Court was fully justified in rejecting the application."

19. This Court in case of **Abdul Jalil Vs. Jalil Beg and others: 2011 (7) ADJ 292** held in paragraph Nos. 11 and 12 as under:-

"11. Even though refusal to accept the written statement does not amount to striking off the defence still defendant cannot be permitted to adduce evidence for the reason that evidence can be adduced to prove the pleaded facts and in the absence of pleading (W.S), this exercise will be futile. No amount of evidence can be looked into unless there is corresponding pleading for the same.

12. Accordingly, impugned orders permitting the tenant to adduce evidence even though his written statement has been directed not to be taken on record/accepted are erroneous in law and without jurisdiction."

20. In case of **Chuni Lal Chowdhry Vs. Bank of Baroda and others; AIR 1982 J& K 93**, Jammu and Kashmir High Court has held in paragraph No. 3 as under:-

"3. On the authority of these observations, Rule 10 can be taken to relate to Rule 1 of Order 8 and on the defendant's failure to file written statement of his defence, when so required, the court has the power, either to pronounce the judgment against him or make such order in relation to the suit as it thinks fit depending upon whether the suit was for the final disposal or for the settlement of the issues only. In the latter case, the court has ample discretion to grant more time for filing the written statement or to proceed to hearing of the suit without such written statement. The discretion cannot, however, be exercised arbitrarily. In determining which course to adopt, the court will always be guided by the facts and circumstances of each case. Where the court decides to proceed to hearing of the suit without the written statement, that would not debar the defendant from taking part in further proceedings of the case. His participation would, however, be hedged in by several limitations. He will not be able either to cross- examine the plaintiff's witnesses or to produce his own evidence with regard to any questions of fact which he could have pleaded in the written statement. He will, however, be competent to cross-examine the plaintiff's witnesses in order to demolish their version of the plaintiff's case."

21. In case of **Siai Sinha Vs. Shivadhari Sinha and others; AIR 1972 Pat 81**, similar view has been taken by the Patna High Court.

22. In case of **Sangram Singh Vs. Election Tribunal, Kotah and others; (1955) 1 SCC 323**, the Hon'ble Supreme Court observed and held that on setting aside the ex parte decree and on restoration of the suit, the parties to the suit shall be put to the same position as they were at the time when ex parte judgment and decree were passed and the defendant may not be permitted to file written statement as no written statement was filed. However, at the same time, they can be permitted to participate in the suit proceedings and cross-examine the witnesses.

23. In case of **Modula India Vs. Kamakshya Singh Deo; 1988 (4) SCC 619**, the Supreme Court considered the scope and ambit of participation in a suit or proceedings by the defendant whose defense is struck off or who has not been permitted to file his written statement. Paragraph Nos. 18, 19, 20, 21 and 22 of the judgment in case of Modula India (supra) are quoted as under:-

"18. We agree that full effect should be given to the words that defence against ejectment is struck off. But does this really deprive the defendant tenant of further participation in the case in any manner? While it is true that, in a broad sense, the right of defence takes in, within its canvass, all aspects including the demolition of the plaintiff's case by the cross-examination of his witnesses, it would be equally correct to say that the cross-examination of the plaintiff's witnesses really constitutes a finishing touch which completes the plaintiff's case. It is a well established proposition that no oral testimony can be considered satisfactory or valid unless it is tested by cross-examination. The mere statement of the plaintiff's witnesses cannot constitute the plaintiff's evidence in the case unless and until it is tested by cross- examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. Looked at from this point of view it should be possible to take the view that, though the

defence of the tenant has been struck out, there is nothing in law to preclude him from demonstrating to the court that the plaintiff's witnesses are not speaking the truth or that the evidence put forward by the plaintiff is not sufficient to fulfill the terms of the statute.

19. To us it appears that the basic principle that where a plaintiff comes to the court he must prove his case should not be whittled down even in a case where no defendant appears. It will at once be clear that to say that the Court can only do this by looking the plaintiff's evidence and pleadings supplemented by such questions as the court may consider necessary and to completely eliminate any type of assistance from the defendant in this task will place the court under a great handicap in discovering the truth or otherwise of the plaintiff's statements. For after all, the court on its own motion, can do very little to ascertain the truth or otherwise of the plaintiff's averments and it is only the opposite party that will be more familiar with the detailed facts of a particular case and that can assist the court in pointing out defects, weaknesses, errors and inconsistencies of the plaintiff's case.

20. We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. But we are equally clear that this right should be subject to certain important safeguards. The first of these is that the defendant cannot be allowed to lead his own evidence. None of the observations or decisions cited have gone to the extent of suggesting that, inspite of the fact that the defence has been struck off, the defendant can adduce evidence of his own or try to substantiate his own case.

21. Secondly, there is force in the apprehension that if one permits cross-examination of the plaintiff's witnesses by the defendant whose defence is struck off, procedural chaos may result unless great case is exercised and that it may be very difficult to keep the cross- examination within the limits of the principles discussed earlier. Under the guise of cross-examination and purported demolition of the plaintiff's case, the defendant may attempt to put forward pleas of his own. To perceive quickly the difference between questions put out to elicit a reply from the plaintiff which may derogate from his own case and questions put out to substantiate pleas in defence which the defendant may have in mind and to restrict the cross-examination to its limits will be not an easy task. We think, however, that this is a difficulty of procedure, rather than substance. As pointed out by Ramendra Mohan Dutta, J. this is a matter to be sorted out in practical application rather than by laying down a hard and fast rule of exclusion.

22. A third safeguard which we would like to impose is based on the observations of this court in Sangram Singh's case. As pointed out therein, the essence of the matter in all such cases is that the latitude that may be extended by the court to the defendant inspite of his not having filed a written statement, should not cause prejudice to the plaintiff. Where the defendant does not file a written statement or where he does not appear to contest the case the plaintiff proceeds on the basis that there is no real opposition and contents himself by letting in just enough evidence to establish a prima facie case. Therefore, the court should ensure that by permitting the defendant at a later stage either to cross-examine the witnesses or to participate in the proceeding the plaintiff is not taken by surprise or gravely prejudiced. This difficulty however can be easily overcome in practice, because there is a wide discretion with the court and it is always open to the court, where it believes that the

plaintiff has been misled, to exercise its discretion to shut out cross-examination or to regulate it in such manner as to avoid any real prejudice to the interests of the plaintiff."

24. Very recently, Hon'ble Supreme Court in case of **Kaushik Narsinhbhai Patel and others Vs. M/S. S.J.R. Prime Corporation Private Limited and others; (2024) 9 SCC 462** was considering the effect of its earlier order dated 11.08.2021 (Annexure No. P-18) wherein the Supreme Court permitted in a claim petition before the National Consumer Redressal Forum to proceed without the written statement of the respondent builder, but permitted the respondent builder to participate in the proceedings. In the aforesaid case, contention was raised by the appellant that ignoring the order of Supreme Court dated 11.08.2021, National Consumer Disputes Redressal Commission virtually permitted the respondent to introduce facts to dispute their claims and complainants inasmuch as the opportunity offered to the first respondent by National Consumer Dispute Redressal Commission to file written submissions was utilized by the first respondent to introduce new facts to resist their claim and contentions. Such newly introduced facts and factors by the respondent through written submissions, obviously, weighed with the National Consumer Disputes Redressal Commission in adopting the formula followed in the impugned order for the purpose of computation of compensation payable to the complainants. Paragraph Nos. 15 to 18 and 20 to 26 of **Kaushik Narsinhbhai Patel** (supra) are quoted as under:-

"15. We will straight away verify the verity of the aforesaid contentions with reference to Annexure P-18 order dated 11.08.2021, firstly, to see whether the same was overreached and then, subject to its answer and consequences of its defiance. A bare perusal of Annexure P-21, which is the written submissions on behalf of the first respondent herein (opposite party therein) filed before the NCDRC and marked as such in this proceeding, without any peradventure would go to show that in and vide the said written submissions, the first respondent had introduced some pleadings to resist the claims and the contentions of the complainants in CC No.945 of 2019 and eventually, to offer its explanation for the delay in handing over possession of the flats. The raison d□etre for our remarks would be unravelled by a mere perusal of Annexure P-21. Paragraph 3 thereof, opens thus: -

The complainants do not deserve any compensation as, (emphasis supplied)

16. Thenceforth, under para 3 (i) to 3 (iii), the respondents gave the reasons therefor. Through paragraph 4 of Annexure P-21, the respondent introduced further reasons to support its stand that the complainants do not deserve compensatory interest for the delay in handing over possession of flats. It is to be noted that even after taking a stand at paragraph 5 thereof that there was no delay at all from its part, the first respondent proceeded to explain the delay in paragraph 6. The statements made in the further paragraphs of Annexure P-21 also carry, either the case of the first respondent or its explanations/reasons to counter the claim of the complainants. To put it pithily, the first respondent, on being given the opportunity to file written submission, made use of it to make good its failure to file a written statement despite the fact that its right to file the same was declared as forfeited by this Court.

17. We are at a loss to understand as to how, such an opportunity could have been utilised by the first respondent in defiance to the specific directions of this Court under Annexure P-18 order

and to file a written submission of such a nature. Under Annexure P-18 order, this Court declared that the first respondent had forfeited its right to file a written statement and then permitted, rather, directed to proceed further without the written statement of the first respondent-builder. True that even then its right to participate in the proceedings was protected, presumably, taking into account the position of law in that regard. We will deal with the scope of such permitted participation as also the consequence of the act of defiance of Annexure P-18 order depending on its degree of defiance and its impact. In doing so, we will have to keep reminded of the principle of law that what cannot be done directly, cannot be done indirectly.

18. The discussion as above, would take us to the next question as to what is the impact of forfeiture of opportunity to file written statement? We are fully aware of the fact that all the provisions in the Code of Civil Procedure, 1908, (for short "the CPC") are not proprio vigore applicable to proceedings before Consumer Forums created under the Consumer Protection Act, 2019, except to the extent it is provided under Section 38 (9) of the Consumer Protection Act. Be that as it may, in the absence of specific provisions dealing with the consequence of forfeiture of the right to file a written statement, it is only appropriate to refer to the provisions and positions dealing with such situations in the CPC to know the general law on this question.

20. Thus, the position is that even if the defendant/opposite party failed to file a written statement and, in that matter, even if forfeiture of the right to file written statement has occasioned it would not disentitle that party from participating in the further proceedings, without filing a written statement and in such circumstances, the said party would also be having the right to cross-examine the witness(es), if any, of the plaintiff/complainant. 21. In the contextual situation, it is also appropriate to refer to Rule 1 & 2, Order VI of the CPC which reads thus:-

"Pleading. – "Pleading" shall mean the plaint or written statement. Rule 2, Order VI, in so far as, reads thus: -

"2. Pleading to state material facts and not evidence.--(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved."

22. The rigour of the rule of pleadings is evident from Rule 7 of Order VI, CPC, which mandates that:

"7. Departure-no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same" .

23. In the context of the aforesaid provisions under the CPC, it is apt to refer to a decision of a Division Bench of the Karnataka High Court in Nalini Sunder v. GV Sunder. It was held therein that a party could not make out a case on the basis of evidence for which he/she has laid no foundation in the pleadings. It is fairly settled that no amount of evidence can prove a case of a party who had not set up the same in his/her pleadings, it was further held therein.

24. According to us, it is the correct proposition of law. In the absence of any specific provisions dealing with non-filing of written statements/forfeiture of the right to file a written statement, taking note of the

general position as above, it can only be held that it should bar the opposite party in a proceeding before the Consumer Redressal Forums to bring in pleadings, indirectly to introduce its/his case and evidence to support such case. In the situations mentioned above, the right of the opposite party is confined to participate in the proceedings without filing a written statement and to cross-examine witness(es), if any, examined by the complainant(s).

25. It being the position of law, the first respondent who is bound by Annexure P- 18 order could not have been permitted to introduce its case to defend the case of the complainants through written submissions though it was rightly permitted to participate in the proceedings. There is no case for the first respondent that it sought permission to cross- examine Kaushik Narsinhbhai Patel who filed affidavit of evidence and produced documentary evidence. At any rate, no such case was put forth by the first respondent and no grievance of denial of such opportunity was also raised.

26. In the circumstances expatiated above, in view of Annexure P-18 order the reply and objection filed by the first respondent herein in this proceeding also cannot be looked to the extent it carries pleadings relating its case, the reasons and objections which could have been let in through a written statement. In short, the first respondent could be permitted only to argue the legal questions arising based on authorities and provisions of law as also regarding lapses or laches and the consequential non-admissibility or otherwise of evidence, let in by the appellants."

25. Learned counsel for the petitioner relied upon paragraph No. 15 of the judgment in case of **Pandit Gopicharan Bajpai** (supra), which is quoted as under:-

"15. As I have pointed out above, a party has the right to lead evidence on the issues framed in the case even though there has been an order, earlier in the case, to the effect that proceedings in the case would be "ex parte", provided of course there has not been an "ex parte" decree already."

26. I have perused the judgment passed by this Court in case of Pandit Gopicharan Bajpai (supra). This Court was considering an order passed by the trial court rejecting the application filed by the revisionist for permitting him to file written statement. This Court allowed the revision partly and permitted the defendant-revisionist for appearing at the trial and leading evidence. Though, certain observations have been made by this Court in the aforesaid judgment, but in view of the law laid down by the Privy Council, the Supreme Court, this Court and various other High Courts, I find myself unable to persuade to the contention made by the petitioner that even where the defendant has been denied the right to file written statement, can be permitted to lead evidence. Since there are no pleadings in case written statement is not filed by the defendant, evidence cannot be led on the issues framed in absence of pleadings.

27. In view of the discussions made above, I am of the view that court below has not committed any illegality in rejecting the evidence filed by the petitioner as the right to file written statement of the defendant was closed and there was no pleading regarding the evidence sought to be adduced by the petitioner. In this case, petitioner has been permitted to cross-examine the witnesses adduced by the plaintiff and in my view, beyond that, permission cannot be granted to the petitioner to lead evidence for want of pleadings.

28. Accordingly, the petition fails and is **dismissed**.

(2026) 7 ILRA 1502
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 1823 of 2025
& Connected with Another Case

Santosh & Ors. ...Petitioners
Versus
Smt. Asha Rani & Ors. ...Respondents

Issue for Consideration

Whether the decree can be corrected by the executing court where the execution of decree is pending or the same can only be corrected by the court which has passed the decree

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908-Section 47, 151, 152 & 153, Order VI Rule 17- For correction of the description of the suit property in the plaint, amendment is permissible under Order VI Rule 17 of C.P.C., when the court is in seisin of the suit. After disposal of the suit, the amendment cannot be carried out under Order VI Rule 17 of the C.P.C. In such a situation, the plaintiff can take recourse to Sections 151, 152 of the C.P.C. for correction of this error to determine the real question of the suit, the amendment can be allowed in any proceedings including the execution-Section 152 of the C.P.C cannot be invoked to amend the plaint, the power of the court to make corrections for correcting errors arising due to accidental slip, which are necessary for the ends of justice, is not confined only to the power exercisable under Section 152, but extensive power can be exercised even under Sections 152 and 153 of the Code. The correction is required to be made with a view to give true meaning to the decree.

Held- The litigant cannot be deprived of the fruits of the decree for accidental slips and omissions. In this case, the slip ought to be said to be accidental and typographical only. The plaintiffs have fought from the trial court to High Court. They could not be deprived of fruits of the decree for such inadvertence. The executing court has committed no error in correcting the description of the property in the decree.
Petition dismissed. (E-15)

(Para 24, 38 & 39)

Case Law Cited

M. P. Shreevastava vs Mrs. Veena; AIR 1967 Supreme Court 1193;Ramchandra Spg. & Wvg. Mills vs Bijli Cotton Mills & Ors; AIR 1967 SC 1344,;Kassim Beevi Vs. Meeranchi Mytheen Beevi and others; 1986 SCC Online Ker 305;Tilak Raj Vs. Baikhunthi Devi (D) By Lrs; AIR 2009 SC 2136

List of Acts

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

List of Keywords

After disposal of the suit, the amendment cannot be carried out under Order VI Rule 17; In such a situation, the plaintiff can take recourse to Sections 151, 152 of the C.P.C. for correction of error to determine the real question of the suit; Amendment can be allowed in any proceedings including the execution.

Case Arising From

The petition Matters Under Article 227 No. 1823 of 2025 has been filed challenging the order dated 20.12.2024 passed by Additional District Judge, Court No. 14, Bareilly, allowing the Civil Revision No. 26 of 2024 (Smt. Asha Rani and others vs. Santosh and others). The petition Matters Under Article 227 No.5440 of 2025 has been filed challenging the orders dated 03.02.2025 passed by the executing court in Execution Case No. 50 of 1994, (Pooran Lal (deceased) and others vs. Maya Devi (deceased) and others), as well as revisional order dated 15.04.2025 passed by District Judge, Bareilly in Civil Revision No. Nil of 2025, (Santosh and others vs. Smt. Asha Rani and others).

Appearances for Parties

Counsel for Petitioner(s) : Bhanu Bhushan Jauhari, Rishi Bhushan Jauhari
Counsel for Respondent(s) : Rama Goel Bansal, Shalini Goel

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

1. Heard Sri Bhanu Bhushan Jauhari, learned counsel for the petitioners, Ms. Rama Goel Bansal, learned counsel for the respondents and perused the records.

2. The petition Matters Under Article 227 No. 1823 of 2025 has been filed challenging the order dated 20.12.2024 passed by Additional District Judge, Court No. 14, Bareilly, allowing the Civil Revision No. 26 of 2024 (Smt. Asha Rani and others vs. Santosh and others). The petition Matters Under Article 227 No.5440 of 2025 has been filed challenging the orders dated 03.02.2025 passed by the executing court in Execution Case No. 50 of 1994, (Pooran Lal (deceased) and others vs. Maya Devi (deceased) and others), as well as revisional order dated 15.04.2025 passed by District Judge, Bareilly in Civil Revision No. Nil of 2025, (Santosh and others vs. Smt. Asha Rani and others).

3. Both the petitions arise from the same suit and the same execution case, therefore they are being considered and decided together.

4. Brief facts of the case are that one Pooran Lal (predecessor in interest of the respondents) instituted a suit for specific performance of an agreement to sell dated 31.12.1967 executed by one Maya Devi (predecessor in interest of the present petitioners). By judgment and decree dated 29.04.1972 passed by the trial court, suit filed by the plaintiff (hereinafter referred to as "respondents") was decreed. The judgment and decree dated 29.04.1972 was challenged in appeal by defendant (hereinafter referred to as "petitioners") by filing a first appeal under Section 96 of the C.P.C. The first appeal referred above was allowed by judgment and order dated 05.03.1973 passed by the first appellate court and judgment and decree dated 29.04.1972 passed by the trial court was set aside and the suit was remanded by the appellate court to be decided by the trial court. After the remand, by the judgment and decree dated 21.02.1974, suit filed by the respondents was dismissed by the trial court. The judgment and decree dated 21.02.1974 was challenged by the respondents in Civil Appeal No. 76 of 1974, Pooranlal Vs. Smt. Maya Devi, which was allowed by District Judge vide judgment and order dated 21.04.1975 and the suit was decreed with cost and

with a direction to the petitioners to execute the sale deed of the disputed house within thirty days from the date of order. The judgment and decree dated 21.04.1975 passed by the District Judge in Civil Appeal No. 76 of 1974 was challenged before this court in Second Appeal No. 884 of 1975, Smt. Maya Devi Vs. Pooranlal. The second appeal was dismissed by this Court vide judgment and decree dated 23.01.2006. During pendency of second appeal, a conditional stay order was granted by this Court, however, since conditions of the stay order were not obeyed by the judgment debtors i.e. petitioners, execution application was filed by the respondents before the Munsiff City, Bareilly on 02.10.1994 which was registered as Execution Case No. 50 of 1994. Both original plaintiff and defendant died during the pendency of the execution case and were substituted by present respondents and the petitioners respectively. In the execution case, respondents filed draft sale deed to be executed by the petitioners before the executing court marked as paper No. 69-C. In the draft sale deed, the address of the property to be transferred was mentioned to be situated at Mohalla-Siklapur, Bareilly. The petitioners filed their objection to the draft sale deed, paper No. 70-C challenging the details of the property. On 30.01.2024, the respondents filed application paper No.-91- C wherein it was stated that while preparing the decree, house in question has been referred to be situated at Mohalla-Gulab Nagar instead of Mohalla-Siklapur. It was also stated in the application that the error is because of mistake of the clerk, who prepared the decree and is liable to be corrected. To application paper No. 91-C, objections were filed by the petitioners being paper No. 92-C, wherein it was stated by the petitioners that the decree was passed regarding house situated at Mohalla-Gulab Nagar, Bareilly, on the basis of description given in the plaint and in the garb of the said decree, the respondents were trying to grab the house of the petitioners situated at Mohalla-Siklapur, Bareilly. The executing court by order dated 08.04.2024 directed the respondents to file original agreement to sell or certified copy of the same, so that, execution application may be decided. Thereafter, the respondents filed application paper No. 96-C under Sections 151/152/153 read with Section 47 C.P.C. and prayed that in all the necessary documents, instead of Gulab Nagar, words Siklapur be written. The petitioners thereafter filed their objection being paper No. 99-C for rejection of the aforesaid application paper No. 96-C. By order dated 27.08.2024, the application paper No. 96-C filed by the respondents was rejected by the executing court. Against order dated 27.08.2024 passed by the executing court, Civil Revision No. 26 of 2024 was filed by the respondents before the District Judge, Bareilly. The District Judge, Bareilly vide judgment and order dated 20.12.2024 allowed the revision filed by the respondents and set aside the order dated 27.08.2024 and has also held that order dated 08.04.2024 passed by the executing court is of no consequence. The order dated 20.12.2024 was challenged by the petitioners by filing Matters Under Article 227 No. 1823 of 2025, Santosh Kumar and others versus Smt. Asha Rani and others, which is one of the two connected petitions which are being decided. Since there was no interim order granted by this court in Matters Under Article 227 No. 1823 of 2025, the executing court proceeded with the matter. On 28.01.2025, the petitioners filed their further objection to the application paper No. 96-C filed by the respondents. The executing court, by order dated 03.02.2025 allowed the application paper No. 96-C. In pursuance of order dated 03.02.2025, the decree passed by the trial court was also amended. The order dated 03.02.2025 was challenged by the petitioners by filing Civil Revision No. NIL of 2025, to which objections were filed by the respondents. By order dated 15.04.2025, the revisional court i.e. the District Judge, has dismissed the revision filed by the petitioners. Hence Matters Under Article 227 No. 5440 of 2025 is filed.

5. Contention of learned counsel for the petitioners is that dispute between the parties before the executing court was as to the details of the property of which sale deed was to be executed i.e. whether the same was situated at Mohalla- Gulab Nagar or Mohalla-Siklapur. Counsel for the petitioners further contended that the decree sought to be executed was passed for the house situated at Mohalla Gulab Nagar and not at Siklapur. The respondents in their application paper No. 91-C had admitted that there was no mistake in the decree and the decree as such was to be executed. Later on, the respondents moved an application paper No. 96-C for correction, in all the records of the execution case, changing the location of the house in question from Mohalla-Gulab Nagar to Mohalla-Siklapur. It has been further submitted by learned counsel for the petitioners that if there is any discrepancy in the decree sought to be executed, the same can only be corrected by the court which has passed the decree, and the decree cannot be corrected in execution proceedings. It has also been contended by learned counsel for the petitioners that by the order impugned, the executing court has allowed and corrected the decree by changing the description from Mohalla-Gulab Nagar to Mohalla-Siklapur while allowing the application filed by the respondents. It has been further submitted that executing court cannot go behind the decree and it has to execute the decree as it is, and executing court cannot correct or modify the decree.

6. Per contra, learned counsel for the respondents submitted that there was no mis-description of the property in the suit, as the same was apparent from the averments made in the plaint. It has been further submitted by learned counsel for the respondents that because of clerical error committed by the clerk, who prepared the final decree, Mohalla-Gulab Nagar was mentioned in the decree instead of Mohalla-Siklapur, which is contrary to the averments made in the plaint as well as in the judgment passed by the District Judge, which was sought to be executed. It has also been submitted by learned counsel for the respondents that an error apparent on the face of the record, and wrong description given in the decree which is contrary to the averments made in the plaint, can always be looked into and corrected by the executing court. Learned counsel for the respondents further submitted that in view of Section 47 C.P.C, all the questions arising between the parties to the suit in which the decree was passed relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree. It has been further submitted that no error has been committed by the executing court in correcting the decree to the effect that description of property 'at Mohalla Gulab Nagar' was corrected to 'Mohalla Siklapur'. An inadvertent error at the time of preparing of the decree, can be corrected in exercise of powers under Sections 151, 152, 153 C.P.C. and also under Section 47 C.P.C. while determining the questions relating to execution, discharge or satisfaction of the decree.

7. In support of his submissions, learned counsel for the petitioners relied upon following judgments:-

Durga Singh vs. Wahid Raza & Ors; AIR 1965 ALL 226, Rakesh Kumar & Ors Vs. Ashok Kumar & Anr; 2015(6) ADJ 102, M/s Gojer Brothers Ltd Vs. Shri Ratan Lal Singh; AIR 1974 SC 1380, Lala Brij Narain Vs. Kunwar Tejbal Bikram Bahadur; (1910) L.R. 37 I.A. 70; MANU/PR/0001/1910, Chandi Prasad & Ors Vs. Jagdish Prasad & Ors; (2004) 8 SCC 724, Nagesh Datta Shetti & Ors Vs. State of Karnataka & Ors; (2005) 10 SCC 383.

8. Learned counsel for the respondents relied upon judgments in case of: **Pratibha Singh & Another Vs. Shanti Devi Prasad & Another; 2003 0 AIR (SC) 643, Mahadeo S/o Punjaji Malokar vs Mahadeo S/o Pandurang Dhanorkar; 2023:BHC-NAG 15832, Tilak Raj vs Baikunthi Devi (D) By Lrs; AIR 2009 SC 2136, Madhav Tukaram Kulal & Anr. Vs. Kisan Ayaji Bodakhe & Ors; 2007 (4) AIR BOM R 500, Hindustan Petroleum Corporation Ltd. Vs. Ajay Bhatia; AIR 2022 SC 4739, Shyama Natural Pharma & Herbals Ltd Vs. Bake Well Engineering (P) Ltd. ; 2004 SCC Online (Del) 248, Periyammal (Dead) Through Lrs & Ors Vs. Rajamani & Anr; 2025 (9) SCC 568.**

9. Section 47 of C.P.C. is the one of the most important provisions in the Code relating to execution of decrees. It enacts that the Court executing the decree shall determine all questions arising between the parties to the suit or their representatives, relating to execution, discharge or satisfaction of the decree. The scope of Section 47 of C.P.C. is very wide and comprehensive. Exclusive jurisdiction has been conferred on the executing court in respect of all matters relating to execution, discharge or satisfaction of a decree arising between the parties or their representatives. Once the suit is decreed, this section requires that executing court should alone determine all questions in the execution proceedings and filing of the separate suit is barred.

10. The underlying object of Section 47 of C.P.C. is to provide extensive and expeditious remedy for determination of all the questions relating to the execution of a decree only in execution proceedings without recourse to a separate suit. It thus, seeks to prevent needless and unnecessary litigation. In **M. P. Shreevastava vs Mrs. Veena; AIR 1967 Supreme Court 1193**, after referring to various decisions, the Supreme Court observed that Section 47 of C.P.C. enacts the salutary rule that all questions relating to execution, discharge or satisfaction of the decree should be determined in execution proceedings only.

11. Section 47 of C.P.C. confers plenary powers on the executing court for determining all questions arising between the parties to the suit in which the decree is passed.

12. In **Ramchandra Spg. & Wvg. Mills vs Bijli Cotton Mills & Ors; AIR 1967 SC 1344**, the Supreme Court observed: "It has been consistently held in a number of decisions by the Privy Council and the High Courts that Section 47 is wide and should be liberally construed so as not to drive the parties to a separate suit and thereby prolong litigation. All questions relating to the execution, discharge or satisfaction of the decree which arise between the parties fall within the scope of this section."

13. In order that this section may apply, the following conditions must be satisfied: (I), the question must be one arising between the parties to the suit in which the decree is passed or their representatives and (II) it must relates to execution, discharge or satisfaction of the decree. Both these conditions must be satisfied cumulatively.

14. Expression, "relating to execution, discharge or satisfaction of the decree", has not been defined in the Code, can presumably with a view to say that it remains flexible. The phrase is comprehensive enough to include any question which furthers, hinders, or in any manner affects the execution of the decree. However, the expression (after relating to execution, discharge or

satisfaction of the decree) must be construed reasonably, no artificial extension is permissible. Each and every question raised by a party to the suit cannot be considered by the executing court, even if it may relate to execution, discharge or satisfaction of the decree. Such question must arise in the course of execution and must relate to enforcement of obligation created by decree and should be referable to matters arising subsequent to the passing of the decree. The questions contemplated by Section 47 are those questions which were not raised at the trial and not decided by the court. If the question was raised before the court and was decided by the trial court, it is not open to the parties to raise it again at the stage of execution. Likewise, a question cannot be raised before the executing court if such question ought to have been raised by a party before the trial court, but he omits to raise it.

15. Section 47 enjoins the executing court to decide all questions relating to execution, discharge or satisfaction of the decree. Section 47(1) is mandatory, the words of the section are peremptory and if the case is covered by this provision, the Court is bound to decide it in execution and it has no discretion to refer the party to a separate suit. The word 'determine' conveys that the questions contemplated by Section 47 should be finally disposed of. The questions of the fact as well as of the law can be decided by the court under Section 47 C.P.C.

16. Before considering the legal submissions, it would be appropriate to look into the factual position as it stands from the pleadings.

17. The plaint of Original Suit No. 96 of 1968 has been annexed as Annexure No. 3 at page No. 57 of the paper book. In paragraph No. 1 of the said plaint, it has been stated that the defendant i.e, predecessor in interest of the petitioners, is the owner of the house situated at Mohalla-Siklapur, bounded and detailed at the foot of the plaint. Paragraph No. 1 of the plaint is quoted as under:

"1. That the defendant is the owner of a house situate at Bareilly Mohalla Siklapur bounded and detailed at the foot of the plaint which she was anxious to dispose off."

18. In relief (a) of the plaint quoted in paragraph No. 15 of the plaint, it was prayed by the plaintiff that defendant be directed to execute a sale deed of disputed house situated at Bareilly, Mohalla Siklapur, bounded and detailed at the foot of the plaint. From the perusal of the plaint, it is apparent, while giving the boundaries of the house at the foot of the plaint, it has been mentioned as boundaries of the house situated at Bareilly Mohalla- Gulab Nagar. Paragraph No. 15 (a), as well as boundaries as mentioned in the suit, are quoted as under:-

"15....

a- That the defendant be directed to execute a sale deed of the disputed house situated at Bareilly Mohalla Siklapur bounded and detailed at the foot of the plaint within such time as may be ordered by this Hon'ble Court on payment of the balance sale consideration and deliver possession thereof to the plaintiff failing which the sale deed be get executed and registered through court and the possession over the said house be ordered to be delivered to the plaintiff.

Boundaries of the house situate at Bareilly Mohalla Gulab Nagar.

East- House of Ram Gopal and others
West-Road
North House of Lal Ji.
South- House of Hulas Rai"

19. In the written statement filed by the defendant-petitioners in the aforesaid suit, which has been annexed along with supplementary affidavit as Annexure S.A.1, the defendant-petitioners have admitted paragraph No. 1 of the plaint. Paragraph No. 15 of the plaint has been stated to be legal. In paragraph No. 2 the defendant has admitted the execution of agreement to sell. I have also perused the true copy of the Hindi translation of original Urdu agreement filed by the petitioners along with supplementary affidavit as Annexure S.A. 4. In the aforesaid agreement, Mohalla of the house for which agreement to sell was executed was not given, but the boundaries of the house are given, which are as under:

East- house of Ram Gopal, etc.,
West-public road (Sadak Sahakari)
South- Makan of Hulas Ram
North- Rasta Makan, Ram Gopal.
Boundaries as given in the plaint are as under:
East- House of Ram Gopal and others
West-Road
North House of Lal Ji.
South- House of Hulas Rai

20. In the execution application as well as draft sale deed submitted by respondents/ defendants, house is claimed to be at Siklapur with the boundaries as given in the plaint.

21. The question whether a particular property is or is not covered under the decree or dispute as to description of the property whether correct or not is a question concerned under this Section. Such question relates to execution, discharge or satisfaction of the decree. The question cannot be determined in a separate suit. The question regarding identity of the property is a question relating to execution, discharge or satisfaction of the decree. It is true that an executing court cannot go behind the decree. It must take the decree as it stands and execute it according to its terms. It has no power to amend, varying, modifying, or substituting. Where there is no ambiguity in the terms of the decree, a plain meaning must be given to the words used. Where the terms of the decree are clear and unambiguous, the effect must be given to such terms at the same time, however, wherever the decree is vague or ambiguous, it is competent to the executing court to go behind the decree and look into the judgment, even the pleadings and to get assisted in order to have the ambiguity dispelled. Section 47 of the C.P.C. would not be a bar to such course being adopted.

22. In the facts of the present case, it is clear that parties were quite clear about the identity of the property for which they were litigating for and there was no doubt or ambiguity in relation to identity of the suit property. However, inadvertently, due to typographical error at the foot of the plaint, Mohalla Gulab Nagar was incorrectly mentioned instead of Mohalla Siklapur. In paragraph No. 1 as well as paragraph No. 15 of the plaint, it has been stated that house situated at Mohalla

Siklapur was the property for which the agreement was executed and suit was instituted. Paragraph No. 1 of the plaint has been admitted by the defendant and paragraph No. 15 was stated to be legal. The agreement is of the year 1967 and the execution was filed in the year 1994.

23. The boundaries as given in the agreement to sell and in the plaint, three boundaries exactly match. There was misdescription of the Mohalla at the bottom of the plaint, in my view, same cannot be fatal to the case of the decree holders. Other than that, the remaining description of the property is quite clear and unambiguous. The executing court had ample powers to refer the pleadings of the parties, qua, decree passed in the suit.

24. For correction of the description of the suit property in the plaint, amendment is permissible under Order VI Rule 17 of C.P.C., when the court is in seisin of the suit. After disposal of the suit, the amendment cannot be carried out under Order VI Rule 17 of the C.P.C. In such a situation, the plaintiff can take recourse to Sections 151, 152 of the C.P.C. for correction of this error to determine the real question of the suit, the amendment can be allowed in any proceedings including the execution. In my opinion, though Section 152 of the C.P.C cannot be invoked to amend the plaint, the power of the court to make corrections for correcting errors arising due to accidental slip, which are necessary for the ends of justice, is not confined only to the power exercisable under Section 152, but extensive power can be exercised even under Sections 152 and 153 of the Code. The correction is required to be made with a view to give true meaning to the decree.

25. The defendant while contesting the suit, filed the written statement, participated in framing of issues, took cross-examination, argued the matter, and during all these stages, he challenged the claim of the plaintiff in the suit. From the defence, the court has gather knowledge of the defendant, whether he has despite of correct description has challenged the claim of the plaintiff about the correct suit property or the defendant was really misled or has misconception of the facts of the suit property due to wrong description.

26. In my view, in the present case, the suit was contested by the defendant by filing written statement, wherein he has not challenged that the property is not situated at Siklapur, rather he has admitted the averment of the plaintiff regarding the same. Further, no such objections were taken by the petitioners in appeal or in execution proceedings prior to the present application filed by the respondents. Thus, it cannot be held that the defendant was misled. The mistake committed by the respondents was of clerical nature which can be corrected by applying provisions of Section 152 of the C.P.C or in exercise of power under Section 47 C.P.C while determining the questions relating to execution, discharge or satisfaction of the decree by the executing court itself.

27. Learned counsel for the petitioners relied upon the judgment in case of Durga Singh (supra). This court has taken a view that after dismissal of the the second appeal by the High Court under Order XLI Rule 11 C.P.C, the application for amendment of decree lies to the High Court and not to the lower appellate court. This court has held the appellate decree is the final decree and the decree of the lower court merges with it. The doctrine of merger applies even where a second appeal has been dismissed by the High Court summarily under Order XLI Rule 11 of C.P.C. It

follows that in such a case, application for amendment of decree must be made to the High Court and not to the lower court.

28. In case of Chandi Prasad (supra) relied upon by the petitioners, it was held by the Supreme Court, since the final decree was passed in second appeal on 30.10.1986, therefore the decree of the trial court merged with that of the High Court and therefore execution application filed taking date of decree of the High Court to be starting point of limitation, is not barred by time.

29. In case of M/s. Gojer Brothers (Supra), relied upon by counsel for the petitioners, the Supreme Court held that the decree of the trial court dated 24.11.1958 merged in the decree of the High Court dated 08.01.1969. Since the decree of the High Court was passed after the commencement of West Bengal Premises Tenancy (Amendment) Act, 1968, i.e. to say after August 26, 1967, Section 17-D of the Act of 1956 can have no application and therefore, the decree of the High Court, which is the only decree to be executed, cannot be set aside under that Section. In all the judgments relied upon by counsel for the petitioners, the Supreme Court as well as this Court was considering the doctrine of merger and has held that the decree of the trial court merges with the decree of High Court. There is no dispute to the said proposition.

30. In the case, in hand, the question is not of merger of the decree, but the power of the executing court to correct the decree passed by the court in exercise of its power under Section 47 C.P.C. and therefore, in my view, these judgments are not of much help to the petitioners.

31. There is no dispute to the proposition of law that a court passing the decree can always correct the same on an application of either of the parties to the suit. Judgment relied upon by the petitioners mentioning herein above lays down that because of merger of decree, power of amendment in the decree can be exercised by the court which has passed the last/final decree. In the present case, the question involved is as to whether the decree can be corrected by the executing court where the execution of decree is pending or the same can only be corrected by the court which has passed the decree. According to the petitioners, it is only the court which has passed the decree can correct the decree and not the executing court. The submission of learned counsel for the respondents is otherwise.

32. In case of Rakesh Kumar and others (supra), relied upon counsel for the petitioners, this court has taken a view that amendment in the execution application cannot be permitted unless the decree sought to be executed itself was not amended as the prayer in execution could be only in accordance with the decree. Once the decree specified the property as consisting of four rooms on third floor, no prayer could be permitted by way of amendment in execution to seek relief in respect of four rooms on second floor.

33. I have perused the judgment and the aforesaid judgment is not applicable to the facts of the present case. In case of Rakesh Kumar (supra) the defendant applied for amendment in the execution application without asking for amendment in the decree. In the present case, the plaintiff decree holders have sought the amendment in the decree itself before the executing court, which has been allowed by the executing court.

34. Learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in the case of Pratibha Singh (supra), wherein it has been held by the Supreme Court in paragraph No. 16 of the judgment as under:-

"16.When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within tie meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC."

35. In case of **Kassim Beevi Vs. Meeranchi Mytheen Beevi and others; 1986 SCC Online Ker 305**, in paragraph Nos. 2 and 3 of the judgment, Kerala High Court has held as under:-

"2. The suit was fought on various points right up to this court and was decreed. The plaintiff filed E.P. No. 349 of 1977 with a draft sale deed, the boundaries in which did not tally with the description in Ext.P2 and in the plaint or in the decree, both of which had reproduced the boundary description in Ext.P2. The difference in the boundaries was consequent on the mistake in the boundaries as described in Ext.P2 as pointed out earlier. The decree-holder also filed application for correction of the decree, inter alia regarding the boundaries of the property described in the decree schedule. That application was dismissed on the ground that the application for amendment lay only to this court in view of the fact that the matter had been taken up in second appeal to this court. The decree-holder filed C.M.P. No. 13226/82 for amendment of the decree in this court, whereupon this court held that the execution court itself had jurisdiction to construe the decree and decide as to what was the property to which the decree related with reference to the pleadings, judgments and other records. It was stated that on the basis of such adjudication the decree-holder was entitled to relief in respect of the property actually involved in the suit in spite of the misdesciption. The petition was closed with these observations. Thereafter the decree-holder filed the present execution petition with a draft sale deed in which he incorporated the boundary descriptions of the property as set out in Ext.D2, the sale deed in favour of the petitioner. Despite the fact that the property involved in Ext. D2 and the property forming the subject matter of the decree was one and the same and the fact that the decree-holder was entitled to have a deed of sale executed in his favour in respect of that property, the execution petition was vehemently opposed by the petitioner as if the court had no right to have the sale deed executed with the correct boundary descriptions. The various contentions were overruled by the lower court and the executing court approved the draft sale deed produced by the decree-holder. The revision is filed therefrom.

3. This is one of those eases where the execution of a decree is attempted to be stalled on mere technicalities. The suit itself was keenly fought out by the petitioner. The matter was carried through three courts. Thereafter when the execution is taken, technical pleas are raised as if the court is precluded from taking note of the actual state of affairs and conveying the property with a proper sale deed describing the actual boundaries. It is not as if there was any dispute as to the property in regard to which specific performance was sought. It was not in dispute that the property covered by Ext.P2 and that sold as per Ext. D2 was one and the same. That there was a mistake in the boundary description in Ext.P2 is also clear from the observations in para 13 of the judgment in the suit. The plaintiff is entitled, in a suit for specific performance, to have the property agreed to be sold to him conveyed with a proper, correct and effective deed of sale. When there is no dispute regarding the identity of the property, there is no reason why the actual boundaries of the property, as understood by all the parties, should not be incorporated in the sale deed to avoid any possible confusion in future. It is not as if by doing so the court is traversing beyond the decree or causing any prejudice to any of the parties or conveying property not agreed to be conveyed. In a case of this nature the court is bound to carry out and implement its decree in accordance with its tenor, which in turn would imply that the property should be correctly described with the proper boundaries. That is all that has been done by the lower court in approving the draft sale deed. The plaintiff has only incorporated the boundaries from Ext. D2, the sale deed in favour of the petitioner. In the absence of any dispute that this was the property which was the subject matter of Ext.P2 also, the lower court has only acted rightly in approving the draft sale deed.

I do not find any merit in the revision petition. It is dismissed with costs."

36. In case of **Tilak Raj Vs. Baikhunthi Devi (D) By Lrs; AIR 2009 SC 2136**, the Hon'ble Supreme Court has held in paragraph Nos. 13, 14, and 15 of the judgment as under:-

"13. We have perused the submissions made by the counsel appearing for both the parties and scrutinized the whole record. On appreciation of the records, we are of the opinion that the Patwari had issued a wrong certified copy of Jamabandi incorporating therein Khasra No. 25R/52 against Khewat No. 50 Khatoni No. 60 of jamabandi for the year 1966-67 of village Mojowal. In fact there was no Khasra No. 25R/52 whereas it was actually 26R/52. On the basis of and on account of such wrong supply of materials in the certified copy of Jamabandi, the appellant had sued by wrongly mentioning identity of land as Khasra No. 25R/52. There was no dispute that the parties in the earlier suit were agitating regarding the Estate of Datta Ram. In that view of the matter the appellant was not at fault at all for suing the land as mentioned in the para A of the plaint filed in suit no. 149 of 1979. Actually, this was a mistake on the part of the Patwari or some Revenue Officer, who had issued the aforesaid Khasra Girdawari. It was nowhere disputed that Khasra No. 26R/52 was owned by Datta Ram and there was no Khasra Number described as 25R/52. Moreover, no rebuttal on behalf of the respondent was made in the written submissions in Civil Suit No. 306 of 1969 or otherwise that it was not Khasra No. 25R/52.

14. The aforesaid mistake was of clerical nature which could have been corrected by applying the provisions of Section 152 of the CPC. Counsel appearing for the respondents also during his submissions fairly accepted the aforesaid position. The remedy that was available to the appellant was to file an application seeking for amendment of the decree

by way of correcting the clerical mistake in respect of Khasra Number. Since the mistake was clerical in nature and the appellant being not responsible for the said clerical mistake which had occurred due to wrong recording of Khasra Number in Khasra Girdawari, we find no reason as to why such a genuine and bona fide mistake cannot be allowed to be corrected by exercising the powers under Section 152 of the CPC. In K. Rajamouli vs. A.V.K.N. Swamy, (2001) 5 SCC 37, this Court held as follows:-

"Section 152 provides that a clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties".

15. Since the court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for sub-serving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the courts should not bind itself by the shackles of technicalities."

37. So far as contention of learned counsel for the petitioners that it is the appellate court which confirms the decree, can alone correct the decree and not the executing court, is not sustainable and the case laws cited by learned counsel for the petitioners has no bearing upon the case at hand.

38. On a perusal of the ratio in Pratibha's case (supra) it is apparent that the plaintiff had been remiss in the pleadings in wrongly describing the property at the bottom of the plaint. Had the immovable property been correctly identified, there would have been no vagueness that could have been pleaded in the execution of the decree. Courts of law are ever mindful of the fact that the plaintiff should not be denied the fruits of the decree and if some nebulous question has to be determined in execution proceedings, the Court should not hesitate from doing so. In the present case, undoubtedly pleadings have been made by the plaintiff/respondents in paragraph Nos. 2 and 15 of the plaint that the house in dispute was situated in Mohalla-Siklapur, which was never denied at any point of time by the defendant, except for at the time of execution.

39. As observed by the Hon'ble Supreme Court in Pratibha Singh's case, the litigant cannot be deprived of the fruits of the decree for accidental slips and omissions. In this case, the slip ought to be said to be accidental and typographical only. The plaintiffs have fought from the trial court to High Court. They could not be deprived of fruits of the decree for such inadvertence. The executing court has committed no error in correcting the description of the property in the decree.

40. Learned counsel for the petitioners could not show me any perversity or any illegality in the orders. I, therefore, see no merits in the present petitions and they are dismissed without cost.

(2026) 7 ILRA 1514
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 5377 of 2026

Asif Ansari **...Petitioner**
Versus
Himanshu Sharma & Anr. **...Respondents**

Issue for Consideration

Whether, in the facts of the present case, rejection of the amendment application calls for interference under Article 227 of the Constitution.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908-Order VI Rule 17- An amendment under Order VI Rule 17 CPC is intended to facilitate effective adjudication of the real controversy and is not meant to duplicate or reiterate existing pleadings- Where the proposed amendment merely restates legal pleas already discernible from the pleadings or the memorandum of appeal, refusal of such amendment causes no legal prejudice- Rejection of an amendment application does not bar a party from advancing pure questions of law arising from the existing pleadings at the stage of final hearing.

Held- That rejection of an application for amendment does not, by itself, determine the fate of a legal plea otherwise arising from the existing pleadings. Procedural orders must be assessed with reference to their substantive impact upon the rights of the parties, for procedural law is a handmaid of justice and not an end in itself. Consequently, where refusal of an amendment neither occasions prejudice nor results in failure of justice, and the legal contention remains capable of being urged on the existing pleadings, supervisory interference under Article 227 of the Constitution would ordinarily be unwarranted. (E-15)

(Para 18, 23 & 24)

Case Law Cited

Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329; Garment Craft v. Prakash Chand Goel (2022) 4 SCC 181

List of Acts

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

List of Keywords

Order VI Rule 17; CPC; Rejection of an amendment application; Does not bar party from advancing pure questions of law arising from the existing pleadings; At the stage of final hearing.

Case Arising From

Order dated 26.03.2026 passed by the Rent Tribunal/Additional District Judge, Court No. 1, Saharanpur in Rent Appeal No. 234 of 2025, whereby the petitioner's application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the memorandum of appeal has been rejected

Appearances for Parties

Counsel for Petitioner(s) : Rajesh Gupta, Satya Prakash Mishra, Vinay Kumar Singh
Counsel for Respondent(s) : Birendra Kumar, Himanshu Dubey

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Satya Prakash Mishra, learned counsel for the petitioner and Sri Himanshu Dubey, learned counsel appearing for the respondents.

2. The present petition under Article 227 of the Constitution of India has been instituted questioning the correctness of the order dated 26.03.2026 passed by the Rent Tribunal/Additional District Judge, Court No. 1, Saharanpur in Rent Appeal No. 234 of 2025 (Asif Ansari v. Himanshu Sharma and Another), whereby the petitioner's application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the memorandum of appeal has been rejected.

3. The appeal itself arises from the judgment dated 19.09.2025 rendered in Rent Case No. 3360 of 2022 instituted under Section 21(2) of the U.P. Act No. 16 of 2021.

4. The amendment sought by the petitioner was intended to incorporate certain pleas founded upon the principles of "res judicata" and estoppel. The Rent Tribunal, after examining the pleadings and the memorandum of appeal, recorded a categorical finding that the said pleas already constituted part of the petitioner's case and had also been specifically incorporated amongst the grounds of challenge in the appeal. The Tribunal was, therefore, of the opinion that the proposed amendment did not seek to introduce any new factual foundation or legal issue and that permitting such amendment would merely delay the adjudication of the appeal. Accordingly, the application came to be rejected.

5. Learned counsel appearing for the petitioner has assailed the aforesaid order by contending that the proposed amendment was necessary to avoid any technical objection at the stage of final hearing and that no prejudice would have been caused to the respondents had the amendment been permitted.

6. However, during the course of hearing, learned counsel for the petitioner fairly does not dispute the factual position recorded by the Tribunal that the contentions founded upon the principles of res judicata and estoppel already form part of the pleadings and also find place amongst the grounds urged in the memorandum of appeal.

7. The question which, therefore, falls for consideration is whether, in the facts of the present case, rejection of the amendment application calls for interference under Article 227 of the Constitution.

8. The controversy, though arising out of an interlocutory procedural order, presents a question of some significance, namely, whether refusal of an amendment under Order VI Rule 17 of the Code of Civil Procedure, where the proposed contentions already form part of the pleadings and the

memorandum of appeal, warrants interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution.

9. Order VI Rule 17 CPC is an enabling provision intended to advance the cause of justice by permitting such amendments as may be necessary for determining the real questions in controversy between the parties. The provision is not an end in itself. Its object is neither to multiply pleadings nor to permit repetitive incorporation of matters already existing on record. The Court, while considering an application for amendment, is essentially required to examine whether the proposed amendment is necessary for an effective adjudication of the dispute and whether refusal thereof would occasion prejudice or failure of justice.

10. It has consistently been held that the discretion to allow or refuse an amendment is to be exercised on well-settled judicial principles, the primary consideration being whether the proposed amendment is necessary for determining the real controversy between the parties and whether its allowance or refusal would occasion prejudice or injustice to the opposite party. Equally, where the proposed amendment merely reiterates what is already implicit or explicit in the existing pleadings, or seeks only to elaborate legal submissions without introducing any new factual foundation, the Court would be justified in declining such amendment as unnecessary. Procedural law is intended to facilitate effective adjudication and not to encourage prolixity or duplication in pleadings.

11. The distinction between pleadings containing material facts and submissions founded upon those facts is equally well recognised. Material facts constitute the foundation of a cause, whereas legal submissions represent the inferences and consequences flowing therefrom. Once the material facts necessary to attract a legal principle are already pleaded, the Court is not rendered powerless merely because every legal proposition has not been elaborately articulated in the pleadings. A pure question of law arising from the admitted or existing pleadings can always be urged at the stage of final arguments, provided its consideration does not require investigation into facts not already on record.

12. It follows, therefore, that where the principles of “res judicata” or estoppel are demonstrably founded upon the existing pleadings and the material already available before the Court, rejection of an amendment application does not extinguish the party's right to advance such legal submissions during the course of final hearing. The rejection merely signifies that no further amendment of the pleadings is considered necessary; it does not amount to an adjudication upon the merits of the legal plea itself.

13. The scope of interference under Article 227 of the Constitution is considerably narrower than that of an appellate or revisional jurisdiction. The jurisdiction is supervisory and is intended to ensure that courts and tribunals subordinate to the High Court function within the limits of their authority. It is not designed to permit re-appreciation of every interlocutory order or to substitute the opinion of the High Court for that of the subordinate forum merely because another view is possible.

14. The legal position governing the exercise of supervisory jurisdiction under Article 227 of the Constitution stands authoritatively settled by the decisions of the

Supreme Court in **Shalini Shyam Shetty v. Rajendra Shankar Patil1 and Garment Craft v. Prakash Chand Goel**. These decisions reiterate that supervisory jurisdiction is attracted only where the order under challenge suffers from patent perversity, manifest illegality, jurisdictional error, gross violation of principles of natural justice, or where interference becomes indispensable to prevent a manifest failure of justice. Mere errors of fact or law, or even the possibility of another plausible view, do not justify invocation of Article 227.

15. Viewed from the aforesaid perspective, every procedural order refusing amendment cannot be treated as inviting supervisory correction. Unless the refusal demonstrably deprives a party of raising a material factual or legal issue necessary for adjudication, no occasion arises for interference under Article 227.

16. In the present case, the Rent Tribunal has returned a categorical finding that the pleas relating to "res judicata" and estoppel already stand incorporated in the pleadings as well as in the memorandum of appeal. Significantly, the petitioner has not been able to assail this factual finding. Once this position is accepted, the inevitable consequence is that rejection of the amendment has not deprived the petitioner of any substantive right. The legal submissions remain available for consideration at the stage of final hearing on the strength of the pleadings already on record.

17. The impugned order, therefore, neither occasions any failure of justice nor discloses any jurisdictional error warranting interference under Article 227 of the Constitution. At the same time, since the legal pleas continue to subsist in the existing pleadings, it is clarified that the petitioner shall remain entitled to urge all submissions founded thereon before the Rent Tribunal, which shall consider the same on their own merits, uninfluenced by the rejection of the amendment application.

18. The legal position may, therefore, be summarised thus:

(i) An amendment under Order VI Rule 17 CPC is intended to facilitate effective adjudication of the real controversy and is not meant to duplicate or reiterate existing pleadings.

(ii) Where the proposed amendment merely restates legal pleas already discernible from the pleadings or the memorandum of appeal, refusal of such amendment causes no legal prejudice.

(iii) Rejection of an amendment application does not bar a party from advancing pure questions of law arising from the existing pleadings at the stage of final hearing.

19. Applying the aforesaid principles to the facts of the present case, this Court finds that the Tribunal has recorded a categorical finding that the pleas founded upon the principles of "res judicata" and estoppel already constitute part of the pleadings and have also been specifically incorporated amongst the grounds of appeal. The

correctness of the said factual finding has not been disputed before this Court. Consequently, rejection of the amendment application has neither deprived the petitioner of any substantive right nor foreclosed any legal contention available on the existing pleadings. The impugned order, therefore, neither occasions a failure of justice nor suffers from any jurisdictional error, patent illegality or perversity warranting interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution.

20. At this stage, learned counsel for the petitioner submits that since the pleas relating to "res judicata" and estoppel already form part of the pleadings and the memorandum of appeal, liberty may be reserved to the petitioner to urge all such submissions before the Rent Tribunal at the stage of final hearing.

21. Learned counsel appearing for the respondents does not dispute the legal position that pure questions of law arising from the pleadings can always be urged at the stage of final arguments.

22. The submission deserves acceptance. Rejection of the amendment application cannot be construed as foreclosing the petitioner's right to advance legal submissions founded upon the pleadings already on record. The Tribunal would remain under an obligation to examine every contention legitimately arising from the pleadings and the grounds of appeal while rendering its final decision.

23. Applying the aforesaid principles, this Court finds no ground to interfere with the order impugned in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. It is, however, clarified that rejection of the petitioner's application under Order VI Rule 17 CPC shall not preclude the petitioner from advancing, at the stage of final hearing of the appeal, all legal submissions founded upon the existing pleadings, including those relating to the principles of "res judicata" and estoppel. In the event such submissions are advanced, the Rent Tribunal shall consider and determine the same on their own merits, strictly in accordance with law, uninfluenced by the rejection of the amendment application.

24. It merits emphasis that rejection of an application for amendment does not, by itself, determine the fate of a legal plea otherwise arising from the existing pleadings. Procedural orders must be assessed with reference to their substantive impact upon the rights of the parties, for procedural law is a handmaid of justice and not an end in itself. Consequently, where refusal of an amendment neither occasions prejudice nor results in failure of justice, and the legal contention remains capable of being urged on the existing pleadings, supervisory interference under Article 227 of the Constitution would ordinarily be unwarranted.

25. Subject to the aforesaid observations and clarifications, the petition stands **disposed of.**

(2026) 7 ILRA 1519
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 5549 of 2019

Shri Ram Prakash & Ors. ...Petitioners
Versus
Smt. Asha Johri & Ors. ...Respondents

Issue for Consideration

Whether the suit for redemption for mortgage is filed after expiry of limitation period and therefore the plaint of the plaintiffs is liable to be rejected

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order VII Rule 11; The Limitation Act, 1973- Article 61- Right of redemption of a mortgagor being a statutory right, the same can be taken away only in terms of the proviso to Section 60 of the Transfer of Property Act which is extinguished either by a decree or by act of the parties- It is admitted that it was only for the first time on 30.12.2015, the notice was given to the petitioners along with pay orders for payment of the principal sum to the defendants which was refused by them. The limitation will start from 30.12.2015 itself as the said date will be the date on which the amount was tendered by the mortgagor to the mortgagee. The suit was filed on 03.03.2016 is definitely be within the limitation.

Held- No error has been committed by the courts below in dismissing the application filed by the petitioners under Order VII Rule 11 C.P.C. for rejecting the plaint on the ground that the suit was barred by limitation. **Petition dismissed**. (E-15)

(Para 19, 23 & 24)

Case Law Cited

Lachhman Singh v. Natha Singh through Harnam Singh and others; 1940 AIR Lahore 401 (FB); Gopal v. Parsotam (1883) ILR 5 ALL 121, P. 137); Harminder Singh (D) through L.Rs. v. Surjit Kaur (D) through L.Rs. & others; 2022 Legal Eagle SC 1365; Ram Kishan and others v. Sheo Ram; AIR 2008 P&H 77; Singh Ram (D) Thr. L.Rs. v. Sheo Ram and others; AIR 2014 SC 3447; Prabhakaran and others v. M. Azhagiripillai (dead) by LRs. and others; 2006 (3) SCC 484 ; Sampuran Singh v. Niranjan Kaur; (1999) 2 SCC 679.

List of Acts

The Constitution of India, 1950-; The Code of Civil Procedure, 1908; The Limitation Act, 1973

List of Keywords

Suit for redemption for mortgage; Right of redemption of a mortgagor statutory right; Can be taken away only in terms of the proviso to Section 60 of T.P Act ; Extinguished either by a decree or by act of the parties; Limitation will start from the date on which the amount was tendered by the mortgagor to the mortgagee

Case Arising From

Order dated 13.10.2017 passed by Civil Judge (Junior Division), Bareilly in Original Suit No. 35 of 2016 dismissing the application filed by the defendants under Order VII Rule 11 C.P.C. and also the order dated 08.05.2019 passed by Additional District Judge, Court No. 9, Bareilly in Civil Revision No. 117 of 2017 and others dismissing the revision filed by the defendants/revisionists against the judgment and order dated 13.10.2017 passed by the Civil Judge (Junior Division) Bareilly.

Appearances for Parties

Counsel for Petitioner(s) : Kiran Kumar Arora
Counsel for Respondent(s) : Ajay Singh, Bhanu Bhushan Jauhari, Rishi Bhushan Jauhari

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

1. Heard Shri Kiran Kumar Arora, learned counsel for the petitioners, Shri Bhanu Bhushan Jauhari, learned counsel for the respondents and perused the record.

2. This petition has been filed challenging the order dated 13.10.2017 passed by Civil Judge (Junior Division), Bareilly in Original Suit No. 35 of 2016, (Asha Johri and others v. Ram Prakash and others) dismissing the application filed by the defendants under Order VII Rule 11 C.P.C. and also the order dated 08.05.2019 passed by Additional District Judge, Court No. 9, Bareilly in Civil Revision No. 117 of 2017 Ram Prakash and others v. Asha Johri and others dismissing the revision filed by the defendants/revisionists against the judgment and order dated 13.10.2017 passed by the Civil Judge (Junior Division) Bareilly.

3. Brief facts of the case are that in the year 1978, one Jagdish Prasad husband of respondent no. 1/plaintiff, mortgaged house bearing No. 333, situate at Mohalla Kunwapur, Bareilly ad-measuring 168.81 sq. meters in favour of the petitioner nos. 1 to 4.

4. The mortgage deed in question was for securing a debt of Rs. 15,000/- given to Jagdish Prasad Johri executant of the mortgage deed and in lieu thereof the house in dispute was mortgaged and the petitioners were put in possession over the house in dispute. It was also settled that the rent of the house will be adjusted towards interest on the sum advanced and the period of mortgage was four years. It was also provided in the mortgage deed that till the entire debt amount is paid, the property will remain in possession of the petitioners and Jagdish Prasad Johri predecessor in interest of the respondents will be entitled for redemption of the mortgage after payment of the loan and in case, the same is not done, will be entitled to get the same by filing a suit. After the death of Jagdish Prasad Johri, a suit was instituted by the heirs of deceased Jagdish Prasad Johri in the court of Civil Judge (Junior Division) Bareilly being Original Suit No. 35 of 2016 for the relief that the defendants be directed to execute the documents for rehan wapsi i.e. for cancellation of mortgage deed and shall also hand over actual physical possession of the house mortgaged to the plaintiffs. The aforesaid suit was filed with the allegation that late Jagdish Prasad Johri requested several times to defendants in the suit to take back amount of Rs. 15,000/- which was given to Jagdish Prasad Johri and cancel the mortgage deed and hand over possession of house in question. After the death of Jagdish Prasad Johri on 26.10.2015, his heirs i.e. plaintiffs in the suit tendered amount of Rs. 15,000/- by means of Bank Pay Order along with notice dated 30.12.2015 to the defendants and demanded that the defendants in the suit may get the mortgage deed cancelled and hand over the possession of the house in dispute. The plaintiff also claimed damages from the date of notice. The

notice was replied by the defendants vide notice dated 12.01.2016 wherein the defendants have admitted the mortgage deed and has also admitted that the said mortgage deed was never redeemed and the banker cheque along with notice was returned. It was also stated that the plaintiffs has no right to redeem the mortgage. After being noticed, the defendant nos. 2 to 4 moved an application under Order 7 Rule 11 C.P.C. for rejection of plaint on the ground that the mortgage deed was executed on 28.03.1978 and in the said deed it was specifically mentioned that the mortgage is for the period of four years. The period of four years expired on 28.03.1982. The mortgage was not redeemed by the mortgagor. The limitation for redemption for mortgage is 30 years which has expired on 28.03.2012 and the present suit was filed on 03.03.2016 after the expiry of limitation period and therefore the plaint of the plaintiffs is liable to be rejected. Objections were filed by the plaintiffs/respondents to the application filed by the defendants/petitioners under Order VII Rule 11 C.P.C. The trial court i.e. Civil Judge (Junior Division), Bareilly, on 13.10.2017 rejected the application filed by the defendants/petitioners under Order VII Rule 11 C.P.C. holding that the suit is not barred by limitation as the right to redeem the mortgage arose on 30.12.2015 when the plaintiff give notice for payment of mortgage debt. Against the order dated 13.10.2017, the defendants/petitioners filed revision No. 117 of 2017 before the Civil Judge (Senior Division) Bareilly. The said revision was also dismissed by the revisional court i.e. Additional District Judge, Court No. 9, Bareilly, hence the present petition.

5. It has been contended by learned counsel for the petitioner that the right of a mortgagor to redeem, is governed by Article 61 of the Schedule to the Limitation Act and the right to redeem or recover possession accrues on the date of execution of mortgage deed itself unless a different time is agreed between the parties. It has also been contended by learned counsel for the petitioner that in the mortgage deed it was provided that the period of mortgage is four years and the said period expired on 28.03.1982. It has been further contended by learned counsel for the petitioner that since the mortgagor has right to redeem the mortgage on payment of mortgage money and there can be no restriction to exercise his right on the date of mortgage itself in case no time is prescribed for exercise of such right, the period of limitation starts from the date of execution of mortgage deed and on expiry thereof, the right to recover the possession comes to an end. It has been further contended by learned counsel for the petitioner that in the present case, the said right accrued to the mortgagor on 28.03.1982 after expiry of four years from the date of mortgage i.e. 28.03.1978. The limitation for filing a suit for redemption is 30 years and the said limitation expired on 28.03.2012 and therefore, the suit itself was barred by time. It has been further contended by learned counsel for the petitioner that the expiry of limitation not only bars the remedy but also right to seek possession as provided under Section 27 of the Limitation Act. Learned counsel for the petitioner relied upon judgment of the Supreme Court in case of ***Prabhakaran and others v. M. Azhagiripillai (dead) by LRs. and others; 2006 (3) SCC 484 and Sampuran Singh v. Niranjan Kaur; (1999) 2 SCC 679***. Relying upon the aforesaid judgments of the Supreme Court, learned counsel for the petitioner contended that in case of usufructuary mortgage where no time is fixed for redemption, the right to redeem will accrue immediately on execution of mortgage deed and the mortgagee has to file suit for redemption within 30 years from the date of mortgage and therefore failure to redeem the mortgage within a period prescribed under Article 61 of the Limitation Act will lead to closure of the option to seek redemption.

6. Per contra, learned counsel for the plaintiffs/respondents submitted that the document in question was a usufructuary mortgage. In view of Section 62 of the Transfer of Property Act, the limitation for filing a suit for redemption of usufructuary mortgage or for recovery of possession will commence whenever the mortgagor gives a notice to the mortgagee to receive back his money and to hand over the possession. In the present case, the plaintiffs send a demand draft of mortgage amount and asked the defendants to hand over the property mortgaged on 30.12.2015, hence, the limitation for filing the suit will start from 30.12.2015 and not earlier as contended by learned counsel for the petitioner. Suit filed by the plaintiff/respondents is within time. It has been contended by learned counsel for the respondents that in an usufructuary mortgage right to recover possession continues till the money is paid either from the rents and profits or where it is partly paid from the rents and profits when the balance is paid by the mortgagor or deposited in court as provided under Section 62 of the Transfer of Property Act. Learned counsel for the respondents further submitted that in the present case, the rent of the property mortgaged was to be adjusted for payment of interest on the sum advanced i.e. Rs. 15,000/- and therefore, the limitation will start only after payment of principal sum i.e. Rs. 15,000/- or on tender being made by mortgagor of the principal amount to the mortgagee which in the present case was done on 30.12.2015 and therefore, the limitation will start from 30.12.2015 and not before.

7. Learned counsel for the respondent submitted that the judgments relied upon by learned counsel for the petitioner in case of **Prabhakaran and others** (Supra) and **Sampuran Singh v. Niranjan Kaur** (Supra) were considered by a Larger Bench of the Supreme Court in case of **Singh Ram (D) Thr. L.Rs. v. Sheo Ram and others; AIR 2014 SC 3447** and Supreme Court has held that the law laid down in the judgment in case of **Prabhakaran and others** (Supra) and **Sampuran Singh v. Niranjan Kaur** (Supra) does not lay down the correct view in law and has been impliedly over ruled by the Larger Bench. Learned counsel for the respondent relied upon the judgment of the Apex Court in case of **Singh Ram (D) Thr. L.Rs. v. Sheo Ram** (Supra) judgment of the Full Bench of Punjab & Haryana High Court in case of **Ram Kishan and others v. Sheo Ram; AIR 2008 P&H 77**, and judgment of Supreme Court in case of ***Harminder Singh (D) through L.Rs. v. Surjit Kaur (D) through L.Rs. & others; 2022 Legal Eagle SC 1365***.

8. Before considering the rival submissions of the parties, it will be appropriate to refer to the statutory provisions of the Transfer of Property Act as well as Limitation Act:

Sections 58, 60 & 62 of the Transfer of Property Act is as follows:

"58. **"Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined**. - (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage -deed.

(b) **Simple mortgage**.- Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) **Mortgage by conditional sale**.- Where the mortgagor ostensibly sells the mortgaged property"

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

(d) **Usufructuary mortgage**.- Where the mortgagor delivers possession [or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property [or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest [or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) **English mortgage**.- Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

[(f) **Mortgage by deposit of title-deeds**.-Where a person in any of the following towns, namely, the towns of Calcutta, Madras, [and Bombay], 3*** and in any other town which the [State Government concerned] may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) **Anomalous mortgage**.- A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.]

60. **Right of mortgagor to redeem**.- At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage -money, to require the mortgagee (a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by [decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.- Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgager.

62. **Right of usufructuary mortgagor to recover possession**.- In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property [together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],- (a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property,-when such money is paid: (b) where the mortgagee is authorised to pay himself from such rents and profits [or any part thereof a part only of the mortgage -money],-when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee [the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided."

Article 61 (a) of the Limitation Act is as follows:

"61. By a mortgagor-

a)to redeem or recover possession of immovable property mortgaged;	Thirty years.	When the right to redeem or to recover possession accrues.

9. Before considering case law relied upon by respective parties, it would be useful to consider the nature of mortgage, specially the usufructuary mortgage.

10. Justice Mehmood in case of **Gopal v. Parsotam (1883) ILR 5 ALL 121, P. 137**) says of the definition of the mortgage in Section 58 of the Transfer of Property Act, 1881 as under:

"mortgage as understood in this country cannot be defined better than by the definition adopted by Legislature in Section 58 of the Transfer of Property Act (IV of 1882). The definition has not in any way altered the law but on the contrary, has only formulated in clear language the notions of mortgage as understood by all the writers of the text books on Indian mortgages. Every word of the definition is borne out by the decision by Indian Courts of Justice."

A mortgage is a transfer of an interest in specific immovable property as security for the repayment of debt. But such interest itself is immovable property. The nature of the right transferred depends upon the form of mortgage. It is sufficient that the transfer should be originally intended as security for the debt. The court will ascertain the intention by looking at the substance and essence of the transaction and not the mere form of the deeds. Even if, deed calls itself a mortgage, its nature will be determined not by the name parties give it but by the jural relationship constituted by it. The question has to be decided with reference to the pre-dominent intention of the parties as gathered from the recitals and the terms of the documents and the surrounding, circumstances, including conduct of the parties. The transfer must be to a living person or persons (Section 5 of the Transfer of Property Act).

In a mortgage, some rights are transferred to the mortgagee and some remain vested in the mortgagor. In order to create a mortgage it is necessary to specify the immovable property. The description must at least be sufficient to identify the property. The purpose or object of mortgage is to secure a debt. The transfer made for the purpose discharging a debt is not a mortgage. The mortgage may be for a present debt or a future debt to secure the payment of the debt. Person executing the mortgage is called mortgagor. A mortgagor must be a person competent to contract and capable to transfer the property. A mortgagee is the person to whom the interest in a immovable property is transferred by the mortgagor for securing a debt. In a usufructuary mortgage the mortgagee is placed in possession and has a right to enjoy the rents and profits until the debt is paid. It is not necessary that the mortgagee should take physical possession, for the mortgagor may continue in possession as lessee of the mortgagee or he may direct the tenant to pay rents to the mortgagee but unless there is a clause providing for mortgagee going in possession, there cannot of course be a usufructuary mortgage, as possession of the mortgagee is distinguishing feature for such a mortgage. It follows that there cannot be two different usufructuary mortgage on the same property at the same time. Under a usufructuary mortgage, the mortgagor cannot be sued personally for the debt. The mortgagee remains in possession until the mortgage money is paid.

11. In Mulla's The Transfer of Property Act, Ninth Edition, certain statements are relevant. They read as follows:

"Right of redemption: The mortgagor in Indian Law is the owner who had parted with some rights of ownership and the right of redemption is a right which he exercises by virtue of his

residuary ownership to resume what he has parted with. The Section affirms a right of redemption in all mortgagees and thus carries out the recommendation of the Privy Council in Thumbuswamy's case (1875 1 Mad 1, 2 IA, 241) that the Legislature should intervene to recognize a right of redemption in mortgagees by conditional sale. In India this right of redemption is, however, a statutory one, and, therefore a legal right as stated by the judicial committee. Right of redemption cannot be extinguished by any agreement made at the time of the mortgage as part of the mortgage transaction.

The right of redemption is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists. It can be extinguished as provided in the section and when it is alleged to be extinguished by a decree, the decree should run strictly in accordance with the forum prescribed for the purpose. Dismissal of an earlier suit for redemption whether as abated or as withdrawn or in default would not be barred the mortgagor from filing a second suit for redemption so long as the mortgage subsists and the right of redemption is not extinguished by the efflux of time or by a decree of the court in the prescribed form.

A redemption pre-supposes the existence of a `mortgage'. As defined in the Act, a mortgage is a transfer of an interest in immovable property for the purpose of securing the payment of a loan. It is created by the act of parties. In an usufructuary mortgage, a transfer is made of the right of possession and enjoyment of the usufruct. The rights of a usufructuary mortgagee forms part of the bundle which constitute ownership. The remainder still remains with the mortgagor and can be transferred by him. The mortgagor's right is as indicated in section 60 of the Act i.e. after the principal money has become due, the mortgagor has a right to pay the mortgage money and on such payment, he has the right to require the mortgagee to deliver possession. This right cannot be extinguished except by the act of parties or by a decree of a Court. This right is called the right to redeem and a suit to enforce it is called a suit for redemption. Thus the scope of a suit for redemption is preliminary to enforce the right to make a payment of the mortgage money. A claim to redeem a mortgage actually does not attach to the land, although the decree passed in the suit may ultimately affect possession which is also an interest in land.

The section is not prefaced by any such words as in the absence of a contract to the contrary'. The right of redemption is therefore a statutory right which cannot be fettered by any condition which impedes or prevents redemption. Any such condition is void as a clog on redemption."

12. The authoritative work of Dr. Rashbehary Ghose's "Law of Mortgage", which has received the approval of various High Courts and the Supreme Court, the maxim 'once mortgage, always a mortgage has been explained as under (Eighth Edition - Page Nos. 280-281) under the heading "Once a Mortgage, always a mortgage: is quoted as under:

"In 1681 Lord Nottingham in the leading case of Harris v. Harris (1681) 1 Vern 33 firmly laid down the principal: 'Once a mortgage,' always a mortgage.' This is a doctrine to protect the mortgagor's right of redemption: It renders all agreements in a mortgage for forfeiture of the right to redeem and also encumbrances of or dealings with the property by the mortgagee as against a mortgagor coming to redeem. In 1902 the well-known maxim, 'once a mortgage, always a mortgage' was supplemented by the words and nothing but a mortgage' added by Lord Davey in the

leading case of Noakes v. Rice 1902 A.C. 24 (H.L.) : (1900-3) A11 E.R Rep 34, in which the maxim was explained to mean 'that a mortgage cannot be made irredeemable and a provision to that effect is void'. The maxim has been supplemented in the Indian context by the words 'and therefore always redeemable', added by Justice Sarkar of the Supreme Court in the case of Seth Ganga Dhar v. Shankarlal .

It is thus evident that very conception of mortgage, involves three principals. First, there is the maxim: 'Once a mortgage, always a mortgage.' that is to say, a mortgage is always redeemable and if a contrary provision is made, it is invalid. And this is an exception to the aphorism, modus et conventio vincunt legem (custom and agreement overrule law). Secondly, the mortgagee cannot reserve to himself any collateral advantage outside the mortgage agreement. Thirdly, as a corollary from the first another principal may be deduced, namely, 'once a mortgage, always a mortgage, and nothing but a mortgage'. In other words, any stipulation which prevents a mortgagor from getting back the property mortgaged is void. That is, a mortgage is always redeemable.

The maxim 'once a mortgage, always a mortgage' may be said to be a logical corollary from the doctrine, which is the very foundation of the law of mortgages, that time is not of the essence of the contract in such transactions; for the protection which the law throws round the mortgagor might be rendered wholly illusory, if the right to redeem could be limited by contract between the parties (For a very curious case mentioned in the books in which the mortgagor was permitted to redeem, although he had solemnly sworn on the Bible never to exercise the right, see Stistefl's case cited in East India Co. v. Atkyns 1 Compyn 348). Right to redeem is an incident of a subsisting mortgage and is inseparable from it so that the right is co-extensive with the mortgage itself. The right subsists until it is appropriately and effectively extinguished either by the acts of the parties concerned or by a proper decree of the competent court."

13. In case of **Lachhman Singh v. Natha Singh through Harnam Singh and others; 1940 AIR Lahore 401 (FB)**, Full Bench of Lahore High Court held in paragraph nos. 5 to 11 as under:

"5. Before examining the provisions of the Act, it seems necessary to determine the exact nature of the transactions in question and the rights and obligations of the parties under them. From the conditions of the mortgages already given, it will appear that they are "usufructuary mortgages" as defined in cl. "(d), Section 58, Transfer of Property Act. That Act, of course, is not in force in the Punjab, but the definitions of the various kinds of mortgages given in it have always been accepted as correctly describing their essential ingredients and incidents. This definition is as follows:

(d) Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage money, or partly in lieu of interest and partly in payment of the mortgage money, the transaction is called a "usufructuary mortgage," and the mortgagee a "usufructuary mortgagee."

6. It will be seen that the characteristics of a usufructuary mortgage, as defined above, are: (1) that the possession of the mortgaged property is delivered, or agreed to be delivered, to the mortgagee; (2) that he is to appropriate the rents and profits either (a) in lieu of interest, or (b) towards the principal, or (c) partly in lieu of interest and partly in payment of the principal; (3) that in none of these cases the mortgagor incurs any personal liability to repay; and (4) as the mortgagor has not bound himself to repay (but may repay if and when he chooses) there can be no "forfeiture" and therefore the remedies by way of foreclosure or sale are not open to the mortgagee.

7. These propositions are too well established to require an elaborate discussion. In Ram Narain Singh v. Adindra Nath AIR 1916 Privy Council 119, their Lordships of the Privy Council after examining the particular deed before them held that, having regard to the nature of the deed which was a usufructuary mortgage only and to its terms, any personal liability on the part of the "mortgagor was excluded." Again, there is a large number of cases in which it has been held that a usufructuary mortgagee is not entitled to sue for sale of the property (Chathu v. Kunjan, Sadashiv v. Vyankatrao, Umrao v. Umrao Begam, and Luchmeshar Singh v. Dookh Mochan Jha and where there is a stipulation to the contrary the transaction ceases to be one of "usufructuary mortgage" but is what is described as an "anomalous mortgage." As stated in (2) above, usufructuary mortgages are of three kinds. Of these, the two described in (b) and (c) are self redeeming; the mortgagee has to look to the rents and profits only to re-pay himself and when his entire charge is so liquidated he must re-deliver possession of the mortgaged property to the mortgagor free from all encumbrances. A common instance of this kind of mortgage found in the Punjab, especially in the western districts, is the lekha mukhi mortgage where the mortgagee takes over the land and binds himself to keep the lekha (account) of the produce, and as soon as the principal and interest have been paid off therefrom, he must surrender the property to the mortgagor. In this mortgage the mortgagor undertakes no personal liability and while he is competent at any time to claim redemption on payment of the amount found to be due under the mortgage the mortgagee is not entitled to sue for his debt (per Plowden J. in Gahimal v. Shera). Another familiar instance of this kind of mortgage is the one permitted under Section 6 or Section 14, Punjab Alienation of Land Act, in which the entire principal and interest is automatically wiped off within a specified period, not exceeding 20 years, irrespective of whether the rent and profits actually realized by the mortgagee are more or less than the principal sum secured and interest due thereon. In this case also there is no personal liability of the mortgagor to pay nor has the mortgagee a right to bring the property to sale.

8. The most common form of usufructuary mortgage however is that described in 2(a) above, and it is to this class that the mortgages in the cases before us belong. Here the rents and profits are to be set off against interest and the mortgagee is entitled to retain possession until such time as the mortgagor chooses to redeem on payment of the principal sum secured. This form of mortgage has been in vogue in India since ancient times. It was known to the Hindu lawyers under the expressive name of bhog bandakam which literally means "mortgage (bandaka) by enjoyment (bhog)." It was a mortgage for an indefinite period, during which the mortgagee enjoyed the usufruct and the mortgagor was entitled to redeem at any time on payment of the principal. It retained its popularity during the Mughal period, especially among the Mahomedan creditors who by obtaining possession of property (as a zer-i-peshgi lessee and under other similar names) and appropriating the rents and profits till redemption, could find a safe investment for their money without charging interest. This form of mortgage is not peculiar to India alone. It has been described by Dr. Ghose and other

standard writers as analogous to what was known as a 'Welsh mortgage' in England, where it has now become obsolete. But it has been the subject of judicial consideration in Ireland in recent times, and there are reported cases to which reference may usefully be made. In Balfe v. Lord (1842) 2 Dr & War 480, Lord St. Leonards described a Welsh mortgage as one under which the lender goes into possession of the rents and continues to receive them until the party who borrowed the money, chooses to redeem and this he is always permitted to do, so that the peculiarity is that while there can be no foreclosure on the part of the mortgagee, still the right of redemption subsists in the mortgagor.

9. More recently in Ireland, in Cassidy v. Cassidy (1890) 24 LR Ir 577 Johnson J. described a Welsh mortgage as a kind of security by which on the one side the land is assured to the lender as his security--his possession of the land and enjoyment of the profits being in lieu of interest--while on the other side, the borrower is under no personal obligation to pay the principal money but is entitled to redeem at any time upon its payment.

10. Again, In Re Cronin (1914) 1 Ir R 23 it was pointed out that a power of sale was wholly inconsistent with the 'continuing' right of redemption which the Welsh mortgage carries and that the express inclusion in the security of such a stipulation showed that security was not a Welsh mortgage.

11. It will be clear from the foregoing discussion that the principal characteristics of a usufructuary mortgage are that there is no personal liability of the mortgagor to pay, nor has the mortgagee a right to have the mortgaged property brought to sale……"

14. In case of **Prabhakaran and others** (Supra) relied upon by learned counsel for the petitioner, it has been held by the Apex Court in case of usufructuary mortgage which does not fix any date for redemption of mortgage money, but merely specifies that mortgagee is entitled to be in possession till redemption right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to filed suit for redemption within 30 years from the date of mortgage. Paragraph no. 11 of the judgment in case of **Prabhakaran and others** (Supra) is quoted as under:

"11. Article 148 of the Limitation Act, 1908 (referred to as 'old Act') provided a limitation of 60 years for a suit against a mortgagee, to redeem or to recover possession of immovable property mortgaged. The corresponding provision in the Limitation Act, 1963 ('new Act' or 'Limitation Act' for short), is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property mortgaged is 30 years. The period of limitation begins to run when the right to redeem or to recover possession accrues. In the case of a usufructuary mortgage which does not fix any date for repayment of the mortgage money, but merely stipulates that the mortgagee is entitled to be in possession till redemption, the right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to file a suit for redemption within 30 years from the date of the mortgage. Section 27 of the Limitation Act provides that "at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished". This would mean that on the expiry of the period of limitation prescribed under the Act, the mortgagor would

lose his right to redeem and the mortgagee would become entitled to continue in possession as the full owner."

15. In case of **Sampuran Singh v. Niranjan Kaur** (Supra), relied upon by learned counsel for the petitioner, the Supreme Court has held in paragraph no. 14 as under:

"14. Submission was, as aforesaid, right to redeem only accrue when either mortgagors tender the amount of mortgage or the mortgagees communicate satisfaction of the mortgage amount through the usufruct from the land. This submission is misconceived, as aforesaid, if this interpretation is accepted, then till this happens the period of limitation never start running and it could go on for an infinite period. We have no hesitation to reject this submission. The language recorded above makes it clear that right of redemption accrues from the very first day unless restricted under the mortgage deed. When there is no restriction mortgagors have a right to redeem the mortgage from that very date when the mortgage was executed. Right accruing means, right either existing or coming into play thereafter. Where no period in the mortgage is specified, there exist a right to a mortgagor to redeem the mortgage by paying the amount that very day in case he receives the desired money for which he has mortgaged his land or any day thereafter. This right could only be restricted through law or in terms of a valid mortgage deed. There is no such restriction shown or pointed out. Hence, in our considered opinion the period of limitation would start from the very date the valid mortgage is said to have been executed hence the period of limitation of 60 years would start from the very date of oral mortgage that would be from March, 1893. In view of this, we do not find any error in the decision of the first Appellate Court or the High Court holding that the suit of the present appellants is time barred."

16. In case of **Singh Ram v. Sheo Ram** (supra) relied upon by learned counsel for the respondents in paragraph no. 2 of the judgment, the Supreme Court has quoted the question which was referred to the Larger Bench of the Supreme Court, same is quoted as under:

"2. These matters have been put up before this Bench in pursuance of the order passed by a Bench of two Judges on 18.08.2008, as under:

"As it appears that observations made by this Court in Prabhakaran & Ors. v. M. Azhagiri Pilolai & Ors., reported in 2006 (4) SCC 484: (AIR 2006 SC 1567), in regard to the interpretation and/or application of Article 61 of the Schedule appended to the Limitation Act, 1963 are contrary to the principals laid down by this Court in a large number of decisions, including Jayasingh Dhyanu Mhoprekar & Anr. v. Krishna Babaji Patil & Anr. [1985(4) SCC 162] (AIR 1985 SC 1646) as also various decisions referred to by the Full Bench of the High Court, we are of the opinion that the matter should be heard by a larger Bench.

Before adverting to the question of reconciling conflicting opinions in various decisions, including the two decisions referred to above, we consider it appropriate to mention that by the impugned judgment, the Full Bench of the High Court of Punjab and Haryana at Chandigarh, considered the question "whether there is any time limit for usufructuary mortgagor to seek redemption? and decided the said question in the negative, in favour of the respondent-mortgagor as follows:-

"Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable.- The correctness of the above view is the subject matter of consideration before this Court."

17. While answering the reference, the Supreme Court in case of **Singh Ram v. Sheo Ram** (Supra) has held as under:

"8. The main contention urged on behalf of the appellants is that the right of mortgagor to redeem is governed by Article 61 of the Schedule to the Limitation Act and the right to redeem or recover possession accrues on the date of the mortgage itself, unless a different time is agreed between the parties. Since the mortgagor has right to redeem on payment of the mortgage money and there can be no restriction on the mortgagor to exercise his right on the date of mortgage itself, period of limitation starts on the date of mortgage and on expiry thereof, right to recover possession comes to an end. The expiry of limitation not only bars the remedy but also the right to seek possession as provided under Section 27 of the Limitation Act. It is submitted that this Court has dealt with the issue in Sampuran Singh & Ors. vs. Niranjan Kaur (smt.) & Ors., (1999) 2 SCC 679. There is no occasion to reconsider the said view. Reliance is also placed on a Full Bench decision of the High Court of Himachal Pradesh in Bhandaru Ram (D) Thr. L.R. Ratan Lal vs. Sukh Ram, AIR 2012 (H.P.) 1 (FB) wherein the impugned judgment of the Full Bench of the Punjab and Haryana High Court has been expressly dissented from and it has been concluded that the period of limitation for filing a suit for recovery of possession of immovable property or redemption of usufructuary mortgage, which have not fixed any time for repayment of mortgage money, is 30 years from the date of mortgage, as prescribed under Article 61 of the Schedule to the Limitation Act, 1963 (60 years under Article 148 as per Indian Limitation Act, 1908).

9. Learned counsel for the respondents support the view taken by the High Court and submit that the usufructuary mortgage was different from any other mortgage and the person, who parts with possession of his property from rents and profits of which the mortgagee was entitled to recover the mortgage money, could not be placed at par with a mortgagor who had not given possession of the property to mortgagee and allowed the usufruct of the property to be used for payment of mortgage money. In such cases, limitation could not run from the date of mortgage but from the date mortgage money is paid out of rents and profits of the property to the knowledge of the mortgagor or from the date of payment or deposit by the mortgagor. Mere expiry of time from the date of mortgage could not extinguish the right of redemption and to recover possession.

10. We have given our anxious consideration to the question of law arising in the cases.

11. We are in agreement with the view taken in the impugned judgment that in a usufructuary mortgage, right to recover possession continues till the money is paid from the rents and profits or where it is partly paid out of rents and profits when the balance is paid by the mortgagor or deposited in Court as provided under Section 62 of the T.P. Act.

13. We may now refer to decisions of this Court.

(i) In Prabhakaran & Ors. vs. M. Azhagiri Pillai & Ors., (2006) 4 SCC 484, suit of mortgagor for redemption was held to be within limitation. However, in para 13, it was observed:-

"13. Article 148 of the Limitation Act, 1908 (referred to as "the old Act") provided a limitation of 60 years for a suit against a mortgagee to redeem or to recover possession of immovable property mortgaged. The corresponding provision in the Limitation Act, 1963 ("the new Act" or "the Limitation Act" for short), is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property mortgaged is 30 years. The period of limitation begins to run when the right to redeem or to recover possession accrues. In the case of a usufructuary mortgage which does not fix any date for repayment of the mortgage money, but merely stipulates that the mortgagee is entitled to be in possession till redemption, the right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to file a suit for redemption within 30 years from the date of the mortgage. Section 27 of the Limitation Act provides that "at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished". This would mean that on the expiry of the period of limitation prescribed under the Act, the mortgagor would lose his right to redeem and the mortgagee would become entitled to continue in possession as the full owner."

The above observations do not take into account the special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession which commences after mortgage money is paid out of rents and profits or partly out of rents and profits and partly paid or deposited by mortgagor. Thus, we are unable to accept the same as correct view in law.

14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.

15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.

16. On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High Court in Bhandaru Ram (D) Thr. L.R. Ratan Lal vs. Sukh Ram (supra) will stand over-ruled."

18. The Full Bench judgment of the Punjab & Haryana High Court in case of Ram Kishan and others v. Sheo Ram (Supra), which has been upheld by the Supreme Court in case of Singh Ram v. Sheo Ram (Supra) in paragraph nos. 44, 45, 47 & 48, the Full Bench has held has under:

"44. Section 60 of the Act is general in nature applicable to all kinds of mortgages including usufructuary mortgage which is evident from Clause (b) of Section 60 of the Act, where the mortgagee in possession of the mortgaged property is required to deliver possession to the mortgagor. But Section 62 of the Act is a special provision dealing only with the rights of usufructuary mortgagor. In terms of Clause (a) of Section 62 of the Act, the suit is for possession after the mortgage comes to an end by self redeeming process as the mortgagee is authorised to pay himself the mortgage money from the rents and profits of the property. The mortgagee has to look to the rents and profits only to repay himself and when his entire charge is so liquidated he must re-deliver possession of the mortgaged property to the mortgagor. However, in terms of Clause (b) of Section 62 of the Act, the right of the mortgagor will arise'only after rents and profits derived by the mortgagee out of the usufruct of the mortgaged property are adjusted towards the interest or the principal and on mortgagor paying the balance in the manner prescribed. In such mortgages, rents and profits are to be set off against interest and the mortgagee is entitled to retain possession until such time as the mortgagor chooses to redeem on payment of.the principal sum secured. Such right for possession will accrue after the mortgage money is paid off.

45. The limitation of 30 years under Article 61(a) beings to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage, where rents and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and profits from the interest thereof, therefore, right of foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable.

47. Thus, we prefer to follow the dictum of law Lald down by the larger Bench in **Seth Ganga Dhar's case** (supra) as well as judgments of Hon'ble Supreme Court in **Jayasingh Dnyanu Mhoprekar's case** (supra), **Pomal Kanji Govindji's case** (supra), Panchanan Sharma's case (supra) and Harbans 's case (supra) in preference to the judgments relied upon by the mortgagees in Prabhakaran's case (supra) and Sampuran Singh's case (supra).

48. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable."

19. Thus, right of redemption of a mortgagor being a statutory right, the same can be taken away only in terms of the proviso to Section 60 of the Transfer of Property Act which is extinguished either by a decree or by act of the parties.

20. In a very recent judgment in case of **Harminder Singh (D) through L.Rs.** (Supra) the view taken by the Supreme Court in case of Singh Ram v. Sheo Ram (Supra) has been reaffirmed.

21. So far as the contention of learned counsel for the petitioners is concerned that the time prescribed in the mortgage deed was four years and therefore, the cause of action for filing the suit for redemption of mortgage will start after expiry of four years is also misconceived, for the reason that at the best the time of four years as prescribed in the mortgage deed can be said that during this period of four years mortgagor could not have filed a suit for redemption of mortgage. Whether the said restriction would amount to the clog on the rights of the mortgagor, I am not inclined to consider the same but it cannot be said that the limitation will start running after expiry of the aforesaid four years period.

22. From the law as discussed above, I am of the considered opinion that the limitation will start only after payment or tender of payment by the mortgagor to the mortgagee of the amount due in case of usufructuary mortgage and not otherwise.

23. In the facts of the present case, it is admitted that it was only for the first time on 30.12.2015, the notice was given to the petitioners along with pay orders for payment of the principal sum to the defendants which was refused by them. The limitation will start from 30.12.2015 itself as the said date will be the date on which the amount was tendered by the mortgagor to the mortgagee. The suit was filed on 03.03.2016 is definitely be within the limitation.

24. In view of the above, no error has been committed by the courts below in dismissing the application filed by the petitioners under Order VII Rule 11 C.P.C. for rejecting the plaint on the ground that the suit was barred by limitation.

25. Consequently, the writ petition fails and is **dismissed**.

26. No order as to cost.

27. Interim order, if any, stands discharged.

(2026) 7 ILRA 1535
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Habeas Corpus Writ Petition No. 518 of 2026
& Other Connected Case

Achal Kumar Gupta **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

The moot question is if the petitioner, who was in judicial custody in Crime No. 453 of 2025 at District Jail, Gautam Buddha Nagar, when ordered to be released forthwith by this Court vide order dated 04.02.2026 passed in Criminal Misc. Petition No. 27881 of 2025, could be validly produced before the learned Magistrate at Meerut, pursuant to the warrant or custody order dated 06.02.2026 issued by the learned Magistrate at Meerut?

Head Notes

The Constitution of India, 1950-Article 22 (1) & 226 (Habeas Corpus Writ Petition); The Bharatiya Nagarik Suraksha Sanhita, 2023- Sections 301, 302 & 304- B-warrant is not a fresh authorisation to detain a free man. If the petitioner's detention was unauthorised with the Jail Superintendent, District Jail, Gautam Buddha Nagar after 04.02.2026, in consequence of the order passed in Criminal Misc. Writ Petition No. 27881 of 2025, he had no business to detain the petitioner further and then produce him before the learned Magistrate at Meerut, in compliance with the B-warrant. The petitioner's production before the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut being absolutely illegal, his remand by the learned Additional Chief Judicial Magistrate aforesaid in Crime No. 4 of 2026 was also illegal.

Once the petitioner had not lawfully been arrested, the learned Magistrate at Meerut had no jurisdiction to remand him to judicial custody because the arrest, pursuant to the B-warrant, was itself illegal. The petitioner had to be furnished the grounds of his arrest by the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut on 10.02.2026. In the absence of furnishing the grounds of arrest, the arrest itself would be rendered illegal and the arrested person entitled to be set at liberty, for the failure constitutes invasion of his fundamental right guaranteed under Article 22(1) of the Constitution.

Held- Petitioner's detention after 04.02.2026 is absolutely illegal, and we would direct his immediate release from custody, we do not wish to say that the petitioner cannot be validly arrested, after following the due procedure in any of the crimes registered against him, which permit arrest without warrant or on the basis of a valid warrant of arrest issued by a Court of competent jurisdiction; but certainly, not an arrest on the basis of a B-warrant issued against the petitioner, while he is in no lawful custody.
Writ petition succeeds and stands allowed. (E-15)

(Para 37, 39 & 47)

Case Law Cited

Dharampal and another v. State of U.P. and another 1982 AIR All LJ 130 : 1981 SCC OnLine All 756;K.S. Muthuramalingam v. State, rep. by the Inspector of Police, District Crime Branch, Commissioner Office, Coimbatore and another 2010 (2) MWN (Cr.) 302 (DB) : 2010 SCC OnLine Mad 3648; Mihir Rajesh Shah v. State of Maharashtra and another (2026) 1 SCC 500; Bharat Pukhraj Chaudhary v. State of Maharashtra and another 2024 SCC OnLine Bom 3515;Lalit Shyam Tekchandani v. State of Maharashtra and another 2024 SCC OnLine Bom 3817

List of Acts

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

List of Keywords

Sections 301, 302 & 304 BNSS; B-warrant is not a fresh authorisation to detain a free man; petitioner not lawfully been arrested, then learned Magistrate had no jurisdiction to remand him to judicial custody; Because the arrest, pursuant to the B-warrant; Absence of furnishing the grounds of arrest; The arrest itself would be rendered illegal and the arrested person entitled to be set at liberty

Case Arising From

Habeas corpus writ petition has been filed by the petitioner, seeking a rule nisi to produce the petitioner, and upon production, direct his release from illegal custody. The petitioner says that his custody is illegal, because he was summoned on the basis of a B-warrant dated 06.02.2026, when already ordered to be released by this Court and subsequently remanded by the Magistrate vide order dated 10.02.2026 passed in Case Crime No. 4 of 2026 under Sections 420, 467, 468, 471, 102 of the Indian Penal Code, 18601, Police Station Ganga Nagar, District Meerut. The petitioner has challenged B-warrant dated 04.02.2026 as well as remand order dated 10.02.2026 as a process and order made in violation of the interim order of this Court dated 10.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025, ordering the petitioner to be released forthwith in Case Crime No. 453 of 2025, under Section 318(4), 338 and 336(3) of the Bharatiya Nyaya Sanhita, 2023 , Police Station Beta 2, Gautam Buddha Nagar. The order of release from custody in Case Crime No. 453 of 2025 was passed by this Court on ground that the grounds of arrest mentioned in the arrest memo were not specific, rendering the arrest illegal

Appearances for Parties

Counsel for Petitioner(s) : Mr. Anil Kumar Tiwari, Senior Advocate along with Mr. Kabeer Tiwari, Advocate
Counsel for Respondent(s) : Mr. Manish Goyal, Additional Advocate General along with Mr. Arvind Kumar, Additional Government Advocate for the State respondents

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

This habeas corpus writ petition has been filed by the petitioner, seeking a rule nisi to produce the petitioner, and upon production, direct his release from illegal custody. The petitioner says that his custody is illegal, because he was summoned on the basis of a B-warrant dated 06.02.2026, when already ordered to be released by this Court and subsequently remanded by the Magistrate vide order dated 10.02.2026 passed in Case Crime No. 4 of 2026 under Sections 420, 467, 468, 471, 102 of the Indian Penal Code, 18601, Police Station Ganga Nagar, District Meerut. The petitioner has challenged B-warrant dated 04.02.2026 as well as remand order dated 10.02.2026 as a process and order made in violation of the interim order of this Court dated 10.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025, ordering the petitioner to be released forthwith in Case Crime No. 453 of 2025, under Section 318(4), 338 and 336(3) of the Bharatiya Nyaya Sanhita, 20232, Police Station Beta 2, Gautam Buddha Nagar. The order of release from custody in Case Crime No. 453 of 2025 was passed by this Court on ground that the grounds of arrest mentioned in the arrest memo were not specific, rendering the arrest illegal.

2. The nutshell of the petitioner's case is that before he could be physically released from custody, in compliance with the order dated 04.02.2026 passed by this Court in Criminal Misc. Writ Petition No. 27881 of 2025, he was got summoned by the Court of the Additional Chief Judicial Magistrate, Court No. 7, Meerut on a B-warrant dated 06.02.2026, and upon production, remanded to judicial custody by the order dated 10.02.2026. The petitioner says that since he was not in lawful custody on 06.02.2026 by dint of the order of this Court dated 04.02.2026, he could not be summoned under a B-warrant, which is available against a person in custody, which means lawful custody. His production through the aforesaid B-warrant and the subsequent remand are both illegal, rendering his detention in Crime No. 4 of 2026 (supra) illegal from the inception of it. The petitioner, therefore, says that he is entitled to a habeas corpus, ordering him to be released from illegal custody.

3. We must remark that if pursuant to processes, that are so illegal that they are void, the petitioner is in custody, which is illegal as well, the reliefs for quashing the B-warrant and the remand order initially sought, and subsequently added through amendment, would not at all be necessary. The Office of a Habeas Corpus Petition is confined to determining the legality of the detention, and, if the detention is per se illegal, any order authorising it contrary to law would not stand in the way of a writ of habeas corpus being issued.

4. It is further clarified at this stage that the petitioner has also said that he was illegally produced through B warrant in the present case and unlawfully remanded, because his arrest in the earlier case was illegal and non est. This subsequent ground, we must remark here, cannot be the subject matter of challenge in this petition, because, that is already sub judice in Criminal Misc. Petition No. 27881 of 2025, where an interim order, directing the petitioner's immediate release, has been passed.

5. We would now turn to the facts of the petitioner's case, as he has pleaded them.

6. Crime No. 453 of 2025 (supra) was registered at Police Station Beta 2, Gautam Buddha Nagar on 30.09.2025 against the petitioner, carrying allegations, which primarily disclose dispute of a civil nature. The petitioner challenged the remand order dated 12.10.2025 and 13.10.2025 as well as the consequential proceedings arising out of his illegal arrest made on 11.10.2025 in connection with Crime No. 453 of 2025 by means of Criminal Misc. Writ Petition No. 27881 of 2025 before this Court. This Court, after considering the petitioner's case regarding the validity of his arrest and the consequential order of remand, held that the arrest was illegal on account of non-furnishing of specific grounds, and vide interim order dated 04.02.2026, while issuing notice to the respondents, ordered as follows :

24. Considering the facts and circumstances of the case and also the submissions urged by the learned Senior Counsel for petitioner as noted hereinabove, as an interim measure, it is provided that petitioner shall be released forthwith in Case Crime No. 453 of 2025 under Sections 318(4), 338, 336(3) of B.N.S., Police Station Beta-2, District Gautam Budh Nagar (Greater Noida, Commissionerate Gautam Buddh Nagar) arising out of FIR dated 30.09.2025.

7. In compliance of the order dated 04.02.2026 passed by this Court, the learned Chief Judicial Magistrate, Gautam Buddha Nagar passed an order, directing the jail authorities to release the petitioner on 07.02.2026. The learned Chief Judicial Magistrate directed the Jail Superintendent, District Jail, Gautam Buddha Nagar vide order dated 07.02.2026 in the following terms :

प्रस्तुत प्रकरण में प्रार्थी / अभियुक्त अचल कुमार गुप्ता की ओर से द्वारा अधिवक्ता प्रार्थना-पत्र प्रस्तुत कर निवेदन किया गया है कि मिसलेनियस रिट पिटिशन संख्या-27881/2025 अचल कुमार गुप्ता उका में उनकी ओर से माननीय उच्च न्यायालय में बनाम उत्तर प्रदेश राज्य एवं चार अन्य प्रस्तुत किया गया था, जिसमें माननीय उच्च न्यायालय द्वारा दिनांक 04.02.2026 को आदेशण पारित विका गया है। जिस आदेश का अनुपालन किये जाने का निवेदन किया गया। समर्थन में माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांकित 04.02.2026 की प्रमाणित प्रतिलिपि भी प्रस्तुत की गयी है।

सुना तथा अवलोकन किया गया।

प्रस्तुत प्रकरण में प्रार्थी / अभियुक्त अचल कुमार गुप्ता की ओर से माननीय उच्च न्यायालय, इलाहाबाद में प्रस्तुत क्रिमिनल मिसलेनियस रिट पिटिशन संख्या-27881/2025 अचल कुमार गुप्ता बनाम उत्तर प्रदेश राज्य एवं चार अन्य में दिनांक 04.02.2026 को माननीय उच्च न्यायालय ने आदेश पारित किया है कि Considering the facts and circunıstances of the case and also the submissions urged by the learned Senior Counsel for petitioner as noted hereinabove, as an interim measure, it is pro-vided that petitioner shail be released forthwith in Case Crime No. 453 of 2025 under Sections 318(4), 338, 336(3) of B.N.S., Police Station Beta-2, District Gautam Budh Nagar (Greater Noida, Commissionerate Gautam Buddh Nagar) arising out of FIR dated 30.09.2025. अतः माननीय उच्च न्यायालय के आदेश के अनुपालन में उक्त अभियुक्त अचल कुमार को प्रस्तुत प्रकरण में अविलम्ब रिहा किया जाये। आदेश की एक प्रति आदेश के अनुपालनार्थ जेल अधीक्षक, जिला कारागार को प्रेषित हो। लिपिक आदेश का अनुपालन किया जाना सुनिश्चित करें।

8. It is asserted by the petitioner that the said order was communicated to the jail authorities via e-mail by the learned Counsel for the petitioner on 07.02.2026 at 12:22 post meridiem. A copy of that communication is annexed to the record of the petition. It is the petitioner's case that despite the order of release, the petitioner was kept in custody on account of addition of Sections 340(2) and 61(1) BNS. The petitioner approached the learned Magistrate and was granted an order of release in respect of the added sections on 09.02.2026. The subsequent order of the learned Magistrate dated 09.02.2026, post addition of the sections directing release, reads :

प्रार्थी/अभियुक्त अचल कुमार गुप्ता के द्वारा प्रार्थना पत्र प्रस्तुत कर कथन किया गया कि माननीय उच्च न्यायालय द्वारा दाण्डिक प्रकीर्ण रिट संख्या-2788/2025 में पारित आदेश दिनांक 04.02.2026 के द्वारा प्रार्थी/अभियुक्त को रिहा किये जाने हेतु आदेशित किया गया। उपरोक्त आदेश में धारा 340(2) एवं 61(1) बीएनएस का समावेश न होने के कारण अभियुक्त को रिहा नही किया गया।

प्रार्थी/अभियुक्त के द्वारा माननीय उच्च न्यायालय द्वारा पारित आदेश उपरोक्त की प्रति प्रदान की गयी।

मेरे द्वारा माननीय उच्च न्यायालय द्वारा पारित आदेश उपरोक्त का और सम्मानपूर्वक परिशीलन किया गया।

माननीय उच्च न्यायालय द्वारा पारित आदेश उपरोक्त दिनांकी 04.02.2026 में अभियुक्त के विरूद्ध दर्ज प्रथम सूचना रिपोर्ट सं0-453/2025 एवं रिमाण्ड अंतर्गत धारा 313 (4), 338, 336 (3), 340(2), 61 (2) बीएनएस के बावत आदेश पारित किया गया है।

अतः उपरोक्त तथ्यों एवं परिस्थिति में प्रार्थी/अभियुक्त की रिहाई अंतर्गत धारा 340 (2), 61 (1) बी०एन०एस० में भी रिहा किये जाने का आधार पर्याप्त है।

अभियुक्त का रिहाई परवाना तदनुसार संशोधित होकर पुनः जिला कारागार प्रेषित है।

9. The petitioner asserts that notwithstanding the order dated 09.02.2026, directing release under the added sections granted by the learned Magistrate, he was illegally kept in custody, deliberately ignoring the orders directing immediate release made by this Court as well as the orders of the learned Magistrate dated 07.02.2026 and 09.02.2026, directing release in compliance with the orders of this Court dated 04.02.2026. It is pleaded that the aforesaid illegal detention, despite all these judicial orders, was on account of collusion between the jail authorities, the Police and the complainant, all acting in concert, knowing well that they would not be able to hold the petitioner in jail illegally for long.

10. An application was moved by the Police before the Court of the Additional Chief Judicial Magistrate, Court No. 7, Meerut, praying that grant of a B-warrant in Case Crime No. 4 of 2026, directing the petitioner's production from District Jail, Gautam Buddha Nagar before the learned Magistrate at Meerut, treating him to be in lawful custody in Case Crime No. 453 of 2025 in Gautam Buddha Nagar jail. The production, pursuant to the B-warrant dated 06.02.2026 issued by the learned Magistrate at Meerut, was directed to be made on 09.02.2026. The petitioner, however, was not produced pursuant to the B-warrant before the learned Magistrate at Meerut on 09.02.2026. He was produced on the following day id est 10.02.2026. It is pleaded by the petitioner that in C.D. No. 13 dated 09.02.2026, pertaining to Crime No. 4 of 2026, the Investigating Officer3 failed to disclose any justifiable reason for the petitioner’s non-production on the date fixed in the B-warrant and has merely stated that the B-warrant had been obtained and the petitioner was to be produced on the terms of the warrant on 09.02.2026, but, could not be produced before the learned Magistrate. There is absolutely no explanation for the delayed production, pursuant to the warrant on the date other than that mentioned in the said warrant.

11. A rule nisi was issued in this petition on 06.05.2026, ordering the detenue to be produced before this Court on 12.05.2026 at 02:00 post meridiem. He was produced before us on 12.05.2026, and the matter directed to be taken up again on 13.05.2026. The personal presence of Rajendra Kumar, Inspector, Special Crime Branch, Ganga Nagar, Meerut was exempted on 13.05.2026. It may be noted that on 12.05.2026, four affidavits were filed on behalf of the State, and on 13.05.2026, the petitioner filed rejoinders. The parties having exchanged affidavits by 13.05.2026, the matter was heard on that date, and the petitioner was directed to be sent back to custody wherefrom he was brought forth, pending delivery of judgment.

12. Heard Mr. Anil Kumar Tiwari, learned Senior Advocate assisted by Mr. Kabeer Tiwari, learned Counsel for the petitioner and Mr. Manish Goyal, learned Additional Advocate General assisted by Mr. Arvind Kumar, learned Additional Government Advocate on behalf of the State.

13. It must be noticed that the facts giving rise to the cause of action in the petition did not come to an end with what was said in the petition. The petitioner has been remanded in a further crime, pending the present habeas corpus petition, again through a B-warrant dated 02.05.2026

issued by the Additional Chief Judicial Magistrate at Ghaziabad vide remand order dated 04.05.2026. The petitioner, therefore, filed a supplementary affidavit dated 05.05.2026 to bring the aforesaid facts on record. The relevant part of these facts are stated in paragraph no. 3 of the supplementary affidavit last mentioned, which must be quoted for every word of it :

3. That certain developments have taken place during the pendency of the present writ petition, and are necessary to be brought on record before this Hon'ble Court in the interest of justice for proper and effective adjudication of the controversy involved in the present matter, which are as follows: -

a. That one FIR bearing Case Crime No. 59 of 2026 U/s 318(4), 336(3), 340(2), 351(3) and 51(2) of the BNS 2023 registered at PS Crossing Republic District Nagar (Commissionerate Ghaziabad) on 22.03.2026.

The copy of FIR dated 22.03.2026, is being filed herewith and marked as Annexure No.SA1 to this affidavit.

b. That the instant Habeas Corpus Writ Petition No. 518 of 2026 was filed on 27.04.2026.

The photo copy of status report of aforesaid writ petition, is being filed herewith and marked as Annexure No.SA2 to this affidavit.

c. That on 24.04.2026, One Devesh Kumar i.e. Sub-Inspector in P.S. Crossing Republic where the FIR bearing Case Crime No. 59 of 2026 is registered, addressed a letter to the Additional Chief Judicial Magistrate Court No. 2, District Ghaziabad seeking issue of a production order u/s 302 BNSS i.e. a B Warrant.

The copy of Letter dated 24.04.2026, is being filed herewith and marked as Annexure No.SA3 to this affidavit.

d. That it is imperative to note here that the Petitioner is shown to be arrested in Case Crime No. 04 of 2026, in judicial custody of District Jail Meerut.

e. That the learned Court of Additional Chief Judicial Magistrate Court No. 2 issued the production order u/s 302 BNSS 2023 vide order dated 02.05.2026.

The photocopy of the order dated 02.05.2026 is being filed herewith and marked as Annexure No.SA 4 to this affidavit.

f. That in pursuance of the aforesaid production order, the form 'B-warrant' dated 02.05.2026 was issued to the District Jail Superintendent, Meerut seeking production of the Petitioner on 04.05.2026 before the court of learned CJM, Ghaziabad.

A photocopy of the B Warrant dated 02.05.2026 is being filed herewith and marked as Annexure No.SA5 to this affidavit.

g. That in pursuance of the aforesaid, the Petitioner was subsequently produced and remand order dated 04.05.2026 was passed by the Court of Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad whereby a remand of 14 days under Section 187 of BNSS was allowed up to 18.05.2026.

A photocopy of the remand order dated 04.05.2026 is being filed herewith and marked as Annexure No.SA6 to this affidavit.

14. Therefore, the further case of the petitioner, that is pleaded, is that the subsequent developments are part of the cause of action involved in the petition and bear directly on the issue involved here, inasmuch as the facts above pleaded show that during pendency of the writ petition, another production warrant was obtained by the Police against the petitioner, while he was in custody at Meerut, pursuant to the B-warrant issued by the learned Magistrate at Ghaziabad. It is the petitioner's case that a production warrant under Section 302 of the Bharatiya Nagarik Suraksha Sanhita, 20234 is a mere process for securing the attendance of a person who is already in lawful custody, confined or detained in prison. The said provision does not, by itself, create an independent source of authority to detain a man already at liberty or continue illegal incarceration for one who has been restored to his liberty by a judicial order. It is urged that lawful custody on the date of issue of a production warrant is the sine qua non for acting upon such a production warrant or order, and the production cannot be acted upon without subsisting lawful custody. It is also said that a production warrant cannot substitute, create or authorise continued detention in the absence of a legal and subsisting authority for lawful custody.

15. In this case, the custody in Crime No. 453 of 2025 was declared illegal and the petitioner ordered to be released forthwith by a Division Bench of this Court vide order dated 04.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025. The subsequent orders of release, numbering two, made by the learned Magistrate in compliance with the said order clarified that the custody in the said crime was illegal because of the this Court's order, as the learned Counsel for the petitioner would submit. His production, therefore, through a B-warrant dated 06.02.2026, secured in Crime No. 4 of 2026 issued by the learned Magistrate at Meerut was without authority of law. A subsequent B-warrant was again got issued by the learned Magistrate at Ghaziabad in Crime No. 59 of 2026, ordering the petitioner to be produced from Meerut Jail before the Additional Chief Judicial Magistrate, Court No. 2 at Ghaziabad, It is illegal for the reason that the petitioner's custody became illegal at Gautam Buddha Nagar in Crime No. 453 of 2025. It is submitted that once the custody became illegal, it cannot be legalised through successive issue of B-warrants in different cases, unless on the date of issue of the initial B warrant, the petitioner was in lawful custody, pursuant to a valid order of remand. Here, the custody at Gautam Buddha Nagar became illegal because of the order of the Division Bench dated 04.02.2026, and thereafter, all B-warrants issued authorise unlawful detention of the petitioner for the obvious reason that a B-warrant could not authorise detention of a person on production by another Court in another crime, unless he was already in lawful custody. Here, the petitioner was not in lawful custody in Crime No. 453 of 2025 at Gautam Buddha Nagar. The submission, therefore, is that the B-warrant issued from Meerut and his remand there as well as the B-warrant, again issued by the Court at Ghaziabad and his remand at Ghaziabad are both vitiated for reasons that initial defect in the petitioner's custody at Ghaziabad that had become unauthorised and illegal, pursuant to the order of the

Division Bench of this Court dated 04.02.2026. It is emphasized that the custody having become illegal on the basis of a cause of action initially involved in the writ petition, the subsequent illegal remand is a part of the same cause of action, that is initially involved in this petition. It is on the foot of the said submission that the petitioner seeks his custody to be declared illegal and prays for restoration of his liberty.

16. Four personal affidavits have been filed, all dated 11.05.2026. Affidavit No. 7 of 2026 has been filed by the Jail Superintendent, District Gautam Buddha Nagar, Affidavit No. 4 of 2026 filed by the Jail Superintendent, District Ghaziabad, Affidavit No. 5 of 2026 filed on behalf of the Jail Superintendent, District Meerut and the affidavit bearing No. 6 of 2026 filed by the Station House, Police Station, Ganga Nagar, District Meerut.

17. A second supplementary affidavit, bearing No. 8 of 2026 was filed on 12.05.2026, bringing on record the fact that after the issue of a B-warrant/production order dated 06.02.2026, on the foot of which the present writ petition was filed, Inspector Rajendra Kumar Nagar, Crime Branch, Sector Gautam Budh Nagar, Meerut, who is the IO of Crime No. 4 of 2026, resorted to harassing the petitioner's daughter, who is the deponent on his behalf in the present habeas corpus petition. He threatened the petitioner's daughter with false implication in cases involving the petitioner's company. The stand in the affidavit is that the petitioner’s daughter is a blood relative of the petitioner’s and has nothing to do with the affairs of the company. She made a complaint regarding all these facts on the Integrated Grievance Redressal System (IGRS) Portal on 23.02.2025. Inspector Rajendra Kumar Nagar of the Crime Branch Meerut called the petitioner's daughter, who is prosecuting the present habeas corpus writ petition on her mobile number +918448159397. The details of these calls, which are four in number, are furnished in paragraph no. 8 of the second supplementary affidavit dated 12.05.2026 as follows :

8. That from a bare perusal of the call record screenshot, it is evident that the said inspector crime branch has called the deponent from +91 7017974535 on the following dates, which are as follows :-

1. 17.03.2026 at 3:12 PM.

2. 11.04.2026 at 10:13 PM.

3. 21.04.2026 at 10:48 AM.

4. 07.05.2026 at 5:42 PM.

18. There is a specific averment further made in paragraphs nos. 8 and 9 of the second supplementary affidavit dated 12.05.2026 to the following effect :

8. That it is relevant to point out here that the last call by the said inspector is after the orders dated 04.06.2026 and 06.05.2026 passed by this Hon'ble Court.

9. That it is also respectfully submitted that the said Inspector has also visited the detenue for purpose of investigation during which threats were issued against the family of the detenue.

19. It was in view of the said affidavit that Inspector Rajendra Kumar Nagar was summoned to the Bar by this Court, as already indicated.

20. The petitioner has filed four replies to the four affidavits filed by the three Jail Superintendents and the Station House Officer, Police Station Ganga Nagar, Meerut, all dated 13.05.2026. The personal affidavit filed by the Jail Superintendent, District Gautam Buddha Nagar, is the most detailed return on behalf of the State and brings on record most of the State's case in support of the validity of the petitioner's detention through successive B-warrants secured against him by the Police. A perusal of Affidavit No. 7 of 2026 filed by the Jail Superintendent, District Gautam Buddha Nagar shows that the petitioner was in his jail in connection with Crime No. 453 of 2025 up to 12.10.2025 under an order of remand passed by the Judicial Magistrate/Civil Judge (Junior Division), Fast Track Court, Gautam Buddha Nagar. This remand was made under a custody warrant dated 12.10.2025, authorising the petitioner's detention in the District Jail, Gautam Buddha Nagar issued by the Court of the Magistrate last mentioined.

21. On 07.02.2026, a B-warrant was issued against the petitioner vide order dated 06.02.2026 by the Additional Chief Judicial Magistrate, Court No. 7, Meerut in Crime No. 4 of 2026. This B-warrant was received apparently on the same date through Head Constable 1039 Kapil Singh from District Meerut at 14:10 hours. The date of production for the petitioner fixed before the Additional Chief Judicial Magistrate, Court No. 7, Meerut was indicated as 09.02.2026 in the B-warrant. On 07.02.2026, a release order was received at the Gautam Budh Nagar prison in Crime No. 453 of 2025 issued by the learned Chief Judicial Magistrate, Gautam Buddha Nagar, apparently, pursuant to orders of this Court directing release from custody forthwith. It is averred that after comparing the release order and the custody warrant, it was found that Sections 340(2) and 61(2) BNS were not mentioned in the release order. Due to receipt of a B-warrant by the petitioner in another case and the error in the release order, it was not possible to release the petitioner. It is emphasised that 08.02.2026 was a holiday, as it was a Sunday, and it was not possible to send the release order for amendment.

22. It is next said that as per the district jail records of Gautam Buddha Nagar, summons dated 07.02.2026 were issued by the learned Chief Judicial Magistrate Gautam Budh Nagar in Crime No. 453 of 2025, summoning him to the Court on 09.02.2026. On 09.02.2026, the petitioner was produced before the Chief Judicial Magistrate, Gautam Budh Nagar, in compliance with his summons dated 07.02.2026 in Crime No. 453 of 2025. Here, the amendment of the release order with regard to the added sections was sought and the amended release order was received in Crime No. 453 of 2025. It is next said that it was not possible to send the prisoner pursuant to the B-warrant issued in Crime No. 4 of 2026 issued by the Additional Chief Judicial Magistrate, Court No. 7, Meerut on the scheduled date in the warrant id est 09.02.2026, because of the proceedings before the learned Chief Judicial Magistrate, Gautam Buddha Nagar for correction of the release order et cetera.

23. On 09.02.2026 in the evening, after the Jail Superintendent, District Jail, Gautam Buddha Nagar received the corrected release order in Crime No. 453 of 2025 the petitioner, Achal Kumar Gupta was released in the said case, but detained under B-warrant in the other accumulated cases, as averred in the Jail Superintendent's affidavit vide paragraph no. 11. On the following day id est 10.02.2026, the petitioner, after being granted bail in all cases in District Gautam Buddha Nagar, was sent in police custody before the Additional Chief Judicial Magistrate, pursuant to the B-warrant for production issued in Crime No. 4 of 2026. He was then remanded to judicial custody at Meerut and lodged in the Meerut District Jail.

24. So far as the personal affidavit filed by the District Jail Superintendent, Ghaziabad is concerned, it is averred in paragraph no. 3 that after receiving the order dated 06.05.2026 passed by this Court, he inquired about the petitioner and found that there was no such man in custody in his jail. The Jail Superintendent visited the e-prison official website and collected information about the petitioner, who was in jail custody at District Gautam Buddha Nagar and then transferred to District Jail, Meerut. It is clearly averred that the petitioner is not in custody at the Ghaziabad Jail.

25. In reply to the Jail Superintendent, Ghaziabad's affidavit filed by the petitioner, it is averred in paragraph no. 5 that the fact is admitted to the limited extent that the petitioner is not in physical custody at the District Jail, Ghaziabad. It is next averred that the Jail Superintendent, Ghaziabad has been impleaded as a party respondent not merely on account of the petitioner being in custody at the Ghaziabad Jail, but because, subsequent coercive proceedings were taken in Crime No. 59 of 2026 (supra), including the issue of a production order dated 02.05.2026, a B-warrant dated 02.05.2026 and the remand order dated 04.05.2026, which have already been brought on record through a supplementary affidavit filed by the petitioner.

26. Upon hearing learned counsel for parties and perusing the material on record, we are of opinion that the moot question is if the petitioner, who was in judicial custody in Crime No. 453 of 2025 at District Jail, Gautam Buddha Nagar, when ordered to be released forthwith by this Court vide order dated 04.02.2026 passed in Criminal Misc. Petition No. 27881 of 2025, could be validly produced before the learned Magistrate at Meerut, pursuant to the warrant or custody order dated 06.02.2026 issued by the learned Magistrate at Meerut?

27. For a first, we are of clear opinion that the order dated 04.02.2026 passed by the Division Bench of this Court in Criminal Misc. Writ Petition No. 27881 of 2025 rendered the petitioner's custody in Crime No. 453 of 2025 in the District Jail, Gautam Buddha Nagar absolutely illegal on and from 04.02.2026 when the said order was made. The order directed immediate release of the petitioner in Crime No. 453 of 2025, and the petitioner could not, thereafter, be detained for a minute in the District Jail, Gautam Buddha Nagar. His confinement in District Jail, Gautam Buddha Nagar was nothing more than a physical custody or restraint, and not any kind of lawful detention, preventive, punitive or one pending trial. It is the respondents case that when the order dated 04.02.2026 was passed by the Division Bench of this Court, the petitioner was remanded in some other crime at District Gautam Budh Nagar. He could not be, therefore, held in prison at Gautam Buddha Nagar in Crime No. 453 of 2025 for a minute, after the order dated 04.02.2025 passed by this Court. The release orders dated 04.02.2026 passed by the learned Chief Judicial Magistrate, Gautam Buddha Nagar, directing the jail authorities at Gautam Buddha Nagar to release the

petitioner on 07.02.2026, pursuant to this Court's order, is superfluous. Likewise is the amended order dated 09.02.2026, directing release in added Sections 340(2) and 61(1) BNS, quite apart from the fact that for an added section, a release order cannot be flouted by the jail authorities, once release is directed in a crime, whether pursuant to a bail order or any other kind of a judicial order. We will allude to this aspect of the matter a little later in this judgment.

28. What we emphasise, for the present, is that a writ of this Court issued under Article 226 of the Constitution does not require the crutches of a Magistrate's release order to secure the release of a prisoner from jail. Once we direct the release of a prisoner from jail, our writ proceeds from this Court to the jail authorities without any further process or proceedings required to be taken by a Subordinate Court like that of a Magistrate. The release order is required to be made when we exercise our jurisdiction to grant bail, where a personal bond has to be furnished by the detenue, besides sureties, on the foot of which, a release order is made by the Magistrate. That is not the case with a writ issued under Article 226, directing the immediate release of a prisoner from jail custody. The writ, as already remarked, proceeds from this Court direct to the jail authorities, as in this case and the authorities of the District Jail, Gautam Buddha Nagar were required and obliged to forthwith comply and release the prisoner from custody. If they did not, awaiting some kind of a release order from the Magistrate, and then, finding faults with it, because, some sections had been added to the crime by the Police, the detenue’s custody, like the petitioner here, is not only rendered illegal, but non est. It is well-settled that anything done in violation of a judicial order of this Court by any administration or executive authority is a nullity. Since the petitioner was detained in jail by the district jail authorities, including the Jail Superintendent, Gautam Buddha Nagar in violation of our order dated 04.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025, his custody, after 04.02.2026, was nothing more than illegal confinement or detention, not referable to any lawful detention, preventive, punitive or one pending trial or investigation.

29. This would bring us to the issue if the petitioner was in custody, that was non est on account of our order dated 04.02.2026 aforesaid, could he be sent in custody to the learned Magistrate at Meerut, pursuant to the B-warrant dated 06.02.2026 passed by the Additional Chief Judicial Magistrate, Court No. 7, Meerut in Crime No. 4 of 2026 and produced there in compliance with the B-warrant. For the purpose, we think that it would be apposite to refer to the provisions of Sections 301, 302 and 304 BNSS. These read :

301. In this Chapter,

(a) "detained" includes detained under any law providing for preventive

detention;

(b) "prison" includes,-

(i) any place which has been declared by the State Government, by general

or special order, to be a subsidiary jail;

(ii) any reformatory, Borstal institution or other institution of a like nature.

302. (1) Whenever, in the course of an inquiry, trial or proceeding under this Sanhita, it appears to a Criminal Court,-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him; or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

304. Where the person in respect of whom an order is made under section 302-

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government or the Central Government under section 303 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

30. A conjoint perusal of Sections 301, 302 and 304 BNSS clearly shows that in order that a Court may exercise the power to summon a person from prison in connection with an inquiry, trial or proceedings pending before it, the person may be confined or detained in prison, as provided under Section 302(1)(a) BNSS, and the word □detained□ is defined under Section 301(1)(a) BNSS inconclusively to mean detention under any law providing for preventive detention. It would, of course, include punitive detention or one pending trial, or on committal for trial, or pending preliminary investigation. Apparently, the detention, that would authorise the Court to exercise powers under Section 302 BNSS, would mean some kind of a custody in prison, referable to some lawful authority, authorising the detention. It would ex facie not apply to a case where a man is illegally held in custody, may be, by the Jailer of a prison, which does not have the authority of law.

31. One of the grounds on which the Officer in charge of a prison may refuse to carry out the order of the Court to produce a prisoner, envisaged under Section 304(c) BNSS, is if the period of his custody authorised would expire during the period of time required for complying with the order of the Court to produce him and taking him back to the prison where he is confined. This would further show that the authority of the Officer in charge of a jail, Jailer or Jail Superintendent, by whatever name called, to produce a person in compliance with the Court's order, is limited to the period of time that a prisoner is in lawful detention or custody; not when his detention, though lawful at some point of time, becomes unauthorised later was on account of period of remand expiring or an order directing release being made.

32. There are pari materia provisions carried in The Prisoners (Attendance in Courts) Act, 19555, and in particular, reference may be made to Sections 2, 3, and 6 of the Act last mentioned. Reference in this connection may be made to a Bench decision of this court in **Dharampal and another v. State of U.P. and another**, where, H.N. Seth, J., speaking for the Division Bench, held :

9. A consideration of the aforementioned provisions indicate that the requisition under S. 3(2), Prisoners (Attendance in Courts) Act, 1955, and S. 267(1), Cr. P.C. can be addressed to Supdt., of a District jail who is already holding a prisoner under an authority of law. The requisition by itself does not authorise the detention of any person. It merely requires the officer in charge of the prison (1) to produce the detenu before the requisitioning Court on the date fixed by it and (2) after the purpose of requisition is over, to take him back and to keep him in custody in accordance with the writ or direction issued by the Court which had authorised his detention in jail. As laid down in S. 55, Prisons Act, 1894, during the period the prisoner is away from the prison in pursuance of the requisition, he would throughout be deemed to be in the custody of the prison and would be subject to all the same incidents as if he were actually in prison.

10. The requisitions issued by the criminal Courts in Haryana, therefore, did not authorise the Supdt., District Jail, Meerut, to keep the two petitioners in his custody. They merely required the Supdt., to produce the two petitioners before the concerned courts only if the Supdt., was entitled to keep them in his custody under some valid authority. Since the various requisition orders did not authorise the Supdt., District Jail, Meerut to keep the two petitioners in custody and the moment the petitioners had been admitted to bail in all the criminal cases in connection with which their

detention in District Jail, Meerut had been authorised, the authority of the Supdt., District Jail, to keep the petitioners under detention came to an end and the petitioners' detention after being released on bail, became illegal and without authority of law. The requisitions received from the criminal Courts at Haryana under S. 3, Prisoners (Attendance in Courts) Act, 1955 or under S. 267 Cr. P.C. could not confer any valid authority on the Supdt., of jail to keept the petitioners under detention and render his custody in District Jail, Meerut valid.

11. Moreover, S. 3, Prisoners (Attendance in Courts) Act, 1955 and S. 267, Cr. P.C. merely enable a criminal Court to require the attendance of a prisoner before it on the date specified in the requisition. If for the reasons contained in S. 6, Prisoners (Attendance in Courts) Act, 1955, and S. 269, Cr. P.C., an officer in charge of the prison is not able to comply with the requisition, he has to submit a report to the Court concerned whereupon the said requisition comes to an end, if the presence of the prisoner is still required by the said Court the requisitioning Court will have to issue a fresh requisition under S. 3, Prisoners (Attendance in Courts) Act, 1955 and S. 267 Cr. P.C. requiring the officer in charge of the prison to produce the prisoner before it on some other date to be nominated by it. It therefore, follows that after the date mentioned in the requisition issued by the criminal court to produce a prisoner before it expires, no further obligation remains upon the officer in charge of the prison to produce the prisoner before that court on any other date till such time as a fresh requisition for the purpose is not received by him. In the circumstances in no case can a requisition issued by a Criminal Court under S. 3, Prisoners (Attendance in Courts) Act, 1955, and S. 267 Cr. P.C., ever be construed as authorising the officer in charge of the prison to keep a person under detention after the date mentioned in the requisition has expired and he has made a report to the concerned Court stating the reason for his omission to comply with the requisition. In the instant case, we find that the Supdt., District Jail, Meerut, had been required by a Criminal Court at Haryana to produce both the petitioners before it on 2nd June, 1981 and thereafter on 4th June, 1981. Those dates have passed long time back and no further requisition has been received for the production of the two petitioners from that Court Another requisition was received from another Court in Haryana requiring production of one of the petitioners (Dharam Pal) before that Court on 16th September, 1981. That date has also passed. At present there is no direction by any criminal Court requiring production of the two petitioners either under S. 3, Prisoners (Attendance in Courts) Act, 1955, or under S. 267 Cr. P.C. In the circumstances, it is not open to the Supdt., District Jail, Meerut, to transfer the two petitioners to Haryana on the basis of the requisitions which had been received by him. Further, as the petitioners have been directed to be released on bail in all the criminal cases in connection with which they had been committed to the custody in District Jail, Meerut, and release orders had been received by the Jailor, no authority remains in him to keep the petitioners in custody.

33. As would appear from a perusal of Section 304(c) and Section 6(d) of the Act of 1955, even if a B-warrant was issued on 06.02.2026 by the Additional Chief Judicial Magistrate, Court No. 7, Meerut, the Jail Superintendent, District Jail, Gautam Buddha Nagar was under a legal obligation to abstain from carrying out the said warrant, because the petitioner's custody expired on 04.02.2026, that is to say, the date on which this Court directed his immediate release from prison by an order of the said date passed in Criminal Misc. Writ Petition No. 27881 of 2025. The Jail Superintendent, District Jail, Gautam Buddha Nagar ought have declined to carry out the B-warrant

and sent to the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut statement of reasons for so doing.

34. The question fell for consideration before a Division Bench of the Madras High Court in **K.S. Muthuramalingam v. State, rep. by the Inspector of Police, District Crime Branch, Commissioner Office, Coimbatore and another**. The facts in **K.S. Muthuramanlingam (supra)** are very striking and can best be recapitulated by reference to the relevant part of the report, where these are set forth by their Lordships in the following words :

2. As per the Petition allegations, the detenu Sundar alias Raja was arrested and remanded to judicial custody 111 Crime No.16/2009, registered on the file of District Crime Branch, Coimbatore, for offences punishable under Sections 406 and 420. I.P.C. on 29.5.2009 and he was granted bail by the learned Judicial Magistrate, Palladam. imposing conditions to produce documents showing assets worth Rupees One Crore and two sureties, having property worth Rs.50,00,000/- and to jointly execute a bond for a sum of Rs. 10,000/-. However, the said order was subsequently modified by removing the other conditions and imposing a condition to execute a bond for a sum of Rs.1,00,000/- with two sureties each for a like sum and the said order of modification was passed on 10.6.2010. It has also been stated in the Petition that pursuant to the said order, bail bond was executed on 18.6.2010 by the sureties and the bail bond was sent to the Central Prison. Coimbatore on the same day. However, the detenu Sundar alias Raja was not released by the Prison Authorities even after the submission of the bail bond as per the requirements found in the bail order granted by the learned Judicial Magistrate, Palladam. Hence, the Petitioner has come forward with the present Petition contending that the continued detention of the detenu in the Central Prison is not authorised by law and his right guaranteed under Article 21 of the Constitution of India has been violated. necessitating this Court to exercise the power under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus for production of the detenu and set him at liberty

3. The Second Respondent has filed a counter affidavit stating that even before the bail bond was received by the Jail Authorities in the case in which the detenu had been remanded to judicial custody, a P.T. Warrant was received from the III Additional Civil Judge and Judicial Magistrate of First Class, Porbandar, Gujarat in connection with Crime No.2576/2009, a case registered for an offence punishable under Section 138 of Negotiable Instruments Act; that due to non-availability of the escort police, the detenu could not be taken to Porbandar to be produced before the said Court and that subsequently on intimation to the said Court, successive P.T. Warrants came to be issued till date and a P.T. Warrant is pending at present, directing the production of the detenu on 23.7.2010. It has also been stated in the Counter Affidavit that two more P.T. Warrants, one from III Additional Civil Judge (Junior Division) and III Judicial Magistrate of First Class, Bijapur and another from I Additional Civil Judge (Junior Division) and Judicial Magistrate of First Class, I Court GADAG, in connection with C.C. Nos. 04/10 [P.C. No. 123/2009] and C.C. No.05/2010 [P.C. No. 124/2009] respectively with requests to produce the above said detenu before the said Courts on 23.7.2010, are pending execution and that the same was the reason why the detenu was not released pursuant to the execution of bail bond.

35. Upon Muthuramalingam filing a petition for habeas corpus, P.R. Shivakumar, J., speaking for the Division Bench, held :

11. A conjoint reading of Sections 267 and 269, Cr.P.C. will make it clear that the purpose of P.T. warrant is to direct the production of a person who is confined or detained in prison by a lawful order. It cannot be interpreted to mean that the P.T. warrant shall be an authorisation to curtail the liberty of the person and keep him in custody till the date on which his production is sought for. The mere pendency of a P.T. warrant shall not be enough to keep a prisoner in the prison beyond the date of expiry of the sentence, if he is a convict or beyond the date on which the remand expires unless the remand is extended by a competent Court. The pendency of a P.T. warrant cannot be equated with a remand and the same cannot be construed to be an authorisation for detaining a person beyond the period for which he was remanded or committed to undergo punishment.

12. In this regard, the judgment of this Court in Kattan @ Subramani v. State by Inspector of Police, Avadi P.S. & Another, 1992 (1) MWN (Cri) 68 shall have bearing, though not directly applicable. In the said case it has been observed that the issue of a P.T. Warrant when the person is not confined or detained in a prison in respect of any other case is not justifiable and when such a fact is brought to the notice of the Court which had issued P.T. Warrant, the same should be recalled. The judgment went further to state that the recalling of the P.T. Warrant will not bar the subsequent arrest of the person in execution of an NBW.

13. From the above, it is quite obvious that the scope of the P.T. Warrant cannot be enlarged by assuming the same to be an authorisation for detaining the prisoner beyond the period of detention. It will be effective only if his detention is otherwise authorised as on the date on which he is supposed to be produced before the Court issuing P.T. Warrant.

14. The decision of the Apex Court in Ram Dass Ram v. State of Bihar and another, AIR 1987 SC 1333 will make it abundantly clear that the issuance of P.T. Warrant cannot be construed to be an order of remand. A person, who has been acquitted or granted bail in the cases in which he was remanded to judicial custody, cannot be detained further on the sole ground that a P.T. Warrant has been issued by another Court. In the said case decided by the Supreme Court, the Accused was acquitted in two Sessions cases in which he had been remanded and even after the acquittal in those cases he was continued to be detained in the prison on the basis of a P.T. warrant issued for his trial in another case. Such a detention was held to be unjustified. The facts of the case before the Supreme Court reveal that there was no warrant (remand order) for detaining the detenu in jail in the third case in which P.T. Warrant was issued or in any other case after the detenu had been acquitted in the two cases in which he had been remanded.

15. P.T. Warrants can be classified into two categories:

(1) directing production of the person confined in the prison on the date of hearing specified in the order, and

(2) directing production without specifying a date for production.

In either case, the P.T. Warrant cannot be construed to be an authorisation to detain the person in jail beyond the period of remand or beyond the date of expiry of the sentence of imprisonment, as the case may be. Legal custody on the date on which he is directed to be produced in the sine qua non for such production. Therefore, the first category of P.T. Warrant, namely specifying a particular date on which production is to be made, shall be issued in cases when production is sought for for being examined as a witness or for answering a charge or facing other proceedings in which he has already been granted bail. In such cases, the prisoner shall be released if, before the date fixed for his production, his period of sentence expires or the period of remand comes to an end. Second type of P.T. Warrants viz. without specifying the date for production can be issued, in cases wherein the prisoner has to answer the charge or face a proceeding when he was not granted bail or bail granted was cancelled. In such cases, the prison authority is bound to produce such person on receipt of P.T. Warrant. Even in such cases, he cannot be detained for being produced in the Court in compliance with the P.T. Warrant if the sentence or remand period expires before the receipt of P.T. Warrant.

16. Hence, we are convinced with the contention of the learned Counsel for the Petitioner that the continued detention of the Petitioner beyond 19.6.2006, the date on which the bail bond was received by the Superintendent of Prisons, Central Prison, Coimbatore, is illegal and this Court has to issue a direction for his release, especially when it is not the case of the Respondents that he has been remanded in any other case or his continued custody is authorised in connection with any other case.

36. In the present case, we find that the petitioner's custody was absolutely illegal after 04.02.2026, when this Court ordered his immediate release from prison. There was a positive obligation upon the Jail Superintendent, District Jail, Gautam Buddha Nagar to refuse production of the petitioner before the Additional Chief Judicial Magistrate, Court No. 7, Meerut, in compliance with the B-warrant dated 06.02.2026. We have already spoken about it.

37. We must add, as already held by good authority, that a B-warrant is not a fresh authorisation to detain a free man. If the petitioner's detention was unauthorised with the Jail Superintendent, District Jail, Gautam Buddha Nagar after 04.02.2026, in consequence of our order passed in Criminal Misc. Writ Petition No. 27881 of 2025, he had no business to detain the petitioner further and then produce him before the learned Magistrate at Meerut, in compliance with the B-warrant. The petitioner’s production before the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut being absolutely illegal, his remand by the learned Additional Chief Judicial Magistrate aforesaid in Crime No. 4 of 2026 was also illegal.

38. It has already been noticed by us that the Jail Superintendent, District Jail, Meerut had admitted in paragraphs nos. 11 and 12 of his affidavit that the petitioner was released on 09.02.2026 at 16:42 hours in the evening, after receipt of the revised order of the learned Magistrate in Crime No. 453 of 2025, but was detained under a B-warrant in the other accumulated cases. It is said in paragraph no. 12, also already noticed, that he was granted bail in all cases pending against him in District Gautam Buddha Nagar and was, therefore, sent in police custody to the Additional Chief Judicial Magistrate, Court No. 7, Meerut in compliance with the B-warrant issued in Crime No. 4 of 2026. It has been noticed that a B-warrant is not an arrest warrant to

detain a free man. The petitioner could, therefore, never have been arrested, pursuant to the B-warrant issued by the Additional Chief Judicial Magistrate, Court No. 7, Meerut, after he was released in Crime No. 453 of 2025 by the Jail Superintendent, District Jail, Gautam Buddha Nagar. The petitioner's detention, therefore, at Gautam Buddha Nagar and the act of the Jail Superintendent, District Jail, Gautam Buddha Nagar in forwarding him in custody to the learned Magistrate at Meerut constitutes illegal custody.

39. As already remarked that once the petitioner had not lawfully been arrested, the learned Magistrate at Meerut had no jurisdiction to remand him to judicial custody at Meerut, because the arrest, pursuant to the B-warrant, was itself illegal. Assuming that the B-warrant was an authority to arrest the petitioner, though it was not, if the petitioner had to be arrested by dint of the B-warrant issued by the learned Magistrate at Meerut, he had to be supplied the grounds of his arrest on 09.02.2026 after he was arrested, as the Jail Superintendent, District Jail, Gautam Buddha Nagar says, in connection with the B-warrant. In any case, the petitioner had to be furnished the grounds of his arrest by the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut on 10.02.2026. In the absence of furnishing the grounds of arrest, the arrest itself would be rendered illegal and the arrested person entitled to be set at liberty, for the failure constitutes invasion of his fundamental right guaranteed under Article 22(1) of the Constitution. In this regard, reference may be made to the decision of the Supreme Court in Mihir Rajesh Shah v. State of Maharashtra and another8, where it has been held :

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

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

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

59. It may so happen that in the presence of a police officer a cognizable offence is being committed and the factual matrix presents a tangible and imminent risk of the suspect absconding or committing further offence(s). For instance, in a case involving a murder being committed in

front of a police officer, it may not be possible for the officer to provide the grounds of arrest in writing before the arrest or forthwith on the arrest to the accused. A rigid insistence upon informing of written ground(s) of arrest before or at the time of effecting the arrest or immediately thereafter may result into police officer not being able to discharge their duty and responsibility efficiently and effectively.

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

63. The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.

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

65. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the Explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the Magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

40. The position of law with regard to the necessity of furnishing reasons of arrest, when the arrest is made of a person already in jail and produced before another Court on its B-warrant in connection with the crime before that Court, has been subject matter of consideration in **Bharat**

Pukhraj Chaudhary v. State of Maharashtra and another. The short facts in **Bharat Pukhraj Chaudhary** may be noticed from the report of the judgment, which reads :

2. The petitioner has sought a declaration that his arrest in Crime No. 221 of 2023 registered with Bhoiwada Police Station, Thane on October 21, 2023 under Section 8(K), 22(K) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 18(K), 18(A) punishable under Section 27(B) and 28(A) of the Drugs and Cosmetics Act, 1940 is illegal and is in gross violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India so also Section 50 of the Criminal Procedure Code, 1973. The petitioner has also sought quashing of the remand order dated February 11, 2024 and subsequent remand orders in the aforesaid case.

3. The facts necessary for deciding the writ petition are as under:-

4000 bottles of various cough syrups were found in possession of co-accused Shiraj. The possession was with an intention to illegally market the same, which falls within the definition of psychotropic substance. As a sequel of above, the offence being Crime No. 221 of 2023 referred above came to be registered. The present petitioner is impleded as accused no. 5 and his address is shown as resident of Pali District, Rajasthan.

4. The petitioner was already detained in Haridwar prison located in the State of Uttarakhand. During the investigation, direct involvement of the petitioner was noticed in the above crime. Based on the production remand, the petitioner was produced and shown to have been arrested on February 11, 2024, as the transit warrant was honoured by the Court at Haridwar on February 07, 2024. Based on the above, the petitioner came to be arrested and produced before the Magistrate on February 11, 2024 and was then subjected to various remand orders.

41. In **Bharat Pukhraj Chaudhary**, it was observed by the Division Bench :

10. The petitioner who is shown to be accused no. 5 was in the custody of Uttarakhand Police. He was arrested on February 11, 2024, before which the production warrant was prayed by the Court of Judicial Magistrate First Class, 11th Court, Bhiwandi on January 30, 2024. Said production warrant was consequentially endorsed by the Court of Additional Sessions Judge, Haridwar vide order dated February 07, 2024.

11. The General Diary Entry dated February 11, 2024, i.e. after the petitioner's custody was obtained from Haridwar jail on February 11, 2024 mentions about the communication of the reasons of arrest and his right to claim bail. However such unilateral entry does not confirm acknowledgment in writing from the accused to that effect. The remand application dated February 11, 2024 further speaks of similar mention of the communication of reasons of arrest. However, we fail to understand as to what prompted the respondents not to produce on record the written communication served on the petitioner thereby informing him about the grounds of arrest. Failure of the respondents to above effect prompts this Court to draw adverse inference against the respondents.

12. Though the learned Additional Public Prosecutor has tried to justified the claim of communication of grounds of arrest to the accused so also the reasons based on the contents of the production warrant which are issued by the Court of Judicial Magistrate First Class, 11th Court, Bhiwandi and also the production warrant granted by the Additional Sessions Court, Haridwar, there is no iota of material to infer that the petitioner at any point of time was communicated in writing about the grounds of his likely arrest or post arrest the grounds for which he was arrested. Merely because the respondents have mentioned in its record that the grounds of arrest or reasons of arrest were communicated to the petitioner or any of his blood relations, that by itself cannot be said to be in conformity with the mandate provided under Article 22(1) of the Constitution of India. In support of the aforesaid observations, reliance can be placed on the findings recorded by the Apex Court in Pankaj Biswas (supra), which are already discussed hereinabove.

42. A similar view was expressed in another Bombay decision, that is to say, **Lalit Shyam Tekchandani v. State of Maharashtra and another**. In **Lalit Shyam Tekchandani** (supra), it was observed :

20. When we specifically asked Mr. Venegavkar about whether grounds of arrest were communicated to him, when he was arrested in C.R. No. 18 of 2024, he has submitted before us that the Transfer Warrant had indicated the reasons, but we do not find any such indication, as it is nothing but a proforma.

In any case, the application for that purpose is preferred to the Court and we do not find that the copy of the same is served upon the Petitioner, so as to enable him to be aware of the grounds of his arrest. Similar procedure was followed as regards C.R. No. 20 of 2024 registered with CBD Belapur, when pursuant to a Production Warrant, he came to be arrested and produced before the Magistrate, who remanded him to police custody on the first date and subsequently remanded him to judicial custody.

21. On perusal of the papers produced before us, we have perused the Arrest/Court Surrender Form of the Petitioner in C.R. No. 18 of 2024 and C.R. No. 20 of 2024 with respective police stations and we find that it is as good as arrest in the said offence and if it is so, then definitely when he is required to be produced before the Magistrate within 24 hours of his arrest, pursuant to which remand is sought for the purpose of investigation by the Investigating Officer, he is entitled to know the grounds of his arrest and the law down by the Apex Court in Pankaj Bansal and Prabir Purkayastha (supra) with all force comes into play.

It is trite position of law that where an accused is arrested in relation to an offence registered against him, but when he is released on bail, upon the subsequent addition of offences of serious nature against him, the investigating agency cannot straightway arrest such person and it is required to obtain order of arrest and custody with respect fo sch accused from the Court, which had earlier released him on bail.

Upon such serious offence subsequently added against the accused after grant of bail, it is also open for him to move an application for bail in respect of newly added offences in the Court concerned and if this bail application for newly added offences is rejected, then the accused can

very well be arrested. It is not, however, necessary that earlier bail should be cancelled by the Court in every case, before granting permission to the arrest of the accused on the basis of the newly added offence, as the Court in exercise of power under Section 437(5) as well as Section 439(2) of Cr. P.C. can direct the person who is already released on bail to be arrested and committed to custody on addition of graver offences.

43. Here, the case of the State, as expressed in the affidavit of the Jail Superintendent, District Jail, Gautam Buddha Nagar, is that on 09.02.2026, at 16:42 hours, after receiving the revised release from the learned Magistrate in Crime No. 453 of 2025, the petitioner was released in the said case, but detained under B-warrant in the other accumulated cases. In paragraph no. 12 of the said affidavit, it is said that on the next day id est 10.02.2026 at 9:15 a.m., the petitioner was sent in police custody to the Additional Chief Judicial Magistrate, Court No. 7, Meerut, who had issued a B-warrant of his production in Crime No. 4 of 2026.

44. Thus, on this statement of facts, it is evident that the petitioner was released from custody by the Jail Superintendent, District Jail, Gautam Buddha Nagar on 09.02.2026 at 16:42 hours and then arrested in terms of the B-warrant. issued by the Additional Chief Judicial Magistrate, Court No. 7, Meerut, in relation to Crime No. 4 of 2026. He was detained at Gautam Buddha Nagar for the whole night on 10.02.2026, and on the following day, sent to the learned Magistrate at 9:15 a.m. in police custody. If this position of facts were accepted, it was a fresh arrest for the petitioner, nevertheless. He had, therefore, to be communicated with the grounds of arrest, which, apparently in this case, he was not. Nothing has been produced to show before us that grounds of arrest in writing, after the petitioner's arrest in connection with the B-warrant issued by the learned Magistrate in Crime No. 4 of 2026, were furnished him, as required by Article 22(1) of the Constitution and Section 47 BNSS. The principles, therefore, laid down by the Supreme Court in **Mihir Rajesh Shah** and the Bombay High Court in **Bharat Pukhraj Chaudhary** and **Lalit Shyam Tekchandani** would squarely apply to vitiate the petitioner's arrest in the present crime. When the petitioner was produced before the learned Magistrate at Meerut, he was remanded to judicial custody in Crime No. 4 of 2026. The arrest itself was illegal for more than one reason. The petitioner's detention in Crime No. 4 of 2026 was, therefore, illegal.

45. This principle about the petitioner's detention being illegal on account of non-furnishing of grounds of arrest is not in derogation of the other principle that once the petitioner was no longer in custody authorised by law at the District Jail, Gautam Buddha Nagar, he could not be taken in custody pursuant to a B-warrant issued by the learned Magistrate at Meerut, produced before that learned Magistrate and remand to judicial custody for the case pending at Meerut. We have already dealt with this matter in moreful detail earlier in this judgment. This mention is just a matter of elucidating the distinction between the two different reasons that vitiate the petitioner's custody.

46. While the petitioner was in judicial custody at the District Jail Meerut, which, apparently, was unauthorised, a letter to the Additional Chief Judicial Magistrate, Court

No. 2, Ghaziabad for the issue of a production warrant or a B-warrant under Section 302 BNSS was addressed by a Sub-Inspector of Police posted at Police Station Crossing Republic, Ghaziabad. The Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad issued a production or B-warrant dated 02.05.2026 to the Jail Superintendent, District Jail, Meerut, seeking production of the petitioner before him on 04.05.2026. The petitioner was produced on the aforesaid B-warrant on 04.05.2026 before the Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad, who remanded him to 14 days' custody in Case Crime No. 59 of 2026. The question is if the petitioner was illegally arrested, and a fortiori, illegally confined in the prison at Meerut, for reasons that we have already indicated, he could not have been produced on a B-warrant from the District Jail, Meerut, where he was not in lawful custody before the Additional Chief Judicial Magistrate at Ghaziabad. Again, there is nothing to show that if there was a fresh arrest, he was informed of the grounds of arrest in writing, as required by law. In fact, since the petitioner's production before the learned Magistrate at Meerut, pursuant to the B-warrant was illegal, his ensuing detention in judicial custody at Meerut and the subsequent production, pursuant to the other B-warrant issued by the learned Magistrate at Ghaziabad and remand in Case Crime No. 59 of 2026 are all rendered illegal, in our clear opinion. This is a habeas corpus petition, and all we have to see is the legality of the petitioner's custody, in which he is detained for the time being. For determining the validity of that custody, the validity of the detenue's arrest or successive arrest has to be looked into, which we have done.

47. Though there are strong pleas of mala fides raised against the respondents by the petitioner, and we may dare say, not without facts and materials, but, it is not our province, in a habeas corpus petition, to go into those questions. This is, after all, not a criminal writ petition, seeking to quash the First Information Report or investigation or some proceedings in a crime, which can be examined also on ground of mala fides. Though we are of opinion that the petitioner's detention after 04.02.2026 is absolutely illegal, and we would direct his immediate release from custody, we do not wish to say that the petitioner cannot be validly arrested, after following the due procedure in any of the crimes registered against him, which permit arrest without warrant or on the basis of a valid warrant of arrest issued by a Court of competent jurisdiction; but certainly, not an arrest on the basis of a B-warrant issued against the petitioner, while he is in no lawful custody.

48. In the circumstances, this habeas corpus writ petition **succeeds** and stands **allowed**. The continued detention of the petitioner in Case Crime No. 4 of 2026 at District Jail, Meerut and Case Crime No. 453 of 2025 at District Jail, Ghaziabad are declared illegal. He shall be set at liberty forthwith.

49. The Registrar (Compliance) is directed to communicate this order to the Director General of Police, Uttar Pradesh, Lucknow, the Station House Officer, Police Station Ganganagar, District Meerut, the Jail Superintendent, District Jail, Gautam Buddha Nagar, the Jail Superintendent, District Jail, Meerut, the Jail Superintendent, District Jail, Ghaziabad, the Commissioner of Police, Ghaziabad and the Senior Superintendent of Police, Meerut, all through the learned Chief Judicial Magistrates concerned.

(2026) 7 ILRA 1558
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

S.C.C. Revision No. 25 of 2026

Vinod Chaurasia ...Revisionist
Versus
Shri Radha Kishan Ji Maharaj Virajman Mandir ...Respondent

Issue for Consideration

Whether the proposed amendment would have the effect of introducing an altogether new factual foundation requiring fresh evidence and would, in substance, permit the revisionist to retract admissions already made in the written statement

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order VI Rule 17- Learned counsel for the revisionist fairly submitted that, in view of subsequent developments, the amendment as sought may no longer survive for consideration. It has, however, been urged that the legal consequences flowing from such developments may yet require adjudication and that the revisionist be permitted to advance all such legal submissions before the court below. Learned counsel appearing for the opposite party does not dispute that pure questions of law, resting on admitted or undisputed facts and not necessitating further evidence, may be raised at any stage of the proceedings, subject to the governing statutory framework- There exists a clear distinction between the amendment of pleadings, which seeks to alter or supplement the factual basis of a party's case, and the canvassing of pure questions of law arising on the facts already borne out by the record. Rejection of an application for amendment does not, by itself, foreclose the right of a litigant to urge such legal contentions as are otherwise available in law. The trial court shall remain at liberty to examine any such contention on its own merits, provided its determination does not require an enquiry beyond the existing pleadings and evidence or occasion prejudice to the opposite party.

Held- In the facts of the present case, and particularly in view of the fair stand adopted by learned counsel for the revisionist that the amendment itself need not be pressed, no ground for interference with the order impugned is made out in exercise of revisional jurisdiction. It is, however, observed that disposal of the present revision shall not preclude either party from raising all such legal submissions as may be available to them before the court below, which shall consider and determine the same independently, strictly in accordance with law and uninfluenced by any observation contained herein.
Revision disposed of. (E-15)

(Para 12, 13 & 15)

Case Law Cited

Revajeetu Builders and Developers v. Narayanaswamy and Sons (2009) 10 SCC 84; Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram & Co (1976) 4 SCC 320.; Vidyabai v. Padmalatha (2009) 2 SCC 409

List of Acts

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

List of Keywords

Rejection of amendment application; Does not foreclose the right of a litigant to urge legal contentions as are otherwise available in law.

Case Arising From

Order dated 23.03.2026 passed by the Additional District Judge, Court No. 8, Kanpur Nagar, in Small Cause Suit No.26 of 2022, whereby Application No.80-Ga filed by the revisionist-defendant under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, seeking amendment of the written statement, has been rejected

Appearances for Parties

Counsel for Revisionist(s) : Birendra Kumar, Himanshu Dubey, Sr. Advocate
Counsel for Opposite Party(s) : Prashant Rai, Rishi Kant Rai

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Ashish Kumar Singh, learned Senior Advocate along with Sri Himanshu Dubey, counsel for the revisionist and Sri Prashant Rai, learned counsel appearing for the opposite party.

2. The present revision is directed against the order dated 23.03.2026 passed by the Additional District Judge, Court No. 8, Kanpur Nagar, in Small Cause Suit No.26 of 2022, whereby Application No.80-Ga filed by the revisionist-defendant under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, seeking amendment of the written statement, has been rejected.

3. The court below, while declining the prayer for amendment, has returned a finding that the proposed amendment would have the effect of introducing an altogether new factual foundation requiring fresh evidence and would, in substance, permit the revisionist to retract admissions already made in the written statement. Aggrieved thereby, the instant revision has been preferred.

4. The proceedings arise out of Small Cause Suit No. 26 of 2022 instituted by Radha Krishna Ji Maharaj Virajman Mandir through its alleged Sarvarakar seeking eviction of the revisionist-defendant, recovery of arrears of rent and other consequential reliefs. Upon completion of the pleadings, the suit proceeded to trial. The plaintiff filed documentary evidence as well as an affidavit in support of the claim, whereafter the suit was fixed for cross-examination of the plaintiff's witness.

5. At that stage, the revisionist moved Application No. 80-Ga under Order VI Rule 17 read with Section 151 CPC seeking amendment of the written statement. The principal basis for the proposed amendment was the pendency of Civil Suit No. 1484 of 2023, wherein disputes relating to the management of the trust and the authority of the person claiming to be the Sarvarakar were stated to be pending adjudication. On the strength of the said proceedings, the revisionist sought to introduce additional pleadings disputing the competence of the Sarvarakar to

maintain the present suit and to incorporate further averments relating to the constitution and management of the trust.

6. The amendment application was opposed by the plaintiff contending that the trial had already commenced and that the proposed amendment sought to introduce an entirely new factual controversy requiring fresh evidence. It was further urged that the amendment was an attempt to withdraw or dilute admissions already contained in the written statement regarding the status of the Sarvarakar and the tenancy.

7. Upon consideration of the rival submissions, the trial court rejected the amendment application by the impugned order dated 23.03.2026 holding that the proposed amendment would alter the factual foundation of the defence, necessitate fresh evidence and permit the revisionist to resile from admissions already made in the written statement. Aggrieved thereby, the present revision has been preferred.

8. The object underlying Order VI Rule 17 CPC is to enable the court to determine the real controversy between the parties and to avoid multiplicity of proceedings. At the same time, the power of amendment is discretionary and is not to be exercised where the amendment would fundamentally alter the nature of the case, occasion irretrievable prejudice to the opposite party, or permit a litigant to resile from clear and unequivocal admissions to the detriment of the adversary. Equally, once the trial has commenced, the proviso to Order VI Rule 17 enjoins the party seeking amendment to establish that, despite due diligence, the matter sought to be introduced could not have been raised earlier.

9. The Supreme Court in **Revajeetu Builders and Developers v. Narayanaswamy and Sons**, has exhaustively laid down the factors governing amendment of pleadings, inter alia, whether the amendment is necessary for determining the real question in controversy, whether it introduces a new or inconsistent case, and whether it would prejudice the other side. Similarly, in **Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram & Co.**, it has been held that a party cannot be permitted to amend its pleadings so as to displace admissions made earlier, if such admissions have conferred a right upon the opposite party.

10. Further, the proviso to Order VI Rule 17 CPC, inserted by the Amendment Act of 2002, places an additional restriction that once the trial has commenced, no amendment shall be allowed unless the party satisfies the court that, despite due diligence, the matter sought to be introduced could not have been raised earlier. The requirement of due diligence has been emphasised in **Vidyabai v. Padmalatha**, wherein it has been held that the proviso is couched in mandatory terms and must be strictly complied with.

11. On the findings returned by the court below, the proposed amendment cannot be said to be a mere clarification; rather, it seeks to introduce a fresh factual

foundation and to depart from admissions already made in the written statement, a course which is ordinarily impermissible under the settled principles governing amendment of pleadings.

12. During the course of hearing, learned counsel for the revisionist fairly submitted that, in view of subsequent developments, the amendment as sought may no longer survive for consideration. It has, however, been urged that the legal consequences flowing from such developments may yet require adjudication and that the revisionist be permitted to advance all such legal submissions before the court below. Learned counsel appearing for the opposite party does not dispute that pure questions of law, resting on admitted or undisputed facts and not necessitating further evidence, may be raised at any stage of the proceedings, subject to the governing statutory framework.

13. The submission merits acceptance. There exists a clear distinction between the amendment of pleadings, which seeks to alter or supplement the factual basis of a party's case, and the canvassing of pure questions of law arising on the facts already borne out by the record. Rejection of an application for amendment does not, by itself, foreclose the right of a litigant to urge such legal contentions as are otherwise available in law. The trial court shall remain at liberty to examine any such contention on its own merits, provided its determination does not require an enquiry beyond the existing pleadings and evidence or occasion prejudice to the opposite party.

14. The rejection of an application for amendment under Order VI Rule 17 CPC and the entitlement of a party to advance pure questions of law operate in distinct spheres. While the former concerns alteration of the factual foundation of the case, the latter rests upon the pleadings and material already on record. Consequently, refusal of an amendment does not, by itself, preclude a party from urging legal submissions founded on the existing pleadings, provided their adjudication does not require investigation into fresh facts or occasion prejudice to the opposite party.

15. In the facts of the present case, and particularly in view of the fair stand adopted by learned counsel for the revisionist that the amendment itself need not be pressed, no ground for interference with the order impugned is made out in exercise of revisional jurisdiction. It is, however, observed that disposal of the present revision shall not preclude either party from raising all such legal submissions as may be available to them before the court below, which shall consider and determine the same independently, strictly in accordance with law and uninfluenced by any observation contained herein.

16. Subject to the aforesaid observations, the revision stands **disposed of.**

(2026) 7 ILRA 1562
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 376 of 2025

Smt. Priyanka Maheshwari ...Applicant
Versus
Vaibhav Maheshwari ...Opposite Party

Issue for Consideration

Whether the applicant has established the existence of such genuine hardship, compelling inconvenience or other exceptional circumstances as would warrant exercise of the discretionary jurisdiction of this Court under Section 24 of the Code of Civil Procedure for transfer of the proceedings from the Court of the Principal Judge, Family Court, Aligarh to the Court of the Principal Judge, Family Court, Gautam Budh Nagar

Head Notes

The Code of Civil Procedure, 1908-Section 24- Applicant has not placed any material on record to demonstrate that attending the proceedings before the Family Court at Aligarh is rendered impracticable or that such attendance would impose a hardship of such magnitude as would effectively deprive her of an opportunity to contest the proceedings. Mere inconvenience or additional travel, howsoever relevant, cannot, in the absence of compelling circumstances, furnish a sufficient foundation for exercise of the power under Section 24 CPC- The proceedings under Section 9 of the Hindu Marriage Act, 1955 and those under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are distinct in their nature, scope and object, and the mere pendency of such proceedings before different Courts does not, in the absence of demonstrable prejudice, likelihood of conflicting adjudications or any other compelling circumstance affecting the administration of justice, warrant their consolidation before a common forum.

Held- The grounds urged by the applicant fall short of the threshold required for invoking the discretionary jurisdiction under Section 24 of the Code of Civil Procedure. The applicant has failed to demonstrate that continuance of the proceedings before the Court at Aligarh would occasion any failure of justice or cause such genuine hardship as would justify transfer. Consequently, no case for transfer is made out. **Application dismissed**. (E-15)

(Para 13, 14 & 18)

Case Law Cited

Anjana Rana v. Navin Singh 2026 (2) ADJ 228

List of Acts

The Code of Civil Procedure, 1908

List of Keywords

Proceedings under Section 9 of the Hindu Marriage Act, 1955 and under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are distinct; Mere pendency of such proceedings before different Courts does not, in the absence of demonstrable prejudice, likelihood of conflicting adjudications or any other compelling circumstance ;Affecting the administration of justice, warrant their consolidation before a common forum

Case Arising From

Transfer application has been filed under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Case No. 595 of 2025, instituted under Section 9 of the Hindu Marriage Act, 1955, from the Court of the Principal Judge, Family Court, Aligarh to the Court of the Principal Judge, Family Court, Gautam Budh Nagar

Appearances for Parties

Counsel for Applicant(s) : Abhishek Gupta
Counsel for Opposite Party(s) : Ajay Sengar, Gunjan Yadav

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Abhishek Gupta, learned counsel for applicant and Ms. Gunjan Yadav, learned counsel for opposite party.

2. The present transfer application has been filed under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Case No. 595 of 2025 (Vaibhav Maheshwari v. Priyanka Maheshwari), instituted under Section 9 of the Hindu Marriage Act, 1955, from the Court of the Principal Judge, Family Court, Aligarh to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.

3. The principal ground urged in support of the transfer application is that the applicant is presently residing in District Gautam Budh Nagar, where her minor daughter is pursuing her education. It is submitted that the applicant is the primary caregiver of the minor child and is, therefore, required to remain at Gautam Budh Nagar to attend to her educational and day-to-day needs. According to the applicant, compelling her to undertake repeated travel to Aligarh for attending the proceedings would not only cause her considerable inconvenience and financial burden but would also adversely affect the education and welfare of the minor child. It is thus contended that the balance of convenience lies in favour of transferring the proceedings to Gautam Budh Nagar, where the applicant is presently residing with the child.

4. It is further submitted that Maintenance Petition No. 98 of 2025 under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is already pending before the Court of the Principal Judge, Family Court, Gautam Budh Nagar. In such circumstances, it is urged that transfer of the proceedings under Section 9 of the Hindu Marriage Act, 1955 to the same Court would facilitate a more convenient and effective adjudication of the disputes between the parties, obviate the necessity of contesting parallel proceedings before different courts, avoid multiplicity of litigation, reduce unnecessary expenditure and hardship, and subserve the ends of justice.

5. Per contra, learned counsel appearing for the opposite party, placing reliance upon the averments contained in the counter affidavit, submits that both the applicant's parental home and her maternal home are situated in District Aligarh. It is contended that the prayer for transfer of the proceedings to District Gautam Budh Nagar has been advanced solely with a view to protract and delay the adjudication of the petition instituted under Section 9 of the Hindu Marriage Act, 1955.

6. It is further submitted that District Aligarh is a well-established educational centre and that the mere fact that the applicant has chosen to have her daughter educated in Gautam Budh Nagar

cannot, by itself, constitute a sufficient or compelling ground for transfer. According to the opposite party, the applicant's decision to reside at Gautam Budh Nagar for the purpose of her daughter's education is a matter of personal choice and cannot be permitted to dictate the forum of adjudication of the matrimonial proceedings.

7. Proceeding further, learned counsel submits that the petition under Section 9 of the Hindu Marriage Act, 1955 has been instituted with the bona fide object of seeking restitution of conjugal rights and restoration of the matrimonial relationship by bringing the applicant and the minor daughter back to the matrimonial home. It is urged that, on account of the pendency of the present transfer application and the interim protection granted by this Court, the proceedings before the Family Court have remained stalled, thereby frustrating the very object of the petition.

8. Reliance has also been placed upon the decision of this Court in **Anjana Rana v. Navin Singh**, to contend that the jurisdiction under Section 24 of the Code of Civil Procedure is discretionary in nature and is required to be exercised sparingly, with great care, caution and circumspection. It is submitted that transfer of matrimonial proceedings cannot be ordered merely on the basis of the convenience or preference of one of the parties. Before directing transfer, the Court must be satisfied that the applicant has established genuine hardship, grave inconvenience or other exceptional circumstances warranting such transfer in the interest of justice. Mere inconvenience, unsupported by cogent material demonstrating that refusal of transfer would result in failure of justice, cannot by itself justify exercise of the power under Section 24 CPC. It is further submitted that while the doctrine of balance of convenience is undoubtedly a relevant consideration, the Court is required to balance the convenience of both parties, the convenience of witnesses, the availability of evidence and the suitability of the forum, while also bearing in mind that the plaintiff, being dominus litis, is ordinarily entitled to choose the forum for institution of the proceedings. It is, therefore, contended that, in the absence of any compelling circumstance warranting interference, the forum lawfully chosen by the opposite party deserves due deference and the transfer application is liable to be dismissed.

9. In the backdrop of the rival submissions, the question which falls for consideration is whether the applicant has established the existence of such genuine hardship, compelling inconvenience or other exceptional circumstances as would warrant exercise of the discretionary jurisdiction of this Court under Section 24 of the Code of Civil Procedure for transfer of the proceedings from the Court of the Principal Judge, Family Court, Aligarh to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.

10. Having bestowed anxious consideration to the rival submissions and upon an overall appraisal of the facts and circumstances of the case, this Court proceeds to examine whether the applicant has been able to establish the existence of such genuine hardship, compelling inconvenience or other exceptional circumstances as would warrant

exercise of the discretionary jurisdiction under Section 24 of the Code of Civil Procedure.

11. The power of transfer under Section 24 of the Code of Civil Procedure is intended to advance the ends of justice and not to enable a litigant to secure a forum of personal convenience. Consequently, the burden lies upon the applicant to establish, by cogent and convincing material, that continuance of the proceedings before the Court in which they have been instituted would occasion genuine hardship or result in failure of justice.

12. In the present case, the principal ground urged by the applicant is that she is presently residing at Gautam Budh Nagar on account of the schooling of her minor daughter. While this Court is not unmindful of the paramount importance of a child's welfare and the responsibilities cast upon a parent in ensuring her education and upbringing, such a circumstance, by itself, cannot be elevated into a rule of universal application so as to justify transfer of matrimonial proceedings in every case where a party chooses to reside at a place different from the forum of institution. Though the convenience of the wife and the welfare of a minor child are undoubtedly relevant considerations in matrimonial disputes, they cannot be treated as inflexible or overriding considerations divorced from the facts of the individual case. The decisive test is whether refusal of transfer is likely to occasion a failure of justice.

13. The applicant has not placed any material on record to demonstrate that attending the proceedings before the Family Court at Aligarh is rendered impracticable or that such attendance would impose a hardship of such magnitude as would effectively deprive her of an opportunity to contest the proceedings. Mere inconvenience or additional travel, howsoever relevant, cannot, in the absence of compelling circumstances, furnish a sufficient foundation for exercise of the power under Section 24 CPC.

14. Equally, the mere pendency of Maintenance Petition No. 98 of 2025 under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 before the Family Court at Gautam Budh Nagar does not, by itself, constitute a compelling ground for transfer of the proceedings. Though avoidance of multiplicity of litigation is a relevant consideration while exercising jurisdiction under Section 24 CPC, it is neither conclusive nor determinative. The proceedings under Section 9 of the Hindu Marriage Act, 1955 and those under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are distinct in their nature, scope and object, and the mere pendency of such proceedings before different Courts does not, in the absence of demonstrable prejudice, likelihood of conflicting adjudications or any other compelling circumstance affecting the administration of justice, warrant their consolidation before a common forum. No material has been placed on record to establish that continuation of the proceedings before different Courts would occasion any failure of justice or otherwise justify displacement of the forum lawfully chosen by the opposite party.

15. The legal position governing the exercise of jurisdiction under Section 24 CPC may be succinctly stated thus. The jurisdiction under Section 24 of the Code of Civil Procedure is discretionary in nature and is required to be exercised sparingly, with circumspection and only where the ends of justice demonstrably so require. The provision is not intended to facilitate forum shopping or to permit a litigant to seek transfer merely because another forum may be comparatively more convenient. While the convenience of the wife, the welfare of a minor child and the pendency of connected proceedings are undoubtedly relevant considerations in matrimonial disputes, none of these factors, either individually or collectively, constitutes an inflexible rule mandating transfer. The Court is required to undertake a holistic assessment of all relevant circumstances, including the convenience of both parties, the nature of the proceedings, the availability of evidence, the stage of the litigation and the likelihood of prejudice being caused by refusal of transfer. Equally, due weight must be accorded to the right of the plaintiff, as dominus litis, to prosecute proceedings before a forum otherwise competent in law. Unless the applicant establishes that continuance of the proceedings before the existing forum would occasion genuine hardship or result in denial of a fair and effective opportunity to prosecute or defend the case, the forum lawfully chosen by the plaintiff ought not to be disturbed as a matter of routine.

16. Tested on the touchstone of the aforesaid principles, this Court finds that the grounds urged by the applicant do not satisfy the threshold for invoking the discretionary jurisdiction under Section 24 CPC. The applicant has failed to discharge the burden of establishing that continuance of the proceedings before the Family Court at Aligarh would occasion such genuine hardship or compelling inconvenience as would effectively deprive her of a fair and effective opportunity to contest the proceedings or otherwise result in failure of justice. The circumstances relied upon by the applicant, namely, the schooling of the minor daughter at Gautam Budh Nagar and the pendency of maintenance proceedings before the Family Court at Gautam Budh Nagar, though relevant considerations, do not, in the facts of the present case, outweigh the opposite party's right to prosecute the proceedings before the forum lawfully chosen by him. On the contrary, the proceedings instituted under Section 9 of the Hindu Marriage Act, 1955 have remained stalled on account of the pendency of the present transfer application and the interim protection operating therein. The balance of convenience, viewed holistically, does not tilt so decisively in favour of the applicant as to justify transfer of the proceedings.

17. For all the aforesaid reasons, this Court finds that the grounds urged by the applicant fall short of the threshold required for invoking the discretionary jurisdiction under Section 24 of the Code of Civil Procedure. The applicant has failed to demonstrate that continuance of the proceedings before the Court at Aligarh would occasion any failure of justice or cause such genuine hardship as would justify transfer. Consequently, no case for transfer is made out.

18. The transfer application is, accordingly, **dismissed**. The interim order, if any, stands vacated. The Principal Judge, Family Court, Aligarh shall proceed with the proceedings expeditiously and endeavour to conclude the same in accordance with law, without being influenced by any observation contained in this order, which is confined exclusively to the adjudication of the present transfer application.

(2026) 7 ILRA 1567
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 8728 of 2026

Arif Khan **...Petitioner(s)**
Versus
Smt. Roshan Jahan **...Respondent(s)**

Issue for Consideration

Whether, upon a true construction of Section 39 of the U.P Regulation of Urban Premises Tenancy Act, 2021 read with the relevant provisions of the Court Fees Act, 1870, a memorandum of appeal preferred under Section 35 of the Act is required to be valued with reference to the subject matter in dispute in appeal, including the amount awarded towards accrued or ascertainable mesne profits, or whether the court fee payable on such memorandum of appeal is confined to the court fee paid on the original application instituted before the Rent Authority.

Head Notes

The Constitution of India, 1950-Article 227; The U.P. Regulation of Urban Premises Tenancy Act, 2021-Section 35 & 39; The Court Fees Act, 1870- Sections- 2(4), 7 & 11; The Code of Civil Procedure, 1908-Section 2(12)- Decree under challenge fastens upon the petitioner an existing liability towards arrears of rent and also a liability towards mesne profits, which, to the extent accrued or capable of precise arithmetical ascertainment on the date of presentation of the appeal, formed part of the monetary burden sought to be displaced. That liability consequently constituted part of the subject-matter in dispute before the Rent Tribunal and was liable to be taken into account for purposes of valuation of the memorandum of appeal.

Held- Where an appellant challenges a composite decree passed by the Rent Authority directing eviction together with recovery of arrears of rent and payment of mesne profits, the memorandum of appeal under Section 35 of the Act, 2021 is liable to be valued with reference to the subject-matter in dispute in appeal. To the extent the decree embodies an existing liability towards mesne profits which has accrued or become capable of precise arithmetical ascertainment on the date of presentation of the appeal, such liability forms part of the decretal burden sought to be displaced and is liable to be taken into account in computing the court fee payable on the memorandum of appeal.
Petition dismissed. (E-15)

(Para 76 & 79)

Case Law Cited

State of Maharashtra v. Mishrilal Tarachand Lodha AIR 1964 SC 457; Shivaji v. Deoji AIR 1974 MP 123; Ratnamma v. Karthiyani Pillai AIR 1974 Ker 140; Alok Kumar Jain v. Indra Bhushan Sawhney 2025 SCC OnLine All 7188; In re Kudappa Subbamma AIR 1957 Andhra Pradesh 6; Ragho Prasad v. B. Pratap Narain Agrawal AIR 1976 All 470 (FB)

List of Acts

The Constitution of India, 1950 ; The U.P. Regulation of Urban Premises Tenancy Act, 2021; The Code of Civil Procedure, 1908; The Court Fees Act, 1870

List of Keywords

Composite decree directing eviction with recovery of arrears of rent and mesne profits; Embodies an existing liability towards mesne profits on the date of presentation of the appeal, such liability forms part of the decretal burden and is liable to be taken into account in computing the court fee payable on the memorandum of appeal.

Case Arising From

Order dated 22.05.2026 passed by the Rent Tribunal, Varanasi in Misc. Case No.322 of 2026, whereby the Tribunal has directed the petitioner-appellant to deposit additional court fee on the entire decretal amount, including the amount awarded towards mesne profits, as a condition for continuation of the appeal preferred under Section 35 of the U.P. Regulation of Urban Premises Tenancy Act, 2021

Appearances for Parties

Counsel for Petitioner(s) : Sr. Advocate, Tejas Singh
Counsel for Respondent(s) : Raj Raghuvanshi

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Ajay Kumar Singh, learned Senior Counsel assisted by Sri Tejas Singh, for the petitioner and Sri Ashish Kumar Srivastava, learned counsel appearing for the respondent. Since the controversy involves the interpretation of the provisions of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 and the Court Fees Act, 1870, Sri Kartikeya Saran, learned Additional Advocate General, along with Sri Manoj Kumar Singh, learned Chief Standing Counsel, appearing for the State of Uttar Pradesh has also been heard to assist the Court on issues of statutory interpretation arising in the present petition.

Facts Giving Rise to the Petition

2. The present petition under Article 227 of the Constitution of India is directed against the order dated 22.05.2026 passed by the Rent Tribunal, Varanasi in Misc. Case No.322 of 2026, whereby the Tribunal has directed the petitioner-appellant to deposit additional court fee on the entire decretal amount, including the amount awarded towards mesne profits, as a condition for continuation of the appeal preferred under Section 35 of the U.P. Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as "the Act, 2021").

3. The controversy in the present petition centres upon the true construction of Section 39 of the Act, 2021 and its interplay with the provisions of the Court Fees Act, 1870. The principal question requiring consideration is whether a memorandum of appeal preferred under Section 35 of the Act against a composite decree passed by the Rent Authority is liable to be valued on the entire decretal liability forming the subject matter of the appeal, including the amount awarded towards mesne profits, or whether the court fee payable on such appeal remains confined to the court fee paid on the original application instituted before the Rent Authority.

4. The respondent-landlady instituted Rent Case No. 4309 of 2024, Smt. Roshan Jahan v. Arif Khan, before the Rent Authority under Section 21 of the Act, 2021 seeking eviction of the petitioner from three adjoining shops situated at premises No. CK-47/23, Sarai Harha, Ward

Chowk, Varanasi, together with recovery of arrears of rent and mesne profits. The proceedings were initiated by presentation of an application in the prescribed Form-7.

5. The petitioner contested the proceedings by filing objections supported by affidavit, to which the respondent filed a rejoinder. Upon consideration of the pleadings and the material brought on record, the Rent Authority, by its order dated 19.02.2026, allowed the application, directed the petitioner to vacate the premises within one month and further held him liable to pay arrears of rent together with mesne profits at the rate of Rs.2,000/- per day besides consequential monetary liabilities.

6. Aggrieved thereby, the petitioner preferred Misc. Case No. 322 of 2026 before the Rent Tribunal under Section 35 of the Act, 2021. Along with the memorandum of appeal, the petitioner deposited a sum of Rs.7,00,000/-, asserting that the deposit satisfied the requirement of pre-deposit contained in the proviso to Section 35 of the Act, 2021. It is also the petitioner's case that court fee equivalent to that paid before the Rent Authority was affixed on the memorandum of appeal in compliance with Section 39 of the Act, 2021.

7. During the pendency of the appeal, the respondent-landlady filed objection/application (Paper No. 13-Ga) raising a preliminary objection that the memorandum of appeal suffered from deficiency in court fee, inasmuch as court fee had not been paid on the entire decretal amount including the amount awarded towards mesne profits. The petitioner filed objections controverting the said plea.

8. By the impugned order dated 22.05.2026, the Rent Tribunal upheld the objection to the extent of holding that the memorandum of appeal suffered from deficiency in court fee and consequently directed the petitioner to deposit additional court fee on the entire decretal amount, including the amount awarded towards mesne profits, on or before 30.05.2026. Aggrieved thereby, the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution.

Submissions on behalf of the Petitioner

9. Assailing the impugned order, learned counsel for the petitioner submits that the Rent Tribunal has committed a patent error of jurisdiction in directing payment of additional court fee on the amount awarded towards mesne profits as a condition for continuation of the appeal. According to him, the direction proceeds on an erroneous construction of Section 39 of the Act, 2021 and is contrary to the statutory scheme governing the levy and computation of court fee under the Act.

10. It is submitted that the petitioner has fully complied with every statutory requirement prescribed for maintaining the appeal. Besides depositing more than fifty per cent of the decretal amount in compliance with the proviso to Section 35 of the Act, 2021, the petitioner also affixed court fee amounting to Rs.26,324/-, being the same court fee as had been paid by the respondent-landlady while instituting the application before the Rent Authority under Section 21 of the Act.

11. Elaborating the submission, learned counsel contends that Section 39 constitutes a complete code governing the levy and computation of court fee in proceedings under the Act, 2021. Inviting attention to sub-sections (1) and (2) thereof, he submits that although the provisions of the Court Fees Act, 1870 have been made applicable to proceedings under the Act, the legislature has simultaneously created a statutory fiction by providing that, for the purposes of computation of court fee, both an application before the Rent Authority and a memorandum of appeal before the Rent Tribunal shall be deemed to be suits between the landlord and the tenant. It is argued that once the statute places both proceedings on the same footing, the court fee payable on the memorandum of appeal cannot exceed the court fee payable on the original application. According to the petitioner, therefore, payment of court fee identical to that paid before the Rent Authority constitutes complete compliance with Section 39.

12. Learned counsel further submits that the expression "court-fees" occurring in Section 39 of the Act, 2021 is to be construed in the light of the provisions of the Court Fees Act, 1870. According to him, the claim relating to mesne profits does not constitute a claim for a fixed or ascertained sum so as to attract ad valorem court fee payable on an ordinary money claim. It is contended that mesne profits, by their very nature, remain uncertain and incapable of precise valuation until finally determined in accordance with law and, therefore, do not require separate court fee on the memorandum of appeal.

13. Learned counsel further submits that the Tribunal has failed to appreciate the nature of the decree passed by the Rent Authority. According to learned counsel, while passing the decree, the Rent Authority directed that court fee in respect of the mesne profits awarded would be realised from the respondent-landlady at the stage of execution. It is, therefore, submitted that the petitioner could not have been required to pay court fee in appeal on a component in respect whereof the respondent herself had not paid court fee at the institution of the proceedings.

14. Learned counsel further contends that the authorities relied upon by the respondent, particularly those arising out of suits for rendition of accounts, are distinguishable on facts and in law. It is submitted that proceedings before the Rent Authority under the Act, 2021 are summary in nature and cannot be equated with ordinary civil suits for rendition of accounts, where the liability is determined upon an entirely different statutory footing.

15. It is next submitted that a consistent line of judicial authority recognises that future or unascertained mesne profits do not ordinarily attract separate court fee at the stage of filing of an appeal unless the correctness or quantum thereof is specifically and independently put in issue. Placing reliance upon the decisions in **State of Maharashtra v. Mishrilal Tarachand Lodha, Shivaji v. Deoji and Ratnamma v. Karthiyani Pillai**, learned counsel contends that the direction requiring payment of additional court fee on the mesne profits component is contrary to the legal position emerging from the aforesaid authorities.

16. Learned counsel also submits that Section 2(4) of the Court Fees Act, 1870, which defines the expression "suit" to include a first and second appeal from a decree in a suit, supports the contention that the valuation adopted at the stage of institution cannot be altered merely because the matter has reached the appellate stage.

17. It is further submitted that the Tribunal has unnecessarily invoked Section 42 of the Act, 2021 despite there being no inconsistency requiring resort to the overriding provision. According to learned counsel, the issue is squarely governed by Section 39 itself, leaving no occasion for invoking Section 42. It is also argued that reliance placed upon the decision in **Alok Kumar Jain v. Indra Bhushan Sawhney** is misplaced, as the said decision did not arise from proceedings involving eviction, arrears of rent and mesne profits under Section 21 of the Act, 2021 and, therefore, has no application to the controversy involved in the present case.

18. On the aforesaid premises, learned counsel submits that the impugned order suffers from manifest illegality and jurisdictional error warranting interference under Article 227 of the Constitution of India. It is, accordingly, prayed that the impugned order dated 22.05.2026 be set aside and the Rent Tribunal be directed to proceed with the appeal without insisting upon payment of any additional court fee.

Submissions on behalf of the Respondent

19. Learned counsel appearing for the respondent-landlady supports the impugned order and submits that the Rent Tribunal has committed no illegality in directing the petitioner to make good the deficiency in court fee before proceeding with the appeal. According to him, the impugned order is in complete accord with the scheme of the Act, 2021 and the provisions of the Court Fees Act, 1870.

20. It is submitted that the order dated 19.02.2026 passed by the Rent Authority is a composite decree directing eviction of the petitioner from the tenanted premises besides payment of arrears of rent and mesne profits. Since the petitioner has challenged the decree in its entirety, including the monetary liability created thereunder, the memorandum of appeal is necessarily required to be valued on the entire decretal amount constituting the subject matter in dispute. Consequently, court fee is payable on the whole of the liability sought to be displaced and not merely on the amount on which court fee had been paid at the stage of institution of the original proceedings.

21. Learned counsel further submits that compliance with the proviso to Section 35 of the Act, 2021 by depositing fifty per cent of the decretal amount operates in a field altogether different from the obligation to pay proper court fee under Section 39. Satisfaction of the condition relating to statutory pre-deposit does not dispense with, or dilute, the independent requirement of affixing appropriate court fee on the memorandum of appeal.

22. Elaborating his submissions on Section 39, learned counsel contends that sub-section (1) expressly attracts the provisions of the Court Fees Act, 1870, while sub-section (2) creates a statutory fiction by treating a memorandum of appeal as a suit between the landlord and the tenant for the purposes of computation of court fee. It is, therefore, submitted that once the Court Fees Act stands attracted, court fee has necessarily to be computed on the valuation of the subject matter in dispute in appeal. According to him, the petitioner has incorrectly proceeded on the assumption that the court fee payable in appeal must invariably be identical to that paid on the original application before the Rent Authority, an interpretation which finds no support from the statutory scheme.

23. It is further contended that the liability of a plaintiff to pay court fee at the institution of the proceedings and that of a defendant preferring an appeal operate in distinct spheres. While the former is determined with reference to the reliefs claimed in the original proceedings, the latter is governed by the extent of the decree sought to be displaced in appeal. Merely because Section 2 of the Court Fees Act defines the expression "suit" to include a first and second appeal from a decree, it does not follow that the valuation adopted at the institution stage remains immutable throughout the appellate process. On the contrary, the Court Fees Act contemplates valuation with reference to the nature and extent of the relief claimed in appeal.

24. Learned counsel next submits that the petitioner's reliance upon the line of authorities dealing with future or unascertained mesne profits is wholly misplaced. According to him, those decisions were rendered in an entirely different factual and legal context. In the present case, the Rent Authority has not merely directed an enquiry into future mesne profits but has already recorded a finding that the petitioner's occupation had become unauthorised and has awarded mesne profits as part of the decree. Consequently, the liability no longer remains contingent or indeterminate but stands incorporated into the decretal liability itself. It is submitted that the decision in **Mishrilal Tarachand Lodha** does not lay down that decreed mesne profits can never constitute the subject matter of an appeal or that the valuation of an appeal must invariably remain identical to that of the original proceedings. Likewise, the decisions in **Shivaji v. Deoji** and **Ratnamma v. Karthiyani Pillai** are stated to have been rendered in the context of future mesne profits and cannot be mechanically extended to a case where the monetary liability already stands quantified under the decree.

25. Proceeding further, learned counsel submits that once mesne profits stand quantified and form part of the decree, they cease to remain a fluctuating or unascertained claim and become an integral component of the monetary relief challenged in appeal. Reliance is placed upon **In re Kudappa Subbamma** to contend that once the rate, period and amount of mesne profits are determined by the court, the liability crystallises into an ascertained monetary obligation attracting ad valorem court fee in appeal. Reliance is also placed upon the Full Bench decision of this Court in **Ragho Prasad v. B. Pratap Narain Agrawal** to submit that an appeal against a decree imposing an ascertained monetary liability must be valued according to the amount sought to be displaced and not by reference to the valuation adopted in the original proceedings. Learned counsel also relies upon the decision of this Court in **Alok Kumar Jain** to contend that Sections 39 and 42 of the Act, 2021 constitute a self-contained scheme governing court fee under the special enactment.

26. Lastly, it is submitted that the petitioner's contention regarding the alleged absence of power under the Act, 2021 to award arrears of rent or mesne profits is wholly extraneous to the controversy involved in the present proceedings. The issue before this Court is confined to the court fee payable on the memorandum of appeal against the decree passed by the Rent Authority. So long as the decree contains a quantified monetary award and the petitioner seeks to assail that liability in appeal, the memorandum of appeal must bear court fee in accordance with law. It is, therefore, submitted that the Rent Tribunal rightly directed the petitioner to make good the deficiency in court fee and, instead of rejecting the appeal, adopted a liberal approach by granting an opportunity to remove the defect. The impugned order, therefore, neither suffers from any

jurisdictional error nor occasions any failure of justice warranting interference under Article 227 of the Constitution of India.

Submissions on behalf of the State

27. Learned Additional Advocate General appearing for the State supports the impugned order and submits that the controversy in the present case turns upon the proper interpretation of Section 39 of the Act, 2021 read with the provisions of the Court Fees Act, 1870. It is submitted that Section 39 incorporates the general principles governing levy of court fee under the Court Fees Act while simultaneously introducing a special statutory mechanism for proceedings before the Rent Authority or the Rent Tribunal. According to him, the provision must be construed in a manner which gives effect both to the statutory fiction created under sub-section (2) and to the settled principles regulating valuation of appeals.

28. Learned Additional Advocate General submits that the levy of court fee is not merely a fiscal measure intended to augment public revenue. It also serves the legislative purpose of securing partial recovery of the cost of administration of civil justice, discouraging frivolous litigation and maintaining procedural discipline in the institution and prosecution of legal proceedings. The liability to pay court fee on an appeal is, therefore, an independent statutory obligation and cannot be treated as irrevocably linked to, or controlled by, the court fee payable at the stage of institution of the original proceedings.

29. Elaborating his submissions, learned Additional Advocate General contends that the incidence of court fee has to be determined with reference to the statutory provisions governing the appeal itself and not with reference to whether the successful party before the Rent Authority had or had not paid court fee on every component of the relief granted. According to him, the question whether the respondent-landlady was required to pay additional court fee at any subsequent stage is wholly distinct from the obligation of the petitioner, as an appellant, to value his memorandum of appeal in accordance with law.

30. It is further submitted that mesne profits, as defined under Section 2(12) of the Code of Civil Procedure, 1908, constitute compensation payable for wrongful possession of immovable property. Although a claim for mesne profits may initially remain uncertain or incapable of precise valuation at the stage of institution of proceedings, the legal position materially changes once the adjudicating authority determines the rate or quantifies the liability. To the extent such liability has accrued or become capable of precise arithmetical ascertainment by the date of presentation of the appeal, it ceases to remain contingent and becomes part of the decretal liability sought to be displaced.

31. In support of the aforesaid submissions, reliance has been placed upon **Mishrilal Tarachand Lodha** to contend that the valuation of an appeal depends upon the extent of the liability actually brought into dispute by the appellant and that future interest, pendente lite interest or costs ordinarily do not attract separate court fee unless independently challenged. Reliance has also been placed upon **Ratnamma v. Karthiyani Pillai** to submit that where the decree for mesne profits is specifically assailed, the accrued or ascertainable mesne profits forming part of the

decretal liability constitute part of the subject matter in dispute in appeal, whereas no separate court fee is payable in respect of mesne profits which have neither crystallised nor been brought into challenge.

32. Learned Additional Advocate General further submits that none of the authorities relied upon by the petitioner lays down an absolute proposition that mesne profits can never attract court fee in appeal. According to him, those decisions merely recognise that future or unascertained mesne profits, which remain incapable of valuation at the relevant stage, do not ordinarily require immediate payment of court fee. They do not govern a case where the decree itself has already created an accrued or ascertainable monetary liability which forms an integral part of the subject matter challenged in appeal.

33. Developing the aforesaid submission, it is contended that the expression "subject matter in dispute in appeal", as understood under the Court Fees Act, has consistently been interpreted to mean the extent of the detriment or liability from which the appellant seeks relief and not the valuation adopted at the stage of institution of the original proceedings. Consequently, where the appellant seeks to avoid the entire decretal liability created by the impugned decree, the valuation of the appeal must necessarily extend to the whole of that liability, including the component representing accrued or ascertainable mesne profits.

34. According to the learned learned Additional Advocate General acceptance of the petitioner's interpretation would lead to anomalous consequences. According to him, an appellant would then be entitled to assail a decree imposing substantial monetary liability while paying court fee only on the valuation adopted at the institution of the proceedings, notwithstanding that the decree has materially altered the legal and financial obligations of the parties. Such a construction, it is submitted, would be inconsistent with both the scheme of the Court Fees Act, 1870 and the legislative intent underlying Section 39 of the Act, 2021.

35. It is, accordingly, submitted that the petitioner having challenged the composite decree in its entirety, including the liability towards mesne profits, the Rent Tribunal rightly directed payment of court fee on the entire decretal amount to the extent it constituted the subject matter of challenge. The impugned order, therefore, warrants no interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

Question Arising for Consideration

36. In the backdrop of the rival submissions and the statutory framework noticed hereinafter, the question arising for consideration is that whether, upon a true construction of Section 39 of the U.P. Regulation of Urban Premises Tenancy Act, 2021 read with the relevant provisions of the Court Fees Act, 1870, a memorandum of appeal preferred under Section 35 of the Act is required to be valued with reference to the subject matter in dispute in appeal, including the amount awarded towards accrued or ascertainable mesne profits, or whether the court fee payable on such memorandum of appeal is confined to the court fee paid on the original application instituted before the Rent Authority.

Relevant Statutory Framework

37. Since the controversy centres upon the construction Sections 35 and 39 of the U.P. Regulation of Urban Premises Tenancy Act, 2021, read in conjunction with the relevant provisions of the Court Fees Act, 1870, it is apposite to notice the relevant provisions before examining the rival submissions and the question arising for consideration.

38. Section 35 of the Act, 2021, which provides for an appeal to the Rent Tribunal, reads as follows:

***"35. Appeal to Rent Tribunal**. - (1) Any person aggrieved by an order passed by the Rent Authority may prefer an appeal along with a certified copy of such order to the Rent Tribunal within the local limits of which the premises is situated, within a period of thirty days from the date of that order:*

Provided that no appeal shall lie unless the appellant pre-deposits fifty percent of the entire payable amount under the impugned order of the Rent Authority.

"

Section 39 of the Act, 2021, which constitutes the principal provision governing court fees under the Act and lies at the centre of the present controversy, provides:

"39. Court-fees. (1) The provisions of the Court Fees Act, 1870 (Act No. 7 of 1870) shall apply in respect of applications or appeals to be presented before the Rent Authority or Rent Tribunal, as the case may be.

(2) For the purposes of computation of court fees, the application for recovery of possession made to the Rent Authority and the memorandum of appeal presented before the Rent Tribunal shall be deemed to be a suit between the landlord and the tenant.

(3) The court fees for the application filed before the Rent Authority shall be same as that of an interlocutory application presented in a Civil Court."

Section 42 of the Act, 2021, which confers overriding effect upon the provisions of the Act, reads as follows:

***"42. Act to override other laws.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law of the State of Uttar Pradesh for the time being in force."*

39. Section 7 of the Court Fees Act, 1870, read with Article 1 of Schedule I thereof, provides for levy of ad valorem court fee on a memorandum of appeal according to the value of the subject matter in dispute in appeal. Since the controversy also concerns the treatment of mesne profits for the purposes of court fee, it is also apposite to notice Section 11 of the Court Fees Act, 1870, which contemplates payment of additional court fee where mesne profits ultimately decreed exceed the amount on which court fee has previously been paid, thereby recognising the distinction between liability capable of valuation at the institution stage and liability which crystallises only upon adjudication.

40. Learned counsel for the petitioner has also placed reliance upon Section 2(4) of the Court Fees Act, 1870, which defines the expression "suit" to include a first and second appeal from a

decree in a suit. The true scope of the inclusive definition and its bearing upon the deeming fiction enacted under Section 39(2) of the Act, 2021 shall be considered in the course of the discussion.

41. Since one of the principal questions arising in the present case concerns the liability to pay court fee on the amount awarded towards mesne profits, reference may also be made to the statutory definition contained in Section 2(12) of the Code of Civil Procedure, 1908, which reads as follows:

"2(12) 'mesne profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

42. Order XX Rule 12 of the Code of Civil Procedure, 1908, which empowers the Court to pass a decree for past mesne profits and to direct an enquiry into future mesne profits until delivery of possession, also bears upon the distinction between accrued and future mesne profits which arises for consideration in the present case.

Discussion and Analysis

43. The controversy turns upon the true construction of Section 39 of the U.P. Regulation of Urban Premises Tenancy Act, 2021 and, in particular, the scope of the statutory fiction engrafted in sub-section (2) thereof. The rival submissions reveal that the dispute does not merely concern the incidence of court fee in the present case but raises a broader question touching the principles governing valuation of a memorandum of appeal preferred under Section 35 of the Act. The issue, therefore, falls to be examined in the light of the scheme of the Act, 2021, the provisions of the Court Fees Act, 1870 and the settled principles governing appellate valuation.

44. Section 39 is the principal provision governing the levy and computation of court fee under the Act, 2021. Sub-section (1) makes the provisions of the Court Fees Act, 1870 applicable to applications or appeals presented before the Rent Authority or the Rent Tribunal. The application of the Court Fees Act, however, is not left at large. Sub-sections (2) and (3) prescribe distinct modes of computation for different classes of proceedings, thereby demonstrating that while the legislature intended to adopt the general framework of the Court Fees Act, it simultaneously modified its operation to suit the special statutory scheme governing landlord-tenant disputes under the Act, 2021.

45. Section 39(2) provides that, for the purposes of computation of court fee, an application for recovery of possession before the Rent Authority and a memorandum of appeal before the Rent Tribunal shall be deemed to be suits between the landlord and the tenant. The statutory fiction is of limited but significant import. It is created solely for identifying the legal regime governing the computation of court fee. It neither obliterates the distinction between original and appellate proceedings nor enacts that the court fee payable on a memorandum of appeal must invariably remain identical to that paid on the original application. Once the fiction attracts the provisions of

the Court Fees Act, 1870, the computation of court fee necessarily falls to be determined in accordance with the principles governing valuation under that enactment.

46. It is equally well settled that a statutory fiction must be carried to its logical conclusion, but only within the field for which it has been created. The fiction embodied in Section 39(2) cannot be enlarged so as to assimilate an appeal with the original proceedings for every purpose connected with court fee. Its function is exhausted once the memorandum of appeal is brought within the fold of the Court Fees Act. Thereafter, the valuation of the appeal must necessarily be governed by the provisions and principles of that Act applicable to appellate proceedings.

47. At this stage, it is necessary to distinguish between the incidence of court fee and the measure of its computation. The incidence of court fee answers the anterior question whether a particular proceeding attracts liability to court fee at all. The measure of court fee concerns the manner in which that liability is quantified. Section 39(1) determines the former by making the provisions of the Court Fees Act applicable to applications and appeals under the Act, 2021. Section 39(2) merely prescribes the juridical basis upon which such computation is to proceed by treating specified proceedings as suits between landlord and tenant. Once the liability to pay court fee is attracted, its quantification must necessarily follow the valuation principles embodied in the Court Fees Act.

48. Section 39, therefore, cannot be construed as a self-contained code prescribing an independent method of valuation of appeals divorced from the Court Fees Act. The provision incorporates the Court Fees Act while engrafting a limited statutory fiction to facilitate its application to proceedings before the Rent Authority or the Rent Tribunal. Any construction which treats the court fee payable on every memorandum of appeal as being irrevocably tied to the court fee paid on the original application would not only travel beyond the express language of Section 39 but would also render otiose the settled principles governing appellate valuation under the Court Fees Act.

49. Once the applicability of the Court Fees Act is accepted, the enquiry necessarily shifts to the principles governing valuation of appeals under that enactment. It is a settled principle that the valuation of a memorandum of appeal is determined not by the valuation adopted at the institution of the original proceedings but by the value of the subject-matter in dispute in appeal. The focus of the appellate court is no longer the original claim as framed by the plaintiff but the decree passed by the adjudicating authority and the extent to which the appellant seeks to have that decree reversed, varied or set aside.

50. The distinction between the liability of a plaintiff to pay court fee and that of a defendant preferring an appeal is fundamental. A plaintiff values the proceedings with reference to the relief claimed at the institution stage. A defendant, however, approaches the appellate court only after the rights and liabilities of the parties have crystallised under the decree. His liability to pay court fee is, therefore, determined by the extent of the decree from which he seeks relief and not by the court fee paid by the plaintiff at the institution stage. Consequently, the court fee paid on the original application before the Rent Authority cannot, by itself, furnish the measure of the court fee payable on the memorandum of appeal.

51. The position becomes more apparent when the decree under challenge is composite in nature. Where a decree grants several distinct reliefs, the valuation of the appeal depends upon the extent to which those reliefs are brought under challenge. If the appellant assails the decree in its entirety, the subject-matter

in dispute ordinarily extends to the whole of the decretal liability. Conversely, where the challenge is confined to a severable part of the decree, the valuation correspondingly stands restricted to that part alone.

52. The same principle applies to monetary decrees. An unascertained or contingent claim stands upon a different footing from a liability which has crystallised into a definite decretal obligation. So long as the liability remains uncertain and incapable of present ascertainment, different considerations may arise regarding its valuation. Once, however, the adjudicating authority determines the liability or renders it capable of precise arithmetical ascertainment, the appellant who seeks to avoid that liability necessarily brings that monetary obligation within the subject-matter of the appeal.

53. The principle emerging from the aforesaid discussion is that Section 39(2) merely attracts the settled principles governing appellate valuation under the Court Fees Act; it does not displace them. The question, therefore, is what is comprehended within the expression "subject-matter in dispute in appeal" occurring in the Court Fees Act and whether the amount awarded towards mesne profits forms part of that subject-matter in the facts of the present case. The answer to that question assumes decisive significance in the present case, for the controversy ultimately turns not upon the nature of the original application before the Rent Authority but the extent of the decretal liability which the petitioner seeks to displace before the Rent Tribunal.

54. The expression "subject-matter in dispute in appeal" has received authoritative exposition from the Supreme Court in **State of Maharashtra v. Mishrilal Tarachand Lodha**. The controversy before the Supreme Court arose in the context of the liability to pay court fee on the amount awarded towards pendente lite interest. While resolving that issue, the Court explained that the valuation of an appeal is determined by the matters which are actually brought in challenge before the appellate court and require adjudication. Since the appellant had not assailed the award of pendente lite interest, the Supreme Court held that such interest did not form part of the subject-matter in dispute in appeal.

55. The decision thus emphasises that the expression "subject-matter in dispute in appeal" refers to the right, liability or relief which the appellant seeks to have adjudicated upon by the appellate court. The enquiry is directed to the real controversy arising from the memorandum of appeal and not to every component of the decree irrespective of whether it has been questioned. The ratio of the decision, therefore, is that the valuation of an appeal depends upon the extent of the decree or liability actually brought under challenge and requiring determination by the appellate court.

56. The decision in **Mishrilal Tarachand Lodha**, however, cannot be understood divorced from the controversy which arose for determination therein. The Supreme Court was concerned with a discretionary award of pendente lite interest under Section 34 of the Code of Civil Procedure which had not been independently challenged before the appellate court. The judgment, therefore, does not lay down any general proposition that every monetary component incorporated in a decree necessarily falls outside the subject-matter in dispute in appeal. Equally, it does not support the broader submission advanced by the petitioner that the valuation adopted at the institution of the proceedings must invariably govern the valuation of the appeal irrespective of the decree actually brought under challenge.

57. Properly understood, the principle emerging from **Mishrilal Tarachand Lodha** is that the valuation of an appeal depends upon the extent of the decree or liability which the appellant seeks to have adjudicated upon before the appellate court. A monetary component of the decree which is not brought in

challenge does not ordinarily form part of the subject-matter in dispute. Conversely, where the appellant seeks to avoid a quantified monetary liability embodied in the decree, that liability ordinarily constitutes part of the subject-matter in dispute in appeal unless excluded by some recognised principle of law.

58. It is in the application of these principles that the controversy regarding mesne profits arises. The real question is not whether every award of mesne profits automatically attracts court fee in appeal, nor whether the valuation adopted in the original proceedings necessarily governs the memorandum of appeal. The true enquiry is whether the liability towards mesne profits embodied in the decree under challenge had, as on the date of presentation of the appeal, remained contingent and incapable of valuation or had crystallised into an existing monetary liability forming part of the decretal burden from which the appellant seeks relief. It is to that distinction that the Court must now turn.

59. The law has consistently recognised a distinction between future mesne profits, which remain contingent and incapable of present ascertainment, and mesne profits which have already accrued or become capable of precise computation. Future mesne profits represent compensation for continued wrongful occupation after institution of the proceedings and necessarily depend upon the uncertain period during which such occupation continues. Their duration, and consequently the amount payable, cannot ordinarily be determined at the institution of the proceedings. Accrued mesne profits, however, stand upon a different footing. Once the adjudicating authority determines the liability or fixes the rate payable so that the amount becomes capable of precise arithmetical ascertainment, the uncertainty disappears to that extent and the liability assumes the character of an existing monetary obligation embodied in the decree.

60. It is in that context that the decision of the Supreme Court in **Gopalakrishna Pillai** must be understood. The Supreme Court was concerned with the nature of a claim for future mesne profits at the stage of institution of the suit and explained why such a claim is incapable of present valuation, there being no existing cause of action in respect thereof. The decision also recognised the power of the Court under Order XX Rule 12 of the Code of Civil Procedure to award future mesne profits. The judgment does not consider the valuation of an appeal where the decree itself has already created a monetary liability towards mesne profits. It is, therefore, distinguishable on the question which arises in the present proceedings.

61. The decision of the Madhya Pradesh High Court in **Shivaji v. Deoji** likewise proceeded in the context of future mesne profits accruing during the pendency of the proceedings. It was observed that where the decree for possession is displaced, the consequential relief relating to future mesne profits would ordinarily fail with it and, therefore, separate court fee was not exigible upon such contingent liability. The principle enunciated therein was directed to liabilities which had not yet crystallised and not to a quantified or otherwise ascertainable monetary obligation incorporated in the decree under challenge.

62. The Full Bench decision of the Kerala High Court in **Ratnamma** substantially proceeds upon the same distinction between contingent future mesne profits and liabilities which have already become enforceable. None of those authorities lays down an absolute proposition that every award relating to mesne profits necessarily remains outside the valuation of an appeal irrespective of the nature of the decree or the relief claimed therein.

63. The authorities relied upon by the respondent address the position obtaining after the liability has crystallised into a definite monetary obligation. **In re Kudappa Subbamma**, it was recognised that although

a claim for future mesne profits may initially remain incapable of valuation, the position materially changes once the Court determines the rate, specifies the period or otherwise renders the liability capable of precise computation. At that stage, the claim ceases to remain wholly uncertain and crystallises into a definite monetary liability forming part of the decree. An appellant seeking to avoid such liability must value the appeal accordingly.

64. The same principle is reflected in the Full Bench decision of this Court in **Ragho Prasad.** As noticed hereinbefore, the Full Bench authoritatively held that the valuation of an appeal must correspond to the actual relief claimed against the decree and not necessarily to the valuation adopted at the institution of the proceedings. The Court emphatically rejected the contention that because an appeal is a continuation of the suit, the valuation adopted in the original proceedings must invariably govern the memorandum of appeal. The Full Bench observed that if the appellant seeks to be relieved against the whole of a money decree, "the valuation of the relief cannot be arbitrary. It must be related to the relief sought."

65. The decision of this Court in **Alok Kumar Jain** also lends support to the statutory construction adopted herein. While considering the scheme of Sections 39 and 42 of the Act, 2021, the Court recognised that the computation of court fee in proceedings under the Act continues to be governed by the Court Fees Act, 1870, subject only to the statutory modifications expressly enacted by the Legislature. Nothing in that decision suggests that Section 39 creates a self-contained code dispensing with the settled principles governing valuation of appeals.

66. The real divergence between the parties thus lies not in the authorities upon which reliance has been placed, many of which are common to both sides, but in the interpretation sought to be placed upon them and their application to the facts of the present case. The distinction is not one of conflicting legal principle but of the stage at which the liability falls for consideration and the nature of the relief sought before the appellate court.

Application of the Principles to the Present Case

67. The controversy in the present case must, therefore, be resolved not by applying any single decision in isolation but by examining the true character of the liability created under the decree passed by the Rent Authority. The decisive question is whether the amount awarded towards mesne profits, to the extent it had accrued or become capable of precise arithmetical ascertainment on the date of presentation of the appeal, formed part of the decretal liability which the petitioner sought to have displaced. The answer to that question necessarily depends upon the nature of the decree impugned before the Rent Tribunal.

68. The order dated 19.02.2026 passed by the Rent Authority is a composite decree directing eviction of the petitioner from the tenanted premises, recovery of arrears of rent and payment of mesne profits at the prescribed rate from the date specified therein until delivery of possession. The petitioner has challenged that decree in its entirety before the Rent Tribunal. The memorandum of appeal is not confined to the direction of eviction alone, nor does it exclude the monetary liabilities created under the decree. On the contrary, the appeal seeks to have the decree displaced in its entirety.

69. The inevitable consequence is that the subject-matter in dispute in the appeal is co-extensive with the decretal liability sought to be avoided by the petitioner. The valuation of the memorandum of appeal

cannot, therefore, be determined merely by reference to the court fee paid by the respondent-landlady at the institution of the proceedings before the Rent Authority. Once the decree has fastened liabilities upon the petitioner and those liabilities are brought under challenge before the appellate forum, the valuation necessarily falls to be determined with reference to the relief claimed in appeal and not with reference to the fiscal incidents attending the institution of the original proceedings.

70. Equally untenable is the submission that because the respondent-landlady was not required to pay court fee upon the mesne profits component at the stage of institution, the petitioner likewise incurs no liability to pay court fee while challenging that component of the decree. The incidence of court fee upon a plaintiff at the institution stage and the liability of a defendant preferring an appeal arise in distinct statutory settings and are governed by different principles. The former depends upon the nature of the relief claimed in the original proceedings, whereas the latter depends upon the extent of the decree from which the appellant seeks relief. The liability of the plaintiff cannot, therefore, furnish the measure of the liability of the defendant in appeal.

71. The submission founded upon the direction of the Rent Authority regarding payment of court fee at the stage of execution is equally devoid of merit. Such direction merely regulated the stage at which the respondent-landlady would be required to make good the court fee payable on the mesne profits ultimately found recoverable. It neither determines nor controls the independent statutory liability of an appellant to value the memorandum of appeal in accordance with Section 39 of the Act, 2021 read with the Court Fees Act, 1870. The procedural direction contained in the decree cannot override the statutory principles governing appellate valuation.

72. Nor does the petitioner's reliance upon Section 2(4) of the Court Fees Act advance the matter any further. The inclusive definition of the expression "suit", whereby a first and second appeal are brought within its ambit, merely extends the operation of the Court Fees Act to appellate proceedings. It does not enact that the valuation adopted at the institution of the proceedings must necessarily remain frozen for every subsequent appeal. Such an interpretation would run contrary to the scheme of the Court Fees Act itself and to the principles authoritatively stated by the Full Bench of this Court in **Ragho Prasad.**

73. The petitioner's construction of Section 39, if accepted, would lead to consequences difficult to reconcile with the statutory scheme. An appellant could challenge a decree imposing substantial quantified monetary liability while paying court fee only upon the valuation adopted before adjudication, notwithstanding that the decree has materially altered the rights and obligations of the parties. Such a construction would not only disregard the concept of the "subject-matter in dispute in appeal" embodied in the Court Fees Act but would also enlarge the limited statutory fiction enacted by Section 39(2) beyond its legitimate field of operation.

74. On the other hand, the interpretation adopted by the Rent Tribunal gives harmonious effect both to Section 39 of the Act, 2021 and to the provisions of the Court Fees Act, 1870. It preserves the statutory fiction enacted by Section 39(2), while at the same time respecting the settled principles governing appellate valuation. Such a construction avoids rendering either enactment otiose and gives full effect to the legislative intent underlying both statutes.

75. In the facts of the present case, the decree under challenge fastens upon the petitioner an existing liability towards arrears of rent and also a liability towards mesne profits, which, to the extent accrued or capable of precise arithmetical ascertainment on the date of presentation of the appeal, formed part of the monetary burden sought to be displaced. That liability consequently constituted part of the subject-matter in dispute before the Rent Tribunal and was liable to be taken into account for purposes of valuation of the memorandum of appeal.

76. The Rent Tribunal, therefore, committed no jurisdictional error in directing the petitioner to make good the deficiency in court fee. Significantly, the Tribunal did not reject the memorandum of appeal on the ground of deficient court fee but merely afforded the petitioner an opportunity to remove the defect within the stipulated period. The course adopted is consistent with the settled procedural approach governing deficient court fee and cannot be characterised as arbitrary or illegal.

77. The supervisory jurisdiction of this Court under Article 227 of the Constitution is intended to ensure that courts and tribunals act within the limits of their jurisdiction and in accordance with law. It is neither an appellate jurisdiction nor one intended to substitute one possible interpretation of a statute with another merely because an alternative view may also be plausible. Unless the order under challenge discloses patent lack of jurisdiction, manifest perversity or an error apparent going to the root of the decision-making process, interference is not warranted.

78. Tested on the aforesaid parameters, the impugned order suffers from no jurisdictional error, manifest illegality or perversity warranting interference under Article 227 of the Constitution. The interpretation placed by the Rent Tribunal upon Section 39 of the Act, 2021 is consistent with the scheme of the enactment, the provisions of the Court Fees Act, 1870 and the settled principles governing valuation of appeals.

Conclusion

79. This Court, accordingly, holds that where an appellant challenges a composite decree passed by the Rent Authority directing eviction together with recovery of arrears of rent and payment of mesne profits, the memorandum of appeal under Section 35 of the Act, 2021 is liable to be valued with reference to the subject-matter in dispute in appeal. To the extent the decree embodies an existing liability towards mesne profits which has accrued or become capable of precise arithmetical ascertainment on the date of presentation of the appeal, such liability forms part of the decretal burden sought to be displaced and is liable to be taken into account in computing the court fee payable on the memorandum of appeal.

80. The Rent Tribunal was, therefore, fully justified in directing the petitioner to make good the deficiency in court fee before proceeding with the appeal. No ground for interference under Article 227 of the Constitution is made out.

81. The petition, being devoid of merit, is accordingly **dismissed**. There shall be no order as to costs.

(2026) 7 ILRA 1583
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.07.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Government Appeal No. 114 of 1990

State of U.P. **...Appellant**
Versus
Tikka **...Respondent**

Issue for Consideration

Whether the learned trial court after considering the special circumstances, as had been raised by the accused, awarded four and half months rigorous imprisonment to the accused.

Head Notes

The Code of Criminal Procedure, 1973-Section 378; The Railway Property (Unlawful Possession) Act, 1966-Section 3(b) - The learned trial court has recorded special and adequate reasons as to why it was adopting a liberal view in only awarding four and a half months imprisonment to the accused, which were that the accused is a poor person and has been in jail during the pendency of the case, and further that there is no other earning member in the family apart from him- Reasons prevailed on the learned trial court in awarding a sentence which was below the minimum prescribed under clause (b) of Section 3 of the Act, 1966, which in our view, would fall within the ambit of being "adequate and special reasons" for the purpose of awarding a lesser sentence than prescribed under the Act, 1966.

No case for interference is made out and the appeal is dismissed. (E-15)

(Para 18, 19 & 22)

Case Law Cited

Nirmal Lal Gupta vs. State of Orissa-1995 Supp. (2) SCC 713

List of Acts

The Code of Criminal Procedure, 1973; The Railway Property (Unlawful Possession) Act, 1966-Section 3(b)

List of Keywords

Statutory requirement for awarding punishment less than what is prescribed in the statute is to record "special and adequate reasons"; Adequate reasons would be commensurate in fitness, sufficient, suitable, equal in magnitude and extent: "Special reasons" means exceptional, particular, peculiar, different from others, designed for a particular purpose, occasion or person, limited in range, confined to a definite field of action.

Case Arising From

Judgment and order dated 16.11.1989 passed by learned Judicial Magistrate, First Class, Northern Railway Lucknow, per which the respondent has been convicted and given imprisonment for a period of four and half months.

Appearances for Parties

Counsel for Appellant(s) : Govt. Advocate
Counsel for Respondent(s) : S.Verma

(Delivered by Hon'ble Abdul Moin, J.
&
Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Sri Anurag Verma, learned AGA appearing for the State-appellant.

2. Under challenge is the judgment and order dated 16.11.1989 passed by learned Judicial Magistrate, First Class, Northern Railway Lucknow, per which the respondent has been convicted and given imprisonment for a period of four and half months.

3. The only ground urged is that the learned court has failed to consider clause (b) of Section 3 of the Railway Property (Unlawful Possession) Act, 1966 inasmuch as the respondent had a criminal history of 12 cases, which were duly placed before the learned trial court, yet the learned trial court has passed the impugned judgment.

4. The contention is that a perusal of clause (b) of Section 3 of the Act, 1966 indicates that it provides for repeat offenders a minimum sentence of two years and a maximum sentence of five years and consequently, the learned trial court has patently erred in only awarding a sentence of four and a half months.

5. In this regard, learned AGA has placed reliance on the judgment of Hon'ble Single Judge of this Court in the case of **Murari Lal vs. State of U.P. ? 1975 SCC OnLine All. 194.**

6. Placing reliance on the aforesaid judgment, the argument is that the learned trial court has patently erred in awarding a lesser punishment than was prescribed under the provisions of the Act 1966 more particularly when the accused was a habitual offender.

7. As nobody has responded on behalf of the respondent, as such, the Court has itself gone through the pleadings on record.

8. As only a short question of law is involved as such the Court proceeds to decide the matter.

9. A perusal of the impugned judgment indicates that the learned trial court after considering the special circumstances, as had been raised by the accused, has awarded four and half months rigorous imprisonment to him. The judgment is sought to be challenged on the ground that once the minimum sentence prescribed is two years and maximum of 5 years with regard to habitual

offenders consequently the learned trial court has erred in giving a lesser sentence.

10. In order to consider this argument, we will have to consider the provisions of Section 3 of the Act 1966 which, for the sake of convenience, is reproduced below:-

"3. Penalty for unlawful possession of railway property. - Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless the proves that the railway property came into his possession law-fully, be punishable-

(a) for the first offence, with imprisonment for a term which may ex-tend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judg. ment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees."

11. From perusal of Section 3 of the Act, 1966, it emerges that whoever is found to be in possession of railway property suspected of having been stolen, shall be punishable, in the case of first offence, with imprisonment for a term which may extend to 5 years, or with fine, or both, and in the absence of special and adequate reasons, such imprisonment shall not be less than 1 year. However, for a second or subsequent offence, the person would be given imprisonment for a term which may extend to 5 years or with fine, and in the absence of special and adequate reasons to be mentioned in the judgment, such imprisonment shall not be less than 2 years and fine shall not be less than Rs. 2,000.

12. Once the respondent was having a criminal history of 12 cases, as has been contended by the appellant, as such, it would be clause (b) of Section 3 of the Act, 1966, which would be applicable upon him i.e. he being given imprisonment for a term which may extend to 5 years, but such imprisonment will not be less than 2 years in the absence of special and adequate reasons to be mentioned in the judgment.

13. Thus, it is apparent that in case the Court mentioned special and adequate reasons then it would be the prerogative of the Court to grant a sentence of less than two years to the person being convicted more particularly when clause (b) of Section 3 of the Act, 1966 uses the words "special and adequate reasons."

14. Clause (b) of Section 3 of the Act, 1966 has been considered by the Hon'ble Supreme Court in the case of **Nirmal Lal Gupta vs. State of Orissa**- 1995 Supp. (2) SCC 713, wherein the Hon'ble Supreme Court has held as under:

"4. Our attention may now be focussed on the provision of the section itself. As is evident, it has two clauses. Clause (a) operates to award punishment for the first offence. Clause (b) operates to award punishment for the second or subsequent offence. Both are worded differently. Whereas for clause (a) the maximum term of imprisonment which can be imposed can be upto 5 years, the minimum term of imprisonment imposable is upto one year, and there is a mandate that it shall not be for a period less than one year unless and until for some special and adequate reasons to be mentioned in the judgment of the court, a lesser period of imprisonment had been awarded. It is in this way that the sentence of imprisonment is compartmentalised. The other alternate punishment is imposition of fine. Whereas there is no maximum limit of the fine imposable, but which can in no event be excessive and unreasonable, there is, on the same analogy, a minimum of Rs. 1,000.00 fine imposable, unless and until for special and adequate reasons to be mentioned in the judgment of the court, the fine imposed was less than one thousand rupees. This too has its own compartment. Clause (a) gives a choice to the court to either award imprisonment or impose fine, or both. It is the choice of the court which determines whether imprisonment alone should be awarded or fine alone be imposed or both should be awarded. It is thus obvious that it is not obligatory on the court to always award imprisonment as a punishment. Once it is so understood it is difficult to comprehend that a minimum sentence alone thereunder is imposable to which the Probation of Offenders Act would not be applicable.

5. The above result is also achieved when clause (a) is compared with clause (b). For the second or subsequent offence the court is obligated to award imprisonment for a term which may extend to five years and also impose fine. ***The awardable imprisonment however cannot be less than two years and such fine cannot be less than two thousand rupees, unless for special and adequate reasons, to be mentioned in the judgment of the court, the imprisonment of less than two years is imposed and a fine less than Rs. 2,000.00 is imposed. Here there is a compulsion to impose both kinds of sentences, unless the court exercises discretion to do away with imposing any punishment. The limited distinction in the two clauses is prominent."***

(emphasis by the Court)

15. After comparing clause (a) and clause (b) of Section 3 of the Act, 1966, the Hon'ble Supreme Court has observed that the awardable imprisonment cannot be less than 2 years and such fine cannot be less than Rs. 2,000 **unless for special and adequate reasons to be mentioned in the judgment** of the Court the imprisonment of less than 2 years is imposed meaning thereby that the sine qua non to imposition of a lesser punishment than 2 years is the mentioning of special and adequate reasons in the judgment.

16. We may hasten to add that in the case of **Nirmal Lal Gupta** (supra), the Hon'ble Supreme Court was only considering clause (a) of Section 3 of the Act, 1966, yet carved out a distinction between clause (a) and clause (b) of Section 3 of the Act, 1966 and also observed about the 'special and adequate reasons'.

17. What would be "special and adequate reasons" has been considered threadbare by the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Vinod Kumar** - (2012) 6 SCC 770 wherein the Hon'ble Supreme Court held as under:

"9. The statutory requirement for awarding the punishment less than seven years is to record adequate and special reasons in writing. Dictionary meanings of the word "adequate" are commensurate in fitness, sufficient, suitable, equal in magnitude and extent, and fully. "Special reasons" means exceptional; particular; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action. Thus, in a case like the instant one, in order to impose the punishment lesser than prescribed in the statute, there must be exceptional reasons relating to the crime as well as to the criminal.

10. In Meet Singh v. The State of Punjab, AIR 1980 SC 1141, this Court while dealing with expression "special reasons" held that it means special to the accused concerned.

"7...The court has to weigh reasons advanced in respect of each individual accused whose case is taken up for awarding sentence. The word 'special' has to be understood in contradistinction to word 'general' or 'ordinary'. Thus, anything which is common to a large class governed by the same statute, cannot be said to be special to each of them. Therefore, in the context of sentencing process, special reasons must be 'special' to the accused in the facts and circumstances of the case in which the sentence is being awarded.

11. In Madhukar Bhaskarrao Joshi v. State of Maharashtra, AIR 2001 SC 147, this Court examined a similar provision under the Prevention of Corruption Act, 1988 which also contained a provision that accused shall be imposed the punishment which "shall not be less than one year" , however, a lesser punishment may be awarded recording the special reasons. The Court held:

"17…. The proviso is in the form of a rare exception by giving power to the Court for reducing the imprisonment period below one year only when there are "special reasons" and the law required that those special reasons must be recorded in writing by the Court….

18...Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals……Such a legislative insistence is reflection of Parliament's resolve to meet corruption cases with very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants……

19. In the present case, how could the mere fact that this case was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the PC Act and it is not a speciality of this particular case. It is the defect of the system that longevity of the cases tried under the PC Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by the Parliament the legislative exercise would stand defeated.

(Emphasis added)"

18. From perusal of the judgment of **Vinod Kumar** (supra), it emerges that the statutory requirement for awarding the punishment less than what is prescribed in the statute is to record "special and adequate reasons" in writing. Adequate reasons would be commensurate in fitness, sufficient, suitable, equal in magnitude and extent, while "special reasons" means exceptional, particular, peculiar, different from others, designed for a particular purpose, occasion or person, limited in range, confined to a definite field of action.

19. Accordingly, when the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar** (supra), which deals with "adequate and special reasons" is seen in the context of the impugned judgment of the learned trial court dated 16.11.1989, it emerges that the learned trial court has recorded special and adequate reasons as to why it was adopting a liberal view in only awarding four and a half months imprisonment to the accused, which were that the accused is a poor person and has been in jail during the pendency of the case, and further that there is no other earning member in the family apart from him. Thus, these reasons prevailed on the learned trial court in awarding a sentence which was below the minimum prescribed under clause (b) of Section 3 of the Act, 1966, which in our view, would fall within the ambit of being "adequate and special reasons" for the purpose of awarding a lesser sentence than prescribed under the Act, 1966. Thus, this Court does not find any infirmity in the judgment of the learned trial court.

20. So far as the judgment of this Court in the case of **Murari Lal** (supra) is concerned, suffice to state that this Court was of the view that the reasons being cited by the accused raising a challenge to the sentence awarded to him by the learned trial court on being convicted under the provisions of the Act, 1966 did not fall within the ambit of being "special and adequate reasons", and thus dismissed the revision.

21. The aforesaid judgment would have no applicability in the instant case as we have already observed that special and adequate reasons prevailed on the learned trial court in awarding a lesser sentence.

22. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the appeal is dismissed.

23. This Court also records the assistance rendered by Mr. Mohd. Azam Siddiqui, Research Associate of this Court.

(2026) 7 ILRA 1589
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 01.07.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Government Appeal No. 434 of 1984

State of U.P. **...Appellant**
Versus
Munna **...Respondent**

Issue for Consideration

Whether the learned trial court has recorded its findings on the basis of the material available on record in consonance with law while passing the judgment and order dated 30.04.1983 whereby the accused, was acquitted of the charges under Sections 302 and 323 of the Indian Penal Code.

Head Notes

The Code of Criminal Procedure, 1973-Section 378; The Indian Penal Code, 1860- Sections 302 & 323- The prosecution case suffers from deeply entrenched infirmities and major discrepancies. The very genesis of the prosecution case has been suppressed and the informant, who was the most natural and injured witness of the incident, completely discarded the prosecution version. By turning hostile, she explicitly refused to support the case in respect of the core allegation that the accused-respondent had assaulted the deceased and herself. The testimonies of other two witnesses of facts, namely PW4 and PW-6, do not possess the attributes of sterling quality and are legally insufficient to sustain a conviction. Furthermore, a clear and credible motive is completely lacking on record.

Held- The learned trial court reasonably and justifiably concluded that the prosecution had miserably failed to prove its case against the accused person beyond reasonable doubt. This Court does not find any manifest illegality, perversity, or jurisdictional error in the impugned judgment and order of acquittal. The findings recorded by the learned trial court are well-founded, legally sustainable, and based on a meticulous appreciation of the material available on the record. The view taken by the trial court is a highly plausible and reasonable view, which is in perfect consonance with the settled principles of law, warranting no interference. **Appeal dismissed. (**E-15)

Case Law Cited

Union of India and Others Vs. Sepoy Pravat Kumar Behuria; (2019) 10 SCC 220;Mathai Mathews Vs. State of Maharashtra; (1970) 3 SCC 772;Vaibhav Vs. State of Maharashtra; (2025) 8 SCC 315;Rai Sandeep Vs. State (NCT of Delhi), (2012) 8 SCC 21; Kannaiya Vs. State of Madhya Pradesh; 2025 SCC OnLIne SC 2270; Bhagwan Sahai v. State of Rajasthan; Pankaj Vs. State of Rajasthan

List of Acts

The Code of Criminal Procedure, 1973-Section 378; The Indian Penal Code, 1860

List of Keywords

Prosecution case suffers from infirmities and major discrepancies; Informant, the most natural and injured witness completely discarded the prosecution version; Clear and credible motive is completely lacking; Testimonies of witnesses of facts, do not possess the attributes of sterling quality ; Legally insufficient to sustain a conviction

Case Arising From

Government Appeal under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order dated 30.04.1983 passed the learned Sessions Judge, Hardoi in Sessions Trial No. 746 of 1982, whereby the accused respondent, Munna, was acquitted of the charges under Sections 302 and 323 of the Indian Penal Code.

Appearances for Parties

Counsel for Appellant(s) : Govt. Advocate
Counsel for Respondent(s) :

(Delivered Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Shri Pawan Kumar Mishra, learned AGA for the appellant-State.

2. The instant Government Appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order dated 30.04.1983 passed by Sri R.S. Agarwal, the then learned Sessions Judge, Hardoi in Sessions Trial No. 746 of 1982, whereby the accused-respondent, Munna, was acquitted of the charges under Sections 302 and 323 of the Indian Penal Code.

3. The factual matrix of the case is that on 16.03.1982 in the evening, the stepson of the informant, namely Munna, expressed an apprehension to his stepmother, Smt. Jai Devi (the informant), that some persons were planning to kill him. The accused, Munna, also called his uncle, Sri Ram, to the house. Thereafter, all three sat down and took their dinner inside the kothari (room). After dinner, the accused, Munna, locked the door of the kothari from inside. The deceased, Sri Ram, lay down on a cot, while the informant lay down on the floor inside the kothari, where a diya (earthen lamp) was burning.

4. At about 12:00 midnight, the accused, Munna, got up, picked up a moosal (wooden pestle), and began to assault Sri Ram with it, exclaiming that he wanted to usurp his property by killing him and would not leave him alive. When the informant, Smt. Jai Devi, raised an alarm and cried out for help, the accused also assaulted her with the moosal. Upon hearing the hue and cry, the villagers arrived at the spot. Since the kothari was locked from inside, an opening was made by breaking the western wall of the kothari. In the light of the torches and the opening made in the western wall, the villagers saw the accused assaulting Sri Ram.

5. The informant, in an attempt to save herself, peeped out from the opening made in the western wall, whereupon the villagers, namely Bhola and Mulayam, dragged her outside. At that time, villagers Pitamber, Badri, Chhote Lal, and several others were present at the spot and witnessed the incident. In this occurrence, the informant also sustained internal and external injuries. Smt. Jai Devi dictated a written report at the police station at 7:15 A.M. on 17.08.1982. On the basis of the said written report submitted by the informant, a First Information Report (FIR)

was lodged against the accused, Munna, son of Raja Ram, on 17.08.1982 at 7:15 A.M. at Police Station Majhla, District Hardoi, which was located at a distance of 10 kilometers from the place of occurrence.

6. After lodging of the FIR, the police reached the place of occurrence, conducted proceedings for the inquest on the body of the deceased, sealed the corpse, and dispatched the dead body along with the necessary documents for an autopsy.

7. The post-mortem examination on the body of the deceased, Sri Ram, was conducted on 18.08.1982 at 4:30 P.M. by Dr. R.M. Gupta (PW-1), who recorded the following antemortem injuries on the person of the deceased:

(A) External Injuries:

1. Contusion measuring 14 cm x 10 cm over the right side of the face with underlying fracture of the maxillary bone and right side of the mandible badly fractured.

2. Contusion measuring 10 cm x 8 cm over the left side of the face, with underlying fracture of the left maxillary bone badly fractured.

(B) Internal Examination:

Head & Neck: Underlying the scalp, the right parietal bone was found fractured. The membranes of the brain were deeply congested, and a lacerated hematoma measuring 4 cm x 3 cm was present under the right parietal bone. The brain was also deeply congested on the right side.

Thorax: The walls, ribs, and cartilages were normal. Both lungs were normal and congested. The heart was normal with a weight of 200 grams.

Abdomen: The buccal cavity and teeth showed 16/16 teeth present, mostly dislocated because of the mandible fracture on both sides. The stomach contained 2 ounces of paste-like food matter. The small intestine contained liquid, feces, and gas, while the large intestine contained fecal matter and gas. The liver weighed 1000 grams and was normal. The spleen weighed 100 grams and was normal. Both kidneys weighed 210 grams and were normal.

8. The Doctor opined that the cause of death was shock and hemorrhage resulting from the aforementioned antemortem injuries.

9. During the course of the investigation, the Investigating Officer collected various articles and objects from the place of occurrence and prepared recovery memos in respect of the torch, kuppi (oil lamp), blood-stained clothes, moosal (wooden pestle), blood-stained and plain earth, the banyan (undershirt), and the cot. A site plan was also prepared at the instance of the informant. The Investigating Officer recorded the statements of the witnesses under Section 161 of Cr.P.C. and, upon finding sufficient prima facie evidence against the accused, submitted a charge-sheet under Section 302 of IPC before the competent court.

10. Upon compliance with the statutory provisions, the case, being exclusively triable by a Court of Session, was committed to the Court of Session under Section 209 of the Cr.P.C. The case was registered as Sessions Trial No. 746 of 1982, and charges under Sections 302 and 323 of the IPC were formally framed against the accused, Munna. The charges were read over and explained to the accused in Hindi, to which he pleaded not guilty and claimed to be tried.

11. To prove its case, the prosecution adduced the following oral evidence:

1. Dr. R.M. Gupta (PW-1)
2. Dr. S.C. Vaish (PW-2)
3. Smt. Jai Devi (PW-3)
4. Mulayam Singh (PW-4)
5. H.C. Mahadev Singh (PW-5)
6. Pitamber (PW-6)
7. SO Ganesh Prasad Mishra (PW-8)

12. In addition to the oral evidence, the following documentary evidence was also adduced by the prosecution:

1. Exhibit Ka-1: Post-mortem Report of the deceased, Sri Ram, conducted by Dr. R.M. Gupta (PW-1).
2. Exhibit Ka-2: Injury Report of the informant, Smt. Jai Devi, prepared by Dr. S.C. Vaish (PW-2).
3. Exhibit Ka-3: First Information Report (FIR) lodged at Police Station Majhla, District Hardoi.
4. Exhibit Ka-4: Copy of General Diary (GD) Entry / Nakal Rapat No. 10, dated 17.08.1982.
5. Exhibit Ka-5: Copy of General Diary (GD) Entry / Nakal Rapat No. 29.
6. Exhibit Ka-6: Copy of General Diary (GD) Entry / Nakal Rapat No. 18, dated 17.08.1982.
7. Exhibit Ka-7: Copy of General Diary (GD) Entry / Nakal Rapat No. 16.
8. Exhibit Ka-8: Written Report (Tahrir) dictated by the informant, Smt. Jai Devi.
9. Exhibit Ka-9: Recovery Memo (Fard) in respect of the Torches and Earthen Lamp (Kuppi).
10. Exhibit Ka-10: Copy of the statement of Smt. Jai Devi recorded under Section 161 of the Cr.P.C..
11. Exhibit Ka-11: Inquest Report (Panchayatnama) prepared by the police.
12. Exhibit Ka-12: Police Form No. 379.
13. Exhibit Ka-13: Police Form No. 13 (Chalan Nash).
14. Exhibit Ka-14: Site Plan (Naksha Nazri Moka) prepared by the Investigating Officer.
15. Exhibit Ka-15: Recovery Memo (Fard) in respect of the blood-stained clothes (undershirt/banyan and pajama) of the accused, Munna.
16. Exhibit Ka-16: Recovery Memo (Fard) in respect of the weapon of offense, the blood-stained wooden pestle (moosal).
17. Exhibit Ka-17: Recovery Memo (Fard) in respect of the blood-stained and plain earth collected from the spot.
18. Exhibit Ka-18: Recovery Memo (Fard) in respect of the undershirt (banyan) of the deceased and the string/rope (wan) cut out from the cot.
19. Exhibit Ka-19: Charge-sheet submitted by the Investigating Officer against the accused, Munna.

13. After completion of the prosecution evidence, the statement of the accused-respondent was recorded under Section 313 of the Code of Criminal Procedure, 1973. The accused denied all the incriminating evidence and circumstances put to him and stated that he had been falsely implicated in the present case. He stated that his implication was a result of an ongoing enmity over a field/land dispute involving the villager Pitamber. He further took a specific defense plea that on the fateful night, certain miscreants/dacoits had committed a dacoity at the house, during which incident he as well as the informant, Smt. Jai Devi, sustained injuries, and the deceased, Sri Ram, was killed by the said assailants.

14. No oral or documentary evidence has been adduced on behalf of the defense. After hearing both the parties and perusing the material available on the record, the learned trial court observed that the prosecution had suppressed the true genesis of the incident and that the witnesses were not reliable. The learned trial court heavily relied on the fact that the informant had completely discarded the prosecution version and resiled from her statement in court. It further held that no reliable evidence was available on record, noting the absence of a proven motive, material inconsistencies in the statements of the witnesses, and the inimical disposition of the village witnesses. The trial court also drew an adverse inference on the ground that the injuries sustained by the accused were not explained by the prosecution, and concluded that the entire substratum of the prosecution story was demolished by the testimony of the informant herself. Consequently, the learned trial court concluded that the prosecution had miserably failed to prove the charges levelled against the accused beyond reasonable doubt and resultantly acquitted the accused of the charges under Sections 302 and 323 of the IPC.

15. Being aggrieved by the impugned judgment of acquittal, the State has preferred the instant appeal inter alia on the grounds that the learned trial court grossly erred in rejecting the testimony of the informant in its entirety. It is contended that the informant had fully supported the prosecution case in its material aspects during the initial stage and her subsequent turnabout was merely an afterthought to save her stepson, which should not have been used to discard the early, untainted part of the prosecution story. It is further contended that the presence of the other eye-witnesses, namely Mulayam (PW-4) and Pitamber (PW-6), at the spot was not doubted even by the learned trial court, yet their testimony was discarded on the legally untenable ground that they were unreliable.

16. Furthermore, the appellant urges that the learned trial court completely ignored a highly incriminating circumstance that the Investigating Officer, Ganesh Prasad Mishra (PW-8), found the accused, Munna, inside the kothari where the deceased was lying dead on the cot. The accused had locked himself inside and bargained with the villagers, stating that he would only come out if his dispute was settled. It was only upon the categorical assurance given by the Investigating Officer that he would not be beaten that the accused opened the door of the kothari and was taken into custody. It is submitted that the learned trial court failed to appreciate these binding circumstances, which directly point toward the guilt of the accused and passed the impugned judgment of acquittal in a mechanical and arbitrary manner. The appellant maintains that the prosecution has conclusively proved its case by adducing relevant, material, and reliable oral as well as documentary evidence and therefore the impugned judgment of acquittal is liable to be set aside,

the appeal deserves to be allowed, and the accused-respondent is liable to be convicted and sentenced in accordance with law.

17. Heard learned counsel for the parties and perused the record. At the very outset, it is expedient to outline the settled legal principles governing the power of an appellate court to interfere with and reverse a judgment of acquittal. The law regarding the scope of an appeal against acquittal under Section 378 of the Cr.P.C. has been consistently highlighted and consolidated by the Hon'ble Apex Court a catena of cases. In the case of Union of India and Others Vs. Sepoy Pravat Kumar Behuria; (2019) 10 SCC 220, in para 17 the Court observed as follows:-

"17. It is trite law that judgments of acquittal should not be disturbed unless there are substantial or compelling reasons. The substantial or compelling reasons to discard a judgment of acquittal were examined by this Court in Ghurey Lal v. State of U.P. [Ghurey Lal v. State of U.P., (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] which are as follows: (SCC p. 477, para 70)

"70. 1.

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in grave miscarriage of justice ;

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached one that leads to acquittal, the other to conviction the High Courts/appellate courts must rule in favour of the accused."

18. In **Mathai Mathews Vs. State of Maharashtra; (1970) 3 SCC 772**, in para 5 the Court observed as under:-

5. It is now well-settled that the power of an appellate court to review evidence in appeals against acquittals is as extensive as its power in appeals against convictions. It is also well-settled that before an appellate court can set aside an order of acquittal, it must carefully consider the reasons given by the trial court in support of its order and must give its own reasons to reject those reasons. If a finding reached by the trial Judge cannot be said to be a unreasonable finding then the appellate court should not disturb that finding even if it is possible to reach a different conclusion on the basis of the material on record. It should bear in mind the presumption of innocence of the accused and the fact that the Trial Judge had the advantage of seeing and hearing the witnesses. In brief, the appellate court should not disturb an order of acquittal except on very cogent grounds. On an examination of the entire material on record we have come to the conclusion that the High Court was not justified in setting aside the order of the trial court.

18. In view of the above settled position of law, it is to be seen whether the learned trial court has recorded its findings on the basis of the material available on record in consonance with law. It is not disputed that the informant, Smt. Jai Devi, is the stepmother of the accused, Munna. It is also not disputed that the deceased, Sri Ram, was the uncle of the accused and a cousin of the informant's husband, Raja Ram. As stated by Smt. Jai Devi (PW-3), the deceased had major children; however, none of the children of the deceased has been examined by the prosecution.

19. As per the First Information Report, exhibited as Exhibit Ka-3, the informant, the deceased, and the accused were all present inside the kothari where the incident took place. According to the FIR, the accused first launched an assault with a moosal on the deceased, Sri Ram, who was on a cot, repeatedly striking him. When the informant raised an alarm, the accused beat her as well.

18. However, during the trial, the informant, Smt. Jai Devi, who was examined as PW-3, did not support the prosecution version. She stated that after her marriage, she resided mostly at Kanpur, where her husband, Raja Ram, was employed. She further deposed that on the date of the incident, she had come to the village. According to her trial testimony, while they were sleeping at night, the deceased, Sri Ram, raised an alarm, shouting "हाय बदमाश आ गये मारे डालते हैं". She claimed that upon hearing this alarm, the accused, Munna, and she herself came out of the kothari and saw miscreants assaulting the deceased. When she rushed to save him, the miscreants beat her as well, causing her injuries. Thereafter several villagers arrived and the miscreants fled the spot.

19. She categorically stated before the Court that she neither dictated the written report to Pitamber nor went to the police station to lodge the FIR. She asserted that when the police arrived at the spot in the morning, they obtained her thumb impression on a blank piece of paper, which corresponds to Paper No. 3/2-Ka. Upon perusing the said document in Court, she emphasized that she had not lodged the report. Due to her complete refusal to support the prosecution version, the witness was declared hostile.

20. During her cross-examination by the prosecution, she denied having made the statement recorded by the Investigating Officer under Section 161 of the Cr.P.C.. She also denied the actual place of occurrence being the kothari, specifically stating that no moosal was present inside the room. Instead, she claimed that 15 to 16 miscreants entered the courtyard and brutally beat the deceased with lathis and dandas. She further stated that the miscreants also inflicted blows upon her and the accused, Munna, and since there was total darkness, it was possible that the miscreants might have assaulted her with a moosal. She further alleged that the miscreants committed a loot, taking away her jewellery from a box inside the house.

21. Significantly, this witness also deposed about an ongoing dispute over an orchard. She stated that the uncle of the witness Pitamber had been assassinated in the past and that the deceased Sri Ram had deposed in a case. She asserted that there was an orchard in the field where the accused, Munna, had made an encroachment, leading to bitter enmity between Munna and Pitamber. She claimed that due to this pre-existing enmity, Pitamber had falsely implicated the accused, Munna, in the present case.

22. Thus, the star witness of the prosecution completely resiled from the prosecution version, shifting the entire manner of occurrence and exonerating the accused from his alleged role. Although it is an undisputed fact on record that the deceased met a homicidal death caused by blows from a hard and blunt object, the fundamental question that arises is who actually assaulted the deceased. While the prosecution version initially averred in the FIR that the accused, Munna, was the sole culprit who brutally assaulted and killed the deceased. The informant turned completely hostile before the Court. It is noteworthy that Smt. Jai Devi is the stepmother of the accused. Since she herself sustained substantial injuries during the same incident, it strains credulity to assume why an injured victim would easily spare her own assailant to falsely shield her stepson unless the genesis of the crime itself was clouded by reasonable doubt.

23. It is further observed that no motive has been assigned to the accused in the FIR. Although it is a well-settled principle of criminal jurisprudence that where the facts are absolutely clear and the prosecution case is fully supported by an unassailable eye-witness account, the absence or weakness of motive becomes insignificant, yet it can never be ignored that motive plays an important role in the commission of a crime, especially when the ocular testimony is shaky or compromised. In the present case, a credible and clear motive linking the accused to the commission of the offense is visibly lacking, which further weakens the prosecution's case.

24. In this regard the Hon'ble Apex Court, in the case of **Vaibhav Vs. State of Maharashtra; (2025) 8 SCC 315,** has held as under:-

33. We may now come to the next aspect of the case i.e. absence of motive and consequence thereof. It is trite law that in a case based on circumstantial evidence, motive is relevant. However, it is not conclusive of the matter. There is no rule of law that the absence of motive would ipso facto dismember the chain of evidence and would lead to automatic acquittal of the accused. It is so because the weight of other evidence needs to be seen and if the remaining evidence is sufficient to prove guilt, motive may not hold relevance. But a complete absence of motive is certainly a circumstance which may weigh in favour of the accused. During appreciation of evidence wherein favourable and unfavourable circumstances are sifted and weighed against each other, this circumstance ought to be incorporated as one leaning in favour of the accused.

25. It has been vehemently emphasized by the learned counsel for the appellant that since the prosecution has produced two other witnesses of facts who are also eye-witnesses to the incident, the turnabout or resiling of the informant from her statement will have no adverse effect on the prosecution case, provided the charges are established beyond reasonable doubt by such other evidence. In order to test this submission, we proceed to scrutinize the testimony of the remaining two witnesses of facts.

26. At this juncture, it is a well-settled principle of criminal jurisprudence that judicial evaluation of ocular evidence broadly categorizes witnesses into three distinct types: (i) wholly reliable, for whom no formal corroboration is required to base a conviction; (ii) partly reliable and partly unreliable, whose testimony requires independent corroboration in the shape of either ocular, documentary, circumstantial, or medical evidence before placing reliance; and (iii) wholly unreliable, whose testimony must be rejected outright.

27. To prove its case, the prosecution has adduced Mulayam as PW-4. This witness stated in his examination-in-chief that at the time of the incident, he was sleeping on the roof of his house when he heard a noise coming from Munna's house. He rushed toward the spot, where other villagers, namely Bhola, Chhote Lal, Badri, and Pitamber also met him. He claimed that from inside the kothari, the screaming of Smt. Jai Devi was audible, who was crying out "हाय मुन्ना मारे डाल रहा है". He further stated that they all broke the western wall of the kothari to open a passage, through which they saw, with the help of a torch, that the accused, Munna was holding a moosal in his hand. They then pulled Smt. Jai Devi outside through the said passage but Munna remained locked inside the kothari. He also deposed that Smt. Jai Devi told him that Munna had beaten her as well and thereafter she dictated the written report (tahrir) to Pitamber.

28. However, a close perusal of the cross-examination of this witness completely shakes the credibility of his ocular account. During his cross-examination on behalf of the accused, PW-4 stated that at the time of the incident, there was a great hue and cry and about 20 to 25 people had gathered at the spot. He reiterated that screaming was coming from inside the kothari and that Munna was holding a moosal.

29. Crucially, however, he admitted in his cross-examination that he did not state to the Investigating Officer in his statement recorded under Section 161 of the Cr.P.C. that he had actually seen Munna inflicting blows with the moosal upon his uncle, Sri Ram, or that the accused assaulted the informant when she rushed to save the deceased.

30. Thus, from a holistic evaluation of the testimony of PW-4, it clearly emerges that he merely reached the spot after hearing the hue and cry and did not actually witness the execution of the crime with his own naked eyes. At best, his testimony is limited to the assertion that he saw the accused, Munna, holding a moosal in his hand and that the informant had informed him about the assault.

31. On the contrary, the informant, Smt. Jai Devi (PW-3) has explicitly denied these facts in her testimony, categorically asserting that 15 to 16 outside miscreants entered their courtyard, committed a loot, and inflicted blows upon the deceased, the accused, and herself, whereby they all sustained injuries. She has completely disowned the written report, stating that the tahrir was never written on her dictation and that the police merely obtained her thumb impression on a blank piece of paper on the next morning.

32. Consequently, the testimony of PW-4 cannot be termed as cogent, consistent, or believable. His derivative knowledge regarding the assault allegedly made by the accused stands completely contradicted and demolished by the very person the informant from whom he claims to have gathered such knowledge. Therefore, the testimony of PW-4 falls into the category of unreliable evidence and fails to provide the requisite independent corroboration to the prosecution case.

33. The other witness of fact produced by the prosecution is Pitamber, who was examined as PW-6, who also stated that upon raising of the alarm by the informant, Smt. Jai Devi, from inside

the kothari, he rushed toward the house of Munna where Bhola, Chhote Lal, and Badri met him. Mulayam was having a torch. Jai Devi was screaming to save her and that someone was killing them. Then the western wall of the kothari was broken and after making an opening, they saw that Munna was having a moosal and was beating Jai Devi. Then they scolded the accused, Munna, and he left the moosal. Thereafter, they pulled Jai Devi out from the passage of the opening. He also stated that Jai Devi had dictated the report to him regarding the incident, and after being heard, she had put her thumb impression. On being cross-examined by the counsel of defense, he also stated that he did not tell the Investigating Officer that he saw inside the kothari that the accused was inflicting blows to Sri Ram, and if this statement has been recorded by the Investigating Officer, it is not in his knowledge. But he also admitted that the accused, Munna, sustained an injury on his neck. However, he denied the commission of the dacoity in the house of the informant on the date of the incident and he also denied that during the commission of a dacoity, the deceased was assaulted. He admitted that the murder of his uncle was conducted but he does not know whether in that trial the deceased, Sri Ram, was a witness or not. He denied that Munna had encroached on his field. He stated that the report was lodged at about 2:30 in the night, but he did not depose that in the night information was sought from the police station and police personnel arrived there.

34. From this evidence also, it reveals that he did not see through his naked eye that the accused, Munna was inflicting blows to the deceased. He only said Munna was having a moosal in his hand and Jai Devi has specifically denied this fact. Thus, the testimony of this witness, who is examined as an eye-witness, is not sufficient to prove the charge levelled against the accused, as his deposition has been contradicted by the informant and she had stated that she never dictated to Pitamber for the lodging of the FIR and the averments made in the FIR were prepared later on after taking her thumb impression on a blank paper. Moreover, the evidence of PW-6 as well as PW-4 may be circumstantial evidence that after a hue and cry they reached the spot and saw the deceased and Jai Devi, but from their evidence, it does not reveal that they witnessed the core execution of the incident.

35. Here it is to be notable that witnesses should be of sterling quality, as the Hon'ble Apex Court held in the case of **Rai Sandeep Vs. State (NCT of Delhi), (2012) 8 SCC 21.** The relevant paragraph of the said judgment is extracted herein-below:

"22. In our considered opinion, the sterling witness should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the

scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a sterling witness whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

36. In view of the law cited by the Hon'ble Apex Court regarding the sterling quality of a witness, when we examine the depositions made by PW-4 Mulayam and PW-6 Pitamber, we find that the quality of the testimonies of these witnesses is not of sterling quality. Their testimonies are mostly based on the statement of the informant, who is said to have narrated the story, while she herself has completely denied this statement in court.

37. Now the question arises as to why these witnesses of fact gave evidence against the accused. The accused has stated in his statement recorded under Section 313 of Cr.P.C. that the witnesses were inimical to him, since Pitamber always quarreled with him regarding the field of Lewa, and because the accused was in possession of the Lewa field, he was falsely implicated due to this enmity. It is a settled principle that enmity is a double-edged weapon that can cut both ways. One aspect is that it may rule out false implication, while the other aspect is that it may serve as a motive to take revenge by falsely implicating an innocent person with whom a dispute was pending earlier. In this regard, although it is apparent that there is no documentary evidence on record with regard to any earlier scuffle between the accused and Pitamber, the prosecution's star witness (the informant) stated in her deposition that Pitamber was inimical to the accused, Munna, because Munna had forcibly made an encroachment on the field of Pitamber. Thus, the possibility that the accused may have been falsely implicated due to pre-existing enmity cannot be ruled out.

38. It is also pertinent to observe that no report from the Forensic Science Laboratory (FSL) with regard to the blood-stained clothes and objects found on the spot has been produced before the court. There is not even an FSL report for the blood-stained earth and simple earth which had been collected during the course of the investigation from the alleged place of occurrence. No plausible explanation has been offered by the prosecution as to why this material evidence was prevented from being presented before the court, which also warrants an adverse inference against the prosecution case.

39. There is also a glaring fact that none of the sons of the deceased was examined by the prosecution. It appears from the record that a son of Sri Ram, as well as Bhola and the brother of the accused were residing in that very house on the date of the incident. Yet, the prosecution has failed to offer any plausible explanation for not examining any of them. They would have been the most natural witnesses because if an alarm was raised from inside the kothari, the persons who

were inside the house and living adjacent to the kothari would naturally be the first to witness the occurrence. By failing to examine them, this material witness evidence was suppressed and not disclosed to the court and these circumstances weigh heavily against the prosecution for withholding the true facts.

40. Apart from this, another highly important fact is that the prosecution witnesses did not deny the fact that the accused also sustained injuries. The informant explicitly stated in her statement and Pitamber (PW-6) admitted during his cross-examination that Munna had sustained an injury on his throat. Despite this admission, no explanation regarding the injuries found on the person of the accused, Munna, was offered by the prosecution. In this regard, PW-5 also admitted that the accused had an injury on his person when he came to the police station. The Investigating Officer has also stated that the accused was not beaten after his arrest. This clearly establishes that if the injuries were not inflicted by the police personnel after his arrest, they must have occurred at the time the incident took place. Therefore, the probability of the statement given by the informant that 15 to 16 outside miscreants entered the courtyard, committed a loot, and took away her jewellery, cannot be ruled out.

41. It is also very surprising that as per the prosecution evidence, the deceased, Sri Ram, had arranged the marriage of the daughter of his brother-in-law to the accused prior to the incident. This fact clearly demonstrates that if there was indeed any deeply entrenched animosity or murderous friction between them, it would have been highly improbable for them to enter into such a close familial alliance and get their kith and kin married.

42. On a holistic and critical analysis of the facts, circumstances, and the evidence adduced by the prosecution in its entirety, it is manifest that the prosecution case suffers from deeply entrenched infirmities and major discrepancies. The very genesis of the prosecution case has been suppressed and the informant, who was the most natural and injured witness of the incident, completely discarded the prosecution version. By turning hostile, she explicitly refused to support the case in respect of the core allegation that the accused-respondent had assaulted the deceased and herself. The testimonies of other two witnesses of facts, namely PW-4 and PW-6, do not possess the attributes of sterling quality and are legally insufficient to sustain a conviction. Furthermore, a clear and credible motive is completely lacking on record.

43. The Hon'ble Supreme Court while considering the case of **Kannaiya Vs. State of Madhya Pradesh; 2025 SCC OnLIne SC 2270**, has referred the case of **Pankaj Vs. State of Rajasthan,** wherein it was emphasised that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Court held as under:

"25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was

alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt."

44. The Hon'ble Supreme Court in the said case also referred the case of **Bhagwan Sahai v. State of Rajasthan,** holding that once the prosecution is found to have suppressed the origin and genesis of the occurrence, the only proper course is to grant the accused the benefit of doubt. The Court observed as follows:

"8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-by in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case."

45. Therefore, on the basis of the facts and circumstances emerging from the records available, the learned trial court reasonably and justifiably concluded that the prosecution had miserably failed to prove its case against the accused person beyond reasonable doubt. This Court does not find any manifest illegality, perversity, or jurisdictional error in the impugned judgment and order of acquittal. The findings recorded by the learned trial court are well-founded, legally sustainable, and based on a meticulous appreciation of the material available on the record. The view taken by the trial court is a highly plausible and reasonable view, which is in perfect consonance with the settled principles of law, warranting no interference by this Court.

46. In view of the above discussions, the instant Government Appeal preferred by the State lacks merit and is, accordingly, **dismissed**.

47. The impugned judgment and order of acquittal dated 30.04.1983 passed by the learned Sessions Judge, Hardoi in Sessions Trial No. 746 of 1982 is hereby upheld.

48. Let a copy of this judgment along with the lower court record be sent down to the trial court concerned forthwith for necessary information and compliance.

(2026) 7 ILRA 1602
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 801 of 2026

Rudra Parashar & Anr. ...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue for Consideration

Whether respondent no.4 allegedly took the corpus into his custody without the knowledge or consent of mother and whether being a mother of the minor corpus who is below five years of age, she is entitled to the custody of minor corpus

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus Writ Petition); The Hindu Minority and Guardianship Act, 1956- Section 6(a)- From the documents annexed to the writ petition, it is apparent that the minor corpus had been admitted to a school at Ghaziabad and that the school fees were being paid by the petitioner. It is also evident that a dispute arose between the petitioner and respondent no.4 regarding the custody of the minor corpus. In this regard, both the parties appeared before Police Station Vijay Nagar, District Ghaziabad, on 15.05.2026, where respondent no.4 made a statement admitting that the minor corpus had been in his custody since 03.04.2026. During the said proceedings before the police authorities, a compromise was arrived at between the parties, whereby it was agreed that, after a period of five days, the custody of the minor corpus would remain with the petitioner for one month and thereafter with respondent no.4 for the succeeding one month, on an alternating basis, until the issue of custody was finally adjudicated by a competent court- A part of the cause of action has undeniably arisen within the territorial jurisdiction of this Court. Accordingly, in view of Article 226(2) of the Constitution of India, this Court has the territorial jurisdiction to entertain and adjudicate the present habeas corpus petition.

Under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor who has not attained the age of five years ordinarily rests with the mother, unless there exist circumstances disentitling her from such custody- No material has been brought on record, nor has any circumstance been pointed out before the Court, which would disentitle the petitioner from having the custody of the minor corpus.

Held- The custody of the minor corpus is forthwith handed to the petitioner who is her mother. In order to maintain the emotional bonding between the respondent and the corpus, the respondent no.4, Akash Sharma is granted visitation rights.(E-15)

(Para 13, 15 & 19)

Case Law Cited

Nawal Kishore Sharma v. Union of India and Others, (2014) 9 SCC 329

List of Acts

The Constitution of India, 1950-; The Hindu Minority and Guardianship Act, 1956

List of Keywords

Corpus being a minor child; Not attained age of five years; Mother is entitled for the custody of minor child; Unless there exist circumstances disentitling her from such custody; Section 6(a) of the Hindu Minority and Guardianship Act, 1956

Case Arising From

The corpus, Rudra Parashar, aged about 3 years and 3 months, is the minor son of the petitioner, and is in the illegal custody of respondent no.4, Akash Sharma, who is the husband of the petitioner

Appearances for Parties

Counsel for Petitioner(s) : Syed Fahim Ahmed
Counsel for Respondent(s) : G.A., Subir Lal

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

1. Compliance affidavits filed by the learned counsel for both the parties in Court today are taken on record.

2. By order dated 10.07.2026, the petitioner, Smt. Garima Sharma, and respondent no.4, Akash Sharma, were directed to remain personally present before this Court along with the minor corpus, Rudra Parashar. In compliance with the aforesaid order, both the parties, along with the minor corpus, are present before this Court.

3. This Court interacted with respondent no.4, Akash Sharma, who disclosed that he is employed with the World Bank at Delhi and is earning approximately Rs.4.5 lakhs per month. He further stated that he has admitted the minor corpus to a school at Faridabad, where he is presently pursuing his education. He further submitted that the minor corpus was taken from his custody at Faridabad and, therefore, this Court lacks territorial jurisdiction to entertain and decide the present habeas corpus petition. He also submitted that the petitioner is employed in Mumbai and, being a working woman, would not be in a position to personally look after the minor corpus. Accordingly, he contended that the custody of the minor corpus ought not to be handed over to the petitioner.

4. This Court also interacted with the petitioner, Smt. Garima Sharma, who disclosed that till April, 2026, the minor corpus had been residing with her. She further stated that she had admitted the minor corpus to a school at Ghaziabad, from where respondent no.4 allegedly took the corpus into his custody without her knowledge or consent. She submitted that, being the mother of the minor corpus and the corpus being below five years of age, she is entitled to his custody. She further disclosed that she is working as an Environmental Engineer in Mumbai and is earning approximately Rs.80,000/- per month. She also stated that during her working hours, the minor corpus would be looked after by her parents, who are willing to reside with her at Mumbai for that purpose.

5. This Court also interacted with the minor corpus, Rudra Parashar, aged about 3 years, with a view to ascertaining his upbringing, emotional attachment, and recognition of the parties. During the interaction, the corpus recognized both his mother and his father. He also indicated that his mother takes good care of him and expressed his inclination to reside with her.

6. The petitioner was also directed to take the minor corpus in her lap, and she duly complied with the said direction. During the interaction, it became evident that the minor corpus shared a strong emotional bond with the petitioner. The corpus remained comfortable and at ease in her company, freely interacted with her, and exhibited a clear sense of security and affection towards her. Although the corpus, being only about 3 years of age, is too young to express an independent and informed preference regarding his custody, this Court interacted with him solely for the limited purpose of assessing his emotional attachment and comfort level with the parties. From the interaction so held, this Court is of the prima facie opinion that the minor corpus is emotionally attached to and feels secure and comfortable in the company of his mother.

7. It is also apparent from the material brought on record that the minor corpus had been admitted to a school at Ghaziabad and that the petitioner's parents are available to look after the minor corpus during the petitioner's working hours.

8. A significant issue relating to the territorial jurisdiction of this Court has been raised by Sri Swetashwa Agarwal, learned Senior Counsel appearing for respondent no.4, which has been contested by Sri P.K. Jain, learned Senior Counsel, assisted by Sri Syed Fahim Ahmed, learned counsel for the petitioner.

9. Learned Senior Counsel appearing for respondent no.4 submitted that the minor corpus was in the custody of respondent no.4 at Faridabad and, therefore, the entire cause of action arose outside the territorial jurisdiction of this Court. It was accordingly contended that this Court lacks the territorial jurisdiction to entertain and adjudicate the present habeas corpus petition.

10. Per contra, learned Senior Counsel appearing for the petitioner submitted that the treatment records, school admission documents and fee receipts of the minor corpus have been brought on record, which clearly establish that the corpus had been residing at Ghaziabad and was admitted to a school there. He further submitted that both the petitioner and respondent no.4 were called to Police Station Vijay Nagar, District Ghaziabad, on 15.05.2026, where, with the intervention of the police authorities, a compromise was arrived at between the parties. Under the said compromise, it was agreed that the custody of the minor corpus would remain alternately with each parent for a period of one month. However, the respondent no.4 failed to abide by the terms of the said compromise. He further submitted that a copy of the compromise recorded at the

police station has been annexed to the writ petition, wherein respondent no.4 expressly acknowledged that the minor corpus had been in his custody since 03.04.2026. According to the learned Senior Counsel, this admission itself establishes that, prior to the said date, the custody of the minor corpus was with the petitioner.

11. Learned Senior Counsel for the petitioner further submitted that the aforesaid admission made by respondent no.4 clearly establishes that the minor corpus was forcibly taken away from the custody of the petitioner at Ghaziabad. He contended that the cause of action, therefore, arose within the territorial jurisdiction of this Court, conferring jurisdiction upon this Court to entertain and adjudicate the present habeas corpus petition. In support of his submissions, learned Senior Counsel placed reliance upon the judgment of the Apex Court in the case of ***Nawal Kishore Sharma v. Union of India and Others, (2014) 9 SCC 329.***

12. I have heard the learned Senior Counsel appearing for the parties and have also interacted with the parties as well as the minor corpus for the purpose of ascertaining in whose custody the welfare and best interests of the minor corpus would be best secured.

13. From the documents annexed to the writ petition, it is apparent that the minor corpus had been admitted to a school at Ghaziabad and that the school fees were being paid by the petitioner. It is also evident that a dispute arose between the petitioner and respondent no.4 regarding the custody of the minor corpus. In this regard, both the parties appeared before Police Station Vijay Nagar, District Ghaziabad, on 15.05.2026, where respondent no.4 made a statement admitting that the minor corpus had been in his custody since 03.04.2026. During the said proceedings before the police authorities, a compromise was arrived at between the parties, whereby it was agreed that, after a period of five days, the custody of the minor corpus would remain with the petitioner for one month and thereafter with respondent no.4 for the succeeding one month, on an alternating basis, until the issue of custody was finally adjudicated by a competent court.

14. From the material brought on record, it is apparent that the minor corpus had been residing with the petitioner and was taken away by respondent no.4 from Ghaziabad on 03.04.2026. Thus, a part of the cause of action has undeniably arisen within the territorial jurisdiction of this Court. Accordingly, in view of Article 226(2) of the Constitution of India, this Court has the territorial jurisdiction to entertain and adjudicate the present habeas corpus petition.

15. It is further apparent that the minor corpus is only about 3 years of age. Under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor who has not attained the age of five years ordinarily rests

with the mother, unless there exist circumstances disentitling her from such custody. No material has been brought on record, nor has any circumstance been pointed out before this Court, which would disentitle the petitioner from having the custody of the minor corpus.

16. During the course of interaction, the minor corpus also expressed his inclination to reside with his mother. Although, considering his tender age, such preference cannot be treated as determinative, his conduct and demeanour before this Court clearly reflected that he is emotionally attached to, and feels secure and comfortable in the company of, his mother. This circumstance, coupled with the statutory presumption under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, persuades this Court to hold that the welfare of the minor corpus would presently be best served in the custody of the petitioner. The corpus was very comfortable in the company of the petitioner and was having great emotional bonding with her, as such, the petitioner cannot be deprived from the company of the minor corpus.

17. It is also apparent that the petitioner is financially capable of taking good care of the corpus because she is educated and she is also supported by her parents and this Court is not under any apprehension that she will not ensure the welfare of the minor corpus.

18. This Court also tried its best to have a reconciliation between the spouses, but unfortunately this Court could not succeed in persuading them to reside together in order to ensure the paramount welfare of the minor corpus.

19. In view of the above circumstances, the custody of the minor corpus is forthwith handed to the petitioner Smt. Garima Sharma, who is her mother. In order to maintain the emotional bonding between the respondent and the corpus, the respondent no.4, Akash Sharma is granted visitation rights. He can visit the corpus as and when he desires after prior information to the petitioner at the residence of the petitioner. The respondent can also have interaction through video conferencing with the corpus as and when he desires, after the corpus returns from the school. The petitioner has assured that she will not create any obstruction or hindrance in such meeting or interaction. During school vacation, the respondent will be entitled to claim the custody of the minor corpus from the petitioner and after efflux of vacation, the respondent has assured that he will restore the custody of the corpus to the petitioner. The parties are restrained from taking out the corpus, outside India.

20. Subject to the above, this instant habeas corpus petition is ***disposed of.***

(2026) 7 ILRA 1607
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

S.C.C. Revision No. 51 of 2026
Connected With
S.C.C. Revision No. 79 of 2026

Manoharlal (Deceased) & Ors. ...Revisionist(s)
Versus
Jagdish Prasad Goel ...Opposite Party(s)

Issue for Consideration

Whether upon enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, disputes relating to eviction, recovery of rent and other ancillary reliefs in respect of premises governed by the said Act could continue to be entertained by the Court of Small Causes merely because the tenancy had earlier been determined by a notice under Section 106 of the Transfer of Property Act, 1882, or whether such disputes fall within the exclusive adjudicatory mechanism created under the Act, 2021.

Head Notes

The Transfer of Property Act, 1882-Section 106; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021- Section 38(1)-Where a landlord-tenant dispute is instituted after the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 and is otherwise governed by the provisions of the said Act, the forum competent to entertain such dispute must be determined with reference to the Act, 2021. The mere fact that the tenancy had earlier been determined by a notice under Section 106 of the Transfer of Property Act, 1882 does not preserve the jurisdiction of the Court of Small Causes or exclude the operation of Section 38(1) of the Act, 2021- The reasoning adopted by the trial court cannot be sustained. The trial court failed to notice the distinction between the law governing the determination of a tenancy and the law governing the forum competent to adjudicate disputes arising there from. It erroneously assumed that determination of the tenancy under Section 106 of the Transfer of Property Act, 1882 preserved the jurisdiction of the Court of Small Causes notwithstanding the coming into force of the Act, 2021 and the express jurisdictional bar enacted by Section 38(1). The impugned order dated 02.04.2026, therefore, suffers from a manifest error of law affecting the very assumption of jurisdiction and is liable to be set aside.

Held- S.C.C. Suit No.3 of 2021 is not maintainable before the Court of Small Causes and shall proceed no further before the said forum-Respondent-landlord shall, therefore, be at liberty to avail such remedy as may be available under the Act, 2021 before the authority competent in law. **Revision allowed**. (E-15)

(Para 27, 28, 29 & 40)

Case Law Cited

Canara Bank Branch Office and Another v. Sri Ashok Kumar @ Heera Singh 2026 (1) ARC 90; Akhilesh Kumar v. Sanjay Sahgal 2026 (7) ADJ 20;

List of Acts

The Transfer of Property Act, 1882; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021

List of Keywords

Landlord-tenant dispute instituted after the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 and is otherwise governed by the provisions of the said Act; Forum competent to entertain dispute must be determined with reference to the Act, 2021. ; The tenancy had earlier been determined by a notice under Section 106 of the Transfer of Property Act, 1882 does not preserve the jurisdiction of the Court of Small Causes or exclude the operation of Section 38(1) of the Act, 2021

Case Arising From

SCC Revision No. 79 of 2025 is directed against the order dated 20.05.2025, whereby the learned trial court rejected the defendants' Application No.51C under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint. SCC. Revision No.51 of 2026, in turn, assails the subsequent order dated 02.04.2026, whereby the learned trial court rejected Application No.87C raising a preliminary objection to the maintainability of the suit on the ground that, upon the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 , the Court of Small Causes ceased to possess jurisdiction to entertain the proceedings.

Appearances for Parties

Counsel for Revisionist(s) : Utpal Chatterji
Counsel for Opposite Party(s) : Ashish Kumar Singh

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Utpal Chaterji, learned counsel for the revisionists and Sri Ashish Kumar Singh, learned counsel appearing for the respondent.

2. These two revisions, preferred under Section 25 of the Provincial Small Cause Courts Act, 1887, arise out of SCC Suit No.3 of 2021 (Jagdish Prasad Goel v. Manohar Lal (deceased) through Legal Representatives), pending before the Court of the Additional District & Sessions Judge/Fast Track Court-I, Judge, Small Causes Court, Hapur.

3. SCC Revision No. 79 of 2025 is directed against the order dated 20.05.2025, whereby the learned trial court rejected the defendants' Application No.51C under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint. SCC. Revision No.51 of 2026, in turn, assails the subsequent order dated 02.04.2026, whereby the learned trial court rejected Application No.87C raising a preliminary objection to the maintainability of the suit on the ground that, upon the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 20211, the Court of Small Causes ceased to possess jurisdiction to entertain the proceedings.

4. Since both revisions arise from the same suit and involve a common question concerning the maintainability of the proceedings in the light of the provisions of the Act, 2021, they have been heard together and are being decided by this common judgment.

5. The principal controversy raised in these revisions is whether a suit instituted on 20.08.2021, after the enforcement of the Act, 2021, could validly be entertained by the Court of Small Causes or whether, by virtue of the statutory scheme of the said Act, the jurisdiction of that Court stood excluded. It is in that context that the revisionists seek to assail the impugned orders and press their objections to the maintainability of the suit, including the application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint.

6. The dispute in the present revisions pertains to two shops bearing old Municipal Nos. 3 and 4, new Municipal Nos. 4 and 5 and present Municipal Nos. 1-1/163/4 and 1-1/163/5, situated near Shanti Bhavan, Railway Road, Hapur, District Hapur. The premises were originally let out by late Narayan Das, the predecessor-in-interest of the plaintiff-respondent, to Manohar Lal, the predecessor-in-interest of the present revisionists. Upon the demise of Narayan Das, the respondent, Jagdish Prasad Goel, succeeded to the ownership as well as the landlordship of the disputed premises.

7. Alleging default in payment of rent and seeking determination of the tenancy, the respondent-landlord served upon Manohar Lal a notice dated 15.07.2021 under Section 106 of the Transfer of Property Act, 1882. The notice was duly replied to on 09.08.2021, disputing the allegations levelled therein.

8. Thereafter, on 20.08.2021, the respondent instituted S.C.C. Suit No.3 of 2021 before the Judge, Small Causes Court, Hapur, seeking eviction of the tenant from the disputed premises together with recovery of arrears of rent, damages and other consequential reliefs. During the pendency of the suit, the original defendant, Manohar Lal, died on 12.10.2022, whereupon the present revisionists were brought on record as his legal representatives.

9. Following their substitution, the defendants moved Application No. 51C under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint. It was principally urged that, the suit having been instituted after the enforcement of the Act, 2021, the Court of Small Causes lacked jurisdiction to entertain it and that, in any event, the plaint disclosed no cause of action against the substituted legal representatives. The application was contested by the plaintiff and came to be rejected by the trial court by order dated 20.05.2025.

10. Subsequently, on 25.02.2026, the defendants filed Application No. 87C once again questioning the maintainability of the suit. The application was founded primarily upon the decision of this Court in **Canara Bank Branch Office and Another v. Sri Ashok Kumar @ Heera Singh,** wherein, according to the defendants, it had been authoritatively held that disputes of the present nature were governed by the provisions of the Act, 2021 and, consequently, lay beyond the jurisdiction of the Court of Small Causes.

11. The plaintiff opposed the aforesaid application contending, inter alia, that the question of maintainability had already been adjudicated while deciding Application No. 51C and that the subsequent application was nothing but an attempt to reopen the same controversy solely on the basis of a subsequent judicial pronouncement.

12. By the impugned order dated 02.04.2026, the trial court rejected Application No. 87C, holding that the issue of maintainability already stood concluded by its earlier order dated 20.05.2025 passed on Application No.51C and that the decision in **Canara Bank** did not alter the legal position governing the controversy. The trial court consequently directed the parties to proceed with the trial in accordance with the earlier directions issued for its expeditious disposal.

13. Aggrieved thereby, the defendants have preferred S.C.C. Revision No.79 of 2025 against the order dated 20.05.2025 and S.C.C. Revision No.51 of 2026 against the subsequent order dated 02.04.2026.

14. In the aforesaid factual backdrop, the rival submissions advanced by learned counsel for the parties fall for consideration.

15. Learned counsel appearing for the revisionists submits that the principal controversy involved in the present revisions is no longer res integra in view of the decision of this Court in **Akhilesh Kumar v. Sanjay Sahgal**. It is contended that the said decision has authoritatively interpreted the provisions of the Act, 2021 and conclusively settled the legal position regarding the forum competent to entertain proceedings instituted after the enforcement of the said Act. It is, therefore, submitted that the view taken by the trial court on the question of maintainability is plainly inconsistent with the law so declared and, consequently, both the impugned orders are liable to be set aside.

16. Learned counsel appearing for the respondent-landlord fairly does not dispute the legal principles enunciated in **Akhilesh Kumar**. He, however, submits that the controversy in the present case must be examined in the light of the ratio laid down therein and the facts obtaining herein. According to learned counsel, the correctness of the impugned orders falls to be tested on the touchstone of the aforesaid principles.

17. In view of the aforesaid submissions, the principal question that arises for consideration is whether, upon the enforcement of the Act, 2021, disputes relating to eviction, recovery of rent and other ancillary reliefs in respect of premises governed by the said Act could continue to be entertained by the Court of Small Causes merely because the tenancy had earlier been determined by a notice under Section 106 of the Transfer of Property Act, 1882, or whether such disputes fall within the exclusive adjudicatory mechanism created under the Act, 2021.

18. The impugned order dated 02.04.2026 reveals that the trial court rejected the defendants' objection to the maintainability of the suit substantially on two grounds. Firstly, it held that an identical objection had already been considered and rejected while deciding Application No. 51C by order dated 20.05.2025 and, therefore, the issue could not be permitted to be re-agitated. Secondly, while noticing the reliance placed by the defendants upon the decision of this Court in **Canara Bank**, the trial court took the view that the said decision did not support the defendants' contention and that the proceedings could validly continue before the Court of Small Causes. Proceeding on the premise that the tenancy had already been determined by a notice under Section 106 of the Transfer of Property Act, 1882 before institution of the suit, it concluded that the provisions of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 had no application and that the jurisdiction of the Court of Small Causes remained unaffected.

19. The reasoning adopted by the trial court thus rests on the fundamental premise that once the contractual tenancy had been determined under Section 106 of the Transfer of Property Act, 1882, the subsequent dispute continued to be governed exclusively by the said enactment, with the consequence that the coming into force of the Act, 2021 neither altered the forum competent to

entertain the proceedings nor affected the legal regime governing the dispute. The trial court further held that, since the plaint itself asserted the inapplicability of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, there was no occasion to examine whether the dispute was governed by the provisions of the Act, 2021.

20. The question that falls for consideration is whether the aforesaid reasoning is consistent with the statutory scheme and legislative mandate embodied in the Act, 2021.

21. The effect of the enforcement of the Act, 2021 on proceedings instituted thereafter, its interaction with the provisions of the Transfer of Property Act, 1882, and the question whether disputes governed by the Act, 2021 continue to be triable by the Court of Small Causes merely because the tenancy had earlier been determined by a notice under Section 106 of the Transfer of Property Act, have since received authoritative consideration by this Court in **Akhilesh Kumar**. The principles emerging therefrom, read in conjunction with the statutory provisions of the Act, 2021, furnish the appropriate framework for examining the correctness of the reasoning adopted by the trial court.

22. The Act, 2021 is a special and self-contained enactment governing the rights and obligations of landlords and tenants in respect of premises to which it applies. Besides creating substantive rights and liabilities, the Act establishes a specialised adjudicatory mechanism for the enforcement thereof. The requirement of execution and submission of a written tenancy agreement contemplated under Section 4 is essentially regulatory and evidentiary in character. The absence of such an agreement, or non-submission of the particulars envisaged therein, does not, by itself, exclude the applicability of the Act or denude the Rent Authority of jurisdiction, particularly where the jural relationship of landlord and tenant is admitted or is otherwise capable of being established.

23. Section 38 (1) embodies the legislative mandate in clear and unequivocal terms. Its effect is to exclude the jurisdiction of the civil courts in respect of disputes which fall within the substantive and remedial framework of the Act, except to the extent expressly provided therein. The opening non-obstante clause, read together with the express bar enacted under the provision, unmistakably manifests the legislative intent that disputes governed by the Act are to be adjudicated exclusively by the authorities constituted thereunder. Once it is found that a dispute is governed by the provisions of the Act, 2021, the jurisdiction of the ordinary civil courts, including the Court of Small Causes, stands excluded by virtue of the express bar enacted under Section 38(1).

24. The statutory exclusion contained in Section 38(1) cannot be rendered nugatory merely because, prior to institution of the proceedings, the landlord had determined the tenancy by issuing a notice under Section 106 of the Transfer of Property Act, 1882. Service of a notice under Section 106 merely determines the contractual tenancy and furnishes the landlord with a cause of action to seek eviction. It neither determines the forum competent to adjudicate the ensuing dispute nor creates, preserves or enlarges the jurisdiction of any particular court. The forum before which such right is to be enforced is governed by the law in force on the date the proceedings are instituted and not by the law under which the cause of action arose.

25. The jurisdiction of a court is determined by the law in force on the date on which the proceedings are instituted unless the statute expressly provides otherwise. The date on which the cause of action accrued or the tenancy stood determined is relevant only for the accrual of the right to sue; it does not determine the forum competent to entertain the proceedings. While determination of a tenancy under Section 106 of the Transfer of Property Act, 1882 furnishes the landlord with a cause of action to seek eviction, it neither creates nor preserves the jurisdiction of any particular forum. The question of jurisdiction must, therefore, be answered with reference to the statutory regime governing adjudication on the date of institution of the proceedings.

26. This distinction assumes particular significance in the present case. The tenancy may have stood determined by the notice dated 15.07.2021 issued under Section 106 of the Transfer of Property Act, 1882. However, the suit itself came to be instituted on 20.08.2021, by which date the Act, 2021 had already come into force. The determinative date for deciding the question of jurisdiction is, therefore, the date of institution of the proceedings and not the date on which the contractual tenancy stood terminated. Jurisdiction is attracted by the law prevailing on the date proceedings are instituted and cannot be preserved merely because the cause of action had arisen under an earlier legal regime. Any other interpretation would enable litigants to circumvent the legislative mandate embodied in Section 38(1) simply by issuing a notice under Section 106 prior to institution of the proceedings, thereby frustrating the object of the Act in creating an exclusive statutory mechanism for adjudication of landlord-tenant disputes and introducing a distinction, founded solely on the date of determination of the tenancy rather than the date of institution of the proceedings, which finds no support either in the language or the scheme of the Act, 2021.

27. The legal position may, therefore, be summarised thus. Where a landlord-tenant dispute is instituted after the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 and is otherwise governed by the provisions of the said Act, the forum competent to entertain such dispute must be determined with reference to the Act, 2021. The mere fact that the tenancy had earlier been determined by a notice under Section 106 of the Transfer of Property Act, 1882 does not preserve the jurisdiction of the Court of Small Causes or exclude the operation of Section 38(1) of the Act, 2021.

28. The further observation of the trial court that, since the tenancy had been determined under Section 106 of the Transfer of Property Act, 1882, the proceedings continued to be governed by that enactment and, consequently, remained maintainable before the Court of Small Causes, proceeds on a manifest misconception of the legal position. The Transfer of Property Act regulates the substantive incidents relating to the creation and determination of leases; it neither confers nor preserves the jurisdiction of any particular forum. Once the Act, 2021 came into force and the dispute fell within its substantive and remedial framework, the forum competent to entertain such dispute necessarily stood governed by the later special enactment.

29. Tested on the aforesaid legal position, the reasoning adopted by the trial court cannot be sustained. The trial court failed to notice the distinction between the law governing the determination of a tenancy and the law governing the forum competent to adjudicate disputes arising therefrom. It erroneously assumed that determination of the tenancy under Section 106 of the Transfer of Property Act, 1882 preserved the jurisdiction of the Court of Small Causes notwithstanding the coming into force of the Act, 2021 and the express jurisdictional bar enacted by Section 38(1). The impugned order dated 02.04.2026, therefore, suffers from a manifest error of law affecting the very assumption of jurisdiction and is liable to be set aside.

30. Turning now to the order dated 20.05.2025, it is evident that the trial court rejected Application No.51C under Order VII Rule 11 of the Code of Civil Procedure by repelling two distinct objections raised by the defendants. The first related to the alleged absence of a cause of action against the substituted legal representatives, while the second pertained to the maintainability of the suit before the Court of Small Causes in the light of the enforcement of the Act, 2021.

31. Insofar as the first objection is concerned, this Court finds no infirmity in the view taken by the trial court. It is trite that while considering an application under Order VII Rule 11 CPC, the Court is required to confine itself to the averments contained in the plaint and the documents relied upon by the plaintiff. The plaint, as amended after substitution, specifically impleads the legal representatives of the deceased defendant and seeks the reliefs originally claimed against the estate represented by them. Upon the death of a party during the pendency of the proceedings, his legal representatives step into his shoes and represent his estate for the purposes of the litigation. It cannot, therefore, be said that the plaint discloses no cause of action against the substituted defendants. The rejection of Application No. 51C to that extent, therefore, warrants no interference.

32. The second objection, however, stands on an entirely different footing. While rejecting the application, the trial court proceeded on the premise that, since the plaint itself pleaded that the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 were inapplicable and the tenancy had been determined by a notice under Section 106 of the Transfer of Property Act, 1882, the suit continued to remain maintainable before the Court of Small Causes notwithstanding the enforcement of the Act, 2021.

33. The approach, however, overlooks the real issue arising for consideration. The question was not whether the Act of 1972 applied to the dispute, but whether, on the date of institution of the suit, the jurisdiction of the Court of Small Causes stood excluded by reason of the statutory scheme of the Act, 2021. Likewise, the determination of the tenancy under Section 106 of the Transfer of Property Act was relevant only for the accrual of the landlord's cause of action and not for determining the forum competent to adjudicate the dispute. The trial court thus addressed itself to considerations which were legally irrelevant while failing to examine the jurisdictional consequences flowing from Sections 4 and 38 of the Act, 2021.

34. In view of the foregoing discussion, this Court is of the considered opinion that the trial court proceeded on an erroneous understanding of the statutory scheme of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021. The premise that determination of the tenancy by a notice under Section 106 of the Transfer of Property Act, 1882, coupled with the admitted inapplicability of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, was sufficient to preserve the jurisdiction of the Court of Small Causes is legally unsustainable. The trial court failed to appreciate that the forum competent to entertain the dispute was required to be determined with reference to the provisions of the Act, 2021, which had already come into force on the date of institution of the suit. The findings recorded in both the impugned orders on the question of maintainability, therefore, suffer from a manifest error of law warranting interference in exercise of revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act, 1887.

35. However, insofar as the rejection of the objection founded upon the alleged absence of a cause of action against the substituted legal representatives is concerned, the trial court has committed no error. The finding that the plaint discloses a cause of action against the legal representatives, who represent the estate of the deceased defendant, is in consonance with the settled principles governing Order VII Rule 11 of the Code of Civil Procedure and, therefore, calls for no interference.

36. The findings recorded by the learned trial court on the issue of maintainability in both the impugned orders are, therefore, liable to be set aside.

37. Consequently, S.C.C. Revision No.79 of 2025 and S.C.C. Revision No.51 of 2026 are **allowed**. The orders dated 20.05.2025 and 02.04.2026 passed by the Judge, Small Causes Court, Hapur are hereby set aside insofar as they hold that S.C.C. Suit No.3 of 2021 is maintainable before the Court of Small Causes notwithstanding the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021.

38. As a necessary consequence, it is declared that S.C.C. Suit No.3 of 2021 is not maintainable before the Court of Small Causes and shall proceed no further before the said forum.

39. At this stage, learned counsel appearing for the respondent-landlord prays that liberty be reserved in favour of the respondent to institute appropriate proceedings under the provisions of the Act, 2021 in respect of the relief of eviction claimed against the tenant. The prayer merits acceptance.

40. The respondent-landlord shall, therefore, be at liberty to avail such remedy as may be available under the Act, 2021 before the authority competent in law. It is clarified that this Court has not expressed any opinion on the merits of the rival claims and that all questions of fact and law are expressly left open to be urged and adjudicated before the competent authority in accordance with law.

(2026) 7 ILRA 1615
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 07.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Transfer Application (Criminal) No. 79 of 2026

Satyendra Nath Shukla ...Applicant(s)
Versus
State of U.P. ...Opposite Party(s)

Issue for Consideration

Whether learned Session judge rightly came to a conclusion that transferring the trial to another Court of Additional Session Judge in the same Sessions Division, which is presided by a Presiding Officer, who has recorded the testimony of as many as nine prosecution witnesses, deserves to be transferred to the Court presided by the same Presiding Officer.

Head Notes

The Code of Criminal Procedure, 1973- Section 326, 407, 408 & 482- When an applicant files an application before the Sessions Judge for transfer of a case under Section 408 CrPC and that application is rejected, the applicant can approach the High Court by filing a transfer application under Section 407 CrPC, as is specifically mentioned in the proviso appended to Sub-section (2) of Section 407. However, when a transfer application filed under Section 408 CrPC is allowed by the Sessions Judge, the person aggrieved by the transfer order cannot challenge the same by filing another application under section 407 CrPC. The validity of a transfer order can only be challenged by invoking the inherent powers of the High Court, as acknowledged by Section 482 CrPC

Held- the Courts should give due consideration to the demeanor of the witnesses. When the trial commenced and continued till recording of deposition of PW-9 before a particular Presiding Officer in the Court of Additional Session Judge/Special Judge ATS, Lucknow and the Presiding Officer of that Court had the advantage of watching the demeanor of nine prosecution witnesses, which include all the witnesses of fact, and thereafter that Presiding Officer was transferred to another Court in the same Sessions Division, if the learned Sessions Judge found it appropriate to transfer the trial to the Court of Additional Sessions Judge presided by a Presiding Officer who has recorded the deposition of PW-1 to PW-9, then the Session Judge has not committed any error or illegality and the transfer order does not defeat the ends of justice, warranting interference by the High Court in exercise of its inherent power.
Application dismissed. (E-15)

Case Law Cited

Punjab Singh Vs. State of U.P.: 1983 Cr.L.J. 205;Anil Kumar Agarwal Vs. State of U.P.:(2015) 89 ACC 723: 2014 SCC OnLine All 16193;Bhaskar alias Prabhaskar and others Vs. State represented by Inspector of Police, Vellore, Taluk Police Station, Vellore: (1999) 9 SCC 551;Ranbir Yadav Vs. State of Bihar: (1995) 4 SCC 392;Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122

List of Acts

The Code of Criminal Procedure, 1973

List of Keywords

Transfer application under Section 408 CrPC is allowed by the Sessions Judge; Person aggrieved cannot challenge the same by filing another application under section 407 CrPC; Validity of a transfer order can only be challenged by invoking the inherent powers of the High Court, as acknowledged by Section 482 CrPC

Case Arising From

Order dated 29.06.2026, passed by the Session Judge, Lucknow, allowing Transfer Application bearing Criminal Misc. Case No.783 of 2026, filed by the opposite party no.2 for transferring Session Trial No. 2707 of 2024 titled State Vs. Anshuman Pandey arising out of F.I.R. No.416 of 2013, Police Station Gomti Nagar, District Lucknow from the Court of Additional SessionJudge/Special Judge ATS, Lucknow to the Court of Additional Session Judge, Court No. 4/Special Judge Gangsters Act, Lucknow

Appearances for Parties

Counsel for Applicant(s) : Sushil Kumar Singh, Ayush Singh
Counsel for Opposite Party(s) : G.A., Ayodhya Prasad Mishra A.p. Mishra, Rituraj

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

1. Heard Sri Sushil Kumar Singh, the learned counsel for the petitioner, Sri Rajiv Kumar Verma, the learned A.G.A.-I appearing on behalf of the State and Sri Ayodhya Prasad Mishra, who has put in appearance on behalf of the opposite party no.2 and filed his vakalatnama, which is taken on record.

2. By means of the instant petition filed under Section 407 Cr.P.C. the petitioner has challenged the validity of an order dated 29.06.2026, passed by the Session Judge, Lucknow, allowing Transfer Application bearing Criminal Misc. Case No.783 of 2026, filed by the opposite party no.2 for transferring Session Trial No. 2707 of 2024 titled State Vs. Anshuman Pandey arising out of F.I.R. No.416 of 2013, Police Station Gomti Nagar, District Lucknow from the Court of Additional Session Judge/Special Judge ATS, Lucknow to the Court of Additional Session Judge, Court No. 4/Special Judge Gangsters Act, Lucknow.

3. Briefly stated, facts of the case are that the opposite party no.2 filed an application under Section 408 Cr.P.C. seeking transfer of Session Trial No. 2707 of 2024 from the Court of Additional Session Judge/Special Judge ATS, Lucknow to the Court of Additional Session Judge, Court No. 5/Special Judge, Gangsters Act, Lucknow, on the ground that previously the Court of Additional Session Judge/Special Judge ATS, Lucknow was presided by Shri Abhinay Kumar Mishra, H.J.S. and he has recorded the testimony of as many as nine prosecution witnesses. Thereafter, Shri Abhinay Kumar Mishra, H.J.S. got transferred to the Court of Additional Session Judge, Court No. 4/Special Judge Gangsters Act, Lucknow, i.e., within the same Sessions Division. Shri Shashwat Pandey, HJS took over the Court of Additional Session Judge/Special Judge ATS, Lucknow.

4. It was stated in the transfer application that Shri Abhinay Kumar Mishra HJS had conducted substantial proceedings in the trial and he is presiding over the Court of Additional Session Judge, Court number 5/Special Judge Gangsters Act, Lucknow within the same Session Division. The continuance of trial before the Presiding Officer who has already heard substantial part of the matter, would advance the cause of fair trial, judicial continuity, proper appreciation of evidence

and judicial economy. The opposite party no.2 relied upon a decision rendered by a Division Bench of this Court in the case of **Punjab Singh Vs. State of U.P.: 1983 Cr.L.J. 205.**

5. The applicant-complainant filed an application for impleadment in the transfer application, which was allowed. The learned counsel for the applicant opposed the transfer application by submitting that the Court where the trial has been transferred has already recorded the testimony of PW-10 and no useful purpose would be served by sending the case to some other Court. It was also submitted that the applicant has not leveled any allegation of bias against the Presiding Officer of the transferee Court, the prosecution evidence is complete and the transferee Court has jurisdiction to conclude the trial.

6. The learned Session Judge allowed the transfer application on the ground that Shri Abhinay Kumar Mishra, H.J.S. has recorded the testimony of as many as nine prosecution witnesses and keeping in view the provisions contained in Section 326 Cr.P.C. and the law laid down by the High Court in the case of **Punjab Singh** (Supra).

7. Assailing the validity of the aforesaid transfer order, the learned counsel for the applicant has submitted that Section 326 Cr.P.C. specifically provides that after transfer of a Presiding Officer, the subsequent incumbent will have the jurisdiction to decide the trial and Section 326 Cr.P.C. does not provide that after transfer of the presiding officer, in case he is posted in another Court in the same Sessions Division, the trial should be transferred to his Court. The learned counsel for the applicant has submitted that **Punjab Singh** (supra) was decided keeping in view the provisions contained in Section 350 of the Criminal Procedure Code. 1898, which had since been repealed. Section 326 of Cr.P.C., 1973 which has replaced Section 350 of Cr.P.C. of 1989, does not contain the provisions which was there in Section 350 Cr.P.C., 1898.

8. He has placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **Ranbir Yadav Vs. State of Bihar**: (1995) 4 SCC 392 and **Bhaskar alias Prabhaskar and others Vs. State represented by Inspector of Police, Vellore, Taluk Police Station, Vellore:** (1999) 9 SCC 551. He has also placed reliance on judgment of a coordinate Bench of this Court in the case of **Anil Kumar Agarwal Vs. State of U.P.:(**2015) 89 ACC 723: 2014 SCC OnLine All 16193.

9. The undisputed facts of the case, so far as are relevant for adjudication of this transfer application are not in dispute. The learned counsel for the parties agree that the trial commenced in the Court of Additional Session Judge/Special Judge ATS, Lucknow while this Court was presided over by Shri Abhinay Kumar Mishra, H.J.S. The testimony of PW-1 to PW-9 was recorded while the aforesaid Court was presided over by Shri Abhinay Kumar Mishra. Thereafter, he got transferred to the Court of Additional Session Judge, Court No.4/Special Judge, Gangsters Act, in Lucknow Sessions Division itself. Shri Shashwat Pandey, H.J.S. got posted in the Court of Additional Session Judge/Special Judge ATS, Lucknow and he took over the trial from the stage attained by his predecessor. Thereafter the Court recorded the testimony of PW-10. The transfer application was moved on 14.05.2026 on the ground that continuation of trial before the Presiding Officer who had already heard a substantial part of the matter, would advance the cause of fair trial, judicial continuity, proper appreciation of evidence and judicial economy.

10. In **Punjab Singh v. State of Uttar Pradesh** (supra) a Division bench of this Court held that: -

"29. Section 326 thus deals with part-heard cases and provides for the powers of the Judge and the procedure to be followed by him in respect thereof with reference to the situations arising therein. The part-heard case in an inquiry or trial has to reach a stage where the Judge has heard and recorded the whole or any part of the evidence therein, and thereafter if the Judge ceases to exercise jurisdiction therein and is succeeded by another Judge who has or would exercise such jurisdiction, namely, the jurisdiction to continue the trial, he may act on the evidence recorded by his predecessor or may record the evidence himself, and then conclude the trial. In this regard, if the succeeding Judge finds it necessary that he should re-summon the witnesses or any of them, he may do so, and after such further examination, cross-examination or re-examination as he may permit, the witness or witnesses may be discharged.

* * *

31. ***It is the right of an accused that his case should be decided by a Judge who has heard and recorded the evidence****. Thus, unless the jurisdiction of the Judge to continue the trial is taken away expressly or by necessary implication either under a statutory provision or an order passed to that effect by a competent authority, the Judge shall continue to exercise the jurisdiction to continue a part-heard trial, and he would not be deemed to have been divested of it merely because a change has taken place in his designation. If this be not the true rule,* ***successive changes in the designation of Additional Sessions Judges would result in successive change of hands in the trial of part-heard cases, which does not seem to be the intention of the legislature behind the provisions of Section 326."***

11. The learned Counsel for the petitioner has relied upon the law laid down by the Hon ble Supreme Court in **Ranbir Yadav** (Supra). In that case, Mr Jethmalani, the learned counsel appearing for all the appellants had submitted that the High Court had no power to transfer the case from the 10th Court to the 5th Court and that too by an administrative order at a stage when, admittedly, the trial had already commenced. He submitted that as per Section 194 of the Code, the power of the High Court to direct a particular court to try a case could be exercised only at the initial stage where trial was yet to commence and not thereafter. He next contended that the Section 407 Cr.P.C. empowered the High Court to transfer a case, but such a power could be exercised judicially only after complying with the requirements thereof and hearing the parties. As, admittedly, the High Court did not exercise such judicial power, the order of transfer whereby the 5th Court acquired jurisdiction, must be held to be void and ineffective. The order of transfer passed by the High Court was not produced before the Hon ble Supreme Court and the Hon ble Supreme Court noted that, had it been produced, the Court would have known the facts and circumstances which prompted the High Court to pass that order and clearly apprehended the source of power. However, from the material on record, it appeared that the order was passed by the High Court in its administrative jurisdiction. The Hon ble Supreme Court held that: -

"12. …Under Article 227 of the Constitution of India every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and it is trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appears that the High

Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the courtroom as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the court was so crowded that even clerks of the lawyers were not being allowed to enter the courtroom to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which, we assume had a bigger and better arrangement to accommodate the accused, lawyers and others connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised….."

Mr Jethmalani, however, contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. He contended that, if the former was not contained, the latter would be nugatory. The Hon ble Supreme Court rejected this contention by holding that: -

"13. We are unable to share the above view of Mr Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and others connected with the trial but did it with utmost dispatch."

In **Ranbir Yadav** (Supra), the Hon ble Supreme Court referred to the legislative history behind Section 326 of the Code. In the Code of 1898 the corresponding section was Section 350 and, so far as was material for the purposes of the case, read as under [Prior to its amendment by Act 26 of 1915]:

"(1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ***ceases to exercise jurisdiction therein****, and is* ***succeeded by another Magistrate*** *who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself or* ***he may re-summon the witnesses and recommence the inquiry or trial.***

Provided as follows:

(a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and reheard;

(b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial."

(emphasis supplied by the Hon ble Supreme Court)

The Hon ble Supreme Court noted that the Legislature added the following sub-section to Section 350(1) by Section 4 of Act XVIII of 1923: -

"(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1)."

The next legislative change in Section 350 of the Code of 1898 was brought about by Act 26 of 1955. By that, in sub-section (1) of the section for the words or he may re-summon the witnesses and recommence the inquiry or trial and the proviso, the following proviso was substituted: -

"Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination, and re-examination, if any, as he may permit, the witness shall be discharged."

When the Code of 1898 was repealed and replaced by the Code of 1973, Section 350 was renumbered as 326 without any textual change. However, later on by the Criminal Procedure Code (Amendment) Act, 1978 the section was amended to vest the power and discretion exercisable thereunder by a Magistrate to a Judge also. With the amendments detailed above Section 326 read, at the time the trial in question took place, and still reads as follows:

"326. (1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

*(3) ***"*

(emphasis supplied by the Hon ble Supreme Court)

The Hon ble Supreme Court concluded that: -

"20. From a comparative reading of sub-section (1) of Section 350 as it stood prior to its amendment in 1955 and as it stands since then with the change in its numeral and inclusion of the word Judge therein we find that the discretion earlier given to the Presiding Officer of the Court to act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by him still remains. But so far as the other option is concerned, while earlier he could re-summon the witnesses and recommence the inquiry or trial which necessarily meant a de novo trial he can now only re-summon a witness who has already been examined for further examination and discharge him after such further examination, cross-examination and re-examination, if any. It is evident therefore that now the Magistrate or Judge can exercise his judicial discretion only for further examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. Obviously, keeping in view the inevitable frequent changes in the office of the Magistrate and Judge and in order to provide a speedy trial the legislature has taken away the well-established right of the accused to claim a de novo trial and that of the court to so direct by express words of the amending statute of 1955....."

In the case of **Bhaskar @ Prabhaskar** (Supra), the Hon'ble Supreme Court has held that: -

"15. The archaic concept was that the very same judicial personage who heard and recorded the evidence must decide the case. That concept was in vogue for a long time. But over the years it was revealed in practice that fossilisation of the said concept, instead of fostering the administration of criminal justice, was doing the reverse. Very occasionally the judicial officer of one Court was changed and was replaced by another. As evidence had to be recorded afresh by the new officer under the old system, witnesses who were already examined in the cases at the cost of considerable strain and expenses not only to them but to the exchequer were resummoned and re-examined. The litigation cost thereby inflicted on the parties used to soar up. The process would have to be repeated over again if such next judicial personage also was changed. Eventually it was learnt that the object sought to be achieved by such repetitions, when compared with the enormous cost and trouble, was not of much utility. Hence the legislature wanted to discontinue the aforesaid antediluvian practice and decided to afford option to the successor judicial officer. The legislature conferred such option only on the Magistrates at the first instance and at the same time empowered them to re-examine the witnesses already examined if they considered such a course necessary for the interest of justice. As the new experiment showed positive results towards fostering the cause of criminal justice the Law Commission recommended that such option should advisedly be extended to Judges of all other trial Courts also."

12. In **Anil Kumar Agarwal** (Supra) the earlier Presiding Officer of the Court of Special Judge Anti-Corruption (UPSEB) recorded the testimony of all 26 prosecution witnesses and 8 defence witnesses and then the case was listed for writing of judgment. At this stage he got transferred. The successor Judge had the jurisdiction to try the offences concerned, he also recorded evidence of some of the witnesses of defence and also decided some applications left to be decided by his predecessor. After relying on the decisions in the cases of **Bhaskar, Punjab Singh & Ranbir Yadav and** (Supra) without giving any specific answer to the question formulated, the Court found no merit in the transfer application, for the apparent reason that the transfer Court had jurisdiction to decide the trial.

13. In **Anil Kumar Agarwal** (Supra), this Court had proceeded on the premise that the main controversy is on the issue; Whether transferred Judge have ceased to exercise jurisdiction in that case ? There can be no dispute that the successor Judge will have the jurisdiction to decide the case, as the jurisdiction is vested in the Court and not vested in the Presiding Officer .

14. In the present case, the Session Judge has exercised the power of transfer of trial conferred by Section 408 Cr.P.C., which reads as follows: -

"408. Power of Sessions Judge to transfer cases and appeals. - (1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of Section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of Section 407,

except that sub-section (7) of that section shall so apply as if for the words one thousand rupees occurring therein, the words two hundred and fifty rupees were substituted."

15. The transfer was neither sought on the ground that the transferee Court has no jurisdiction to decide the same nor has the case been transferred on the ground. Therefore, the judgments relied upon by the learned Counsel for the petitioner have no relevance for examining the validity of the transfer order passed by the Sessions Judge. The grounds pressed in the transfer application were that continuation of trial before the Presiding Officer who has already heard substantial part of the matter would advance the cause of fair trial, judicial continuity, proper appreciation of evidence and judicial economy.

16. The learned Session judge came to a conclusion that transferring the trial to another Court of Additional Session Judge in the same Sessions Division, which is presided by a Presiding Officer, who has recorded the testimony of as many as nine prosecution witnesses, deserves to be transferred to the Court presided by the same Presiding Officer.

17. The applicant - complainant has challenged the aforesaid order by filing an application under Section 407 Cr.P.C., sub-sections (1) and (2) whereof provide as follows: -

***"407. Power of High Court to transfer cases and appeals**. - (1) Whenever it is made to appear to the High Court*

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him."

18. When an applicant files an application before the Sessions Judge for transfer of a case under Section 408 CrPC and that application is rejected, the applicant can approach the High Court by filing a transfer application under Section 407 CrPC, as is specifically mentioned in the proviso appended to Sub-section (2) of Section 407. However, when a transfer application filed under Section 408 CrPC is allowed by the Sessions Judge, the person aggrieved by the transfer order cannot challenge the same by filing another application under section 407 CrPC. The validity of a transfer order can only be challenged by invoking the inherent powers of the High Court, as acknowledged by Section 482 CrPC, which reads as follows: -

"Section 482 - Saving of inherent power of High Court

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

19. Although the applicant ought to have challenged the transfer order by filing a petition under Section 482 CrPC and not under Section 407 CrPC, instead of rejecting the transfer application on this technical ground after detailed submissions on merit of the application have already been advanced, this Court finds it appropriate to examine the merits of the transfer application in exercise of its inherent powers acknowledged by Section 482 CrPC.

20. In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque**, (2005) 1 SCC 122, defining the nature and scope of the power under Section 482 observed that: -

"8 ....The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. ***It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.*** *It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything, it gives him that without which it cannot exist).* ***While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*** *It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."*

21. Section 407 (1) Cr.P.C. confers jurisdiction upon the Sessions Judge to transfer any particular case from one Criminal Court to another Criminal Court in his sessions division if it is expedient for the ends of justice. The Sessions Judge has recorded this satisfaction and has transferred the trial to the Court of Additional Session Judge, Court No.4/Special Judge Gangsters Act, which also has jurisdiction over the trial irrespective of the person who is presiding the Court. Therefore, this Court can interfere in the impugned transfer order only if the order occasions an abuse of the process of law or it defeats the ends of justice.

22. An order passed by the Session Judge in exercise of the jurisdiction conferred upon him by Section 407 (1) Cr.P.C. after giving an opportunity of hearing to the parties and after dealing with their submissions, cannot be said to be an order obtained by or resulting in an abuse of the process of law.

23. There is no dispute that the Court in which the trial was originally proceeding and the Court to which the transferred, both have jurisdiction to decide the trial. The learned Sessions Judge has passed the impugned transfer order keeping in view the fact that the Court of Additional Sessions Judge/Special Judge ATS, Lucknow was presided by Shri Abhinay Kumar Mishra, H.J.S., who recorded the testimony of PW-1 to PW-9 and thereafter he got transferred to the Court of Additional Sessions Judge, Court Number 4/Special Judge Gangsters Act in the same Sessions Division, as the learned Sessions Judge has formed the view that completion of trial by the same Presiding Officer, who is available in a Court of competent jurisdiction in the same Sessions Division, will secure the ends of justice in a better manner.

24. When the Court of learned Additional Session Judge/Special Judge ATS, Lucknow and the Court of Additional Session Judge, Court No.4/Special Judge Gangsters Act, both have jurisdiction over the trial, the Session Judge has discretion to allocate the trial to any of the two Courts having jurisdiction over the matter. Upon the transfer application having been filed, the Sessions Judge invited a report from the Presiding Officer of the transferee Court Sri. Abhinay Kumar Mishra. He stated in his report that while he was the Presiding Officer of the Court of Additional Sessions Judge / Special Judge ATS, he had recorded the testimony of some prosecution witnesses but the prosecution evidence had not completed and at this stage he got transferred to the Court of Additional Sessions Judge / Special Judge Gangsters Act. He stated that the matter was pending at the stage of prosecution evidence and he had not heard the submissions of the parties.

25. It is settled law that the Courts should give due consideration to the demeanor of the witnesses. When the trial commenced and continued till recording of deposition of PW-9 before a particular Presiding Officer in the Court of Additional Session Judge/Special Judge ATS, Lucknow and the Presiding Officer of that Court had the advantage of watching the demeanor of nine prosecution witnesses, which include all the witnesses of fact, and thereafter that Presiding Officer was transferred to another Court in the same Sessions Division, if the learned Sessions Judge found it appropriate to transfer the trial to the Court of Additional Sessions Judge presided by a Presiding Officer who has recorded the deposition of PW-1 to PW-9, then the Session Judge has not committed any error or illegality and the transfer order does not defeat the ends of justice, warranting interference by the High Court in exercise of its inherent power.

26. Interference with the impugned transfer order would neither serve the purpose of giving effect to any order under the Code nor does the impugned order lead to the abuse of process of court that must be prevented. The impugned also does not in any way defeat the ends of justice. Therefore, in absence of there being any error or illegality in the impugned order dated 29.06.2026, passed by learned Sessions Judge, Lucknow in Transfer Application/Criminal Misc. Case No.783 of 2026 in relation to Sessions Trial No.2707 of 2024 (Crime No.416 of 2013, Police Station Gomti Nagar, Lucknow) and the transfer order not defeating the ends of justice, there is no good ground to interfere in the transfer order by means of invoking the inherent powers of this Court.

27. The petition lacks merit and the same is accordingly ***dismissed***.

(2026) 7 ILRA 1625
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.07.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 4180 of 2025
Along with
Writ C No. 13795 of 2020

M/s Drosia India Ltd. ...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue for Consideration

Whether the cancellation of the petitioner's highest bid, which was higher than the reserve price, on the ground that a higher price could be obtained in a subsequent auction, was valid; and whether the Lucknow Development Authority was justified in levying interest from the date of auction till the date of allotment in the absence of any provision authorising such levy under the terms and conditions of the auction.

Headnotes

U.P. Urban Planning and Development Act, 1973 – s.41(3) – Hotel plot – Tender-cum-auction – Lucknow Development Authority published advertisement dated 21.09.2007 inviting applications for participation in tender auction for plots for hotel purposes – Petitioner offered bid of Rs.12,050/- per square metre against reserve price of Rs.8,800/- per square metre and its bid was the highest – Bid cancelled on the ground that adjoining commercial plot had been sold at Rs.35,500/- per square metre and a higher price could be obtained in a subsequent auction – Petitioner challenged cancellation – During pendency of writ petition, matter was settled – Vice-Chairman, by order dated 18.11.2015, withdrew cancellation subject to payment of interest – Petitioner objected to levy of interest from the date of auction – Interest reduced by order dated 11.03.2016 – Petitioner deposited Rs.3,71,01,690/-, being more than 50% of the sale consideration – Allotment letter dated 03.12.2015 – Possession not handed over – Petitioner applied under OTS scheme seeking waiver of penalty and interest – Allotment cancelled by order dated 11.07.2022 and amount deposited refunded after deductions – Revision under s.41(3) allowed on 26.04.2024 and matter remanded for reconsideration of levy of interest strictly in accordance with the terms and conditions of the auction – In remand proceedings, Authority passed impugned order dated 24.12.2024 again levying interest from the date of auction to the date of allotment – Challenge thereto and prayer for permitting deposit of the amount at the rate advertised in 2007 without interest, after adjustment of the amount deducted at the time of cancellation, and for handing over possession.

Held: Government Order dated 06.02.1997 provided that where the highest bid was higher than the base price, the same was to be accepted and could not be cancelled unless there was concealment or fraud – There being no allegation of collusion, fraud or concealment against the petitioner, the highest bid of the petitioner could not have been cancelled – Cancellation of the petitioner's bid held to be arbitrary and illegal – By order dated 03.12.2015, the Authority approved allotment of the disputed plot in favour of the petitioner, but there was no reference to any rule or provision of law authorising levy of interest from the date of auction till the date of payment – Clause 10 of the auction conditions provided for deposit of 35% of the bid amount

within seven working days from acceptance of the bid, followed by issuance of the allotment letter; further 15% was payable within one month from issuance of the allotment letter and the remaining 50% in four instalments carrying interest at 15% – Clause 10(b) provided that the instalments would commence only after issuance of the allotment letter and Clause 10(c) provided for penal interest in case of delay in payment of the instalments – Interest could be levied only from the date of allotment in terms of Clause 10 of the auction conditions – Since the petitioner's bid had initially been cancelled and no allotment letter had been issued at that stage, no interest could have been levied upon the petitioner for the period preceding issuance of the allotment letter – In the absence of any provision authorising levy of interest prior to issuance of the allotment letter, Lucknow Development Authority could not have imposed interest upon the petitioner from the date of auction to the date of allotment – Levy of interest from the date of auction to the date of allotment held to be illegal and arbitrary – Respondents directed to pass a fresh order requiring the petitioner to pay the amount for which bid was made strictly in accordance with Clause 10 of the terms and conditions of the auction – Respondents further directed to comply with the conditions regarding handing over possession in terms of the auction conditions– Impugned orders dated 24.12.2024 and 11.04.2025 quashed. [Paras 31, 33, 37, 38, 40-47, 49]

Writ petition allowed. (E-5)

Case Law Cited

The Bhopal Sugar Industries Ltd. v. Income Tax Officer, Bhopal, AIR 1961 SC 182;

M/s Mayur Continental, Dehradun and others v. Administrator, Nazul Land, Dehradun and others, (1989) 2 UPLBEC 127;

Golden Food Products India v. State of Uttar Pradesh and others, 2026 INSC 22;

Eva Agro Feeds (P) Ltd. v. Punjab National Bank, (2023) 10 SCC 189.

List of Acts

U.P. Urban Planning and Development Act, 1973

List of Keywords

Hotel plot; Tender-cum-auction; Highest bid; Reserve price; Cancellation of auction; Government Order dated 06.02.1997; Concealment or fraud; Arbitrary cancellation of bid; Allotment letter; Clause 10 of auction conditions; Levy of interest; Interest from date of auction; Interest from date of allotment; Instalments; Penal interest; Revision under Section 41(3); Remand; Lucknow Development Authority; Possession of allotted plot; Auction conditions.

Case Arising From

Petition challenging orders dated 24.12.2024 and 11.04.2025 passed by the Lucknow Development Authority in relation to levy of interest on the petitioner in respect of the hotel plot auctioned in 2007.

Appearances for Parties

Advs. for the Petitioner (s) : Ajeet Pratap Singh, Abhishek Singh, Kushagra Dikshit, Lalta Prasad Misra, Piyush Kishor, Prashant Kumar, Saima Khan, Sarvesh Kumar Tiwari

Advs. for the Respondent(s): C.S.C., Ratnesh Chandra

(Delivered by Hon'ble Alok Mathur, J.
&
Hon'ble Amitabh Kumar Rai, J.)

1. Heard Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Prashant Kumar, Sri Abhishek Kumar, Sri Ajeet Pratap Singh, Sri Sarvesh Kumar Tiwari and Sri Devesh Srivastava,

learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Ratnesh Chandra, learned counsel for Lucknow Development Authority.

2. Learned counsel for the parties contend that the issue involved in WRIT - C No. 4180 of 2025 and WRIT - C No. 13795 of 2020 are the same. As such, the Court proceeds to hear and decide both the writ petitions together. For convenience, facts of Writ C No. 4180 of 2025 are being taken into consideration.

3. At the very outset, learned counsel for the petitioner submits that Writ C No. 13795 of 2020 has been rendered infructuous due to subsequent events and orders passed by the opposite parties after filing of Writ C No. 4180 of 2025. Learned counsel for the petitioner has categorically indicated this fact in paragraph 5 of memo of Writ C No. 4180 of 2025. He prays that the Writ C No. 13795 of 2020 may be dismissed as having become infructuous.

4. Accordingly, Writ C No. 13795 of 2020 is **dismissed** as infructuous.

5. Learned counsel for the petitioner The instant writ petition has been filed praying for the following main relief(s):

"(i) To issue writ or direction in the nature of certiorari quashing the order dated 24.12.2024 passed by the opposite party number 3 (contained as Annexure number 1 to this writ petition).

(ii) To issue writ or direction in the nature of certiorari quashing the order dated 11.04.2025 issued by the opposite party no. 4/Incharge officer(commercial), LDA (contained as Annexure number 2 to this writ petition).

(iii) To issue the writ, order or direction in the nature of Mandamus directing the LDA to allow the petitioner to deposit the amount as per the rate advertised at the time of advertisement dated 21.09.2007 regarding plot bearing number TCG-01-A-V 4/1 situated at Vibhutikhand, Gomtinagar, Lucknow without any interest and adjusting the amount deducted at the time of cancellation vide order dated 11.07.2022 passed by opposite party no. 3 and handover the peaceful possession of the said plot immediately."

6. The petitioner is a Company duly incorporated under the Companies Act, 1956 and registered in the name of Messers Drosia India Limited and is engaged in the business of real estate and hospitality. The Lucknow Development Authority had published an advertisement dated 21/09/2007 inviting applications for participation in the tender auction for plots for hotel purposes. In the said auction, the bid of the petitioner was for Rs. 12,050/- per square meter as against the reserve price of ₹ 8800 per square meter and accordingly the bid of the petitioner was the highest, but no order was passed directing the petitioner to deposit 35% of the bid amount within 7 days. The petitioner in the aforesaid circumstances himself deposited an amount of ₹ 45 lakhs on 13/10/2007 as earnest money, but the Lucknow Development Authority by means of an order dated 18/10/2007 unilaterally cancelled the auction as the bid price was low.

7. The petitioner being aggrieved by the order dated 18/10/2007 filed a writ petition before this Court being Writ Petition No. 8173 (MB) of 2007, and this Court proceeded to stay the order

dated 18/10/2007 on 02/11/2007. During the pendency of the aforesaid petition, both parties entered into a dialogue and the matter was settled between them, and as per the said settlement, the petitioner was to withdraw the writ petition and submit a request to the Lucknow Development Authority to withdraw the order of cancellation of the auction and thereafter settle the plot in favour of the petitioner in terms of the auction.

8. It is in the aforesaid circumstances that a representation was submitted by the petitioner on 15/07/2015 and the vice-chairman of the Lucknow Development Authority passed an order on 18/11/2015 intimating his decision to withdraw the previous order of cancellation dated 18/10/2007 subject to payment of interest. The order dated 18.11.2015 was communicated to the petitioner vide letter dated 3.12.2015. According to the petitioner the order dated 18.11.2015 passed by the Lucknow Development Authority was illegal and arbitrary inasmuch as while setting aside the previous order of cancellation, it imposed a penalty upon the petitioner treating this case as if he had not paid the entire sale consideration from the date of auction till the date of revocation of cancellation. The main contention of the petitioner was that the interest can only be levied after the allotment letter is issued and possession is handed over and not from any date prior and also that there is delay in payment of the instalments. In the present case inasmuch as the possession of the plot was not given to the petitioner, there was no question of levying interest on payment.

9. The petitioner expressed his opposition to levying of interest by the Lucknow Development Authority by submitting a representation on 12/01/2016. The said representation was duly considered and by means of an order dated 11/03/2016 the amount of interest was reduced to simple interest and amount of 50% of deposit which previously was Rs. 11,65,77,329/- was reduced to Rs. 7,86,61,606/-.

10. The grievance of the petitioner to the levy of interest was on account of the fact that according to the petitioner, the penal interest would be levied only when the allotment letter is issued and possession of the plot had been handed over to the petitioner and not at any stage prior. According to the petitioner this aspect of the matter has already been considered by the Lucknow Development Authority in the case of Ms Ganpati Constructions where the levy of interest from 07/10/2013 to 30/05/2017 was waived off by the authority itself as the possession of the property was not given to the auction purchaser, and accordingly wanted his case to be considered in accordance with the order passed in favour of Ms Ganpati Constructions.

11. As the grievance of the petitioner was not considered or rectified, he preferred another representation on 18/04/2016 objecting to the levy of interest from the date of the auction. Despite the submission of representation the petitioner was directed to deposit the amount by means of an order dated 03/04/2017. It is the case of the petitioner that he repeatedly took up the matter before the Lucknow Development Authority, but they only repeatedly told him that certain amounts have to be firstly paid by him before the aspect of possession will be considered. The petitioner, accordingly, made a total payment of Rs. 3,71,01,690/- which was more than 50% of the sale consideration and only thereafter he was communicated that the allotment had been made in his favour by allotment letter dated 03/12/2015.

12. Despite deposit of the aforesaid amount the possession of the plot was never handed over to him by the respondents, but the respondents stated that the entire cost of plot will have to be deposited before the same could be handed over to him, despite the fact that according to the petitioner in all other similar circumstances the possession of the plots were handed over on deposit of 25% of the amount of consideration.

13. During this period, the COVID 19 pandemic had gripped the entire country, and the State Government in such peculiar circumstances had decided to waive the penalty and interest amount of persons who had defaulted. The petitioner also moved an application under the OTS scheme seeking waiver of penalty and interest, but by means of a letter dated 30/12/2021, the petitioner was informed that in case he does not deposit the amount demanded then his allotment would be cancelled. The petitioner kept on making representations against the said demand, and subsequently by means of an order dated 11/07/2022 his allotment was cancelled and the money deposited by the petitioner was refunded after making certain deductions.

14. Against the order of cancellation dated 11/07/2022, the petitioner preferred a revision under Section 41(3) of the Uttar Pradesh Urban Planning and Development Act, 1973. The revisional authority did not pass any order on the application for interim relief made by the petitioner, while on the other hand, the Authority was proceeding to re-auction the said plot and create third-party rights.

15. In the aforesaid circumstances, the petitioner preferred a writ petition before this Court being Writ C No. 5403 of 2022 which was disposed of by means of an order dated 18/08/2022, restraining the parties from creating any third-party rights, till the interim application in the revision proceedings is decided. The revision was finally allowed in favour of the petitioner on 26/04/2024 and a very categorical finding was given that no interest can be levied for the period 2007 to 2015 while remanding the matter to the opposite party no. 3 for a limited purpose to determine the levy of interest from 2007 to 2015, strictly as per the terms and conditions of the auction.

16. The Lucknow Development Authority in the remand proceedings proceeded to pass the impugned order dated 24/12/2024 and again levied the interest from the date of cancellation of allotment to the date of reallotment which had previously been levied on the petitioner against which he preferred a revision.

17. The order dated 24/12/2024 has been assailed by the petitioner in the present writ petition. The appellant has vehemently submitted that the impugned order dated 24/12/2024 levying interest from the date of auction till the date of revocation of the order of cancellation, that is from 15/10/2007 to 15/07/2015 is illegal and arbitrary and contrary to the order dated 26/04/2024 passed by the State Government passed in the revision preferred by the petitioner as well as terms and conditions of the auction. It is submitted that the Lucknow Development Authority is bound to comply with the directions of the State Government, while the impugned order has been passed clearly in defiance of the revisional order and is, therefore, illegal and arbitrary and deserves to be set aside.

18. The petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **The Bhopal Sugar Industries Ltd vs Income Tax Officer, Bhopal, 1961 AIR 182** and judgment of this Court in the case of **M/s Mayur Continental,Dehradun and others vs Administrator, Nazul Land, Dehradun and others, (1989) 2 UPLBEC 127.**

19. It was further submitted that the Lucknow Development Authority could not have levied interest from the date of the auction till the date of revocation or cancellation of the auction in the absence of any conditions in the bid document or any other provision enabling the authority to levy such interest. It was submitted that as per the government order dated 06/02/1997 in case the highest bid price offered is higher than the base price, then the bid should be accepted and not cancelled unless there is some concealment or fraud committed while offering the said bid.

20. It was contended that this Court in Writ Petition No. 8173 (MB) of 2007, had passed an interim order in favour of the petitioner after considering the provisions of the government order dated 06/02/1997.

21. It was also submitted by the counsel for the petitioner that as per the government order dated 06/02/1997 it has been provided that the highest bid cannot be cancelled unless some concealment of fraud is committed in offering the bid and, therefore, it was submitted that the action of the respondents in cancelling the bid of the petitioner itself was illegal and arbitrary and violative of Article 14 of the Constitution of India.

22. The writ petition has been vehemently opposed by Sri Ratnesh Chandra, learned counsel for the Lucknow Development Authority.

23. There is no dispute that during the auction held on 12/10/2007 the petitioner had made a bid for ₹ 12,050/- against the reserve price of ₹ 8,800/- while for the adjacent plot bid of Rs. 35,500/- was received and there was a significant difference in the bid amount and there was a reasonable expectation that in a subsequent auction a higher price would be fetched and therefore, by means of order dated 17/10/2007, the bid made by the petitioner was rejected. The petitioner thereafter had filed a writ petition before this Court being Writ Petition No. 8173 (MB) of 2007, where, by means of an interim order dated 02/11/2007 the order dated 17/10/2007 was stayed, and as the writ petition remained pending, after a period of eight years an application was preferred by the petitioner for resolving the said dispute before the Lucknow Development Authority on 15/07/2015. The vice-chairman of the Lucknow Development Authority gave his approval to the said proposal made by the petitioner on 18/11/2015 but recorded that the terms and conditions of the auction would apply, and payment would have to be made by the petitioner along with interest.

24. The formal communication of the decision of the Lucknow authority was made on 03/12/2015 according to which 50% of the bid amount has to be deposited by 31/12/2015, which was the amount of Rs.11,65,77,329/- and the remaining 50% in four quarterly instalments of Rs. 3,19,26,887/-. The computation of the aforesaid amount including interest was provided to the petitioner vide letter dated 03/04/2017 according to which from 17/11/2007 to 21/03/2017 interest at the rate of 15% was imposed amounting to ₹ 8, 57,43,282/-.

25. There is no dispute that the petitioner had opposed the imposition of interest from 2007 to 2017.

26. In paragraph 22 of the counter affidavit filed by the Lucknow Development Authority, it has been stated that the State Government had allowed the revision preferred by the petitioner on 26/04/2024 and the orders dated 04/07/2022 and 11/07/2022 were set aside and remanded the matter to Lucknow Development Authority, directing the authority to consider the aspect of charging interest afresh after giving an opportunity of hearing to the petitioner.

27. The opposite parties have relied upon condition nos. 1 and 11 of the terms and conditions of the auction notice to impose interest upon the petitioner from the date of the auction till the date of allotment was made into 2017.

28. Clause 1 and 11 of the terms and conditions of the auction notice are are quoted hereinbelow:-

"क्रम सं0-1. होटल / व्यवसायिक भूखण्डों का निस्तारण, टेण्डर एवं तदोपरान्त नीलामी द्वारा किया जायेगा। निर्धारित तिथि को प्रत्येक भूखण्ड के लिये अलग-अलग टेण्डर डाले जायेंगे। इसके उपरान्त निविदाए निर्धारित तिथि को समिति के द्वारा खोली जायेंगी, तदोपरान्त उच्चतम निविदा को आरक्षित विक्रय मूल्य (जो प्राधिकरण के आरक्षित मूल्य से कम न हो) मानकर नीलामी बोली प्रारम्भ की जायेगी। टेण्डर अथवा नीलामी में प्राप्त सर्वोच्च दर ही विचारणीय होगी। उपाध्यक्ष लखनऊ विकास प्राधिकरण को पूर्ण अधिकार होगा कि सर्वोच्च बोली को अस्वीकृत कर दें और जमानत धनराशि वापस कर दें तथा नीलामी हेतु दुबारा टेण्डर आमंत्रित करें। जिन लोगों ने टेण्डर डाले है वह दुबारा टेण्डर डाल सकते हैं।

क्रम सं0-11. नीलामी में प्राप्त उच्चतम टेण्डर अथवा बोली के आधार पर ही किसी व्यक्ति को सम्पत्ति का आवंटन पूर्ण नहीं माना जायेगा, राम्पत्ति का आवंटन उसी समय माना जायेगा जब सक्षम स्तर अर्थात उपाध्यक्ष, विकास प्राधिकरण से स्वीकृति के उपरान्त लखनऊ विकास प्राधिकरण की ओर से आवंटन पत्र जारी हो जायेगा। आवंटन के पश्चात समस्त वांछित धनराशि निर्धारित समय में जमा करते हुऐ औपचारिकताएं की पूर्ति करनी होगी अन्यथा आवंटन निरस्त कर दिया जायेगा, यदि कोई टेण्डरदाता बोली स्वीकार होने के पश्चात वांछित औपचारिकताओं की पूर्ति नहीं करता है अथवा भूखण्ड के आवंटन को निरस्त किया जाता है तो नियमों के अन्तर्गत धनराशि कटौती/जब्त करते हुए शेष धनराशि जमा वापस कर दी जायेगी।"

29. The respondents have also relied upon the letter dated 15/07/2015 submitted by the petitioner to justify the levying of interest, stating that the petitioner himself had offered to deposit the same and therefore, the petitioner cannot challenge the same on the principle of estoppel.

30. I have heard the counsels of the parties and perused the record.

31. The first aspect which deserves consideration is the validity of the order of cancellation of the bid of the petitioner vide order dated 17/10/2007. Though the said order was assailed by the petitioner in Writ Petition No. 8173 (MB) of 2007, which was subsequently dismissed as infructuous by means of an order dated 31/10/2017, but as the said order is the genesis of the dispute leading to the present petition, the validity of the same will have a bearing on the present controversy.

32. The petitioner had participated in the auction for purchase of a plot, which was advertised by the Lucknow Development Authority on 21/09/2007, where 11 bids were received, and the bid of the petitioner was the highest having offered the rate of ₹ 12,050/- per square meter against the reserve price of ₹ 8,800/- per square metre. The bid of the petitioner was cancelled only on account of the fact that the adjoining plot, which was a commercial plot, was sold for ₹ 35,500/-. This Court in a writ petition filed by the petitioner being Writ Petition No. 8173 (MB) of 2007 stayed the order of cancellation dated 18.10.2007, after holding that as per the policy of the State Government dated 22/05/2006 the Hotel business has been given the status of industry and it has been provided that price fixed for the hotel shall be at the industrial rate, while it was noticed that the adjacent plot was a commercial plot and naturally such a plot would fetch a higher price than an industrial plot, and therefore found the order of cancellation to be prima facie arbitrary and stayed the same by means of the order dated 02/11/2007.

33. It is also relevant to consider that as per the Government order dated 06/02/1997 in case the highest bid price offered is higher than the base price, then the bid should be accepted and not cancelled unless there is some concealment or fraud committed in offering the said bid. In the order passed subsequently by the respondents themselves clearly mentioned that there were 11 bidders in the said auction and therefore there is no element of collusion or fraud and it is for this reason that the respondents decided to settle the dispute in favour of the petitioner. Accordingly, we find that in the absence of any allegation of fraud or concealment, the bid of the petitioner could not have been cancelled.

34. At this stage, it would be relevant to consider the recent judgment of the Supreme Court in the case **GOLDEN FOOD PRODUCTS INDIA vs STATE OF UTTAR PRADESH & OTHERS, 2026 INSC 22** where it has been observed as under:-

"28. In our view, there cannot be any imprimatur of the Court to such arbitrary cancellation of auction by an instrumentality or agency of the State in the absence of there being any fraud, collusion, suppression etc. Merely because the smaller plots measuring 123 to 132 square metres were auctioned and sold at a higher price as compared to the subject plot measuring 3150 square metres which is a large sized plot, could not have been the basis for cancelling the auction insofar as the subject plot is concerned. The demand for smaller plots being higher was sold at a higher price per square metre than the subject plot, where there was no demand for the subject plot as only two bidders participated in the auction. The bid of the appellant was above the reserve price. There was no other reason to cancel the auction sale of the subject plot. Therefore, GDA - respondent No. 2 was under an obligation in law having accepted the bid offered by the appellant to issue the allotment letter instead of cancelling the auction on the basis of irrelevant

considerations that too behind the back of the appellant. Expectation of a higher bid in a subsequent auction cannot be a reason to cancel an auction held in accordance with law.

29. The appellant herein as also all bidders would had made all financial arrangements before making technical and financial bids in an auction. The technical bid of the appellant herein was accepted. There was no reason to decline the financial bid made by the appellant which was the highest bid. The financial bid was also over and above the reserve price. There was no reason attributed to the appellant for cancellation of the auction sale. In the circumstances, the appellant had a legitimate expectation to receive an allotment letter vis- -vis the subject plot as it was the highest bidder. Instead, without any prior notice to the appellant the auction itself was cancelled which constrained the appellant to approach the High Court. The High Court has lost sight of these facts of the matter and has simply dismissed the writ petitions filed by the appellant herein which is not correct.

30. We could consider the judgments cited at the Bar as under:

a) In Haryana Urban Development Authority v. Orchid Infrastructure Developers (P) Ltd., (2017) 4 SCC 243, the contract contained an express clause stating that the presiding officer had the right to reject a bid without offering any reasons. Although twenty-seven bidders participated in the said auction and the reserve price was Rs. 106.65 crores and the highest bid was Rs. 111.75 crores for 9.527 acres of land in Gurgaon, the bid was cancelled. However, such a clause is conspicuous by its absence in the present case.

b) In Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477, owing to a news item published in a newspaper that large scale bungling had taken place in the auction due to which the price fetched for the plots was much below the market rate, a direction was issued by this Court to hold a fresh auction. Such a situation did not arise in the instant case.

c) In State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36, there was a direction to hold a re-auction as the power to accept or reject the bid was given to the highest authority in the State and the State Government was of the opinion that the price was inadequate. Possibly, in the facts of the said case, the said direction was issued by this Court.

d) In Uttar Pradesh Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182, the reserve price was fixed at Rs. 1,80,200/- and the respondent therein offered Rs. 1,31,500/- which was much less than the reserve price. Hence, the bid was rightly rejected.

e) In Meerut Development Authority v. Association of Management Studies, (2009) 6 SCC 171, the request of the respondent therein for allotment of remaining 20,000 square metres to them as they had acquired 37,000 square metres of land as per the reserve price, was rejected as the price quoted had been lower than the reserve price for the said remaining land and rightly so.

f) In Indore Vikas Praadhikaran (IDA) v. Shri Humud Jain Samaj Trust, 2024 SCC OnLine SC 3511, this Court distinguished Eva Agro Feeds and found that the bid could not be accepted as the tender committee while finalizing the bids noticed that property tax of Rs. 1.25 crore in respect of the subject land therein was outstanding. On noticing this error, the Board decided to cancel the bid of the respondent therein and decided to issue a fresh notice inviting tenders.

31. The following judgments also require consideration:

a) In M.P. Power Management Company Limited v. Sky Power Southeast Solar India (Private) Limited, (2023) 2 SCC 703, the bid of the respondent therein was accepted and it was observed that public interest cannot always be conflated with an evaluation of the monetary gain or loss alone.

b) In Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd., (2006) 13 SCC 382, an advertisement inviting applications for a fresh contract to run a slaughterhouse was sustained. In the said judgment, it was observed that the award of government contracts through public auction or public tender was to ensure transparency in the public procurement, to maximise the economy and efficiency in government procurement, to promote healthy competition among the tenderers and to eliminate irregularities, interference and corrupt practices by the authorities concerned. In rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through private negotiations . The Government must then have freedom of contract. Some fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. The plea of the respondent therein seeking permission to modernize the slaughterhouse and therefore, to refrain from issuing an advertisement was negatived.

c) In Subodh Kumar Singh Rathour v. Kolkata Metropolitan Development Authority, (2024) 15 SCC 461, this Court observed that merely because the rates embodied in a contract with the passage of time have become less appealing, the same cannot become a determinative criterion for either terminating the contract or for the courts to decline interference in such contractual disputes. Public interest cannot be used as a pretext to arbitrarily terminate contracts. Merely because the financial terms of a contract are less favourable over a period of time does not justify its termination. It was observed that the mere possibility of fetching a higher license fee was no ground to cancel the tender issued to the appellant therein.

32. An auction process has a sanctity attached to it and only for valid reasons that the highest bid can be discarded in an auction which is otherwise held in accordance with law. If a valid bid has been made which is above the reserve price, there should be a rationale or reason for not accepting it. Therefore, the decision to discard the highest bid must have a nexus to the rationale or the reason. Merely because the authority conducting the auction expected a higher bid than what the highest bidder had bid cannot be a reason to discard the highest bid. In the instant case, no other party had placed a bid higher than the appellant herein. There was no infirmity in the conduct of the auction. No other party had complained about the process of auction conducted by the GDA - respondent No. 2. The bid offered by the appellant herein was the highest and above the reserve price. In the circumstances, the said bid ought to have been accepted by GDA - respondent No. 2 rather than cancelling the same without notice to the appellant herein. Hence, the cancellation of the bid submitted by the appellant herein is quashed.

33. For the aforesaid reasons, the impugned orders of the High Court dated 24.05.2024 and 15.07.2024 passed in the respective writ petitions are set-aside. The appellant is directed to re-deposit the earnest money preferably within four weeks from today. Within two weeks from the date of the re-deposit of the earnest money, the GDA - respondent No. 2 shall make an order of allotment of the subject plot in favour of the appellant herein and take all consequential steps for concluding the auction process in favour of the appellant herein. These appeals are allowed in the aforesaid terms."

35. The law laid down by Hon'ble Supreme Court for cancellation of auction is extremely clear and in paragraph 32 it has been held that the highest bid can be discarded only on reasonable

grounds which cannot be whimsical or bereft of any cogent reason. In the aforesaid judgement, the Supreme Court had also reaffirmed its previous judgement in the case of **Eva Agro Feeds (P) Ltd. v. Punjab National Bank, (2023) 10 SCC 189** (Eva Agro Feeds) where it was held as under:

"...mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring avoidable expenses but also erode the credibility of the auction process itself ."

36. In the instant case, a perusal of the terms and conditions of the tender issued by the respondents in clause 6 it was clearly provided that if an allotment is obtained by fraud and misrepresentation undue influence etc, then it shall be cancelled. If a sale deed is executed on the basis of such allotment obtained by fraud, undue influence etc, then the sale deed will also be cancelled and 50% of the sale price will be forfeited.

37. It is not the case of the respondents that there was any fraud committed by the petitioner or undue influence exerted by him, and there were 11 persons who had participated in the auction and therefore it cannot be said that the auction was hit by any of the conditions, which could render it liable for cancellation, and therefore the order of cancellation of the bid of the petitioner was arbitrary and illegal. Accordingly, we find that the decision to cancel the auction was clearly illegal and arbitrary and when this aspect of the matter was realised by the respondents themselves, they sought to restore the bid of the petitioner, subject to certain conditions.

38. During the pendency of the Writ Petition No. 8173 (MB) of 2007 on the representation of the petitioner the respondents, by means of an order dated 03/12/2015, gave their approval for allotment of the disputed plot in favour of the petitioner, subject to the condition that the petitioner deposits the remaining consideration along with interest from the date of the auction. It is relevant to note that in the aforesaid order, there is no mention of any rule or any provision of law which may enable the respondents to levy interest upon the petitioner from the date of the auction till the date of payment.

39. There is no dispute that the petitioner has been repeatedly contesting the aspect of the levy of interest, restoration of his bid and allotment of a plot in his favour. It is this contention that the levy is contrary to the conditions of the tender itself and the plot should be given to him on the same terms and conditions of the bid amount made by him during the said auction.

40. The terms and conditions of the auction pertaining to the payment to be made by the successful bidder have been provided in clause 10 which is as under:-

"10. नीलामी की कार्यवाही लखनऊ विकास प्राधिकरण गोमती नगर कार्यालय में सार्वजनिक रूप से समिति के समक्ष करायी जायेगी। नीलामी के पूर्व नीलामी के नियम व शर्तें एक बार पुनः सूचित कर दी जायेगी। भुगतान का विवरण निम्न होगाः-

(अ) उच्चतम टेण्डर दाता को कुल धनराशि की 35 प्रतिशत धनराशि बोली गयी बोली/नीलामी की स्वीकृति की तिथि से सात कार्यदिवसों में जमा करनी होगी (इसमें निविदा के साथ

जमा जमानत धनराशि समायोजित कर ली जायेगी) उपरोक्तानुसार 35 प्रतिशत धनराशि जमा होने एवं आवंटन पत्र निर्गत होने की तिथि से एक माह के अन्दर 15 प्रतिशत धनराशि पुनः जमा करनी होगी तथा शेष 50 प्रतिशत धनराशि 3-3 माह की 4 किस्तों में 15 प्रतिशत ब्याज की दर पर जमा की जा सकेगी।

(ब) किश्तों का प्रारम्भ आवंटन पत्र निर्गत होने की तिथि से माना जायेगा।

(स) देय किश्तों का भुगतान न करने पर 18 प्रतिशत की दर से दण्ड ब्याज देय होगा।"

41. A perusal of the aforesaid provisions clearly indicates that the highest bidder has to deposit 35% of the bid amount within 7 days from the date of acceptance of his bid and it is only after deposit of 35% of the amount that the allotment letter would be issued to him. It is further provided that the successful bidder has to deposit further 15% of the bid amount within one month from the date of allotment and the remaining 50% has to be deposited in four instalments of 3-3 months alongwith interest @ 15%. In clause 10(b) of the aforesaid terms and conditions, it is further provided that installments will commence only after issuance of the allotment letter. Other relevant conditions are found on perusal of clause 10(c) of the aforesaid terms and conditions which provides that in case the aforesaid installments are not paid within the time prescribed then 18% penal interest would be levied upon the bidder.

42. The challenge to the imposition of interest for delayed payment was made by the petitioner by filing a revision before the State Government which was allowed by means of order dated 26.4.2024. The State Government while deciding the said revision extensively considered the grounds raised by the petitioner as well as reasons given by the Lucknow Development Authority for imposition of the interest imposed upon the petitioner. After considering the rival contentions, the State Government was of the view that there was no reason for the Lucknow Development Authority to have imposed interest upon the delayed payment from the date of auction till the date of issuance of the allotment letter dated 03.12.2025. It further considered that while considering the representation of the petitioner, proper opportunity of hearing was not given and therefore the said order itself is in gross violation of principle of natural justice and accordingly allowed the revision setting aside the orders of the Lucknow Development Authority dated 04.07.2022 as well as 11.07.2022 and remanded the matter for consideration afresh specially with regard to imposition of interest from 12.10.2007 to 03.12.2015 in light of the terms and conditions of the auction.

43. From the aforesaid, it is clear that the Lucknow Development Authority was under a mandate to reconsider the terms and conditions of the auction and only there was any provision by which they could levy interest from the date of auction to the date of allotment, the said interest could have levied.

44. From perusal of the impugned order, we find that only provisions considered were Clause I and II of the terms and conditions and without discussing as to how and under which provision the interest could be levied, the Lucknow Development Authority again levied the interest from the date of auction to the date of allotment. The Vice-Chairman while passing the impugned order has only recorded the fact that on the basis of a compromise dated 15.07.2015, the interest have been levied from 15.10.2007 and his predecessor in the note-sheet has duly recorded the fact that while passing fresh order of

allotment, interest should be levied upon the petitioner and therefore he has proceeded to pass the impugned order levying interest on the petitioner from the date of auction to the date of allotment.

45. Accordingly, from the above, we find that firstly as per the terms and conditions of the auction, the interest could have been levied only from the date of allotment as provided in Clause 10 (C). We further find that initially the bid of the petitioner was cancelled and at which stage no allotment letter had been issued in favour of the petitioner. Accordingly, without issuance of the allotment letter, we find that no interest could have been levied upon the petitioner as per the terms and conditions of the auction. We further find that as per Clause 10 of the terms and conditions of the auction, the petitioner who was the successful and the highest bidder was to deposit 35% of the bid amount within 07 working days pursuant to which the allotment letter was to be issued and within one month of the issuance of the allotment letter further 15% of the bid amount was to be deposited by him. The remaining 50% of the bid amount was to be deposited in 3-3 months in four installments along with interest @ 15% and in Clause (B) it was clearly stated that the installment should be payable only after issuance of the allotment letter and as per Clause - (C) penal interest could be levied only when there is a delay in deposit of the installments. Accordingly, it is abundantly clear that without issuance of the allotment letter, no interest could have been levied upon the successful bidder and therefore we do not find any reason or any provision by which Lucknow Development Authority could have imposed interest upon the petitioner for the delayed payment.

46. As already observed hereinabove, after examining the entire matter, we find that even the cancellation of the bid of the petitioner on the ground that the adjacent plot was auctioned at a higher price and therefore in case the disputed plot is subjected to any further auction, a higher price can be obtained. Such a ground is unreasonable and arbitrary inasmuch as it is contrary to the Government Order issued by the State Government itself dated 06.02.1997 which aspect of the matter has been duly discussed in the revisional order dated 26.04.2024.

47. It is for the aforesaid reason that the impugned order levying interest upon the petitioner from the date of auction to the date of allotment is illegal and arbitrary and accordingly set aside. The respondents in the aforesaid circumstances are directed to pass a fresh order requiring the petitioner to pay the amount for which bid was made by him strictly as per Clause 10 of the terms and conditions of the auction within one month from the date a certified copy of this order is produced before the competent authority.

48. The respondents are also directed to comply with the conditions on handing over the possession of the property in terms of terms and conditions of the auction. While on the other hand the petitioner would be under a mandate to pay all the dues as per terms and conditions of the auction and in case the petitioner does not comply with the orders passed by Lucknow Development Authority, the Lucknow Development Authority shall be at liberty to proceed against him strictly in accordance with law after taking due consideration of the terms and conditions of the auction.

49. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The impugned orders dated 24.12.2024 and 11.4.2025, copies of which are annexure 1 and 2 respectively to the writ petition, are quashed.

(2026) 7 ILRA 1638
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.07.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 12144 of 2010

Krishna Kumar Mishra & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether possession of the land in dispute had been taken under Section 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976 by means of a Dakhalnama (possession memo) prior to enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, or the petitioners continued to remain in possession of the land in dispute at the time of enforcement of the Repeal Act, 1999;

Whether the writ petition filed after a delay of 11 years from the date of taking possession was liable to be dismissed on the ground of delay and laches.

Headnotes

Urban Land (Ceiling and Regulation) Act, 1976 – ss. 6(1), 6(2), 8(4), 9, 10(3), 10(5), 10(6) – Urban Land (Ceiling and Regulation) Repeal Act, 1999 – Government Orders dated 02.02.2000 and 09.08.2000 – Ceiling proceedings – Possession – Delay and laches – Ceiling proceedings initiated against the predecessors of the petitioners, who were the recorded tenure holders – Notice under s. 6(2) issued on 08.07.1996 – Order under s. 8(4) passed on 31.03.1997 declaring the land as surplus – Proceedings under ss. 9 and 10(1) undertaken – Notification under s. 10(3) published on 18.07.1998 – Notice under s. 10(5) issued on 29.09.1998 – Possession claimed to have been taken by the State under s. 10(6) on 11.02.1999 by means of Dakhalnama (possession memo) – Land subsequently transferred in favour of Kanpur Development Authority and its name recorded in the revenue records – Petitioners claimed continued possession and entitlement to protection under the Repeal Act, 1999 and relied upon irrigation receipts and photographs – Respondents relied upon the Dakhalnama, revenue entries and development of Jawaharpuram Housing Scheme over the land – Writ petition filed in 2010 seeking protection from dispossession and expunging of revenue entries in the name of Urban Ceiling – Respondents contended that possession had been taken prior to enforcement of the Repeal Act, 1999 and that the writ petition was liable to be dismissed on the ground of delay and laches.

Held: Petitioners did not produce any recent receipts issued by the Irrigation Department to substantiate their claim of possession – Irrigation receipts relied upon by the petitioners pertained only upto the year 2011, with one receipt of the year 2015, and the name of respondent no. 3-Authority had been recorded since 1998 – Photographs relied upon by the petitioners did not establish that they pertained to the land in dispute and failed to establish possession of the petitioners over the same – Respondent no. 3-Kanpur Development Authority filed a layout plan of the residential scheme "Jawaharpuram" and details of expenditure showing that Rs.174 crores had been spent upto 30.06.2016 – Petitioners themselves admitted that the land in dispute was recorded in the name of Kanpur Development Authority vide order dated 25.07.1998 – Dakhalnama dated 11.02.1999 was signed by the person handing over possession as well as the person taking over possession,

namely, the Nayab Tehsildar, Urban Land Ceiling, Kanpur – Petitioners did not dispute the Dakhalnama/possession memo but only stated that the same had not been signed by witnesses – Possession of the land in dispute stood transferred to respondent no. 3 prior to enforcement of the Repeal Act, 1999 – Writ petition was filed after a delay of 12 years from the date the land was recorded in the name of respondent no. 3 and 11 years after possession was handed over to the State – Belated challenge to dispossession liable to be rejected on the ground of delay and laches – Petitioners not entitled to the benefit of the Repeal Act, 1999 – No case made out in favour of the petitioners . [Paras 12–26]

Writ petition dismissed. (E-5)

Case Law Cited

State of Assam v. Bhaskar Jyoti Sarma and Others, (2015) 5 SCC 321;
Shiv Ram Singh v. State of U.P. and Others, 2015 SCC OnLine All 8853;
Indore Development Authority v. Manohar Lal, (2020) 8 SCC 129;
Kapilaben Ambalal Patel and Others v. State of Gujarat and Others, (2021) 12 SCC 95;
Marinmoy Maity v. Chhanda Koley and Others, (2024) 15 SCC 215;
Mithai Lal and Others v. State of U.P. and Others, Writ-C No. 38977 of 2022, decided on 16.02.2023.

List of Acts

Constitution of India;
Urban Land (Ceiling and Regulation) Act, 1976;
Urban Land (Ceiling and Regulation) Repeal Act, 1999.

List of Keywords

Urban Land Ceiling – Surplus Land – Ceiling Proceedings – Urban Land (Ceiling and Regulation) Act, 1976 – Repeal Act, 1999 – Section 10(3) – Section 10(5) – Section 10(6) – Physical Possession – Dakhalnama – Possession Memo – Vesting – Kanpur Development Authority – Revenue Records – Jawaharpuram Housing Scheme – Delay – Delay and Laches – Belated Writ Petition – Article 226

Case Arising From

Writ petition filed seeking a direction to the respondents not to dispossess the petitioners from the land in dispute and expunge the entries in the name of Urban Ceiling from the revenue records and record the names of the petitioners in respect of the land in dispute.

Appearances for Parties

Advs. for the Petitioner (s) : S.C. Tiwari, Shakti Shanker Tiwari
Advs. for the Respondent(s): Abhinava Krishna Srivastava, C.S.C., Ramesh Upadhyay, S.C., Sanjai Singh Jatav, Vivek Varma

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. The present writ petition has been filed for the relief that the respondents be commanded not to dispossess the petitioners from the land in dispute and further a direction may be issued to the respondents to expunge the entries in the name of Urban Ceiling in the revenue records and the same be recorded in the name of the petitioners in respect of land in dispute.

2. The case of the petitioners is that the predecessors of the petitioners were the recorded tenure holders of the land measuring 1.004 hectares comprised in Plot Nos. 357, 358, 359 and 360

situated at Village ? Bara Sirohi, Tehsil Sadar, District-Kanpur Nagar (herein after referred to as the land in dispute).

3. It is also stated that although the ceiling proceedings were initiated in respect of the land in dispute under the Urban Land (Ceiling and Regulation) Act, 1976 (herein after referred to as the Act, 1976) but the petitioners continued to remain in possession of the land in dispute.

4. It is further contended that no compensation was paid to the petitioners at any point of time under the provisions of the Act, 1976. The petitioners have also relied upon the government orders dated 02.02.2000 and 09.08.2000 under which if the possession of the land has not been taken at the time of enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (herein after referred to as "the Repeal Act, 1999") then the land holders would continue to remain in possession of the land in question.

5. The petitioners in support of their possession have filed irrigation receipts, the latest pertaining to the year 2015. The petitioners have also filed orders passed by the revenue authority dated 29.07.1998 by means of which the land in dispute was recorded in the name of Kanpur Development Authority respondent no. 3.

6. Per contra, it has been contended on behalf of the respondent State that as the land holders did not file ceiling return under Section 6(1) of the Act, 1976, thereafter notice no. 915 dated 08.07.1996 was issued under Section 6(2) of the Act, 1976. However, no statement was filed by the land holders even thereafter. Subsequently, an order under Section 8(4) of the Act, 1976 was passed on 31.03.1997. Thereafter, proceedings under Sections 9 and 10(1) of the Act, 1976 had taken place and a notification under Section 10(3) of the Act, 1976 was published on 18.07.1998. Notice under Section 10(5) of the Act, 1976 was issued to the land holders on 29.09.1998, which was served upon the land holders. However, as the land holders did not handover the possession of the land in dispute, the possession was taken under Section 10(6) of the Act, 1976 by means of a Dakhalnama (possession memo) dated 11.02.1999. The perusal of the Dakhalnama reveals that it had signatures of the person handing over the possession. Thus, it is stated that the possession of the land in dispute was taken prior to enforcement of the Repeal Act, 1999.

7. The case of the Kanpur Development Authority-respondent no. 3 is that the possession of the land in dispute was taken by the State and subsequently the possession of the land in dispute was transferred to the respondent no. 3 - Authority and the name of the respondent no. 3 -Authority was also recorded in the revenue records. It is also stated that the land in dispute has been developed by the respondent no. 3 - Authority under the Housing Scheme namely, "Jawaharpuram" and the residential plots carved out therein have already been allotted to the public. Further reliance has been placed upon the judgment and order dated 19.09.2018 passed by this Court in Writ-C No. 31059 of 2015 (Jagdish Chandra Vs. State of U.P. & 2 others), wherein the land in question was similarly situated in Village-Bara Sirohi, Tehsil and District-Kanpur Nagar and the order dated 26.03.2015 passed by the District Magistrate/Collector, Kanpur Nagar rejecting the representation of the petitioner in the said writ petition was upheld. Subsequently, the Special Leave Petition filed against the judgment and order dated 19.09.2018 passed by this Court was also dismissed by the Apex Court. Further it is contended that the possession of the land in dispute was taken in the year

1999 and the same was recorded in the name of the respondent no.3 - Authority and as such the writ petition has been filed after a delay of 11 years from the date of taking the possession and is liable to be dismissed solely on the ground of delay.

8. Thus, the contention of petitioners is that the petitioners have continued to remain in possession of the land in dispute after the enforcement of the Repeal Act, 1999 and as such the petitioners are entitled to protect their possession by virtue of the provisions of the Repeal Act, 1999 and the government orders dated 02.02.2000 and 09.08.2000. The petitioners in support of their contention that they are in possession of the land in dispute have filed the receipts of payment made to the Irrigation Department as well as photographs.

9. On the other hand, the contention of the respondents is that the possession of the land in dispute was taken under Section 10(6) of the Act by means of a Dakhalnama prior to enforcement of the Repeal Act, 1999 and the land was also recorded in the name of the respondent no. 3 ? Authority in the revenue records but the petitioners had never objected to the same. Further a residential colony by the name of Jawaharpuram is situated over the land in dispute. It is vehemently contended that the present writ petition filed after a lapse of more than 11 years from being or the possession of the land in dispute and is grossly time barred and is liable to be dismissed solely on the ground of delay.

10. We have perused the records of the case. The respondent State in paragraph 4 of their counter affidavit dated 30.11.2010 have taken a specific stand that the possession of the land in dispute stood transferred to the State by means of a Dakhalnama on 11.02.1999. The relevant part of the counter affidavit is reproduced herein under:-

"4. That statements under Section 6(1) of the Urban Land (Ceiling and Regulation Act), 1976, hereinafter referred to as Act, 1976 were filed by Sri Satya Narain son of Mitthu, Sri Shiv Kumar, Shri Ram Kumar and Shri Lala Ram, all sons of Shri Shiv Ram, resident of Village Maqsoodabad, Kanpur giving the details of their land and property owned by them, being statements No. 7570, 7571, 7572 & 7573. On the said statements after completing the proceedings according to the provisions of the aforesaid Act, the benefit of 1000 Sqm. land were given to each of the land holders. It is submitted that no proceedings for taking possession in the concerned files were conducted. Later on, a scheme known as 'Jawaharpuram housing scheme' was started by the Kanpur Development Authority, under which plot Nos. 357, 358, 359 & 360 situate in village Barasirohi, District Kanpur were found to be in possession and owned by the aforesaid land holders. It is relevant to mention here that the aforesaid land holders had not disclosed the details of the said plot Nos., 357, 358, 359 & 360 situate in village Barasirohi, Kanpur in their statements filed earlier under Section 6(1) of the Act, due to which no proceedings in respect of the said land under the provisions of the Act, were initiated. Therefore, again a notice No. 915 dated 8.7.1996 under Section 6(2) of the Act was issued to the land holders for submitting their statements in respect of the said plots. But thereafter no statement were filed by them in response to the said notice dated 8.7.1996. It is stated that according to survey report 5018.2 Sqm. land were found in possession of Satya Narain, 1692.93 Sqms. land was found in possession of Shiv Kumar, 1692.93 Sqms. Land in possession of Ram Kumar and 1692.93 Sqms. and Land in possession of Lala Ram, total 10037.64 sqm. land. It is submitted that the benefit of 1000 sqm. land under the provisions of

aforesaid Land to each of the land holder had already been given. As such an order under Section 8(4) of the Act was passed on 31.3.1997 declaring the said land (10037.64 sqm. land) as surplus being beyond the ceiling limit with the land holders. Thereafter, after completing the proceedings under Section 9 and 10(1) of the Act, when no interested person filed any objection under Section 10(2) of the Act then a notification was made on 25.3.1998 under Section 10(3) of the Act for its publication in the government gazette, which was published in the government gazette on 18.7.1998, and the entire declared surplus land free from all encumbrances, were vested in the State Government. Thereafter a notices under Section 10(5) of the Act were issued to each of the land holders on 29.9.1998 for handing over possession themselves, which was served upon them at the level of Tehsil / Up Ziladhikari. When the aforesaid land holders were themselves not handed over the possession of the declared surplus land then the Tehsil staff went on spot and taken over the possession of the declared surplus land on behalf of District Magistrate under Section 10(6) of the Act on 11.2.1999 and prepared Dakhalnama in this connection on spot and on the same date the declared surplus was transferred in favor of Kanpur Development Authority, Kanpur. Thereafter the proceedings under Section 11 of the Act were initiated for fixation of the compensation in respect of the declared surplus land, which is still pending. Photocopy of the Dakhalnamas of the land in question is being annexed herewith and marked as Annexure No. CA -1 to this Counter Affidavit."

11. The petitioners in their rejoinder affidavit in response to the contents of paragraph 4 of the counter affidavit in their rejoinder affidavit dated 01.04.2023, wherein para wise reply of the counter affidavit dated 30.11.2010 has been submitted, have stated as under:-

"That the contents of paragraph no. 4 of the counter affidavit are misconceived hence vehemently denied. In reply thereto it is respectfully submitted that the Satya Narain s/o-Mitthu, Shiv Kumar, Ram Kumar, and Lala Ram all sons of Shiv Ram R/O-village Maqsoodabad District Kanpur had filed the detail statements bearing no. 7570, 7571, 7572 and 7573 and thereafter authorities were found that there was no access urban land and as such the proceedings were completed without issuing any further notice to the owners. Moreover, the Arazi no.-357, 358, 359 & 360 situated at village Bara Sirohi Tehsil Sadar, District Kanpur Nagar were used for only agriculture purpose and cultivation of foods grain has still continuing. The petitioner has already annexed copy of Khasra of relevant years as the annexure no. 01 of the writ petition which is at page no. 22 of the writ petition. From perusal of Khasra from year of 1473, it is clear that this Arazi numbers were duly irrigated through canal for cultivation of the grains and the land are only utilize for agriculture purpose. The petitioner vide his paragraph no. 12 pleaded that the land in question has been irrigated through canal and government itself receiving the payment of water charges. The receipt has also been annexed as annexure no.-5 to the writ petition.

It is noteworthy to state that "The Urban Land (Ceiling and Regulation) Act 1976 define the Urban Land vide Section 2-(o) of the Act - "urban land" means,-(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or, (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a

panchayat, but does not include any such land which is mainly used for the purpose of agriculture."

"It is also relevant to state here that the Village Bara sirohi was initially beyond the Municipal area as well as the areas of agglomeration but later on by introducing Jawaharpuram Housing Scheme the Kanpur Development Authority brought this area under the agglomeration area but the K.D.A did not notified the land of petitioner under the Jawaharpuram Housing Scheme as such no land acquisition proceeding have ever taken place by the authorities.

The allegation of respondents that the land holder does not disclose the details of aforesaid Arazi is wholly misconceived hence denied. The land in question being agriculture land not cover under the definition of Urban land as defined in section 2(o) of the Act.

It is noteworthy to state that alleged notice no 915 u/s-6(2) has never been issued and served to the land owners. The petitioners have no knowledge of any proceeding. In fact the proceeding was only on paper work and no any opportunity was provided to the petitioners. The Authorities passed the Ex- party orders without serving notice to the petitioner. However, after the passing of Ex-party order u/s- 8(4) no proceeding of section 9 and 10 (1) of the act was held. There was no notice under section 10(5) was ever issued and served. The respondent deliberately did not file the copy of notice as well as disclosed the date of the notice or receiving date of the notice. More over, Dakhalnama enclosed with the counter affidavit at page no 10 to 13 has no concerned with the taking of possession from the land owners. From perusal of the dakhalnama, it appears that the Naib Tehsildar, UCL, Kanpur Nagar in pursuance to the order date 31/03/1997 passed under section 8(4) deliver the possession of the land on 11-02-1999 to the Kanpur Development Authority. There is no whisper of the fact on which date the possession have taken from the land owners, even the petitioners have no knowledge of any such activities, there is no signature of witness The document itself Contradictory to the Govt. record of Mutation as annexure no 02 of the writ petition as in the record the name of the K.D.A has appears to be recorded void order 25-07-1998, while the proceedings under section 10(5) has been claimed to be taken place thereafter the Dakhalnama disclosed that the K.D.A has taken the possession on 11/02/1999, thus, prior to 11.02.1999, there was no occlusion to record the name of the K.D.A.

It is also relevant that there was several of shares of the land in question thus without partition of the arazi part of the arazi land could not be taken by the authorities. Since only 1/6 shares was alleged to be declares surplus, therefore, without partition of land under the provision of the Act and Rules, the possession could not be exchanged. This fact is also apparent from the annexure no -01 where boundaries of the land does not disclose and no map of the land which was taken make part of the Dakhalnama.

The Arazi of the land is as large area and without partition of the land the possession could not be possible takeover."

12. We have perused the Dakhalnama the same is signed by the person handing over possession as well as the person taking over possession i.e. Nayab Tehsildar, Urban Land Ceiling, Kanpur and the date of taking possession thereon is mentioned as 11.02.1999. The petitioner in the rejoinder affidavit do not make any mention about the signatures of the person handing over the possession, what to say about any denial of the same. Further, the allegation of no mention of the date on which possession was taken from the land holder is also without any basis, as the perusal of the Dakhalnama reveals that the possession of the land in dispute was handed over to Supervisor Kanoongo/Nayab Tehsildar on 11.02.1999 and after the possession was handed over by the land

holder to the Nayab Tehsildar that the Nayab Tehsildar went on to hand over the possession to the representative of Kanpur Development Authority The petitioners in their response to paragraph 4 of the counter affidavit have not disputed the Dakhalnama/possession memo but only state that the same has not been signed by the witnesses.

13. Further, the petitioners themselves admit that the land in dispute was recorded in name of Kanpur Development Authority vide order dated 25.07.1998 and the same was done after the vesting of the land in dispute in the State by means of proceedings under section 10(3) of the Act, 1976, which were published in the State Gazette on 18.07.1998 and we find no irregularity in the same. We also fail to understand as to what took the petitioners 12 years to file the present writ petition, once, the petitioners were aware of the order dated 25.07.1998 by means of which the land in dispute was recorded in the name of respondent no. 3 ? Authority, the petitioners themselves having filed the of revenue authorities orders along with the writ petition.

14. The only document produced by the petitioners to show their possession of the land in dispute are receipts issued by the Irrigation Department but the same too pertain upto the year 2011 and one receipt is of the year 2015. The petitioners have not filed any receipt of recent years, hence, it cannot be ruled out that the Department of Irrigation stopped issuing receipts once development commenced under the Jawaharpuram Scheme by the respondent no. 3. Moreover, the receipts from Irrigation Department can be obtained by depositing the amounts payable and the same are admittedly not in consonance with the revenue records, wherein the name of the respondent no. 3 authority has been recorded since the year 1998. Hence, it is difficult to hold that the petitioners are in possession of the land in dispute solely on the basis of receipts of Irrigation Department. Further, the photographs relied upon by the petitioners in no way establish that they pertain to the land in dispute and, thus, fail to establish the possession of the petitioners over the same.

15. Moreover, the respondent no. 3-authority has filed a lay out plan of the residential scheme Jawaharpuram to be developed in village Bara Sirohi, Kanpur Nagar and also details of expenditure under which the amount of Rs. 174 crores had already been spent upto 30.06.2016.

16. Besides, a Coordinate Bench of this Court in respect of the proceedings under the Act, 1976 pertaining to land situated in Village-Bara Sirohi, Kanpur Nagar had dismissed the writ petition filed by the land holders being Writ-C No. 31059 of 2015 (Jagdish Chandra Vs. State of U.P.), decided on 19.09.2018, wherein this court amongst others had held as under:-

"13. Learned counsel for petitioner did not dispute that in Revenue records of Fasli 1406 to 1411 name of KDA has been entered in respect of land in dispute. He has also placed on record certain photographs which shows existence of roads, installed electrical polls etc in substantial part of land in dispute and also construction of water supply tank, some houses etc., which are not constructed by petitioner but KDA. The de facto possession, therefore, in respect of land in dispute is evidently with KDA. In the entire writ petition, it is not stated anywhere as to when KDA had undertaken all these developmental activities. There is nothing to show that KDA did not acquire possession of land prior to cut off date prescribed in Repeal Act, 1999. Without entering into question whether possession of land in dispute is validly taken or not or there exists proper memo of possession or not, suffice it to mention that KDA is in possession of land in dispute and has

undertaken some development activities by constructing roads, installing electrical polls, construction of water supply tanks, houses etc. In absence of anything to show that aforesaid possession of KDA is subsequent to Repeal Act, 1999, we find no reason to disbelieve the finding recorded by District Magistrate that KDA got possession over the land in dispute. If de facto possession of land was taken by the authorities before cutoff date prescribed in Repeal Act, 1999, it will render the ceiling proceedings ineffective and would abate the same."

17. Thus, in view of the facts above he hold that the possession of the land and dispute stood transferred to respondent no. 3 prior to enforcement of the Repeal Act, 1999.

18. There is another aspect of the subject matter in a controversy that of delay, it is contended on behalf of the respondents that the petitioners have approached this court after a delay of 12 years from the date the land in dispute was recorded in the name of respondent no. 3 ? Authority and 11 years after the possession was handed over to the State.

19. It is pointed out here that the respondents have relied upon the case, ***State of Assam v. Bhaskar Jyoti Sarma and others, 2015 (5) SCC 321.*** In that case submission was raised by the State of Assam that physical possession has been taken over by the competent authority and it was submitted on behalf of the landowner that procedure prescribed under Section 10 (5) of the Act, 1976 was not followed. It was before taking possession under Section 10 (6) of the Act, 1976, the notification under Section 10 (5) was necessary; thus no possession can be said to have been taken under Section 3 of the Repeal Act, 1999. The question before the Hon'ble Supreme Court was whether actual physical possession was taken over by the competent authority. The State of Assam submitted that though possession was taken over in the year 1991, may be unilaterally and without notice to the land owner. It was urged that mere non-compliance with Section 10 (5) would be insufficient to attract the provisions of Section 3 of the Repeal Act, 1999. The Apex Court while repelling the submission of the landowner had held as under:-

"14 We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorized officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the Government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand? Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed again after issuing a notice to him? It is this aspect that has to an extent bothered us.

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no

matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an a academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17 Reliance was placed by the respondents upon the decision of this Court in Hari Ram case. That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so."

20. The aforesaid judgment of the Supreme Court in the case of ***State of Assam v. Bhaskar Jyoti Sarma and others*** has also been relied upon by a Co-ordinate Bench of this Court in the case ***of Shiv Ram Singh v. State of U.P. and others, 2015 SCC Online All 8853*** wherein this Court while dismissing the writ petition on the ground of delay and laches had held as under:-

"10. We must also advert to another aspect of the matter particularly. having regard to the recent decision of the Supreme Court in Bhaskar Jyoti Sarma (supra). The petitioner moved the first writ petition in 2002 nearly three years after the Repeal Act had come into force. After the earlier writ petition was disposed of by directing the District Magistrate to pass an order on the representation of the petitioner, an order was passed by the District Magistrate on 10 May 2007. The petitioner thereafter waited for a period of over two years until the present writ petition was filed in July, 2009. If the petitioner had been dispossessed of the land without due notice under section 10(5), such a grievance could have been raised at the relevant time. As a matter of fact, it has been the case of the State all along that a notice under section 10(5) was, in fact, issued in the present case which would be borne out from the original file which has been produced before the Court. The issue is whether such a grievance could be made long after, before the Court. The petitioner had waited for nearly three years after the Repeal Act came into force to file the first writ petition and thereafter for a period of over two years after the disposal of the representation despite the finding of the District Magistrate that possession was taken over on 25 June, 1993. In our view, such a belated challenge should not, in any event, be entertained. However, we would hasten to add that this is quite apart from the fact that we have, independent of this finding, held that possession was in fact taken over prior to 18 March, 1999 consequent upon which the petitioner would not be entitled to the benefit of the Repeal Act."

21. It is also pertinent to mention here that the law laid down by the Hon'ble Supreme Court in the case of State of Assam v. Bhaskar Jyoti Sarma and others came up for consideration of a Constitution Bench of the Hon'ble Supreme Court in the case of ***Indore Development Authority v. Manohar Lal, (2020) 8 SCC 129,*** although the question involved in the said case pertained to interpretation of Section 24 of the Right to Fair Compensation and Transparency and Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Apex Court while considering paras 15 to 17 of the judgment in the case of ***State of Assam v. Bhaskar Jyoti Sarma and others*** (supra) had held as under:-

"This Court held that provisions of the Repeal Act could not be extended in such a case where possession has been taken without following the procedure, and the landowner cannot retain the land. This Court also observed that once possession has been taken over in the year 1991, any grievance as to non-compliance of Section 10 (5) ought to have been made within a reasonable time of such dispossession. By sheer lapse of time, the possession would acquire legitimacy. Thus, the owner or the person in possession must be deemed to have waived his right under Section 10 (5) of the Act. This Court also observed that only because of the fortuitous circumstances of a Repeal Act, which confers regarding his dispossession, being in violation of the prescribed procedure. It is clear from the aforesaid decision that such claim cannot be entertained, and any such dispute raised belatedly was repelled by this Court."

22. In this regard, the Apex Court in the case of ***Kapilaben Ambalal Patel and others v. State of Gujarat and others, 2021 (12) SCC 95*** where the writ petition had been filed after a lapse of 14 years from taking of possession of the land from the land holders. The Hon'ble Supreme Court while upholding the judgment of the Division Bench of the High Court, inter alia dismissing the writ petition on the ground of delay had held as under:-

"17. The Division Bench, in our opinion, therefore, was right in concluding that the writ petition filed by the appellants after lapse of 14 year was hopelessly barred by delay and suffered form laches. We are in agreement with the said view taken by the High Court in the peculiar facts of the present case.

18. Strikingly, in this appeal by special leave, a vague ground has been raised to challenge the said conclusion of the Division Bench. Further, no substantial question of law has been formulated in the appeal by special leave in that regard. Furthermore, in the grounds all that is asserted is that the High Court erred in holding that there was delay of 14 years in filing of writ petition and in not appreciating that the notice under Section 10 (5) of the 1976 Act, dated 23.1.1986, was not served upon Ambalal Parsottambhai Patel as he had already expired on 31.12.1985 and the notice sent to him was returned back on 2.2.1986 unserved with remark "said owner has expired". Further, the legal heirs of Ambalal Parsottambhai Patel ought to have been served with the said notice. From the factual matrix already stated hitherto, these ground, in our opinion, are of no avail to the appellants. It is manifest from the acknowledgement produced by the respondent State that the first notice under Section 10(5) issued to Ambalal Parsottambhai Patel was duly served on 26.12.1985. By the time second notice under Section 10(5) was issued on 23.1.1986, Ambalal Parsottambhai Patel had died (on 31.12.1985). The second notice was also issued to others, namely Bhikhabhai Manganbhai Patel, Natvarbhai Bhailabhai Patel and Jayantibhai Babarbhai Patel. Be that as it may, we are not inclined to reverse the conclusion recorded by the Division Bench of the High Court that the writ petition filed by the appellants was hopelessly delayed and suffered from laches. That is possible view in the facts of the present case.

19. The respondents had additionally relied on the decision of this Court in Larsen & Turbo Ltd (supra), wherein the Court adverted to the exposition in Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors, Balmokand Khatri Educational and Industrial Trust vs. State of Punjab and Tamil Nadu Housing Board vs. A. Viswam (Dead) by Lrs. Regarding the settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. Further, that the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. Reliance is also placed on paragraphs 14 to 16 of the Bhaskar Jyoti Sarma (supra). However, it is not necessary for us to dilate on these aspects having agreed with the conclusion recorded by the Division Bench of the High Court that the writ petition filed in the year 2001 by the appellants with limited relief of questioning the Possession Panchnama dated 20.3. 1986, suffered from laches. The Division Bench of the High Court noted that the learned single Judge completely glossed over this crucial aspect of the matter, and we find no reason to depart from that conclusion."

23. It is further pointed out that as far as the question of delay in filing of writ petition is concerned, the Apex Court in the case of ***Marinmoy Maity v. Chhanda Koley and others, (2024) 15 SCC 215***, which case although does not relate to proceedings under the Act, 1976 had held as under :-

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and latches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time,

wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is involved, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action of resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court..."

24. It is also pertinent to mention here that a Co-ordinate Bench of this Court in ***Writ C No. 38977 of 2022 (Mithai Lal and others v. State of U.P and others),*** where the relief of abatement of proceedings under the Act, 1976 and correction of revenue records was sought on the ground that the petitioners were in possession of land in question and no proceedings under Section 10 (6) of the Act, 1976 had been initiated, had went on to dismiss the writ petition on the ground of delay vide judgment and order dated 16.02.2023 where in it was held as under:-

"19. For the reasons aforestated and also in view of the law laid down by Hon'ble Supreme Court in the case of ***Bhaskar Jyoti Sharma (supra), Kapilaben Ambalal Patel (supra)*** *and a coordinate Bench decision of this Court in the case of* ***Shiv RamSingh (supra),*** *we do not find any merit in the writ petition. This writ petition is also highly time barred and no reason for the inordinate delay has been given in the writ petition.*

20. Consequently, the writ petition is ***dismissed****. "*

25. Thus, in view of above as the possession of the land in dispute already stood transferred to the respondent no. 3 ? Authority prior to enforcement of the Repeal Act, 1999 and there being substantial delay on the part of the petitioners in approaching this court, thus we have no hesitation in concluding that no case is made out in favour of the petitioners.

26. Hence, the present writ petition lacks merit and is dismissed. No order as to costs.

(2026) 7 ILRA 1650
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.07.2026

BEFORE

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

Writ C No. 16649 of 2026

Syed Rashid Ali & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Whether the petitioners, being merely tenants and shopkeepers and not the owners or title-holders of the shops, had any right or locus to question the road widening or its effect on their properties; and whether the proposed acquisition of the six Waqf mosques was prohibited by the Places of Worship (Special Provisions) Act, 1991.

Headnotes

Constitution of India, Arts. 14, 19(1)(a), 21 and 300-A – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 11 – Waqf Act, 1995, ss. 51 and 91 – Places of Worship (Special Provisions) Act, 1991, ss. 2, 3 and 4 – Road widening and beautification – Acquisition – Tenants and shopkeepers – Petitioners, tenants and shopkeepers of six shops situated at Dalmandi Market/Street, Varanasi, claimed to have been carrying on business in the said shops for decades – State Government issued Government Orders dated 31.03.2025 and 30.07.2025 for widening and beautification of Dalmandi Street – Petitioners alleged that, without issuance of a preliminary notification under s. 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the respondents had commenced demolition of shops and buildings in the garb of implementing the aforesaid Government Orders and were threatening and harassing them with a view to forcibly dispossess them without following due process of law – Petitioners further alleged that six ancient mosques situated in Dalmandi were also proposed to be taken over and demolished for widening and beautification of Dalmandi Street – Petitioners contended that, in view of ss. 2, 3 and 4 of the Places of Worship (Special Provisions) Act, 1991, the religious character of the six mosques, existing prior to 15.08.1947, could not be altered and their acquisition was prohibited – Petitioners further relied upon ss. 51 and 91 of the Waqf Act, 1995 and contended that proceedings for acquisition of Waqf property were required to be undertaken in accordance therewith – Alleged violation of Arts. 14, 19(1)(a), 21 and 300-A of the Constitution – Respondents contended that petitioners were only tenants and shopkeepers and had no proprietary rights in the shops, that acquisition for public purpose was permissible subject and that the Places of Worship (Special Provisions) Act, 1991 did not prohibit acquisition of religious property for a secular and public purpose.

Held :

Petitioners were tenants and shopkeepers and were not the owners of the shops – Their business in the said shops since the time of their ancestors did not grant them anything more than their tenancy rights – Their rights were limited to their tenancies – Landlords and owners of the premises had not come forward to question the road-widening project or its effect on their properties – When it comes to acquisition of property under the Act of 2013, it is largely the title holder who has locus to object, negotiate a sale or suffer an acquisition – The moment the owner's rights vest in the State either by transfer of land or acquisition, the

land vests free from all encumbrances in the State – The tenants, in a situation like this, would hardly have rights to question the acquisition of property – No such notice has been questioned in the petition by the petitioners, nor have they said that they have been served any such notice by the Corporation – It was not the petitioner's case that they were facing any demolition notice from the VDA or any proceedings for demolition under Section 27 of the Act aforesaid had been initiated against them – Any relief, therefore, sought against the Development Authority was besides the point – Six mosques were admittedly registered Waqf, with their own Mutawalli in each case – Essentially, it was the Mutawalli and the Waqf Board who had to protect such properties and their locus was pre-eminent, and not that of the petitioners – Sections 3 and 4 of the Places of Worship (Special Provisions) Act, 1991 had to be harmoniously construed – Section 3 prohibits the conversion of a place of worship of any religious denomination or a sect thereof into a place of worship of another sect of the same religious denomination or a different religious denomination – The Act of 1991 is not meant to derogate from the State's authority to acquire any place of religious worship for a secular and public purpose, subject to the owner's right to receive just and fair compensation – Section 51 of the Waqf Act, 1995 contemplates acquisition of Waqf properties for a public purpose under the Act of 2013 or any other law relating to acquisition of land, if such acquisition is made in consultation with the Waqf Board and subject to the statutory conditions – Petitioners had no right to any of the reliefs that they sought . [Paras 31–49]

Writ petition dismissed. (E-5)

Case Law Cited

Saraswati Syndicate Ltd. v. Union of India : AIR 1975 SC 460;
*Amrit Lal Berry v. Collector of Central Excise : AIR 1975 SC 538***;**
*Kamini Kumar Das v. State of West Bengal : AIR 1972 SC 2060***;**
*Dr. M. Ismail Faruqui and others v. Union of India and others***,** (1994) 6 SCC 360;
*Yusuf Ajij Shaikh and others v. Special Land Acquisition Officer No. 2, Pune and others***,** 1995 1 Mah LJ 483 : 1994 SCC OnLine Bom 246;
*Church of North India Trust Association v. Union of India and others***,** 2016 SCC OnLine All 1985 : AIR 2017 All 143.

List of Acts

Constitution of India;
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;
Waqf Act, 1995;
Places of Worship (Special Provisions) Act, 1991.

List of Keywords

Dalmandi Market/Street; Road widening and beautification; Acquisition; Tenants and shopkeepers; Tenancy rights; Title holder; Proprietary rights; Road-widening project; Nagar Nigam; Dilapidated buildings; Varanasi Development Authority; Demolition under Section 27; Six ancient mosques; Waqf properties; Mutawalli; Waqf Board; Places of Worship (Special Provisions) Act, 1991; Religious character; Conversion of place of worship; Acquisition of religious property; Public purpose; Secular purpose; Eminent domain; Waqf property; Sections 51 and 91 of the Waqf Act, 1995; Just and fair compensation.

Case Arising From

Writ petition filed by tenants and shopkeepers of six shops situated at Dalmandi Market/Street, Varanasi, seeking protection against dispossession and demolition and raising objections to the proposed acquisition of six ancient mosques in connection with the road-widening and beautification project.

Appearances for Parties

Advs. for the Petitioner (s) : Mr. Quazi Mohammad Akaram

Advs. for the Respondent(s): Mr. Mahesh Chandra Chaturvedi, Additional Advocate General, along with Mr. Suresh Singh, Additional Chief Standing Counsel for State; Mr. Vineet Sankalp, Advocate for Nagar Nigam, Varanasi; Mr. Ravi Prakash Pandey, Advocate for Varanasi Development Authority, Varanasi.

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

1. This writ petition has been instituted by six petitioners, who are tenants and shopkeepers of six shops situate in Dalmandi Market/Street, Varanasi. They pray that this Court do issue multiple directions in the nature of mandamus against the respondents, that they say are essential to protect their rights of myriad kind, as would be presently seen.

2. The foremost command the petitioners wish this Court to issue is one directing the respondents not to dispossess them from their respective shops and buildings, situate at Dalmandi Market/Street arbitrarily and illegally, and in violation of their legal as well as human rights.

3. The second and the third reliefs, which the petitioners seek, are in aid of the first, and both of those reliefs are directed to prevent the respondents from deploying workmen, the Police and the paramilitary forces to effect their dispossession, as aforesaid, or harass or threaten them in order to forcefully dispossess them from their respective premises.

4. The fourth relief is a distinct and different relief, by which, the petitioners seek a direction to the respondents to take over and change the character of the six ancient mosques existing at Dalmandi Street, prior to the 15th day of August, 1947, to wit, Anjuman Intezamia Masjid, Masjid Rangile Shah, Masjid Ali Raza Khan, Masjid Karimullah Baig, Masjid Nisaran and Masjid Sangamarmar.

5. The last of the reliefs, which the petitioners seek, is a mandamus directing the respondents to develop any other alternative street nearer the Kashi Vishwanath Dham Corridor in order to widen and strengthen the same for the sake of easy movement and commutation of pilgrims, devotees and tourists visiting the Dham.

6. In substance, therefore, what the petitioners seek is, in the first part, protection of their possession in their respective shops located at Dalmandi Market/Street, where they do business, and, in the second, preservation of the six old mosques, that are likely to give way to the project for widening and beautification of street as part of development of the Kashi Vishwanath Corridor.

7. The facts of this case are that the petitioners are tenants and shopkeepers of shops, which bear the following number :

1. CK43/168-169;
2. CK68/1;
3. CK69/32;
4. CK43/147;
5. CK68/36; and
6. CK43/181

All the aforesaid shops are situate at Dalmandi Market/Street, Varanasi. The petitioners say that they have been engaged in their respective business in these shops for decades. Prior to the petitioners taking up business in these shops, their ancestors were engaged in running the same business in the very shops and premises that the petitioners now occupy. In short, they say that not only their business, but also their business premises are now legacy in their hands. They have brought on record lease agreements, rent slips and electricity bills relating to their respective shops in order to substantiate their claim, all annexed to the writ petition as Annexure No. 1.

8. The petitioners further say that they have been doing active and continuous business in the respective shops at Dalmandi Market/Street for decades, as they say, and in proof thereof, they have produced some still photographs of the shops, which they have annexed to the writ petition. According to the petitioners case, the Dalmandi Market is a busy and dense area, which has existed for centuries. People from all over the Purvanchal visit this market for shopping and purchase of necessaries and other things of use. It is a market that serves not only Varanasi, but also the entire Purvanchal. The Dalmandi Market is located in a stretch of 650 meters, which houses 187 buildings. These buildings have existed, as already said, for a long period of time. The buildings house more than 1000 shops. Dalmandi is a densely populated area, which is dominated by members of a particular religious community, to wit, the Muslims. More than 97% of the shopkeepers and owners of the buildings are Muslims and they have been carrying on their profession and business for decades together. No one has interfered in the peaceful business and occupation of the petitioners and other occupants until the month of July 2025.

9. The petitioners say that they were utterly surprised, as also the other shopkeepers and residents of Dalmandi, when a Government Order dated 31.03.2025, followed by another dated 30.7.2025, were issued by the State Government, allocating a budget of ₹21,588.24 lakhs for the purpose of widening and beautification of the Dalmandi Street. It is pointed out that the Dalmandi Street has a maximum width of 70 feet for the present. The respondents propose to widen and strengthen the Dalmandi Street for easy movement and commutation of tourists, pilgrims, and devotees, who visit the Kashi Vishwanath Dham.

10. The distance of the Dalmandi Market from the Kashi Vishwanath Mandir is about 800 meters towards the east. Adjacent to the Dalmandi is Kodai Chowk and Sonar Gali, which are located at a distance of 100 meters from the Kashi Vishwanath Temple. However, the distance of Dalmandi through Chowk is about 800 meters. The petitioners, therefore, say that Dalmandi is much farther than Sonar Gali from the Kashi Vishwanath Dham Corridor and the Kashi Vishwanath Temple. The petitioners further plead that the Public Works Department seek to take possession of the entire Dalmandi area for the purpose of its beautification, widening and strengthening. The purpose and idea behind the widening and beautification of Dalmandi Street is said by the respondents to be ease of movement in commutation of pilgrims, who come to visit the Kashi Vishwanath Temple, Varanasi.

11. After the Government Orders dated 31.03.2025 and 30.07.2025, have been issued, the respondent-Authorities, their workmen and the Police have been threatening the petitioners and harassing the other shopkeepers and residents of the entire Dalmandi Market/Street for the purpose

of forcibly dispossessing them from the buildings in which their shops are located, without resort to any provision of the law, in clear violation of their rights.

12. The next fact that is pleaded is about a different right altogether. It has nothing to do with the petitioners' right to freedom of trade, business or livelihood, or its abridgment in consequence of the State's decision to widen the Dalmandi Street. It is about the right of the petitioners to practice their religion, and more than that, protect old mosques, said to be constructed prior to the 15th day of August, 1947 from losing their existence to the proposed development. It is pleaded that in the Dalmandi area, where old members of the Muslim community are working for the occupation or living, there are six ancient mosques called Anjuman Intezamia Masjid, Masjid Rangile Shah, Masjid Ali Raza Khan, Masjid Karimullah Baig, Masjid Nisaran and Masjid Sangamarmar. All these mosques have been constructed decades ago and decidedly, before the 15th day of August 1947. The petitioners have secured documents regarding ownership and existence of some of the mosques and also photographed them. Copies of the documents relating to these mosques and the original photographs thereof from the Dalmandi Market/Street are annexed to the writ petition as the Fifth Annexure. It is pleaded in paragraph no. 15 that the said mosques are also proposed to be demolished by the respondents, in the garb of enforcing Government Orders dated 31.03.2025 and 30.07.2025 for the purpose of widening and beautification of the Dalmandi Street/Market.

13. The petitioners somehow secured, under the Right to Information Act, 20052 from the PWD, Varanasi information to show that the six ancient mosques are also proposed to be taken over and demolished. The PWD sent their reply that all the six mosques in question are said to be acquired and taken over by the respondents. A copy of the reply from the PWD, Varanasi under the RTI is also on record to the writ petition and annexed to it. It is emphasised that there is no urgency and necessity for public purpose that may move the respondents to widen the Dalmandi Street. It is emphasised that no notification mentioning the purpose of widening of the Dalmandi Street has so far been published by the Government. It is averred that no public purpose, which the respondents say is involved, would be served by depriving thousands of citizens of their right to livelihood and shelter as also their right to worship by demolishing the six ancient mosques located in the area. The proposed decision of the respondents to widen the Dalmandi Street is, therefore, perverse, arbitrary and illegal, and above all, one, in violation of The Places of Worship (Special Provisions) Act, 1991.

14. It is next pleaded that without issue of a preliminary notification under Section 11 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the respondents, in collusion with each other, have commenced demolishing shops and buildings forcibly and without due process of law, all located in the Dalmandi Market/Street, in the name of the aforesaid Government Orders dated 31.03.2025 and 30.07.2025.

15. It is specifically pleaded that for their protection, in matter of acting dehors the law, the other respondents and officers of the Nagar Nigam have manufactured a representation given by one Sanjay Singh, who has written to the Nagar Nigam, that some buildings in the Dalmandi Market are in a dilapidated condition and need to be demolished by the Nagar Nigam. In the garb

of acting on the said representation dated 29.01.2026, the respondents, with the aid of the Police and the paramilitary forces, encircled the entire Dalmandi area and demolished 29 buildings from 09.02.2026 until date. A copy of the representation dated 29.01.2026 addressed to the Nagar Ayukt, Nagar Nigam, Varanasi by Dr. Sanjay Singh Gautam is on record of the writ petition as an annexure. The Nagar Nigam have a list of buildings that are dilapidated in the entire city of Varanasi. However, no buildings have so far been demolished, except those located in the Dalmandi Street/Market. A copy of the dilapidated buildings drawn up by the Nagar Nigam, Varanasi is also annexed to the writ petition.

16. The petitioners and other similarly situate persons affected by the illegal demolition of the buildings, where their premises are located, have captured some still photographs of the demolition carried out by the respondents and their workmen, officers and police personnel. Copies of the photographs of demolition are placed on the record of the writ petition. The petitioners have received threats from the respondents, asking them to vacate their respective shops and premises, without due process of law. The respondents threatened human rights of the petitioners as well as have threatened to forcibly dispossess the petitioners from their respective shops and premises, without providing them resettlement, relocation and rehabilitation, which are their legal rights, provided under the Act of 2013. The petitioners are being deprived of the right to livelihood and shelter, pushing them to the verge of starvation.

17. There are other odd pleadings in paragraphs nos. 25 and 26 of the writ petition, which show that the purpose behind the demolition of the residential shops and buildings and the proposed widening is extraneous and directed to target a particular community at the instance of the ruling dispensation in the State. Again, extraneous motives are imputed to the Government and the respondent-Authorities in paragraph no. 27 of the writ petition. It is next said that apart from this, thousands of citizens, including the petitioners, are said to be deprived of their livelihood, whereas only about 30 residential buildings are situate in the Sonar Gali, a far more suitable and easier site for widening and strengthening of the pilgrims route during their commutation and movement, while visiting the Kashi Vishwanath Dham.

18. A Social Impact Study Report prepared by an agency called ENV DAS India (Pvt.) Ltd. Developmental Assistance India Private Limited, Lucknow, that was forwarded to the Land Acquisition Officer, shows that the shopkeepers in the Dalmandi Street are tenants belonging to the Muslim community. They would be deprived of their livelihood, in the event they are dispossessed by widening of the Dalmandi Market/Street, one of the oldest markets. The said report also says that every now and then, demolition drive is carried out by the respondents, curtailing legal and human rights of the shopkeepers and residents in the area. This is emphasised that there are heaps of debris, scattered over the entire Dalmandi area, that have made business difficult for shopkeepers. The business of the petitioners and other men of commerce at the Dalmandi have been ruined by the threats extended by the respondents, the Police and the paramilitary forces who are deployed in the area and patrolling it.

19. It is particularly urged that the Parliament has passed the Act of 1991 with the object and purpose of prohibiting conversion of any place of worship and to provide for maintenance of the religious character of any place of worship, as it existed on 15.08.1947, and for matters connected

therewith or incidental thereto. The character that is to be preserved is one that existed on the 15th day of August 1947. Various provisions of the Act of 1991 have been copiously pleaded in order to bring home the point as to how the said Act would be violated, if the six mosques, located in the Dalmandi, are included in the development scheme.

20. It is pleaded that by virtue of Section 4 of the Act of 1991, no acquisition, as proposed by the respondents, could be made. Therefore, any notification or Government Order, making a proposal for the acquisition of the mosques in Dalmandi is per se illegal and arbitrary, besides being one in violation of legal and human rights of the petitioners, apart from other members of the Muslim community. It is emphasised that according to the Social Impact Study Report, 50% of the families reside in Dalmandi and 45% of them live at other places, but have their business there. The Social Impact Study Report also mentions the six ancient mosques present in the Dalmandi. The petitioners allege violation of their fundamental rigths under Articles 14, 21, 19(1)(a) and 300(a) of the Constitution. It is broadly on these pleadings that the petitioners seek relief in the present petition.

21. In the supplementary affidavit filed by the petitioners, there is appended a letter from the U.P. Sunni Central Waqf Board, Lucknow dated 23.04.2026 from the Chief Executive Officer of the Board with the Executive Engineer, Provincial Division, PWD, Varanasi. It is a response to the letter dated 17.04.2026 from the Executive Engineer to the Chief Executive Officer of the Waqf Board, where properties of certain Waqf were intimated to be wholly or entirely affected by some project, with particulars of the premises number furnished to the Waqf Board. In the reply of the Chief Executive Officer of the Waqf Board, six mosques are mentioned with their premises number and the relative Waqf number. The names of respective Mutawalli of the six Waqf are also mentioned. It is said, at the tail end of the letter, that proceedings for acquisition of any Waqf property have to be taken in accordance with Sections 51 and 91 of The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995.

22. It is the petitioner's case, in paragraph no. 3 of the supplementary affidavit, that the Waqf Board could not issue guidelines/instructions to the Executive Engineer, Provincial Division, PWD, Varanasi, in contravention of Sections 51 of the Waqf Act, 1995. The proviso to Section 51(a) stiputes that acquisition shall not be in contravention of the Act of 1991. Therefore, no acquisition proceedings could be taken of the places of worship, which are within the purview of Section 4 of the Act of 1991. It is also averred that the Waqf Board, in connivance with other Authorities concerned, issued the said letter dated 22.04.2026, saying that said ancient mosques would be taken over in acquisition proceedings. There are assertions in paragraph no. 4 of the supplementary affidavit that the six ancient mosques situate at Dalmandi are covered under Section 4 of the Act of 1991, which cannot be acquired in any mode whatsoever, as also with the consent of the officer bearers/management of the said ancient mosques.

23. Heard Mr. Quazi Mohammad Akaram, learned Counsel for the petitioners, Mr. Mahesh Chandra Chaturvedi, learned Additional Advocate General assisted by Mr. Suresh Singh, learned Additional Chief Standing Counsel appearing for the State-respondents, Mr. Vineet Sankalp, learned Counsel appearing for the Nagar Nigam, Varanasi and Mr. Ravi Prakash Pandey, learned Counsel appearing on behalf of the Varanasi Development Authority, Varanasi.

24. Learned Counsel for the petitioners has supported the writ petition on the various grounds already noticed above.

25. The learned Additional Advocate General appearing on behalf of the State has submitted that the writ petitioners acknowledge that they are tenants and shopkeepers of different shops in Dalmadi Market/Street bearing numbers CK43/168-169, CK68/1, CK69/32, CK43/147, CK68/36 and CK43/181. In support of this claim of theirs, the petitioners have certain copies of rent agreements, rent slips and electricity bills, out of which, three in number are unregistered agreements on non-judicial stamps in the form of notarial affidavit. The inference is, therefore, clear that they are not owners of the buildings in question, but tenants.

26. A perusal of the writ petition clearly demonstrates that the petitioners have not submitted any application, relating to the reliefs which they seek before this Court by the issue of an mandamus. Under the law governing mandamus, it cannot generally be granted, unless the petitioner has first made a formal demand for justice before the authority sought to be commanded, who has refused to oblige or is completely inactive. A mandamus is an extraordinary prerogative writ rather than a right. It is a settled law that demand for justice and its refusal must proceed with filing of a writ petition, praying for the issue of a mandamus. It must be shown by evidence that there was a distinct demand by the party applying for a mandamus. Reference is made to the consistent holding of the Supreme Court in **Saraswati Syndicate Ltd. v. Union of India, Amrit Lal Berry v. Collector of Central Excise and Kamini Kumar Das v. State of West Bengal**, where it has been held that before approaching a High Court, the absence of a prior written representation of demand for justice renders the petition fundamentally defective.

27. It is emphasised by the learned Additional Government Advocate that the petitioners have annexed a letter dated 03.06.2025 issued by the Executive Engineer, Provincial Division, PWD, Varanasi, addressed to one Mirza Saif Baig, under the Right to Information Act, 2005, wherein it has been clearly found that land/building, which may be utilised for widening of the road, may be taken after execution of sale deeds, on the basis of mutual agreement, as provided under the Government Order dated 19.03.2015 or acquired under the Act of 2013. The Act of 2013 clearly provides compensation for land owners and rehabilitation and resettlement, entitlement for all affected families, in accordance with the provisions of the said Act, which includes the First and the Second Schedule. Therefore, the apprehension of the petitioners are unfounded. The land/building falling under the area of road widening is being taken up for execution of sale deeds on the basis of agreement and payment of appropriate compensation, and those who do not agree for execution of sale deeds on the basis of agreement, proceedings have been initiated for acquisition of the land/building under the Act of 2013, and in this regard, notification under Section 11 of the Act of 2013 has been issued after completing necessary formalities, that insofar action being taken by the VDA or the Nagar Nigam, Varanasi is concerned, that is quite independent of the State Government acquiring land for road widening in accordance with the Act of 2013. Those bodies are proceeding in individual cases under The Uttar Pradesh Urban Planning and Development Act, 197311 or The Uttar Pradesh Municipal Corporation Act, 195912. Those proceedings are on considerations relevant under the last mentioned statutes, which the Municipal Corporation and the Development Authority are charged with their obligation of implementing.

28. It is next submitted by Mr. Chaturvedi, learned Additional Advocate General that the petitioner have referred to six mosques in the Dalmandi area in paragraphs nos. 14, 31, 32, 33 and 34 of the writ petition, which cannot be disturbed, in view of the provisions of the Act of 1991. They have referred to the provisions of Sections 2(a), 2(b), 4 and 7 of the Act of 1991. The learned Additional Advocate General submits that neither the Act of 1991 nor the Waqf Act, 1995 prohibits land acquisition under the Act of 2013. The Act of 1991 does not prohibit the Government from acquiring religious land for larger public purposes. Under the Act of 2013, the Government has the sovereign power to acquire any property, including religious property, for public purpose, such as building roads, highways or public infrastructure. The Act of 2013 allows this, provided that fair compensation, and where applicable, rehabilitation are granted. The Act of 1991 is intended solely to prevent conversion of a public place of worship from one religion or denomination to that of another religion or another denomination of the same religion, thus preserving status quo as existed on 15th August, 1947. The Act of 1991 is not a shield against acquisition by the State for public purpose or welfare. Learned Additional Advocate General, in this regard, has placed reliance upon the authority of this Court in Church of **North India Trust Association v. Union of India and others.**

29. It is further argued that the petitioners have nowhere shown any special authority with regard to the six mosques referred to in paragraph no. 14. It is next submitted that the Waqf Act, 1995 does not prohibit to take over of land of a Waqf, under the Act of 2013, subject only to the provisions Sections 51 and 91 of the Waqf Act, 1995. It is, in fact, permissible under the provisions of Section 51 and 91 of the Waqf Act, 1995.

30. We have heard learned Counsel for parties at considerable length at the motion stage.

31. Upon hearing learned Counsel parties, what we find is that the petitioners have mixed up their rights, some of which they have and some of which they do not. The petitioners are admittedly tenants and shopkeepers of six shops bearing numbers CK43/168-169, CK68/1, CK69/32, CK43/147, CK68/36 and CK43/181, situate at Dalmandi Market/Street, Varanasi. They are admittedly not the owners of the said shops. It is true that they might have had their business in the said shops since the time of their ancestors, but that would not grant them anything more than their tenancy rights. They hold on lease agreements and rely on rent slips, reiterating their status as tenants in six of the shops located in Dalmandi. It is not that since their shops are running for a long time, when their ancestors were doing the same business, that their rights have been enlarged to some kind of a proprietorship.

32. As it appears, Rashid Ali, who a tenant in Shop No. CK-43/168-169, whereof the owners are Haji Mohammad Saleem and Mohammad Saleem pays a monthly rent and the rent receipt for the rent last paid by him relating to the period August to December, 2004 is for sum of ₹1750. There is a photostat copy of the rent agreement annexed by petitioner no. 2, Mohammad Dilshad, who is a tenant in Shop No. CK68/36. The rent agreement is dated 20.01.2023, where the landlord is one Syed Akhtar Ali. A shop is held on a monthly rent of ₹2200. There are similar other rent agreements, where shops are held on whatever are the settled monthly rents, evidenced in some cases by rent agreements, and in others, by rent receipts. The rights of these petitioners are, therefore, limited to their tenancies.

33. We note that the landlords and owners of the premises have not come forward to question the road-widening project or its effect on their properties. We would think that the petitioners are more or less here, in order to protect their business and source of livelihood, rather than proprietary rights. When it comes to acquisition of property under the Act of 2013, it is largely the title holder who has locus to object, negotiate a sale or suffer an acquisition. The tenant hardly has any rights. The moment the owner's rights vest in the State either by transfer of land or acquisition, the land vests free from all encumbrances in the State. May be in the case of a sale deed, arrangement would have to be made about the rights of the tenants, because, upon a voluntary transfer of property by owner to the State for a negotiated consideration, the tenant might become the State's tenant. That might not at all happen in case of acquisition. The tenants, in a situation like this, would hardly have rights to question the acquisition of property.

34. It also appears that in some cases, the Nagar Nigam is taking action under the Act of 1959. That action would be on very different premises. It would mostly be putting down certain structures that are dilapidated, in accordance with the provisions of the Act of 1959. No such notice has been questioned in this petition by the petitioners, nor have they said that they have been served any such notice by the Corporation. It is possibly about some other buildings in the Dalmandi Street, which are dilapidated, but not involved in this petition.

35. Likewise is the case with the action taken by the Development Authority. Their province and powers are limited to the Act of 1973. They usually proceed against a building for demolition under Section 27 of the Act of 1973, if it is constructed without a sanctioned plan or map, or in violation thereof. It is not the petitioner's case that they are facing any demolition notice from the VDA or any proceedings for demolition under Section 27 of the Act aforesaid have been initiated against them. Any relief, therefore, sought against the Development Authority is besides the point.

36. The petitioners, who are tenants in certain shops, as already said, located in the Dalmandi Street, have mixed up another cause of action, and that is about protecting the six mosques located in the Dalmandi area from acquisition. They seem to urge that since they are Muslims, they have a right to protect these mosques, that are Waqf properties. From the primary cause of action involved in the writ petition, which is about protecting shops, wherein the petitioners are tenants, protecting six mosques located in the area, would make us think that the cause of action is rather multifarious, and seeks to agitate very different kind of rights. The mosques are admittedly registered Waqf, with their own Mutawalli in each case. No doubt, members of the Muslim community may come forward in certain cases, but essentially it is the Mutawalli and the Waqf Board, who have to protect such properties. We have, nevertheless, heard the petitioners on this issue as well. If we hear the petitioners on this issue and pass judgment, it might prejudice the rights of the Mutawalli and the Waqf Board, who might have something to say in the matter, and their locus is pre-eminent, and not of the petitioners□.

37. Since the learned Counsel for the petitioners were, nevertheless, very emphatic about their submissions that they have a right to ensure that the mosques are not acquired, as it is a violation of the provisions of that all-time shield, to wit, the Act of 1991, we have considered their arguments in this regard, limited to their rights as members of the Muslim community. They have relied upon the provisions of Section 2(b), 2(c), 3, 4 and 7 of the Act of 1991. These read :

*2. **Defintions**.- In this Act, unless the context otherwise requires,-*

...

(b) "conversion", with its grammatical variations, includes alteration or change of whatever nature;

(c) "place of worship" means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

*3. **Bar of conversion of places of worship**.-No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.*

*4. **Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.** - (1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.*

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,-

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section

(2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

38. They have also relied upon the provisions of Sections 51 and 91 of the Waqf Act, 1995. Sections 51 and 91 of the Waqf Act, 1995 read :

51. Alienation of waqf property without sanction of Board to be void.-*(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:*

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio.

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under [the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that-

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.

91. Proceedings under Act 1 of 1894*.-(1) If, in the course of proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) or under any law for the time being in force relating to the acquisition of land or other property, and before an award is made, in case the property under acquisition is waqf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.*

Explanation.-The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is waqf property, it may at any time before the award is made appear and plead as a party to the proceeding.

3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

(4) Any order passed [under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)] or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, 2[shall be kept in abeyance relating to portion of the property claimed by the Board, if the Board), within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

Provided that the Collector after hearing the parties concerned shall make the order within one month of the application of the Board.

39. The foremost to be considered is the Act of 1991, regarding which, the submission of the learned Counsel for the petitioners is that it would make the acquisition of the mosques absolutely illegal, because these mosques are in existence much prior to the 15th day of August, 1947. We notice that the place of worship has been defined as a Temple, Mosque, Gurudwara, Church, Monastery or any other place of public religious worship of any religious denomination. Conversion means alteration or change of whatever nature.

40. Section 3 of the Act of 1991 prohibits the conversion of a place of worship of any religious denomination or a sect thereof into a place of worship of another sect of the same religious denomination or a different religious denomination.

41. Section 4 of the Act of 1991 makes a declaration that there shall be no change in the religious character of a place of worship existing on the 15th day of August, 1947. Sub-section (3) of Section 4 provides that no place of worship referred to in sub-Section (1) and sub-Section (2) of Section 4 of the Act of 1991, which is an ancient and historical monument, or an archaeological site, or covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958, shall be covered by the declaration under Section 4.

42. Now, Sections 3 and 4 of the Act of 1991 have to be harmoniously construed, in particular, sub-Section (1) of Section 4. Read in isolation, sub-Section (1) of Section 4 might seem to declare that the religious character of a place of worship existing on the 15th day of August, 1947 is immutable, to wit, if it was a temple, it will remain a temple, if a church, it would remain that, and if a mosque, it would continue to be so. But reading it this way, would be a misconstruction of the scope of the Statute. When Section 4(1) of the Act of 1991 is read together with Section 3, it is evident that there is a prohibition imposed by Section 3 upon any person converting any place of worship of any religious denomination or a sect thereof into a place of worship of a different sect of the same denomination or to that of a different religious denomination. Sections 3 and 4 of the Act of 1991, when harmoniously construed, prevent the religious character of a place of

worship belonging to a religious denomination from being changed into a place of worship of another religious denomination, from whatever it was on the 15th day of August, 1947. In short, a temple on 15th August, 1947 cannot be converted to a church or a mosque, and likewise, a mosque or a church to a temple. The purport of the Act of 1991 is not to place beyond the pale of authority of the State s right as the owner paramount of all lands in the territory of India and to acquire and use it for any public purpose, subject, of course, to the owner's right to receive just and fair compensation. That is what the doctrine of eminent domain, after all, means. The Act of 1991 is not meant to derogate from that right of the State.

43. The object of the Act of 1991 also shows that it was enacted to prohibit conversion of any place of worship and when read with Section 3, the scope of the Act is limited to conversion of a place of worship of one religious denomination into another, or from one sect of the same denomination into another. The Act of 1991 does not, at all, go beyond the said prohibition.

44. Section 51 of the Waqf Act, 1995 (as amended by Act No. 14 of 2025) provides, by virtue of the second proviso to sub-Section (1A) of Section 51 that nothing contained in this sub-Section, that is to say, the prohibition on sale, gift, exchange, mortgage or transfer of Waqf property being void, shall affect any acquisition of Waqf properties for a public purpose, under the Act of 2013, or any other law relating to acquisition of land, if such acquisition is made in consultation with the Board. The Board, of course, means the Waqf Board. The third proviso says that the acquisition shall not be in contravention of the Act of 1991, the provision upon which learned Counsel for the petitioner has much harped.

45. We have already held that the Act of 1991 prohibits the conversion of place of worship of one religious denomination into another. It does not derogate from the State's authority to acquire any place of religious worship for a secular and public purpose, like development of a road or augmentation of infrastructure or any similar activity. In this connection, reference may be made to the remarks of the Constitution Bench of the Supreme Court in **Dr. M. Ismail Faruqui and others v. Union of India and others**, where it has been observed :

80. It has been contended that a mosque enjoys a particular position in Muslim Law and once a mosque is established and prayers are offered in such a mosque, the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the namaz can be offered. As indicated hereinbefore, in British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.

81. Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 of the Constitution adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are

essentially immovable properties and subject to protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions.

82. The correct position may be summarised thus. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See Mulla's Principles of Mahomedan Law, 19th Edn., by M. Hidayatullah Section 217; and Shahid Ganj v. Shiromani Gurdwara [AIR 1940 PC 116, 121 : 44 CWN 957 : 67 IA 251]). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

(emphasis by Court)

46. In **Yusuf Ajij Shaikh and others v. Special Land Acquisition Officer No. 2, Pune and others,** dealing with the issue that we have under consideration, it has been remarked by P.S. Patankar, J. :

8. The new question now raised is whether this acquisition can be dropped in view of the enactment i.e. The Places of Worship (Special Provisions) Act, 1991 (hereafter referred to as the Places of Worship Act). The learned Advocate for the Appellants drew my attention to the Preamble of the said Act which says that this is an Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947. This is also to be found in section 4(1).

Section 2(b) defines "conversion" which is as follows:-

"2(b) "conversion" with its grammatical variations, includes alteration or change of whatever nature;"

Section 3 is a charging section. It says that "No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious

denomination or any section thereof". The learned Advocate for Respondents submits that this enactment has no application as far as the acquisition of land under the Land Acquisition Act is concerned. The ban is on persons to convert, alter or change from one section etc. to another. This has been done with a view that persons of one community or section do not trespass and usurp the land or religious place of some other religious community or section and convert it into their place of worship. This has been done with a view to maintain communal harmony in the country. He submits that this is also clear from section 6 which provides for punishment for contravention of section 3. Section 6(1) provides for punishment to person who contravenes section 3 with imprisonment for a term which may extend to three years and shall also be liable to pay fine. Section 6(2) and section 6(3) provide for attempt and abetment in that respect. The submission made on behalf of respondents deserves to be accepted. In this case land is sought to be acquired under the provisions of the Land Acquisition Act. No provision of the Places of Worship Act bans such acquisition expressly or impliedly. The provisions of the Land Acquisition Act are not abrogated. It is very, clear that this Act has been enacted for the limited purpose to prohibit and punish one section or community who illegally takes over the land of religious worship of another community or section and changes its character. It is not possible to accept the submission that acquisition of land under the Land Acquisition Act loses its character and therefore prohibited. Under this Act, conversion contemplated by section 3 is by persons of the place of worship of one community or section to religious place of worship of some other community or section. It is not mere conversion as defined. This legislative intent is clearly discernible and done with a view to see that communal harmony is not disturbed by such acts of one community or section or denomination. The injunction under section 4(1) is for the people of all communities to see that the religious character of a place of worship existing on the 15th day of August, 1947 is maintained and continued and there is no conversion. This cannot cover in its sweep the acquisition of land under the Land Acquisition Act. It is not merely because there is a loss of Dargah or the Mosque this would amount to conversion in view of section 3. This is also clear from section 6 which prescribes punishment to those persons who indulge in such conversion. Hence I reject this contention.

47. We were not inclined to go into this issue, because the petitioners rights are very limited and the cause of action, which they essentially canvass, would not logically involve the issue about the six ancient mosques being acquired for any public purpose. But, since the petitioners have canvassed that point much vociferously, we have dealt with it in commensurate measure, without prejudice to the rights of the State, the Waqf Board and the Mutawalli of mosques concerned to suit their rights in appropriate proceedings, if and when the occasion arises. So far as the petitioners are concerned, we are of opinion that they have no right to any of the reliefs that they seek.

48. In the result, this petition **fails** and stands **dismissed**.

49. There shall be no order as to costs.

(2026) 7 ILRA 1666
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.07.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 35283 of 2024

Netra Pal Singh **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to the maintainability of a writ petition under Article 226 of the Constitution of India challenging the cancellation of a fisheries lease, forfeiture of security deposit and recovery proceedings arising out of a contractual dispute containing an arbitration clause, and whether, despite the writ petition having remained pending for long and pleadings having been exchanged, the petitioner could still be relegated to the alternative remedy of arbitration.

Headnotes

Constitution of India, Art. 226 – Writ jurisdiction – Contractual disputes – Alternative remedy – Arbitration clause – Disputed questions of fact – Fisheries lease – E-tender invited for auction of fishing rights – Fisheries lease granted to petitioner – Agreement executed between parties – Cancellation of lease, forfeiture of security deposit and initiation of recovery proceedings by the Corporation on account of non-payment of contractual dues – Petitioner claimed that actual fishing area made available was substantially less than the area advertised due to overlap with core forest area and State boundaries and alleged breach of agreement by respondents – Petitioner challenged cancellation of lease, forfeiture of security deposit and recovery proceedings – Respondents raised objection as to maintainability of writ petition on ground of availability of arbitration clause and existence of disputed questions of fact – Maintainability of writ petition:

Held: It is well settled that this Court, in exercise of powers under Article 226 of the Constitution of India, normally does not entertain petitions with regard to contractual disputes, particularly if there are disputed questions of fact involved – Although there is no absolute bar on entertaining petitions involving contractual disputes, the present case does not involve failure of principles of natural justice or violation of fundamental rights – Questions relating to the income earned by the petitioner while carrying out fishing under the agreement, the actual reservoir area made available to the petitioner for fishing and the effect thereof on the adjustments to be made in the installments payable are disputed questions of fact – Such questions require the parties to adduce evidence in support of their respective case and cannot be adjudicated in proceedings under Article 226 of the Constitution of India – Mere pendency of writ petition for long and exchange of pleadings does not warrant adjudication under Article 226 where serious dispute of fact exists and materials on record are insufficient or inconclusive – Writ petition not maintainable – Petitioner relegated to remedy under the Arbitration and Conciliation Act, 1996 – Interim protection granted for six weeks to enable petitioner to avail appropriate remedy – No opinion expressed as to which of the parties committed breach of the agreement, observations being made only for the purpose of deciding whether the present petition should have been entertained or not. [Paras 14–24] (E-5)

Case Law Cited

Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728;
Union of India v. Puna Hinda, (2021) 10 SCC 690;
Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others, A.I.R. 2003 SC 2120;
State of U.P. and another v. Ehsan and another, 2023 LiveLaw (SC) 887

List of Acts

Constitution of India;
Arbitration and Conciliation Act, 1996.

List of Keywords

Writ jurisdiction; Article 226; Contractual disputes; Alternative remedy; Arbitration clause; Disputed questions of fact; Fisheries lease; Auction of fishing rights; Forfeiture of security deposit; E-tender; Fundamental breach of contract; Non-maintainability of writ; Relegation to statutory remedy; Interim protection.

Case Arising From

Challenge to the order dated 28.09.2024 passed by Chief General Manager, UP Fisheries Development Corporation Limited, Lucknow, and letter dated 07.10.2024 issued by Manager (Finance and Accounts), UP Fisheries Development Corporation Limited, Lucknow

Appearances for Parties

Advs. for the Petitioners : Anurag Kumar Ojha, Siddharth Khare
Advs. for the Respondent : Ajit Singh, C.S.C., Santosh Kumar Srivastava

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Heard Sri Siddharth Khare along with Sri Anurag Kumar Ojha, learned counsels for the petitioner, learned Standing Counsel for the State-respondent no.1 and Sri Santosh Kumar Srivastava, learned counsel appearing on behalf of the respondent nos. 2 and 3.

2. The petitioner has filed the present petition, being aggrieved by the order dated 28.09.2024 passed by respondent no. 2, Chief General Manager, UP Fisheries Development Corporation Limited, Lucknow, by means of which the agreement for Fisheries Lease has been cancelled and the security amount of Rs. 67,70,825/- forfeited, besides, the petitioner has also been called upon to deposit an amount of Rs.1,82,67,040/- within a period of 15 days, failing which, proceedings of recovery as arrears of land revenue shall be initiated, and the petitioner blacklisted. The petitioner is also aggrieved by the letter dated 07.10.2024 issued by the Manager (Finance and Accounts), UP Fisheries Development Corporation Limited, Lucknow, by means of which the Branch Manager, Punjab and Sindh Bank, has been called upon to release the Bank Guarantee/FDR deposited by the petitioner in favor the respondent- Corporation.

3. The controversy shorn of facts is that the UP Fisheries Development Corporation Limited, Lucknow (hereinafter referred to as "the Corporation") had invited applications through e-tender for auction of fishing rights of Sharda Sagar Reservoir, Class I having a total area of 6,880 hectares situated in District Pilibhit for a tenure of 10 years, i.e., upto 30.06.2033. Under the e-tender, the petitioner was required to deposit 25% of the total amount as stipulated within a period of 24 hours from the selection of the bid, the petitioner, in this regard, had duly deposited an amount of Rs. 55,45,221/- on 14.07.2023. Subsequently, the petitioner had deposited the security amount of Rs. 67,70,825/- on 18.08.2023 in the shape of fixed deposit receipts. The petitioner had also deposited

a stamp duty of Rs. 27,88,830/- for the purposes of execution of the agreement. Besides, the petitioner had also deposited an amount of Rs. 13,54,430/- with the respondents as contract fees.

4. Ultimately, an agreement dated 29.08.2023 was concluded between the parties for the fisheries lease in the Sharda Sagar Reservoir, Pilibhit. In this regard, an order dated 14.09.2023 was issued granting the contract for the year 2023-24 to the petitioner.

5. However, shortly after the petitioner reached the reservoir to carry out fishing, the employees of the petitioner were detained and the fishing boats seized by the forest authorities on the pretext that the area in which fishing was carried out belonged to Pilibhit Tiger Reserve and fishing was prohibited in the said area. The petitioner, on the basis of a reply to an application under the RTI Act, states that a total area of 683.88 hectare of the Sharda Sagar Reservoir fell in the core area of the Pilibhit Tiger Reserve. Besides there was also a prohibition on any activity within 200-500 m from the place where the water from the reservoir entered the Pilibhit Tiger Reserve, as it was also considered to be the core area. It is also contended that there are six villages comprising roughly 1,000 hectares in the Sharda Sagar Reservoir where there is no water at all, and villagers are carrying out agricultural activities, thus, the petitioner was also deprived from carrying out fishing in this area of the reservoir. Further, no fishing could also be carried out in the area of the reservoir which fell within the territory and jurisdiction of the State of Uttarakhand.

6. Besides, the petitioner has also placed reliance upon records of the National Register of Dams as well as the chart maintained by the Irrigation and Water Resources Department to demonstrate that the total area of the Sharda Sagar Reservoir is 5765 hectares whereas the fisheries lease in respect of an area of 6880 hectares had been granted, which was practically not possible.

7. It is in the above circumstances as the actual fishing area allotted to the petitioner fell much short of the area advertised that the petitioner could not deposit the amounts due under the agreement, and there were defaults on the part of the petitioner. In this regard, several notices were issued to the petitioner by the respondents and the petitioner in response thereto had ventilated his grievances.

8. However, as the petitioner failed to make payments in due accordance with the terms of the agreement, ultimately the respondent no. 2 vide the impugned order dated 28.09.2024 had terminated the agreement and forfeited the security deposit of Rs. 67,70,825/- and further had called upon the petitioner to deposit the remaining amount due being Rs. 1,82,67,040/- under the agreement and by means of another letter dated 07.10.2024, the bankers of the petitioner were called upon to release the bank guarantee/FDR in favour of the Corporation.

9. Thus, the crux of the contention of the petitioner is that the petitioner was never provided the total area of the reservoir in respect of which bids were invited, measuring 6,880 hectares. The respondent, while having failed to provide the required area, had committed a fundamental breach of the agreement. The petitioner in this regard has drawn the attention of this Court to the letter dated 30.07.2024 issued by the petitioner, wherein it was categorically submitted that the area of the reservoir, which should have been 6,880 hectares, was falling short by 1,798.88 hectares, in view of the fact that in the National Register of Large Dams, the area of Sharda Sahayak Reservoir

was only 5,765 hectares and an area of 683.88 hectares fell in the core area of Pilibhit Tiger Reserve. Besides, the petitioner has also relied upon the reply to the application under the RTI Act dated 17.02.2024 issued by the forest authorities at Pilibhit Tiger Reserve. The petitioner states that it is not as if the petitioner had not deposited any amount after execution of the agreement, and in fact the petitioner had deposited an amount of Rs. 1,05,15,000/- upto 19.09.2024 other than amounts already deposited at the time of the agreement. Hence, it is contended on behalf of the petitioner that it is solely on account of defaults and breaches on the part of the respondents that the petitioner could not carry out the fishing, and as a consequence, there was delay in payment of installments under the agreement.

10. Per contra, it is contended on behalf of the respondent's no. 2 and 3 that the present writ petition itself is not maintainable, as the petitioner has an alternative remedy of resorting to arbitration by invoking the arbitration clause contained in the agreement. In this regard it is further submitted that the present controversy involves disputed questions of fact which cannot be decided in proceedings under Article 226 of the Constitution of India. It is further stated that the agreement was executed on," as-is-where-is basis", and it was specifically provided in the tender conditions that, before participating in the auction bid, the auction bidder should himself make a spot inspection of the reservoir. Besides, it is only a miniscule area of the Sharda Sahayak Reservoir, which is not fit for fishing, in comparison to the total area of the reservoir. Hence, it is contended that the impugned order dated 28.09.2024 and letter dated 07.10.2024 has been issued in due accordance with the terms of the agreement solely on account of defaults on the part of the petitioner in making payment of the installments as agreed upon by the parties.

11. We have perused the records of the case and find that no serious dispute has been raised by the respondents regarding the area allotted to the petitioner for the purposes of fishing having fallen short as compared to the area mentioned in the e-tender notice i.e 6,880 hectares. The respondents in their counter affidavit have only given an evasive reply as far as the contention of the petitioner that 683.88 hectares of the area of the reservoir fell in the core area of Pilibhit Tiger Reserve and in the National Register of Dams the total area of the said reservoir was only 57650 hectares. Thus, prima facie, it seems that the contention so raised by the petitioner has force.

12. Be that as it may, even if we take the contention of the petitioner to be correct that the petitioner was deprived of 1798.88 hectares of reservoir area for fishing, we cannot remain oblivious of the fact that the petitioner had 5,081.12 hectares of reservoir area out of the total area of 6,880 hectares available to him for fishing. Further, the agreement between the parties admittedly was executed on 29.08.2023 and was terminated vide the impugned order was dated 28.09.2024, thus, the petitioner had carried out fishing for a period of about thirteen months, which was admittedly available to the petitioner for the purpose. It is not the case of the petitioner that the petitioner did not carry out any fishing whatsoever on account of the shortfall in the reservoir area. Thus, the income earned by the petitioner during this period of thirteen months shall also have to be taken into consideration while adjudicating the disputes so arisen between the parties. However, we are afraid that no figures in respect of the income earned by the petitioner during this while have been brought on record.

13. Moreover, not only is the question of the income earned by the petitioner while carrying out fishing under the agreement, but also the questions of the actual reservoir area made available to the petitioner for fishing and the effect thereof on the adjustments to be made in the installments payable, if any under the agreement are also disputed questions of fact. Further perusal of the impugned order dated 28.09.2024 reveals that an amount of Rs. 91,56,859/- was due from the petitioner in respect of the installments, an amount of Rs. 21,00,000/- was due towards the fish seeds and an amount of Rs.7, 42,420 was due as penal interest for the auction year 2023-24, while the remaining amount was due towards the auction year 2024-25. On the other hand, the petitioner states to have deposited Rs. 1,05,15,000/- upto 19.09.2024, other than the amounts that had been deposited by the petitioner at the time of execution of the agreement dated 29.08.2024. Hence, from the evidence that has been placed on record, it is also not clear as to what is the actual amount to be recovered from the petitioner by the respondents or in the alternative if, any amount is payable by the petitioner other than what has already been paid. Even the question as to whether the termination of the agreement is invalid or is valid and has been made in due accordance with the terms of the agreement is a question of fact.

14. We are afraid all the questions, as mentioned in the preceding paragraph, are disputed questions of fact, which require the parties to adduce evidence in support of their respective case and the same cannot be adjudicated in proceedings under Article 226 of the Constitution of India. We make it clear that these are only a few questions that have crept in our minds, and there would be many such questions, which would require adjudication by the competent forum.

15. It is well settled that this Court, in exercise of powers under Article 226 of the Constitution of India, normally does not entertain petitions with regard to contractual disputes, particularly if there are disputed questions of fact involved. Although there is no absolute bar on entertaining petitions involving contractual disputes, the circumstances in which such a writ petition can be entertained had been elucidated by the Apex Court in the judgment in the case of ***Joshi Technologies International Inc. vs Union of India, (2015) 7 SCC 728*** and the same reads as follows:-

"69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarized as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights

and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

71. Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded."

16. In the case of ***Union of India vs Puna Hinda, (2021)10 SCC 690,*** the Apex Court has crystallized relatively narrow grounds in which writ petitions under Article 226 would be an appropriate remedy in a contractual dispute and has held as under :-

"24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads."

17. On the other hand, the petitioner, while contending that the presence of the arbitration clause in the agreement is not an absolute bar regarding the maintainability of

the present petition, the petitioner in support thereof has relied upon the judgment of the Apex Court in the case of ***Harbanslal Shania and another vs Indian Oil Corporation Ltd. and others, A.I.R. 2003 SC 2120***. However, the perusal of the said judgment reveals that the controversy involved arose out of the termination of the dealership of the appellant, which was done in contravention of the principles of natural justice. Further there were no disputed facts involved, apparently, in the said case, which is not so in the present case. The Apex Court in the said case had held as under:-

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

18. Thus, it is evident that there was a failure of principles of natural justice and violation of fundamental rights in the said case, while passing the termination order. However, in the present case, it is not at all so, as admittedly various notices were issued to the petitioner to pay the installments, failing which the agreement would stand terminated and the petitioner has also failed to demonstrate as to how it's fundamental rights have been violated. Hence, the petitioner would not be entitled to the benefit of the law, so relied upon by the petitioner. Moreover, the present controversy also involves disputed questions of fact as already held above.

19. Another contention of the petitioner, in reply to availing the remedy of alternative remedy in the shape of arbitration, is that the writ petition has been pending since long and the parties have already exchanged their pleadings, hence, it would not be in the interest of justice to relegate the parties to avail the alternative remedy at this stage and the petitioner would be subjected to undue hardship in the process.

20. In this regard, we rely upon the law laid down by the Apex Court in the case of ***State of UP & Anr. versus Ehsan and Anr., 2023 LiveLaw (SC) 887*** wherein amongst others the controversy that arose was in respect of the disputed question of possession and as to whether the parties should be relegated to avail the remedy of civil suit and it was held as under:-

"28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

36. In view of the above conclusion, the appeal is allowed. The impugned order passed by the High Court is set aside. The first respondent's writ petition is dismissed without prejudice to his right to institute a suit. Parties to bear their own costs"

21. Thus in view of the above circumstances, we hold that the present writ petition is not maintainable for the reason that an alternative and efficacious remedy by resorting to arbitration is available to the petitioner, and more so as the present controversy involves disputed questions of fact which can only be adjudicated after the parties have adduced their respective evidence.

22. Before we part, we are also conscious of the fact that this court, vide the order dated 12.12.2024, had stayed the orders dated 28.09.2024 and 07.10.2024, which are impugned in the present writ petition. Hence, we are of the view that an interim protection should be provided to the petitioner till the time the petitioner avails an appropriate remedy under the Arbitration and Conciliation Act, 1996.

23. Thus, for the reasons detailed above, the present petition is dismissed with the liberty to the petitioner to avail remedy under the Arbitration and Conciliation Act, 1996, within a period of six weeks from the date of this order and till then, the operation of the impugned order dated 28.09.2024 and the order dated 07.10.2024, morefully annexed as Annexure No. 1 and Annexure No. 2 to the present petition, shall remain stayed. It is also made clear that the interim protection so granted to the petitioner shall automatically stand vacated after a passage of six weeks from the date of this order.

24. It is also clarified that we have not expressed any binding opinion as to which of the parties had breached the terms of the Agreement dated 29.08.2023. Observations, if any, in this regard are purely for the purpose of deciding whether the present petition should have been entertained or not. Hence, if any arbitration proceedings are initiated, the same shall be decided on it's own merits.

25. No order as to costs.

(2026) 7 ILRA 1675
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 986 of 2026

Omwati & Anr. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Whether the Corpus is in the illegal detention of private respondent nos.4 to 7, who are the wife and the relatives of the wife, of the corpus

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus Writ Petition)- The corpus is accused of committing an offence by the private respondents, as such, he cannot be illegally detained by them. It is also evident from a perusal of the instructions received by the learned A.G.A. that the Investigating Officer has made sincere efforts to trace and apprehend the corpus; however, he is absconding and has failed to cooperate with the I.O. The I.O. has approached the Court for obtaining non-bailable warrants against him. The investigation against accused persons have been concluded and a charge sheet has been submitted against the petitioner Omwati and corpus Manish, under Sections 85, 115(2), 352, 351(2) of B.N.S. and 3/4 of D.P. Act, as such, no ground is made out for entertaining this habeas corpus writ petition.

Habeas corpus writ petition is dismissed. (E-15)

(Para 10 & 11)

Case Law Cited

Home Secretary(Prison) and Others vs. H. Nilofer Nisha (2020) 14 SCC 161;Union of India vs. Yumnam Anand M. @ Bocha @ Kora @ Suraj and Another (2007) 10 SCC 190**;** Satendra Kumar Srivastava and Another vs. State of UP and Others 2011 SCC OnLine All 4084; Rajamani vs. The Superintendent of Police and Another in HCP(MD) No.1439 of 2021; Netram Rawat(Baba) vs. State of MP and Others 2024 SCC OnLine MP 8207

List of Acts

The Constitution of India, 1950

List of Keywords

Corpus accused of committing an offence by the private respondents; he is absconding and has failed to cooperate with the I.O

Case Arising From

The corpus aged about 35 years is the son of the petitioner who is in the illegal detention of private respondent nos.4 to 7, who are the wife and the relatives of the wife, of the corpus

Appearances for Parties

Counsel for Petitioner(s) : Pankaj Dwivedi
Counsel for Respondent(s) : G.A.

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

1. Learned counsel for the petitioner submitted that the corpus Manish aged about 35 years is the son of the petitioner Omwati, who is in the illegal detention of private respondent nos.4 to 7, who are the wife and the relatives of the wife, of the corpus. He further submitted that in this regard an F.I.R. was registered on 18.02.2026 being Case Crime No.74 of 2026, under Sections 115(2), 126(2), 351(2), 351(3), 303(2) of B.N.S. at P.S. Mania, District Dholpur (State of Rajasthan) against respondent no.4 Lakhan Singh but neither the corpus has been traced out nor any action has been taken against the private respondents.

2. Per contra, learned A.G.A. submitted that there is a matrimonial dispute between the corpus and his wife/respondent no.7 Sona. The corpus Manish and his relatives demanded dowry of Rs.2,00,000/- and in non-fulfillment of that demand, the wife of the corpus was subjected to mental and physical harassment and cruelty and was thrown out of her matrimonial home. The relatives of the petitioner also committed sexual assault on the respondent Sona, regarding which an F.I.R. was registered by her on 16.12.2025, being Case Crime No.371 of 2025, under Sections 74, 85, 115(2), 352, 351 (2) of B.N.S. and 3/4 Dowry Prohibition Act, P.S. Shamshabad, District Agra against the corpus and his relatives, in which apprehending his arrest the corpus is absconding. Learned counsel submitted that the corpus is not in the illegal detention of the private respondents, who are the wife and relatives of the wife of the corpus.

3. I have heard learned counsel for the parties and perused the documents available on record and instructions received by the A.G.A.

4. The Apex Court in the case of ***Union of India vs. Yumnam Anand M. @ Bocha @ Kora @ Suraj and Another (2007) 10 SCC 190*** while explaining the nature of writ of habeas corpus has held that the petitioner must show a prima facie case of unlawful detention. It is quoted as under:-

"*7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it ?the great and efficacious writ in all manner of illegal confinement?. The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right."*

5. The Apex Court in the case of ***Home Secretary(Prison) and Others vs. H. Nilofer Nisha (2020) 14 SCC 161*** while delineating the scope and ambit of the writ of habeas corpus, has categorically held that such a writ is not maintainable where there is no allegation or material indicating that he/she is under unlawful or illegal detention. The existence of unlawful detention constitutes the sine qua non for the issuance of a writ of habeas corpus. The relevant paras reads as under:-

"16. ***A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law.*** *Though the literal meaning of the Latin phrase habeas corpus is "to produce*

the body", over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. ***Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.*** *"*

(emphasis supplied)

6. This Court in the case of ***Satendra Kumar Srivastava and Another vs. State of UP and Others 2011 SCC OnLine All 4084*** held as under:-

"4. It seems that in the aforesaid crime no. 472 of 2008, after investigation, a charge sheet was submitted, on the basis of which, cognizance was taken and case no. 6864 of 2010 under the aforesaid offences was registered in the court and 82-83 process have been issued by C.J.M. It is at this stage that father has preferred this habeas corpus writ petition because petitioner no. 2 Vandana @ Teetu is not traceable.

5. On the aforesaid facts, it is perceptly clear that Vandana @ Teetu is residing with her husband on her own volition. She is not traceable, ostensibly for the reason that she is residing with her family at a place where the police is unable to lays its hands. ***Since the Vandana @ Teetu is not in illegal detention, habeas corpus writ petition is not maintainable. In case, a charge sheeted accused is not appearing in court and has been declared to be an absconder, the remedy for the victim is to approach appropriate authorities or this court in an appropriate writ. Habeas corpus writ petition are not meant for such purpose. A habeas corpus writ petition is maintainable only when some corpus is under illegal detention against his or her wish and the person, who is filing the petition is interested in knowing whereabout the corpus, production of the corpus and its release from the cluches of illegal detention."***

(emphasis supplied)

7. A Division Bench of the Madras High Court in the case of ***Rajamani vs. The Superintendent of Police and Another in HCP(MD) No.1439 of 2021*** decided on 28.09.2021, held as under:-

"1. Alleging that the petitioner's son by name Boominathan, aged about 35 years, was found missing, the petitioner has given a complaint before the second respondent police. But, so far no action has been taken by the second respondent to secure the detenu. Hence, the present Habeas Corpus Petition has been filed.

2.Mr.S.Ravi, learned Additional Public Prosecutor on instructions would submit that the detenu is an accused in a murder case and the trial is pending in S.C.No.134 of 2016, on the file of Mahila Court, Tirupur, and the detenu is absconding, a Non-Bailable Warrant is issued against him and the same is pending for execution.

3.Considering the above said facts, the detenu is an absconding accused and he is not illegally detained as alleged by the petitioner. Hence, the Habeas Corpus Petition is not maintainable and the same is dismissed."

8. A Division Bench of the Madhya Pradesh High Court in the case of ***Netram Rawat(Baba) vs. State of MP and Others 2024 SCC OnLine MP 8207*** held as under:-

"2. Grievance of petitioner is that his son is missing and according to him, he is in illegal confinement of respondent No. 4-Balli Rawat and respondent No. 5-Nathu Singh Rawat.

3. He also referred order dated 9 September, 2024 passed in WP No. 26523/2024 by this Court which was first round of habeas corpus petition which was filed and disposed of when status report was filed.

4. Learned counsel for the respondent-State opposed the prayer. According to counsel for the respondent-State, petitioner himself is a man of criminal background consisting of 22 cases. Corpus is his son-Mahesh. He also bears criminal record of five cases and arrest warrant has been issued against him. Police is in search of him.

*5. Considering the rival submissions and previous status report filed in WP No. 26523/2024, it appears that son of petitioner (corpus) is absconding because of arrest warrant being issued against him. When earlier writ petition in nature of habeas corpus was filed and when fact of absconsion was brought before this Court then said petition was disposed of in terms of directions as contained into. Now, again another petition is being filed as habeas corpus. This appears to be abuse of process of law.**When corpus himself is a man of criminal background and is absconding, therefore, no such petition can be entertained. Police shall proceed in accordance with law against erring persons and try to arrest the corpus in accordance with law."***

(emphasis supplied)

9. From a perusal of the instructions received from the A.G.A., it is apparent that an additional demand of Rs. 2,00,000/- as dowry was made from the respondent, Sona, who is the wife of the corpus. Due to the non-fulfillment of the said dowry demand, she was subjected to mental and physical harassment and acts of cruelty by the corpus and his family members. Besides that she was molested by the relatives of the corpus and as such, in order to save herself from continued acts of cruelty and molestation she returned to her parental home and subsequently, registered an F.I.R. on 16.12.2025, being Case Crime No.371 of 2025, under Sections 74, 85, 115(2), 352, 351(2) of B.N.S. and 3/4 D.P. Act, P.S. Shamshabad, District Agra against the corpus and his relatives.

10. It is further apparent that in these circumstances, since the corpus is accused of committing an offence by the private respondents, as such, he cannot be illegally detained by them.It is also evident from a perusal of the instructions received by the learned A.G.A. that the Investigating Officer (I.O.) has made sincere efforts to trace and apprehend the corpus; however, he is absconding and has failed to cooperate with the I.O. The I.O. has approached the Court for obtaining non-bailable warrants against him. The investigation against accused persons have been concluded and a charge sheet has been submitted against the petitioner Omwati and corpus Manish, under Sections 85, 115(2), 352, 351(2) of B.N.S. and 3/4 of D.P. Act, as such, no ground is made out for entertaining this habeas corpus writ petition.

11. Accordingly, the instant habeas corpus writ petition is ***dismissed***.

(2026) 7 ILRA 1679
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 900 of 2023

Preeti Mishra & Anr. ...Applicants
Versus
Vidya Kant Tripathi & Anr. ...Opposite Parties

Issue for Consideration

Whether transfer of the subsequently instituted suit to the Court at Kanpur Nagar would facilitate a comprehensive, effective and consistent adjudication of the entire controversy between the parties while obviating the possibility of conflicting decrees

Head Notes

The Code of Civil Procedure, 1908-Section 24- The validity of the adoption deed constitutes the foundational issue in both suits. Consequently, the evidence likely to be adduced and the questions requiring determination would substantially overlap. Any adjudication rendered in one proceeding is likely to have a direct and substantial bearing upon the issues arising in the other. If the proceedings are permitted to continue independently before different Courts, there exists a real possibility not only of duplication of evidence but also of inconsistent decrees in relation to the same document. Avoidance of such a situation is itself a relevant consideration while exercising jurisdiction under Section 24 CPC.

Held- Having regard to the identity of the parties, the commonality of the issues involved, the pendency of the earlier suit before the competent Court at Kanpur Nagar and the overall interests of justice, this Court is satisfied that the present is a fit case for exercise of jurisdiction under Section 24 of the Code of Civil Procedure

Application allowed. (E-15)

(Para 11 & 16)

Case Law Cited

List of Acts

The Code of Civil Procedure, 1908

List of Keywords

Validity of adoption deed foundational issue in both suits; Any adjudication rendered in one proceeding is likely to have a direct and substantial bearing upon the issues arising in the other; If the proceedings are permitted to continue independently before different Courts; there exists a real possibility not only of duplication of evidence but also of inconsistent decrees in relation to the same document.

Case Arising From

Application has been filed seeking transfer of O.S. No. 170 of 2023, pending before the Court of Civil Judge (Junior Division), Kannauj, to a Court of competent jurisdiction at Kanpur Nagar

Appearances for Parties

Counsel for Applicant(s) : Arvind Srivastava, Mohd. Naushad Siddiqui
Counsel for Opposite Party(s) : Rajeev Tiwari

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Mohd. Naushad Siddiqui, learned counsel for the applicants and Sri Rajeev Tiwari, learned counsel for the opposite party.

2. Present application has been filed seeking transfer of O.S. No. 170 of 2023 (Vishnu Kant Tripathi and another Vs. Apurva Shukla and another), pending before the Court of Civil Judge (Junior Division), Kannauj, to a Court of competent jurisdiction at Kanpur Nagar.

3. It is submitted that a registered adoption deed dated 30.06.2022 was executed between the parties, whereunder the minor girl child was given in adoption to the applicants. It is stated that ever since the execution of the said deed, the applicants have been taking care of the adopted child and she has settled in their family.

4. It is further submitted that subsequently the respondents started exerting pressure upon the applicants for return of the minor child. In the aforesaid circumstances, the applicants instituted O.S. No. 2465 of 2022 before the Court of Civil Judge (Junior Division), Kanpur Nagar seeking a declaration that the adoption deed dated 30.06.2022 is legal, valid and binding upon the parties. The said suit is stated to be pending.

5. It is then urged that thereafter the respondents instituted O.S. No. 170 of 2023 before the Court of Civil Judge (Junior Division), Kannauj seeking cancellation of the very same adoption deed dated 30.06.2022. By means of the present application, the applicants seek transfer of the subsequent suit to Kanpur Nagar so that both proceedings involving the same parties and arising out of the same adoption deed may be adjudicated by the same Court.

6. Learned counsel appearing for the opposite parties, on instructions, fairly states that the opposite parties have no objection if the suit pending at Kannauj is transferred to a Court of competent jurisdiction at Kanpur Nagar.

7. The Court has considered the submissions advanced by learned counsel for the parties.

8. The power conferred upon this Court under Section 24 of the Code of Civil Procedure, 19081 is discretionary and is intended to advance the cause of justice. While exercising such jurisdiction, the paramount consideration is whether the

proposed transfer would facilitate a fair, convenient and effective adjudication of the dispute. The provision is designed to secure the ends of justice by preventing multiplicity of proceedings, avoiding inconsistent findings on common questions of fact and law, and facilitating a consistent and effective adjudication of related disputes.

9. The jurisdiction under Section 24 CPC is equitable in nature and is to be exercised whenever the exigencies of justice so require. The provision is not confined to cases where hardship or inconvenience alone is established; it equally enables the Court to regulate the course of judicial proceedings in a manner that secures an effective, efficient and comprehensive adjudication of the controversy. The ultimate touchstone is whether the proposed transfer would better serve the administration of justice.

10. In the present case, it is not in dispute that both the suits are between the same parties and arise out of the same registered adoption deed dated 30.06.2022. While the earlier suit pending before the competent Court at Kanpur Nagar seeks a declaration regarding the validity and binding nature of the adoption deed, the subsequent suit instituted at Kannauj seeks cancellation of the very same document. The principal controversy in both proceedings is, therefore, substantially identical.

11. The validity of the adoption deed constitutes the foundational issue in both suits. Consequently, the evidence likely to be adduced and the questions requiring determination would substantially overlap. Any adjudication rendered in one proceeding is likely to have a direct and substantial bearing upon the issues arising in the other. If the proceedings are permitted to continue independently before different Courts, there exists a real possibility not only of duplication of evidence but also of inconsistent decrees in relation to the same document. Avoidance of such a situation is itself a relevant consideration while exercising jurisdiction under Section 24 CPC.

12. The administration of justice requires that disputes arising out of the same transaction or document, involving substantially identical issues and evidence, should, as far as practicable, be adjudicated by the same Court. Such a course promotes judicial consistency, procedural economy and certainty in the adjudicatory process, besides avoiding unnecessary duplication of judicial effort.

13. Ordinarily, where two suits involving substantially the same subject matter are pending before different Courts of competent jurisdiction, the Court in which the earlier proceeding is pending constitutes the more appropriate forum for continuation of the subsequent proceeding, unless compelling circumstances indicate otherwise. In the present case, the earlier declaratory suit was instituted before the competent Court at Kanpur Nagar and continues to remain pending. No circumstance has been brought to the notice of the Court which would justify departure from the aforesaid course.

14. Though the categorical 'no objection' expressed by the opposite parties is a relevant circumstance, the exercise of jurisdiction under Section 24 CPC cannot rest upon consent alone. The Court is required to independently satisfy itself that the proposed transfer would advance the ends of justice. Upon a consideration of the facts of the present case, this Court finds that transfer of the subsequently instituted suit to the Court at Kanpur Nagar would facilitate a comprehensive, effective and consistent adjudication of the entire controversy between the parties while obviating the possibility of conflicting decrees. The stand adopted by the opposite parties further demonstrates that no prejudice is likely to be caused to either side by the proposed transfer.

15. The discretion under Section 24 CPC is to be exercised not merely for the convenience of the parties but to ensure the orderly administration of justice. Where the controversy in two proceedings is substantially common and the decision in one is likely to have a material bearing upon the other, transfer of the subsequently instituted proceeding to the Court where the earlier proceeding is pending would ordinarily advance the ends of justice, unless compelling reasons exist to adopt a different course. No such compelling circumstance exists in the present case.

16. Having regard to the identity of the parties, the commonality of the issues involved, the pendency of the earlier suit before the competent Court at Kanpur Nagar and the overall interests of justice, this Court is satisfied that the present is a fit case for exercise of jurisdiction under Section 24 of the Code of Civil Procedure.

17. The Transfer Application is, accordingly, **allowed** with the following directions:

(i) O.S. No. 170 of 2023 (Vishnu Kant Tripathi and another Vs. Apurva Shukla and another), pending before the Court of Civil Judge (Junior Division), Kannauj, is hereby withdrawn from the Court of Civil Judge (Junior Division), Kannauj and transferred to the Court of the Civil Judge (Junior Division), Kanpur Nagar, having jurisdiction to try the same.

(ii) The Civil Judge (Junior Division), Kannauj shall transmit the entire original record of the aforesaid suit to the transferee Court within a period of fifteen days from the date of receipt of a certified copy of this order.

(iii) Upon receipt of the record, the transferee Court shall proceed with the suit from the stage at which it stands transferred and shall, subject to the provisions of law and after hearing the parties, consider the desirability of hearing O.S. No. 170 of 2023 along with O.S. No. 2465 of 2022, or of adopting such other procedure as may be permissible in law, so as to secure an effective adjudication of the disputes and avoid inconsistent decrees.

(2026) 7 ILRA 1683
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 1009 of 2025

Arshad Hussain ...Applicant
Versus
Nazia Parveen ...Opposite Party

Issue for Consideration

Whether the transfer application is liable to be allowed on the ground that a recommendation had earlier been made for transfer as well as on the ground that the real brother of the opposite party is a practising Advocate at Muzaffarnagar

Head Notes

The Code of Civil Procedure, 1908-Section 24- Transfer of the case from one Family Court to another within the same district does not furnish any basis for transfer to another district- Merely because a close relative of one of the parties happens to be a practising Advocate in the judgeship where the proceedings are pending does not, by itself, give rise to any presumption that the matter will not receive fair and impartial consideration. Judicial officers are expected to discharge their functions independently and in accordance with law. In the absence of any tangible material demonstrating a real and reasonable apprehension of prejudice, bias, or failure of justice, such a circumstance cannot constitute a legally sustainable ground for transfer of judicial proceedings. A transfer cannot be ordered on the basis of conjectures, surmises, or unfounded apprehensions.

Held- No such objective material has been placed before the Court. The power to transfer proceedings is not intended to be exercised as a matter of routine, and the circumstances disclosed by the applicant do not give rise to any reasonable apprehension that justice will not be done if the proceedings continue before the court where they are pending. Apart from the aforesaid submissions, no other ground has been pressed in support of the transfer application. (Para 8, 11 & 13)

Application dismissed. (E-15)

Case Law Cited

List of Acts

The Code of Civil Procedure, 1908

List of Keywords

In the absence of any tangible material demonstrating a real and reasonable apprehension of prejudice, bias, or failure of justice; A transfer cannot be ordered on the basis of conjectures, surmises, or unfounded apprehensions.

Case Arising From

Application under Section 24 of the C.P.C filed seeking transfer of Divorce Case No.30 of 2024, instituted for dissolution of marriage and is pending before the Court of the Additional Principal Judge, Family Court No.1, Muzaffarnagar, to a court of competent jurisdiction at Meerut or, in the alternative, at Bijnor.

Appearances for Parties

Counsel for Applicant(s) :Anil Kumar Dubey, Anubhav Shukla, Chandra Bhan Dubey
Counsel for Opposite Party(s) : Jagdish Prasad Mishra

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Shri Chandra Bhan Dubey, learned counsel for the applicant, and Shri Jagdish Prasad Mishra, learned counsel for the opposite party.

2. The present application under Section 24 of the Code of Civil Procedure has been filed seeking transfer of Divorce Case No.30 of 2024 (Arshad Hussain vs. Nazia Parveen), instituted by the applicant for dissolution of marriage and presently pending before the Court of the Additional Principal Judge, Family Court No.1, Muzaffarnagar, to a court of competent jurisdiction at Meerut or, in the alternative, at Bijnor.

3. The applicant, who is the husband and petitioner in the aforesaid proceedings, seeks transfer essentially on two grounds. First, it is urged that upon an application dated 16.10.2025 moved by the opposite party, a recommendation had earlier been made for transfer when the matter was pending before the Court of the Additional Principal Judge, Family Court No.2, Muzaffarnagar. Secondly, it is contended that the real brother of the opposite party is a practising Advocate at Muzaffarnagar and, therefore, in the interest of justice, the proceedings ought to be transferred outside the district.

4. *Per contra*, learned counsel for the opposite party submits that, upon the earlier application, a report was called for from the Presiding Officer of Family Court No. 2, who expressed no objection to the transfer. Pursuant thereto, by order dated 27.10.2025 passed in the registered Misc. Civil Case, the Principal Judge, Family Court, Muzaffarnagar transferred the case to the Court of the Additional Principal Judge, Family Court No.1, Muzaffarnagar. It is, therefore, contended that the said circumstance furnishes no basis for seeking a further transfer outside the district.

5. The jurisdiction under Section 24 CPC is discretionary and is to be exercised to advance the ends of justice. It does not confer upon a litigant any vested right to choose a forum. The discretion is to be exercised judiciously, upon objective considerations, and only where circumstances indicate that transfer is necessary to secure a fair trial or to prevent failure of justice.

6. The power under Section 24 CPC is to be exercised in circumstances which would lead a reasonable and prudent person to apprehend that continuance of proceedings before the existing court may result in denial of fair adjudication. Mere conjectures, unfounded apprehensions, or subjective perceptions of prejudice are insufficient to justify transfer. The apprehension pleaded must be real, reasonable, and bona fide, and not imaginary or speculative.

7. It is well settled that the power of transfer is an extraordinary discretionary power to be exercised sparingly and with circumspection. The applicant must establish a real, reasonable, and bona fide apprehension that justice is unlikely to be administered fairly by the court concerned. Such apprehension must rest on objective material and must be of a nature that would commend itself to a reasonable person. Vague allegations or speculative assertions cannot furnish a valid foundation for transfer.

8. Insofar as the first ground is concerned, the earlier transfer of the case from one Family Court to another within the same district does not furnish any basis for transfer to another district. The record indicates that upon consideration of the registered Misc. Civil Case moved by the opposite party, a report was called for from the concerned Presiding Officer, who expressed no objection. Thereupon, by order dated 27.10.2025, the Principal Judge, Family Court, Muzaffarnagar transferred the proceedings from Family Court No. 2 to Family Court No. 1 for disposal in accordance with law. Such transfer within the judgeship cannot be construed as conferring any right upon the applicant to seek transfer outside the district.

9. The proceedings are presently pending before a competent court within the same judgeship pursuant to the aforesaid order. The grievance which formed the basis of the earlier transfer thus no longer survives. That circumstance, by itself, cannot justify transfer to another district.

10. The second ground, namely that the real brother of the opposite party is a practising Advocate at Muzaffarnagar, is equally untenable. Apart from a bald assertion, no material has been brought on record to demonstrate any prejudice, undue influence, intimidation, or denial of fair opportunity in the conduct of the proceedings.

11. Merely because a close relative of one of the parties happens to be a practising Advocate in the judgeship where the proceedings are pending does not, by itself, give rise to any presumption that the matter will not receive fair and impartial consideration. Judicial officers are expected to discharge their functions independently and in accordance with law. In the absence of any tangible material demonstrating a real and reasonable apprehension of prejudice, bias, or failure of justice, such a circumstance cannot constitute a legally sustainable ground for transfer of judicial proceedings. A transfer cannot be ordered on the basis of conjectures, surmises, or unfounded apprehensions.

12. To hold that the mere fact that a relative of one of the parties is practising as an Advocate in the judgeship is, by itself, a sufficient ground for transfer would lead to anomalous consequences. If that circumstance were, by itself, to be regarded as sufficient to warrant transfer, the place of trial would come to depend upon fortuitous personal circumstances rather than principled judicial standards. Such an approach would be inconsistent with the presumption that courts act fairly, independently and in accordance with law. The jurisdiction under Section 24 CPC is intended to safeguard the administration of justice where a real and reasonable apprehension of prejudice is shown on objective material; it is not intended to accommodate speculative concerns resting solely on the professional identity or relationship of a person connected with one of the parties, or on generalized suspicions incapable of objective verification.

13. In the present case, no such objective material has been placed before the Court. The power to transfer proceedings is not intended to be exercised as a matter of routine, and the circumstances disclosed by the applicant do not give rise to any reasonable apprehension that justice will not be done if the proceedings continue before the court where they are pending. Apart from the aforesaid submissions, no other ground has been pressed in support of the transfer application.

14. This Court, therefore, finds no sufficient cause warranting transfer of the proceedings from the Court of the Additional Principal Judge, Family Court No.1, Muzaffarnagar.

15. The transfer application is devoid of merit and is, accordingly, **dismissed**.

16. No order as to costs.

(2026) 7 ILRA 1686
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 7908 of 2026

Ramesh Chand Sachdeva ...Petitioner
Versus
Alok Prakash ...Respondent

Issue for Consideration

Whether the learned District Judge committed a jurisdictional error in exercising powers under Section 24(5) CPC by transferring S.C.C. Suit No. 69 of 2020 to a court of competent pecuniary jurisdiction, or whether, once it was found that the suit had been instituted before a court lacking pecuniary jurisdiction, the only course permissible in law was to direct return of the plaint under Order VII Rule 10 of the Code for presentation before the competent court. The issue squarely turns on the interplay between the transfer power under Section 24 CPC and the procedure for return of plaint under Order VII Rule 10 CPC.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Section 24(5), Order VII Rule 10- The principal submission advanced on behalf of the petitioner is that once the defect of pecuniary jurisdiction came to light, the only permissible course was return of the plaint under Order VII Rule 10 of the Code and that the evidence recorded by the court lacking jurisdiction became non est. The submission cannot be accepted. Section 24(5) expressly authorises transfer of a suit from a court which has no jurisdiction to try it, and the legislative intent is thereby clear that transfer constitutes a valid statutory mechanism for curing a jurisdictional defect.

Equally untenable is the submission that the evidence recorded prior to the order of transfer necessarily stands obliterated. Sub-section (2) of Section 24 specifically provides that the transferee court may, subject to any special directions contained in the order of transfer, either retry the suit or proceed from the stage at which it was transferred. The statute, therefore, itself contemplates continuity of proceedings after transfer and leaves it to the discretion of the transferee court to determine the appropriate course. Whether the evidence already recorded is to be acted upon, or whether any witness is required to be recalled or the trial is to commence afresh, are matters falling within the jurisdiction of the transferee court in accordance with law. The impugned order merely directs transfer of the proceedings and does not foreclose the exercise of such discretion by the transferee court.

Held- Petitioner has not demonstrated any prejudice occasioned solely on account of the transfer of the proceedings. The grievance projected in the present petition is founded upon the legal proposition that transfer itself was impermissible. Once that proposition is found to be contrary to the express language of Section 24(5) as well as the settled legal position noticed hereinabove, no independent ground survives to hold that the exercise of jurisdiction by the learned District Judge suffers from any manifest illegality or jurisdictional error. **(Para 28, 29 & 30)**

Petition dismissed. (E-15)

Case Law Cited

Shiv Shankar v. Mahavir @ Ghura Turha and Others 2026:AHC:53013;

List of Acts

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

List of Keywords

Section 24(5) CPC authorises transfer of suit from a court which has no jurisdiction to try it; Legislative intent is clear that transfer constitutes a valid statutory mechanism for curing a jurisdictional defect.

Case Arising From

Order dated 02.04.2026 passed by the learned District Judge, Meerut in Transfer Application No. 732 of 2025, whereby S.C.C. Suit No. 69 of 2020 was withdrawn from the Court of the Judge, Small Causes Court, Meerut and transferred to the Court of the Additional District Judge, Court No.2, Meerut, for disposal in accordance with law, in exercise of powers under Section 24(5) of the Code of Civil Procedure, 1908

Appearances for Parties

Counsel for Petitioner(s) : Alka Srivastava, Santosh Kumar Srivastava, Syed Shahnawaz Shah
Counsel for Respondent(s) : Hemant Kumar

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Shri Santosh Kumar Srivastava, learned counsel for the petitioner and Shri Hemant Kumar, learned counsel for the respondent.

2. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 02.04.2026 passed by the learned District Judge, Meerut in Transfer Application No. 732 of 2025, whereby S.C.C. Suit No. 69 of 2020 (Alok Prakash v. Ramesh Chand Sachdeva) was withdrawn from the Court of the Judge, Small Causes Court, Meerut and transferred to the Court of the Additional District Judge, Court No.2, Meerut, for disposal in accordance with law, in exercise of powers under Section 24(5) of the Code of Civil Procedure, 1908.

3. The facts giving rise to the present petition, to the extent relevant for adjudication of the controversy involved, are noticed hereinafter.

4. The dispute between the parties relates to a shop ad-measuring approximately 255 square feet, situated at premises no. 34, Banshipura (Classic Sports), Suraj Kund Road, Meerut City, hereinafter referred to as "the disputed premises". It is not in dispute that the petitioner is a tenant in the disputed premises under the respondent-landlord at a monthly rent of Rs.8,000/-. The relationship of landlord and tenant between the parties is admitted.

5. The respondent instituted S.C.C. Suit No.69 of 2020 before the Court of the Judge, Small Causes Court, Meerut seeking eviction of the petitioner on the ground of default in payment of rent. Upon service of summons, the petitioner entered appearance and filed his written statement denying the allegations contained in the plaint and asserting that he had been regularly paying the

rent and had committed no default. The respondent thereafter filed a replication reiterating the averments made in the plaint.

6. During the course of trial, the respondent examined himself as P.W.-1 in support of his case. In defence, the petitioner examined himself as D.W.-1 and also adduced the evidence of two other witnesses. Upon completion of evidence on both sides, the suit was posted for final arguments.

7. At that stage, the petitioner moved an application dated 06.10.2025 under Order VI Rule 17 CPC seeking amendment of the written statement so as to incorporate a plea that the suit, having been valued at Rs.1,06,806.45, was beyond the pecuniary jurisdiction of the Court of the Judge, Small Causes Court, Meerut. The respondent filed objections to the said application, contending, inter alia, that the amendment had been sought after conclusion of the evidence and was not maintainable at that stage of the proceedings.

8. Thereafter, the respondent filed an application under Section 24(5) CPC before the District Judge, Meerut, praying that in view of the valuation of the suit exceeding the pecuniary jurisdiction of the Court where it was pending, the suit be transferred to a court competent to entertain and decide the same. The petitioner filed objections to the transfer application contending that the application was not maintainable and had been filed by suppressing material facts. It was asserted that the suit, at the time of its institution, had been valued at Rs.1,06,804.45, whereas the pecuniary jurisdiction of the Court of the Judge, Small Causes Court, Meerut extended only up to Rs.1,00,000/-, and therefore the suit had been instituted before a court inherently lacking pecuniary jurisdiction. According to the petitioner, Section 24(5) of the Code could be invoked only where a suit had been validly instituted before a competent court and the question of jurisdiction arose subsequently on account of a change in circumstances, and not where the suit was incompetent from its inception. It was further contended that the initial presentation of the suit before a court lacking jurisdiction could not be validated through transfer proceedings, that the trial conducted by such court was void, and that the only permissible course in law was return of the plaint for presentation before the competent court. On these premises, dismissal of the transfer application was prayed for.

9. The aforesaid transfer application came to be considered by the learned District Judge, Meerut, who, after hearing the parties and considering the material brought on record, proceeded to pass the impugned order dated 02.04.2026.

10. The impugned order records that a report had been called for from the concerned Court and that the petitioner had filed objections opposing the transfer application. Upon consideration of the reports submitted by the concerned Court and the *Munsarim*, the learned District Judge recorded that S.C.C. Suit No. 69 of 2020 was pending before the Court of the Judge, Small Causes Court, Meerut and that its valuation was Rs. 1,06,806.45, whereas the pecuniary jurisdiction of the said Court extended only up to Rs.1,00,000/-. Proceeding on the basis that the valuation of the suit exceeded the pecuniary limits of the Court in which it was pending, the learned District Judge held that sufficient grounds existed for allowing the transfer application and that it would be appropriate to transfer the suit to the Court of the Additional District Judge, Court No. 2, Meerut.

11. Consequently, by the order dated 02.04.2026, the transfer application was allowed, S.C.C. Suit No. 69 of 2020 was withdrawn from the Court of the Judge, Small Causes Court, Meerut and made over to the Court of the Additional District Judge, Court No. 2, Meerut for disposal in accordance with law. Aggrieved

by the aforesaid order, the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

12. Learned counsel for the petitioner submits that the impugned order is wholly unsustainable in law inasmuch as S.C.C. Suit No. 69 of 2020, having been instituted with a valuation of Rs.1,06,806.45 before a Court whose pecuniary jurisdiction extended only up to Rs.1,00,000/-, was not maintainable before the Court of the Judge, Small Causes Court, Meerut from its very inception. It is contended that the proceedings conducted before a Court lacking inherent pecuniary jurisdiction, including the evidence adduced by the parties, are non est in the eyes of law and could not have been validated by invoking the power of transfer under Section 24(5) CPC.

13. It is further submitted that once the trial Court was found to be devoid of pecuniary jurisdiction, the only course available in law was to return the plaint under Order VII Rule 10 of the Code for presentation before the competent Court and not to transfer the suit together with the evidence already recorded. Learned counsel, therefore, submits that the learned District Judge committed a manifest error of jurisdiction in allowing the transfer application without appreciating the objections raised by the petitioner, and that the impugned order is liable to be set aside.

14. Thus, the principal issue that arises for consideration is whether the learned District Judge committed a jurisdictional error in exercising powers under Section 24(5) CPC by transferring S.C.C. Suit No. 69 of 2020 to a court of competent pecuniary jurisdiction, or whether, once it was found that the suit had been instituted before a court lacking pecuniary jurisdiction, the only course permissible in law was to direct return of the plaint under Order VII Rule 10 of the Code for presentation before the competent court. The issue squarely turns on the interplay between the transfer power under Section 24 CPC and the procedure for return of plaint under Order VII Rule 10 CPC.

15. Having heard learned counsel for the parties and having perused the material available on record, this Court finds that the controversy essentially lies in a narrow compass, namely, whether the learned District Judge could, in exercise of powers under Section 24(5) CPC, transfer a suit which, according to the petitioner, had been instituted before a court lacking pecuniary jurisdiction, or whether the proper course in such a situation was to return the plaint under Order VII Rule 10 of the Code. The answer to the said question depends upon the true scope and ambit of Section 24(5) of the Code *vis-a-vis* the procedural mandate contained in Order VII Rule 10, and the effect, if any, of the trial already conducted before the court of first instance.

16. The principal contention advanced on behalf of the petitioner is that once it was found that S.C.C. Suit No. 69 of 2020 had been instituted before a court lacking pecuniary jurisdiction, the entire proceedings conducted by the said court, including the evidence recorded therein, stood vitiated in the eyes of law and, consequently, the learned District Judge could not have exercised powers under Section 24(5) CPC to transfer the suit to a court of competent jurisdiction. According to the petitioner, the only course open in law was to direct return of the plaint under Order VII Rule 10 of the Code for presentation before the competent court.

17. In order to appreciate the aforesaid contention, it would be apposite to examine the scheme of the Code governing return of plaint and transfer of proceedings. Order VII Rule 10 of the Code embodies the

principle that where a plaint has been instituted before a court which lacks territorial, pecuniary, or subject-matter jurisdiction, the plaint is liable to be returned for presentation before the court competent to entertain the same. The object underlying the provision is to ensure that adjudication takes place before a forum possessing lawful jurisdiction. The provision is procedural in character and seeks to regulate the forum before which the lis is to be adjudicated.

18. However, the provisions relating to return of plaint cannot be read in isolation, divorced from the other provisions of the Code. The Code constitutes a complete procedural framework and, within that framework, Section 24 confers wide powers upon the High Court and the District Court to transfer or withdraw suits, appeals, and other proceedings pending before subordinate courts. The power is expressed in broad terms and is intended to secure the proper administration of justice by enabling proceedings to be tried by a court competent to entertain the same.

19. The width of the power under Section 24 of the Code also deserves notice. The power is not confined merely to cases involving convenience of parties or transfer on administrative grounds. It is intended to enable the superior court to ensure that proceedings are ultimately adjudicated by a forum competent in law. The provision is couched in the widest possible terms by authorising transfer "at any stage" of the proceedings and, by virtue of sub-section (5), even from a court which has no jurisdiction to try the suit. Such legislative language clearly manifests that the provision is remedial in character and is intended to avoid multiplicity of proceedings and unnecessary procedural complications.

20. Significantly, sub-section (5) of Section 24 expressly provides that a suit or proceeding may be transferred under the said provision "from a court which has no jurisdiction to try it". The language employed by the Legislature is plain, unambiguous, and admits of no qualification. The provision itself contemplates a situation where proceedings are pending before a court lacking jurisdiction and nevertheless authorises the District Court to transfer such proceedings to the court competent to try the same. The legislative intent, therefore, is manifest that absence of jurisdiction in the court of origin does not denude the District Court of its statutory power to transfer the proceedings to a competent forum.

21. It is a settled rule of interpretation that where the Legislature has consciously incorporated a specific provision dealing with a particular situation, the court must give full effect to such provision and avoid any construction which renders it redundant. The maxim ut res magis valeat quam pereat requires that every part of the statute should be interpreted so as to have operative effect. Therefore, Section 24(5), which specifically authorises transfer from a court lacking jurisdiction, cannot be rendered meaningless by holding that return of plaint under Order VII Rule 10 is invariably the only permissible course.

22. The contention that in every case where the court of institution is found to lack pecuniary jurisdiction, return of the plaint under Order VII Rule 10 is the only permissible course, cannot be accepted. Such an interpretation would render sub-section (5) of Section 24 otiose. The settled principle of statutory interpretation requires that every provision enacted by the Legislature must be given its due meaning and effect and that no provision should be construed in a manner which renders another redundant or nugatory. Order VII Rule 10 and Section 24 operate in distinct, though complementary, spheres. While the former provides one procedural mechanism for presentation of the plaint before the proper forum, the latter empowers the superior court to remedy the defect by transferring the pending proceedings to a court

competent to adjudicate upon the dispute. Both provisions advance the common object of ensuring that the lis is ultimately decided by a court having jurisdiction.

23. The Code does not treat every defect relating to pecuniary or territorial jurisdiction as fatal to the proceedings. Rather, the legislative scheme demonstrates an intention to preserve and continue proceedings before a competent forum wherever such course is legally permissible. It is in furtherance of this object that Section 24(5) expressly authorises transfer even from a court lacking jurisdiction. To hold that the plaint must invariably be returned notwithstanding the existence of such an express statutory power would not only render Section 24(5) largely redundant but would also compel avoidable duplication of proceedings, thereby defeating the object of expeditious adjudication.

24. The plenary nature of the power under Section 24 is further reinforced by sub-section (2), which authorises the transferee court either to retry the suit or to proceed from the stage at which it stood transferred, subject to any special directions contained in the order of transfer. Thus, the Code itself contemplates continuity of proceedings after transfer and leaves it to the discretion of the transferee court to determine whether the matter requires a de novo trial or whether the proceedings may continue from the stage at which they stood transferred. Consequently, the submission advanced on behalf of the petitioner that the evidence recorded prior to transfer necessarily becomes non est and cannot be looked into by the transferee court does not find support from the statutory scheme itself.

25. The legal position is thus clear that return of the plaint under Order VII Rule 10 is not the sole or mandatory consequence whenever a defect of jurisdiction comes to light. Where the District Court, in exercise of its statutory powers under Section 24(5), transfers the proceedings to a court competent to entertain and decide the matter, such transfer constitutes a lawful method of remedying the defect of jurisdiction. An interpretation compelling return of the plaint in every case, notwithstanding the express language employed in Section 24(5), would elevate procedural form over substantive justice and defeat the legislative object underlying the provision.

26. The aforesaid interpretation also stands fortified by the decision of this Court in **Shiv Shankar v. Mahavir @ Ghura Turha and Others**, wherein an identical question arose for consideration as to whether, upon discovery of a jurisdictional defect, return of the plaint under Order VII Rule 10 was the only permissible course or whether the District Judge could exercise powers under Section 24(5) CPC to transfer the suit to a court of competent jurisdiction. Upon an elaborate consideration of the scheme of the Code, particularly the interplay between Order VII Rule 10 and Section 24, this Court held that the provisions relating to return of plaint are procedural in nature and do not curtail or override the plenary power of transfer vested in the District Court under Section 24. It was further held that Section 24(5) expressly contemplates transfer of a suit from a court lacking jurisdiction and that such transfer constitutes a valid and legally sustainable mode of curing the defect of jurisdiction. The Court further observed that where the jurisdictional defect stands effectively remedied by a lawful order of transfer and no prejudice is shown to have been caused to any party, insistence upon return of the plaint would amount to elevating procedural form over substantive justice.

27. Applying the aforesaid principles to the facts of the present case, this Court finds that the learned District Judge exercised the jurisdiction vested in him under Section 24(5) CPC strictly in accordance with law. The impugned order records that, upon consideration of the reports submitted by

the concerned Court and the *Munsarim*, it was found that S.C.C. Suit No. 69 of 2020 had been valued at Rs.1,06,806.45, whereas the pecuniary jurisdiction of the Court of the Judge, Small Causes Court, Meerut extended only up to Rs.1,00,000/-. Upon noticing the jurisdictional defect, instead of permitting the proceedings to continue before an incompetent court, the learned District Judge exercised the statutory power specifically conferred under Section 24(5) and transferred the suit to the Court of the Additional District Judge, Court No. 2, Meerut, which was competent to entertain and decide the same.

28. The principal submission advanced on behalf of the petitioner is that once the defect of pecuniary jurisdiction came to light, the only permissible course was return of the plaint under Order VII Rule 10 of the Code and that the evidence recorded by the court lacking jurisdiction became non est. The submission cannot be accepted. Section 24(5) expressly authorises transfer of a suit from a court which has no jurisdiction to try it, and the legislative intent is thereby clear that transfer constitutes a valid statutory mechanism for curing a jurisdictional defect. Acceptance of the petitioner's contention would render sub-section (5) of Section 24 largely redundant and would defeat the very object for which the provision has been enacted.

29. Equally untenable is the submission that the evidence recorded prior to the order of transfer necessarily stands obliterated. Sub-section (2) of Section 24 specifically provides that the transferee court may, subject to any special directions contained in the order of transfer, either retry the suit or proceed from the stage at which it was transferred. The statute, therefore, itself contemplates continuity of proceedings after transfer and leaves it to the discretion of the transferee court to determine the appropriate course. Whether the evidence already recorded is to be acted upon, or whether any witness is required to be recalled or the trial is to commence afresh, are matters falling within the jurisdiction of the transferee court in accordance with law. The impugned order merely directs transfer of the proceedings and does not foreclose the exercise of such discretion by the transferee court.

30. It is also noteworthy that the petitioner has not demonstrated any prejudice occasioned solely on account of the transfer of the proceedings. The grievance projected in the present petition is founded upon the legal proposition that transfer itself was impermissible. Once that proposition is found to be contrary to the express language of Section 24(5) as well as the settled legal position noticed hereinabove, no independent ground survives to hold that the exercise of jurisdiction by the learned District Judge suffers from any manifest illegality or jurisdictional error.

31. The supervisory jurisdiction of this Court under Article 227 of the Constitution is intended to ensure that subordinate courts act within the bounds of their jurisdiction and in accordance with law. It is neither appellate nor meant to substitute the Court's own view for that of the subordinate court merely because another view may also be possible. In the present case, the learned District Judge has exercised a jurisdiction expressly vested by statute and the course adopted is consistent with the scheme of the Code of Civil Procedure. No patent illegality, perversity, or jurisdictional infirmity has been demonstrated so as to warrant interference by this Court in exercise of its supervisory jurisdiction.

32. In view of the foregoing discussion, no ground for interference under Article 227 of the Constitution is made out. The petition lacks merit and is, accordingly, **dismissed**.

(2026) 7 ILRA 1693
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.07.2026

BEFORE

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

Writ C No. 3531 of 2019

Kalyan Health Care Products Pharmaceuticals Co-Operative Society Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the relief claimed is, in fact, a disguised suit for recovery of money and execution of contract though couched as a writ petition, for which remedy lies under the private law as the medicines supplied and non-payment of bills being a disputed question of fact would amount to adjudicating a money claim by embarking upon rival claims

Head Notes

The Constitution of India, 1950-Article 226- Every writ petition seeking payment of contractual dues cannot be thrown out and can very well be entertained against the State and its instrumentalities if the amount of money due under contract is admitted and no inquiry is required to ascertain the facts. But, where facts are so disputed that these cannot be decided without leading evidences by rival parties, the Court must lay its hands off while exercising writ jurisdiction- Money claim set up by the petitioner requires adjudication of various disputed questions of fact, such as observance/defiance of procurement policy, utilisation of goods, refund/failure to refund medicine supplied, whether the goods supplied were sub-standard and the issue of limitation- adjudication of the petitioner's entitlement would necessarily require oral and documentary evidence these cannot be substituted by pleadings/affidavits alone, concerning procurement, quality of medicines, utilisation, alleged financial irregularities and contractual obligations.

Held- That it would be inappropriate for this Court to determine the contentious disputed questions of fact that arise for our consideration in these writ proceedings- However, this order will not in any manner preclude the petitioner from seeking these remedies before the Civil Court or any other statutory forum, including arbitration etc.

Petition dismissed. (E-15)

(Para 37 to 41)

Case Law Cited

M/s Utkal Highways Engineers and Contractors Vs. Chief General Manager and others, 2025 SCC OnLine SC 1400,;Kanika Construction Vs. State of U.P. and 3 others, Writ-C No.27869 of 2021;M/s Alaska Tech through its Partner Sanjeet Singh and another Vs. State of U.P. through Principal Secretary Urban Development and others (Misc. Bench No.3861 of 2014);Subhashree Das @ Mili Panda & Others vs State Of Orissa, 2012 (9) SCC 729;Hindustan Petroleum Corporation Limited and another Vs. Dolly Das, 1999 (4) SCC 450;M/s Amit Traders and another Vs. State of U.P. and another (Writ-C No.34449 of 2019);ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others (2004) 3 SCC 553;Sanjay Kumar Jha Vs. Prakash Chandra Chaudhary and others, (2019) 2 SCC 499

List of Acts

The Constitution of India, 1950

List of Keywords

Where facts are so disputed; That these cannot be decided without leading evidences; The Court must lay its hands off while exercising writ jurisdiction

Case Arising From

Order dated 08.10.2018 passed by the 3rd respondent/Chief Medical Officer, Allahabad, whereby contractual dues in lieu of supply of Ayush Medicine have been refused. There is a further, prayer for the issue of a writ of mandamus commanding the respondents to pay the bills for goods supplied by the petitioner, with interest at 18%.

Appearances for Parties

Counsel for Petitioner(s) : Abhishek Sharma
Counsel for Respondent(s) : C.S.C., Rajiv Sharma

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Abhishek Sharma, learned counsel for the petitioner, Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel for the respondent nos. 1 to 4 and Mr. S.B. Singh, Advocate holding brief of Mr. Rajiv Sharma, learned counsel for the respondent no.5.

2. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner challenging the validity and correctness of the order dated 08.10.2018 passed by the 3rd respondent/Chief Medical Officer, Allahabad, whereby contractual dues in lieu of supply of Ayush Medicine have been refused. There is a further, prayer for the issue of a writ of mandamus commanding the respondents to pay the bills for goods supplied by the petitioner, with interest at 18%.

3. Briefly stated, the facts are as follows:-

3.1 The petitioner claims to be a Cooperative Society registered under the provisions of the Cooperative Societies Act, 1965, holding a licence to manufacture AYUSH medicines. The petitioner received a supply order.

3.2 The supply order dated 21.12.2017 was received from the office of the 3rd respondent and in response to the same, the requisite Ayush Medicines were supplied. It is said that Goods and Service Tax (GST) to the extent of Rs.2,00,000/- was also paid by the petitioner. The pleaded case is that, there being no fault or deficiency in supply of medicines, the respondent-State authorities are not justified in refusing the claim for payment of bills of the petitioner.

3.3 In this factual matrix, the petitioner instituted Writ-C No.28503 of 2018 before this Court, which was disposed of vide order dated 24.08.2018 in terms of the following directions:-

"The limited relief pressed before us by the learned Counsel for the petitioner is for an appropriate direction to the respondent No.3/Chief Medical Officer, Allahabad to decide its pending representation, contained in Annexure No.6 to the petition, within a fixed time-frame.

Considering the facts and circumstances of the case, we dispose of this petition with a direction to the respondent No.3 to decide the pending request of the petitioner, referred to above, in accordance with law, within a period of eight weeks, from the date of production of a certified copy of this order."

3.4 In pursuance of the directions issued by this Court the 3rd respondent decided the petitioner's claim vide order dated 08.10.2018 refusing to pass the bills. The relevant excerpts of the order impugned are quoted below:-

"1. औषधियों के क्रय के लिये मिशन निदेशक राष्ट्रीय स्वास्थ्य मिशन द्वारा निर्धारित गाइड लाइन का अनुपालन नही किया गया ।

2. औषधियों के क्रय से पूर्व जिलाधिकारी की अध्यक्षता में न तो समिति का गठन किया गया और न ही क्रय से पूर्व समिति का अनुमोदन प्राप्त किया गया।

3. औषधियों को क्रय से पूर्व औषधियों के आकलन हेतु आयुष चिकित्सकों से मांग पत्र नहीं प्राप्त किया गया।

4. औषधियों के क्रय से पूर्व क्लासिकल व नान क्लासिकल मानकों का भी अनुपालन सुनिश्चित नहीं किया गया, सभी औषधियों एक ही पैथी की ली गयी।

5. औषधियों का क्रय न तो सी०जी०एच०एस० के दर अनुबन्ध से किया गया और न ही मिशन निदेशक द्वारा निर्धारित फर्मों से किया गया (संलग्नक -1)

6. अधोहस्ताक्षरी के द्वारा भी प्रकरण की जांच हेतु एक समिति का गठन कर जाँच कराई गयी। समिति ने भी अपनी जॉच आख्या में वित्तीय अनिमिता का उल्लेख किया है (संलग्नक समिति की रिपोर्ट-2 से 3)

7. अधोहस्ताक्षरी द्वारा समिति की रिपोर्ट के आधार पर एवं वित्तीय अनिमितिाओं के कारण सम्बन्धित फर्म को औषधियों को वापस ले जाने हेतु बीजकों पर अंकित पते पर पत्राचार किया परन्तु पता गलत होने के कारण पत्र वापस कर दिया गया इससे भी फर्म की होने न होने की संदिग्धता प्रतीत होती है (संलग्नक समिति की रिपोर्ट-4 से5)

उपरोक्त कारणों से आपके द्वारा वर्ष 2017-18 में आपूर्ति की गयी औषधियों का भुगतान घोर वित्तीय अनिमितिाओं के कारण नहीं किया जा सका एवं अभी भी भुगतान सम्भव नहीं है।"

SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER

4. Learned counsel for the petitioner submitted that the impugned order does not contain any recital that the medicines supplied were sub-standard or that there was any deficiency. It also does not speak of any financial irregularity in the submission of bills or any inflated claim.

5. It has been strenuously urged that the 4th respondent/Chief Pharmacist/Store In-charge, C.M.O. Office, Allahabad, certified the material supplied by the petitioner to be perfectly in order and further recommended release of payment to the petitioner.

6. The ground of denial of payment as reflected from the order impugned is founded on some inquiry report, which has not been supplied to the petitioner, violating the principles of natural justice.

7. Learned counsel for the petitioner further submitted that if there was any fault in observing the rules and regulations on part of the predecessor-in-office of respondent no.3, while placing the procurement order, the petitioner cannot be blamed in any manner on that account.

8. Counsel for the petitioner invited our attention to the recital carried in the order impugned with respect to the firm/petitioner being a non-existent identity inferable from the factum of service of a letter dispatched to the petitioner′s given address for return of medicines. It is ill founded, as a photostat copy of the envelope contained at page no.11 of the counter affidavit does not describe the complete address. Thus, the inference drawn by the third respondent that the petitioner-firm was non-existent is misplaced.

9. Learned counsel for the petitioner in order to buttress his submission that there was no deficiency/fault in the medicines supplied, strenuously urged that the averments in the counter affidavit are evasive.

10. Counsel for the petitioner, while assailing the order dated 08.10.2018, submitted that the inquiry report appended with the counter affidavit clearly reflects that nothing adverse has been pointed out against the petitioner in the supplying of medicines.

11. Further, to buttress the submissions advanced as aforesaid, learned counsel for the petitioner relied on the authority of the Supreme Court in **M/s Utkal Highways Engineers and Contractors Vs. Chief General Manager and others, 2025 SCC OnLine SC 1400**, emphasizing that non-payment of admitted dues may be considered as an arbitrary action on the part of the respondents and for the recovery of such dues a writ petition may lie. Moreover, dismissing a writ petition on the ground of the availability of an alternative remedy after 10 years, particularly when parties have exchanged their pleadings, is not the correct course of law, unless there are disputed questions of fact, which by their nature cannot be adjudicated upon without formally recording evidence.

12. Reliance has also been placed on a Bench decision of this Court in **Kanika Construction Vs. State of U.P. and 3 others, Writ-C No.27869 of 2021** decided on 06.01.2022 wherein it has been held that a writ petition would be maintainable to enforce a monetary claim if there is no dispute relating to the amount of money due and payable to petitioner.

13. Concluding the arguments, learned counsel for the petitioner drew our attention to the fact that the instant writ petition is pending for the last 7 years and the pleadings have been exchanged; as such, the claim for payment in relation to medicines supplied be entertained, and mandamus be issued accordingly.

SUBMISSION OF COUNSEL FOR THE RESPONDENTS

14. Learned counsel for the State submitted that Chief Medical Officer constituted a committee of three members to enquire about the claim of the petitioner for payment due on account of supply of medicines, who submitted a report that the financial irregularities and serious financial irregularities were committed in placing the procurement order, setting the norms of procurement at naught, by the then Chief Medical Officer and the then Additional Chief Medical Officer.

15. It is further urged that the then Additional Chief Medical Officer (Store), Prayagraj sent a letter dated 26.06.2018 addressed to the petitioner, saying there that the medicines had been found sub-standard. A reminder dated 11.07.2018 to the same effect was also sent, but such communications were returned by the office of the Postal Department with the remark that the aforesaid firm/accommodation/factory/shop has not been found at the given address. Mere absence of mentioning the name of street on which petitioner′s firm is alleged to be situated cannot be construed as an incomplete address. More so, the denial of the money claim is based on a three-member committee report; thus, no fault can be found with the order impugned.

16. Our attention has been drawn to the letter dated 17.07.2017 written by the Mission Director, Rashtriya Swasthya Mission, U.P., Lucknow along with a list of Central Government/State Government Pharmacies/Cooperatives Manufacturing ASU & H Medicines. The list of pharmaceutical suppliers appended with the letter dated 17.07.2017 does not include the petitioner′s name.

17. For ready reference, the list of Central Government/State Government Pharmacies/Cooperatives Manufacturing ASU & H Medicines appended with the letter dated 17.07.2017 is extracted as under:-

"1. Indian Medicines Pharmaceutical Corporation Lid, Govt. of India Enterprise
2. Oushadhi- The Pharmaceutical Corporation (I.M.) Kerala Ltd. - State Pharmacy
3. TAMPCOL, Tamil Nadu (Ayurveda/Siddha Medicine)-State Pharmacy
4. IMCOPS, Government of Tamil Nadu (Siddha Medicines)
5. M.P. Minor Forest Products Cooperative Federation Madhya Pradesh- State Pharmacy
6. Cooperative Drug Factory, Chilyanaula, Ranikhet, Uttarakhand
7. Uttarakhand State Medicines and Pharmaceutical Ltd. -Subsidiary of CDF
8. Kerala Government Pharamacy (Homoeopathic).″

18. The further submission is that there are serious financial irregularities/bungling noticed by the inquiry committee comprising three members, which coupled with the fact of absence of

petitioner's name in the list brought on record by virtue of Annexure No.CA-6, i.e. letter dated 17.07.2017, disentitles the petitioner from claiming payment of their under the contract.

19. The learned State counsel has drawn our attention to the pleadings contained in paragraph no.13 of the counter affidavit to the effect that it has not utilised the medicines supplied, as these were found sub-standard and against the procurement policy so that public money may not go to waste and health of the public at large, suffer.

20. In his concluding submissions, the learned State counsel has opposed the entertainability of this writ petition stating that the instant writ petition may not be entertained for a money claim since various disputed questions of fact are to be thrashed out before deciding the respective claims of parties.

21. In their rejoinder, the learned counsel for the petitioner drew our attention to the registration certificates of the empaneled pharmaceutical manufacturers contained at page no.20 of the counter affidavit have expired, whereas the same was subsisting in favour of the petitioner. Therefore the then Chief Medical Officer allowed the supply to be made by the petitioner.

QUESTIONS/ISSUES INVOLVED

22. This Court in the instant case is faced with the question, whether the relief claimed is, in fact, a disguised suit for recovery of money and execution of contract though couched as a writ petition, for which remedy lies under the private law as the medicines supplied and non-payment of bills being a disputed question of fact would amount to adjudicating a money claim by embarking upon rival claims ?

ANALYSIS AND REASONING

23. Having heard learned counsel for the parties, this Court finds that the money claim set up by the petitioner has been refused by the 3rd respondent, stating various grounds, including financial irregularities practiced in the process of procurement, and that too against the policy.

24. The reasons assigned in the order impugned raise various disputed questions of fact, including non-compliance of the procurement policy. Even the name of the petitioner does not find place in the list appended with the circular dated 17.07.2017, as evident from the record (page no. 20 of the counter affidavit), a fact, which has not been denied by the petitioner.

25. The identity of the firm/petitioner itself has been disputed by respondents, and in our writ jurisdiction under Article 226 of the Constitution of India we are not equipped to undertake an inquiry into the matter by commenting upon the fact whether non-mentioning of the petitioner's street in the small town of Bagpat could be said to be such a fatal lapse that resulted in non-service of the letter by which the medicines were sought to be returned.

26. Turning to the next question that it was the Chief Pharmacist/4th respondent, who certified the quality and quantity of medicine received, we find that no such letter has been brought on

record by which we could draw an inference in the petitioner's favour. Even if it is assumed that there was certification, the question if the said respondent was competent to certify the quantity and quality of the medicine supplied. The non-compliance of procurement policy can still not be adjudicated, as it has multiple facets of disputed questions of facts. The fault/deficiency/quality in supply of medicine are contractual rights and obligations for which the private law remedies are best suited.

27. As regards the submission of the learned counsel for the petitioner that non-mentioning of the petitioner-firm in the empanelled list for procurement, if registration in favour of empanelled pharmaceutical manufacturers expired, then they might too have been dis-entitled to undertake supply to the respondents, but that would not ipso facto create any right in favour of petitioner-firm. Even if the registration certificate of other firms had expired (about which there is no material before this Court), this Court cannot extend the scope of our writ jurisdiction and conduct a roving enquiry on such matter, which can be decided through private law remedies, involving pleadings and evidence.

28. The authority cited by learned counsel for the petitioner in **M/s Utkal Highways Engineers (supra)**, we are afraid is inapplicable as it relates to non-payment of admitted dues. 'Non-payment' of admitted dues bears twin conditions, i.e. not only the quantum of amount should be admitted, but the contractual obligation and rights should not be disputed to the extent the amount has been admitted.

29. We do not find either in the counter affidavit or in the order impugned. There is no admission by the State respondents regarding the dues or their quantum.

30. In the case of **M/s Alaska Tech through its Partner Sanjeet Singh and another Vs. State of U.P. through Principal Secretary Urban Development and others (Misc. Bench No.3861 of 2014)** decided on 08.05.2014, this Court has held:-

"At the outset, a preliminary objection was raised by the learned Standing Counsel appearing on behalf of the respondents to the maintainability of this petition under Article 226 of the Constitution.

We are of the view that, in a matter of this nature which pertains to alleged non-payment of dues under a contract for supply of goods, it would neither be prudent nor judicious for this Court, in exercise of its jurisdiction under Article 226 of the Constitution, to grant relief, which is in substance, is a prayer for a money decree. These matters, it must be emphasized, are not those relating to statutory contracts but are purely non-statutory contracts. Whether work has been satisfactorily performed, whether the rates which had been quoted are in accordance with the terms of the contract, whether the goods were of a quality as mandated, and above all, whether the claim is within limitation or otherwise, are issues which cannot appropriately be adjudicated upon under Article 226 of the Constitution.

Increasingly, in cases like the one in hand, instead of taking recourse to the jurisdiction of the ordinary civil court under Section 9 of the Code of Civil Procedure Code, 1908, recourse is

taken to the writ jurisdiction under Article 226. That is not permissible. The jurisdiction of the Civil Court is intended to provide the ordinary civil remedy for the adjudication of such claims. As a matter of fact, we also indicated to the learned counsel that even within the purview of the Civil Procedure Code, provisions such as those under Order 37 of the C.P.C. contain an adequate safeguard by laying down a summary remedy or procedure which can be availed of in cases where under a written contract, money is due and payable. Under Order 37, the defendant has to make out a triable defence before being granted even leave to defend the suit.

Hence, in the present case, we see no reason or justification to entertain the petition under Article 226 of the Constitution."

(emphasis by us)

31. It has been the consistent view of this Court as well as the Supreme Court that no interference can be made made under Article 226 of the Constitution of India, where a disputed question of fact is raised. The High Court in exercise of jurisdiction under Article 226 of the Constitution of India, would ordinarily not adjudicate a matter where the foundational facts are disputed. (see **Subhashree Das @ Mili Panda & Others vs State Of Orissa, 2012 (9) SCC 729)**.

32. In the case of **Hindustan Petroleum Corporation Limited and another Vs. Dolly Das, 1999 (4) SCC 450**, the Supreme Court has held:-

"In the absence of Constitutional or statutory rights being involved a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid contractual liability arising thereto. In the absence of any statutory right Article 226 cannot be availed to claim any money in respect of breach of contract or tort or otherwise..."

33. An analogous issue arose before Division Bench of this Court in the case of M/s Amit Traders and another Vs. State of U.P. and another (Writ-C No.34449 of 2019), decided on 24.10.2019. The Division Bench has held that a mandamus sought by petitioner is nothing but the grant of a money decree in the extraordinary equitable jurisdiction under Article 226 of the Constitution of India, which cannot be granted. The relevant paragraphs of said judgement are extracted as under:-

*"5. In **Kerala State Electricity Board and another Vs. Kurien E. Kalathil and others 2000 (6) SCC 293**, Court said that interpretation and implementation of a clause in a contract cannot be subject-matter of a writ petition. Whether a contract envisages actual payment or not is a question of construction of contract. If a term of contract is violated, ordinarily remedy is not the writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Disputes arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles*

of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies have power to contract or deal with property like private parties. Such activities may not raise any issue of public law. When it is not shown that contract is statutory and parties are within the realm of their authority, contract between the parties is in the realm of private law. The disputes relating to interpretation of terms and conditions of such contract cannot be agitated in a petition under Article 226 of the Constitution. The Court further said:

"That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition."

6. Following the above authorities, a Division Bench of this Court in ***M/S Prabhu Construction Company through its Proprietor Vs. State of U.P. and another (Writ C No. 25075 of 2014)*** *decided on 05.05.2014 said as under:*

"In the present case, there is nothing on the record which may persuade us to hold that the contract is a statutory contract. The remedy of the contractor, if he is aggrieved by non-payment, would be to either file an ordinary civil suit or if there is an arbitration agreement between the parties, to invoke the terms of the agreement."

9. The same view has been reiterated in ***M/S Goyal Stationary Mart through its Proprietor State of U.P. (Misc. Bench No. 10971 of 2015)*** *decided on 27.11.2015,* ***Budh Gramin Sansthan Vs. State of U.P. 2014 (7) ADJ 29, Kaka Advertising Agency Vs. U.P. Technical University and others 2014 (11) ADJ 227, M/s A.K. Constructions Vs. State of U.P. and others (Misc. Bench No. 1909 of 2014)*** *decided on 07.03.2014,* ***Major Travels through Proprietor Vs. State of U.P. and others (Misc. Bench No. 3472 of 2014)*** *decided on 25.04.2014 and* ***Uttaranchal Paper Converters and Publishers through Proprietor Vs. State of U.P. and others (Misc. Bench No. 3898 of 2015)*** *decided on 13.05.2014.*

10. The question as to whether in writ jurisdiction under Article 226 of Constitution this Court should entertain writ petitions seeking a mandamus for payment of contractual amount like a decree for recovery of money, repeatedly it has been held that such writ petition should not be entertained and parties must be relegated to avail remedies in common law.

11. Following the above authorities, a Division Bench of this Court presided by me has also taken same view in ***Writ Petition (Writ-C) No. 42697 of 2002 (M/S Jai Goswami Electric Works Alld. Vs. Union Of India through' D.R.M. and Others)*** *decided on 19.05.2016.*

34. We are conscious of the fact, that every writ petition seeking payment of contractual dues cannot be thrown out and can very well be entertained against the State and its

instrumentalities if the amount of money due under contract is admitted and no inquiry is required to ascertain the facts. But, where facts are so disputed that these cannot be decided without leading evidences by rival parties, this Court must lay its hands off while exercising our writ jurisdiction.

35. We ourselves have entertained Writ-C No.6580 of 2022 following the guidelines and principles of the Supreme Court rendered in **ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others (2004) 3 SCC 553** but there the dues were admitted and not being paid only on the ground that the officers, who were responsible for embezzlement of the farmer's money in lieu of supply of paddy had not refunded the money and the money could not be recovered from them. But, the facts in the instant case are altogether different.

36. It is trite law that facts are required to be proved by evidence employing examination and cross-examination of witnesses. These cannot be determined on the basis of affidavits of rival parties. The aforesaid principle is fortified by the observation of the Supreme Court in **Sanjay Kumar Jha Vs. Prakash Chandra Chaudhary and others, (2019) 2 SCC 499**. The relevant excerpt is reproduced below:-

"13. It is well settled that in proceedings under Article 226 of the Constitution of India the High Court does not adjudicate upon affidavit, disputed questions of fact."

CONCLUSION

37. The money claim set up by the petitioner requires adjudication of various disputed questions of fact, such as observance/defiance of procurement policy, utilisation of goods, refund/failure to refund medicine supplied, whether the goods supplied were sub-standard and the issue of limitation; all these are disputed questions of fact involved in this lis.

38. Since adjudication of the petitioner's entitlement would necessarily require oral and documentary evidence these cannot be substituted by pleadings/affidavits alone, concerning procurement, quality of medicines, utilisation, alleged financial irregularities and contractual obligations.

39. In the present case, for the reasons stated above, we are of opinion that it would be inappropriate for this Court to determine the contentious disputed questions of fact that arise for our consideration in these writ proceedings. Thus, we decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India. The instant writ petition fails and is, accordingly, **dismissed**.

40. Parties shall bear their own costs.

41. However, we clarify that this order will not in any manner preclude the petitioner from seeking these remedies before the Civil Court or any other statutory forum, including arbitration etc.

(2026) 7 ILRA 1703
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

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

Writ C No. 23761 of 2026

Rakesh Kumar Gupta ...Petitioner
Versus
Union of India & Ors. ...Respondents

Issue for Consideration

Whether the failure to issue the 'No Objection Certificate' without any reasonable or plausible justification would attract the 'doctrine of malice in law'

Head Notes

The Constitution of India, 1950-Article 14, 19 & 226- The District Magistrate's 'No Objection Certificate' for setting up a fuel retail outlet not issued to the petitioner, despite a lapse of more than two years owing to apathetic attitude of the District Magistrate and his office including the red tapism involved in the decision making process which compelled the petitioner to knock the doors of this Court- The action now taken to issue the 'No Objection Certificate' in haste could have been taken at leisure long back- The District Magistrate's office and successive incumbents in that office were sitting tight over the matter for more than two years, in violation of the Government Order dated 30.01.2023 and the later order dated 18.12.2025- The delay in decision-making, without any plausible cause, itself is an indication of malice in law, also exhibiting arbitrariness writ large- Since the 'No Objection Certificate' has now been issued, nothing survives further for adjudication in this petition on merits.

Held-Petition disposed of with the directions to the District Magistrate, Fatehpur, to act with promptitude in all matters where rights of citizens are involved and pay heed to proceedings of this case as a guide for the future and keep the Office of the District Magistrate responsive and in order. (E-15)

(Para 24, 25 & 27)

Case Law Cited

Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248; E.P. Royappa Vs. State of Tamilnadu, (1974) 4 SCC 3; West Bengal State Electricity Board Vs. Dilip Kumar Ray reported in 2007 (14) SCC 568; Ratnagiri gas and power Private Limited vs RDS Projects and others, 2013 (12) SCC 786;

List of Acts

The Constitution of India, 1950

List of Keywords

Delay in decision-making, without any plausible cause ;Is an indication of malice in law; also exhibiting arbitrariness writ large

Case Arising From

By means of the instant writ petition, the petitioner has prayed for issue of a writ in the nature of mandamus commanding the District Magistrate, Fatehpur to grant a 'No Objection Certificate' in favour of petitioner M/S Ramraj Filling Station situated at 6th Ramganj Pakka Talab, Tehsil Sadar, District Fatehpur for the purpose of installation of a retail outlet of petrol at Khasra No.180 located in Village Udaharanpur, Tehsil Sadar, District Fatehpur forthwith without any further delay.

Appearances for Parties

Counsel for Petitioner(s) : Phool Singh Yadav, Ram Pratap Yadav
Counsel for Respondent(s) : A.S.G.I., Ajay Shankar, C.S.C., Dhurva Kant Chaturvedi

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Ram Pratap Yadav, learned counsel for the petitioner, learned Additional Solicitor General appearing on behalf of respondent no.1/Union of India, Mr. Ajai Shankar, learned counsel for the respondent no.2 and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel for the respondent nos.3 & 4.

2. By means of the instant writ petition, the petitioner has prayed for issue of a writ in the nature of mandamus commanding the District Magistrate, Fatehpur to grant a 'No Objection Certificate' in favour of petitioner M/S Ramraj Filling Station situated at 6th Ramganj Pakka Talab, Tehsil Sadar, District Fatehpur for the purpose of installation of a retail outlet of petrol at Khasra No.180 located in Village Udaharanpur, Tehsil Sadar, District Fatehpur forthwith without any further delay.

Factual Matrix

3. The facts giving rise to the instant writ petition are recapitulated as under:

3.1. The petitioner applied for the allotment of a retail outlet of the second respondent oil company and, accordingly, was issued a Letter of Intent dated 29.03.2024 by Reliance BP Mobility Limited, Eldeco Corporate Chambers 2, 9th Floor, Vibhuti Khand, Gomti Nagar, Lucknow (hereinafter referred to as the "oil company"). After the issue of the letter of intent, the petitioner was required to obtain and submit a 'No Objection Certificates' (NOCs) from various authorities, namely the Revenue Department, Electricity Department, Stamp Department, Fire Department, Pollution Control Board, and the National Highways Authority of India (NHAI). The No Objection Certificates issued by the respective authorities have been collectively brought on record as Annexure No. 2 to the present writ petition.

3.2. The second respondent/Oil Company, asked for a 'No Objection Certificate' from the office of District Magistrate concerned by virtue of its letter dated 01.07.2024. The District Magistrate's 'No Objection Certificate' for setting up a fuel retail outlet at Lalganj was not issued to the petitioner, despite a lapse of more than two years owing to apathetic attitude of the District Magistrate and his office including the red tapism involved in the decision making process which compelled the petitioner to knock the doors of this Court.

3.3. In the year 2024, when the District Magistrate's 'No Objection Certificate' was asked for, the prevalent policy was governed by a Government Order dated 30.01.2023. Subsequently, the State Government itself issued a revised Policy dated 18.12.2025, whereby the procedure for grant of the NOC was substantially simplified and applicable norms were relaxed but even the mandate of Government order dated 18.12.2025, could not Pursuade the office of the District Magistrate to issue the requisite 'No Objection Certificate' which is evident from the personal affidavit of none other than District Magistrate concerned, as figured in paragraph no.11 of the said affidavit, which unmistakably demonstrates that despite the revised policy, no decision was taken on the petitioner's application.

3.4. In the aforesaid factual background, this Court passed the following order dated 22.06.2026:

"The District Magistrate, Fatehpur will show cause by day after tomorrow why he has not granted NOC to the petitioner for the purposes of establishment of petrol and diesel outlet at Village Udhannapur, Tehsil Sadar, District Fatehpur.

Mr. D.K. Chaturvedi has appeared on behalf of the respondent-Union of India, whereas notice on behalf of the State respondent is accepted by Ms. Priyanka Midha, Additional Chief Standing Counsel.

Put up day after tomorrow.

To be taken up as fresh.

The Registrar (Compliance) is directed to communicate this order to the District Magistrate, Fatehpur through the learned Chief Judicial Magistrate, Fatehpur today."

4. This Court, being dissatisfied with the instructions furnished on behalf of the respondents, asked for assistance of District Magistrate concerned, since subsequent Government Order referred as 18.12.2025 could not persuade office of District Magistrate to give a quietus to the issue of grant of the requisite 'No Objection Certificate'. Consequently, On 24.06.2026, this Court passed below quoted order:

"Perused the instructions furnished by the District Magistrate, Fatehpur.

There are the matters which require serious clarification that have been left unexplained. In this case, the letter of intent was issued way back in the year 2024 and the government order, upon which the District Magistrate relies, is dated 18.12.2025.

Let all these matter be explained in-person by the District Magistrate, Fatehpur before this Court tomorrow at 2.00 p.m.

Put up tomorrow as fresh at 2.00 p.m.

Let this order be communicated to the District Magistrate, Fatehpur through the learned Chief Judicial Magistrate, Fatehpur by the Registrar (Compliance) today."

5. On 25.06.2026, the District Magistrate concerned filed her personal affidavit appending therewith the requisite 'No Objection Certificate'. Taking note of 'No Objection Certificate' issued in favour of the petitioner, this Court directed District Magistrate to take up the matter with the oil company for further recourse in pursuance to the letter of intent.

6. A perusal of the 'No Objection Certificate' brought on record by virtue of personal affidavit of the District Magistrate reveals that it is preceded by twin conditions. First, the sanction of a building plan/map for the entire area (measuring 4200 square meteres) proposed to be utilised for the retail outlet is mandatory. The second limb of condition is deposit of process fees for sanction of the map. These conditions are said to be in terms of policy/Government order dated 18.12.2025.

Submissions Advanced On Behalf of Petitioner

7. The learned counsel for the petitioner strenuously urged that his fundamental right to carry on trade and business has been infringed on account of a hostile discrimination and apathetic attitude of office of District Magistrate, who swiftly made a clerk the scapegoat without realizing her responsibility, though she exhibited scant regard to the government orders issued for swift issue of a 'No Objection Certificate'.

8. The further submission advanced is, that the right to practise any profession or to carry on any occupation, trade or business is guaranteed by the virtue of Article 19(1)(g) of the Constitution of India, subject to the certain reasonable restrictions in terms of Article 19(6) but non taking any decision, by the District Magistrate for a period of more than two years, despite there being no plausible explanation for such inaction, constitutes an arbitrary and unreasonable exercise of power, which is again hit by Article 14 of the Constitution of India. Thus, it infringes the petitioner's fundamental right so guaranteed.

9. No explanation/cause of delay could come forth either in personal affidavit of District Magistrate or she herself could justify her action.

Submission Advanced on behalf of State-Respondents

10. Per contra, learned counsel for the State-respondents vehemently submitted that no further cause of action survives as the requisite 'No Objection Certificate' has already been issued pursuant to the receipt of police report dated 22.06.2026 and in terms of order dated 24.06.2026. The further submission is that the delay in the issue of a NOC was on account of the belated submission of a police report by the concerned police authorities. Since the requisite 'No Objection Certificate' could not be issued with promptitude on account of such delay, the concerned clerk has been taken to task by awarding him the punishment of a censure entry.

11. The record of this case, including the personal affidavit of the District Magistrate exhibits that there is no explanation/cause what to say reasonable and plausible cause regarding the non issue of a 'No Objection Certificate' for an indefinite period which could issued only be after the institution of instant petition, where also initially an attempt was made for protract litigation. Thus, in the background of this case, the principal question that arises for consideration is whether the failure to issue the 'No Objection Certificate' without any reasonable or plausible justification would attract the 'doctrine of malice in law'.

12. The Non-issue of 'No Objection Certificate' without any plausible cause, as evident from the personal affidavit submitted by the District Magistrate before this Court, who could not defend

her inaction for a period of two years attracts the doctrine of malice in law and, by itself, indicates the mala fide and arbitrariness. Mala fide and arbitrariness are distinct manifestations arising from the same vice, with the latter being broader in scope and encompassing the former.

13. Any action taken wrongfully and intentionally, without just cause, excuse, or lawful justification, is distinct from personal ill-will or malice in fact and would be construed as malice in law. The District Magistrate concerned has palpably failed, in her personal affidavit, to show any justifiable cause for the non issue of 'No Objection Certificate' for a period of more than two years. Such unexplained inaction would definitely constitute malice in law.

14. Malice in fact requires proof of personal ill-will, or improper motive, whereas malice in law may be inferred when a public authority or an individual acts in deliberate defiance of the law or on extraneous/misconceived grounds. Malice in law in the instant case is writ large as the District Magistrate concerned had absolutely no explanation for the delay in issue of a 'No Objection Certificate' except slashing one petty clerk by her mighty sword.

15. There are authoritative pronouncements of the Supreme Court elucidating the doctrine of malice in law and its effect on the validity of administrative action.

16. It is well settled that malice in law does not necessarily imply personal ill-will, spite or animosity on the part of the authority concerned. Rather, it denotes an action taken without lawful justification, for an unauthorized purpose, or in disregard of the statutory scheme governing the exercise of power.

17. The following decisions of the Supreme Court authoritatively expounds the aforesaid principle:

18. In the case of **Ratnagiri gas and power Private Limited vs RDS Projects and others, 2013 (12) SCC 786**, the Supreme Court has held:

30. Coming then to the question whether the action taken by the appellant-RGPPL was vitiated by malice in law, we need hardly mention that in cases involving malice in law the administrative action is unsupportable on the touchstone of an acknowledged or acceptable principle and can be avoided even when the decision maker may have had no real or actual malice at work in his mind. The conceptual difference between the two has been succinctly stated in the following paragragh by Lord Haldane in Shearer v. Shields (1914) A.C. 808 quoted with approval by this Court Additional District Magistrate, Jabalpur v. Shivkant Shukla (1976) 2 SCC 521:

"410.

Between 'malice in fact' and 'malice in law' there is a broad distinction which is not peculiar to any system of jurisprudence. The person who inflicts a wrong or an injury upon any person in contravention of the law is not allowed to say that he did so with an innocent mind. He is taken to know the flaw and can only act within the law. He may, therefore, be guilty of 'malice in law', although., so far as the state of ins mind was concerned he acted ignorantly, and in that sense innocently. 'Malice in fact' is a different thing. It means an actual malicious intention on the part of the person who has done the wrongful act."

31. Reference may also be made to the decision of this Court in State of AP & Ors. v. Goverdhanlal Pitti (2003) 4 SCC 739 where the difference between malice in fact and malice in law was summed up in the following words:

"11. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'.[See Words and Phrases legally defined in Third Edition, London Butterworths 1989].
.Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with a oblique or indirect object..." (emphasis supplied)

32. To the same effect is the recent decision of this Court in Ravi Yashwant Bhoir v. District Collector, Raigad and Ors (2012) 2 SCC 407 where this Court observed:

"MALICE IN LAW:
37. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact-or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts.
Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt. Magistrate, Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207; Union of India thr. Govt. of Pondicherry and Anr. v. V. Ramakrishnan and Ors.,2005) 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors., AIR 2010 SC 3745)."

(emphasis supplied by us)

19. Reference may also be made to authority in the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray reported in 2007 (14) SCC 568**, wherein Supreme Court held:

"*19. Malice in law. "Malice in law" is however, quite different. Viscount Haldane described it in Shearer Shields, (1914) AC 808 as: "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or fro want of reasonable or probable cause. (See S.R. Venkatarcunan v. Union of India (1979) 2 SCC 491)*

Analysis and Reasoning

20. The ambit of Article 14 of the Constitution of India was substantially expanded by the Supreme Court by including executive discretion under its ambit. In the case of **E.P. Royappa Vs. State of Tamilnadu, (1974) 4 SCC 3**, the Supreme Court held that Article 14 gives a guarantee against the arbitrary action of the State. The right to equality is antithetical to arbitrariness. They both are enemies of each other so the arbitrary action in not taking a prompt decision in utter disregard to the spirit of government orders are clearly indicative of the fact that the petitioner is a victim of red tapism in the bureaucratic set up in democracy. The relevant excerpts from **E.P. Royappa (supra)** is reproduced hereinbelow:

85. The last two grounds of challenge may be taken up together for consideration.

Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine or equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.

Now, what is the content and reach of this great equalising principle? ***It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits.***

From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14, *and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.*

They require that State action must be based on equivalent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

(Emphasis added by us)

21. In the case of **Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248**, the Constitution bench of the Supreme Court speaking through his lordship Hon'ble Mr. Justice P.N. Bhagwati, held that the concept of equality enshrined under Article 14 of the Constitution of India is against the arbitrariness of the State action. The Court further expounded the doctrine of the "*golden triangle*" by holding that Articles 14, 19 and 21 are not mutually exclusive but are interrelated and must be read harmoniously. The delay in taking decision for issue of a 'No Objection Certificate' without any plausible cause is definitely unpardonable, if tested on the anvil of Article 14, 19(1)(g) read with Article 21 of the Constitution of India. The right to establish and operate a retail fuel outlet, subject to fulfillment of the statutory and regulatory requirements, constitutes an integral facet of the right to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution. Where the establishment of such an enterprise is unjustifiably impeded by arbitrary and unexplained administrative inaction, the resultant deprivation also bears upon the individual's right to livelihood and to live with dignity, which forms an inseparable facet of Article 21 of the Constitution. The relevant paragraph from **Maneka Gandhi (supra)** is reproduced hereinbelow:

56. Now, the question immediately arises as to what is the requirement of Article 14 what is the content and reach of the great equalising principle enunciated in this article. There can be no doubt that if is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E. P. Royappa v. State of Tamil Nadu and Anr. MANU/SC/0380/1973 : (1974)ILL J172SC namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14".Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Emphasis added by us

22. The Supreme Court has read Articles 14, 19 and 21 together as an inseparable constitutional framework, popularly known as the doctrine of *"golden triangle"*. Since

infringement of right to practice any profession or to carry any occupation, trade or business is guaranteed under Article 19(1)(g) of the Constitution of India, its infringement automatically attracts the tenets of Article 14 of the Constitution of India, since arbitrariness is antithetical to Article 14; and, as such, an arbitrary infringement of the right of occupation, trade or business in its natural course erodes and subverts the basic facet of Article 21 of the Constitution of India which guarantees right to live with dignity. Thus, an unjustified and arbitrary denial or delay in permitting a citizen to carry on a lawful trade or business must withstand the combined constitutional scrutiny of Articles 14, 19(1)(g) and 21 of Constitution of India.

23. Equality is a dynamic concept with many aspects and dimensions, and it cannot be cribbed, cabined and confined with traditional and doctrinaire limits. From a positive point of view equality is antithetical to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to rule of law in a republic while the other, to the whims and caprices of an absolute monarch, who possess arbitrary discretion.

Conclusion

24. Before proceeding further, this Court must remark that the learned counsel for the petitioner endeavoured to impeach certain conditions carried in the 'No Objection Certificate', which we cannot examine in the absence of any challenge to such conditions at this stage. We notice that a clerk has been punished with a censure entry, when the higher officers were reminded of their duties. We would say that the action now taken to issue the 'No Objection Certificate' in haste could have been taken at leisure long back. We are also of opinion that the District Magistrate's office and successive incumbents in that office were sitting tight over the matter for more than two years, in violation of the Government Order dated 30.01.2023 and the later order dated 18.12.2025. The delay in decision-making, without any plausible cause, itself is an indication of malice in law, also exhibiting arbitrariness writ large.

25. Since the 'No Objection Certificate' has now been issued, nothing survives further for adjudication in this petition on merits.

26. The oil company/second respondent shall proceed further in the matter on the basis of Letter of Intent issued by them way back on 29.03.2024, contained as Annexure No. 1 to the writ petition, expeditiously.

27. We would expect the District Magistrate, Fatehpur/third respondent, whoever is incumbent, to act with promptitude in all matters where rights of citizens are involved and pay heed to proceedings of this case as a guide for the future and keep the Office of the District Magistrate responsive and in order.

28. Subject to the above remarks, this petition stands **disposed of.**

29. No order as to costs.

(2026) 7 ILRA 1712
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.07.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Writ C No. 41777 of 2025

Swami Shiv Swarupanand Ji Maharaj ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the demolition proceedings initiated against the petitioner under Sections 27(1), 28(1) and 28(ii) of the U.P. Urban Planning and Development Act, 1973 were liable to be reconsidered in view of the subsequent Government Circulars dated 15.01.2025, 17.01.2025 and 25.04.2026 issued pursuant to the Supreme Court's order dated 13.11.2024.

Headnotes

U.P. Urban Planning and Development Act, 1973 – ss. 27(1), 27(iv), 28(1), 28(ii) – Unauthorized construction – Demolition – Appeal – Petitioner submitted a building plan before the Mathura Vrindavan Development Authority for construction of an Ashram, which was disapproved on the ground that the area lies within a flood-affected area and no permanent structure could be constructed thereon – Petitioner nevertheless raised construction – Authority passed demolition order under ss. 27(1), 28(1) and 28(ii) – Appeal preferred by petitioner under s. 27(iv) dismissed on the ground that petitioner failed to establish that the construction had been raised in accordance with the approved sanction plan – Petitioner challenged the aforesaid orders before the High Court alleging that the action of the authorities amounted to "pick and choose", as demolition orders had been passed against 23 persons but demolition proceedings had been selectively executed against the petitioner and certain other persons – State Government issued Circulars dated 15.01.2025, 17.01.2025 and 25.04.2026 pursuant to the Supreme Court's order dated 13.11.2024 passed in Writ Petition (Civil) No. 295 of 2022, *Re: Directions in the matter of demolition of structures and others* – Writ petition disposed of with liberty to petitioner to approach respondent no. 4 afresh by raising his grievances – Mathura Vrindavan Development Authority directed to take a decision in accordance with the aforesaid Circulars – Impugned order dated 04.09.2025 kept in abeyance meanwhile.

Held :

A. It is constitutional obligation of the State to protect the life and safety of every citizen and pilgrim within its territory – Right to life guaranteed under Article 21 of the Constitution of India imposes upon the State a positive obligation to create and maintain conditions in which human life is not lost to preventable disasters arising from the State's own administrative and intellectual unpreparedness – Institutionalization of crowd behaviour science in academia, administration and policy is a constitutional imperative – Court recommended that the State Government introduce dedicated courses on the science of crowd behaviour encompassing the psychological, sociological and physical dimensions of human crowd dynamics, including theories of collective behaviour, crowd psychology, panic propagation, emotional contagion and the behavioural distinction between religious, political, agitational, recreational and emergency crowds, including crowd flow dynamics and density modelling, crowd risk assessment and safety planning, crowd management policy and law and case studies in crowd disasters – Court recommended that the State Government examine the feasibility of constituting a statutory commission for Uttar Pradesh to advise the Government and development authorities on the aesthetic and environmental quality of urban design and development and, in particular, on proposals for

construction that may materially affect the character of an area of historical, architectural or environmental significance – Court further recommended establishment of a dedicated Centre of Excellence for Crowd Science, Mass Gathering Safety and Urban Risk Management to conduct original interdisciplinary research into crowd behaviour, develop and maintain a comprehensive database of crowd-related incidents, near-misses and safety interventions, provide technical advisory services to district administrations, development authorities and event management bodies, design and deliver training programmes for civil servants, police officers, urban planners and event administrators and collaborate with international centres of excellence in crowd science – Court further recommended that the State Government make it mandatory to engage qualified and certified crowd behaviour experts and crowd safety consultants at the planning stage of every major public gathering – Court additionally recommended that the State Government may direct all development authorities to integrate crowd behaviour science and crowd safety norms into their master planning processes, development control regulations and building bye-laws.

B. Writ petition disposed of with liberty to petitioner to approach respondent no. 4 afresh by raising his grievances – MVDA directed to take a decision in the light of the Circulars dated 15.01.2025, 17.01.2025 and 25.04.2026 issued by the State Government in compliance with the Supreme Court's order dated 13.11.2024 passed in Writ Petition (Civil) No. 295 of 2022, *Re: Directions in the matter of demolition of structures and others* – Impugned order dated 04.09.2025 passed by the Commissioner, Agra Division, Agra, kept in abeyance meanwhile.[Paras 55–61] (E-5)

Case Law Cited

Re: Directions in the matter of demolition of structures and others, Writ Petition (Civil) No. 295 of 2022, Supreme Court, order dated 13.11.2024;
Anant Sharma v. State of U.P., PIL No. 1509 of 2022;

List of Acts

Constitution of India;
U.P. Urban Planning and Development Act, 1973

List of Keywords

Unauthorized construction; Demolition order; U.P. Urban Planning and Development Act, 1973; Mathura Vrindavan Development Authority; Appeal under s. 27(iv); Building plan; Flood-affected area; "Pick and choose"; Discriminatory action; Crowd behaviour; Crowd management; Crowd science; Crowd crush; Religious gatherings; Public safety; Article 21; Constitutional obligation; Positive obligation of the State; Institutionalization of crowd behaviour science; Academic discipline; Crowd flow dynamics; Density modelling; Crowd risk assessment; Safety planning; Crowd management policy and law; Statutory commission; Urban design; Centre of Excellence for Crowd Science; Mass Gathering Safety; Urban Risk Management; Crowd behaviour experts; Crowd safety consultants; Master planning; Development control regulations; Building bye-laws; Government Circulars dated 15.01.2025, 17.01.2025 and 25.04.2026; Supreme Court order dated 13.11.2024; Fresh notice; Reconsideration of demolition proceedings.

Case Arising From

Writ petition filed challenging the order dated 04.09.2025 passed by the Commissioner, Agra Division, Agra

Appearances for Parties

Advs. for the Petitioner (s): Dharmendra Kumar Gupta, Kiran Gupta.
Advs. for the Respondent(s): Harsh Vardhan Gupta.

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

Although the present case relates to an unauthorized construction, but this Court has expanded the scope of the writ petition to address a larger issue that requires urgent attention.

I- PROLOGUE:

THE PRIMACY OF UNDERSTANDING OVER REACTION

"The governance of large human gatherings- particularly those of a religious, cultural, or congregational nature- has, for far too long, been approached by administrative authorities as a logistical and law-and-order challenge rather than as a complex socio-psychological and behavioural phenomenon demanding systematic academic inquiry, institutional research, and evidence-based policy response. The recurring tragedies witnessed at pilgrimage sites, religious congregations, and mass gatherings across the country- including, most recently, the crowd crush incidents at Maha Kumbh Mela- 2025, at Prayagraj, and crowd crush at Mathura, in 2022- are not merely the product of administrative failure or infrastructural inadequacy but at their root, they reflect a profound and institutionalized ignorance of the science of crowd behaviour: how crowds form, how they move, how they think collectively, how panicky propagates through dense human assemblies, and at what precise point a gathering transitions from a manageable congregation to a lethal crush. Until this foundational deficit is acknowledged and remedied, no amount of deployment of police personnel, erection of barricades, traffic diversion or issuance of standard operating procedures will suffice to prevent the recurrence of such tragedies.

It is in this context that this Court considers it necessary to examine, at some depth, the academic foundations of crowd behaviour science and to assess the extent to which the district administration of Mathura, the U.P. Braj Teertha Vikas Parishad, and the Mathura Vrindavan Development Authority have engaged- or conspicuously failed to engage- with this body of knowledge in discharging their respective statutory and constitutional obligations toward public safety."

II- BACKGROUND AND BRIEF HISTORY OF THE CASE:

1. The present petition has been preferred assailing the impugned order dated 04.09.2025, passed by the respondent no.2- Commissioner, Agra Division, Agra, in Case No.RST/01751/2017, whereby the petitioner's appeal has been rejected by the Commissioner.

2. In brief, the facts of the case are that the petitioner claims to be the sole owner and possessor of the property ad-measuring 167.22 square meters, falling in Khasra Nos.64/189, 65 and 66, situated in Village Vrindavan Khaddar, Tehsil and District Mathura. It is further averred that in order to raise construction on the property in question, the petitioner submitted a building plan for sanction with the Mathura Vrindavan Development Authority for construction of an Ashram, and the same was disapproved on the ground that the area lies within the flood-affected area, and therefore, no permanent structure could be build up on the plot in question.

3. The petitioner raised the construction. Dissatisfied by the construction, the Mathura Vrindavan Development Authority/respondent no. 4 passed a demolition order under Sections 27(1), 28(1) and 28(ii) of the U.P. Urban Planning and Development Act, 1973. Aggrieved by the same, the petitioner preferred an appeal under Section 27(iv) of the Urban Planning and Development Act, 1973. The same came to be dismissed by the Appellate Authority/

Commissioner, Agra Division, Agra, on the ground that despite being given sufficient opportunity of hearing, the petitioner could not establish that the construction had been raised as per the approved sanction plan of the Mathura Vrindavan Development Authority.

4. Learned counsel for the petitioner submits that the impugned action of the authority is arbitrary and discriminatory, amounting to a case of *"pick and choose"*. It is contended that, as is evident from Annexure-10 to the writ petition, demolition orders have been passed against 23 persons for alleged unauthorized constructions; however, such demolition proceedings have been selectively executed only against the petitioner and certain others, namely those placed at serial nos. 4, 9, 10 and 11 in the said list. It is thus argued that similarly situated persons have been treated unequally, without any reasonable classification or justification, rendering the impugned action legally unsustainable.

5. After hearing learned counsel for the petitioner and on perusal of the record, this Court vide order dated 23.04.2026 directed respondent no. 4/Mathura Vrindavan Development Authority (MVDA) to file a comprehensive affidavit. It was further directed that the affidavit should be filed by the Vice Chairman, MVDA, in consultation with its Chairman, and should, *inter-alia*, specifically contain: (i) the status and action taken by MVDA in respect of demolition proceedings concerning all 23 properties against whom demolition orders had been passed; (ii) the number and details of properties booked by MVDA for unauthorized construction during the last five years; and (iii) the policy framework, statutory guidelines, standard operating procedures, and administrative mechanisms adopted by the authority to regulate, prevent, and curb unauthorized constructions within its jurisdiction.

6. It was also observed that in the recent past, the city of Mathura had witnessed incidents of stampede-like crowd crush during pre-Holi events and other auspicious occasions, resulting in injuries, loss of consciousness, and casualties. The heavy influx of devotees during festivals had led to dangerous overcrowding, raising serious concerns regarding public safety at these historically significant sites. Unauthorized constructions had further aggravated the situation by obstructing rescue and emergency operations, as had been observed on several such occasions.

7. In view of the above, this Court deemed it appropriate to expand the scope of the present writ petition. Accordingly, the District Magistrate, Mathura, was directed to file an affidavit indicating whether a comprehensive plan for crowd and crisis management existed for Mathura. The affidavit was also required to disclose whether any expert body exist in the district for: (i) understanding crowd behaviour; (ii) coordination among stakeholders with clearly defined roles and responsibilities; and (iii) methodologies adopted for effective crowd management. The District Magistrate was further directed to provide details of the strategies and management principles in place for handling crowd-related disasters, for sensitizing stakeholders, and for enhancing institutional capacity through training and awareness.

8. All officers concerned, as referred to herein, were directed to clearly and specifically state in their respective affidavits whether any scientific studies, academic research, or institutional analyses had been conducted by or on behalf of the district administration. Such disclosures were required to include details of any involvement of academic institutions, research bodies, or expert

agencies, particularly in light of the recent stampede-like crowd crush incidents reported in Mathura. The affidavits were further required to indicate the scope, methodology, findings, and recommendations of any such studies, as well as the extent to which these insights had been considered or implemented by the District authorities in order to prevent recurrence of similar incidents.

9. The Municipal Commissioner, Mathura, and the SSP, Mathura, were also directed to file affidavits outlining the measures undertaken by Nagar Nigam, Mathura, and the Police to ensure that the city remained safe and livable.

10. In compliance thereof, the Vice Chairman, Mathura Vrindavan Development Authority, District Magistrate, Mathura, and SSP Mathura have filed compliance affidavit. The District Magistrate, Municipal Commissioner, Commissioner, Mathura Division, Mathura, SSP Mathura and Chief Executive Officer, Uttar Pradesh Braj Teerth Vikas Parishad have appeared through video conferencing, and the officers have been heard.

III- FACTS AND FINDINGS EMERGING FROM THE AFFIDAVIT OF THE VICE CHAIRMAN MATHURA VRINDAVAN DEVELOPMENT AUTHORITY, MATHURA:

11. From the affidavit filed by the Vice Chairman, Mathura Vrindavan Development Authority, it is discernible that pursuant to Supreme Court′s order dated 13.11.2024, passed in Writ Petition (Civil) No. 295 of 2022 in *"Re: Directions in the matter of demolition of structures and others,"* the State Government issued certain directions vide circulars dated 15.01.2025, 17.01.2025 and 25.04.2026 mandatorily required to be adhered with before executing any demolition order. The directions to the District Magistrate, Municipal/Local Authorities are comprehensive and self explanatory.

12. It is further gathered from the affidavit that in view of the aforesaid Circulars, the Development Authority need to issue fresh notices before executing the demolition orders. The Vice Chairman has in detail examined and explained, each property mentioned in the impugned demolition notification. In most of the cases the application for compounding the unauthorized construction has been pending consideration in the office of MVDA Mathura.

13. It is further gathered that out of referred 23 offending constructions, 01 has been compounded, 03 have been found to be beyond territorial jurisdiction of MVDA Mathura, for 03 offending constructions, the notices have been issued, and for 16 properties, demolition orders are yet to be examined in the wake of newly issued circulars. It is also indicated that in some cases appeals are pending, therefore, no requisite action has been undertaken and the decision on 16 applications for seeking compounding of the offending constructions shall be taken in consonance and in-conformity with building by-laws.

14. It further emerges from the affidavit that over the last five years (2021-22 to 2025-26), the Authority has undertaken enforcement action against unauthorized constructions, issuing 2,453 notices under Section 27(1) of the Uttar Pradesh Urban Planning and Development Act, 1973. Pursuant to these notices, 700 demolition orders were passed, of which 323 were actually executed.

Additionally, 104 properties were sealed, and 212 cases were regularized through compounding. While the data reflects a sustained enforcement drive, it represents merely the tip of the iceberg- the magnitude of the problem is far more serious and grave than what these figures suggest.

15. The details of action taken by the authority against unauthorized constructions over the last five years are set out in the table below.

Sl. No. Year Number of Notices Issued under Section 27(1) Number of Demolition Orders Passed Number of Properties Sealed Accepted Compounding
1 2021 22 624 52 35 2
2 2022 23 539 135 49 12
3 2023 24 485 179 135 5
4 202425 400 181 50 46
5 2025 26 405 153 54 39
Total 2453 700 323 104

IV- FACTS EMERGING FROM THE AFFIDAVIT OF DISTRICT MAGISTRATE, MATHURA:

16. The Court directed the District Magistrate, Mathura, to file a personal affidavit addressing three specific questions: (i) whether a comprehensive crowd and crisis management plan exists; (ii) whether any expert/specialized body exists to study the crowd behaviour; and (iii) what methodologies are adopted for effective crowd management.

17. In response to the specific questions, the affidavit discloses that after stampede at Shri Banke Bihari Ji Temple, Vrindavan, on 20.08.2022 during Aarti, in which two persons died, the State Government came into action and subsequently litigation also ensued. The affidavit acknowledges that while Mathura City has remained largely incident-free, Kasba Vrindavan, with its dense concentration of major temples, faces acute crowd pressure during festivals.

18. After the stampede on 22.08.2022, the Government constituted a High-Level Committee (chaired by Shri Sulkhan Singh, former DGP, U.P.) This committee submitted a report on 07.09.2022 recommending three categories of measures: (i) Immediate, (ii) Short-term, and (iii) Long-term. Subsequently, the Hon'ble Supreme Court, by order dated 08.08.2025 in WP (Civil) No. 704/2025, constituted the *"Thakur Shri Banke Bihari Ji Temple High Powered Management Committee"* under the chairmanship of a Retired Judge of the Allahabad High Court, with the DM, SSP, District Judge, Municipal Commissioner, and MVDA Vice Chairman as members.

19. The affidavit asserts that a comprehensive crowd management plan exists, and implemented through: Multi-departmental coordination meetings chaired by the DM, one-way routing, barricading, and en-marking holding areas around temples, vehicle diversion and restriction of four-wheeler near temples, separate entry and exit gates at Banke Bihari Temple, extension of Darshan hours (12 hrs normal / 18 hrs on special occasions), online Darshan registration, live telecasting of Thakurji's Darshan, installation of steel pipe queue barriers, CCTV deployment, and conduct of structural survey of temple lanes by IIT Roorkee.

20. The affidavit further discloses engagement of expert agencies for designing, and architectural purpose which prepared a preliminary Brij Vikas Yojana Report (May 2019), and preparation of a Traffic Survey and Analysis Report for Green Mobility Zone Study for Mathura-Vrindavan (April 2026).

21. Further reliance has been placed upon multiple departments report regarding ongoing and proposed works: Road widening (PWD), new bypass construction (NHAI-32 KM NH-530B, completed on 30.08.2025), Vrindavan Bypass proposed, development of Parikrama Marg by Brij Teerth Vikas Parishad, bus station up-gradation under PPP by UPSRTC, railing installation in lanes, installation of RO plants, construction of mobile toilets, solid waste management by Nagar Nigam, decentralization of religious sites, parking and rope-way development by MVDA.

22. Following the 2022 stampede, *Anant Sharma vs. State of U.P. (PIL 1509/2022)* was filed before the High Court seeking a mandamus directing preparation of a proper maintenance plan for Banke Bihari Temple, protecting rights of Vaishnav devotees under Article 25 of the Constitution, and acquisition of approximately 5 acres of land around the temple for public facilities and parking.

23. The affidavit identifies a clear division of responsibilities across agencies: DM is responsible for overall administration, magistrate deployment, emergency medical, disaster planning, SSP shall maintain crowd control, CCTV, barricading, police deployment, Municipal Commissioner shall look after sanitation, water, lighting, MVDA is responsible for parking, encroachment removal, infrastructure, PWD job is road widening, ARTO (transport enforcement), UPSRTC (pilgrim facilities), and Brij Teerth Vikas Parishad (Parikrama Marg, public amenities).

V- FACTS EMERGING FROM THE AFFIDAVIT OF SUPERINTENDENT OF POLICE, MATHURA:

24. A conjoint reading of the affidavit dated 03.05.2026 and 18.05.2026 and accompanying documents indicates that the SSP′s affidavit largely mirrors the District Magistrate′s affidavit in its factual narration regarding the 2022 stampede, constitution of High Level Committee constituted by High Court pursuant to PIL No. 1509 of 2022, and the Supreme Court also directed for constitution of High Powered Management Committee. The affidavit further discloses about action plan for strengthening the traffic management system in the Vrindavan area, adoption of effective route system for operation of E-Rickshaws, Autos in Kasba Vrindavan, Prohibition of E-Rickshaws, Autos in Kasba Vrindavan at such places where there is potentiality of crowd traffic congestion. Certain locations have been identified where iron chain barriers have been installed, dedicated Action Plan for Traffic Management on Saturdays/Sundays and Special Occasions/Festivals in Kasba Vrindavan has been in place.

25. Vrindavan has been divided into 5 traffic zones, each staffed with dedicated Sub-Inspectors (Traffic), 34 traffic intersections/crossings have traffic police personnel deployed, 7 E-Rickshaw routes have been designated with fixed fares and vehicle capacity numbers, 34 iron chain barrier locations have been identified and installed to prohibit unauthorized entry of E-Rickshaws and four-wheeler into inner lanes - though several are noted as already damaged, signaling maintenance lapses. On Saturdays, Sundays, and festival days, heavy vehicles are fully prohibited

from entering Kasba Vrindavan from 09 specified points, with diversion routes via NH-19 and Yamuna Expressway, 04 primary parking facilities are designated for normal days, with overflow parking at Mandi Samiti and IIT-IAI College. For NH-19 traffic, 05 designated parking areas exist near Chardham Mandir, 06 vehicle diversion points are specified for crisis management, with fire tenders, ambulances, and emergency vehicles explicitly exempted from all restrictions.

26. Vehicle diversion points for crowd control has been identified and vehicles are diverted in accordance with the plan. A report has also been placed with regard to the enforcement action taken by the office of Assistant Regional Transport Officer (Enforcement Mathura) indicating the number of vehicles seized and individuals challaned for various traffic violations.

27. To avoid future crowd crushing stampede, the intensive enforcement action will be taken by the enforcement team against vehicles parked unauthorizedly on the road side, so that obstruction to the movement of vehicles can be prevented and transportation to the devotees will be smooth and easy.

28. Besides the issues related to the traffic diversion and crowd control, the affidavit also highlighted the roles and responsibility of the Public Works Department in widening the roads, office of Assistant Regional Transport Officer for enforcement actions, role of Mathura Vrindavan Development Authority dealing with unauthorized constructions and other issues, role of Uttar Pradesh State Road Transport Corporation to provide adequate facilities at bus stations for devotees visiting Mathura, role of Uttar Pradesh Braj Teerth Vikas Parishad for construction of Parikrama Marg and public amenities. The Nagar Nigam Mathura Vrindavan′s role for installing railings in lane for the convenient darshan of devotees, a smooth supply of clean drinking water, solid waste management, mobile toilets, cleaning arrangements and street lighting facilities.

29. Likewise, reliance has been placed upon a report dated 15.05.2026 prepared by National Highway Authority of India for constructing Mathura-Bareilly highway by-pass providing effective relief to devotees visiting Mathura from traffic congestion. Construction of Vrindavan by-pass etc.

30. After hearing Shri M.C. Chaturvedi, learned Additional Advocate General, assisted by Shri Prabhakar Tripathi, learned Standing Counsel, Shri D.S. Chauhan, learned counsel for Respondent No. 4, and Shri D.K. Gupta, learned counsel for the petitioner, it emerges that the authorities have, on paper, undertaken considerable preparatory work. The police, after identifying traffic-congested locations, have put in place traffic diversion plans. For the purposes of urban development, a ten-year Development Master Plan has also been prepared by the U.P. Braj Teertha Vikas Parishad in addition to the developmental work undertaken by the Development Authority and the National Highways Authority of India.

31. However, it must be clearly stated that the intention of this Court was never to examine or assess the efficacy of the traffic diversion plans or the ten-year Development Master Plan prepared by the U.P. Braj Teertha Vikas Parishad in conjunction with the Mathura Vrindavan Development Authority.

32. Upon a close and careful perusal of the order dated 23rd April, 2023, the true purport and spirit of the directions issued thereunder are self-evident. The Court's primary concern and emphasis was- and remains- whether the administration of the city of Mathura has any comprehensive crowd and crisis management plan, grounded in a scientific understanding of crowd behaviour, and capable of anticipating, preventing, and responding to crowd-related emergencies of the nature that have tragically manifested in recent times.

33. This Court is constrained to observe that the State is not bereft of talent, expertise, or resources. What appears to be conspicuously absent is vision- and the selfless commitment to public service that responsible governance demands. The universities and research laboratories of this country are endowed with considerable intellectual wealth and technical capacity that remains, by and large, untapped by the administrative machinery- not because it is inaccessible, but because no coherent policy framework exists to facilitate or mandate such engagement. What is equally disconcerting is that the cities- and religious cities in particular- have been abandoned, whether by act or omission, to the mercies of self-serving priest, land mafias and real estate interests, driven by nothing more than the lure of short-term and often illicit gain. In doing so, it seems, those entrusted with the stewardship of public resources and public spaces have mortgaged the safety, the heritage, and the future of the next generation. It is a dereliction that this Court cannot regard with equanimity.

VI- CRITICAL ISSUES EMERGING DURING THE COURSE OF ARGUMENTS:

34. During the course of arguments, several critical issues of systemic and structural significance have emerged before this Court. First, that the Mathura Vrindavan Development Authority prepared its master plan for a period of merely ten years- a planning horizon that this Court regards as wholly inadequate for a city of the religious, cultural, and demographic significance of Mathura. Second, that crowd management in the district has been conceptually and administratively reduced to little more than traffic management- a reductive equivalence that reflects a fundamental misunderstanding of the science and complexity of crowd behaviour. Third, that stampedes and crowd crush incidents have been attributed primarily to the existence of narrow lanes and unauthorized constructions, along with other contributory factors- an attribution that, while not entirely without basis, addresses only the symptomatic manifestations of a far deeper and more entrenched planning and governance failure.

A. The Inadequacy of Long-Term Planning: A Comparative Perspective

35. It is a matter of considerable significance that when the city of Chandigarh was conceived and developed in the early 1950s under the visionary direction of the Swiss-French architect Le Corbusier, the urban plan was designed not merely for the immediate needs of its inhabitants but with deliberate foresight for the city's requirements over the next several decades- incorporating sector-based zoning, dedicated green belts, regulated building lines, and carefully calibrated population density norms that continue to define the city's livability to this day.

36. Similarly, when Sir Edwin Lutyens and Sir Herbert Baker were commissioned to design New Delhi in the early twentieth century, the imperial capital was planned with a long-term

architectural and urban vision that accounted for the functional, ceremonial, and spatial requirements of a capital city well into the foreseeable future. The city of Jaipur, founded by Maharaja Sawai Jai Singh II in 1727, was laid out on the principles of architectural eminence, with a grid-based street plan, uniform building heights, and a civic order that was designed to endure for centuries- and which, despite centuries of organic growth and encroachment, remains discernible and functional to this day.

37. This Court is deeply shocked and profoundly concerned that the development plan for Mathura- one of the most ancient, sacred, and visited pilgrimage cities in the world, receiving millions of devotees annually and carrying an unbroken civilizational and religious heritage of over thousand years- has been prepared for a period of merely ten years. This is particularly incomprehensible at a time when the Government of India has articulated its national development agenda through the Viksit Bharat vision extending to the year 2047, and when urban planning frameworks globally are increasingly adopting centennial and multi-generational perspectives. A city that is eternal in its religious significance cannot be governed by a planning document that expires in a decade. The temporal inadequacy of the master plan is not a technical oversight- it is a governance failure of the first order. Mathura, Ayodhya, Varanasi, and Chitrakoot cannot be placed at equal footing with the other cities in Uttar Pradesh.

B. The Nature of Religious Crowds: A Distinction the Administration Must Recognize

38. This Court considers it necessary to record an important conceptual distinction that appears to have been lost upon the administrative authorities concerned. The crowds that converge upon Mathura are, by their very nature and motivation, religious crowds- gatherings of men, women, and children drawn together by faith, devotion, and the desire for spiritual communion. A religious crowd is, in its essential character, a self-regulating assembly. It is animated not by political passion, competitive aggression, or recreational excitement, but by collective piety and shared reverence. The behavioural dynamics of a religious crowd are therefore qualitatively and fundamentally distinct from those of a crowd assembled for a political rally, a sporting event, or a public protest. To equate the two- as administrative practice in this country has long tended to do- is not merely academically imprecise; it is administratively dangerous, because it leads to the application of crowd control strategies designed for adversarial or unruly gatherings to assemblies that are inherently peaceful and cooperative in their orientation, thereby generating unnecessary friction, confusion, and, in extreme cases, panic.

39. The self-regulating character of a religious crowd, however, must not be mistaken for self-sufficiency. A devotional crowd, precisely because of its heightened emotional and spiritual state, its reduced attention to physical surroundings, and its tendency toward collective synchronization of movement during rituals and processions, is peculiarly vulnerable to the effects of spatial constriction, sudden density surges, and the absence of clearly defined and adequately dimensioned pathways for ingress, egress, and circumambulatory movement. It is the duty of the State, and of every authority entrusted with the governance of pilgrimage sites, to recognize and respond to this vulnerability through informed, sensitive, and scientifically grounded crowd management- not through the blunt instruments of police deployment and barricade construction that have hitherto constituted the sum total of the administration's crowd management strategy.

C. Unauthorized Construction: A Hydra-Headed Menace

40. The problem of unauthorized construction is not unique to Mathura. It is a pervasive and deeply entrenched challenge confronting development authorities across virtually every city and town in India. However, its manifestation in a religious city of Mathura's significance assumes an altogether graver dimension, given the direct and demonstrable causal relationship between unauthorized construction- particularly along pilgrimage routes, riverfront ghats, and congregational spaces- and the occurrence of crowd crush incidents, emergency access failures, and fire safety hazards during mass gatherings.

41. The causes of unauthorized construction are multiple, interconnected, and deeply structural. They include: the corruption of regulatory and enforcement machinery at various levels of the administrative hierarchy; fundamental failures of spatial planning, including the absence of adequate provisions for affordable housing, commercial space, and pilgrim accommodation within the formal planning framework; institutional failure manifested in the form of under-resourced, under-staffed, and often complicit enforcement agencies; and, most perniciously, the systematic and sustained interference of real estate developers, construction conglomerates, and what may candidly be described as construction mafias in the planning and development processes of cities- particularly in the pilgrimage cities of northern India, where the unrelenting demand for accommodation, commercial premises, and ritual space creates conditions of chronic supply scarcity that are ruthlessly exploited by those with the political connections and economic muscle to build without sanction and occupy without consequence.

42. This Court observes, with considerable concern, that the development trajectories of most Indian cities have been indirectly but powerfully shaped by the interests of construction lobbies operating in intimate proximity to political authority. In the religious cities of northern India- Mathura, Varanasi, Ayodhya, Prayagraj, Vrindavan- this influence has assumed an especially virulent form, driven by the extraordinary commercial value of land in proximity to sacred sites and the consequent incentive structures that corrode regulatory integrity and subvert planning discipline. Unauthorized construction in these cities is not simply a product of poverty or ignorance; it is, in significant measure, a product of organized, politically facilitated, economically motivated illegality that has been allowed to accumulate over decades through a combination of institutional complaisance, regulatory capture, and political patronage.

43. To confront this menace effectively requires not merely stronger laws- India does not lack for laws- but something far rarer and more demanding: strong, selfless, and incorruptible institutional will. It requires development authorities, district administrations, and State governments willing to act against powerful vested interests without fear or favour; judiciary-supported enforcement mechanisms capable of withstanding political pressure; and a civic culture that recognizes unauthorized construction not as a private entrepreneurial initiative but as a public safety hazard and a collective crime against the urban fabric and the communities that inhabit it. This Court expects nothing less from the authorities before it.

VII- CROWD BEHAVIOUR, PLANNING HORIZONS, AND THE MENACE OF UNAUTHORIZED CONSTRUCTION:

A. The Science of Crowd Behaviour: An Academic Overview

44. The academic study of crowd behaviour is a well-established interdisciplinary field drawing upon social psychology, physics, urban planning, computational modeling, and disaster management science. Contrary to popular administrative assumption, a crowd is not merely an aggregation of individuals behaving independently. It is, in the language of contemporary crowd science, a complex adaptive system exhibiting emergent properties- collective behaviours that cannot be predicted solely by reference to the conduct of individual members, but which arise from the dynamic interactions among them.

45. The foundational work of scholars such as Gustave Le Bon1, who in the late nineteenth century identified the psychological transformation that individuals undergo when subsumed within a crowd, laid the early theoretical groundwork for this discipline. Le Bon's observations regarding the submergence of individual rational agency, the amplification of emotional contagion, and the susceptibility of crowd members to suggestion and panic remain analytically relevant even today, though they have been substantially refined and, in several respects, challenged by subsequent research. Contemporary crowd scientists, including Professor John Fruin2, whose landmark work on pedestrian planning and level-of-service analysis introduced the concept of critical crowd density thresholds, and Professor G. Keith Still, who developed the concept of crowd dynamics modeling and risk assessment tools now widely used in event safety planning globally, have transformed the study of crowd behaviour from a largely theoretical exercise into a rigorous applied science with direct and measurable implications for public safety.

46. Of particular relevance to pilgrimage and religious gatherings is the concept of crowd density and flow velocity- the relationship between the number of persons per square meter and the speed at which crowd movement becomes self-sustaining, uncontrollable, and ultimately lethal. Research has established that at densities exceeding approximately four to five persons per square meter, individual volition is effectively lost; persons within the crowd can no longer choose their direction of movement and are instead carried involuntarily by the collective force of the surrounding mass. At densities exceeding six to seven persons per square meter- a threshold frequently encountered at major pilgrimage sites in India- compressive asphyxia becomes a serious and imminent risk, and the conditions for a crowd crush are fully present. The transition from manageable congregation to lethal crush can occur within minutes, and frequently does so without any external trigger such as fire, explosion, or structural collapse. The crush generates its own momentum, driven entirely by the behavioural dynamics of the crowd itself.

47. Further, academic research has established that crowd behaviour at religious gatherings is qualitatively distinct from crowd behaviour at secular events such as sporting fixtures or concerts. Religious crowds are characterized by heightened emotional and devotional states, a pronounced tendency toward collective synchronization of movement- particularly during rituals, processions, and circumambulatory practices- reduced responsiveness to conventional crowd control signals such as police instructions or public address announcements, and a significantly elevated tolerance for discomfort, physical compression, and adverse conditions, which paradoxically increases the risk of crush injuries and fatalities by suppressing the early warning signals that would otherwise

prompt self-regulation and dispersal. These characteristics make the scientific study of religious crowd behaviour not merely academically interesting but administratively indispensable.

48. The question that arises- and which this Court regards as of the utmost importance- is whether the district administration of Mathura, or any of the authorities statutorily responsible for the management of the Braj pilgrimage circuit, have at any point commissioned, conducted, or even consulted such scientific studies and computational models in relation to the major religious gatherings held in and around Mathura. The affidavits filed before this Court suggest, with troubling clarity, that they have not.

B. The Administrative Imperative: From Behavioural Study to Institutional Policy

49. The gap between the state of academic knowledge regarding crowd behaviour and the state of administrative practice in Uttar Pradesh- is not merely a gap of awareness. It is a gap of institutional will, organizational culture, and governance philosophy. The study of crowd behaviour must be recognized not as an academic exercise but as an administrative necessity- a prerequisite to the formulation of any rational, effective, and constitutionally compliant crowd management policy.

50. What is required, at the minimum, is the establishment of a permanent, multi-disciplinary expert body at the district and divisional level, comprising specialists in crowd psychology, urban planning, disaster management, civil engineering, and public health, charged with the continuous study of crowd behavioural patterns at major religious sites and events. This body must be empowered to conduct pre-event risk assessments, commission site-specific crowd flow studies, engage with academic institutions and research organizations of national and international repute, and translate their findings into actionable administrative directives binding upon the civil and police administration.

51. The role of the U.P. Braj Teertha Vikas Parishad is particularly significant in this context. As the statutory body entrusted with the development and regulation of the Braj pilgrimage region, the Parishad is uniquely positioned- and uniquely obligated- to serve as the institutional anchor for crowd behaviour research and evidence-based crowd management planning across the entire Braj circuit. Its mandate cannot be construed as limited to infrastructure development and tourism promotion; it must be understood to encompass the safety and well-being of every pilgrim who visits the sacred sites under its stewardship. A Parishad that constructs ghats, temples, and pilgrim facilities without simultaneously commissioning rigorous crowd flow studies and behavioural safety assessments is a Parishad that is building the architecture of potential tragedy.

52. Similarly, the Mathura Vrindavan Development Authority, in its capacity as the spatial planning authority for the district, is obligated to integrate the findings of crowd behaviour science into its master planning, zoning, and development control processes. The width of streets, the design of access and egress points, the location and capacity of congregation spaces, the provision of emergency evacuation routes - all of these are not merely engineering decisions but crowd safety decisions, and they must be informed by a thorough understanding of how crowds behave in the specific spatial and cultural context of Mathura's religious landscape.

C. A Paradigm Shift from Reaction to Research

53. This Court is of the firm view that the prevention of crowd crush disasters at pilgrimage sites across the State- cannot be achieved through the deployment of additional police personnel, the installation of more barricades, or the issuance of more standard operating procedures drafted in ignorance of the science of crowd behaviour. What is required is a fundamental paradigm shift: from reactive crowd control to proactive crowd behaviour research; from instinct-driven administration to evidence-based governance; from siloed departmental action to integrated, research-informed, multi-agency coordination anchored in a deep and institutionalized understanding of how human crowds behave, why they behave as they do, and what specific interventions- spatial, psychological, communicative, and institutional- are most effective in preventing the transition from peaceful congregation to catastrophic crush.

VIII- RECOMMENDATIONS:

54. This Court considers it appropriate to record its recommendations to the Government of Uttar Pradesh, and through it to the relevant academic, administrative, and policy-making bodies, with respect to the urgent need for institutionalizing the study of crowd behaviour and crowd management as a recognized and structured academic discipline within the universities, technical institutions, and professional training establishments of the State.

Reason and Logic: It is a matter of both academic and administrative concern that despite India being one of the most densely populated nations on earth and Uttar Pradesh is the most densely populated state among all States, and despite hosting the largest religious congregations, political rallies, and mass gatherings known to human Civilization- including the Kumbh Mela, which is recognized as the single largest peaceful human assembly on the planet- no structured academic curriculum devoted to the scientific study of crowd behaviour exists in any university or institution of higher learning within the State of Uttar Pradesh, or indeed across most of India. This lacuna is not merely an academic oversight; it is a governance failure with direct, measurable, and potentially fatal consequences for public safety. We need not to be confused with crowd management, though the process of traffic diversion and study of crowd behaviour are two different and distinct concepts.

IX- SPECIFIC RECOMMENDATIONS:

A. Introduction of Crowd Behaviour and Crowd Management as an Academic Discipline

55. This Court recommends that the State Government, through the Department of Higher Education and in consultation with the other stake holders, direct all State universities- and particularly those offering programmes in urban planning, public administration, disaster management, civil engineering, architecture, sociology, applied psychology, and data analysis, to introduce dedicated courses, modules, and research programmes on the science of crowd behaviour encompassing the psychological, sociological, and physical dimensions of human crowd dynamics, including theories of collective behaviour, crowd psychology, panic propagation, emotional

contagion, and the behavioural distinction between religious, political, agitational, recreational, and emergency crowds, and including;

(i) Crowd flow dynamics and density modelling- including pedestrian movement science, level-of-service analysis, critical density thresholds, agent-based modelling, and computational simulation of crowd behaviour in defined spatial environments;

(ii) Crowd risk assessment and safety planning- including pre-event risk profiling, site capacity assessment, vulnerability mapping, ingress and egress management, emergency evacuation planning, and post-event analysis of crowd-related incidents;

(iii) Crowd management policy and law- including the legal framework governing public gatherings, the statutory responsibilities of development authorities, police, district administrations, and event organizers, and the comparative study of crowd management regulatory frameworks in other jurisdictions;

(iv) Case studies in crowd disasters- including the systematic academic analysis of major crowd crush incidents in India and internationally, with particular reference to the lessons learned, the administrative failures identified, and the corrective measures adopted thereafter.

B. Having regard to the considerations set out hereinabove, it is recommended that the State Government shall examine the feasibility of constituting a statutory commission for Uttar Pradesh, on the lines of the Delhi Urban Art Commission constituted under the Delhi Urban Art Commission Act, 1973, to advise the Government and the development authorities on the aesthetic and environmental quality of urban design and development in the cities of the State, and in particular on proposals for construction that may materially affect the character of an area of historical, architectural or environmental significance.

56. This Court further recommends that the State Government consider establishing, in collaboration with a leading State or Central university- or, alternatively, with the Indian Institute of Technology, Kanpur, the Indian Institute of Technology, Roorkee, or any other institution of national repute situated within the State- a dedicated Center of Excellence for Crowd Science, Mass Gathering Safety, and Urban Risk Management. Such a Center should be mandated to:

(i) conduct original interdisciplinary research into crowd behaviour at religious, political, cultural, and emergency gatherings;

(ii) develop and maintain a comprehensive database of crowd-related incidents, near-misses, and safety interventions across the State;

(iii) provide technical advisory services to district administrations, development authorities, and event management bodies on a continuous and institutionalized basis;

(iv) design and deliver training programmes for civil servants, police officers, urban planners, and event administrators in the science and practice of crowd management;

(v) collaborate with international centers of excellence in crowd science- including the Crowd Science Unit at the University of Suffolk, United Kingdom, the research programmes of Professor G.

Keith Still, Makkah- so as to ensure that the State's crowd management practices are aligned with the most advanced global knowledge and methodology.

57. This Court further recommends that the State Government, through appropriate legislative or executive action, make it mandatory for all departments, statutory authorities, local bodies, and event organizers- whether governmental or private- to engage qualified and certified crowd behaviour experts and crowd safety consultants at the planning stage of every major public gathering, irrespective of whether such gathering is of a religious, political, agitational, cultural, or recreational character. Such mandatory engagement should apply to, and encompass:

58. This Court additionally recommends that the State Government may direct all development authorities- including the Mathura Vrindavan Development Authority and the U.P. Braj Teertha Vikas Parishad- to integrate crowd behaviour science and crowd safety norms into their master planning processes, development control regulations, and building bye-laws.

59. It must be borne in mind that we hold the urban landscape in trust for those who come after us. If, in a State that is not wanting in land, its cities are permitted to be surrendered to a builder-bureaucrat nexus for the erection of high-rise structures in disregard of planning norms, the generations to come will have neither the means to undo it nor the reason to forgive it. The history of urban development reminds us that a city's landscape, once disfigured, cannot be restored by the generations that follow. Posterity will judge us not by what we built, but by what we permitted to be destroyed.

X- CONCLUSION:

60. This Court is of the considered opinion that the recommendations set out herein above are not aspirational moralities but minimum governance necessities, demanded by the constitutional obligation of the State to protect the life and safety of every citizen and pilgrim within its territory. The right to life guaranteed under Article 21 of the Constitution of India is not fulfilled merely by the absence of active State violence; it imposes upon the State a positive obligation to create and maintain conditions in which human life is not lost to preventable disasters arising from the State's own administrative and intellectual unpreparedness. The institutionalization of crowd behaviour science- in academia, in administration, and in policy- is a constitutional imperative that this Court urges the State Government to act upon with the seriousness, urgency, and commitment that it deserves.

61. Reverting back to the merits of the case, the present petition is **disposed of** with the liberty to the petitioner to approach the respondent no.4 afresh by raising his grievances, and the MVDA shall take a decision in the light of the Circulars dated dated 15.01.2025, 17.01.2025 and 25.04.2026 issued by State Government in compliance of the Supreme Court’s order dated 13.11.2024, passed in Writ Petition (Civil) No. 295 of 2022 in Re: Directions in the matter of demolition of structures and others. Meanwhile, the impugned order dated 04.09.2025, passed by the Commissioner, Agra Division, Agra shall be kept in abeyance.

62. The Registrar (Compliance) is directed to forthwith transmit a copy of this order to the Chief Secretary along with Secretary, Higher Education; Chairman, University Grants Commission; Secretary, Higher Education, Government of India, for their future reference and record.

(2026) 7 ILRA 1728
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.07.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000016 of 1998

State of U.P. ...Petitioner
Versus
The Addl. Commissioner J Lucknow & Ors. ...Respondents

Issue for Consideration

Whether, in view of Section 38-B of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, any decision rendered prior to 10.10.1975 shall not bar fresh determination of surplus land under the Act; whether the Appellate Court committed an error of law in holding that the order dated 18.04.1975 in the earlier proceedings operates as *res judicata* as per the provisions of Section 38-B of the Act; and whether the earlier order dated 18.04.1975, having been passed before the commencement of Section 38-B, i.e. 10.10.1975, could operate as *res judicata* so as to bar fresh determination of surplus land.

Headnotes

U.P. Imposition of Ceiling on Land Holdings Act, 1960 – Earlier order dated 18.04.1975 – U.P. Amending Act No. 20 of 1976 – Fresh ceiling proceedings – Re-determination of surplus land – Notice issued u/s 10(2) post-1976 amendment – Objections raised by tenure holder claiming earlier order dated 18.04.1975 operated as *res judicata* – Rejected by Prescribed Authority, but allowed by Appellate Court – Justification:

Held: The amendments introduced by U.P. Amending Act No. 20 of 1976 brought significant changes, particularly in determination of ostensible ownership, treatment of transfers after 24.01.1971 and in the concept of co-tenure holders – The 1976 amendment has retrospective effect from 10.10.1975 and mandates re-determination of surplus land – Fresh proceedings are permissible and required post amendment and earlier findings do not attain finality so as to bar re-determination – Section 38-B of the Act clearly provides that any decision rendered prior to 10.10.1975 shall not bar fresh adjudication under the Act as amended.

Prescribed Authority recorded detailed findings on nature of land (irrigated/unirrigated/grove), validity of transfers, possession and ownership, and status of family members – Those findings were based on evidence and proper appreciation of material on record – Appellate Authority, however, set aside the order without adequately discussing or dislodging those findings – Appellate Authority recorded a bald conclusion that no change in holding was established, without considering the evidence on record and the statutory provisions – Appellate order non-speaking and reflects non-application of mind – Appellate Court erred in law in ignoring the provisions of Section 29 as well as Section 38-B of the amended provisions of the Act – Appellate Authority also misapplied the doctrine of *res judicata*, ignored the effect of statutory amendments and failed to consider material evidence and findings of the Prescribed Authority – Impugned judgment and order dated 29.03.1997 quashed. (E-5)

Case Law Cited

Himanshu Dhar Singh v. State of U.P., Writ-C No. 3000084 of 1993

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960;
U.P. Act No. 20 of 1976;
Constitution of India.

List of Keywords

Ceiling proceedings; Surplus land; Fresh determination; Re-determination of surplus land; *Res judicata*; Section 38-B; U.P. Act No. 20 of 1976; Notice under Section 10(2); Retrospective amendment; Ostensible ownership; Co-tenure holder; Transfers after 24.01.1971; Grove land; Actual cultivatory possession; *Sir-Khudkhast*;

Case Arising From

From the judgment and order dated 29.03.1997 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow in Appeal No. 23/1995-96 under Section 13 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

Appearances for Parties

Advs. for the Petitioners : Umeshhwar Prasad, C.S.C
Advs. for the Respondent : Siddiqui, Rakesh Kumar Srivastava

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Rajeev Srivastava, learned Additional Chief Standing Counsel for the petitioner and Shri Rakesh Kumar Srivastava, learned counsel for the respondents.

2. The present writ petition is directed against the impugned judgment and order dated 29.3.1997 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow in Appeal No.23/1995-96 under Section 13 of the U.P. Imposition of Ceiling Land Holding Act, 1960 by which the Appellate Court has set aside the order dated 30.3.1996 passed by the Prescribed Authority which relates to the land recorded and possessed by the respondent no.3.

3. Factual Matrix of the case is that on enforcement of U.P. Act of 20 of 1976, a notice under Section 10(2) of the U.P. Imposition of Ceiling On Land Holding Act, 1960 was issued to the original tenure holder Sri Shiv Shankar son of Ambika Bux with regard to his entire holding which included the disputed plots of land having area of 44-9-4 in terms of agricultural land to be declared as surplus land.

In reply to the notice dated 2.2.1995, the respondent no.3 Shiv Shankar filed his objections on 09.11.1995. After considering the objections and on the basis of the pleadings the Prescribed Authority framed as many as 10 issues and after giving full opportunity of hearing as well as considering the sale deeds executed by the original tenure holder and further the Will dated 20.6.1980 executed by Smt. Kamla Devi in favour of Sanjay, the Prescribed Authority rejected the objections filed by respondent no.3 vide order dated 30.3.1996.

Being aggrieved by the order of the Prescribed Authority, respondent no.3 preferred an appeal before the Additional Commissioner (Judicial), Lucknow Division, Lucknow who vide order dated 29.3.1997 allowed the appeal mainly on the ground of principles of *res judicata*. Hence this writ petition.

4. Learned counsel for the petitioner submitted that the Appellate Court has committed a manifest error of law in holding that the order dated 18.04.1975 in earlier proceedings operates as *"res judicata"* as per the provisions of Section 38-B. He next submitted that the Appellate Authority has ignored the embodied principle therein, which itself provided that no finding or decision given before the commencement the section i.e. 10.10. 1975 in any proceeding or any issue (including any order, decree or judgment) by any court, Tribunal or Authority in respect of any matter governed by the Act, shall bar the trial of such proceeding or issue under this Act, in accordance with the provisions of the Act as amended from time to time, and admittedly the earlier order dated 18.4.1975 was passed before the commencement of section 38B, the same could not operate as *res-judicata.*

5. Learned counsel for the petitioner next submitted that the learned Appellate Court committed a manifest error of law in misinterpretating and holding that no change in the eye of law by amending Act 20 of 1976 was made affecting the tenure holder opposite party no. 3, inasmuch as by the said Act the provisions of section 5(1) explanation II and section 5(6) explanation I(a), were amended whereby the criteria for determining ostensible ownership and declaration of a person an a co-tenure holder respectively were changed, which affected the tenure holder, opposite party no. 3 also, as such it was incumbent upon the Prescribed Authority to initiate fresh proceedings in accordance with the provisions of section 38 B of the act, and the earlier order dated 18.04.1975 did not operate as *"res judicata"*.

6. Learned counsel for the petitioner next submitted that the Appellate Court committed a manifest error of law and jurisdiction in holding that there was no change in the holding of the opposite party no. 3 due to amending Act 20 of 1976, ignoring the fact and the law that the criteria for determining the ostensible ownership as well as a declaration of a person as a co-tenure holder was changed and applying the said criteria it was evident that on enforcement of U.P.Z. A. & L.R. Act the Opposite party no. 3 alone came to be recorded as heir and thus on or before 24.1.71 the said opposite party no. 3 held the land in question and remained in its cultivatory possession and the name of Smt. Kamala Devi, his mother was recorded subsequently by the order dated 16.8.1972 and the partition suit was filed on 18.1.1971 and was hit by amendment of section 5(1) Explanation I and II, and the opposite party no. 3 continued to be in its cultivatory possession, as in the consolidation proceedings also his name was recorded on the basis of possession over the said land and there was no evidence if the land in question was Sir-Khudkast of the deceased Ambika Baksh and also that there was no evidence to show possession of Smt. Kamala Devi, and as such the opposite party no. 2 was liable to be held an ostensible owner of the land in question, thereby his holding had increased beyond the ceiling area applicable to him.

7. Learned counsel for the petitioner next submitted that the Appellate Court has committed a manifest error of law in holding that the earlier order dated 18.4.75 operate as *'res judicata'* as so far it relates to determination of land of opposite party no. 3 as grove, ignoring the provisions of section 29 itself according to which the ceiling area is liable to be re-determined in case any grove land loses its character as grove, and since all the plots except plot nos. 531 and 609 of village Pandarva and plot nos. 31 & 238 of village Chithia Buzurg which were earlier held to be grove land have lost its character as grove land as per the findings of opposite party no. 2 the present proceedings are lawful and the earlier order dated 18.4.1975 does not operate as *'res judicata'*.

8. Learned counsel for the petitioner next submitted that the Appellate Court committed a gross error of law in relying upon the noting of the Revenue officers on the file to the effect that there was no change in the holding as such there was no need to initiate any proceedings without applying its own mind.

9. Learned counsel for the petitioner next submitted that the impugned order dated 29.3.97 passed by the opposite party no.1 suffers from non-application of mind and is a non-speaking order, inasmuch as bald finding has been recorded that there is no fact available on record on the basis of which it could be held that there was any change in the land held by the tenure holder, opposite party no. 3.

10. Learned counsel for the petitioner next submitted that the transfer of land through various sale deeds mentioned in the order dated 30.3.96, passed by the Prescribed Authority, were hit by the amended provisions of section 5 sub section (1) Explanation I and sub section (6) explanation 1(a) and as such the same were liable to be re-determined and the Appellate Court committed a manifest error of law in ignoring the same while passing the impugned order dated 29.3.97 in which no mention thereof has been made. Therefore, the order dated 29.03.1997 is illegal and void ad as such is liable to be quashed.

11. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment in the case of **Himanshu Dhar Singh vs State of UP (WRIT C NO. - 3000084 OF 1993)**.

12. Per contra, learned counsel for the respondents submitted that the impugned order does not suffer from any illegality and is just and valid in eyes of law. Hence the present writ petition is devoid of merit and is liable to be dismissed.

13. Learned counsel for the respondents next submitted that the surplus land proceedings against the tenure holder were conclusively decided when the Appellate Court (IIIrd Additional District Judge, Hardoi), vide order dated 18.04.1975, allowed the appeal, set aside the order dated 30.12.1974, and discharged the ceiling notice. The said order attained finality and operates as res judicata between the parties.

14. Learned counsel for the respondents next submitted that the issuance of the second notice dated 02.02.1995 under Section 10(2) of the Act, after more than 20 years, is wholly arbitrary, illegal, and without jurisdiction. The Prescribed Authority lacked the power to reopen concluded proceedings after such an inordinate delay.

15. Learned counsel for the respondents next submitted that as per the Transitory Provisions, re-determination of surplus land is to be done where earlier determination was made before 10.10.1975 and could only be undertaken within two years from the said date. The statutory window thus expired around 1977. In the present case, no action was taken within the prescribed period. Therefore, the proceedings initiated in 1995 are clearly time-barred and without authority of law.

16. Learned counsel for the respondents next submitted that there was no change in the holding of the tenure holder which could justify re-determination under the amended provisions of Section 29. In absence of any such change, reopening of proceedings is impermissible.

17. Learned counsel for the respondents next submitted that the second notice dated 02.02.1995 does not disclose any special or cogent reasons for reopening the case. Such non-application of mind vitiates the

entire proceedings. Moreover, it is a settled principle that concluded proceedings cannot be reopened after decades, as it defeats the very purpose of law.

18. Learned counsel for the respondents next submitted that In view of the aforesaid submissions, Counsel for the Respondent respectfully prayed that this Hon'ble Court may be pleased to dismiss the writ petition with costs, and uphold the order dated 29.03.1997 passed by the Appellate Authority.

19. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record.

20. To resolve the controversy involved in the present writ petition, operative portion of the judgment rendered in the case of **Himanshu Dhar Singh (supra)** is extracted here-in-below:

"64. In the aforesaid backdrop of the submissions, the undisputed facts and the decisions relied upon by the respective parties, this Court finds that in the instant petition actually there is no challenge to the validity or vires of Sections or provisions of the Act of 1960. Hence, the submission of the learned Senior Counsel that the provisions of the Act should be construed harmoniously and be given prospective application is misconceived.

65. It will not be out of place to mention that the provisions of the Act of 1960 amended by the Amending Act of 1976 has been made applicable retrospectively i.e. w.e.f. 10th October, 1975 and the said provisions have been insulated from judicial review by placing them under Chapter IX of the Constitution of India. For this additional reason as well, there cannot be any challenge to the provisions of the Act as suggested by the learned Senior Counsel. Needless to say that this aspect of the matter was considered by this Court way back in Rajendra Prasad Singh (supra) and this Court does not find that the matter requires any fresh re-determination.

66. Moreover, if the provisions are to be given a harmonious and prospective construction, as suggested by the learned Senior Counsel for the petitioner, then the only conclusion that will be evident, would lead to an anomaly. The basic purpose of the Act of 1960 was transitional in nature and was a step forward taken after the abolition of the Zamindari in the State of U.P. Huge land holdings which were concentrated in the hands of few privileged sections, were to be distributed amongst the actual tilling class, landless labourers and to achieve an optimum and widespread use of the State resources to subserve the common good and this would not be achieved.

67. Another anomaly which will set in and that would be that the ceiling limit contained in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 will get violated. The two Acts of 1950 and Act of 1960 are complimentary and are not supposed to derogate each other. If the ceiling of 40 acres as initially available in the unamended Act of 1960 is retained then it will cause more harm than good and it would result in violating the language and provisions of the Act of 1960, as amended by several amendments which are not under challenge here.

68. Learned Senior Counsel laid heavy emphasis on the transitory Section 19 of the Amending Act no. 18 of 1973 and Section 31 of the Amending Act of 1976. In case if the said Sections are closely examined, it would be clear that the said transitory provision is confined to proceedings which were referable to Section 14 and Chapter III and IV of the Principal Act. Section 14 apparently is a procedural aspect relating to process as to how the possession of the surplus land as declared is to be taken and how it is to be dealt with. This is the stage, after the surplus land has already been declared and the orders have attained finality. Similarly, Chapter III is titled 'determination and payment of amount' and comprises of Sections 17 to 23

and Chapter IV is titled 'disposal and settlement of surplus land' and comprises of Section 24 (which was deleted by the Amending Act No.18 of 1973) till Section 31. These are provisions which relate to payment of compensation and as noticed above relating to disposal of land declared surplus and it has got nothing to do with the determination of rights and declaration of surplus land.

69. The Amending Act of 1976 (U.P. Act no. 20 of 1976) came into force from 10.10.1975 and it required the Authorities to re-determine the surplus land within two years w.e.f. 10.10.1975. It was in furtherance thereof that fresh notice was issued to the petitioner on 15.05.1976 after the Amending Act had come into force. This situation is further clarified by Section 38-B introduced by the Amending Act No. 20 of 1976. Hence, this Court is inclined to accept the reasoning of Sri Pandey, learned Standing Counsel on the aforesaid aspects.

70. Taking a complete holistic view of the Act of 1960 along with Amendments introduced in the year 1973 and 1976, it would reveal that a composite scheme has been brought into play by the Legislature. The submissions made by the learned Senior Counsel for the petitioner appears to be based on disjointed and selective reading of the provisions and is based on tearing observations out of context, from a decision or from the provisions of the Act of 1960. The interpretation suggested does not impress this Court, and it cannot be accepted as it would violate the provisions of the Act of 1960 and it would run contrary to the legislative scheme.

71. Thus, this Court finds that the orders passed by the two Ceiling Authorities cannot be said to be bad for want of jurisdiction or having been passed in contradiction or against the dictum of the Apex Court in Devendra Nath (Supra) and Arvind Kumar (Supra). Thus, the first question is answered accordingly.

79. As the admitted facts would indicate that Appeal No.3/1982 was allowed by the Appellate Authority on 16.09.1983 and again the only issue was regarding the choice and certain plots to be treated as unirrigated and admittedly this judgment dated 16.09.1983 was never challenged. In the fourth round, the Prescribed Authority excluded Plots bearing No.353, 432, 433, 498 and 503 as unirrigated. At this stage, the only issue remained was regarding choice. The decision rendered by the Prescribed Authority dated 27.06.1986 cannot be examined for any other purpose except as to relating to the issue of choice whether it has been properly considered by the Prescribed Authority.

80. As noticed above, 7.3 hectares was permitted to be retained by the petitioner and rest was declared surplus and this finding apparently could not be demonstrated to be erroneous, hence, it does not suffer from any manifest error which may persuade this Court to enter into the factual dispute under Articles 226/227 of the Constitution of India.

84. In this backdrop, the petitioner is attempting to raise issues indirectly by trying to hit at the proceedings which had already attained finality by raising issues of transitory provisions which have no role to play and as already considered, this Court finds that submissions advanced by the learned Senior Counsel have no force and substance, they have been raised only to perpetuate the litigation before this Court and it does not find favour with this Court. Thus, the second question is answered accordingly."

21. Perusal of the above-extracted judgment reveals that fresh proceedings are permissible and required post amendment and earlier findings do not attain finality so as to bar of re-determination.

22. Perusal of the record reveals that Shri Shiv Shankar was found in actual cultivatory possession over the disputed plots of land and as in the consolidation proceeding also his name was recorded on the basis of his possession over the said land and there was no evidence, if the land in question was Sir-Khudkhast of Ambika Bux, and also that there was no evidence to show possession of Smt. Kamla Devi and in these

circumstances if any settlement have taken place after 24.01.1971, the same is liable to be ignored and Appellate Court has erred in law while passing the impugned judgment and order dated 29.03.1997 and further ignoring the provisions of Section 29 as well as Section 38-B of the amended provisions of the Act.

23. The Prescribed Authority recorded detailed findings on nature of land (irrigated/unirrigated/grove); validity of transfers; possession and ownership; and status of family members. These findings were based on evidence and proper appreciation of material on record. The Appellate Authority, however, set aside the order without adequately discussing or dislodging these findings, which amounts to improper exercise of appellate jurisdiction.

24. Perusal of the impugned order also reveals that the Appellate Authority has recorded a bald conclusion that no change in holding was established, without considering the evidence on record and the statutory provisions. Such an order is clearly non-speaking and reflects non-application of mind, rendering it legally unsustainable.

25. As far as the effect of Amendments (Act No. 20 of 1976) is concerned, it is noted that the amendments introduced in 1976 brought significant changes, particularly in determination of ostensible ownership; treatment of transfers after 24.01.1971 and in the concept of co-tenure holders. The law is well settled that the 1976 amendment has retrospective effect from 10.10.1975 and mandates re-determination of surplus land.

26. The scheme of the Act is to ensure equitable distribution of land, thus the Appellate Authority erred in holding that there was no change warranting fresh proceedings. Therefore, the finding recorded by the Appellate Authority that earlier proceedings operate as res judicata is contrary to the statutory mandate and is legally unsustainable.

27. The Appellate Authority has also misapplied the doctrine of res judicata. It has also ignored the effect of statutory amendments and has failed to consider material evidence and findings of the Prescribed Authority. In this view of the matter, the impugned order is arbitrary and legally flawed.

28. In the case of **Himanshu Dhar Singh (supra)** relied upon by learned counsel for the petitioner, it has been clearly held that fresh proceedings are permissible and required post amendment and earlier findings do not attain finality so as to bar re-determination. In the above circumstances, the judgment relied upon by learned counsel for the petitioner is fully applicable to the facts and circumstances of the case.

29. Considering in totalities of facts and circumstances of the case, this Court finds that Section 38-B of the Act clearly provides that any decision rendered prior to 10.10.1975 shall not bar fresh adjudication under the Act as amended. The earlier Appellate Authority's order dated 18.04.1975 admittedly falls prior to the enforcement of Section 38-B, therefore order impugned is liable to be set aside.

30. Accordingly, this writ petition succeeds and is **allowed**. The impugned judgment and order dated 29.03.1997 passed by the Additional Commissioner (Judicial), Lucknow is hereby quashed.

(2026) 7 ILRA 1735
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 3192 of 2026

Smt. Bashiran & Anr. ...Petitioners
Versus
Smt. Harpal Kaur ...Respondent

Issue for Consideration

A. Maintainability of an appeal under Section 22 of U.P. Act No. XIII of 1972 against an order rejecting an application for recall of an ex parte release order passed in proceedings under Section 21(1)(a) of the Act.
B. Recall of the ex parte release order dated 22.12.2023 on the grounds of absence of due service or sufficient cause

Head Notes

The Constitution of India, 1950-Article 227; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972- Section 21(1) (a), 22 & 34(1)(g); The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972- Rule 22(b) & 25- The conduct of the petitioners, assumes relevance while examining the plea of sufficient cause. The release proceedings had remained pending since the year 2016 in relation to a commercial tenancy. The original tenant had actively contested the proceedings throughout his lifetime. After his demise, the petitioners admittedly inherited the tenancy rights and continued in possession of the disputed commercial accommodation. In these circumstances, a reasonable degree of diligence and vigilance was expected from them in monitoring litigation directly concerning the tenancy rights inherited by them- Order dated 22.12.2023 further demonstrates that the Prescribed Authority adjudicated the release application upon consideration of the pleadings and evidence available on record. It recorded findings that the respondent-landlord had established her bona fide requirement for establishment of a clinic for her son; that the tenants had alternative accommodation available at property No.4/236, Gwalior Road, Baluganj, Agra, from where motorcycle repairing and welding work was being carried on; and that no endeavour had been made by the tenants to secure alternative accommodation despite pendency of the proceedings for several years. The release order, therefore, cannot be characterised as a mechanical ex parte order passed without consideration of the merits.

Petitioners failed to establish that they were prevented by circumstances beyond their control from participating in the proceedings. Their explanation is founded principally upon a generalized plea of non-service and lack of knowledge, unsupported by any reliable material capable of displacing the judicial record

Held- (i) An appeal under Section 22 of U.P. Act No. XIII of 1972 is not maintainable against an order rejecting an application for recall of an ex parte release order, such order being referable to the procedural powers contained in Section 34 of the Act read with the Rules framed thereunder and not being an order under Section 21 or Section 24 of the Act.
(ii) the petitioners have failed to establish either that summons were not duly served upon them or that they were prevented by sufficient cause from appearing before the Prescribed Authority when the proceedings

were taken up for hearing. The explanation furnished by them does not satisfy the settled judicial test of diligence, bona fides and genuine inability (iii) the impugned orders suffer from no jurisdictional error, patent illegality or perversity warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

Petition dismissed. (E-15)

(Para 53, 54 55 & 63)

Case Law Cited

Parimal v. Veena (2011) 3 SCC 545; G.P. Srivastava v. R.K. Raizada, (2000) 3 SCC 54; Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993

List of Acts

The Constitution of India, 1950; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972

List of Keywords

Appeal under Section 22 of U.P. Act No. XIII of 1972 is not maintainable against an order rejecting an application for recall of an ex parte release order.

Case Arising From

Judgment and order dated 03.02.2026 passed by the Appellate Authority/District Judge, Agra in Rent Control Appeal No.32 of 2025, whereby the appeal preferred by the petitioners has been dismissed as not maintainable. The petitioners have also challenged the order dated 07.02.2025 passed by the Prescribed Authority/Judge, Small Causes Court, Agra in Misc. Case No. 3 of 2024, rejecting their application seeking recall of the ex parte release order, as well as the ex parte judgment and order dated 22.12.2023 passed in P.A. Case No. 16 of 2016, whereby the release application instituted by the respondent- landlord under Section 21(1)(a) of U.P. Act No. XIII of 1972 came to be allowed.

Appearances for Parties

Counsel for Petitioner(s) : Madhav Jain

Counsel for Respondent(s) : Rajesh Kumar Sharma, Shobh Nath

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Shri Madhav Jain, learned counsel for the petitioners and Shri Shobh Nath, learned counsel for the respondent.

2. The present petition under Article 227 of the Constitution of India has been filed assailing the judgment and order dated 03.02.2026 passed by the Appellate Authority/District Judge, Agra in Rent Control Appeal No.32 of 2025, whereby the appeal preferred by the petitioners has been dismissed as not maintainable. The petitioners have also challenged the order dated 07.02.2025 passed by the Prescribed Authority/Judge, Small Causes Court, Agra in Misc. Case No. 3 of 2024, rejecting their application seeking recall of the ex parte release order, as well as the ex parte judgment and order dated 22.12.2023 passed in P.A. Case No. 16 of 2016, whereby the release application instituted by the respondent-landlord under Section 21(1)(a) of U.P. Act No. XIII of 1972 (hereinafter referred to as "the Act") came to be allowed.

Factual Background

3. The dispute relates to Shop No.4, forming part of property bearing No.4/51, situated at Kachahri Road, Baluganj, Agra, which was admittedly in the tenancy of late Mohammad Shamim at a monthly rent of Rs.500/-. The respondent-landlord instituted proceedings under Section 21(1)(a) of the Act seeking release of the disputed premises on the ground of bona fide requirement, which came to be registered as P.A. Case No.16 of 2016.

4. The release proceedings were initially contested by the original tenant by filing a written statement denying the bona fide need and comparative hardship pleaded by the landlord. In support of the release application, the respondent-landlord filed documentary evidence, including a copy of the notice dated 31.07.2015 issued through counsel to the tenant, a copy of the reply notice dated 28.08.2015 sent on behalf of the tenant, the service discharge certificate and educational certificates of her son, a communication issued by the Chief Medical Officer, Agra regarding payment of honorarium to him, and certain photographs relating to the premises in question.

5. The case of the respondent-landlord before the Prescribed Authority was that the disputed shop was bona fide required for establishment of a clinic for her son, who possessed the requisite medical qualifications, and that the disputed premises, being situated on the main road, was eminently suitable for the said purpose. It was further pleaded that the tenant was carrying on motorcycle repairing and welding work from another property bearing No. 4/236, Gwalior Road, Baluganj, Agra, situated at a short distance from the disputed premises and, therefore, greater comparative hardship would be caused to the landlord in the event the release application was rejected.

6. During the pendency of the proceedings, the original tenant died on 15.12.2020. Thereafter, his legal representatives were brought on record pursuant to orders passed by the Prescribed Authority, and notices were directed to be served upon them through registered post. The record further indicates that thereafter an application bearing Paper No. 23-Ga came to be filed through counsel on behalf of the substituted legal representatives seeking permission to contest and pursue the proceedings after substitution.

7. The aforesaid application came to be rejected by the Prescribed Authority by an order dated 20.07.2023. While doing so, the Prescribed Authority also recorded that despite having full knowledge of the pendency of the proceedings, the substituted legal representatives had failed to adduce any evidence in support of their defence. Consequently, by order dated 25.09.2023, their opportunity to lead evidence was closed. Thereafter, the matter remained pending for final arguments from 09.10.2023, and detailed submissions were heard on 14.12.2023.

8. Ultimately, by judgment and order dated 22.12.2023, the Prescribed Authority allowed the release application holding that the relationship of landlord and tenant stood established between the parties, that the need set up by the respondent-landlord for establishment of a clinic for her son was bona fide and genuine, and that the balance of comparative hardship also tilted in favour of the landlord, particularly in view of the finding that the tenants had another alternative accommodation available at property No. 4/236, Gwalior Road, Baluganj, Agra and had failed to make any effort to search for alternative accommodation during the pendency of the proceedings.

9. The present petitioners, claiming themselves to be the legal representatives of the deceased tenant, thereafter instituted proceedings seeking recall of the aforesaid ex parte judgment and order dated 22.12.2023, which came to be registered as Misc. Case No.3 of 2024. The recall application, however, came to be rejected by the Prescribed Authority by order dated 07.02.2025. Aggrieved thereby, the petitioners preferred Rent Control Appeal No.32 of 2025 before the Appellate Authority. The Appellate Authority, by the impugned judgment and order dated 03.02.2026, dismissed the appeal as not maintainable.

10. It is in the aforesaid factual backdrop that the present petition has been instituted.

Submissions on behalf of the petitioners

11. Learned counsel appearing for the petitioners submits that the application seeking recall of the ex parte release order was maintainable in exercise of the powers conferred upon the Prescribed Authority under Section 34(1)(g) of U.P. Act No. XIII of 1972 read with Rule 22(b) of the Rules framed thereunder. It is contended that the recall application arose directly out of proceedings instituted under Section 21(1)(a) of the Act and, therefore, formed an integral and inseparable part of the original release proceedings.

12. Elaborating the aforesaid submission, it is urged that although the source of power to entertain the recall application may be traceable to Section 34(1)(g) read with Rule 22(b), the exercise of such power is nonetheless in continuation of the proceedings under Section 21 of the Act. According to learned counsel, the recall proceedings are neither independent nor collateral in nature but constitute a continuation of the original adjudication concerning the landlord's release application.

13. It is further submitted that rejection of the recall application has the effect of affirming and perpetuating the ex parte release order dated 22.12.2023, thereby directly affecting the substantive rights of the petitioners in respect of the tenanted premises. It is, therefore, argued that such an order cannot be viewed as merely procedural in character but must be regarded as partaking the character of an order passed under Section 21 of the Act.

14. On the aforesaid premise, learned counsel contends that Section 22 of the Act deserves to receive a purposive and liberal construction so as to include within its ambit an order rejecting a recall application arising out of proceedings under Section 21. Any restrictive interpretation, it is submitted, would leave an aggrieved tenant remediless against an order having serious civil consequences. It is, accordingly, urged that the Appellate Authority committed manifest error in dismissing the appeal as not maintainable.

Submissions on behalf of the respondent

15. Per contra, learned counsel appearing for the respondent-landlord submits that the entire edifice of the petitioners' argument proceeds on a misconception of the statutory scheme. It is contended that the petitioners seek to conflate a substantive adjudication under Section 21 of the Act with a procedural order passed in exercise of the ancillary powers conferred by Section 34.

16. It is submitted that the order dated 07.02.2025 rejecting the recall application is not an order passed under Section 21 of the Act but one rendered in exercise of the procedural jurisdiction traceable to Section 34 read with the Rules. Such an order, therefore, falls outside the scope of Section 22 of the Act, which expressly provides an appellate remedy only against orders passed under Sections 21 and 24.

17. It is further submitted that the right of appeal is a creature of statute and can neither be inferred nor expanded by implication. In the absence of any express statutory provision providing for an appeal against an order rejecting a recall application, no such appellate remedy can be recognised by judicial interpretation. According to the respondent, the legislative intent underlying Section 22 is to confine the appellate jurisdiction to final adjudications under Sections 21 and 24 and not to interlocutory or ancillary orders passed during the course of the proceedings.

18. Learned counsel lastly submits that after the death of the original tenant, the petitioners were duly substituted and had full knowledge of the pendency of the proceedings. Despite such knowledge, they failed to contest the matter, resulting in the ex parte release order dated 22.12.2023. The Prescribed Authority has, while rejecting the recall application, recorded categorical findings regarding due service and the petitioners' knowledge of the proceedings, which are findings of fact based upon the record. It is, therefore, submitted that the petitioners cannot be permitted to circumvent the statutory scheme by seeking an appellate remedy where none exists, nor do the impugned orders disclose any jurisdictional error warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution.

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

Questions for determination

20. On the submissions advanced and the material brought on record, the following questions arise for determination:

20.1 Maintainability of an appeal under Section 22 of U.P. Act No. XIII of 1972 against an order rejecting an application for recall of an ex parte release order passed in proceedings under Section 21(1)(a) of the Act.

20.2 Recall of the ex parte release order dated 22.12.2023 on the grounds of absence of due service or sufficient cause.

Statutory Scheme□□

21. The controversy in the present case essentially turns upon the true scope and interplay of Sections 21, 22 and 34 of U.P. Act No. XIII of 1972, read with the relevant Rules framed thereunder. It is, therefore, apposite to notice the material statutory provisions before adverting to the questions formulated above. The relevant provisions read as under:

"Section 21(1)(a) Proceedings for release of building under occupation of tenant (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists; namely:-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust."

"Section 22 Appeal: Any person aggrieved by an order under section 21 or section 24 may within thirty days from the date of the order prefer an appeal against it to the District Judge, and in other respects, the provisions of section 10 shall mutatis mutandis apply in relation to such appeal."

"Section 34(1): Powers of District Magistrate, Prescribed Authority and appellate and revising authorities

(1) The District Magistrate, the prescribed authority or any appellate or revising authority shall for the purposes of holding any inquiry or hearing any appeal under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely,-

…. ….. …..

….. ….. …..

….. ….. ….

(g) any other matter which may be prescribed."

Rule 22(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972

"22. Powers under the Code of Civil Procedure, 1908 [Section 34 (1) (g)- The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters, namely-

…. ….. …..

(b) the power to proceed ex parte and to set aside, for sufficient cause, an order passed ex parte;

…. … … “

22. It is also relevant to notice the statutory scheme governing continuation of proceedings after the death of a party. Section 34(4) of the Act, read with Rule 25 of the Rules framed thereunder, expressly contemplates continuation of pending proceedings against the legal heirs or legal representatives of a deceased landlord or tenant. The provisions are as follows:

“Section 34(4) Powers of various authorities and procedure to be followed by them-

(4) Where any party to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceeding, such proceeding may be continued after bringing on the record:

(a) in the case of the landlord or tenant, his heirs or legal representatives;

(b) in the case of an un-authorized occupant, any person claiming under him or found in occupation of the building.”

“Rule 25. Bringing legal representatives on record [Section 34 (4)].-(1) Every application for substituting the names of [the heirs or legal representatives, the claimants or occupants] of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such person.

(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and, be accompanied by any affidavit in its support, and thereupon, the application shall be decided after a summary inquiry by the authority concerned.”

23. A conjoint reading of the aforesaid provisions indicates that while Section 21 constitutes the substantive source of jurisdiction empowering the Prescribed Authority to adjudicate the landlord's claim for release of a building, Section 22 confers a limited statutory right of appeal only against orders passed under Sections 21 and 24 of the Act. Section 34, on the other hand, merely vests the authorities under the Act with procedural powers akin to those exercisable by a Civil Court for the effective conduct of proceedings. Rule 22(b), read with Section 34(1)(g), supplements such procedural jurisdiction. Equally, Section 34(4) read with Rule 25 manifests the legislative intent that proceedings continue against the legal representatives of a deceased party and do not abate upon death. It is in the backdrop of this statutory scheme that the questions formulated above fall for consideration.

Question No.1: Maintainability of Appeal under Section 22 of the Act

24. The right of appeal is neither an inherent nor a natural right; it is a creature of statute. It is well settled that such right must be conferred expressly or by necessary implication, and in the

absence thereof, no appeal can be maintained. Section 22 of the Act, in clear terms, restricts the right of appeal to orders passed under Section 21 or Section 24. The legislative intent, thus, is to confine the appellate remedy to final adjudications affecting substantive rights under the Act.

25. A careful reading of the statutory scheme indicates that Section 21 embodies the substantive provision governing the rights of the parties. It confers jurisdiction upon the Prescribed Authority to adjudicate the landlord's claim for release of a tenanted building on the grounds specified therein, including bona fide requirement. An order passed under Section 21 thus culminates in an adjudication of substantive civil rights, resulting either in eviction of the tenant or continuation of the tenancy.

26. A careful reading of the statutory scheme indicates that Section 21 embodies the substantive provision governing the rights and liabilities of the parties. It confers jurisdiction upon the Prescribed Authority to adjudicate the landlord's claim for release of a tenanted building on the grounds specified therein, including bona fide requirement. An order passed under Section 21 is, therefore, one determining substantive civil rights and culminates either in release of the building in favour of the landlord or in continuation of the tenancy. It is such adjudication which the Legislature has made appealable under Section 22 of the Act.

27. Section 34, on the other hand, operates in an altogether different sphere. It neither creates substantive rights nor authorises adjudication upon the merits of the landlord's claim. The provision merely confers procedural powers upon the authorities constituted under the Act to enable them to effectively discharge their adjudicatory functions. The powers enumerated therein, including those exercised under the residuary clause read with the Rules relating to recall of orders, are procedural in character and are analogous to the powers vested in a Civil Court under the Code of Civil Procedure for regulating the conduct of proceedings.

28. The distinction between substantive and procedural provisions assumes decisive significance in the present case. While a substantive provision such as Section 21 culminates in an adjudication determining the rights of the parties, a procedural provision such as Section 34 merely regulates the manner in which such adjudication is conducted or, in an appropriate case, revisited on limited procedural grounds. An order passed in exercise of procedural powers cannot, merely because it arises in proceedings under Section 21, be elevated to the status of an order passed under Section 21 itself. The source of the power exercised by the authority, and not merely the subject-matter of the proceedings, furnishes the true test for determining the character of the order.

29. In the present case, the release order dated 22.12.2023 was admittedly passed under Section 21(1)(a) of the Act and was, therefore, appealable under Section 22. The petitioners, however, did not avail the statutory remedy against the said order. Instead, they invoked the procedural jurisdiction of the Prescribed Authority by filing an application seeking recall of the ex parte release order under Section 34 read with the relevant Rules. The order dated 07.02.2025 rejecting the recall application does not adjudicate afresh upon the landlord's claim for release, nor does it determine the substantive rights of the parties under Section 21. It merely determines whether the ex parte order deserved to be recalled on recognised procedural grounds such as absence of due service or existence of sufficient cause for non-appearance.

30. The submission advanced on behalf of the petitioners that the recall proceedings constitute a continuation of the original proceedings under Section 21 and that the order passed thereon must consequently be treated as an order under Section 21, though attractive at first blush, cannot be accepted. The continuity of proceedings does not alter the juridical character of the power exercised. The determinative consideration is the source from which the authority derives its jurisdiction to pass the impugned order. Where the authority exercises procedural powers referable to Section 34 read with the Rules, the resultant order retains its procedural character notwithstanding that it arises out of proceedings originally instituted under Section 21.

31. The further submission that a restrictive construction of Section 22 would leave an aggrieved tenant remediless against an order having serious civil consequences also does not merit acceptance. Hardship or perceived inadequacy of a statutory remedy cannot furnish a legitimate basis for enlarging the scope of a right of appeal which the legislature has consciously circumscribed. The right of appeal being a creature of statute, its existence and extent must necessarily be gathered from the language employed by the legislature. In the present case, the ex parte release order dated 22.12.2023 was itself an order passed under Section 21(1)(a) of the Act and, therefore, was appealable under Section 22. The petitioners, however, did not avail of the said statutory remedy and instead chose to invoke the recall jurisdiction of the Prescribed Authority under Section 34 read with the Rules. Having elected to pursue such procedural remedy, they cannot contend that the absence of an appeal against the order rejecting the recall application leaves them remediless. The Court cannot, on considerations of equity or perceived hardship, create an additional appellate remedy where the statute has consciously not provided one.□□

32. Merely because the recall application arises from proceedings under Section 21 does not ipso facto render the order passed thereon an order under Section 21. Acceptance of such a construction would amount to enlarging the scope of Section 22 beyond its plain language and legislative intent. The Court cannot, under the guise of purposive interpretation, expand the statutory right of appeal to categories of orders which the Legislature has consciously excluded. The right of appeal being purely statutory, its existence, extent and conditions are governed exclusively by the language employed by the Legislature and cannot be enlarged by judicial interpretation.

33. If the contention of the petitioners were to be accepted, every interlocutory or ancillary order passed during the pendency of proceedings under Section 21□including orders relating to amendment of pleadings, production of documents, summoning of witnesses, adjournments, recall of witnesses or other procedural matters□could equally be contended to partake the character of an order under Section 21 merely because such orders arise in the course of those proceedings. Such an interpretation would obliterate the clear legislative distinction between substantive adjudication and procedural facilitation, render the statutory restriction embodied in Section 22 otiose, and defeat the legislative objective of ensuring expeditious adjudication of landlord-tenant disputes under the Act.

34. For all the reasons aforesaid, this Court is of the considered opinion that an appeal under Section 22 of U.P. Act No. XIII of 1972 would not lie against an order rejecting an application for recall of an ex parte release order, such order being one

referable to the procedural powers exercisable under Section 34 read with the Rules and not an order passed under Section 21 or Section 24 of the Act. The Appellate Authority, therefore, committed no error, either of jurisdiction or of law, in dismissing Rent Control Appeal No. 32 of 2025 as not maintainable.

Question No. 2: Recall of the Ex Parte Release Order

35. Having answered the first question, the Court now proceeds to examine whether the petitioners have made out any case for recall of the ex parte release order dated 22.12.2023.

36. The consideration of an application seeking recall of an ex parte order is governed by well-settled principles akin to those underlying Order IX Rule 13 of the Code of Civil Procedure. A party seeking recall must establish either that the summons were not duly served or that he was prevented by "sufficient cause" from appearing when the matter was called on for hearing. These two grounds constitute the recognised and exhaustive bases upon which an ex parte order may be recalled.

37. The principles governing recall of an ex parte order are no longer res integra. The jurisdiction to set aside such an order is founded upon the twin requirements that the applicant must establish either that summons were not duly served or that he was prevented by □sufficient cause□ from appearing when the matter was taken up for hearing. The expression □sufficient cause□, though incapable of precise definition, has consistently been construed by the Supreme Court as a cause beyond the control of the party concerned, to be determined on the facts and circumstances of each case. While the expression deserves a liberal construction to advance substantial justice, such interpretative generosity cannot be extended to condone negligence, indifference, want of bona fides or deliberate inaction. The discretionary jurisdiction to recall an ex parte order is intended to prevent miscarriage of justice and not to revive proceedings where the absence of the party is attributable to lack of due diligence or vigilance. The relevant enquiry is confined to the cause which prevented the party from appearing on the date fixed for hearing, though the antecedent conduct of the litigant may legitimately be considered insofar as it bears upon his bona fides and diligence. (See **Parimal v. Veena** (2011) 3 SCC 545**; G.P. Srivastava v. R.K. Raizada**, (2000) 3 SCC 54; **Arjun Singh v. Mohindra Kumar,** AIR 1964 SC 993.)

38. The explanation furnished in support of recall must be reasonable, plausible and supported by the material on record so as to satisfy the Court that the absence was neither deliberate nor attributable to negligence. The Court is entitled to scrutinize the entire factual matrix, including the conduct of the parties and the probabilities emerging from the record, while maintaining a balance between the imperative of affording a genuine opportunity of hearing and the equally salutary principle that judicial proceedings must attain finality. The power to recall an ex parte order is, therefore, discretionary in nature and must be exercised judiciously upon a careful appraisal of all relevant circumstances.

39. It bears emphasis that a plea of non-service or lack of knowledge must be substantiated by cogent material. The judicial record relating to service carries a presumption of correctness, and the burden rests upon the party concerned to establish, by cogent material, that the service was legally deficient or wholly illusory. □ □□

40. From the settled legal position discussed above, the following principles emerge for determining whether sufficient cause has been established for recall of an ex parte order:

(i) The applicant must establish that his absence was neither deliberate nor attributable to negligence and that, despite exercising reasonable care and vigilance, he was genuinely prevented from appearing before the Court on the relevant date.

(ii) Mere assertions regarding non-service, lack of knowledge or procedural irregularity, unsupported by cogent and reliable material, would ordinarily not constitute sufficient cause. Judicial orders recording due service carry a presumption of correctness which cannot be displaced by vague or unsubstantiated allegations.

(iii) The Court is entitled to examine the overall conduct of the applicant, including his diligence before and after the ex parte order, the promptness with which he approached the Court, and whether the explanation furnished inspires confidence on ordinary standards of human conduct and probabilities.

(iv) The relevant enquiry is confined to the cause which prevented the applicant from appearing on the date when the matter was taken up for hearing. Earlier defaults or subsequent conduct are relevant only insofar as they bear upon the bona fides and credibility of the explanation offered.

(v) While the expression "sufficient cause" deserves a liberal construction to advance substantial justice, such latitude cannot be extended to condone negligence, indifference, want of bona fides or deliberate inaction.

(vi) The jurisdiction to recall an ex parte order is discretionary and must be exercised judiciously upon a consideration of the entire factual matrix. The Court must balance the need to afford a fair opportunity of hearing with the equally important principle that judicial proceedings should attain finality.

(vii) The principle that procedural law is the handmaid of justice does not imply that concluded proceedings may be reopened merely because an adverse order has been passed. The jurisdiction to recall an ex parte order exists to remedy genuine inability to appear and not to revive proceedings where the absence is attributable to negligence, prolonged inaction or lack of due diligence.

41. The true enquiry, therefore, is whether the party seeking recall acted with bona fide diligence and whether the circumstances disclose a genuine inability to participate in

the proceedings despite exercising reasonable vigilance. The answer to that enquiry necessarily depends upon the facts and circumstances of each case and must be arrived at upon an overall appraisal of the record, the conduct of the parties and the attendant probabilities. Where the material on record reflects prior contest by the original party, continuation of proceedings after substitution, judicial orders recording due service, participation through counsel, prolonged inaction despite pendency of the proceedings, absence of reasonable enquiry regarding the litigation, and failure to rebut the judicial record relating to service and conduct of the proceedings, the Court would ordinarily be justified in concluding that no sufficient cause has been established for recalling *the ex parte* order.□□

Application of the Above Principles to the Facts of the Present Case

42. The case set up by the petitioners may now be examined in the light of the aforesaid principles.

43. The release proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972 were instituted in the year 2016 against the original tenant. The record unmistakably reflects that the original tenant entered appearance, filed a written statement and contested the proceedings on merits by disputing the respondent-landlord's plea of bona fide requirement and comparative hardship. The release application was founded upon the respondent-landlord's case that the disputed shop was bona fide required for establishment of a clinic for her son, who possessed the requisite medical qualifications.

44. During the pendency of the proceedings, the original tenant died on 15.12.2020. Thereafter, the present petitioners, being his legal representatives, were brought on record by order dated 26.07.2022. In view of Section 34(4) of the Act read with Rule 25 of the Rules framed thereunder, the proceedings did not abate upon the death of the original tenant but continued against the substituted legal representatives as a continuation of the original proceedings.

45. Following the substitution, notices were directed to be issued to the substituted legal representatives through registered post. It was at this stage that the counsel who had earlier represented the deceased tenant filed Application Paper No. 27-Ga and appeared before the Prescribed Authority on 20.07.2023 asserting that the substituted legal representatives had not been served through registered post. The Prescribed Authority thereupon required the learned counsel to disclose on whose behalf he was appearing and whether he had received any authority from the substituted legal representatives. The learned counsel stated that he had not been authorised by any of them.

46. Upon verification of the judicial record, the Prescribed Authority found that notices had already been issued to the substituted legal representatives through registered post and that the service report disclosed sufficient service. Accordingly, the objection regarding non-service was rejected. Nevertheless, with a view to ensuring complete

fairness, the Prescribed Authority granted yet another opportunity to the substituted legal representatives to file their written statement and fixed 29.07.2023 for the said purpose.

47. The record further discloses that despite the aforesaid opportunity, the substituted legal representatives neither filed any written statement nor adduced any evidence. Consequently, by order dated 25.09.2023, their opportunity to lead evidence was closed. The matter thereafter remained pending for final arguments from 09.10.2023. Arguments were heard on 14.12.2023 and the release application ultimately came to be decided by judgment and order dated 22.12.2023.

48. Aggrieved thereby, the petitioners instituted Misc. Case No. 3 of 2024 seeking recall of the release order dated 22.12.2023. The principal foundation of the recall application was that after substitution no notice had ever been served upon them and that they remained wholly unaware of the pendency of the proceedings until 17.01.2024, when, according to them, they came to know through a person known to them that an eviction order had been passed. It was their case that inspection of the record was thereafter obtained on 19.01.2024, whereupon they first acquired knowledge of the judgment dated 22.12.2023. They further alleged that notices had neither been served through ordinary process nor by registered post; that the postal receipts relied upon by the respondent-landlord were suspicious; that effective steps for service had not been taken after substitution; that despite orders directing fresh steps, the proceedings continued ex parte without ensuring proper service. On these premises, it was pleaded that the release order stood vitiated for violation of the principles of natural justice.

49. The recall application was opposed by the respondent-landlord by filing detailed objections. It was contended that the judgment and release order dated 22.12.2023 was not an ex parte order in the strict sense but a judgment rendered on merits after due compliance with the prescribed procedure; that the plea regarding incorrect description of the legal representatives was wholly misconceived; that the substituted legal representatives had been duly served; that no fresh notice was required after valid substitution and service; and that the applicants had full knowledge of the pendency of the proceedings but deliberately chose not to participate therein with a view to delaying execution of the release order. It was accordingly prayed that the recall application be dismissed.

50. The Prescribed Authority examined he aforesaid objections in the light of the judicial record and found no merit in the recall application. It noticed that notices had been issued to the substituted legal representatives through registered post and that service had already been held to be sufficient by judicial order dated 20.07.2023. It further noticed that, notwithstanding the order dated 20.7.2023 holding service to be sufficient, the Prescribed Authority, by way of abundant caution, granted a further opportunity to the substituted legal representatives to file their written statement. Thus, the grievance that the proceedings were concluded without affording an adequate opportunity is not borne out from the judicial record. The Prescribed Authority also took note of the fact that despite such opportunity, no written statement was filed, no evidence was adduced and, ultimately,

the opportunity to lead evidence was closed on 25.09.2023 before the matter proceeded for final hearing.

51. Equally significant is the circumstance that the judicial record does not support the plea that the proceedings remained wholly beyond the knowledge of the tenant's side after substitution. As noticed hereinabove, the issue regarding service upon the substituted legal representatives came to be raised before the Prescribed Authority itself, whereafter the Court verified the record, recorded a finding regarding sufficient service and, by way of abundant caution, granted a further opportunity to the substituted legal representatives to participate in the proceedings. Despite such opportunity, no written statement was filed, no evidence was led and the proceedings thereafter culminated in the judgment dated 22.12.2023. These contemporaneous judicial proceedings lend little support to the petitioners' subsequent plea that they remained completely unaware of the litigation until after the release order had been passed.

52. The plea of complete ignorance of the proceedings also rests entirely upon the self-serving averments contained in the affidavit filed in support of the recall application. No independent material has been produced to establish that the notices were never tendered, that the service reports were fabricated, or that the judicial orders recording sufficient service were erroneous. Mere allegations that the postal receipts appeared suspicious or that service was not properly effected, unsupported by any cogent evidence, cannot rebut the presumption of correctness which attaches to judicial proceedings.

53. The conduct of the petitioners, viewed in its entirety, also assumes relevance while examining the plea of sufficient cause. The release proceedings had remained pending since the year 2016 in relation to a commercial tenancy. The original tenant had actively contested the proceedings throughout his lifetime. After his demise, the petitioners admittedly inherited the tenancy rights and continued in possession of the disputed commercial accommodation. In these circumstances, a reasonable degree of diligence and vigilance was expected from them in monitoring litigation directly concerning the tenancy rights inherited by them.

54. The release order dated 22.12.2023 further demonstrates that the Prescribed Authority adjudicated the release application upon consideration of the pleadings and evidence available on record. It recorded findings that the respondent-landlord had established her bona fide requirement for establishment of a clinic for her son; that the tenants had alternative accommodation available at property No.4/236, Gwalior Road, Baluganj, Agra, from where motorcycle repairing and welding work was being carried on; and that no endeavour had been made by the tenants to secure alternative accommodation despite pendency of the proceedings for several years. The release order, therefore, cannot be characterised as a mechanical ex parte order passed without consideration of the merits.

55. The maxim *vigilantibus non dormientibus jura subveniunt*-the law assists those who are vigilant and not those who sleep over their rights squarely applies to the facts of the present case. The petitioners have failed to establish that they were prevented by circumstances beyond their control from participating in the proceedings. Their explanation is founded principally upon a generalized plea of non-service and lack of knowledge, unsupported by any reliable material capable of displacing the judicial record.

56. For the reasons discussed hereinabove, this Court is of the considered opinion that the petitioners have failed to establish either that summons were not duly served upon them or that they were prevented by any sufficient cause from appearing when the release proceedings were taken up for hearing. The conclusion reached by the Prescribed Authority in rejecting the recall application is fully borne out by the material available on record and warrants no interference.

Conclusion:

57. Having answered the questions formulated for determination, it now remains to examine whether the impugned orders warrant interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

58. It is well settled that the jurisdiction of this Court under Article 227 is supervisory and not appellate. The power is intended to ensure that subordinate courts and tribunals act within the limits of their authority and in accordance with law. It is not an avenue for correction of every error of fact or law, nor does it permit this Court to re-appreciate the evidence or substitute its own conclusions merely because another view may also be possible. Interference is warranted only where the impugned order suffers from patent lack or excess of jurisdiction, manifest illegality, perversity, or such grave procedural irregularity as has resulted in failure of justice.

59. Tested on the aforesaid parameters, this Court finds no such jurisdictional infirmity in the orders impugned.

60. The Prescribed Authority has considered the pleadings of the parties, examined the record relating to substitution and service of the legal representatives, adverted to the proceedings conducted after substitution, including the objection regarding service, the grant of further opportunity to the substituted legal representatives, the closure of their opportunity to adduce evidence and the subsequent adjudication of the release application, and has thereafter assigned cogent and reasoned findings while rejecting the recall application. The conclusions so recorded are founded upon the material available on record and cannot be characterised as arbitrary, perverse or unsupported by evidence.

61. The Appellate Authority, in turn, confined its consideration to the question of maintainability of the statutory appeal and rightly concluded that an appeal under Section 22 of U.P. Act No. XIII of 1972 would not lie against an order rejecting an application for recall referable to the procedural powers contained in Section 34 of the Act read with the Rules framed thereunder. Once the appeal itself was found to be not maintainable, the Appellate Authority cannot be faulted for declining to examine the merits of the controversy relating to service or existence of sufficient cause.

62. No jurisdictional error, manifest illegality, perversity or failure of justice has been demonstrated so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution. The findings recorded by the Prescribed Authority on the question of service and sufficient cause are essentially findings of fact based upon appreciation of the material on record, while the conclusion of the Appellate Authority regarding maintainability correctly reflects the statutory scheme of Sections 21, 22 and 34 of the Act. Neither of the impugned orders suffers from any error warranting exercise of the supervisory jurisdiction of this Court.

63. Accordingly, this Court holds that-

(i) an appeal under Section 22 of U.P. Act No. XIII of 1972 is not maintainable against an order rejecting an application for recall of an ex parte release order, such order being referable to the procedural powers contained in Section 34 of the Act read with the Rules framed thereunder and not being an order under Section 21 or Section 24 of the Act;

(ii) the petitioners have failed to establish either that summons were not duly served upon them or that they were prevented by sufficient cause from appearing before the Prescribed Authority when the proceedings were taken up for hearing. The explanation furnished by them does not satisfy the settled judicial test of diligence, bona fides and genuine inability; and

(iii) the impugned orders suffer from no jurisdictional error, patent illegality or perversity warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

64. Consequently, the judgment and order dated 03.02.2026 passed by the Appellate Authority/District Judge, Agra in Rent Control Appeal No. 32 of 2025, the order dated 07.02.2025 passed by the Prescribed Authority/Judge, Small Causes Court, Agra in Misc. Case No. 3 of 2024, and the judgment and release order dated 22.12.2023 passed in P.A. Case No. 16 of 2016 warrant no interference.

65. The petition is, accordingly, **dismissed**.

66. There shall be no order as to costs.

(2026) 7 ILRA 1751
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.07.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 4426 of 2026

Romil Jain **...Petitioner**
Versus
Ashok Kumar Jain & Anr. **...Respondents**

Issue for Consideration

Whether the authorities below committed any jurisdictional error or material illegality in rejecting the petitioner's applications seeking appointment of a Commissioner under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 of the Code of Civil Procedure for local investigation of the disputed premises

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908-Section 75 & Order XXVI Rule 9; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972-Section 21(1) (a) & 34- Power to issue a commission under Section 34(1)(c) of the Act read with Section 75 and Order XXVI Rule 9 CPC is not intended to be exercised merely because a material fact is disputed between the parties. The jurisdiction is discretionary and is to be invoked only where the Court considers a local investigation to be requisite or proper for elucidating a matter in controversy which cannot satisfactorily be resolved on the basis of the pleadings and the evidence already available on record. The existence of a dispute, however substantial, does not by itself furnish a ground for appointment of a Commissioner- The contention that the issue regarding the applicability of U.P. Act No. XIII of 1972 goes to the root of the jurisdiction of the Prescribed Authority does not, by itself, advance the petitioner's case. The significance of the issue cannot determine the procedure by which it is to be adjudicated. Whether the premises are exempt from the operation of the Act is undoubtedly a jurisdictional question; nevertheless, it remains a question to be decided by the competent authority upon appreciation of the legally admissible evidence produced by the parties. The appointment of a Commissioner is only a procedural aid to facilitate adjudication where necessary and cannot be elevated to a mandatory requirement merely because the issue involved is jurisdictional in nature.

Held- Impugned orders do not warrant interference. The discretion vested in the authorities below has been exercised upon due consideration of the pleadings, the documentary material on record and the governing statutory provisions. The view taken is in consonance with the settled principles governing the exercise of power under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC. **Petition dismissed**. (E-15)

(Para 35, 36 & 44)

Case Law Cited

Sanjay alias Mathura v. Onkar Arora AIR Online 2019 ALL 1514; Ranbir Singh Sheoran v. VIth Additional District Judge, Muzaffar Nagar (1997) 31 ALR 116; Son Pal v. Vth Additional District Judge, Aligarh 1999 (2) ARC 596; Avinash Chandra Tewari v. A.D.J., Court No. 3, Unnao 2010 (2) ARC 84;

List of Acts

The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; The Constitution of India, 1950; The Code of Civil Procedure, 1908

List of Keywords

The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972-Section 21(1) (a) & 34**;**Section 75 and Order XXVI Rule 9 CPC; Appointment of a Commissioner is only a procedural aid to facilitate adjudication where necessary; Cannot be elevated to a mandatory requirement merely because the issue involved is jurisdictional in nature

Case Arising From

Order dated 27.11.2024 passed by the Prescribed Authority in P.A. Case No. 17 of 2020 and the order dated 11.09.2025 passed by the Appellate Authority/Additional District Judge, Court No. 19, Agra in Rent Control Appeal No. 17 of 2025, whereby the petitioner's applications seeking appointment of a Commissioner for local investigation of property nos. 32/1/6 and 32/1/7, situated at Old Kutlupur, Chhipitola, Rakabganj Ward, Agra, came to be rejected.

Appearances for Parties

Counsel for Petitioner(s) : Madhav Jain
Counsel for Respondent(s) : Archana Singh

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Shri Madhav Jain, learned counsel for the petitioner and Ms. Archana Singh, learned counsel for the respondents.

2. The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India questioning the legality of□ □the order dated 27.11.2024 passed by the Prescribed Authority in P.A. Case No. 17 of 2020 and the order dated 11.09.2025 passed by the Appellate Authority/Additional District Judge, Court No. 19, Agra in Rent Control Appeal No. 17 of 2025, whereby the petitioner's applications seeking appointment of a Commissioner for local investigation of property nos. 32/1/6 and 32/1/7, situated at Old Kutlupur, Chhipitola, Rakabganj Ward, Agra, came to be rejected. According to the petitioner, such local investigation was necessary to establish that the disputed premises constituted a newly constructed building exempt from the operation of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 19721.

3. The record reflects that property no. 32/1, comprising sub-numbers 1 to 13 and situated at Old Kutlupur, Chhipitola, Rakabganj Ward, Agra, originally belonged to Umrao Singh and his brothers. It is pleaded that pursuant to a family settlement dated 01.07.1998, property nos. 32/1/6 and 32/1/7 fell to the share of respondent no. 1, Ashok Kumar Jain.

4. According to the petitioner, after obtaining possession pursuant to the family settlement, respondent no. 1 got the old dilapidated structure standing over the property vacated and, after demolishing the same, reconstructed a triple-storeyed RCC building during the years 2000-2002. It

is further pleaded that the disputed shop bearing no. 32/1/6, situated on the ground floor of the reconstructed building, was thereafter let out to the petitioner's predecessor-in-interest in the year 2002. Subsequently, respondent no. 1 instituted proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972, registered as P.A. Case No. 17 of 2020, seeking release of the disputed shop.

5. During the pendency of the release proceedings, the petitioner filed a written statement and affidavits asserting that the disputed premises constituted a new construction and, therefore, stood exempt from the operation of U.P. Act No. XIII of 1972. In support of the said defence, the petitioner moved an application seeking appointment of a Commissioner for local investigation of property nos. 32/1/6 and 32/1/7 to ascertain the nature and age of the construction. The application was opposed by respondent no. 1 and came to be rejected by the Prescribed Authority by order dated 27.11.2024. Thereafter, the release application itself was allowed by judgment dated 19.12.2024.

6. Aggrieved by the judgment of release, the petitioner preferred Rent Control Appeal No. 17 of 2025 before the Appellate Authority/District Judge, Agra. During the pendency of the appeal, the petitioner once again moved Application No. 17-C seeking appointment of an Advocate Commissioner for local investigation of the disputed premises. By order dated 11.09.2025, the Appellate Authority rejected the application holding that adequate documentary evidence regarding the age and nature of the construction was already available on record and that no case for issuance of a commission was made out. It is these two orders rejecting the petitioner's applications for appointment of a Commissioner which are under challenge in the present petition.

7. Learned counsel for the petitioner submits that the authorities below have committed manifest illegality in rejecting the petitioner's applications seeking appointment of an Advocate Commissioner under Section 34 of U.P. Act No. XIII of 1972 read with Order XXVI Rule 9 Code of Civil Procedure, 19082. It is contended that the principle defence raised throughout the proceedings is that the disputed shop forms part of a newly constructed building which came into existence during the years 2000□2002 after demolition of the old dilapidated structure standing over property nos. 32/1/6 and 32/1/7. According to the petitioner, once the building is held to be a new construction within the meaning of Section 2 of the Act, it would remain exempt from the operation of U.P. Act No. XIII of 1972 and, consequently, the release proceedings instituted under Section 21(1)(a) of the Act would not be maintainable.

8. It is further submitted that the prayer for local investigation was not intended to collect evidence or fill any lacuna in the petitioner's case, but merely to assist the authorities in ascertaining the true nature, age and mode of construction of the building. Learned counsel submits that the disputed premises is a triple-storeyed RCC structure constructed with reinforced concrete pillars, beams and slabs after demolition of the old structure, which allegedly consisted of brick masonry with lime mortar, thick load-bearing walls and other features ordinarily associated with old constructions. According to the petitioner, these physical characteristics could be objectively verified only through a local investigation by an Advocate Commissioner.

9. It is next contended that both the Prescribed Authority and the Appellate Authority failed to appreciate that the issue regarding the applicability of U.P. Act No. XIII of 1972 goes to the very

root of their jurisdiction. Since the determination of such issue depends upon whether the disputed premises constitutes a new construction, refusal to permit local investigation has resulted in denial of an effective opportunity to establish the petitioner's defence.

10. Learned counsel submits that the petitioner had sought appointment of a Commissioner before the Prescribed Authority itself and merely renewed the same prayer before the Appellate Authority after rejection of the earlier application. It is, therefore, submitted that the respondent's contention that the petitioner sought to introduce additional evidence for the first time in appeal is factually incorrect.

11. Learned counsel also disputes the reliance placed by the respondent upon the municipal assessment records showing the year of construction as 1980. It is submitted that the said assessment records neither formed part of the record before the authorities below nor conclusively establish the age of the disputed building. According to the petitioner, the property was assessed in its present RCC form with effect from 01.04.2016 and the recital mentioning the year of construction as 1980 is erroneous, having allegedly been incorporated to avoid the consequences of raising construction without sanction of a building plan.

12. On the aforesaid premises, learned counsel submits that the impugned orders suffer from material illegality, manifest irregularity and failure to exercise jurisdiction vested in the authorities below. It is, accordingly, prayed that the impugned orders be set aside and a suitable direction be issued for appointment of an Advocate Commissioner to undertake a local investigation of the disputed premises.

13. Per contra, learned counsel appearing for respondent no. 1 supports the impugned orders and submits that neither of the authorities below has committed any jurisdictional error or material illegality warranting interference under Article 227 of the Constitution of India. It is contended that the petitioner's applications seeking appointment of a Commissioner were rightly rejected as they were intended merely to collect evidence and improve the evidentiary basis of the defence, which is impermissible in law.

14. Learned counsel submits that proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972 are summary in nature and are ordinarily adjudicated on the basis of pleadings, affidavits and documentary evidence. It is urged that a commission for local investigation cannot be issued to enable a party to establish facts which it is otherwise required to prove by leading legally admissible evidence. According to the respondent, appointment of a Commissioner is a matter resting entirely within the judicial discretion of the authority concerned and cannot be claimed as a matter of right.

15. It is further submitted that an identical application seeking appointment of a Commissioner had earlier been moved before the Prescribed Authority and was rejected by a reasoned order dated 27.11.2024. Having failed before the Prescribed Authority, the petitioner could not seek appointment of an Advocate Commissioner before the Appellate Authority on the same grounds in the absence of any subsequent event, fresh circumstance or additional material

warranting reconsideration of the issue. The Appellate Authority, therefore, rightly declined the prayer.

16. Learned counsel further submits that sufficient documentary evidence regarding the age and nature of the construction was already available on record, rendering any local investigation wholly unnecessary. Reliance is placed upon the municipal assessment records maintained by the Agra Municipal Corporation, which, according to the respondent, indicate that the RCC structure existed since the year 1980. It is further submitted that the electricity connection standing in the name of respondent no. 1 also lends support to the respondent's case regarding the nature and existence of the construction.

17. It is, accordingly, submitted that where adequate oral and documentary evidence is already available to enable effective adjudication of the controversy, refusal to appoint a Commissioner cannot be said to suffer from any legal infirmity. The impugned orders represent a proper exercise of judicial discretion in accordance with the settled principles governing Section 34 of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC.

18. Learned counsel, therefore, submits that the petition is devoid of merit and seeks interference with purely discretionary and procedural orders passed by the authorities below in accordance with law. It is, accordingly, prayed that the petition be dismissed.

19. The Court has carefully considered the rival submissions advanced on behalf of the parties and has perused the pleadings exchanged between them, the material brought on record, the impugned orders passed by the authorities below, as well as the statutory provisions and judicial precedents relied upon in support of the respective submissions.

20. In the light of the rival submissions, the following question arises for determination:

21. Whether the authorities below committed any jurisdictional error or material illegality in rejecting the petitioner's applications seeking appointment of a Commissioner under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 of the Code of Civil Procedure for local investigation of the disputed premises.

22. In order to appreciate the controversy involved in the present case, it would be apposite to notice the statutory scheme governing exemption of newly constructed buildings under U.P. Act No. XIII of 1972 and the power of the authorities constituted thereunder to issue a commission for local investigation. Since the petitioner's principal defence is that the disputed premises is a newly constructed building exempt from the operation of the Act and that a commission ought to have been issued to establish the said plea, reference is required to Section 2 and Section 34 of U.P. Act No. XIII of 1972, Section 75 read with Order XXVI Rule 9 of the Code of Civil Procedure, 1908. The relevant provisions are extracted below.

"**Section 2. Exemptions from operation of the Act**:

…. …… ……

(2) Except as provided in sub-section (5) of section 12, subsection (1-A) if section 21, subsection (2) of section 24, section 24-A, 24-B, 24-C or subsection (3) of section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed:

…. …… ……

Provided further that where construction of a building is completed on or after April 26, 1985, then the reference in this sub-section to the period of ten years shall be deemed to be a reference to a period of forty years from the date on which its construction is completed.

Explanation I.-For the purposes of this section"

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and, in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

(b) "construction" includes any new construction in place of an existing building which has been wholly or substantially demolished;

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof, the whole of the building, including the existing building, shall be deemed to be constructed on the date of completion of the said addition."

"Section 34- Power of various authorities and procedure to be followed by them:- (1) The District Magistrate, the Prescribed Authority or any Appellate or Revising Authority shall for the purposes of holding any inquiry or hearing any appeal or revision under this Act have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters namely –

…. ….. …..

(c) inspecting a building or its locality, or issuing commission for the examination of witnesses or documents or local investigation;

…. …… …..

"Section 75. Power of Court to issue commissions.-Subject to such conditions and limitations as may be prescribed, the Court may issue a commission-

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition;

(e) to hold a scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(g) to perform any ministerial act."

Order XXVI Rule 9 CPC

"9. Commissions to make local investigations.-In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."

23. A conjoint reading of the aforesaid provisions reveals a well-defined legislative scheme. Section 2 embodies the substantive law governing exemption of newly constructed buildings from the operation of U.P. Act No.XIII of 1972. It not only prescribes the period during which such exemption operates but also lays down objective statutory tests for determining the date of completion of construction. Explanation I specifically provides that the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and, in the case of a building subject to assessment, on the date on which the first assessment thereof comes into effect. Where these dates are different, the earliest of the said dates shall prevail and, in the absence of any such report, record or assessment, the date on which the building is actually occupied shall be deemed to be the date of completion.

24. Explanation I further clarifies that "construction" includes a new construction in place of an existing building which has been wholly or substantially demolished, while clause (c) extends the concept to cases where substantial additions are made to an existing building such that the existing building becomes only a minor part thereof.

25. Unlike Section 2, which creates substantive rights and liabilities, Section 34 is procedural. It incorporates, for the limited purpose of conducting inquiries, appeals and revisions under the Act, certain powers exercisable by a Civil Court under the Code of Civil Procedure. Clause (c) thereof authorises the District Magistrate, the Prescribed Authority and the Appellate or Revising Authority to inspect a building or its locality or to issue a commission for examination of witnesses or documents or for local investigation.

26. The manner in which the power contemplated by Section 34(1)(c) is to be exercised is regulated by the provisions of the Code of Civil Procedure. Section 75 CPC authorises the Court to issue commissions, inter alia, for making a local investigation, while Order XXVI Rule 9 prescribes the circumstances in which such power may be exercised. Significantly, Order XXVI Rule 9 permits issuance of a commission only where the Court considers a local investigation to be "requisite or proper" for elucidating a matter in dispute. The provision, therefore, contemplates local investigation as an aid to the adjudicatory process and not as an independent mechanism for collection of evidence at the instance of a litigant.

27. Equally significant is the use of the expression "may issue a commission" in Section 75 CPC as well as Order XXVI Rule 9. The language employed is clearly enabling and discretionary, not mandatory. Consequently, no litigant possesses a vested or enforceable right to insist upon appointment of a Commissioner merely because an application has been made. Whether a local investigation is requisite or proper is a matter resting exclusively within the judicial discretion of the adjudicating authority, to be exercised having regard to the nature of the controversy, the evidence already available on record and the necessity of such investigation for effective adjudication.

28. Thus, while Section 2 prescribes the substantive criteria for determining whether a building is entitled to exemption from the operation of the Act as a newly constructed building, Section 34 equips the statutory authorities with procedural powers analogous to those exercised by a Civil Court. The substantive enquiry under Section 2 and the procedural power under Section 34 operate in distinct fields and ought not to be conflated. The question whether a building constitutes a "new construction" is ordinarily required to be determined on the basis of the objective statutory indicia contemplated under Section 2, whereas a commission under Section 34 read with Section 75 and Order XXVI Rule 9 CPC may be issued only where the adjudicating authority finds that a local investigation is indispensable for proper elucidation of the controversy and the dispute cannot satisfactorily be resolved on the basis of the evidence already available on record.

29. The interpretation placed upon the aforesaid provisions also finds consistent judicial recognition. In **Sanjay alias Mathura v. Onkar Arora3**, this Court, while interpreting Section 34(1)(c)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC, held that the power to issue a commission is discretionary and cannot be exercised to enable a litigant to collect evidence, fill lacunae in its case or embark upon a fishing or roving enquiry. The Court observed that a commission for local investigation is intended to assist the adjudicating authority where such investigation is necessary for effective adjudication of the dispute and not to relieve a party of its obligation to establish its case by leading legally admissible evidence.

30. The view taken in **Sanjay alias Mathura** is in consonance with the long-settled line of authority of this Court. In **Ranbir Singh Sheoran v. VIth Additional District Judge, Muzaffar Nagar,4 it** was held that local investigation is warranted only where clarification of some ambiguity in the evidence becomes

necessary and not for collecting evidence on behalf of a litigant. Likewise, in **Son Pal v. Vth Additional District Judge, Aligarh5**, it was held that the necessity of local inspection lies entirely within the discretion of the Court. Similar principles were applied in **Avinash Chandra Tewari v. A.D.J., Court No. 3, Unnao6,**wherein it was reiterated that appointment of a Commissioner is not a matter of right and that the power is to be exercised only where local investigation is necessary for proper adjudication of the controversy.

31. The common thread running through the aforesaid decisions is that the jurisdiction to appoint a Commissioner for local investigation is intended to aid the adjudicatory process and not to facilitate collection of evidence for either party. Such power is liable to be exercised only where a local investigation becomes indispensable for elucidating a matter in controversy which cannot satisfactorily be resolved on the basis of the pleadings and the documentary and oral evidence already available on record. Conversely, where the dispute is capable of effective adjudication upon appreciation of the evidence adduced by the parties, refusal to issue a commission is an equally valid exercise of judicial discretion.

32. Having examined the statutory scheme and the legal principles governing the exercise of power under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC, this Court now proceeds to consider whether the authorities below committed any jurisdictional error or material illegality in rejecting the petitioner's applications for issuance of a commission.□□

33. The principal plank of the petitioner's challenge is that the authorities below committed a manifest error in declining the prayer for appointment of an Advocate Commissioner despite the consistent defence that the disputed premises constitute a newly constructed building, allegedly reconstructed during the years 2000□2002 after demolition of the earlier structure. According to the petitioner, if the said plea is ultimately accepted, the building would stand exempt from the operation of U.P. Act No. XIII of 1972 and, consequently, the release proceedings instituted under Section 21(1)(a) of the Act would themselves be rendered incompetent. It is in this backdrop that the petitioner contends that a local investigation was indispensable for determining the nature and age of the construction.

34. It has further been urged that the prayer for appointment of a Commissioner was not intended to collect evidence but merely to enable the authorities to ascertain the physical characteristics of the existing structure, such as RCC pillars, beams, slabs and other constructional features, which, according to the petitioner, would objectively establish that the building was a fresh construction. It has also been submitted that since the question regarding the applicability of the Act goes to the very root of the jurisdiction of the Prescribed Authority, refusal to direct a local investigation has deprived the petitioner of an effective opportunity to establish the foundational defence.

35. The aforesaid submissions, though attractive at first blush, cannot be accepted. As noticed hereinabove, the power to issue a commission under Section 34(1)(c) of the Act read with Section 75 and Order XXVI Rule 9 CPC is not intended to be exercised merely because a material fact is disputed between the parties. The jurisdiction is discretionary and is to be invoked only where the Court considers a local investigation to be requisite or proper for elucidating a matter in controversy which cannot satisfactorily be resolved on the basis of the pleadings and the evidence already available on record. The existence of a dispute, however substantial, does not by itself furnish a ground for appointment of a Commissioner.

36. Equally, the contention that the issue regarding the applicability of U.P. Act No. XIII of 1972 goes to the root of the jurisdiction of the Prescribed Authority does not, by itself, advance the petitioner's case. The significance of the issue cannot determine the procedure by which it is to be adjudicated. Whether the premises are exempt from the operation of the Act is undoubtedly a jurisdictional question; nevertheless, it remains a question to be decided by the competent authority upon appreciation of the legally admissible evidence produced by the parties. The appointment of a Commissioner is only a procedural aid to facilitate adjudication where necessary and cannot be elevated to a mandatory requirement merely because the issue involved is jurisdictional in nature.

37. The distinction sought to be drawn by the petitioner between "ascertaining the physical features of the building" and "collecting evidence" is equally devoid of substance. The application seeking appointment of a Commissioner itself discloses that the object of the proposed local investigation was to establish that the disputed premises constituted a newly constructed building exempt from the operation of the Act. The proposed inspection was, therefore, intended to substantiate the factual foundation of the petitioner's defence. Once the purpose of the commission is to prove a fact which the applicant is otherwise required to establish by leading legally admissible evidence, the exercise inevitably assumes the character of evidence-gathering, which lies beyond the permissible scope of Order XXVI Rule 9 CPC.

38. The respondent has also rightly contended that proceedings under Section 21(1)(a) of U.P. Act No. XIII of 1972 are ordinarily adjudicated on the basis of affidavits and documentary evidence and that appointment of a Commissioner cannot be claimed as a matter of right. A litigant cannot invoke the machinery of local investigation merely because it considers such a course advantageous to its case or because it seeks to reinforce the evidentiary foundation of a plea already taken. These submissions are in consonance with the settled principles governing the exercise of power under Order XXVI Rule 9 CPC, as noticed hereinbefore.

39. Learned counsel for the petitioner has also questioned the reliance placed upon the municipal assessment records by contending that the said records neither formed part of the record before the authorities below nor conclusively establish that the building was constructed in the year 1980. It has further been urged that the first assessment of the RCC structure came into effect only from 01.04.2016 and that the recital regarding the year of construction is erroneous. These submissions, however, do not materially advance the controversy arising in the present petition. The Appellate Authority, in its order dated 11.09.2025, while rejecting Application No. 17-C filed by the petitioner seeking appointment of an Advocate Commissioner, recorded that the landlord had already placed the documents pertaining to the municipal assessment of the disputed premises and that the tenant had failed to adduce any evidence to the contrary. Moreover, the question before this Court is not whether the municipal assessment records conclusively determine the age of the building or whether the entries recorded therein are ultimately correct. Those are matters pertaining to appreciation of evidence in the substantive proceedings. The limited issue is whether the material available before the authorities was sufficient to enable them to form the opinion that local investigation was unnecessary. Viewed from that perspective, any challenge to the evidentiary value or correctness of the municipal records cannot, by itself, render the impugned orders vulnerable to interference under Article 227 of the Constitution.

40. Viewed holistically, the petitioner's application for local investigation did not seek elucidation of any ambiguity which the existing record was incapable of resolving. The real object of the application was to

secure additional material in support of the plea that the disputed premises constituted a newly constructed building exempt from the operation of U.P. Act No. XIII of 1972. The petitioner had already been afforded adequate opportunity before the Prescribed Authority to establish the said plea by leading oral as well as documentary evidence. Having failed to place even prima facie material capable of substantiating the plea of new construction, the petitioner could not legitimately invoke the machinery of local investigation to overcome the evidentiary deficiency in its case.

41. In the facts of the present case, appointment of a Commissioner would not have served the object contemplated under Section 34(1)(c) of the Act read with Section 75 and Order XXVI Rule 9 CPC, namely, to assist the Court in elucidating a matter which could not satisfactorily be determined on the basis of the evidence already available. On the contrary, it would have converted a procedural device intended to aid the adjudicatory process into a means of collecting evidence or strengthening the factual foundation of the petitioner's defence. Such an exercise falls clearly outside the scope of Order XXVI Rule 9 CPC and would run contrary to the principle enunciated by this Court in **Sanjay alias Mathura,** as also the long-settled line of authority commencing from **Ranbir Singh Sheoran,** followed in **Son Pal** and **Avinash Chandra Tewari**, that a commission cannot be issued for collecting evidence, filling lacunae or embarking upon a roving enquiry. Equally well settled is the principle that where the controversy is capable of being effectively adjudicated on the basis of the pleadings and the evidence already on record, refusal to appoint a Commissioner constitutes an equally valid exercise of judicial discretion.

42. This Court is, therefore, satisfied that the discretion exercised by the Prescribed Authority, as affirmed by the Appellate Authority, neither suffers from arbitrariness nor discloses any patent illegality, perversity or jurisdictional infirmity. The impugned orders reflect a correct appreciation of the statutory framework contained in Sections 2 and 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC and are in accord with the settled principles governing appointment of Commissioners for local investigation.

43. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is intended to ensure that courts and tribunals subordinate to it act within the bounds of their authority and in accordance with law. It is neither appellate nor intended to correct every erroneous decision. Interference with a discretionary or procedural order is warranted only where the authority has acted without jurisdiction, failed to exercise jurisdiction vested in it, acted in patent disregard of settled legal principles, or where the order suffers from manifest perversity, patent illegality or has occasioned a failure of justice. The mere possibility of another view or the fact that this Court may have exercised the discretion differently cannot, by itself, justify interference.

44. Tested on the aforesaid parameters, the impugned orders do not warrant interference. The discretion vested in the authorities below has been exercised upon due consideration of the pleadings, the documentary material on record and the governing statutory provisions. The view taken is in consonance with the settled principles governing the exercise of power under Section 34(1)(c) of U.P. Act No. XIII of 1972 read with Section 75 and Order XXVI Rule 9 CPC.

45. The petition, being devoid of merit, is accordingly **dismissed**. There shall be no order as to costs.

(2026) 7 ILRA 1762
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.07.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Election Petition No. 6 of 2022

Radha Charan **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Whether the Tribunal has jurisdiction to declare that the caste certificate forged or not.

Head Notes

The Representation of Peoples Act, 1951- Sections-30, 36(2)(a) read with Sections 100(1)(a), 100(1)(b), 100(1)(d)(i) and 100(2)(d)- Election Tribunal is having no authority to verify the correctness of Caste Certificate and it is only for the committees so constituted by the State Government by different Government Orders-Caste certificate cannot be challenged in election petition and can be challenged under the provisions of statutes and in present case, before the Committee constituted under Government Order.

Held- Caste Certificate issued by the competent authority neither can be challenged nor can be scrutinized by the Election Tribunal in Election Petition. In present matter too, there are three Committees i.e. District, Regional and State Level Committee constituted by State Government by different Government Orders for scrutiny of caste certificate, which are only having authority to validate or invalidate caste certificate. Further, Election Tribunal is having no authority to deal with such matters.

Election petition lacks merit and is dismissed. (E-15)

(Para 23, 25, 26 & 27)

Case Law Cited

Ramlal Kol vs. Moti Kashyap @ Motilal; AIR 2014 NOC 529 MP; Anandra Vithoba Adsul; Raju Shamrao Mankar; Civil Appeal No(s). 2741-2743 of 2024; Navneet Kaur Harbhajansing Kundles @ Navneet Kaur Ravi Rana vs. State of Maharastra and others; Kumari Madhuri Patil vs. Addl. Commissioner; 1994 SCC (6) 241; Dayaram vs. Sudhir Batham & Ors; 2012 (1) SCC 333; Vishwanath S/O. Mahadeo Alte and others vs. Dr. Kalge Shivaji Bandappa and other; 2024:BHCAUG:21373; Hizwana Bano vs. State of U.P. Thru' Collector and others; Writ-C No. 69019 of 2010; Jai Prakash Chaurasiya vs. State of U.P. Thru. Prin; Writ-C No. 8859 of 2022; A. Raja vs. D. Kumar; 2025 INSC 62 G

List of Acts

The Representation of Peoples Act, 1951

List of Keywords

Election Tribunal having no authority to verify the correctness of Caste Certificate; Caste Certificate issued by the competent authority ; Neither can be challenged nor it can be scrutinized by the Election Tribunal in Election Petition.

Case Arising From

Election Petition for the election of the respondent No. 3 Vinay Prakash Gond as a Member of Legislative Assembly U.P. from 335 Ram Kola legislative assembly constituency of District Kushinagar to be set aside and be declared as null and void

Appearances for Parties

Counsel for Petitioner(s) : In Person, Ram Kumar Gautam, Radha Charan
Counsel for Respondent(s) : Ashutosh Mishra, Dinesh Yadav, K.R. Singh, Mohd Rehan Ansari, P.K. Kashyap, Pradeep Kumar

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

1. Heard Sri Ram Kumar Gautam, learned counsel for petitioner, learned Standing Counsel for respondent no.1 and Sri P.K. Kashyap, learned counsel for respondent no. 2.

2. Present election petition has been filed seeking following relief:-

"I) to declaration and election of the respondent No. 3 Vinay Prakash Gond as a Member of Legislative Assembly U.P. from 335 Ram Kola legislative assembly constituency of District Kushinagar to be set aside and be declared as null and void.

II) To grant such other relied as this Hon'ble Court may deem fit and proper under the facts and circumstances of the existing in the present case."

3. Brief facts of the case are that Election Commission of India, New Delhi (hereinafter referred as 'ECI') vide Notification dated 04.02.2022 declared election for U.P. Legislative Assembly-2022 under Section 30 of Representation of Peoples Act, 1951 (hereinafter referred as ' Act, 1951').

4. Present election dispute pertains to 335 Ram Kola Assembly Constituency reserved for Schedule Caste candidates. The date of nomination form was from 05.02.2022 to 11.02.2022, date of scrutiny of nomination form was from 12.02.2022 to 14.02.2022, dates for withdrawal of nomination form was from 16.02.2022 to 17.02.2022, date of polling was 03.03.2022, date of counting of votes was 10.03.2022 and the date of completion of election was 20.03.2022. Many candidates have filed nomination papers and petitioner was also one them along with Vinay Prakash Gond (returned candidate), respondent no. 2.

5. Case of the petitioner is that Vinay Prakash Gond (returned candidate) belongs to Backward Class whereas obtaining Schedule Caste Certificate dated 30.08.2012 (in short 'SC Certificat') fraudulently and filed nomination papers for the said election relying upon that SC Certificate. Against that, petitioner has immediately filed complaint before the Returning Officer on 14.02.2022 with a prayer to cancel the nomination on the ground of false caste certificate, but the said complaint was rejected by the Returning Officer. Ultimately, election was held on 03.03.2022 in which Vinay Prakash Gond was declared returned candidate i.e. elected candidate.

6. Against the said election, present election petition has been filed. The sole ground so taken is that returned candidate has obtained SC Certificate fraudulently as he belongs to Other Backward Class (in short 'OBC'). It is undisputed that said certificate is under challenge before the District Level Committee constituted by the State Government and till date, no decision has been taken upon the same. Aforesaid complaint is still pending for final disposal. It is prayed that as returned candidate has obtained SC Certificate fraudulently, therefore, his election as a Member of Legislative Assembly, U.P. from 335 Ram Kola Assembly Constituency has to be set aside and declared null and void.

7. A written submission has also been filed by the opposite party no. 2 (returned candidate) denying the allegation so levelled against him. It is specifically stated in the written submission that in the light of Government Order dated 03.12.1987, the ?Gond Caste? is included in the list of SC and 'Kahar Caste' is included in the list of OBC. Opposite party no. 2 belongs to Gond Caste, therefore, he is entitled for the SC Certificate, which was issued in his favour. It is also stated in the written submission that caste certificate so issued to him was subjected to scrutiny by the District Level Committee, there it was found genuine and duly issued by the said Committee. It is also stated that though the SC Certificate issued to opposite party no. 2 is under challenged before the District Level Committee, but till date same has not been cancelled.

8. Present case was heard on so many occasions and an application under Order 7 Rule 11 of CPC was also filed, but the same was rejected vide order dated 29.07.2024. Later on, this Court vide order dated 18.09.2024 has framed issues, which are quoted herein-below:-

"2. In the present election petition following issues have been framed:-

(i) As to whether nomination paper filed by respondent No. 2 was properly accepted by the returning officer or not.

(ii) Whether the Tribunal has jurisdiction to declare that the caste certificate forged or not.

(iii) Whether the caste certificate submitted by the respondent No. 2 in support of his nomination is forged or fake.

(iv) Whether the caste certificate upon which respondent No. 2 has contested the election was valid on the date of election or not.

(v) Whether the election is contested by the respondent No. 2 based upon caste certificate dated 13.03.2018, whereas, in election petition caste certificate dated 30.08.2012 has been annexed which is in question, the consequences thereof.

(vi) Reliefs and costs."

9. Thereafter, the examination in chief of the witnesses was taken on record as well as their cross examination has also been recorded and concluded on 03.04.2026. In light of undisputed fact

that SC Certificate of opposite party no. 2 has never been cancelled by District Level Committee or any other Authority authorized for the same, it is agreed and requested by the parties on 27.04.2026 to decide issue number no. 2 first. Thereafter Court has fixed 14.05.2026 and heard learned counsels for parties on this issue. Issue no. (ii) is reiterated herein-below:-

"(ii) Whether the Tribunal has jurisdiction to declare that the caste certificate forged or not."

10. Learned counsel for petitioner firmly submitted that in light of Section 36(2)(a) read with Sections 100(1)(a), 100(1)(b), 100(1)(d)(i) and 100(2)(d) of the Representation of People Act, 1950 (hereinafter referred to as 'Act, 1950'), the Election Tribunal is having enough power to examine the genuineness of every documents submitted along with nomination papers before the Returning Officer. This also includes the genuineness of the caste certificate even if its genuineness is under challenged before the District Level Committee and pending. In support of his contention, he has placed reliance of the judgment of Madhya Pradesh High Court in the matter ***of Ramlal Kol vs. Moti Kashyap @ Motilal; AIR 2014 NOC 529 MP*** and High Court of Bombay in the matter of ***Anandra Vithoba Adsul; Raju Shamrao Mankar; Navneet Kaur Harbhajansingh Kundles @ Navneet Kaur Ravi Rana vs. State of Maharashtra; District Caste Scrutiny Committee; 2021 LawSuit (Bom) 650.***

11. Per contra, Sri P.K. Kashyap, learned counsel for opposite party no.2 (returned candidate) firmly submitted that the State Government has issued Government Order dated 05.01.1996 for issuance of Caste Certificate and further Government Order dated 27.01.2011 for constitution of Divisional Level Committee as well as Government Order dated 28.02.2011 for constitution of District Level Committee to verify or scrutiny the caste certificate. He also pointed out that there is another committee known as State Level Committee in order of hierarchy, whose decision is final. He also pointed out that in case of any doubt or genuineness of the caste certificate, it is required to file complaint before the District Level Committee and in case same is rejected, there is remedy to challenge the same before the Divisional Level Committee. Thereafter State Level Committee is the final authority against the order of Divisional Level Committee. So far as present case is concerned, it is undisputed that as on date, SC Certificate so issued is only under challenged before the District Level Committee and still pending for disposal. So far as Election Tribunal is concerned, it is having no authority to verify the validity of the caste certificate duly issued by the authority competent for the same. In support of his contention, he has placed reliance upon the judgments of Apex Court, this Court as well as other High Courts in the matters of **Hizwana Bano vs. State of U.P. Thru? Collector and others; Writ-C No. 69019 of 2010, Dayaram vs. Sudhir Batham & Ors; 2012 (1) SCC 333, Navneet Kaur Harbhajansing Kundles @? vs. The State of Maharastra; Civil Appeal No(s). 2741-2743 of 2024, Kumari Madhuri Patil vs. Addl. Commissioner; 1994 SCC (6) 241, Vishwanath S/O. Mahadeo Alte and others vs. Dr. Kalge Shivaji Bandappa and other; 2024:BHC-AUG:21373, Jai Prakash Chaurasiya vs. State of U.P. Thru. Prin?; Writ-C No. 8859 of 2022, Tahira Begam vs. State of U.P.; Writ-C No. 1951 of 2023, A. Raja vs. D. Kumar; 2025 INSC 62 G.**

12. In the rejoinder argument, Sri R.K. Gautam, learned counsel for petitioner reiterated his earlier contention and submitted that Election Tribunal is having ample power to examine the genuineness of caste certificate and also to declare the same void, if found false.

13. I have considered rival submissions advanced by counsels for parties and perused the records as well as judgments cited above.

14. There is no dispute on the point that there is a self contained mechanism for issuance of caste certificate and further to challenge the same in case of acceptance or rejection, there is forum starting from District Level Committee to Divisional Level Committee and State Level Committee in order of hierarchy.

15. Learned counsel for petitioner has basically relied upon the judgment of ***Ramlal Kol (Supra)*** and submitted that in light of para 39 of the judgment, genuineness of case certificate was questioned and the returning officer ought to have verified as to whether such certificate was at all issued. So far as this judgment is concerned, the same is not in the rescue of petitioner only for the reasons that here there is no dispute on the point that caste certificate so questioned has been duly issued by the competent authority, therefore, there is no occasion for Returning Officer to question the same unless it is cancelled or annulled by the authority competent for the same. He has also placed reliance upon the judgment of ***Anandra Vithoba Adsul (Supra).*** Against the said order, matter went up to Apex Court in Civil **Appeal No(s). 2741-2743 of 2024; Navneet Kaur Harbhajansing Kundles @ Navneet Kaur Ravi Rana vs. State of Maharastra and others** and Apex Court has overruled the same. Therefore, same cannot be taken into consideration.

16. I have also perused the Government Order dated 05.01.1996, which clearly provides mechanism for issuance of caste certificate having Administrative Officers in the Committee. First time this issue came before the Apex Court in the matter of ***Kumari Madhuri Patil (Supra)*** and after considering the issue, Apex Court has framed detailed guidelines in the said case which is quoted below:-

"*The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:*

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (11) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or doubtful or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply

shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral

turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post."

17. The Apex Court has held that all State Governments shall constitute a committee of three officers for said purpose and has also held that order passed by the committee shall be final and conclusive only to proceeding under Article 226 of Constitution of India. Apex Court was of the firm view that only committee so constituted is having authority to consider the issuance and correctness of caste certificate. This matter again came up before the Apex Court in the matter of ***Dayaram (Supra)*** and after considering the judgment of ***Kumari Madhuri Patil (Supra),*** Apex Court has elaborated the functions of Scrutiny Committee, which provides for Vigilance Cell, whose report is mandatory and relying upon the report of Vigilance Report, caste certificate may be issued or cancelled.

18. In one of the matter, caste certificate issued by the committee was cancelled by the High Court of Bombay in the matter of ***Anandra Vithoba Adsul(Supra)*** and the same matter came up before the Apex Court in the matter of ***Navneet Kaur (Supra),*** in which Apex Court after considering the facts of the case as well as law has held that High Court inadvertently undertook in exercise of jurisdiction under Article 226 of Constitution of India. Relevant paragraph of the said judgment is quoted below:-

"In view of the aforesaid discussion, we are of the considered opinion that High Court inadvertently undertook an erroneous exercise of appreciating evidence in exercise of its jurisdiction under Artice 226 of Constitution of India and swayed itself into a roving inquiry which was not expected as per settled legal position. At the cost of repetition, we again observe that under Rule 13(2)(a) of 2012 Rules, the adjudication on the basis of the documents falls solely within the domain of Scrutiny Committee based on the inputs received from the Vigilance Cell. The Scrutiny Committee is an expert forum armed with fact finding authority. The High Court ought not to have interfered, especially when Scrutiny Committee had followed the due procedure under Rule 12, 17 and 18 of the 2012 Rules and that there was nothing perverse about a finding of fact."

19. In the said case, Apex Court has held that Scrutiny Committee is a expert forum armed with the fact finding authority, meaning thereby ratio of law is that decision so taken by the Scrutiny Committee cannot be interfered by the High Court in Election Petition.

20. This issue also came before the Bombay High Court in the matter of **Vishwanath (Supra),** in which Court has taken same view. Relevant paragraph is quoted below:-

"Considering the law as noted above, it is to be required to be noted that the returned candidate has caste certificate and a caste validity certificate in his favour granted by the quasi judicial authority i.e. by the Caste Scrutiny Committee. The caste certificate and validity certificates were produced before the Returning Officer at the stage of scrutiny. The reasoned order of the Returning Officer rejecting the objections is not annexed with the petition. The election petitioners have produced incomplete documents which were before the Caste Scrutiny Committee on the basis of which they seek declaration that the respondent No. 1 does not belong to Scheduled Caste Category as claimed by him as "Mala Jangam". This Court in absence of pleading of material facts as to how the judgment of the caste validity certificate is obtained by fraud cannot entertain the EP 3 & 6/24 present election petitions as the Caste Scrutiny Committee under the 2000 Act has exclusive jurisdiction to determine the validity of caste certificate granted in favour of the returned candidate. Enquiry cannot be conducted in the status of the returned candidate and he be declared as not belonging to "Mala Jangam" community scheduled caste as the returned candidate has a caste validity certificate in his favour by the Caste Scrutiny Committee which has exclusive jurisdiction to grant caste validity certificate. "

21. The same issue was also came before this Court in the matter of ***Hizwana Bano (Supra)*** and Court while considering the the judgment of ***Kumari Madhuri Patil (Supra)*** has reiterated that it is upon the Scrutiny Committee to validate or invalidate the caste certificate. Relevant paragraphs of the said judgment are quoted below:-

"In Kumari Madhuri Patil (supra), the relevant directions of the Supreme Court are contained in direction nos. 4 to 9. In other words, the caste certificate issued in terms of direction no. (1) to be valid, can only be verified by the Committee and not by the Revenue Officers, like Sub-Divisional Officers, Deputy Collector or Deputy Commissioner, in the present case, the respondent no. 2. The respondent no. 2, for the purpose of granting a caste certificate, has to consider what has been set out in para 3 of the Government Order, which is in consonance with the direction no. 2 of the directions issued by the Supreme Court in Kumari Madhuri Patil (supra). It is only in the event, the respondent no. 2 is satisfied, based on the material produced before him that the applicant belongs to the caste / tribe, then only the certificate would be verified. Once that be the procedure, it is not open to the respondent no. 2 to assume jurisdiction to cancel the caste certificate except may be in a case of fraud on the face of the record, as fraud vitiates all actions. Respondent no. 2, therefore, ordinarily would have no jurisdiction to reconsider the issuance of the caste certificate and pass orders cancelling the certificate or otherwise.

When a complainant contends that a caste certificate was wrongly issued or obtained by suppressing facts or the like, then in that event, it would be open to the complainant, even if the complainant is a stranger as long as his rights are affected, to move the Caste Scrutiny Committee, to verify the caste certificate by setting out the reasons and objections as to why the caste certificate should not be verified. Para 3 of the Government Order would show that verification is not only with regard to admission in any educational institution or appointment in any service but also for other reasons. Therefore, whenever a person seeks to rely on a caste certificate for claiming any benefits, he would be entitled to, then in that event, if a complainant intervenes to oppose the verification of such caste certificate or independently applies before the Caste Scrutiny Committee,

the procedure for verification shall be followed and necessary orders shall be passed by the Committee after following due procedure.

We may further point out that even if a caste certificate is verified, it does not prevent an aggrieved person from challenging the validity of the caste certificate before this Court, even if he had not complained earlier, as long as he is an aggrieved person and there is material to show that the verification was obtained by suppressing facts or material or by playing fraud on the Committee or the like.

If the issue is now considered in the light of the above discussions, it would be clear that the respondent no. 2 would cease to have jurisdiction, once the caste certificate was issued. The Tehsildar in these circumstances would have no authority to recall or cancel the same, except may be in a case of fraud. Respondent no. 2, however, would have the power to correct clerical or artificial mistakes. The jurisdiction to verify the caste certificate and whether it should be validated or invalidated is of the Caste Scrutiny Committee.

Clearly, therefore, the prayer sought for by the petitioner to direct the respondent no. 2 to decide the complaint, in our opinion, cannot be granted in the absence of jurisdiction vested in respondent no. 2. It is, however, open to the petitioner to move the Competent Authority, i.e. Caste Scrutiny Committee to dispute the validity of the caste certificate issued in favour of respondent no. 3, if not already verified. The Committee can then consider the issue. What happens if the Committee fails to validate the caste certificate, is not required to be answered in the present petition as there is nothing on record to show that the petitioner has filed an election petition challenging the election of respondent no. 3."

22. Again, in the matter of ***Jai Prakash Chaurasiya (Supra)*** this Court was of the same view that District Level Committee and Divisional Level Committee have been constituted to look into the validity of the caste certificate. Relevant paragraphs are quoted below:-

"9. The Supreme Court has also dealt with in paras 11 and 12 of the said judgment that the orders passed by Scrutiny Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution and that no suit or other proceedings before any other authority should lie.

10. Though in the case of Kumari Madhuri Patil (supra) was confined only for admissions but the same law has been held to be good in election matters. The State Government has issued Government Orders dated 5.1.1996 and 27.1.2011 where the District Level Committee and Divisional Level Committees have been constituted to look into validity of the caste-certificates of the candidates.

11. In light of the judgment of Supreme Court this Court is of the considered view that adjudication with regard to the case of the returned candidate should have been looked into only by the Scrutiny Committee constituted by the State Government. It is also admitted by the parties that the appeal has been preferred against cancellation of the caste-certificate of respondent No.3 which

is pending before the Commissioner and the hearing of the appeal has been deferred till such time as the appellate proceeding are finalized.

12. This Court is of the considered view that law in this regard has been correctly interpreted and applied by the Sub Divisional Magistrate, Raniganj and there is no infirmity in the same and the writ petition is liable to be dismissed."

23. After clarification by this Court, it is apparently clear that guidelines so issued by the Apex Court in the matter of ***Kumari Madhuri Patil (Supra)*** for admission in educational institution shall also be applicable in election matters meaning thereby the only committee so constituted by the State Government shall have authority to issue or cancel the caste certificate and it is beyond the competence of Court except under Article 226 of Constitution of India after final decisional taken by the State Level Scrutiny Committee. Now this fact is very much clear that Election Tribunal is having no authority to verify the correctness of Caste Certificate and it is only for the committees so constituted by the State Government by different Government Orders.

24. The validity of caste certificate in the election of Kerala Legislative Assembly came before the Apex Court in the matter of ***A. Raja (Supra)*** and while considering in detail, Apex Court has given its finding. Relevant paragraph is being quoted below:-

"64. We deem it appropriate to clarify the position in the wake of the present Judgment. A duly issued Caste/Community Certificate would be amenable to challenge only under the provisions of the statute concerned, and not in an Election Petition. In case no statute governing the field in a State/Union Territory is operative, the Madhuri Patil (supra) guidelines, as modified in Dayaram (supra), shall be followed."

25. Once again Apex Court has clarified that caste certificate can not be challenged in election petition and can be challenged under the provisions of statutes and in present case, before the Committee constituted under Government Order.

26. Therefore, it the light of facts mentioned herein above as well as judgments relied upon, now it is crystal clear that Caste Certificate issued by the competent authority neither can be challenged nor it can be scrutinized by the Election Tribunal in Election Petition. In present matter too, there are three Committees i.e. District, Regional and State Level Committee constituted by State Government by different Government Orders for scrutiny of caste certificate, which are only having authority to validate or invalidate caste certificate. Further, Election Tribunal is having no authority to deal with such matters.

27. Therefore, in the light of such facts as well as law discussed herein-above, this Court is of the firm view that election petition lacks merit and is hereby **dismissed.**

28. No order as to costs.

29. Before parting with the judgment, this Court records its appreciation for the sincere assistance extended by Ms. Moksha Pandey and Ms. Pratiksha Tiwari, Research Associates in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(2026) 7 ILRA 1773
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 961 of 2012

Amit Kumar Tiwari **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the conviction of the appellant for kidnapping a minor from lawful guardianship is sustainable when the trial court itself recorded a categorical finding that the prosecutrix had gone away and stayed with the appellant of her own free will, and when no inducement or active participation by the appellant in taking her away was established.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Sections - 164, 437-A, 446 - Indian Penal Code, 1860 - Sections 361, 363, 366, 368, 376: - Criminal Appeal – against conviction and sentence - FIR – under section 363, 366, 368, 376 IPC - complainant's sister (aged about 14 years) went missing after appearing in High School Examination and was suspected to have been kidnapped accused persons – investigation resulted in charge-sheet against the appellant and his brother under Sections 363, 366, 368 and 376 IPC – statement of prosecutrix under Section 164 Cr.P.C. recorded wherein she stated she left home of her own free will due to family beating, married the appellant and resided with him willingly – recovery of prosecutrix after about four months – trial initiated leading to conviction only under Section 363 IPC on the basis of High School mark-sheet showing date of birth as minor – Appellant pleaded that the prosecutrix had voluntarily accompanied him without any inducement or force, as evidenced by her prolonged stay, repeated public visits without alarm, and the trial court's own finding of free will which led to acquittal under Sections 366 and 376 IPC – Court finds that the prosecutrix willingly left and stayed with the appellant for four months without protest or attempt to escape, medical evidence showed no injuries and age above 18 years (with mark-sheet being the sole basis for minority), and relying on the distinction drawn in S. Varadarajan v. State of Madras between "taking" and merely allowing a minor to accompany – mere facilitation after voluntary departure does not constitute "taking" under Section 361 IPC – held that once free will is established and no inducement is proved, the offence under Section 363 IPC is not made out – hence the conviction and sentence under Section 363 IPC are set aside and the appellant is acquitted of all charges – appeal allowed - conviction set aside - directions issued accordingly.

(Para – 21, 22, 23, 24, 25)

Appeal allowed. (E-11)

CASE LAW CITED

S. Varadarajan v. State of Madras, AIR 1965 SC 942

LIST OF ACTS

Indian Penal Code, 1860, - Code of Criminal Procedure, 1973

LIST OF KEYWORDS

Kidnapping - lawful guardianship - Taking - allowing to accompany - Free will of minor - High School mark-sheet as proof of age - Medico-legal examination - Section 164 Cr.P.C. statement - Acquittal - related charges - Criminal appeal - Non-bailable warrant - recalled – infructuous - Allowed.

CASE ARISING FROM

Judgment and order dated 04.06.2012 passed by the Additional Sessions Judge, Barabanki in Session Trial No. 484 of 2011 arising out of Case Crime No. 575 of 2009, Police Station Kotwali Nagar, District Barabanki.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Smt. Kumari Deepa, (with appellant Amit Kumar Tiwari present in person)
Counsel for Respondent(s): Shri G.D. Bhatt, learned AGA-I.

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

1. Heard Smt. Kumari Deepa, the learned counsel for the appellant and Shri G.D. Bhatt, the learned AGA-I for the State of U.P.

2. The appellant- Amit Kumar Tiwari is present in person and he has filed an application for recall of order dated 22.05.2026 passed by this Court issuing bailable warrant against the appellant.

3. The appeal is pending since the year 2012. It was admitted on 17.07.2012, the trial Court's record was summoned and the appellant was released on bail. Thereafter, the appeal was listed on 28.03.2026 and 01.05.2026 but the learned Counsel for the appellant did not appear and, therefore, this Court had ordered the Chief Judicial Magistrate Barabanki to issue bailable warrant for ensuring the appellant's presence before this Court on 22.05.2026. When the appellant did not appear even on 22.05.2026, a non-bailable warrant was ordered to be issued against him and on 10.07.2026 the Chief Judicial Magistrate was directed to issue notice to the sureties of the appellant and to take recourse to the provisions of Section 446 Cr.P.C. Now that the appellant has appeared, his learned counsel is pressing the application for recall of the order dated 22.05.2026 only and she says that she is not prepared to advance submissions to assist the Court for the final disposal of the appeal.

4. As the appeal has been pending for more than 14 years, the trial Court's record is available and previously the appellant had not cooperated in disposal of the appeal by his continuous non-appearance, instead of deciding the application for recall of the order dated 22.05.2026, the Court proceeds to decide the appeal on merits after perusal of the record and hearing submissions of the learned AGA-I for the State.

5. By means of the instant appeal, the appellant has challenged the validity of the judgment and order dated 04.06.2012, passed by the Additional Sessions Judge, Court No. 34, Barabanki in Session Trial No. 484 of 2011 arising out of Case Crime No.575 of 2009 under Sections 363, 366, 368, 376 IPC relating to Police Station- Kotwali Nagar, District-Barabanki whereby the appellant has been convicted for the offence under Section 363 IPC and sentenced to undergo 3 years? imprisonment and to pay a fine of Rs. 1,000/- for the said offence. The appellant has been acquitted of charges under Section 366, 368 and 376 IPC.

The appellant's brother Sumit Kumar Tiwari was also tried for the offence under Section 368 IPC and he has been acquitted of the charge.

6. The aforesaid case was instituted on the basis of an FIR lodged on 31.03.2009 stating that the complainant's sister aged about 14 years had gone to appear in the High School Examination in the morning of 31.03.2009 but she did not come back. Dilip Kumar @ Pappu Gupta resided in a house opposite the complainant's house and he was also missing and, therefore, the complainant suspected that Dilip Kumar had kidnapped her.

7. After investigation, a charge-sheet was submitted against the appellant and his brother Sumit Kumar Tiwari on 13.08.2009.

8. The complainant was examined as PW-1. He reiterated the FIR version.

9. The father of the prosecutrix was examined as PW-2. He stated that three months after his daughter had gone missing, he had gone to Gularia Garda Mohalla and saw his daughter standing outside a house. Upon seeing him, she went inside the home and closed the door from the inside. The appellant's brother Sumit Kumar Tiwari came out and told that she had married the appellant, Amit Tiwari. During cross-examination, PW-2 stated that he has 6 children. One of his daughters has died. He does not know the correct date of birth of any of his children. He also stated that he had got his daughter married to one Pawan Kumar.

10. The prosecutrix was examined as DW-3. She stated that when she was returning after appearing in High School Examination on 31.03.2009, the appellant met her on the way and under the pretext of taking her for an excursion, he took her to Gularia Garda, Barabanki, where he kept her locked inside a house. Whenever she asked him to take her back home, the appellant used to take her to Lucknow. He forcibly married her at Lucknow in a marriage bureau and thereafter kept her at his home at Gularia Garda where he used to commit the misdeed against her. The prosecutrix admitted her signatures on the statement under Section 164 Cr.P.C. but she stated that she had given the statement before the Magistrate under the fear of the appellant.

11. The doctor who had conducted the medico-legal examination of the prosecutrix was examined as PW-4. She proved the medico-legal examination report which stated that there was no mark of injury on any part of the prosecutrix’s body, and the pathological examination report, which was negative for presence of spermatozoa or gonococci. PW-4 further stated that the age of the victim was above 18 years. During cross-examination, PW-4 stated that there could be an error margin of two years in the assessed age, on either side.

12. After analyzing the aforesaid evidence, the trial Court held that no offence was established against the appellant's brother Sumit Kumar Tiwari and the commission of offences under Sections 366 and 376 IPC by the appellant was also not established. However, the trial Court held that as the High School marks-sheet of the prosecutrix was

available and it mentioned her date of birth as 05.02.1993, no other evidence will be seen regarding her age. As the appellant had taken the minor prosecutrix away from the custody of her lawful guardian the offence under Section 366 IPC is made out.

13. The prosecutrix was recovered on 24.07.2009, i.e., after about 4 months. Her medico-legal examination report mentions no mark of injury on any part of her body, including her private parts. The hymen was found old torn and healed. Vagina admitted two fingers easily. The pathological examination report was negative for the presence of spermatozoa and gonococci. As per X-ray examination, all the epiphysis were fused and the age of the prosecutrix was opined to be above 18 years. However, the High School mark-sheet of the prosecutrix issued on 23.06.2009 mentions her date of birth as 05.02.1993.

14. In the statement of the prosecutrix recorded under Section 164 Cr.P.C. she stated that her family members used to beat her and therefore, she had gone away with the appellant out of her own free will on 31.03.2009. She married the appellant in Chandrika Devi temple at Lucknow on 02.04.2009. Since then, she was residing with the appellant as his wife. She categorically stated that the appellant did not use force against her.

15. The prosecutrix stated in her testimony before the Court that she stayed with the appellant at Gularia Garda, Barabanki. She used to visit Lucknow repeatedly along with the appellant. Both of them used to travel by roadways bus. There used to be a large crowd and presence of police personnel at the bus station. She used to visit the zoo and other crowded places of her interest. She did not make any endeavor to raise any alarm or to escape on any of such numerous visits. Her statement shows that the prosecutrix had willingly gone with the appellant and stayed with him for about four months without any protest or attempt to escape.

16. During cross-examination, a question was put to the prosecutrix that in the ground floor of the house in which the appellant is said to have kept her, her foofa Rajendra Mishra used to reside and although she expressed ignorance about this fact, she did not deny it. She admitted that Rajendra Mishra is her foofa and his son Divakar is her cousin. She admitted that the stairs leading to the upper floor of the house were from inside of the house. She also admitted that persons residing at the ground floor of the house used to sleep on the terrace during summer season.

17. The father of the prosecutrix stated in his testimony that he had gone to Gularia Garda where he saw the prosecutrix standing outside a house and upon seeing him, the prosecutrix went inside the house and closed the door from the inside. Thereafter, the appellant's brother came out of the house and told that the prosecutrix had married his brother. No person had forced the prosecutrix to go inside the house away from her father.

18. After examining the aforesaid evidence, the trial Court held that the evidence shows that the prosecutrix had gone away with the appellant out of her own free will and

the appellant had not enticed her away. Accordingly, the trial Court acquitted the appellant of the charges under Sections 366 and 376 IPC. However, the trial Court held that the prosecutrix was minor and, therefore, the offence under Section 363 IPC was made out. Section 363 IPC reads as follows: -

"363. Punishment for kidnapping. *-Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

19. The offence of kidnapping is defined in Section 361 IPC as follows: -

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

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

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

20. In **S. Varadarajan v. State of Madras,** AIR 1965 SC 942, a Bench consisting of three Hon'ble Judges of the Hon'ble Supreme Court held that:

"11. It must, however, be borne in mind that ***there is a distinction between "taking" and allowing a minor to accompany a person. The two expression are not synonymous*** *though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present* ***where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian.*** *Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking* ***it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return***

to her guardian's house by taking her along with him from place to place. *No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".*

(emphasis added)

21. The trial Court has recorded a categorical finding that the prosecutrix had gone away with the appellant and had stayed with him out of her own free will and has acquitted the appellant of the charges of commission of offences under Sections 366 and 376 IPC on this ground. When it has been established that the prosecutrix had gone away with the appellant out of her own free will and it has not been established that the appellant had taken her away or had enticed her away, the offence of kidnapping punishable under Section 363 is not made out and the order of conviction and sentence for the offence under Section 363 IPC is not sustainable in law.

22. Accordingly, the appeal is **allowed**. The order dated 04.06.2012, passed by the Additional Sessions Judge, Court No.34 Barabanki in Session Trial No.484 of 2011 arising out of Case Crime No.575 of 2009 under Sections 363, 366, 368, 376 IPC relating to Police Station- Kotwali Nagar, District- Barabanki whereby the appellant has been convicted for the offence under Section 363 IPC is **set-aside**. The appellant is acquitted of all the charges.

23. The appellant is directed to submit a personal bond and two sureties before the trial Court within a period of two weeks from today as per the provisions contained in Section 437-A Cr.P.C., for his appearance before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal, which bonds shall hold good for a period of six months.

24. As the appeal itself has been allowed, the application for recall (I.A. No.3 of 2026) of order dated 22.05.2026 is dismissed as having become infructuous.

25. Before parting with the case, I put on record my appreciation for the valuable assistance provided by Sri. Madhukar Ojha, Advocate, the learned State Counsel, by explaining the difference between “taking a minor” and “allowing a minor to accompany on her own”, with the help of the relevant case law, which was crucial to enable the Court to arrive at a just conclusion in this case.

(Subhash Vidyarthi,J.)

Whether the order is speaking – Yes
Whether the order is reportable - Yes

(2026) 7 ILRA 1779
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 974 of 1984

Jhinkoo **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the delay and infirmities in lodging the FIR affect the credibility of the prosecution case.

Whether the age of the prosecutrix (and consequently the question of her consent) stands established by reliable evidence.

Whether the essential ingredients of Section 366 IPC stand proved beyond reasonable doubt.

Whether the omission to frame charge under Section 376 IPC despite the prosecutrix's testimony of rape, the non-prosecution of one of the accused persons, hostility of last-seen witnesses and investigative defects cast a reasonable doubt on the prosecution case.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 374, – Indian Penal Code, 1860 – Sections 363, 366, 376, 361: - Criminal Appeal - against conviction and sentence – FIR – alleged that appellant and co-accused (one of whom died during appeal) along with another co-accused took the prosecutrix from her house to Gorakhpur where she was confined and raped, and cash/ornaments were taken – investigation - statements recorded - medical examination and X-ray done - charge-sheet filed only under Sections 363/366 IPC – charge framed only under Section 366 IPC – conviction and sentence – Evaluation of evidence – Court finds that, delay and absence of definite date in FIR open possibility of deliberation and embellishment; age of prosecutrix not proved by documentary or ossification evidence and rests only on oral assertion; prosecutrix's own admissions that she left on advice of one of accused (who left in trial), removed cash/ornaments herself, raised no alarm during journeys and stay, and existence of long-standing enmity raise real doubt whether "taking" or "enticement" under Section 361 IPC is established - specific intent under Section 366 IPC cannot be inferred from uncharged offence of rape - selective non-prosecution of one of accused lady and hostility of both last-seen witnesses leave prosecution without independent corroboration – held, prosecution failed to prove essential ingredients of Section 366 IPC beyond reasonable doubt - benefit of doubt must ensure to the appellant – hence appeal allowed – conviction and sentence set aside - appellant acquitted and directed to be released forthwith - bail bonds cancelled and sureties discharged – directions issued, accordingly for compliance.
Appeal Allowed. (E-11)

CASE LAW CITED

Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133
S. Varadarajan v. State of Madras, AIR 1965 SC 942
Thakorlal D. Vadgama v. State of Gujarat, (1973) 2 SCC 413
Khujji v. State of M.P., (1991) 3 SCC 627

LIST OF ACTS

Code of Criminal Procedure, 1973
Indian Penal Code, 1860

LIST OF KEYWORDS

Criminal Appeal – Section 366 IPC – Kidnapping/Abduction – Consent – Minority not proved – Delay in FIR – Hostile witnesses – Omission of Section 376 charge – Non-prosecution of co-accused – Benefit of doubt – Acquittal – Appeal allowed.

CASE ARISING FROM

Judgment and order dated 28.03.1984 passed by 6th Additional Sessions Judge, Basti in Sessions Trial No. 239 of 1981 under Section 366 IPC, Police Station Walterganj, District Basti.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri G.P. Mathur, R.C. Shukla, Sunil Kumar Singh, Vivek Prasad Mathur
Counsel for Respondent(s): A.G.A., Shri Tripathi B.G. Bhai.

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Shri Sunil Kumar Singh, learned counsel for the appellant and Shri Purshottam Maurya, learned AGA for the State.

2. The present appeal is preferred under Section 374 of Cr.P.C. by the accused-appellants Jhinkoo (died) and Jhabboo to set aside the judgment and order dated 28.03.1984 passed by 6th Additional Sessions Judge, Basti in Sessions Trial No.239 of 1981 under Section 366 IPC, Police Station- Walterganj, District- Basti, whereby the appellant was convicted under Section 366 IPC and sentenced to undergo rigorous imprisonment for a period of five years.

3. The prosecution case, in brief, is that the appellants Jhabboo, his brother Jhinkoo (since deceased), and a woman named Smt. Kadora were frequent visitors to the house of the complainant Munni ("the prosecutrix"). On Saturday preceding the lodging of the First Information Report on 28.11.1975, Smt. Kadora is said to have called upon the prosecutrix to accompany her to a sugarcane field, where the appellants Jhabboo and Jhinkoo joined them. The three thereafter took the prosecutrix to the Purana Padav bus stand, where certain persons including a woman of Mustafabad and PW-1 Babu Ram and PW-2 Ram Narayan of the prosecutrix's own village are alleged to have seen them. Smt. Kadora did not board the bus. The appellants Jhabboo and Jhinkoo are alleged to have taken the prosecutrix by bus to Basti and thence to Gorakhpur, where they had rented a room. It is alleged that the prosecutrix was confined there overnight, that both accused committed rape upon her by turns under threat of a knife, and that cash of Rs1,500/- and various ornaments and sarees were forcibly taken from her. Jhinkoo, thereafter left Gorakhpur. On the third day, the appellant Jhabboo brought the prosecutrix back towards Basti, where, upon being recognised by one Ramujagir (the prosecutrix's cousin), the appellant fled. The prosecutrix was taken to her cousin's house, her parents were informed, and the report was lodged after her father returned from Kanpur.

4. On these allegations, a case was registered under Sections 363, 366 and 376 IPC against all three named persons, namely the appellants Jhinkoo, Jhabboo and Smt. Kadora. The charge-sheet,

however, was submitted only under Sections 363 and 366 IPC, and the Trial Court proceeded to frame charge only under Section 366 IPC on 15.12.1981. Smt. Kadora was never arrested or put to trial. Upon conclusion of trial, the appellants Jhinkoo and Jhabboo were convicted under Section 366 IPC. Hence this appeal.

5. The prosecution has examined Babu Ram as P.W.-1, Ram Narayan as P.W.-2, complainant Munni as P.W.-3, Rajdei as P.W.-4, S.I. Gajnafar Ali as P.W.-5, Dr. Pushpa Srivastava as P.W-6, Head Constable Surendra Pratap Singh as P.W.-7 and Dr. R.U. Pandey as P.W-8.

6. The Investigating officer has collected documentary and oral evidences during the course of investigation. Ex. Ka.-1 is the FIR, which has been proved by P.W.-3, Ex. Ka.-2 is the chargesheet. Ex. Ka.-3 is the injury report of Munni Devi, which has been proved by P.W.-6. Ex. Ka.-4 is the x-ray report of Munni Devi, which has been proved by P.W.-6 and Ex. Ka.-5 is the copy of G.D. no.17, which as been proved by P.W.-7.

7. P.W.-1 Babu Ram stated in his examination-in-chief that he had only heard that Smt. Munni had eloped about 6 years earlier. He denied seeing Karoda, Jhinkoo, or Jhabboo.

8. P.W.-2 Ram Narayan stated in his examination-in-chief that about 7 years earlier, he did not see Smt. Munni leaving towards Puraina Padav with Karoda, Jhinkoo, or Jhabboo.

9. P.W.-3 Munni stated in her examination-in-chief, in brief, that Karoda lured her from home on the pretext that Jhinkoo and Jhabboo would provide her food and clothes. She was taken to a sugarcane field and then via Puraina Bus Stand to Gorakhpur, where she was wrongfully confined for three days. During this period, Jhinkoo and Jhabboo repeatedly raped her, threatened her with a knife, and forcibly took her jewellery, 5'6 sarees, clothes, and Rs.1,500/- cash. On the third day, Jhabboo brought her to Basti Bus Station, where she met her cousin Ramujagir, narrated the incident, lodged the FIR, and was medically examined the same day.

10. P.W.-4 Durga Prasad (father of the prosecutrix) stated in his examination-in-chief, in brief, that on returning home from the fields, he found Munni missing, the box lock broken, and Rs.1,500/- cash along with jewellery (necklace, earrings, tika, silver anklets, etc.) missing. Babu Ram and Ram Narayan informed him that Karoda, Jhinkoo, and Jhabboo had taken Munni towards Puraina Bus Stand carrying a bag. He searched for her but could not find her and informed her husband in Kanpur. Later, Ramujagir brought Munni from Basti Bus Station. Munni narrated the entire incident, after which the FIR was lodged at the police station.

11. P.W.-5 Gajnafar Ali stated in his examination in chief, in brief, that on 28.11.1975, while posted as Head Moharrir/Officiating A.S.I. at PS- Walterganj, the case was entrusted to him. On 05.12.1975, he inspected the place of occurrence, prepared the site plan (Ext. Ka-2), recorded the statements of Munni, Babu Ram, Ram Narayan, Shyam Raji, Durga Prasad, and the accused Karoda, Jhinkoo and Jhabboo, and on 24.12.1975 recorded Ramujagir's statement and submitted the charge sheet.

12. P.W.-6 Dr. Pushpa Srivastava stated in her examination-in-chief, in brief, that she examined Munni on 28.11.1975. She found no external or genital injuries; the hymen admitted two fingers, with old healed tears and no bleeding, congestion, or swelling. The smear report was negative, and the X-ray showed fused elbow epiphyses and unfused wrist epiphyses, assessing her age at 17'18 years. She opined that the prosecutrix was habituated to sexual intercourse and proved the medical report (Ext. Ka-3) and supplementary report (Ext. Ka-4).

13. P.W.-7 Surendra Pratap Singh stated in his examination-in-chief, in brief, that while posted as Head Moharrir at PS Walterganj on 28.11.1975, he registered the FIR (Case No. 198) under Sections 363, 366 & 376 IPC on the basis of the prosecutrix's complaint and proved the Chik FIR (Ext. Ka-1). He also proved the corresponding G.D. entry (Ext. Ka-5) made on the same day.

14. P.W.-8 Dr. R.U. Pandey stated in his examination-in-chief that on 29.11.1975, while posted as Medical Officer at Sadar Hospital, Basti and also functioning as a Radiologist, he conducted the X-ray examination of the injured Munni. The X-ray plates bearing Plate Nos. 28/6 and 28/7 were prepared under his supervision and were duly identified by his signatures and thumb impression. He proved the X-ray plates, which were marked as Material Ext. I and Material Ext. II.

15. The grounds of the appeal in brief are that the judgement of the court below is against the weight of the evidence on record and conviction of the appellant is illegal and liable to be set aside. The sentence awarded by the trial court is too severe.

16. Learned counsel for the appellant has assailed the conviction on the broad grounds, which this Court has considered cumulatively. The FIR does not disclose a specific date of the alleged occurrence, and there is inordinate and unexplained delay in its lodging. Although the FIR named three accused and invoked Sections 363, 366 and 376 IPC, the charge-sheet omitted Section 376 IPC altogether, and even the charge under Section 363 IPC was not pressed at the stage of framing of charge. Charge having been framed only under Section 366 IPC, without any judicial application of mind reflected on record as to why the graver and cognate offences stood excluded. The FIR itself names Smt. Kadora as the person who instigated the prosecutrix to leave her house and proceed to the sugarcane field, yet she was never arraigned for trial, raising a serious doubt as to the true genesis of the occurrence. The prosecutrix travelled with the appellants Jhabboo and Jhinkoo by bus on more than one occasion, stayed with them for several days, and admittedly raised no alarm at any stage, at the bus stand, during the two bus journeys, or at Gorakhpur, despite the presence of numerous opportunities to do so. Her explanation for this silence was not found satisfactory. There is no reliable documentary evidence of her age. The finding of minority rests on oral testimony alone. The prosecutrix herself deposed to the commission of rape (PW-3), yet no charge under Section 376 IPC was ever framed or tried. She admitted breaking open her mother's box and removing the cash and ornaments herself, and admitted a five-to-ten-year-old enmity between the two families. She further stated that she left her house on the advice of Smt. Kadora. P.W.-1 Babu Ram and P.W.-2 Ram Narayan, cited as "last seen" witnesses, were declared hostile and did not support the prosecution case. The Investigating Officer did not prepare a proper site plan and committed other material omissions and irregularities in investigation. In sum, the essential ingredients of Section 366 IPC were not established by cogent, reliable and consistent evidence.

17. Learned AGA submits that the prosecution has proved the charge under Section 366 IPC beyond reasonable doubt through the cogent and reliable testimony of the prosecutrix, duly supported by the FIR, medical evidence and other material on record. It is argued that the trial court has rightly appreciated the evidence and recorded the conviction, and that the alleged discrepancies, delay in lodging the FIR and defects in investigation are not sufficient to discredit the prosecution case.

18. The following points arise for determination in this appeal:

(a) Whether the delay and infirmities in the lodging of the FIR affect the credibility of the prosecution case,

(b) Whether the age of the prosecutrix, and consequently the question of her consent, stands established,

(c) Whether the essential ingredients of Section 366 IPC namely, kidnapping or abduction of a woman with intent that she may be compelled to marry any person, or in order that she may be forced or seduced to illicit intercourse ,stand proved,

(d) Whether the omission to frame charge under Section 376 IPC, despite the prosecutrix's own testimony of rape, and the non-prosecution of Smt. Kadora, cast a reasonable doubt on the prosecution case as a whole,

(e) Whether the hostility of the "last seen" witnesses and the defects in investigation are fatal to the prosecution case.

19. It is well settled that delay in lodging an FIR is not, by itself, fatal to the prosecution case if it is satisfactorily explained. Equally, unexplained and inordinate delay, particularly where it affords scope for deliberation, embellishment and consultation, is a factor going to the root of the credibility of the prosecution version. Delay in lodging the FIR often results in embellishment, and prompt filing is a valuable guarantee of the truthfulness of the prosecution version. It is also true that mere delay in lodging the FIR cannot be a ground by itself for throwing out the prosecution case, provided the delay is properly explained on facts. Though, prompt and early reporting of an occurrence gives an assurance regarding the truth of the prosecution version.

20. In the present case, the FIR itself does not specify a clear date of occurrence, and there is a gap between the incident, the return of the prosecutrix, and the eventual lodging of the report. The explanation offered that the mother was illiterate and the father was away at Kanpur explains part of the delay, but does not account for the complete absence of a definite date in the FIR, or for the interval consumed in "consultation" before the report was reduced to writing, which itself opens the door to the possibility of deliberation and embellishment of the narrative, particularly regarding the roles attributed to each accused.

21. The finding that the prosecutrix was a minor of about 16 years rests solely on oral assertion. No birth certificate, school admission register, or medical (ossification) evidence was produced or relied upon by the prosecution. The law requires that age be established through the best available documentary or medical evidence, and oral estimation, standing alone, is a weak and often unreliable basis for such a finding. In *Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133,*

Hon'ble Apex Court held that in the absence of reliable documentary proof, ossification test evidence assumes importance in determining the age of a person.

22. This infirmity assumes importance because the ingredient of "kidnapping from lawful guardianship" under Section 361 IPC, which underlies the aggravated offence under Section 366 IPC applies, in the case of a female, only where she is under eighteen years of age, or, if she is of or above that age, where she has been taken or enticed away without her free and voluntary consent. Where a young woman, on the verge of majority or of an age where she is capable of understanding the nature of her acts, leaves her guardian's protection of her own volition, without inducement amounting to "taking" or "enticement" by the accused, the offence is not made out. In ***S. Varadarajan v. State of Madras, AIR 1965 SC 942,*** Honble Apex Court held where a girl, capable of knowing what she is doing, voluntarily leaves her father's protection knowing and having capacity to know the full import of what she is doing, and the accused has done nothing to "take" her out of her guardian's keeping, no offence of kidnapping is made out. In ***Thakorlal D. Vadgama v. State of Gujarat, (1973) 2 SCC 413,*** it was held that the words "takes" and "entices" mean that the accused must, in some manner, be an active participant in bringing about the minor's leaving the guardian's protection, mere passive receipt is not enough, but where the girl leaves entirely on her own initiative the offence is not attracted. Thus, the requirement of "taking" under Section 361 IPC connotes some active or direct part played by the accused which is the proximate cause of the minor leaving parental protection.

23. On the prosecutrix's own admission, she proceeded to the sugarcane field on the persuasion of Smt. Kadora, a co-accused never put to trial, and thereafter travelled by two buses and stayed for a few days without raising any alarm despite repeated opportunities before fellow villagers at the bus stand, before co-passengers on two bus journeys, and at Gorakhpur. Read with the absence of reliable proof of minority, this evidence raises a real and substantial doubt whether the prosecutrix's leaving her home was the result of "taking" or "enticement" by the appellants within the meaning of Section 361 IPC, or was substantially an act of her own volition, at the instance of Smt. Kadora, in which the appellants' role, if any, was not shown to be the proximate and active cause contemplated by law.

24. Section 366 IPC requires proof that the accused kidnapped or abducted a woman (i) with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be so forced or seduced. Both the act of kidnapping/abduction and the specific culpable intent or knowledge are essential ingredients, each of which must be established by the prosecution beyond reasonable doubt. The burden does not shift to the accused merely because the woman was, in fact, found in the company of the accused. In a prosecution under Section 366 IPC, the specific intent set out in the section must be proved as an essential ingredient of the offence, and cannot be presumed merely from the fact of the woman having been in the company of the accused

25. As noted above, the evidence relating to the very act of "taking" is doubtful. Even assuming some role of the appellant in the prosecutrix leaving her village, the further ingredient that this was done with intent that she be forced or seduced to illicit intercourse is sought to be

inferred principally from the prosecutrix's own testimony that she was raped at Gorakhpur. Yet, tellingly, no charge under Section 376 IPC was ever framed against either accused, despite this being precisely the testimony (P.W.-3) on which the prosecution now seeks to found the requisite intent under Section 366 IPC. The Trial Court cannot be permitted, in effect, to import the ingredient of an uncharged and untried offence to sustain a conviction for an offence that depends on proof of intent connected to that very uncharged offence, without the appellants having the opportunity to meet that specific charge at trial.

26. The FIR named three persons and invoked Sections 363, 366 and 376 IPC. The charge-sheet dropped Section 376 IPC, and even Section 363 IPC was not pressed into charge, leaving only Section 366 IPC for trial. Smt. Kadora described in the FIR itself as the person who first called upon the prosecutrix to go to the sugarcane field, and who, on the prosecutrix's own cross-examination, advised her to leave was never arrested, charge-sheeted or tried. No explanation for this appears on the record.

27. Selective and unexplained dilution of the offences charge-sheeted, coupled with non-prosecution of a person assigned a central and initiating role in the FIR, is a matter this Court cannot ignore, since it bears directly on the reliability and completeness of the investigation and the case as presented at trial.

28. Taken together with the unexplained omission of Section 376 IPC despite P.W.-3's own testimony of rape, and the complete non-prosecution of Smt. Kadora, a reasonable doubt arises as to whether the prosecution placed the true and complete picture of events before the Trial Court, or whether the case, as prosecuted, was curtailed and selectively presented.

29. P.W.-1 Babu Ram and P.W.-2 Ram Narayan, cited in the FIR as persons who saw the prosecutrix in the company of the accused en route to the bus stand, were declared hostile and did not support the prosecution version. While the evidence of a hostile witness is not to be rejected in toto and may be relied upon to the extent it supports the prosecution, in the present case these were the only independent "last seen" witnesses cited, and their hostility leaves the prosecution without independent corroboration on the crucial link of the prosecutrix having left the village in the company of the named accused. In ***Khujji v. State of M.P., (1991) 3 SCC 627*** and in catena of judgements, Hon'ble Apex Court held that the evidence of a hostile witness is not to be rejected altogether. That part of the evidence which is consistent with the case of the prosecution or the defence may be relied upon. Thus, merely because a witness is declared hostile, his entire evidence does not stand effaced, but the residue must still be tested with care where it is the sole link on a material aspect

30. In the present case, however, with both cited independent witnesses turning hostile, and with no other independent witness examined to establish the initial taking away of the prosecutrix, the prosecution is left to rest almost entirely on the testimony of the prosecutrix herself, which, for the reasons discussed above, suffers from 'material contradictions' and admissions damaging to its reliability. The Investigating Officer's failure to prepare a proper site plan, and other material omissions in investigation, further weaken the corroborative structure of the prosecution case.

31. It is true that the conviction can, in an appropriate case, rest on the sole testimony of the prosecutrix if it is found to be truthful, natural and inspires confidence, without insistence on corroboration as a matter of rule. The evidence of a prosecutrix, if found truthful and natural, does not require corroboration as a matter of rule, and courts must not adopt an approach that treats her as an accomplice. These principles, however, presuppose a testimony that is otherwise consistent, natural, and free of material as opposed to minor or peripheral contradictions. Where the contradictions and admissions go to the very root of the prosecution case, they cannot be brushed aside as trivial.

32. In the present case, P.W.-3's admissions that she removed the cash and ornaments from her mother's box herself, that there existed a five-to-ten-year-old enmity between the two families, that she left home on the advice of Smt. Kadora, and that she raised no alarm through two bus journeys and several days of residence at Gorakhpur are not peripheral. They go directly to the core question of whether she was "taken" or "enticed" by the appellants, or whether she left of her own volition in circumstances coloured by long-standing family discord. Read with the hostility of the sole independent witnesses and the absence of any charge under Section 376 IPC corresponding to her own testimony of rape, these admissions create a reasonable doubt that this Court cannot ignore.

33. On a cumulative appreciation of (i) the delay and infirmity in the FIR; (ii) the absence of reliable proof of the prosecutrix's minority; (iii) the doubt surrounding the essential ingredient of "taking" or "enticement" under Section 361 IPC, given her own conduct and admissions; (iv) the absence of independent evidence of the requisite intent under Section 366 IPC, compounded by the unexplained omission of a charge under Section 376 IPC despite the prosecutrix's own testimony of rape; (v) the non-prosecution of Smt. Kadora, who finds a central and initiating role in the FIR; (vi) the hostility of both independent "last seen" witnesses; and (vii) the omissions in investigation including the failure to prepare a site plan, this Court is of the considered view that the prosecution has failed to prove the essential ingredients of the offence under Section 366 IPC against the appellant beyond reasonable doubt. It is well settled that where two views are reasonably possible on the evidence on record, the view favourable to the accused must be adopted, and the benefit of doubt arising from the infirmities discussed above must enure to the appellant.

34. In the result, this appeal is **allowed**.

35. The judgment and order of conviction dated 28.03.1984 passed by the learned 6th Additional Sessions Judge, Basti in Sessions Trial No.239 of 1981 convicting the appellant Jhabboo under Section 366 IPC, is set aside.

36. The appellant is acquitted of the charge under Section 366 IPC and shall be released forthwith. The bail bonds, if any, are canelled and the sureties, if furnished earlier, stand discharged.

37. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

38. The Registrar (Compliance) is also directed to send a copy of this order by FAX/e-mail to the concerned court through District & Sessions Judge, Gorakhpur within 48 hours for compliance.

(2026) 7 ILRA 1787
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 15.07.2026

BEFORE

THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 1258 of 2026

Adeem Ali **...Appellants**
Versus
State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

1. Whether the impugned order dated 25.03.2026 taking cognizance and summoning the appellant under Sec. 69 BNS, 2023 and Sec. 3(1)(r), 3(1)(s), 3(2)(v) SC/ST Act is cryptic, non-speaking and without application of judicial mind?

2. Whether an order refusing judicial remand under specific offences bars the Investigating Officer from further investigating and filing charge-sheet under those offences and bars the trial court from taking cognizance thereof?

3. Whether sufficiency of material regarding victim's caste and ingredients of Sec. 69 BNS / SC/ST Act can be examined at the stage of taking cognizance?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Sections 161, 164, 190, 204 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 180, 183, 210, 227 - Bharatiya Nyaya Sanhita, 2023 - Section 69 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1)(r), 3(1)(s), 3(2)(v): - Criminal Appeal – against impugned orders whereby Special Judge (SC/ST) Court has taken taking cognizance and summoned the appellant - FIR - offence under Section 69 BNS and Sections 3(1)(r), 3(1)(s), 3(2)(v) SC/ST Act – investigation - statements recorded – chargesheet – Trial initiated – Trial Court took cognizance vide impugned - appellant pleaded that cognizance order is cryptic, passed without judicial mind, and IO lacked authority after remand refusal – Court finds that, scope of interference at cognizance stage is limited - cognizance under Sec. 210 BNSS is taking judicial notice after applying mind - summoning under Sec. 227 BNSS is distinct consequence requiring no separate elaborate reasons as per Bhushan Kumar Case - impugned order considered police report and statements and found prima facie grounds, conciseness does not vitiate it - order refusing remand is at different stage and does not curtail IO's statutory power to investigate further and file report - contentions regarding caste status, public view, false promise of marriage being false at inception go to sufficiency and appreciation of evidence which are matters for trial - reliance on Hitesh Verma, Pramod Suryabhan Pawar, Sonu does not advance case at threshold – court held, **(i)** Trial Court can independently consider police report at cognizance stage despite earlier refusal of remand.- **(ii)** Summoning order requires no separate explicit reasons if satisfaction at cognizance stage is evident – **(iii)** no infirmity in impugned order warranting interference – hence, criminal appeal dismissed at admission stage – directions issued for trial court to proceed uninfluenced by observations herein.

Appeal Dismissed. (E-11)

CASE LAW CITED

Sonu v. State of U.P., (2021) 18 SCC 517

Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608
Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710
Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424

LIST OF ACTS

Code of Criminal Procedure, 1973 - Bharatiya Nyaya Sanhita, 2023 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

LIST OF KEYWORDS

Criminal Appeal - Order taking cognizance and summoning - Judicial mind - Cryptic order - non-speaking order - Refusal of judicial remand - Authority of Investigating Officer - Charge-sheet - Prima facie case - Promise of marriage - Public view - Appreciation of evidence at trial stage - Sufficiency of Evidence.

CASE ARISING FROM

Special Trial No. 28 of 2026, arising out of Case Crime No. 833 of 2025, P.S. Kotwali Sadar, District Lakhimpur Kheri.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ajeet Kumar Singh.
Counsel for Respondent(s): A.G.A.

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

1. Heard learned counsel for the appellant and learned A.G.A. for the State.

2. The present criminal appeal has been preferred by the appellant seeking to set aside the impugned order dated 25.03.2026 passed by the learned Special Judge (SC/ST Act), Lakhimpur Kheri in Special Trial No. 28 of 2026, arising out of Case Crime No. 833 of 2025, under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989, Police Station Kotwali Sadar, District Lakhimpur Kheri, whereby the cognizance has been taken and the appellant has been summoned.

3. Learned counsel for the appellant submits that the impugned order has been passed without due application of judicial mind and without proper consideration of the evidence collected during investigation. It is further submitted that the order dated 25.03.2026 is cryptic and non-speaking. The learned trial court has also failed to take into consideration its earlier order dated 29.10.2025 whereby judicial remand of the appellant in respect of the offences under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was refused.

4. It is further contended that the Investigating Officer had no authority to add offences in respect of which the trial court had already declined judicial remand. It is submitted that the Investigating Officer by merely recording the statements of two witnesses sought to circumvent the judicial order dated 29.10.2025 and frustrate its effect. Learned counsel also submits that a bare perusal of the First Information Report and the statements recorded under Sections 180 and 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 does not disclose that the victim belongs to a Scheduled Caste.

5. Learned counsel for the appellant in the support of his submission has placed relied on the judgment of the Hon'ble Supreme Court passed in ***Sonu v. State of U.P., (2021) 18 SCC 517; Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 and Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710.***

6. Per contra, learned A.G.A. opposed the appeal and submitted that during the course of investigation, the Investigating Officer recorded the statements of two witnesses and on the basis of the material so collected submitted a charge-sheet under Section 69 of BNS, 2023 and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the SC/ST Act. It is further submitted that while taking cognizance, the learned trial court duly considered the material available on record and followed the settled principles governing the exercise of such jurisdiction.

7. To buttress his submissions, learned A.G.A. placed reliance upon the judgment of the Hon'ble Supreme Court in ***Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424.***

8. The scope of interference with an order taking cognizance and issuing process is fairly well settled. 'Cognizance,' under Section 210 of the BNSS, 2023, refers to the Magistrate's application of judicial mind to the material on record so as to take judicial notice of an offence; 'summoning,' under Section 227 of the BNSS, 2023, is the subsequent and distinct step of compelling the accused's appearance in consequence of that cognizance. The two, though frequently recorded in a single order, are conceptually separate stages of the proceeding. At the stage of taking cognizance, the Court is not expected to undertake a meticulous appreciation of the evidence collected during investigation or adjudicate upon the probable defence of the accused. The jurisdiction is confined to examining whether the material, prima facie discloses the commission of an offence and furnishes sufficient ground for proceeding.

9. Furthermore, while an order taking cognizance need not be elaborate, it must disclose application of judicial mind to the material collected during investigation; and that the subsequent summoning order, being a consequence of cognizance validly taken, requires no separate or explicit reasons of its own. This position stands settled in Bhushan Kumar (supra), where it was held that a summoning order under Section 204 Cr.P.C. (now Section 227 BNSS) requires no explicit reasons, so long as it is evident that the Magistrate took notice of the accusations and applied his mind to the police report and material filed with it, the satisfaction recorded at the stage of cognizance being sufficient to sustain the process issued thereafter.

10. Keeping the aforesaid principles in view, this Court has examined the impugned order as well as the material collected during investigation.

11. A perusal of the impugned order dated 25.03.2026 indicates that the learned Special Judge has considered the police report and the statements recorded during investigation before arriving at the conclusion that sufficient grounds exist for proceeding against the appellant. The learned trial court has specifically recorded that the material collected during investigation prima facie discloses the commission of the offences alleged and that the issues raised by the defence require appreciation of evidence during the course of trial. Merely because the order is concise or does not contain an elaborate discussion of each piece of evidence cannot, by itself, lead to the conclusion that it has been passed without application of judicial

mind. At the stage of taking cognizance, a detailed evaluation of the evidence is neither contemplated nor permissible.

12. The contention that the Investigating Officer lacked authority to invoke the provisions of Section 69 of the BNS, 2023 and the provisions of SC/ST Act, 1989 after the learned trial court had earlier declined judicial remand under those provisions also does not merit acceptance.

13. An order refusing judicial remand is passed at a distinct stage of the criminal proceedings and serves a purpose entirely different from an order taking cognizance. Such an order neither amounts to an adjudication upon the legality of the investigation nor operates as a judicial determination that the offences in question are not made out. It certainly does not curtail the statutory authority of the Investigating Officer to continue the investigation, collect further material and submit an appropriate police report under the provisions of the BNSS, 2023. Consequently, merely because judicial remand was earlier declined would not, by itself, preclude the Investigating Officer from conducting further investigation or prevent the trial court from independently considering the police report at the stage of taking cognizance.

14. Reliance placed by learned counsel for the appellant on *Hitesh Verma (supra),* and *Pramod Suryabhan Pawar (supra),* does not advance the case for interference at this stage. *Hitesh Verma (supra)* lays down that an offence under the SC/ST Act requires proof that the insult or intimidation occurred specifically because of the victim's caste, and that it took place within public view, both being matters that turn on appreciation of evidence and are to be tested at trial, not foreclosed at the stage of cognizance where the material, taken at face value discloses the ingredients alleged. Similarly, the test laid down in Pramod *Suryabhan Pawar (supra),* that a promise of marriage must be shown to have been false at its inception and made in bad faith to attract the offence, goes to a factual determination which the impugned order was not required to resolve at the threshold; it remains a matter for trial. Reliance on *Sonu (supra),* stands on the same footing and does not assist the appellant at this stage for the same reason.

15. The submission that the victim's caste status is not disclosed from a bare perusal of the FIR and the statements under Sections 180 and 183 BNSS is, likewise, a matter going to the sufficiency of evidence, and is accordingly a matter for trial. It cannot be adjudicated by this Court at the stage of examining the correctness of an order taking cognizance, without weighing the material in a manner impermissible at this stage.

16. For the reasons recorded above, this Court finds no infirmity in the impugned order dated 25.03.2026 warranting interference. The submissions urged on behalf of the appellant, including those touching upon the effect of the earlier order refusing judicial remand and the sufficiency of material regarding the victim's caste, are matters that stand open to be urged before the trial court in the course of trial, and cannot furnish ground for setting aside the order taking cognizance.

17. Accordingly the criminal appeal is **dismissed** at the admission stage.

18. Any observation made in this order shall not be construed as an expression of opinion on the merits of the case, and the trial court shall proceed with the trial uninfluenced by anything stated herein.

19. Let a copy of this order be sent to the court concerned for information and compliance.

(2026) 7 ILRA 1791
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1271 of 2019

Ram Prasad & Anr. **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the appellants were guilty of murdering their minor daughters / sister by throttling and subsequently causing disappearance of evidence by hurried burial, despite witnesses turning hostile.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 161, 313, 374(2) – Indian Penal Code, 1860 – Sections 34, 201, 302 – Indian Evidence Act, 1872 – Section 8:-

Criminal Appeal – against conviction and sentence – FIR lodged alleging suicide of two minor daughters – offence of murder – investigation revealed hurried burial, exhumation, postmortem showing ante-mortem injuries and cause of death as asphyxia due to throttling – witnesses turned hostile but medical evidence and conduct of appellants established guilt – chargesheet filed, trial initiated – appellants pleaded false implication, no motive – Court finds that, deaths were homicidal, appellants concealed crime, conduct relevant under Section 8 Evidence Act, chain of circumstances complete – held, conviction under Sections 302/34 and 201 IPC proper – hence, appeal dismissed – directions issued, accordingly.
Appeal Dismissed. (E-11)

CASE LAW CITED

Vivek Kalra v. State of Rajasthan, (2014) 12 SCC 439
Mandhari v. State of Chhattisgarh, (2002) 4 SCC 308
Ujjagar Singh v. State of Punjab, (2007) 13 SCC 90
Vikramjit Singh v. State of Punjab, (2006) 12 SCC 306

LIST OF ACTS

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

LIST OF KEYWORDS

Criminal Appeal – Murder – throttling - honor killing - hostile witnesses - circumstantial evidence - concealment of evidence – exhumation – postmortem - conduct of accused - Circumstantial evidence – Section 302 IPC – Section 201 IPC – Honor killing – Throttling – Medical evidence – Conduct of accused – Complete chain of circumstances – Appeal dismissed.

CASE ARISING FROM

Sessions Trial No. 22 of 2017, arising out of Case Crime No. 198 of 2016, P.S. Saidnagli, District Amroha.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Rajesh Kumar Vishwakarma,
Counsel for Respondent(s): Shri Anil Kumar Mishra learned AGA

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. Rajesh Kumar Vishwakarma, learned counsel for the appellants in support of the appeal, Mr. Anil Kumar Mishra, learned Additional Government Advocate on behalf of the State and perused the record.

2. This criminal appeal has been preferred by the convicts, to wit, **Ram Prasad** and **Chandra Bhanu @ Chandra Bhan**, against the judgment and order dated 15.01.2019, passed by the Additional District & Sessions Judge (Fast Track Court-II), Amroha (Jyotiba Phule Nagar), in Sessions Trial No. 22 of 2017 (State v. Ram Prasad and another), arising out of Case Crime No. 198 of 2016, under Sections 302 & 201 IPC, Police Station Saidnagli, District Amroha, by which appellants were convicted under Sections 302 and 201 IPC.

3. Brief facts of this case are that Gangadas (PW-1), Ex-Gram Pradhan, along with Nardev (PW-3), Chowkidar of the village, got a written report (Ex.Ka-1) scribed on 17.10.2016 by Rajpal Singh (PW-4) and lodged the same at Police Station Saidnagli. In this written report (Ex.Ka-1), Gangadas (PW-1) has stated that yesterday, on 16.10.2016, Ram Prasad S/o Thakur Singh, resident of Sundi Mafi Khadar, Police Station Saidnagli, was going to visit his relatives in the morning. Before leaving, over some issue, he scolded his daughters, Dayawati (aged about 13 years) and Dharmwati (aged about 11 years), and then left for his relatives' house. Following this, both of Ram Prasad's daughters went to the field to fetch fodder or straw. Near the field, inside a mango orchard, both hung themselves using their dupattas from the branch of a mango tree. Ram Prasad and his family members, without informing the police, took the dead bodies of the both girls to the Ganga river and buried or disposed them off. He requested to take appropriate action in this regard.

4. On the basis of the above written report (Ex.Ka-1), a first information report was registered at Police Station Saidnagli on 19.10.2016 at 00:10 A.M. as Case Crime No. 198 of 2016, under Sections 302 & 201 IPC, against unknown offenders by the Constable Clerk Atul Kumar Pandey (PW-7).

5. Upon receiving this information, the SHO Mustakim Ali (PW-10), along with a police party and the Circle Officer, Hasanpur, reached the place where the dead bodies of both girls were buried. He sent a letter to the District Magistrate and requested for the appointment of a Magistrate for exhumation of dead bodies of the deceased girls. After obtaining permission from the District Magistrate, in the presence of Jasveer Singh, Tehsildar of Hasanpur, dead bodies of the deceased girls, Dayawati and Dharmwati, were exhumed from the earth. Thereafter, proceedings of Panchnama were conducted by S.I. Lal Singh (PW-13) under the supervision and direction of Jasveer Singh, Tehsildar, Hasanpur.

6. Under the direction of Jasveer Singh, Tehsildar, Hasanpur, S.I. Lal Singh (PW-13) prepared the Panchayatnama of deceased Dayawati (Ex.Ka-9), Police Papers No. 13 (Ex.Ka-10), Police Papers No. 33 (Ex.Ka-11), Photolash (Ex.Ka-12), Letter to C.M.O. (Ex.Ka-13), Letter to R.I. (Ex.Ka-14), and Seal of Sample (Ex.Ka-15). S.I. Lal Singh (PW-13) also prepared the Panchayatnama of deceased Dharmwati (Ex.Ka-16), Police Form No. 13 (Ex.Ka-17), Police Form No. 33 (Ex.Ka-18), Photolash (Ex.Ka-19), Letter to C.M.O. (Ex.Ka-20), Letter to R.I. (Ex.Ka-21), and Seal of Sample (Ex.Ka-22).

7. After preparing the Panchayatnama and other necessary police papers, the dead bodies of the deceased Dayawati and Dharmwati were handed over for postmortem examination to Lady Constable Nazma Begam, Lady Constable Chanchal, Constable Durgpal and Constable Phool Chandra. The dead bodies of the deceased Dayawati and Dharmwati were transported to the Postmortem House, Amroha, for autopsy.

8. Dr. Aadesh Kumar Singh (PW-12) examined the dead body of the deceased Dharmwati and prepared the postmortem report (Ex.Ka-9). He found the following ante-mortem injuries on the body of the deceased:-

"Injury No. 1: *A bluish bruise measuring 2 cm x 1 cm with abrasion present on the front aspect of the neck.*

Injury No. 2: *A bluish bruise measuring 3 cm x 1 cm with abrasion present on the front aspect of the neck, situated 2 cm above Injury No. 1.*

Injury No. 3: *A bluish bruise measuring 8 cm x 5 cm present on the left posterior (back) part of the head.*

Injury No. 4: *A bluish bruise measuring 3 cm x 2 cm present 10 cm above the elbow joint on the outer aspect of the right arm."*

In the opinion of the Dr. Aadesh Kumar Singh (PW-12), the immediate cause of death of the deceased Dharmwati was Asphyxia due to throttling.

9. Dr. Aadesh Kumar Singh (PW-12) also examined the dead body of the deceased Dayawati and prepared the postmortem report (Ex.Ka-10). He found the following ante-mortem injuries on the body of the deceased:-

"Injury No. 1: *A torn wound (laceration) measuring 3.5 cm x 3 cm between the index and middle fingers of the right hand.*

Injury No. 2: *A bluish bruise with abrasion measuring 2 cm x 1 cm on the left side of the neck, below the lower jaw.*

Injury No. 3: *A bluish bruise with abrasion measuring 3 cm x 2 cm parallel to the outer angle of the left eye.*

Injury No. 4: *A bluish bruise with abrasion measuring 5 cm x 2 cm on the left side of the neck, 2 cm above the collarbone."*

According to the Dr. Aadesh Kumar Singh (PW-12), the immediate cause of death of the deceased Dayawati was also Asphyxia due to throttling.

10. Investigating Officer, Mustakim Ali (PW-10) recorded the statements of the informant and other witnesses under Section 161 Cr.P.C. He also inspected the place of occurrence and prepared a site plan as Ex.Ka-5. He also inspected the place from where the dead bodies of the deceased Dayawati and Dharmwati were exhumed from the ground and prepared a site plan as Ex.Ka-6.

11. After completing all the necessary formalities of investigation, I.O. Mustakim Ali (PW-10) filed a Charge-sheet (Ex.Ka-7) against the appellants, namely, Ram Prasad and Chandra Bhan before the learned Magistrate having jurisdiction. Since the case was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial.

12. In the Trial Court, charges were framed against the appellants on 02.05.2017 under Sections 302/34 & 201 IPC. The appellants pleaded not guilty and claimed trial.

13. To substantiate the charges against the appellants, the prosecution has produced a total of 15 prosecution witnesses, namely, Gangadas as PW-1, Smt. Suman as PW-2, Nardev as PW-3, Rajpal Singh as PW-4, Pawan Kumar as PW-5, Nazma Begam as PW-6, Atul Kumar as PW-7, Rishipal as PW-8, Malwati as PW-9, Mustakim Ali as PW-10, Dharmveer as PW-11, Dr. Aadesh Kumar Singh as PW-12, Lal Singh as PW-13, Chhatrapal as PW-14, and Shishpal @ Shishram as PW-15. Apart from the above oral evidence, the prosecution also relied upon documentary evidences, marked as Exhibits Ka-1 to Ka-16.

14. After hearing the evidence of prosecution witnesses, the appellants were examined under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., the appellants expressed ignorance about the questions put to them. They stated that the prosecution witnesses gave false and wrong statements against them and that they were falsely implicated in this case due to enmity. Furthermore, they stated that they are innocent and have not committed any crime. They also stated that they would not adduce any evidence in their defence.

15. After hearing arguments of the prosecution as well as the defence, the learned Trial Court found the appellants, namely, Ram Prasad and Chandra Bhan, guilty of the murder of the deceased, Dayawati and Dharmwati, and also found them guilty for causing the disappearance of evidence of the offence. Accordingly, the Trial Court has sentenced each of them for life imprisonment under Section 302/34 I.P.C. along with a fine of Rs 10,000/- each. The appellants were also convicted of the offence under Section 201 IPC and sentenced to three years rigorous imprisonment on this count. along with a fine of Rs 5,000/- each. In default of payment of fine, they were also sentenced to three months of additional imprisonment. All the sentences imposed on the appellants were ordered to run concurrently.

16. Aggrieved by the impugned judgment and order of conviction and sentence dated 15.01.2019, passed by the Trial Court, the appellants have preferred this criminal appeal.

17. Learned counsel for the appellants submitted that there is no eyewitness to the incident and the entire prosecution case is based on circumstantial evidence, with no complete chain of circumstances. It is further contended that, even according to the prosecution case, there is no evidence of last seen, nor there is any witness who had seen the accused persons comitting the

alleged crime. All the prosecution witnesses of fact have not supported the prosecution case and stated that the police called the chowkidar, Nardev, Rajpal and Gangadas, the father and brother of the deceased, and upon being informed, they arrived. On the advice of the villagers that both the deceased were minors, their bodies were buried. It is also submitted on behalf of the appellants that all the prosecution witnesses of fact have turned hostile and have not supported the prosecution story. Thus, from the entire evidence of the prosecution witnesses, there is no material to show that the appellants had committed the offence, nor was there any motive for the appellants to commit the offence. All the circumstances are not linked together, and in the absence of a complete chain of the circumstantial evidence, it cannot be said that the appellants have committed the offence.

18. Learned counsel for the appellants also contended that the Trial Court has convicted the appellants on the basis of statements of witnesses recorded under Section 161 Cr.P.C., which is not substantive evidence under the law and can only be used for contradictions. All the witnesses of fact have denied the prosecution case before the Trial Court. As such, the conviction of the appellants is illegal and without any material on record. Thus, the prosecution has failed to prove its case beyond all reasonable doubt against the appellants. However, the Trial Court has not appreciated the evidence in proper perspective and in the manner countenanced by law and wrongly without the support of any cogent evidence and against the settled principles of law, held the appellants guilty and convicted them for the commission of the alleged crime. Therefore, the impugned judgment and order dated 15.01.2019 is not sustainable in the eyes of law which is liable to be set aside and this criminal appeal preferred by the appellants deserves to be allowed.

19. Per contra, the learned A.G.A. for the State-respondent has vehemently opposed the arguments advanced by the learned counsel for the appellants and submitted that although all witnesses of fact have turned hostile before the Trial Court during the recording of their evidence and have not supported the prosecution story, however, all incriminating circumstances are against the appellants, Ram Prasad and Chandra Bhan. They were legally duty bound to give information at the concerned police station about the incident, if they really were innocent, but the appellants have not given any information about this incident that Dharmwati and Dayawati hanged themselves by using their dupattas from the branch of a tree in the mango orchard. On one side, the appellants have not given any information about the unnatural death of their daughters, Dayawati and Dharmwati, and on the other side, silently buried their dead bodies in the khadar of river Ganga. After obtaining permission from the District Magistrate, the dead bodies of the deceased Dayawati and Dharmwati were exhumed from the burial ground, and postmortem examination was conducted by Dr. Aadesh Kumar Singh (PW-12).

20. Learned A.G.A. further submitted that according to the postmortem examination and in the opinion of the Dr. Aadesh Kumar Singh (PW-12), the immediate cause of death of both the deceased girls was Asphyxia due to throttling. All the incriminating and inculpatory circumstances are totally against the appellants, Ram Prasad and Chandra Bhan. This case was a case of honor killing and the appellants have committed the murder of Dayawati and Dharmwati as a measure of honor killing. He also submitted that since the appellants have committed honor killing by murdering Dayawati and Dharmwati, this is a brutal murder committed by the father and brother of the deceased. In spite of the hostility of the prosecution witnesses, there is ample evidence against the appellants. The Trial Court has appreciated the prosecution evidence in the right perspective

and legal manner. There is no illegality or perversity in the impugned judgment and order passed by the Trial Court. In view of the aforesaid, there is no force and merit in the criminal appeal preferred by the appellants. Hence, the impugned judgment and order of the Trial Court deserves to be affirmed and the instant criminal appeal preferred by the appellants is liable to be dismissed.

21. In the light of the above submissions and counter submissions of the learned counsel for the parties, we have perused all evidence, including oral as well as documentary, and also gone through the impugned judgment and order of conviction and sentence dated 15.01.2019 passed by the Trial Court.

22. In the light of the above submissions of the learned counsel for the parties, from perusal of the written report (Exhibit Ka-1), it is an established fact that Gangadas (PW-1), who was an Ex-Gram Pradhan, lodged the written report (Exhibit Ka-1) at the police station, with a view to indirectly throw a curtain over the crime committed by the appellants. Gangadas (PW-1) had filed the said written report about the incident at Police Station Saidnagli. However, after receiving the written report (Exhibit Ka-1), a case was registered against unknown offenders under Sections 302 & 201 IPC and investigation into the crime commenced.

23. The Investigating Officer Mustakim Ali (PW-10) sent a letter (Exhibit Ka-8) to the District Magistrate, Amroha requesting therein for the exhumation of the dead bodies of the deceased Dayawati and Dharmwati, as the incident appeared to be doubtful as narrated in the written report (Exhibit Ka-1). Upon this, the District Magistrate, Amroha nominated the S.D.M., Hasanpur for the exhumation of the dead bodies of the deceased Dayawati and Dharmwati. Thereafter, in the presence of the Tehsildar, Hasanpur, buried dead bodies of the deceased girls, Dayawati and Dharmwati, were exhumed from the burial place near Ganga River and their dead bodies were sent for post-mortem examination to know the real cause of their death.

24. Dr. Aadesh Kumar Singh (P.W.-12) examined the dead bodies of the deceased, Dayawati and Dharmwati, and prepared the post-mortem reports as Exhibit Ka-9 and Exhibit Ka-10, respectively. On the dead body of deceased Dharmwati, four ante-mortem injuries were found, in which Injury No. 1 and Injury No. 2 were found in the front of the neck; Injury No. 3 was found on the back portion of the head; and Injury No. 4, 10 cm above the right elbow. The cause of death was found to be Asphyxia as a result of throttling. In the same way, on the dead body of the deceased Dayawati, four ante-mortem injuries were also found. Injury No. 1 was on her first and middle fingers in the right hand; Injury No. 2 on the left side of the neck, below the jaw; Injury No. 3 parallel to the left eye; and Injury No. 4 on the left side of the neck, 2 cm above the collarbone. According to Dr. Aadesh Kumar Singh (P.W.-12), the cause of death was Asphyxia due to throttling. The tongues of both girls were found protruding, and in the case of Dharmwati, fecal matter was found discharged.

25. The above injuries, in the opinion of Dr. Aadesh Kumar Singh (P.W.-12), clearly indicate and establish the fact that both girls were forcibly held by their necks and killed by throttling. According to the doctor, there were no ligature marks or injuries indicative of hanging. Thus, it is established beyond any reasonable doubt that the deceased girls, Dayawati and Dharmwati, were

murdered by throttling, and their deaths were homicidal that occurred under abnormal circumstances.

26. The prosecution witness, Smt. Suman (PW-2), who is the wife of appellant no. 2, Chandra Bhan, did not support the prosecution story and turned hostile. She resiled from her previous statement given to the Investigating Officer, recorded under Section 161 Cr.P.C., wherein she had stated that on 16.10.2016 at about 5:00 to 6:00 A.M., her husband, Chandra Bhan and father-in-law, Ram Prasad, had not gone with Dayawati and Dharmwati to collet fodder (straw) in the jungle. Instead, she made a contrary statement asserting that both girls had gone alone to fetch fodder (straw). PW-2 also resiled from her statement given to the Investigating Officer wherein she had stated that she had seen sisters-in-law (nanands), Dayawati and Dharmwati with Pawan in an objectionable condition. She further stated that she had not given any statement to the Investigating Officer that on 16.10.2016, early in the morning at about 5:00 to 6:00 A.M., her husband and father-in-law had gone to collect fodder (straw) with both of her sisters-in-law.

27. From a perusal of the evidence of Nardev (PW-3), it emerges that on the date of the incident i.e., 16.10.2016, he was posted as the Chowkidar of Village Sundi Mafi khadar. He stated that on that day he received information that two daughters of Ram Prasad had allegedly hanged themselves from the branch of a tree in the mango orchard using their dupattas. He further stated that the family members had taken the bodies to khadar of the Ganga River and buried them there. This witness also admitted during his deposition that, along with the Gram Pradhan, Gangadas, he had conveyed the said information to the police station.

28. Rajpal Singh (PW-4), who wrote the written report (Ex. Ka-1) on the dictation of Gangadas (PW-1), turned hostile and did not support the prosecution case. He stated in his testimony that the Daroga Ji dictated the tahreer to him, and he wrote it at the police station.

29. Pawan Kumar (PW-6) also turned hostile and stated that he was not present in the village on 16.10.2016. Therefore, he did not witness who killed and hanged the deceased, Dayawati and Dharmwati, in the mango orchard of Ram Prasad.

30. From a perusal of the evidence of Rishipal (PW-8), it is revealed that the dead bodies of the deceased, Dharmwati and Dayawati, were exhumed from the khadar of the Ganga River in his presence. He further stated that the police and the Magistrate prepared the Panchayatnama of the deceased in his presence. However, this witness also turned hostile and did not support the prosecution's case.

31. Prosecution witness Malwati (PW-9) also proved the fact that the dead bodies of the deceased, Dayawati and Dharmwati, were exhumed from the khadar of the Ganga River by the police and the Magistrate and that the Panchayatnama of the deceased was prepared in her presence.

32. Prosecution witnesses Chhatrapal (PW-14) and Shishpal @ Shishram (PW-15) also did not support the prosecution's case and turned hostile.

33. Thus, from a perusal of the entire evidence of the prosecution witnesses, it is clear that although they did not support the prosecution story and resiled from their statements given to the Investigating Officer under Section 161 Cr.P.C., their evidence nevertheless clearly establishes that the deceased, Dayawati and Dharmwati, were not found hanging. This claim was set up by these witnesses merely to divert the attention of the police and create a false impression of suicide by hanging.

34. It is further revealed that Dayawati and Dharmwati did not die under normal circumstances. Their death was abnormal and their father and brother (the appellants herein) buried their bodies in haste in the khadar of the Ganga river without giving any information to the police. It is also apparent that the appellants managed the prosecution witnesses, causing them to turn hostile and fail to support the prosecution case before the Trial Court.

35. From the record and the evidence of witnesses, it is also revealed that appellants, namely, Ram Prasad and Chandra Bhan (father and brother of the deceased girls), have not given any information about this incident at Police Station Saidnagli. If, according to the defence version, both the deceased, Dayawati and Dharmwati, had hanged themselves using their dupattas from the branch of a tree in the mango orchard and if the appellants were truly innocent, they would have surely given information about this incident at the concerned police station. However, the appellants have not given any information about this incident or occurrence to the Police. This fact indicates and reveals their intention to conceal the crime committed by them.

36. On 16.10.2016, the appellants, with a view to cause disappearance of the evidence of the offence, buried the dead bodies of the deceased, Dayawati and Dharmwati, in the khadar of the Ganga River and went to their relatives' places. Thus, the conduct of the appellants, both before and after the commission of the crime, is highly relevant under Section 8 of the Indian Evidence Act, 1872. In the present case, the conduct of the appellants after the commission of the crime becomes relevant and goes against them.

37. The Supreme Court in ***Vivek Kalra v. State of Rajasthan, (2014) 12 SCC 439,*** has held:

"9. It is true that PW-5 has stated that the appellant had a good behaviour and had no bad habit. Section 8 of the Indian Evidence Act, 1872, however, provides that the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent to it. Hence, any behaviour or conduct of the appellant would be relevant if it had nexus with the offence under Section 302 alleged to have been committed by him. This Court has held in Vikramjit Singh v. State of Punjab, (2006) 12 SCC 306 at page 314:

"17. ...Conduct of an accused must have nexus with the crime committed. It must form part of the evidence as regards his conduct either preceding, during or after the commission of the offence as envisaged under Section 8 of the Evidence Act."

The general good behaviour of the appellant and the fact that he had no bad habit have no nexus with the offence alleged against the appellant and are not relevant when other circumstances have established beyond reasonable doubt that it is the appellant and the appellant alone who has committed the murder of the deceased."

38. The Supreme Court in ***Mandhari v. State of Chhattisgarh, (2002) 4 SCC 308,*** has observed:

"4. The most culpable circumstance found to have been proved and accepted by the courts below against the accused is that he had himself made a false report of commission of suicide by his wife and admitted in his examination under Section 313 Criminal Procedure Code that he was present in the house at the time of incident. His case was that he heard some sound in the adjoining room and when went inside, found his wife hanging by neck with a sari tied on the rafter of the roof of the house. He then untied the sari, brought down the dead body, first reported the matter to the villagers and then to the police. The post-mortem report prepared on autopsy conducted by Dr. PC Jain (PW-8) shows that there was ligature mark on the neck of the deceased which was anti-mortem. The opinion of the doctor is clear and definite that such ligature mark of 5 cm width in horizontal position cannot be caused by hanging but could have been caused by strangulation. Medical evidence, therefore, completely falsifies the case of the appellant that on his return from the field to his house he had found his wife hanging and thus she had committed suicide. The conduct of the accused is also not natural. When he found his wife hanging by neck he neither raised any hue and cry nor called any villagers living nearby. He all alone brought down the body hanging from the roof. He thereafter did not report the matter immediately. When villagers collected he took a plea that she had committed suicide. He also did not report the matter on his own but, as is deposed by Dilboodh (PW-2), Kotwar, it is on his insistence and of the Sarpanch that he reported the matter to the Police. These witnesses also stated that the wife had complained in the past to the Panchayat that the appellant was ill-treating her and was not providing her food.

5.After hearing learned counsel appearing and on going through the record we find no ground to take a different view of the evidence. The accused in his examination under Section 313 Cr.P..C. had admitted that he was in the house and on hearing a sound had rushed to find his wife hanging by neck. His defence that his wife committed suicide has been found to be false and the same is not corroborated by medical evidence. The above facts coupled with the circumstances that they were not leading a congenial marital life, the unnatural conduct of the accused subsequent to the incident; the spot map (Ex.7) showing that the rafter of the roof to be at such height as was unapproachable for committing suicide - cumulatively lead only to one irresistible conclusion that the accused alone was the author of the crime and had taken a false defence that he had seen the deceased to have committed suicide by hanging herself."

39. In the light of the principles laid down by the Supreme Court in the case of ***Vivek Kalra (supra)*** and ***Mandhari (supra),*** the conduct of the appellants in the present case is highly relevant. According to the prosecution story and the written report (Exhibit Ka-1), the deceased girls, Dayawati and Dharmwati, were throttled to death. Conversely, as per the defence version, both deceased allegedly hanged themselves using their dupattas from the branch of a tree in the appellants' mango orchard. However, the fact that the appellants, namely, Ram Prasad, father of the deceased, and Chandra Bhan, elder brother of the deceased, remained silent, failed to inform any villager, and did not prepare a formal panchnama, points strongly to their involvement. Furthermore, in the absence of villagers, the appellants carried the dead bodies near the Ganga River and buried them in the khadar with the clear intention of destroying evidence.

40. Thus, it is clear that the appellants are directly and closely related to the crime. The conduct and behaviour of the appellants surely and certainly, without any doubt, indicate their guilty minds. Therefore, in light of the law as laid down by the Hon'ble Supreme Court in the case of ***Vivek Kalra (supra)*** and ***Mandhari (supra),*** the appellants are undoubtedly found guilty of committing the alleged crime.

Consequently, it is established beyond reasonable doubt by circumstantial evidence that no other person, except the appellants, committed this crime and murdered the deceased by throttling their necks.

41. The Supreme Court in ***Ujjagar Singh v. State of Punjab, (2007) 13 SCC 90,*** has held in paragraph 17 of the report as under:

"17. ...It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliche) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."

42. Thus, a perusal of the entire evidence and circumstances on record unequivocally establishes that the appellants, Ram Prasad, the father of the deceased girls, and Chandra Bhan, their elder brother, committed the murder of Dayawati and Dharmwati by throttling. This act was committed for the sake of honor and dignity of the family by applying high pressure while throttling them, as a result of which, the tongues of both deceased girls protruded out of their mouth and Dharmwati also discharged fecal matter. The complete chain of incriminating circumstantial evidence points exclusively toward the guilt of the appellants. Consequently, it is conclusively proved beyond reasonable doubt that no one other than the appellants committed the offence.

43. We have also gone through the impugned judgment and order of conviction and sentence dated 15.01.2019, passed by the learned Trial Court. We find that the findings and reasoning of the Trial Court are based on unimpeachable circumstantial evidence. The Trial Court has thoroughly evaluated the entire prosecution evidence, both oral and documentary. After proper consideration, it successfully linked every chain of circumstantial evidence to find guilt of the appellants in the crime.

44. The Trial Court has evaluated the evidence and circumstances in the proper perspective and lawful manner. The impugned judgment and order have been passed in accordance with settled principles of law, and we find no perversity or illegality in it. In view of the above, the judgment and order of conviction and sentence dated 15.01.2019 deserves to be affirmed.

45. Accordingly, the judgment and order of conviction and sentence dated 15.01.2019, passed by the Additional District and Sessions Judge (Fast Track Court-II), Amroha (Jyotiba Phule Nagar) in Sessions Trial (S.T.) No. 22 of 2017 (State v. Ram Prasad and Another), arising out of Case Crime No. 198 of 2016, under Sections 302 & 201 IPC, Police Station- Saidnagli, District- Amroha, is hereby ***affirmed***.

46. Consequently, the present criminal appeal, being devoid of merit, stands ***dismissed***.

47. The appellants are in jail. They shall remain in jail to serve out the sentence awarded by the Trial Court vide order dated 15.01.2019.

48. Let a copy of this judgment and order, along with the Lower Court record, be sent to the Trial Court forthwith for necessary compliance.

(2026) 7 ILRA 1801
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Criminal Appeal No. 1306 of 2014

Vinay Pratap Singh @ Bablu **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution has established a complete and unbroken chain of circumstantial evidence proving the guilt of the appellant beyond reasonable doubt for the offence.

Whether the circumstances of motive, last-seen together, conduct of the appellant, recoveries and medical evidence unerringly point only to the guilt of the appellant and exclude every hypothesis consistent with innocence.

Whether the conviction under Sections 302, 307, 404 IPC and Section 3(2)(5) of the SC/ST Act and the sentences awarded call for any interference.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 374(2), 313 – Indian Penal Code, 1860 – Sections 302, 307, 404 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(2)(5) – Indian Evidence Act, 1872 – Sections 8, 106:- Criminal Appeal - against conviction and concurrent sentences – Four members of a Scheduled Caste family found strangulated to death in their house – Appellant alleged to have been living in intimate relationship with the daughter for about 1½ years – FIR registered, on discovery of bodies – investigation, inquest, post-mortem, arrest of appellant after alleged firing on police party - recovery of unlicensed pistol and stolen jewellery/mobile phones at his instance – three connected Sessions Trials consolidated – prosecution examined 14 witnesses including complainant, sister of deceased, independent neighbour, doctors, Investigating Officers and arresting officers – Evaluation of evidence – Court finds that, medical evidence conclusively establishes homicidal death by ante-mortem ligature strangulation - appellant admitted intimate relationship and stays at the house - independent neighbour proved quarrel at 9 p.m. on the preceding night and that appellant was not seen leaving thereafter - time-gap between last-seen and discovery of bodies is proximate - appellant failed to offer any explanation under Section 106 Evidence Act - motive of discord over marriage and financial dependence stands proved - conduct of absconding, recovery of articles belonging to deceased and firing at police party form additional links - related witnesses are natural and trustworthy and find corroboration from independent evidence – held, complete chain of circumstantial evidence satisfies the five golden principles of *Sharad Birdhichand Sarda* and unerringly points to guilt of the appellant – hence appeal dismissed – conviction and sentences affirmed – no order as to costs – lower court record directed to be sent within two weeks.

(Paras 43, 46, 49, 55, 58, 65, 67, 75, 76, 77, 78)

Appeal Dismissed. (E-11)

CASE LAW CITED

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116
Hanumant v. State of M.P., (1952) 2 SCC 71
State of U.P. v. Naresh, (2011) 4 SCC 324
G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593
Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372
Rambraksh v. State of Chhattisgarh, (2016) 12 SCC 251
Ram Gopal v. State of M.P., (2023) 5 SCC 534
Appabhai v. State of Gujarat, 1988 Supp SCC 241
Md. Rojali Ali v. State of Assam, (2019) 19 SCC 567
Masalti v. State of U.P., AIR 1965 SC 202
Dalip Singh v. State of Punjab, (1953) 2 SCC 36

LIST OF ACTS

Code of Criminal Procedure, 1973
Indian Penal Code, 1860
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
Indian Evidence Act, 1872
Arms Act

LIST OF KEYWORDS

Criminal Appeal – Circumstantial evidence – Sections 302, 307, 404 IPC – Section 3(2)(5) SC/ST Act – Last-seen theory – Motive – Section 106 Evidence Act – Recovery of stolen property – Homicidal strangulation – Complete chain of circumstances – Appeal dismissed.

CASE ARISING FROM

Common judgment and order dated 02.09.2014 passed by the Additional Sessions Judge, Hardoi in (i) Sessions Trial No. 632 of 2009 arising out of Case Crime No. 353 of 2009; (ii) Sessions Trial No. 676 of 2009 arising out of Case Crime No. 355 of 2009; and (iii) Sessions Trial No. 677 of 2009 arising out of Case Crime No. 356 of 2009; all relating to Police Station Sandi, District Hardoi.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Salil Mohan, Devendra Pratap, Shri Shashank Shekhar Singh
Counsel for Respondent(s): Shri S.P. Singh, learned A.G.A.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Shri Shashank Shekhar Singh, learned Counsel appearing for and on behalf of the appellant, as well as Shri S.P. Singh, learned Additional Government Advocate, appearing for and on behalf of the State respondent and perused the materials available on record.

2. The present Criminal Appeal under Section 374(2) has been preferred by the appellant-**Vinay Pratap Singh @ Bablu,** against the impugned common judgment and order dated 02.09.2014, passed by the Additional Sessions Judge, Hardoi in (i) Sessions Trial No. 632 of 2009 (State vs. Vinay Pratap Singh @ Bablu), arising out of Case Crime No. 353 of 2009; (ii) Sessions Trial No. 676 of 2009 (State vs. Vinay Pratap Singh @ Bablu), arising out of Case Crime No. 355 of 2009; and (iii) Sessions Trial No. 677 of 2009 (State vs. Vinay Pratap Singh @ Bablu), arising out of Case Crime No. 356 of 2009; all relating to Police Station Sandi, District Hardoi, which all were tried together and wherein the appellant has been convicted under Sections 302, 307, 404, of I.P.C and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989 for the maximum punishment of life imprisonment, along with fine of Rs. 20,000/- and the default clause in case of non-payment of fine.

CASE OF THE PROSECUTION

3. The factual matrix leading up to the filing of the present Criminal Appeal is delineated herein-below : -

3.1) As per the prosecution story, on 24.06.2009, at about 8:00 AM, complainant Nathulal (P.W.-1) went to the house of his relative Smt. Nandrani (aged about 65 years) in Mohalla Nawabganj, Police Station Sandi, District Hardoi. Upon entering her house, he found the dead bodies of Smt. Nandrani (Deceased-1) and her Grand-Son Anshu, (aged about 5 years) (Deceased-2) lying on a cot in the courtyard with cloth (saree/dhoti) nooses tied around their respective necks. In the adjacent thatched room, the bodies of Smt. Babita, (aged about 32 years) (Deceased-3), daughter of Nandrani and her grand-daughter Kumari Gunjan, (aged about 7 years) (Deceased-4) were lying on the floor, also with cloth nooses around their necks. All four persons had been strangulated to death.

3.2) The complainant alleged that the accused Vinay Pratap Singh @ Bablu, resident of Village Naumalikpur, P.S.- Bilgram, District Hardoi, had been living in a relationship with Smt. Babita (daughter of Nandrani) in the said house for about 1.5 years. On the intervening night of 23/24.06.2009, a quarrel had taken place between Babita and the accused at around 9:00 PM, which was heard and informed by neighbours. The accused was last seen along with the Deceased-1/Babita in her house and was not found there on the next morning, when her dead body was found in the same house.

3.3) Evidently, all four deceased belonged to the Kori community, which is a Scheduled Caste. The accused belonged to the Thakur community.

3.4) On the basis of the aforesaid written information/tehrir (Exhibit-ka-1) of P.W.-1, F.I.R. No. 353/2009 was registered at P.S.- Sandi under Section 302 I.P.C. and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3.5) Panchayatnama was prepared of the four dead bodies of Nandrani (aged 65 years), Babita (32 years), Kumari Gunjan (aged about 7 years) and Anshu (aged about 5 years). After preparing the necessary documents, the bodies were sent for post-mortem to the District Hospital. Investigation was carried by inspecting the crime-site and recording of statements of the witnesses under Section 161 of the Cr.P.C. Post-mortem examinations confirmed that all four victims died due to ante-mortem strangulation by ligature (saree/cloth).

3.6) During investigation, the accused was apprehended on the same day at about 4:30 PM from Nandlal Shikshan Sansthan Higher Secondary School, Suganwa, while he was allegedly trying to escape from his hideout at a school. On seeing the police personnels, the accused allegedly fired at them with a country-made 12-bore pistol. He was arrested and from his possession, one 12-bore pistol with an empty cartridge stuck in the barrel and one live cartridge were recovered. On his disclosure and at his instance, a black bag was recovered from the south-eastern corner of the school containing jewellery allegedly belonging to the deceased persons, two mobile phones, and a red purse containing ₹116/-. Separate cases under Section 307 I.P.C. (Crime No.355/2009) and Section 3/25 Arms Act (Crime No.356/2009) were also registered against the accused.

3.7) After investigation, charge sheets were filed and according charges were framed against the accused under Sections 302, 404 I.P.C. and Section 3(2)(5) SC/ST Act, Section 307 I.P.C. and Section 3/25 Arms Act. The learned Trial Court framed charges under the aforesaid Sections, to which the accused pleaded not guilty and claimed false implication due to enmity and property dispute, and claimed for Trial. The Trial of all three connected cases was consolidated.

PROCEEDINGS BEFORE THE TRIAL COURT

4. During Trial, in order to prove the charges against the accused/appellant, the prosecution examined the following 14 witnesses:

P.W.-1	***Nathulal***	*Complainant, relative of the deceased*
P.W.-2	***Smt. Malti***	*Sister of Babita, daughter of Nandrani*
P.W.-3	***Surendra Pal***	*Independent Witness/Neighbour*
P.W.-4	***Dr. Laxmi Narayan Mishra***	*Formal expert witness/ Fingerprint Expert*
P.W.-5	***Dr. Anil Kumar Srivastava***	*Medical Officer*
P.W.-6	***HCP Lalji***	*Head Moharrir and a formal witness, proved G.D. entries and registration of F.I.R.*
P.W.-7	***S.I. Ramesh Chandra Pal***	*Formal witness, Member of the Investigation team*
P.W.-8	***Inspector Yogendra Singh***	*Formal witness, Member of the Investigation team*
P.W.-9	***S.S.I. Chandrabhan Singh***	*Formal witness, proved inquest proceedings (Exhibit-Ka-10 to Ka-14) and seizure of the board (Exhibit-Ka-2).*
P.W.-10	***S.I. Hausla Prasad Awasthi***	*Formal witness, proved preparation of inquest memos and other documents.*
P.W.-11	***Const. Satti Deen***	*Formal witness, proved G.D. entries and registration of F.I.R.*
P.W.-12	***Piyush Ranjan Srivastava, C.O.***	*Formal witness, proved investigation, spot maps (Exhibit-Ka-37, Exhibit-Ka-44), and charge sheets.*
P.W.-13	***S.I. Satya Narayan Verma***	*Formal witness, proved investigation of Section 307 I.P.C. and Arms Act cases, Maps (Exhibit-Ka-42).*
P.W.-14	***B.B. Chaurasia, C.O.***	*Formal witness, proved investigation, spot maps (Exhibit-Ka-37, Exhibit-Ka-44), and charge sheets.*

5. Apart from the aforesaid oral evidence, the prosecution has also relied on the following documentary evidence exhaustively, to substantiate its case: -

Written report/ Tehrir	***Exhibit-Ka-1***
Fard/small tin board for taking possession	***Exhibit-Ka-2***
Fard /finger prints collected from the scene of crime	***Exhibit-Ka-3***
Postmortem report of deceased Kumari Gunjan	***Exhibit-Ka-4***
Postmortem report of deceased Nandrani	***Exhibit-Ka-5***
Postmortem report of deceased Anshu	***Exhibit-Ka-6***

Postmortem report of deceased Mrs. Babita	***Exhibit-Ka-7***
Carbon copy of First Information Report dated 24-06-2009, recorded on the basis of written report/Tahrir,	***Exhibit-Ka-8***
General Diary (G.D.)	***Exhibit-Ka-9***
Fard/recovery of country made pistol 12 bore	***Exhibit-Ka-10***
Panchayatnama of Smt. Nandrani	***Exhibit-Ka-11***
Panchayatnama of Anshu	***Exhibit-Ka-12***
Panchayatnama of Smt. Babita	***Exhibit-Ka-13***
Panchayatnama of Kumari Gunjan	***Exhibit-Ka-14***
Letter to the Inspector of Quarter Masters	***Exhibit-Ka-15, 21***
Letter to the Chief Medical Officer, Hardoi	***Exhibit-Ka-16, 26, 31***
Police Form No. 13	***Exhibit-Ka-17, 22, 27, 32***
Photo Lash	***Exhibit-Ka-18, 23, 28, 33***
Sample Seal	***Exhibit-Ka-19, 24, 29, 34,***
Letter written to the Chief Medical Officer regarding postmortem of the dead body of deceased Anshu	***Exhibit-Ka-20***
Letter written to the Inspector of Records regarding the deceased Babita	***Exhibit-Ka-25***
Letter written to the Inspector of Records regarding the post-mortem of the deceased Gunjan	***Exhibit-Ka-30***
F.I.R. No. 355/09 under Section 307 I.P.C.	***Exhibit-Ka-35***
Carbon copy of the General Diary/G.D.	***Exhibit-Ka-36***
Naksa-Nazri related to Case No. 353/2009	***Exhibit-Ka-37***
Charge sheet related to Case No. 353/2009	***Exhibit-Ka-38***
Naksa-Nazri related to Section 307 I.P.C.	***Exhibit-Ka-39***
Naksa-Nazri related to Section 3/25 Arms Act,	***Exhibit-Ka-40***
Charge sheet related to Section 307 I.P.C.	***Exhibit-Ka-41***
Prosecution sanction granted by District Magistrate, Hardoi	***Exhibit-Ka-42***
Charge sheet related to Case No. 356/2009,	***Exhibit-Ka-43***
Naksa-Nazri related to Section 302 I.P.C.	***Exhibit-Ka-44***
Letter written to Director, Finger Print Museum	***Exhibit-Ka-45***

6. Prosecution in order to prove its case before the learned Trial Court has produced fourteen witnesses, wherein **P.W.-1/Nathulal** being the Complainant, deposed that he was related to the family of the deceased as his daughter was married into the family of Smt. Malti (P.W.-2), the elder daughter of deceased Nandrani. Owing to such relationship and also being a co-villager, he used to frequently visit the house of Nandrani situated in Mohalla Nawabganj. He stated that deceased Babita, younger daughter of Nandrani, after the death of her husband Sanjay about 2' to 3 years prior to the incident, had shifted to the house of her mother Nandrani along with her children Gunjan and Anshu and was working as an Anganwadi worker. P.W.'1 further deposed that accused Vinay Pratap Singh @ Bablu had developed intimacy with the deceased Babita and had been residing with her in the said house for about one and a half years prior to the occurrence of the fateful incident. On 24.06.2009 at about 8:00 A.M., when he visited the house of Nandrani, he found the main door open. Upon entering the house, he found Nandrani and Anshu lying dead on a

cot in the courtyard with cloth nooses tied around their necks. In the adjoining thatched room, he found Babita and Gunjan lying dead on the floor with ligature material around their necks. Being terrified, he rushed outside and raised an alarm. P.W.'1 also deposed that neighbours, namely Surendra, Pappu and Mohammad Salim, informed him that on the previous night at about 9:00 P.M. a serious altercation had taken place between the deceased Babita and the accused. Subsequently, he got a written report/Tehrir prepared and lodged the same at Police Station Sandi. He proved the written report/Tehrir and also identified the tin board displayed at the house bearing the name of the accused.

In his cross-examination, P.W.'1 admitted his relationship with the family of the deceased. He, however, categorically deposed that the accused had been residing in the house of deceased Babita and Nandrani for about one and a half years before the incident. P.W.'1 also stated regarding the quarrel between deceased Babita and the accused was informed to him by the neighbours of deceased namely, Surendra, Pappu and Mohammad Salim. He denied the suggestion that the First Information Report had been dictated by the police. He further denied that he had falsely implicated the accused due to any property dispute. He specifically rejected the defence suggestion that he or Smt. Malti (P.W.-2) had any role in the occurrence or had implicated the accused in order to grab the property of the deceased family. Nothing substantial was elicited in his cross-examination to discredit his testimony regarding the relationship of the accused with the deceased Nandrani or deceased Babita, the discovery of the dead bodies, or the lodging of the prompt F.I.R.

7. **P.W.-2/Smt. Malti,** daughter of deceased Nandrani and sister of deceased Babita, deposed that after the death of Babita's husband Sanjay in a railway accident, Babita shifted to her paternal home along with her two children and started working as an Anganwadi worker. P.W.-2 stated that accused Vinay Pratap Singh @ Bablu developed a relationship with deceased Babita and had been living with her for approximately one and a half years prior to the incident. P.W.-2 also deposed that the accused was exerting pressure on Babita to solemnize a Court marriage with him. Babita was unwilling for such marriage, which became a root of frequent discord between them. P.W.-2 further stated that Babita often complained that the accused was unemployed and dependent upon her earnings and that she had to maintain him financially. Such circumstances created suspicion and insecurity in the mind of the accused. P.W.-2 further deposed that after receiving information regarding the incident, she reached the house and found all four deceased persons lying dead. She also noticed that certain jewellery articles usually worn by the deceased were missing. She identified the recovered articles, including silver anklets, toe rings, amulet, purse, cash and mobile phones, as belonging to the deceased persons, which were recovered from a black bag on the pointing of the accused/appellant.

During her cross-examination, P.W.-2 admitted that she was unhappy with the relationship between deceased Babita and the accused. She further stated that after the incident, P.W.-2 and her family had been residing in the said house. P.W.-2 categorically denied the defence suggestion that she, Nathulal or other family members had committed the murders for securing possession of the property of Nandrani. She reiterated that Babita herself had informed her regarding the intimate physical relationship between her and the accused. She denied that the accused had been falsely implicated. The cross-examination failed to impeach her evidence regarding the relationship between the accused and the deceased Babita, the motive arising from the proposed marriage, or the identification of the recovered articles.

8. **P.W.-3/Surendra Pal,** an independent witness (neighbour), residing in the vicinity of the house of deceased Nandrani, deposed that accused Vinay Pratap Singh @ Bablu had been residing with the deceased Babita in the said house for approximately one and a half years prior to the occurrence of the incident. P.W.-3 deposed that on 23.06.2009 at about 9:00 P.M., while he was sitting outside his house, he heard and witnessed a heated quarrel between the deceased Babita and the accused near the entrance of the house. According to him, the altercation was serious in nature. P.W.-3 further stated that he did not see the accused leaving the house during the night after the said fight. On the following morning, he came to know that Nandrani, Babita, Gunjan and Anshu had been murdered.

During his cross-examination, P.W.-3 stated that he remained present for a short duration and heard the exchange of words between the deceased Babita and the accused before leaving the spot. He consistently maintained that the quarrel had indeed taken place on the night preceding the occurrence. P.W.-3 further reiterated that he had not seen the accused leaving the house thereafter. No material contradiction or improvement was brought out in his cross-examination. His testimony remained consistent and provided an important link in the chain of circumstances relating to motive and the "last seen" theory.

P.W.-3 being an independent witness, as well as neighbour, with no demonstrated animus against the accused lends significant corroboration to the prosecution case regarding the presence of the accused in the house on the crucial night and the occurrence of a serious quarrel immediately preceding the murders.

9. **P.W.-4/Dr. Laxmi Narayan Mishra,** the Fingerprint Expert, was posted as 'Senior Scientific Assistant' in the Field Unit, Hardoi. He deposed that upon receiving information regarding the incident, he visited the place of occurrence on 24.06.2009 and conducted scientific examination of the scene. He found a broken steel almirah, plastic briefcase, utensils, plate, bowl and glass at the spot. Fingerprints were taken from the steel cupboard, plastic briefcase, plate, bowl and glass through scientific methods. P.W.-4 proved the fingerprint memo and the report prepared by him during investigation. He identified the fingerprint exhibits and stated that the same were handed over to the Investigating Officer for further examination. P.W.'4 being a formal expert witness, his testimony established the scientific examination of the crime scene.

Nothing substantial was elicited in his cross-examination to challenge either his qualifications, the method adopted by him, or the factum of lifting fingerprints from the scene of occurrence. The defence could not demonstrate any procedural irregularity in the scientific collection of fingerprints.

10. **P.W.-5/Dr. Anil Kumar Srivastava,** the Medical Officer, conducted the post-mortem examinations of all four deceased persons, namely Nandrani, Babita, Gunjan and Anshu, on 24.06.2009 and proved the said post-mortem reports. P.W.'5 found ligature marks around the necks of all four deceased. In the cases of Babita, Nandrani and Anshu, fracture of hyoid bone and tracheal rings was noticed. Congestion of internal organs was also found. In the case of Gunjan, injury to the right eye was additionally noted. P.W.'5 categorically opined that all four deaths were homicidal in nature and occurred due to asphyxia resulting from ante-mortem strangulation by ligature material. According to him, the deaths could have occurred during the intervening night of 23/24.06.2009.

During his cross-examination, the defence was unable to challenge his medical findings. No suggestion was put indicating any possibility of accidental or suicidal death. P.W.'5 remained firm that the deaths were caused by ante-mortem strangulation.

P.W.-5 provides crucial medical corroboration to the prosecution case and conclusively establishes homicidal death by strangulation.

11. **P.W.-6/Head Constable Lalji,** (Head Moharrir and a formal witness) proved the registration of F.I.R. on the basis of the written report/tehrir lodged by P.W.'1 (Exhibit-Ka-1). He proved the chik F.I.R. (Exhibit-Ka-8) and corresponding General Diary (Exhibit-Ka-36) entry prepared on 24.06.2009.

During his cross-examination, no material contradiction emerged. The defence failed to establish any delay or manipulation in the registration of the F.I.R.

12. **P.W.-7/S.I. Ramesh Chandra Pal,** was a member of the police team constituted to apprehend the accused. P.W.'7 deposed that acting on secret information, the police party reached Nandlal Shikshan Sansthan Higher Secondary School, Sungwa, where the accused was hiding. P.W.'7 further deposed that on noticing the police party, the accused fired from a country-made 12-bore pistol with intent to kill them. The police party took cover and succeeded in apprehending him with some force. Upon personal search, one country-made pistol, one empty cartridge stuck in the barrel and one live cartridge were recovered. Thereafter, on disclosure made by the accused, a black bag containing jewellery articles of the deceased, two mobile phones and a purse containing cash was recovered from the school premises. The recovery memos were also duly proved by the P.W.'7.

During his cross-examination, the defence suggested false arrest and fabricated recovery to which P.W.'7 denied all such suggestions and consistently maintained that the accused was arrested from the school premises and that recoveries were made at his instance.

13. **P.W.-8/Inspector Yogendra Singh**, was the leader of the raiding police party. P.W.'8 substantially corroborated the testimony of P.W.'7 regarding the receipt of information, arrest of the accused, firing by the accused, recovery of the pistol and cartridges and recovery of stolen property at the instance of the accused. P.W.'8 further stated that the accused disclosed his involvement in the murders and thereafter, led the police to the concealed articles.

Despite of his lengthy cross-examination, no material contradiction was pointed out between his testimony and that of P.W.'7. Suggestions regarding false implication and fabricated recovery were categorically denied.

14. **P.W.-9/S.S.I. Chandrabhan Singh**, a formal witness, established the condition of the bodies at the earliest stage of investigation and conducted inquest proceedings of all the four deceased persons. P.W.'9 proved the inquest reports and also proved seizure of the tin board displayed outside the house bearing the name of the accused. P.W.'9 also described the condition of the dead bodies and the articles found on them at the time of inquest.

During his cross-examination, no material contradiction was elicited. P.W.'9 remained throughout consistent with respect to the condition of the bodies and the preparation of inquest reports.

15. **P.W.-10/S.I. Hausla Prasad Awasthi**, a formal witness proved the procedural compliance made during the investigation and assisted the police team in the inquest proceedings and also proved the preparation of various documents including, letters addressed to the Chief Medical Officer, police forms, specimen seals and related papers. The witness was not materially shaken during his cross-examination.

16. **P.W.-11/Const. Satti Deen**, formally proved the registration of connected criminal cases being, Case Crime No.355/2009 under Section 307 I.P.C. and Case Crime No.356/2009 under Section 3/25 Arms Act on the basis of recovery memos and reports submitted by the arresting officers. No material discrepancy emerged during his cross-examination.

17. **P.W.-12/Piyush Ranjan Srivastava**, C.O., being one of the Investigating Officers, proved substantial investigative steps culminating in filing of charge-sheet. P.W.'12 deposed about the steps undertaken during investigation, including recording of witness statements, collection of post-mortem reports, preparation of Site plans and examination of police witnesses. P.W.'12 also proved the Site plan and Charge-sheet submitted against the accused under Sections 302 and 404 I.P.C. and Section 3(2)(5) of the SC/ST Act.

During his cross-examination, no material irregularity in investigation could be demonstrated by the opposite party. P.W.'12 strenuously denied suggestions of biased investigation.

18. **P.W.-13/S.I. Satya Narayan Verma**, investigated the offences under Section 307 I.P.C. and Section 3/25 Arms Act. P.W.'13 also deposed about recording statements of witnesses, preparing Site plans relating to the encounter and recovery proceedings and obtaining sanction for prosecution under the Arms Act. P.W.'13 proved the Site plans, Sanction order and Charge-sheets filed in the connected cases.

During his cross-examination, P.W.'13 denied suggestions that the encounter story was fabricated or that the accused had been falsely implicated.

19. **P.W.-14/B.B. Chaurasia, C.O**., was the principal Investigating Officer in the present case, whose testimony connects various pieces of evidence collected during investigation and explains the sequence of investigative steps resulting in submission of the charge-sheet. P.W.'14 during his examination-in-chief has deposed that after registration of the F.I.R., he inspected the scene of occurrence, prepared the Site plan, recorded statements of witnesses including, Nathulal and Surendra Pal, and collected evidence during investigation. P.W.'14 proved the Site map and various investigative documents. Upon completion of investigation and finding sufficient evidence against the accused, he submitted the Charge-sheet.

During his cross-examination, the defence attempted to suggest that investigation was biased and conducted with a predetermined intention to implicate the accused. P.W.'14 denied such allegations and asserted that investigation was carried out fairly and on the basis of material collected during investigation.

20. After conclusion of the evidence of the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C., wherein the accused, **Vinay Pratap Singh @ Bablu**, entered himself in the witness-box as a **Defence witness/D.W.-1,** wherein he deposed that he had been falsely implicated in the present case. He stated that he never resided permanently in the house of

deceased Babita and was merely acquainted with her. He denied having committed the murders of Nandrani, Babita, Gunjan and Anshu and further denied the allegations regarding recovery of jewellery articles and other belongings of the deceased from his possession. D.W.-1 deposed that he had assisted Babita in securing employment as an Anganwadi worker and, consequently, cordial relations had developed between them. According to him, due to such acquaintance, he occasionally visited Babita's residence. D.W.-1 further asserted that the police had apprehended him from his native village Naumalikpur and thereafter, fabricated a false story of arrest, recovery and encounter in order to implicate him in the present case.

During his cross-examination, several significant admissions were elicited from the accused. D.W.-1 admitted that he had developed affection towards Babita and had become emotionally attached to her. D.W.-1 further admitted that he had stayed at Babita's residence on several occasions. Although in his examination-in-chief, D.W.-1 attempted to portray his visits as casual and seldom, but during his cross-examination, he acknowledged that whenever he visited Sandi and it became late in the evening, he used to stay at Deceased-1/Babita's house. D.W.-1 admitted that such stays had occurred on more than one occasion. D.W.-1 also admitted that apart from providing help in facilitating Babita's appointment as an Anganwadi worker, he shared physical relations with the deceased Babita. This admission substantially corroborated the prosecution version that the relationship between the accused and Babita was not merely casual but intimate in nature.

21. The Trial Court after considering and appreciating the evidence available on record, convicted and sentenced the accused/appellant **Vinay Pratap Singh @ Bablu** vide judgment and order dated 02.09.2014, on all counts as mentioned herein below: -

In Session Trial No. 632/2009	The accused was convicted under: - Section 302 I.P.C. ' Imprisonment for Life + fine of Rs.20,000/- (in default, 6 months additional Rigorous Imprisonment); Section 404 I.P.C. ' 2 years Rigorous Imprisonment + fine of Rs.1,000/- (in default, 1-month additional Rigorous Imprisonment); Section 3(2)(5) SC/ST Act ' Imprisonment for Life + fine of Rs.20,000/- (in default, 6 months additional Rigorous Imprisonment).
In Session Trial No. 676/2009:	The accused was convicted under Section 307 I.P.C. ' 8 years Rigorous Imprisonment + fine of Rs.5,000/- (in default, 2 months Rigorous Imprisonment)
In Session Trial No. 677/2009	The accused was convicted under Section 3/25 Arms Act ' 2 years Rigorous Imprisonment + fine of Rs.1,000/- (in default, 1-month Rigorous Imprisonment).

It was also directed that all the sentences were to run concurrently.

PROCEEDINGS BEFORE THIS COURT

22. Aggrieved by the aforesaid conviction and awarding of sentence, the accused/appellant - Vinay Pratap Singh @ Bablu, has preferred the instant Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the impugned common judgment and order dated

02.09.2014, passed by the learned Additional Sessions Judge/Special Judge, SC/ST Act, Hardoi as detailed herein above.

23. It is evident to note at this point that the First bail application filed by the appellant was rejected by a Coordinate Bench of this Court, vide a reasoned order dated 27.03.2015, passed in Criminal Misc. Application No. 96058 of 2014. Subsequently, the Second bail application came to be filed by the appellant vide dated 02.12.2024 in Criminal Misc. Application No. 03 of 2024.

24. However, while arguing the bail application, Shri Shashank Shekhar Singh, learned Counsel appearing for and on behalf of the accused/appellant, has pressed that since the paper book is ready in the present criminal appeal and he is willing to argue the appeal on merits, as the accused/appellant is in jail since 24.06.2009, it was directed for final hearing of the present criminal Appeal.

25. Accordingly, the Second bail application was dismissed as being not pressed and the instant criminal appeal has been heard on its merits.

SUBMISSION ON BEHALF OF THE PARTIES

26. That the hinge of the argument of the learned Counsel for the accused/appellant is that the judgment of conviction and sentence passed by the learned Trial Court is that the entire prosecution case rests solely on circumstantial evidence and there is no direct ocular evidence connecting the accused/appellant with the alleged murder of four deceased persons. It has been submitted that the conviction recorded by the Trial Court is based upon conjectures and surmises rather than legally admissible evidence and, therefore, cannot be sustained in law.

27. Learned Counsel for the accused/appellant has further contended that the First Information Report itself, originates from pure suspicion and lacks the requisite factual foundation to constitute a prima facie case. P.W.-1 (Nathulal) admittedly did not witness the occurrence and merely stated that after reaching the house he found the dead bodies of the deceased persons. The allegation against the accused/appellant was made only because the accused/appellant was known to be residing with deceased-1/Babita and allegedlly certain neighbours informed the Complainant that a quarrel had taken place between deceased Babita and the accused/appellant on the preceding night of the incident. Thus, according to learned Counsel, the F.I.R. discloses only suspicion and not any direct incriminating circumstance against the accused/appellant.

28. Learned Counsel for the accused/appellant has also submitted that the prosecution has failed to establish a complete chain of circumstances as required by settled principles governing cases based upon circumstantial evidence. Reliance has been placed upon some landmark judgments rendered in the cases of ***Sharad Birdhichand Sarda v. State of Maharashtra, reported in (1984) 4 SCC 116; Hanumant v. State of M.P.,*** reported in ***(1952) 2 SCC 71; Ravishankar Tandon v. State of Chhattisgarh,*** reported in ***2024 SCC OnLine SC 526;*** and a judgment of this Court rendered in the case of ***Vinod Chaudhari v. State of U.P., reported in 2023 SCC OnLine All 1420;*** to contend that every circumstance relied upon by the prosecution must be fully established and all such circumstances must unerringly point towards the guilt of the accused, while excluding

every possible hypothesis consistent with innocence. It was argued that the present case falls far short of the aforesaid standard.

29. Learned Counsel for the accused/appellant has further contended that no motive has been established by the prosecution in the present case. It has been vehemently argued that the prosecution story regarding alleged pressure by the accused/appellant upon deceased Babita for marriage and the consequent quarrel is based solely upon the testimony of interested witnesses, particularly P.W.-2 Malti. There is no independent evidence to establish any such motive. It was submitted that where a case rests entirely on circumstantial evidence, proof of motive assumes great significance and the prosecution having failed to establish the same, the chain of circumstances remains incomplete. It has also been submitted that the so-called 'last seen' circumstance is inherently weak and unreliable, in the present case. P.W.-3 Surendra Pal, merely stated that he had heard a quarrel between the accused/appellant and the deceased Babita at about 9:00 p.m. and thereafter, went inside his own house. P.W.-3 did not witness any occurrence during the night. P.W.-3 also did not depose that the accused/appellant remained inside the house throughout the night. Thus, according to learned Counsel, the testimony of P.W.-3 is insufficient to establish exclusive presence of the accused/appellant with the deceased immediately before the occurrence.

30. Learned Counsel for the accused/appellant has strenuously submitted that four persons, including an elderly lady and two children, were allegedly murdered by strangulation. The post-mortem reports disclose ligature strangulation as the cause of death. It has been argued that the nature and manner of occurrence of the incident itself suggest participation of more than one assailant and render the prosecution story that a single individual committed all four murders highly improbable. No explanation has been offered by the prosecution, as to how a single person could simultaneously overpower and murder four occupants of the house without any sign of resistance or alarm by any of them.

31. Furthermore, the recovery of jewellery, mobile phones and other articles allegedly belonging to the deceased has also been challenged. Learned Counsel has submitted that the recovery proceedings are doubtful and suffer from serious procedural irregularities. No independent public witness was associated with the alleged recoveries. Mandatory safeguards contemplated under Cr.P.C. were not complied with. It has been further submitted that the alleged recoveries stand contradicted by the inquest proceedings and therefore, cannot be treated as reliable incriminating circumstances. It has also been contended that the prosecution fabricated a false story of encounter in order to strengthen an otherwise weak case. According to learned Counsel, the accused/appellant was illegally apprehended and a fictitious version was subsequently created regarding firing upon the police party. The entire prosecution case under Section 307 I.P.C. and Section 3/25 Arms Act has argued to be artificial and unsupported by any independent witness.

32. It has been further argued that all material witnesses of fact are either related to the deceased or interested witnesses. P.W.-1 Nathulal, is a close relative of the deceased family, whereas P.W.-2 Malti, is the sister of deceased Babita and daughter of deceased Nandrani. Their testimonies, according to the accused/appellant, required cautious scrutiny. It has been also

submitted that material contradictions and inconsistencies exist in their evidence and the learned Trial Court failed to appreciate such discrepancies.

33. Learned Counsel for the accused/appellant has also contended that the defence version has not been properly considered. The accused/appellant consistently maintained that he was falsely implicated due to a dispute relating to the property of the deceased family. It has been strenuously argued that after the incident, P.W.-2 Malti, and her family occupied the property and therefore, possessed a strong motive to implicate the accused/appellant. The possibility of involvement of other interested persons was also not investigated by the police. Learned Counsel for the accused/appellant has further submitted that the investigation suffered from serious infirmities and was conducted with a predetermined intention to implicate the accused/appellant. Material lapses and procedural irregularities were ignored by the Trial Court. It has been also argued that the statement of the accused/appellant under Section 313 Cr.P.C. has not been properly recorded and all incriminating circumstances were not fairly put to him.

34. Lastly, it has been argued that the prosecution has failed to establish guilt beyond reasonable doubt. At the highest, the circumstances create suspicion against the accused/appellant; however, suspicion, howsoever strong, cannot take the place of legal proof. It has been therefore prayed that the conviction and sentence recorded by the learned Trial Court be set aside and the accused/appellant be acquitted of all charges.

35. Per contra, learned A.G.A. appearing for the State has supported the judgment of conviction and submitted that the learned Trial Court has correctly appreciated the evidence on record and has recorded findings fully supported by law and evidence. Learned A.G.A. has contended that the prosecution has succeeded in proving a complete and unbroken chain of circumstantial evidence pointing solely towards the guilt of the accused/appellant-Vinay Pratap Singh @ Bablu. The evidence establishes that the accused/appellant was residing with deceased Babita in a live-in relationship for about one and a half years immediately preceding the occurrence of the incident. This fact stands proved not only through P.W.-1 Nathulal, P.W.-2 Malti and P.W.-3 Surendra Pal, but also through admissions made by the appellant himself, while deposing as D.W.-1.

36. Learned A.G.A. has further submitted that the motive behind the crime has been satisfactorily established. P.W.-2 Malti, specifically deposed that the accused/appellant was pressurizing Babita to enter into a Court marriage and that Babita was unwilling to do so. P.W.-2 has also stated that Babita often complained about the accused/appellant's unemployment and dependence upon her earnings. The resulting discord created bitterness in the relationship and supplied a clear motive for the crime. The accused/appellant himself admitted during his examination under Section 313 Cr.P.C. and as D.W.-1 that he intended to marry Babita, thereby lending corroboration to the prosecution case regarding motive.

37. Learned A.G.A. has also submitted that the evidence of P.W.-3 Surendra Pal, an independent neighbour, having no animus against the accused/appellant, assumes considerable significance. P.W.-3 categorically stated that on the night of 23.06.2009 at about 9:00 p.m. he witnessed a serious quarrel between the accused/appellant and Babita. He further stated that he did

not see the accused/appellant leaving the house thereafter. Thus, the accused/appellant was last seen in the company of the deceased persons immediately prior to the occurrence. It has been argued that the appellant's conduct after the incident constitutes a strong incriminating circumstance. Although accused/appellant was admittedly residing in the house of the deceased, however he went missing when the dead bodies were discovered. No explanation whatsoever has been furnished by him regarding the circumstances under which four occupants of the house were murdered during the night. The failure of the accused/appellant to offer any plausible explanation attracts the principle embodied in Section 106 of the Indian Evidence Act.

38. Learned A.G.A. has further submitted that the medical evidence completely supports the prosecution case. P.W.-5 Dr. Anil Kumar Srivastava, conclusively proved that all four deaths were homicidal and caused by ante-mortem ligature strangulation. The time of death corresponds with the prosecution version that the murders occurred during the intervening night of 23/24 June 2009. The medical evidence is fully consistent with the circumstantial evidence led by the prosecution. It was next submitted that a highly incriminating circumstance is the recovery of jewellery, mobile phones, purse and other articles belonging to the deceased persons at the instance of the accused/appellant soon after the occurrence. P.W.-2 Malti, identified all recovered articles as belonging to the deceased. The recovery was duly proved by P.W.-7 and P.W.-8 and remained unshaken during cross-examination. Such recovery immediately after the occurrence provides strong corroboration to the prosecution case and establishes the appellant's connection with the crime.

39. It has also been submitted by learned A.G.A. that during Trial, the prosecution also relied upon the conduct of the accused/appellant at the time of arrest. P.W.-7 and P.W.-8 consistently deposed that when the police party attempted to apprehend him, the accused/appellant opened fire with a country-made pistol and thereafter was arrested with an unlicensed firearm and cartridges. The evidence of these witnesses remained consistent and no material contradiction could be elicited despite extensive cross-examination. Learned A.G.A. argued that the defence plea of false implication due to a property dispute is wholly unsubstantiated. No documentary evidence was produced by the accused/appellant to establish any property dispute. No independent witness was examined in support of the defence theory. Mere suggestions put during cross-examination cannot be treated as evidence.

40. It has been further submitted that the testimony of related witnesses cannot be discarded solely on the ground of relationship if otherwise reliable and trustworthy. The evidence of P.W.-1 and P.W.-2 finds substantial corroboration from independent witness P.W.-3, medical evidence, recoveries, documentary evidence and admissions made by the appellant himself. Consequently, their testimony cannot be rejected merely because of their relationship with the deceased. Learned A.G.A. has also submitted that the defence evidence, rather than demolishing the prosecution case, substantially strengthens the prosecution case. As D.W.-1, the accused/appellant admitted his intimate relationship with the deceased Babita, admitted staying at her residence, admitted his desire to marry her and also admitted his close association with the family. These admissions corroborate the prosecution version regarding motive, opportunity and proximity.

41. It has been lastly argued that, in the present case every circumstance relied upon by the prosecution has been proved beyond reasonable doubt and all such circumstances collectively form a complete chain leading only to the conclusion that the accused/appellant-Vinay Pratap Singh @ Bablu, committed the murder of Babita, Nandrani, Gunjan and Anshu. There is no reasonable hypothesis consistent with innocence. The conviction recorded by the Trial Court is therefore fully justified and calls for no interference in the present criminal appeal.

DISCUSSION AND FINDINGS

42. This Court has given its anxious thoughts to the facts and the submissions advanced by both the parties at length and perused the records.

43. The present case is relating to the gruesome murder of four people in the dark of night. Allegation of committing the said murder is on the person, who was last seen quarrelling with one of the deceased on the preceding night and apparently had illicit relation with the said deceased. Admittedly, since the murder was committed at night and the bodies of the four deceased were found within the precincts of the house, wherein these four people ordinarily resided, there is no ocular witness to the said murder. Therefore, the entire prosecution case is based on circumstantial evidence. Before embarking on the arduous task of deciphering the evidence brought on record, this Court find apposite to remind itself the settled law propounded by the Hon'ble Supreme Court for any conviction based on circumstantial evidence.

44. The Apex Court in the well celebrated judgment of ***Sharad Birdhichand Sarda v. State of Maharashtra,*** reported in ***(1984) 4 SCC 116***; held, relevant to the context :-

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is'Hanumant v. State of Madhya Pradesh'[(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129].'This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656].'It may be useful to extract what Mahajan, J. has laid down in'Hanumant'case [(1952) 2 SCC 71 : AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129] :

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the'guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in'Shivaji Sahabrao Bobade v. State of Maharashtra'[(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

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

45. The Hon'ble Supreme Court in the said judgment authoritatively held that it was incumbent on the prosecution to fully establish the circumstances from which the conclusion of the guilt is to be drawn. The transition of the Court before convicting an accused ought to be based on the primary principle that the accused 'must be' and not merely 'may be' guilty. Apparently, there should be no room for any suspicion and the evidence brought on record should be consistent only with the guilt of the accused and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

46. In the light of these guiding principles, this Court proposes to examine the present case.

47. As far as the homicidal death of the four deceased is concerned, we find from the Inquest report of the deceased Nandrani, exhibited as Exhibit-Ka-11, that her body was lying on a cot in the courtyard with the neck tightly tied with a saree. The panchas after inspecting the physical status of the dead body have unanimously opined that the deceased Nandrani has been strangulated to death. Similar is the view of the panchas for deceased Anshu, which is Exhibit-Ka-12 and whose body was lying on the same cot in the courtyard along with the dead body of his grandmother- Nandrani with his neck tied with a black dupatta and the saree of deceased-Nandrani. Further, the panchas have also opined that as far as deceased Babita is concerned, she has also been strangulated to death and her dead body was found in the courtyard beneath the chappar (thatched roof) with her neck tied to a saree and the other end of the saree tied to the neck of her daughter, Kumari Gunjan, whose body was lying beside her. The Inquest report of deceased Babita is exhibited as *Exhibit-Ka-13* and that of Kumari Gunjan as *Exhibit-Ka-14.*

48. Further, we find that subsequent to the Inquest report, the four bodies were sent for Post Mortem to the District Hospital. The Post mortem reports of all the deceased has been prepared and proved by **P.W.-5/Dr. Anil Kumar Srivastava**, the Medical Officer, who conducted the post-mortem examinations of all four deceased persons. The post mortem report of deceased Nandrani has been exhibited as *Exhibit-Ka-5*, that of Babita as *Exhibit-Ka-7,* Gunjan- *Exhibit-Ka-4* and Anshu as *Exhibit-Ka-6*. The said medical officer has deposed that the cause of death of all the four deceased is asphyxia as a result of Ante-mortem strangulation. P.W.'5 found ligature marks around whole of neck circumference below thyroid with underlying ecchymosis of all four deceased. Generally, a ligature mark is a pressure abrasion or indentation on the neck skin caused by the tight constriction of an object like a rope, cord, wire, or clothing. The presence of a ligature mark below the thyroid cartilage with underlying ecchymosis (deep tissue bruising) as recorded in the post-mortem report is a classic forensic triad and furthers the physical condition of the dead bodies as recorded in the Inquest report. Moreover, in forensic pathology, these specific findings strongly point toward a cause of death by **ligature strangulation (homicide)** rather than hanging, which is also commensurate to the physical status of the dead bodies, wherein they were found lying on the cot and on the ground.

49. Moreover, in the cases of deceased Babita, Nandrani and Anshu, *fracture of hyoid bone and tracheal rings* was noticed. This Court finds that medical jurisprudence clearly mentions that fractures of the hyoid bone and tracheal rings are indicators of significant force applied to the neck region. In clinical and forensic contexts, these injuries are associated with serious respiratory and circulatory complication. Thus, suicide of any kind is ruled out altogether. The said witness has also found Congestion of internal organs, which is a common finding during post-mortem autopsies and indicates that blood pooled in organs like the lungs, liver, spleen, or kidneys because it could not flow back to the heart properly before death. This all indicates that an external force was exerted for causing death. In the case of deceased - Gunjan, injury to the right eye was additionally noted. According to P.W.-5 the deaths could have occurred during the intervening night of 23/24.06.2009. During his cross-examination, the defence was unable to challenge his medical findings. No suggestion was put indicating any possibility of accidental or suicidal death. P.W.'5 remained firm that the deaths were caused by ante-mortem strangulation. In the considered view of this Court, P.W.'5 provides crucial medical corroboration to the prosecution case and conclusively establishes homicidal death by strangulation of the four deceased.

50. This Court does not find any serious challenge laid by the learned Counsel for the Appellant to the cause of death being homicidal, except that he has stressed on the proposition that the manner these deaths have been caused of the four deceased, it cannot be a handiwork of a single assailant. Although, we propose to deal with the said proposition later, but the fact remains that there is not an iota of doubt that the death has been caused by strangulation and it is homicidal.

51. That brings us immediately to the next pertinent question as to whether the prosecution has been able to fully establish the circumstances from which the conclusion of the guilt of the Appellant is to be drawn and as to whether the chain of evidence brought on record is consistent only with the guilt of the Appellant and show that in all human probabilities the act must have been done by the accused.

52. Mr. Shashank Shekhar Singh, learned Counsel for the Appellant has laid various grounds to challenge the conviction order against the appellant. We propose to deal with each of them in seriatim. The learned Counsel has challenged the F.I.R. by submitting that there is no ocular evidence connecting the Appellant with the alleged murder of four deceased person. According to him, the complainant who lodged the F.I.R. did not witness the occurrence and the entire fact stated by him is on hearsay and thus, the learned Counsel has sought to conclude that the F.I.R. is based on suspicion and there is no incriminating material stated in the said F.I.R. against the Appellant. Before this Court deals with the said contention of the Appellant, it should be well understood that an F.I.R. is not a substantive piece of evidence. If it cannot be the sole reason to convict an accused, in the same logic it cannot be the sole reason for acquittal of any accused. The law stands settled that F.I.R. is primarily used to corroborate or contradict the person who filed the said F.I.R. The acronym F.I.R. is First Information Report and the law does not mandate that it should contain exhaustive information. F.I.R. merely sets the criminal law into motion and does not anticipate minute details, which are actually meant to be uncovered during investigation, which is to take place subsequently after the F.I.R. comes into existence. F.I.R. is merely a starting point and it does not matter whether a particular accused is named or whether particular evidence is mentioned or not. The Hon'ble Supreme Court in the case of ***State of U.P. v. Naresh***, reported in ***(2011) 4 SCC 324***; went on to hold that :-

"31.'The High Court has also fallen into error in giving significance to a trivial issue, namely, that in respect of the morning incident all the accused had not been named in the complaint/NCR.

32. It is a settled legal proposition that an FIR is not an encyclopaedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. (Vide'Rotash'v.'State of Rajasthan'[(2006) 12 SCC 64 : (2007) 2 SCC (Cri) 382] and'Ranjit Singh'v.'State of M.P.'[(2011) 4 SCC 336 : JT (2010) 12 SC 167])"

53. Further, it ought to be also well engraved in mind that the law does not in any manner provide that an F.I.R. is required to be filed only by an ocular witness or for that matter an F.I.R. can be filed only in those cases which have direct witness. The proposition sought to be espoused by the learned Counsel seems to be absolutely absurd and as such the same has been noted merely to be rejected. Time and again the Courts have held that F.I.R. cannot be expected to be an encyclopaedia and requires every single detail to be mentioned. The concept of hearsay is for evidence and not for an F.I.R. to be lodged for propelling a criminal machinery for investigation. An F.I.R. can be lodged by any person, even on the basis of hearsay evidence. There is no ground on which this Court could subscribe to the opinion of the F.I.R. being suspicious as is being contended by the learned Counsel for the Appellant.

54. The next contention of the learned Counsel for the Appellant is that the manner of assault and deaths of the four deceased persons is seriously doubted. According to him, the said incident cannot be committed by a single person. He has highlighted the post mortem report of the deceased, which shows that all the four deceased had been strangulated to death as ligature mark has been found round the neck of these deceased. This Court at the very outset, clarifies that it is one thing to say that the Appellant could not have committed the crime in question for various reasons and another thing to say that the crime itself could not be committed by a single person i.e. impossibility of commission of crime. As far as the Appellant could not have committed the crime in question, this Court finds that there were other grounds agitated by the learned Counsel, which shall be dealt with in the subsequent paragraphs. However, presently the issue is the factum of crime could not have been committed by a single person. Although, this Court does not wish to enter into a debate as to whether the crime could be committed by a single person or not, as essentially the Appeal and the trial has been conducted on the premises as to whether the Appellant has committed the crime or not rather than who has committed the crime?.

55. The evidence led in the present case is restricted to the culpability of the Appellant and not to the culpability of anyone else. As regards this particular contention raised by the Appellant is concerned, this Court cannot reject the case of the prosecution simply because one person is accused of multiple murders, keeping in view that the F.I.R. came to be lodged against the Appellant and other unknown. Therefore, the first view of this Court is that the inability of the investigating agency to find and charge sheet other accused persons allegedly involved in the present crime does not automatically gives any right or confirms acquittal of the Appellant on this sole ground. Further, it is available from the facts of the present case that the crime was committed at the dark of night, when the deceased were all deep asleep. The vulnerability of the deceased is of special significance because of their age and resultant infirmity. It has come on record that the deceased Nandrani (aged 65 years), Babita (32 years), Kumari Gunjan (aged about 7 years) and Anshu (aged about 5 years) were found with clothes tied around their whole neck. It cannot be ruled out these deceased persons because of their age and the rural background could had been easily over powered as it has also come on record that there was no resistance from any of these deceased. It is common knowledge that elderly and young children lack the physical strength to fight back effectively and it is natural for a determined adult like the Appellant to strangulate one by one. The absence of struggle by each of these deceased attributes to their physical vulnerability and fear as the elderly and children is likely to freeze or become incapacitated by shock during a violet assault, allowing a single assailant to execute the crime without them fleeing. It has come in evidence that the Appellant was very much present in the house and the only possible resistance would be that of deceased- Babita, who was also an adult of 32 years, but this Court cannot be oblivious of the fact that if the presence of the Appellant is proved in the same house as that of the elderly and the children and the deaths happened at night, Section 106 of the Indian Evidence Act immediately is invoked, wherein the Appellant will bear the heavy burden of explaining how four vulnerable people were strangulated under the same roof. This Court does not find any evidence which has been led by the Appellant to come out from the shackles of Section 106 of the Indian Evidence Act, because of other compelling circumstances of 'motive', 'last seen theory' proved against him which is being dealt with hereinafter. This Court is clear in its mind that in case the accused cannot give a plausible explanation, the appellate Court will have to uphold the conviction

as apparently the chain of circumstances appears to be complete and pointing towards the only hypothesis of culpability of the Appellant.

56. The next contention advanced by the learned Counsel on behalf of the appellant is a kind of dual attack on the prosecution story, in as much as according to the learned Counsel the prosecution failed to establish any motive for the crime, on the part of the appellant. It has also been argued that the so called **'last-seen'** circumstances is inherently weak and unreliable in the present case.

57. As far as the contention of the Appellant that since there was an absence of motive, the chain of events could not be completed and as such the appellant ought to have been given the benefit of doubt, the argument appears to be attractive in the first blush, however on a deeper scrutiny of evidence, this Court finds that the said argument to be devoid of any merit. It is well settled that while motive may assume significance in cases based on circumstantial evidence, its absence is not fatal where the prosecution has led reliable and trustworthy testimony. Motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive operates in the realm of the accused's mind and is often difficult to establish and can seldom be fathomed with any degree of accuracy. However, in the present case, we find on reading of the evidence brought on record that a reasonable motive has been appended by the prosecution for commission of the crime of murder by the appellant, which cannot be ignored.

58. In the present case, we find that as far as motive is concerned, the testimony of the fact witnesses P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have consistently stated that there was an ensuing physical relationship between the appellant and the deceased- Babita. In fact, this Court finds that the Appellant also entered the witness box as a defense witness to depose and admit the fact of being in a physical relation with the deceased-Babita and also visiting her house very often. The Appellant has been ordinarily residing in the said house along with Babita can also be well understood from the evidence that a tin name plate (Exhibit-Ka-2) bearing the name of the Appellant as 'General Secretary, Human Right Social Animator Task Force' was displayed in the front of the house of Nandrani, wherein Babita was also residing along with her two children. Further, we do not find any categorical statement that the Appellant was not present in the fateful night of the incident in the said house nor there is any statement to the effect that there was no quarrel/fight on the preceding night of the incident. However, it has been argued by the learned Counsel for the appellant that motive could not be proved, as all the witnesses have merely given a hearsay account of the said love affair and in the absence of any motive, the appellant cannot be assigned the culpability of the offence charged against him. This Court is conscious of the fact that there cannot be direct evidence of any motive and the same has to be gathered from the circumstances. It has clearly come in evidence of P.W.-2 that the appellant had physical relations with the deceased- Babita and was all set to have a Court-marriage with her, but the deceased-Babita had been ignoring the said offer for allegedly the Appellant had not been working and had been living on the earnings of deceased- Babita. It has also come in the evidence that the Appellant had been also physically beating and abusing the deceased- Babita and for various reasons deceased- Babita was in two minds to marry the Appellant or not. Apparently, these facts were reasons for continuous fight between the Appellant and the deceased- Babita. According to the

deposition of P.W.-2, she was told by her deceased sister- Babita that since the Appellant was being rebuked by deceased- Babita for not working, physical abuse etc., the Appellant started suspecting Babita of not continuing living along with the appellant or planning to leave him altogether and marry someone else. Thus, the prosecution was able to prove on record that the murder was committed for a vengeance and out of fear that the deceased Babita may leave the company of Appellant and marry someone else. Therefore, the appellant had a motive to commit the said crime. Apparently it has been also deposed by the Appellant that he wanted to marry the deceased- Babita but it has not come in his evidence or explanation as to why the said deceased - Babita ignored her said offer, although it seemed to be attractive from her point of view as she being a widow and having two children at of age 32 would require a company of man for spending her rest of life in peace. However, we do not find any explanation from the end of the Appellant. Therefore, a motive exists, which cannot be altogether negated in the present facts and circumstances, however, we are also clear in mind that this motive solely cannot be the edifice of conviction. Be that as it may, we are also clear in our mind that inability to prove motive would also not be always fatal to the prosecution case. In this regard, this Court may refer to the judgment of the Hon'ble Supreme Court in the case of ***G. Parshwanath vs. State of Karnataka,*** reported in ***2010 (8) SCC 593***; in which, it has been held as follows:

"45. The argument that in absence of motive on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefit to the accused and not the doubt of a vacillating judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 I.P.C. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question."

(Emphasis Supplied)

59. Apparently, in the present case, a **'motive'** has been sought to be accorded to the said incident by unfolding the story by narrating that the appellant had an illicit relations with the deceased-Babita and was all set to have a Court-marriage with her, but the deceased-Babita had been ignoring the said offer for allegedly the Appellant had not been working and had been living on the earnings of deceased- Babita. Further, these had been a reason for continuous fight between the Appellant and the deceased-Babita. Evidence has come on record that even on the preceding night of murder a fight had been ensued between the Appellant and the deceased- Babita at about 9 PM in the last night, which was witnessed by the neighbors namely, Surendra Pal (P.W.-3), Pappu and Mohd. Salim.

60. There is another aspect of the matter, in as much as it is also undisputed that the four bodies along with the body of deceased- Babita was found in her house, where the Appellant was last seen along with her at about 9 PM on the preceding night. The dead bodies were discovered at 8 AM in the following morning. Apparently, it has come in evidence that the Appellant was present in the said house, on the fateful night of the incident as nothing contrary to that effect has come on record. Therefore, the conduct of the appellant, both prior to and after the incident, assumes significance in view of Section 8 of the Indian Evidence Act, 1872, which inter-alia states as herein under:

"Section 8. Motive, preparation and previous or subsequent conduct.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. - The word "conduct" in this section does not include statements; unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

61. Admittedly, the Appellant was not found in the said house in the morning and the house was open from outside. The Appellant was immediately arrested on the same day from a different place, while he was in a hideout and was trying to flee away. The Appellant has been arrested after a gun fight and an unlicensed gun along with two bullets, one stuck in the barrel was recovered from him after apprehending by a team of police. The Appellant pursuant to his disclosure statement led to recovery of a black bag, containing silver ornaments of the deceased and two mobile phones. It is rather strange that when four dead bodies were found and admittedly, the Appellant was into a physical relationship with the deceased-Babita and as per his own version wanted to marry her also, then as to why he did not approach the Police immediately and rather would have been the complainant, in case he was not involved in the present crime. This Court further notes that the non-participation of the appellant in the *'panchayatnama'* also, shows the conduct of the appellant post-crime is under suspicion and a relevant fact under Section 8 of The Indian Evidence Act.

62. The next ground being agitated by the learned Counsel is that the 'last seen theory' being a very weak piece of evidence and as such cannot be the sole ground of conviction. No doubt, there are consistent line of judgment, starting from ***Arjun Marik Vs State of Bihar,*** reported in ***1994 Supp(2) SCC 372; Krishnan alias Ramaswamy and Ors. Vs State of Tamil Nadu,*** reported in ***(2014) 4 SCC 715;*** and ***Kanahiya Lal Vs State of Rajasthan,*** reported in ***(2014) 4 SCC 715***; which have consistently held that evidence of 'last seen together' is a weak evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 I.P.C.

63. However, in the present case, we find other corroborative evidence and the conviction is not merely on 'last seen' or 'motive' independently, but on an appreciation and consideration of each of the piece of evidence brought on record. As far as the concept of 'last seen theory' is concerned, this Court tries to decode the proposition of the learned Counsel for the Appellant, wherein he submits that 'last seen theory' is weak evidence for conviction. In other words, the learned Counsel is of the view that a conviction cannot be based on the only circumstance of last seen together. There is absolutely no quarrel on the said proposition of law. However, it is also equally settled that last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. (please see ***Rambraksh Vs State of Chhattisgarh***, reported in ***(2016) 12 SCC 2510).*** Thus, the theory of last seen would gain prominence in a given fact and circumstances and would largely depend on the time-gap between the event of deceased being alive in the company of the accused and the event of death of the deceased, which would obviously form an additional link in the chain of circumstantial evidence.

64. So far as the facts in the present case is concerned, it was duly proved that the death of the deceased was homicidal. The prosecution story starts with the discovery of four dead bodies of namely, Nandrani (aged 65 years), Babita (32 years), Kumari Gunjan (aged about 7 years) and Anshu (aged about 5 years) by P.W.-1, when he visited the house of the deceased person on 24.06.2009, at about 8:00 AM located in Mohalla Nawabganj, Police Station Sandi, District Hardoi. It has been proved by evidence that the Appellant was having a physical relationship with one of the deceased namely, Babita since for about 1.5 years prior to the date of incident. It has also come in evidence of P.W.-3, a neighbour of the deceased and an independent witness that there was a quarrel between the Appellant and the deceased- Babita on the preceding night of murder. He has also deposed that he heard the said quarrel for some time, which was happening on the chabutra of the house of the deceased person. There is specific time provided of 9 PM in the preceding night, when a quarrel was heard by the neighbours namely Surendra, Pappu and Mohammad Salim, who also rushed to the crime-site on the discovery of four dead bodies, including that of deceased- Babita, with whom they had witnessed fight with the Appellant last night. It has also come in evidence of P.W.-3 that after the said quarrel at 9 PM in the preceding night of murder, he did not see the Appellant going away from the house of the deceased- Babita, after the said fight. It has also come in evidence of P.W.-1 that the dead body of the deceased- Babita was found at 8 AM in the morning on the very next day of quarrel in the night. Apparently, the time of murder is between 9 PM in the night and 8 AM in the morning, which appears to be very proximate, keeping in view the rural background of the present case, wherein ordinarily there is no night life and generally villagers go early to sleep in the night. It is also true that people come to visit any person in village mostly during the day time only or may be in the night, but certainly not after 9 PM. Therefore, there is remote or rather no chance of any third-party intervention during the contiguous time of 9 PM in the night to 8 AM in the next morning, which would interrupt the continuous togetherness between the Appellant and the deceased- Babita. Further, we find that there is no denial on the part of the Appellant that he was not in the house of the

deceased between 9 PM to 8 AM in the next morning, nor there is any evidence on record, which would show that some other person could had come in the rural village for committing murder of the four deceased without any motive of looting etc. This Court finds that a direct question was put to the Appellant under Section 313 of the Criminal Procedure Code, which is being quoted herein below, which goes to the root of the controversy:

*"**Question 14** (Reference No. (Aakhya Sankhya-3): In the testimony of Surendra Pal, it is stated that on the night prior to the alleged incident, at approximately 9:00 PM, he was sitting at his doorway and observed an altercation taking place outside the house between you and Babita; subsequently, the witness went inside his house and did not see you leaving the house during the night. In the morning, he learned that Nandrani, Babita, and Babita's two children had been murdered. What do you have to say regarding this?*

Answer: The statement about the altercation is incorrect. The rest is correct."

(Translated by this Court)

65. The answer to the specific question signifies the presence of the Appellant in the house of the deceased person on the said fateful night. Further, it is clear from the evidence brought on record that the appellant was seen and heard fighting with the deceased on the preceding night at 9 PM and the very next day early morning at 8 AM, the dead body of the deceased was found lying in her own house, where she was last seen together quarrelling along with the appellant. The threshold of explanation and responsibility of a person, who is having physical relationship with the deceased and is also proved to living along with her in the same house is on a higher pedestal than a normal person. Further, the time gap between the period when the deceased was **'last seen together'** with the appellant and the recovery of the corpse of the deceased being quite proximate, the non-explanation of the appellant with regard to the circumstance under which and when the appellant had departed from the company of the deceased is a very crucial circumstance proved against him.

66. It may be noted that once the theory of **'last seen together'** was established by the prosecution, the appellant was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Indian Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position, that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused, as it may provide an additional link in the chain of circumstances required to be proved against him. In the present case, which is based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of 'last seen together' as propounded by the prosecution was proved against him.

67. Ergo, this Court finds that, in view of above, apparently, a foundational fact was built successfully by the prosecution and thus, a duty was cast upon the appellant to show and explain the evidence which has been brought against him. As aforesaid, the entire evidence was put-across the statements of the appellant under Section 313 Cr.P.C. and when it was specifically asked as to why this case has been filed against him, he simply replied that it was a false case due to vengeance. This Court finds that although a defence story had been narrated by the appellant pointing towards usurping property by P.W.-2 (Malti), the elder daughter of deceased-Nandrani and real sister of deceased- Babita, with the help of her community, but no evidence has been led by him to either name or bring any iota of evidence in that regard, although opportunity of defence was granted to him by the learned Trial Court. The appellant has merely denied or feigned ignorance to which necessary inference can be drawn against him. The Hon'ble Supreme Court in ***Ram Gopal v. State of M.P.,*** reported in ***(2023) 5 SCC 534;*** after considering the judgment of the Apex Court in ***Rajendra Vs State of NCT of Delhi,*** reported in ***(2019) 10 SCC 623;*** and ***Satpal vs State of Haryana,*** reported in ***(2018) 6 SCC 610***; has held as follows:

"9. In view of the afore-stated legal position, it is discernible that though the last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence."

68. The next limb of argument of the learned Counsel for the Appellant is that recovery of jewellery, mobile phones and other articles allegedly belonging to the deceased from the Appellant. Learned Counsel has submitted that the recovery proceedings are doubtful and suffer from serious procedural irregularities. No independent public witness was associated with the alleged recoveries. Mandatory safeguards contemplated under Cr.P.C. were not complied with. It has been further submitted that the alleged recoveries stand contradicted by the inquest proceedings and therefore, cannot be treated as reliable incriminating circumstances.

69. As far as the recovery of Jewellery, mobile phones and other articles from the Appellant is concerned, this Court finds that P.W.-2 (Malti), the real sister of the deceased-Babita has identified the jewellery, Mobile phones and other Articles in her deposition. This Court had carefully examined the Inquest report of the four deceased as well as the evidence of P.W.-9 and P.W.-10 and does not find any marked inconsistencies between the recovery made and the Inquest report as has been sought to be agitated by the Appellant. As far as non-associating of independent public witnesses for recoveries is concerned this Court is of the view that this is not such an impelling ground to throw the case of the

prosecution. It is clear that besides the complainant, P.W.-1 and other fact witness, P.W.-2, the prosecution has also examined one independent witnesses of last seen theory i.e. P.W.-3, the prosecution has also presented P.W.-7 and P.W.-8, who were witness to the said recoveries. No doubt P.W.-7 and P.W.-8 are police officers, however, the fact remains that they have entered the witness box and testified of the recoveries made from Appellant and were available for cross-examination. We do not find any noticeable contradiction in their deposition nor the Appellant was able to elicit anything from them during their cross-examination. Not only this it is a matter of common experience that the public persons are not interested in deposing in Courts in cases in which they do not have any personal interest. There are cases where even the victim of the offence and the persons who are related to that case also shy away from coming to the Courts.'As far as the defence that no public person was made a witness is concerned, the answer lies in the judgment of Hon'ble Supreme Court of India in ***'Appabhai v. State of Gujarat***, reported in ***1988 Supp SCC 241: AIR 1988 SC 696;*** where the Hon'ble Supreme Court has been pleased to observe:"

"It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus 'stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. 'Experience reminds us that civilized people are generally insensible when a crime is committed even in their presence. They withdraw both from the victim and the vigilant. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate but it is there, everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigation agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witnesses must consider the broad spectrum or the prosecution version and search for the nugget of truth with due regard to probability if any, suggested by the accused."

70. It has been next submitted that P.W.-1 and P.W.-2 were related to the deceased in as much as P.W.-2 (Malti) is the real sister of the deceased- Babita and daughter of deceased-Nandrani. Further P.W.-1, the informant is also related to the deceased-Nandarani as he is not only a neighbour but also her relative. Thus, according to the learned Counsel, both P.W.-1 and P.W.-2 are interested witnesses and as such their testimony must be examined with certain circumspection. No doubt, the informant/P.W.-1 is a relative of the deceased person, however, it must also be understood that he is also a neighbour and a co-villager of the deceased person. Further, it has also come on record that as being a co-villager and also a relative, the informant used to often visit the deceased - Nandrani. The presence or the visit of the said witness on the fateful morning of on 24.06.2009, at about 8:00 AM at the house of deceased person cannot be doubted and appears to be normal and usual. The contention that P.W.-1 is an 'interested witness' is misconceived. Further, there is a marked difference between 'interested witness' and 'related witness', as a related witness is not necessarily an interested witness. The law on this aspect is settled by the Hon'ble Supreme Court in ***'Md. Rojali Ali v. The State of Assam'*** reported in ***(2019) 19 SCC 567 : AIR 2019 SC 1128;*** wherein it was held that :-

"13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see'State of Rajasthan'v.'Kalki'[State of Rajasthan'v.'Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] ;'Amit'v.'State of U.P.'[Amit'v.'State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] ; and'Gangabhavani'v.'Rayapati Venkat Reddy'[Gangabhavani'v.'Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]). Recently, this difference was reiterated in'Ganapathiv.'State of T.N.'[Ganapathi'v.'State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , in the following terms, by referring to the three-Judge Bench decision in'State of Rajasthan'v.'Kalki'[State of Rajasthan'v.'Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] : (Ganapathi case'[Ganapathi'v.'State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , SCC p. 555, para 14)

"14. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'."

71. Further, it is true that while considering the evidence of a close relative, the Court has to be cautious with such evidence but the entire evidence cannot be rejected only on the ground that he is close relative. The Supreme Court in the case of ***Masalti v. State of U.P.,*** reported in ***1964 SCC OnLine SC 30 : AIR 1965 SC 202;*** has held as under :-

"14. "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard - and - fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

72. The learned Counsel for the defense has also argued that P.W.-3 cannot be construed to be an independent witness as he is a neighbour of the deceased person. Admittedly, the incident in the present case, occurred in the dark of night on the intervening night of 23rd and 24th of June, 2009. The place of the incident is a rural village. His house is adjoining the house of the deceased person and therefore his hearing of the quarrel between the deceased- Babita and the Appellant on the preceding night appears to be natural and reliable. He has also specifically deposed that he heard

the Appellant quarrelling on the preceding night of the incident and also did not see the Appellant going away from the house of the deceased. The presence of the neighbour P.W.-3 at the scene of the incident is natural and reliable. No animosity has been brought on record, so as to discredit the said witness. There is no evidence of prior enmity or motive for false implication. Indeed, one of the earliest statements with respect to 'interested witnesses' in criminal cases was made by the Supreme Court in the case of ***'Dalip Singh v. State of Punjab,*** reported in ***(1953) 2 SCC 36 : 1954 SCR 145***; wherein the Hon'ble Supreme Court has observed :-

"24. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

Thus, this Court does not find any force in the submission of the learned Counsel for the defense and as such the same is rejected.

73. It has been highlighted by the learned Counsel for the Appellant that there are inconsistencies in the deposition of the witness and the entire case has been built on suspicion. As far as the inconsistency is concerned, the Appellant failed to point out any real consistencies in the statement of any of the witnesses. The suspicion being raised are merely surmises and a last ditch effort on the part of the learned Counsel to defend the Appellant, which appears to be merely illusory. In any case, even giving the concession that there are some remote inconsistencies, we need to understand that these inconsistency does not go to the root of the merits of the case and are normal errors of memory due to lapse of time or mental disposition of a witness. Such minor variations are natural and have been held to be insignificant by this Court in J***itendra Pal Vs State of Uttar Pradesh, Neutral Citation No. :2025:AHC-LKO:79401-DB;*** reported in ***2025 SCC OnLine All 8144;*** wherein this Court had an occasion to deal with minor discrepancy in the statement of witnesses recorded in the Court after a periodic lapse of time of occurrence of incident. This Court has held in paragraph no.17 as follows :-

"17. No doubt, discrepancies or inconsistencies in prosecution evidence is a short fall from which no criminal case is free. However, this court cannot be oblivious to the fact that while considering the deposition of a witness, this Court has to take into consideration the process in which the facts are perceived and testified by a witness. Time and again, it has been held in a catena of judgments that when an incident occurs, a witness perceives facts according to his intelligence and experience in life and

subsequently when he or she is called upon to recollect those facts, after a long gap of time, his or her memory may help or deter him/her in recollection of those facts and he/she may flounder on the precise time, place and sequence of events. This human process brings discrepancy in the deposition of a witness, which may be termed as normal. The testimony of PW-4 as far as the timing relating to having seen the deceased and the appellant together on the fateful day at 6 PM in the evening is an outcome of such a discrepancy. However, when this discrepancy is weighed and marshalled along with other evidence, which has come on record, it can be safely deduced that both the deceased and the appellant were last seen together on the said fateful day. Further, it cannot be discounted that this kind of discrepancies in time, especially in a village, may occur on account of errors of observation of facts, normal errors of memory due to lapse of time or mental disposition of a witness. These discrepancies are those which are normal and expected of a normal person and cannot be termed as any material discrepancies, which may affect the substratum of the story itself. When the discrepancies, highlighted by the learned Counsel for the appellant are being considered, whether it is relating to the time when PW-4 last saw both the deceased and the appellant together on a motor-cycle or the time-line given by these witness, this court is of the opinion that these are normal and not material discrepancies. Thus, it is concluded that the inconsistencies in the prosecution case, as far as the presence of the appellant during the course of day on the date of incident on 09.03.2015 is immaterial and do not have any impact on the facts, deposed by the witnesses. Thus, the presence of the appellant at Sheetal Kheda on 09.03.2015 stands proved by a co-joint reading of the evidence of PW-2, PW-3 and PW-4 and even the last seen together evidence of PW-4 could not be impeached by the defense, although the said witness was subjected to intense cross-examination.'

(Emphasis Supplied)

74. An important circumstance which emerged from the record was that in answer to Question No. 30 recorded under Section 313 Cr.P.C., the accused Vinay Pratap Singh @ Bablu, admitted that he intended to marry Babita. This statement assumes significance when viewed in conjunction with the prosecution evidence suggesting that disputes had arisen between the accused and Babita regarding marriage and their future relationship. The assertion was made by the accused/D.W.-1 that he was falsely implicated due to enmity and that all recoveries shown by the prosecution were fabricated. However, he failed to disclose any specific 'motive' on the part of the informant, the relatives of the deceased or the police authorities for falsely implicating him in a case involving the brutal murder of four persons. No independent defence evidence was adduced to substantiate the plea of false implication.

D.W.-1 also failed to furnish any explanation regarding the circumstances in which the deceased persons, with whom he admittedly maintained close relations, were found murdered during the night immediately following the quarrel, as deposed to by P.W.-3 Surendra Pal. Nor could he explain his absence from the house thereafter or presence anywhere else or provide any plausible account inconsistent with the prosecution case.

75. Keeping in view the totality of the evidence brought on records, this Court is of the opinion that it was duly proved that the death of the four deceased was homicidal. It has also been proved that the deceased- Babita was last seen together with the appellant, quarreling at 9 PM on the preceding night of her death. The dead body of deceased- Babita, her mother and two minor children were found in the very next morning at 8 AM. There is corroborative evidence to show the presence of the Appellant in the house of the deceased, wherein the dead bodies were found. Further, the time gap between the period when the deceased was last seen together with the appellant and the recovery of the corpse of the deceased being quite proximate, the non-explanation of the appellant with regard to the circumstance under which and when the appellant had departed from the company of the deceased is a very crucial circumstance proved against him. Having regard to the oral evidence of the witnesses P.W.-2, the motive for such a crime had also surfaced, which also finds corroboration from the own admission of the Appellant who produced himself as D.W.-1 during the Trial. The corroborative evidence with regard to the conduct of the Appellant before and after the incident, his arrest along with arms and his disclosure statement leading to recovery of articles of ornaments, mobiles etc. in the black bag and the Inquest report showing the status of the body, also substantiated the case of prosecution. Hence, it is proved in the present case that the link and the circumstances are so interconnected that they lead to the only hypothesis of culpability of the Appellant.

76. We hold that the circumstantial evidence brought on record, adheres to the five golden principles, as enunciated by the Hon'ble Supreme Court in the case of ***Sharad Birdhi Chand Sarda (Supra)*** and there exists no material illegality, which has been committed by the learned Trial Court in appreciating the evidence against the appellant. The grounds raised by the Appellant are without any basis and does not have any factual or legal flavour to be considered in any manner.

77. Thus, this Court is of considered view that the prosecution has been successful in establishing the guilt of the accused/appellant beyond the pale of doubt and that there exists a ring of truth in the prosecution story, therefore, we uphold the conviction of the appellant for the offence punishable under Sections 302, 307, 404, of I.P.C and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Keeping in view the gravity of the offences committed, wherein four innocent and gullible persons have been murdered, we do not find this to be a fit case to reduce the sentence of the Appellant.

78. For all the reasons as stated herein above, we find no merits in the present Appeal and as such the same is accordingly ***dismissed***.

79. There shall be no order as to cost(s).

80. The Registry is directed to send the Lower Court record along with the certified copy of this judgment to the learned Trial Court, without any delay, preferably within two weeks from today.

(2026) 7 ILRA 1831
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 1340 of 1987

Triveni & Ors. **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution has proved beyond reasonable doubt that the death of the deceased was homicidal and caused by the appellants due to non-fulfilment of dowry demand.
Whether the delay of more than four years in lodging the FIR fatally undermines the prosecution case.
Whether contradictory medical opinions and absence of direct evidence sustain conviction under Sections 302/34, 201 and 120-B IPC.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 374(2), 313 – Indian Penal Code, 1860 – Sections 34, 201, 120-B, 302 – Indian Evidence Act, 1872 – Circumstantial evidence: -
Criminal Appeal - against conviction and sentence – offence of murder of wife by electrocution/burns due to alleged dowry demand of motorcycle – FIR, lodged after 4 years 6 months – Medical evidence contradictory - State Medico Legal Expert opined burns likely by inflammable substance - but post-mortem doctor found electric entry/exit points consistent with electrocution – No smell of kerosene - no independent eyewitness – Defence plea of accidental electrocution supported by medical findings – Delay in FIR unexplained, chain of circumstances incomplete – Court held prosecution failed to prove homicidal death beyond reasonable doubt – benefit of doubt extended – Surviving appellant Triveni acquitted – Appeal allowed.

(Paras 23, 26, 27, 28, 29)

Appeal Allowed. (E-11)

CASE LAW CITED

No case cited.

LIST OF ACTS

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

LIST OF KEYWORDS

Criminal Appeal – Dowry death – Section 302 IPC – Section 201 IPC – Section 120-B IPC – Delay in FIR – Contradictory medical opinion – Electrocution – Circumstantial evidence – Benefit of doubt – Appeal allowed.

CASE ARISING FROM

Judgment and order dated 08.05.1987 passed by the 2nd Additional District & Sessions Judge, Azamgarh in Sessions Trial No. 185 of 1984 (State v. Chhote Lal and others).

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Bipin Kumar Tripathi
Counsel for Respondent(s): Shri A.N. Mulla, learned A.G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This criminal appeal has been preferred by accused appellants against the judgment and order dated 8.5.1987 passed by 2nd Additional District & Sessions Judge, Azamgarh in Session Trial No. 185 of 1984 (State vs. Chhote Lal and others) convicting and sentencing the appellants for the offences punishable under Section 302 read with Section 34 IPC for life imprisonment, for the offence under Section 201 IPC for three years rigorous imprisonment and for the offence under Section 120-B IPC for seven years rigorous imprisonment with default clause.

2. Facts of the case, in nutshell, as unfolded by informant Bhagwandin in the First Information Report (in short 'F.I.R.'), are that the marriage of his daughter was solemnized with Triveni son of Chhote Lal in the year 1978. The husband and her in-laws were not happy with the dowry given in the marriage and were demanding a motorcycle and due to non-fulfillment of the said demand, she was subjected to cruelty and harassment by them and on 1.7.1979 the informant received an information that his daughter had been electrocuted on 30.6.1979 and has expired.

3. On the basis of written report, chik F.I.R. was lodged on 18.11.1983 and G.D. report was prepared. Investigation in the matter started. The Investigating Officer visited the place of occurrence, prepared site plan and other papers and after completing necessary formalities submitted charge sheet in the matter.

4. Dr. H.K. Verma conducted the postmortem of the deceased on 1.7.1979 at 10.00 a.m. He found seven ante-mortem injuries on the body of the deceased. The cause of the death was extensive electric burn due to ante-mortem shock of burns.

5. The accused appeared and charges under Sections 302/34, 201 and 120-B I.P.C. were framed against them on 6.7.1985. They denied the charges and pleading not guilty claimed their trial.

6. Trial proceeded and in order to prove its case on behalf of the prosecution eleven witnesses, namely, Informant - Bhagwandin (P.W.-1), Krishna Kumar Singh (P.W.-2), Dr. H.K. Verma (P.W.-3), Raghuwar Dayal (P.W-4), Shiv Prasad Dubey (P.W.-5) Khadag Bahadur Singh, (P.W.-6), Ram Bali Rai (PW-7) Ashok Tiwari (P.W.-8), Dev Nath Ram (PW-9), Damdi Prasad (PW-10) and Nihal Singh (PW-11) were examined.

7. In documentary evidence, documents / papers exhibited as Ext.Ka.-1 to Ext. ka-20 respectively have been proved.

8. **P.W.-1 -** Bhagwandin proved the contents of the FIR. He has stated that his daughter died due to burns caused by accused persons, namely, Triveni, Chhote Lal, Shanti Devi and Chinta Mani on account of non-fulfillment of the demand of motor cycle as additional dowry, and not due to electric shock.

9. **P.W.-2** - Krishna Kumar Singh is the State Medico Legal Expert. He has opined that the burning was more likely after pouring in something inflammable. He did not agree with the idea of getting burnt by electric current in the absence of description of characteristics of wounds caused by electrocution.

10. **P.W. - 3** Dr. H.K. Verma, has performed the post mortem on the body of the deceased and has opined that the body was in a pugilistic attitude. There was no smell of kerosene. Death was likely caused one day before. In his opinion cause of death was extensive electric burn due to shock of ante mortem burns.

11. **PW-4** Raghuwar Dayal is the brother of the deceased. He has also supported the FIR version and the statement of PW-1-informant.

12. **PW-5** Shiv Prasad Dubey has also stated in same tone as PW-1 and PW-4.

13. **PW-6** Kharag Bahadur Singh is the Investigating Officer of the case. He has proved the investigation proceedings and the relevant papers in this regard.

14**. PW-7** Ram Bali Rai, **PW**-8 Ashok Tiwari, **PW-9** Dev Nath Ram, **PW-10** Damdi Prasad and **PW-11** S.I. Nihal Singh are the formal witnesses. **PW-10** - Junior Engineer of the concerned Sub-Station has stated that on 30.6.1979 there was no electricity at the concerned Sub-Station from 1.45 a.m. to 12.00 noon.

15. After closure of prosecution evidence, statements of accused appellants under Section 313 CrPC were recorded in which they denied the prosecution case and stated that they have been falsely implicated. They further stated that they did not make any demand of motorcycle.

16. The Trial court found that prosecution has fully succeeded in bringing home the charges against the accused appellants beyond reasonable doubt and convicted and sentenced the accused appellants - Chhote Lal, Triveni and Shanti, as mentioned above whereas accused Chintamani was acquitted. Hence this appeal.

17. We have heard Shri B.K. Tripathi, learned counsel for appellants and Shri A.N. Mulla, learned A.G.A. appearing for the State at length.

18. Castigating impugned judgment and order, learned counsel for the appellants submitted that the FIR was lodged after about four years and six months of the alleged incident without any plausible explanation regarding delay. He further submits that it is a case based on circumstantial evidence and is not

supported with any other substantial evidence against the appellants and the appellants have been falsely roped in this case by the informant. Nobody has seen the appellants causing death of the deceased. It is further submitted that in the present case the missing of links to make a complete chain of circumstances is a relevant lacuna on the part of the prosecution. The evidence fails to establish that in all human probability the crime has been committed by the appellants. He further submits that Triveni, husband of the deceased, was not present at the home at the time of incident and he had gone for nature's call. It is a case of accidental death. Medical evidence does not support the prosecution case. Nothing has been recovered from the appellants. It is next contended that investigation in this matter is perfunctory. Findings recorded by trial court in the impugned judgment and order are not based on correct appreciation of evidence and impugned judgment and order suffers from infirmity and illegality warranting interference by this Court.

19. In reply, learned AGA submitted that prosecution was able to prove its case beyond reasonable doubt. Medical evidence fully supports the oral version. F.I.R. is a genuine document. The offence has been committed by the appellants due to non-fulfillment of additional dowry in the form of one motorcycle. He further submits that on 30.6.1979 there was no electricity at the concerned Sub-Station from 1.45 a.m. to 12.00 noon. Laches on the part of Investigating Officer are also not fatal to the prosecution case. Findings recorded by the learned trial court in the impugned judgment and order are based on correct appreciation of facts, evidence and law and do not suffer from any infirmity or illegality warranting interference by this Court.

20. We have considered rival submissions made by learned counsel for parties and have gone through the entire record carefully.

21. At the outset, it may be mentioned here that appellant no. 2 ? Chhote Lal (father-in-law of the deceased) and appellant no.3 Smt. Shanti Devi (mother-in-law of the deceased) have died and vide order dated 22.5.2018 appeal against them has been abated and only appellant no.1- Triveni (husband of the deceased) is surviving.

22. Now the Court proceeds to deal with submissions raised by learned counsel for the parties.

23. Firstly, this Court must address the glaring delay in the registration of the FIR. An FIR serves as cornerstone for beginning with investigation by making record of initial details of the crime, suspects and witnesses. The record of the present case reveals that the alleged incident, wherein the deceased lost her life, occurred on 30.6.1979. However, the chik FIR was only lodged after a long belated period on 18.11.1983. There is a staggering delay of more than four years. Delay in lodging the FIR is not automatically fatal to the case if the same is satisfactorily explained. Courts do consider certain factors like emotional state of informants, awareness, threat or intimidation, etc. for delay in lodging the FIR but an abnormal and unexplained delay casts a grave shadow of doubt on the prosecution's case.

F.I.R. in a criminal case, though not substantial, is an extremely vital and valuable piece of evidence. Delay in lodging the F.I.R. quite often results in embellishment and also arises danger of the introduction of coloured version, exaggerated account or concocted story. In cases of inordinate and unexplained delay, the entire evidence has to be evaluated with greater caution. In the present case, delay of about four years and six months severely shakes the credibility of the prosecution's case right from its beginning. No satisfactory explanation for such a long delay has been given by the prosecution.

24. It is pertinent to note here that there is no independent eye witness to the alleged incident and the case is based on circumstantial evidence. The prosecution strongly asserts that the death of the deceased was caused by pouring an inflammable liquid, relying on the opinion of the State Medico Legal Expert, P.W.-2. On the contrary, the defence vehemently argues that it was a tragic accident caused by electrocution, and the same has been supported by Dr. H.K. Verma, P.W.-3, who conducted the post-mortem and recorded extensive electric burns over the body of the deceased.

25. Moving to the core of the prosecution's case, the foundational fact that must be established beyond a reasonable doubt is the homicidal nature of the death. Distinguishing deaths as homicidal, suicidal, accidental, natural, or undetermined is critical for conducting proper investigation. Though the State Medico Legal Expert, P.W.-2, has stated that he does not agree with the assertion of burning by the electric current in absence of certain characteristics which are usually seen in cases of electrocution, yet he has not disputed the fact that there was no smell of kerosene or any other inflammable substance from the body of the deceased. He has also stated that injury numbers 4,5 and 6 could be caused by electric burn. On the other hand, Dr. H.K. Verma, P.W.-3, who conducted the post mortem of the dead body, found that the body was in pugilistic attitude. No smell of kerosene oil was emanating from the body. Also, there was entrance point of electric burn present in the thumb and index finger of the left hand and exit point of electric burn in the thumb and index finger of the right hand which according to Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, is a sign of Electrocution only and not burn by any inflammable substance. From both of the opinions mentioned herein above, no ultimate conclusion can be drawn. None of the situation is proved beyond doubt and there exist the scope of suspicion as to the nature of the death. It is a settled legal proposition that where the core question whether the death was homicidal, accidental or suicidal remains shrouded in doubt, the prosecution's case necessarily fails. The conviction of the accused cannot be based on mere presumption of homicide. If the evidence leaves room for the possibility of a suicidal or accidental death, the benefit of the doubt inevitably goes to the accused.

26. As regards the contention of the learned counsel for the State that there was no supply of electricity at the concerned substation on 30.06.1979 from 1:45 a.m. to

12:00 noon, we find no force in the said argument, as the incident occurred in the intervening night of 29/30.06.1979 at unknown time and it is very much possible that the incident might have occurred before 1:45 a.m. of that night.

27. Now the Court proceeds to examine the presence and alleged role of the surviving appellant, Triveni in the present case. The defence has taken a specific plea that he was not present at the house at the time of the incident. While the prosecution heavily relies on the circumstance of him being in the house to infer his involvement in the crime. As there is no eye witness to the alleged incident, it remains doubtful as to whether the appellant was actually present at his house at the time of the occurrence or not. For the sake of argument, even if we assume that he was present at the house at the time of occurrence, no specific role in committing the alleged crime has been assigned to him by the prosecution witnesses in their evidence. In cases of circumstantial evidence, mere presence or absence based on suspicion cannot form the sole basis of conviction. In fact, basic presumption in our justice system is the innocence of the accused, and until charges are proved beyond a reasonable doubt, conviction of an accused cannot be recorded. Hence, in the present case conviction cannot sustain as the presence of the appellant at the time of occurrence at the scene of crime has not been proved beyond reasonable doubt and no active role has been assigned to him and the chain of the evidence is not consistent only with the hypothesis of the guilt of the accused.

28. Under the circumstances, considering all the evidences available on record including the delay in lodging the FIR, contradictory medical opinion, suspicion regarding the presence of appellant at the place of occurrence at the time of the incident and failure of prosecution to prove the death of deceased as homicidal death, it is held that prosecution has failed to prove its case beyond reasonable doubt. There exist doubt and suspicion that the accused-appellant has caused the death of the deceased. Hence, we are of the opinion that the conclusion taken by the learned trial court in the impugned judgment and order is not in accordance with law and the evidence available on record. This Court is of the view that the prosecution has not been able to establish the guilt of the accused appellant Triveni beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of doubt to the accused appellant on the ground of rule of caution.

29. The criminal appeal is **allowed** and the conviction and sentence imposed upon the accused appellant Triveni is set-aside as the accused appellant is found not guilty for the charges framed against him. He is acquitted of all the charges. He is on bail. His bail bonds are cancelled and sureties are discharged.

30. Records of the learned trial court be sent back.

(2026) 7 ILRA 1837
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 1524 of 1988

Babu & Ors. **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution proved beyond reasonable doubt the guilt of the surviving appellants.
Whether the female appellants participated in the assault or shared common object.
Whether the conviction and the benefit of probation granted by the trial court require interference.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Sections 374(2), 207, 145, 313 - Indian Penal Code, 1860 - Sections 147, 323, 324, 149, 148, 302 - Probation of Offenders Act, 1958 - Section 4: - Criminal Appeal – against conviction and order releasing the appellants on probation – Cross-case - FIR - Injuries sustained by both sides – No clear evidence as to which party was aggressor or who had sown the crop – Right of private defence of property not established – investigation - statements recorded - site-plan prepared - injured medically examined - charge-sheet – case being a cross-case committed to Sessions Court – charges framed – prosecution examined informant, injured, eye-witnesses, doctors and Investigating Officer - defence examined one eye-witness – appellants pleaded that the informant's party was the aggressor, that they acted in self-defence, that the land and crop belonged to them, and that there were major contradictions in prosecution evidence – Court finds that the incident is not disputed as to time, place and injuries on both sides, that ownership of land/crop and identity of aggressor are not clearly established making it a free fight in which each party is responsible for its own acts, that ocular evidence specifically attributes assault role to surviving male appellants which is corroborated by medical evidence, but that there is no clear evidence of participation or sharing of common object by the female appellants – held, conviction of female appellants are set aside - conviction of male is affirmed and they are directed to appear before the trial court within one month to execute bonds for good behaviour under Section 4 of the Probation of Offenders Act, 1968 – hence appeal partly allowed – direction issued accordingly.

(Para – 28, 29, 32, 33, 34, 35, 37)

Appeal Allowed in Part. (E-11)

CASE LAW CITED

Not given.

LIST OF ACTS

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

LIST OF KEYWORDS

Criminal Appeal - Cross-case - Free fight - Sections 147 - 323/149, 324/149 IPC - Common object - Right of private defence - Ocular evidence - Medical corroboration - Benefit of doubt - Probation of Offenders Act –

Acquittal of female accused – upheld – affirmed - Appeal dismissed.

CASE ARISING FROM

Judgment and order dated 14.06.1988 passed by Additional Sessions Judge/Special Judge (E.C. Act), Lalitpur in Sessions Trial No. 55 of 1986 arising out of Case Crime No. 189A of 1984, Police Station Bar, District Lalitpur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sanjeev Kumar Khare, Senior Advocate, assisted by Ms. Archana Chauhan
Counsel for Respondent(s): Shri Rajesh Kumar Rao, learned A.G.A.

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

1. This criminal appeal has been filed, under Section 374(2) Code of Criminal Procedure, 1973 (in short Cr.P.C.), by appellants Babu, Puttu, Halkey, Bhajan Lal, Baijnath, Ramanand, Smt. Badi Bahu @ Kanchan Devi, Smt. Ram Dulari, Smt. Sanjhli Bahu wife of Puttu, Smt. Sanjhli Bahu wife of Bhajan Lal, Smt. Manjhli Bahu wife of Baijnath and Smt. Manjhli Bahu wife of Zalim, against the impugned judgment and order dated 14.06.1988, passed by Sri S.S. Gupta, Additional Sessions Judge/ Special Judge (E.C. Act), Lalitpur, in Sessions Trial No.55 of 1986, arising out of Case Crime No.189A of 1984, under Sections- 147, 323/149 and 324/149 Indian Penal Code, Police Station- Bar, District- Lalitpur.

2. By the impugned judgment and order, dated 14.06.1988, the learned trial court has convicted the appellants for offence punishable under Section 147 Indian Penal Code,1860 (in short IPC) and sentenced them to undergo rigorous imprisonment for a period of three months; sentenced to undergo rigorous imprisonment for a period of three months for offence punishable under Section 323/149 IPC; sentenced them to undergo rigorous imprisonment of six months offence punishable under Section 324/149 IPC and, instead of sentencing them at once, they were released on probation for good conduct for a period of one year by giving them the benefit of Section 4 of Probation of Offenders Act, 1968.

3. During the pendency of this appeal, the appellant Nos.1- Babu, appellant no.2- Puttu, appellant no.3- Halkey, appellant no.5- Baijnath, appellant no.8- Smt. Ram Dulari and appellant no.9- Smt. Sanjhli Bahu wife of Puttu have died and vide order dated 04.11.2025 this appeal stands abated against above aforesaid appellants. Now this appeal survives for appellant no.4- Bhajan Lal, appellant no.6- Ramanand, appellant no.7- Smt. Badi Bahu alias Kanchan Devi, appellant no.10- Smt. Sanjhli Bahu wife of Bhajan Lal, appellant no.11- Smt. Manjhli Bahu wife of Baijnath and appellant no.12- Smt. Manjhli Bahu wife of Zalim.

4. Brief facts of the prosecution case are that Mannu Lal son of Kunji Lal Yadav, resident of Village- Basatguwa, Police Station- Bar, District- Lalitpur, lodged an FIR on 20.09.1984 at 17:35, at Police Station- Bar, by submitting a written application (Ext.-Ka.1), stating that on 28.12.1981, a registered sale deed was executed in favour of

himself and his four brothers by Kalle son of Dallu grand-son of Makkhan Kaacchi, regarding 6.45 acre land of Nazarbagh Kunwa. After few months Kalle died, then Babu, Zalim etc. Alongwith their brothers filed an objection against the aforesaid registered sale deed. The above case was decided in Tehsil- Taalbehat and then it was heard by the Commissioner, Jhansi from there the case was remanded, and by order in the case from Tehsil- Taalbehat, the above land was recorded in the name of Nanki (bahu) wife of Kalle. The first informant lodged its appeal before S.D.M. Taalbehat which is pending. After the execution of sale deed the first informant and his four brothers came into possession of the aforesaid land and are cultivating the same. They had sown crop of maze, groundnut and ginger. Today, i.e. 20.09.1984, his maze crop was standing over the land then accused Zalim, Bhagirath, Puttu, Babu, Halke, Bhajan Lal, Baijnath, Ramanand, Smt. Manjhali Bahu wife of Baijnath, Smt. Badu Bahu @ Kanchan Devi, Smt. Ram Dulari, Smt. Manjhali wife of Jalim, Smt. Sanjhli wife of Puttu and Smt. Sanjhli wife of Bhajan Lal, started forcefully harvesting the crop, thereupon the first informant, his elder brother Jagat Singh; Sukhdayal, Rati Ram, Lakkhi @ Lakhan Singh reached there at about 11:00 a.m. and objected. Zalim and others claimed the land their own, and said that you can do whatever you can, but we will cultivate it. Baijnath, Kacchi hit a lathi blow over his head and when his brothers Sukh Dayal and others tried to rescue him then Baijnath and others, in furtherance of their common intention, started committing maarpeet with lathi and sickle. They raised alarm, thereupon the co-villagers Harlal Yadav, Ram Chandey Yadav, Sujan Yadav reached and saved them. Due to the above maarpeet he and Jagat Singh, Sukh Dayal, Rati Ram and Lakkhi @ Lakhan Singh sustained injuries. They ran towards village but saw some police constables, so due to their fear, they ran away leaving there seriously injured Lakkhi. The constables took Lakkhi, Zalim and others on a truck to the police station-Bar. When his younger brother Meghraj came home from Jhansi, then he narrated the entire story.

5. Upon this information FIR under Sections 147, 323 and 324 IPC was lodged and the investigation was entrusted to SHO Narendra Pal Singh. He recorded the statements of first informant and other witnesses, visited the place of occurrence and prepared its site-plan. The injured were medically examined and after investigation he has filed charge-sheet under Sections 147, 323 and 324 IPC before the concerned Magistrate.

6. The court concerned took cognizance of the offence and summoned the accused, they appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case being cross-case of Case Crime No.189 of 1984, was committed to Sessions court by the Chief Judicial Magistrate, Lalitpur, vide order dated 30.07.1986. The accused appeared before the learned Sessions Court where, charges under Sections- 147, 323 read with 149 and 324 read with 149 IPC were framed against them. The accused pleaded not guilty and claimed to be tried.

7. The prosecution examined eight witnesses, to wit, P.W.1 Mannu Lal; P.W. 2 Lakkhi; P.W.3 Meghraj; P.W.4 Dr. K.C. Gupta; P.W. 5 Dr. N.L. Mahajan; P.W. 6 Babulal; P.W.7 Sujan; P.W.8 Narendra Pal Singh, to prove its case.

8. P.W. 1 Mannu Lal, is the eye-witness of the alleged incident and he has supported the prosecution case. He has stated that at the time of incident he was present there and was harvesting this maze crop. There he saw the accused, harvesting his maze crop. He objected to it and said that the crop was sown by him then why you are harvesting it, thereupon they resorted and started committing maarpeet with lathi and sickle. Then they snatched lathi and sickle from the accused persons and saved themselves and in the process the accused also sustained injuries. The witnesses reached at the spot and saved them. In this incident, he himself, Jagat Singh, Sukh Dayal, Rati Ram and Lakkhi @ Lakhan Singh sustained injuries. After committing maarpeet the accused fled from the spot. On their way back, they saw some policemen, then they fled from there leaving injured Lakkhi there. This witness is also the first informant and has proved the tehrir, (Ext.Ka.1), and has said that all the injured were taken to the doctor for treatment. He has admitted that a cross-case is pending against them upon report lodged by accused Babu with regard to the offence of murder.

9. P.W.2 Lakkhi, is the injured witness and he has also supported the prosecution case and has stated the same version as was stated by P.W.1 and has said that all the accused assaulted them with lathi and sickle and in their right of self-defence, the accused also sustained injuries. The police took him and the injured persons of the other party to the Police Station. From the Police Station he was taken to Lalitpur Hospital. He sustained injury over his left palm from sickle. He stated that the accused tried to hit sickle over his head but he tried to defend and thus, sustained injuries over his hand.

10. P.W.3 Meghraj, is not the eye-witness of the alleged incident. He has scribed the tehrir (Ext.Ka.1), which he has written down on the dictation of first informant. He has said that he was at the shop, where he heard about the incident. He reached the village at about 03:00 p.m. After 3-4 days, he went to the police station, on his own, and met the Investigating Officer. He is also an accused in the cross-case.

11. P.W. 4 Dr. K.C. Gupta, is the expert witness, who has prepared injury report of Lakkhi on 20.09.1984 and found following injuries over his body:-

(i) Incised wound 5 cm x 1.5 cm x bone deep over back side of left forearm. The margins were clear cut and everted. Fresh bleeding was present.

(ii) Incised wound 4 cm x 1 cm x bone deep, 1.5 cm below the injury no.1. The margins were clear cut, everted and fresh bleeding was present.

In the opinion of the doctor both the injures were kept under observation and X-Ray was advised. The injuries could have been caused by sharp edged weapon such as sickle. He has said that if some person tries to hit sickle over the head of the injured then while saving oneself with hand, this injury is possible. The doctor has proved the injury report as Ext.Ka.2 and has said that these injuries could be caused on 20.09.1984 at 11:00 a.m.

12. In cross-examination he has said that the injury to Lakkhi could have been caused in other manner also rather than in defending himself. The doctor has said that on the same day he has examined Bhagirath at 04:40 p.m. and found following injuries:-

(i) Contusion 12 cm x 10 cm over the left of skull. 1.5 cm x 1/4 cm x muscle deep x 1 cm ahead of left ear. Fresh bleeding was present.

(ii) Lacerated wound 1 cm x 1/4 cm x muscle deep over left ear (pinnah). Fresh bleeding was present.

(iii) Contusion 5 cm x 3 cm over right side of chest above rib cage red in colour.

(iv) Contusion 5 cm x 3 cm over front side of nose.

(v) Contusion 11 cm x 8 cm over left upper part of back.

(vi) Complaint of pain from ear.

In the opinion of doctor injury nos. 1 and 5 was kept under observation and was advised X-Ray. The injured was admitted in hospital and was unconscious. Rest of the injuries were simple in nature and could have been caused by hard and blunt object. The injuries were fresh.

13. Further, the doctor has said that at about 05:15 p.m. he examined Puttu and found following injuries over his body:-

(i) Lacerated wound 7 cm x 0.5 cm to the left side of head 8 cm above ear. Fresh bleeding was present.

(ii) Lacerated wound 2.5 cm x 0.5 cm x 4.5 cm x muscle deep below injury no.1 over left side of head at occipital bone. Fresh bleeding was present.

(iii) Lacerated wound 2.5 cm x 1/4cm x muscle deep over middle part of head of crescent shape. Fresh bleeding was present.

(iv) Lacerated wound 4 cm x 1/4 cm x muscle deep over left side of head, 4 cm above right eye brow. Fresh bleeding was present.

(v) Contusion 5 cm x 4 cm over left part of left forearm.

(vi) Contusion 3 cm x 1 cm with abrasion over left side of back over scapula region.

In the opinion of the doctor injury no.1, 2, 3 and 4 were kept under observation and X-Ray of head was advised. Rest of the injuries were simple in nature and were caused by hard and blunt object and were fresh in nature. The injured was admitted in hospital. The witness has proved both the injury reports as Ext. Kha.1 and Ext. Kha.2. He has said that these injuries could have been caused on 20.09.1984 at 11:00 a.m. with lathis and injuries to injured Bhagirath were sufficient to cause his death. The injured Bhagirath died due to the aforesaid injuries on 20.09.1984 at 06:45 p.m., regarding which he had informed the Police Station- Kotwali. He has also said that the injured Bhagirath was unconscious and in that condition he was medically examined.

14. P.W. 5 Dr. N.L. Mahajan, is also an expert witness. He has said that on 20.09.1984 he was posted as Incharge Medical Officer at PHC Baar and on that day he has examined Ratiram and found no injury over his body.

15. The same day at about 06:45 p.m. he examined Sukh Dayal and found following injuries:-

(i) Lacerated wound 2 cm x 1/4 cm x 1/4 cm over temporal area away from temple bone. The margins were irregular and clotted blood was found present.

In his opinion the doctor, the injury was simple in nature and was caused by hard and blunt object and was about 12 hours old.

16. On the same evening, at about 07:05 p.m. he examined Jagat Singh and found following injuries over his body:-

(i) Lacerated wound 4 cm x 1/4 cm x 1/4 cm. 7 cm above right eye brow and 2 cm away from the middle line of head.

(ii) Contusion 0.5 cm x 1 cm over right palm below the index finger.

(iii) Abrasion 1 cm x 1/4 cm to the back of palm, 2.5 cm above the wrist.

In the opinion of the doctor the injuries were simple in nature and was caused by hard and blunt object and was about 12 hours old.

17. On the same day, he examined Mannu Lal and found following injuries over his body:-

(i) Lacerated wound 4 cm x 1.05 cm x 0.5 cm on the inner side of hand, 6 cm above the wrist joint. The margins were irregular and clotted blood was present.

(ii) Lacerated wound 3 cm x 0.5 cm x 0.5 cm over middle line of head, in frontal area 7 cm above the root of nose.

(iii) Lacerated wound over head 3 cm x 0.5 cm x 0.5 cm over left temporal area 5 cm above temple.

(iv) Abraded contusion over the back right of scapula region 7 xm x 1 cm x 0.5 cm reddish in colour.

Injuries were simple in nature and were caused by hard and blunt object. The injury was 12 hours old.

In the opinion of the doctor all the injuries to the above injured could have been caused by lathi on 20.09.1984 at about 11:00 a.m. Injury nos. 2 and 3, caused to injured Munna Lal were on vital part, therefore, were dangerous in nature. Injury over head of Sukh Dayal was too deep which is dangerous to life. Injury no.1 to Jagat Singh was over head and if excessive force was used it could have been dangerous to life.

18. P.W. 6, Constable Babu Lal, is a formal witness and he was posted as Head Moharrir at Police Station- Baar on 20.09.1984, who scribed the chik FIR and entered its gist in G.D. No.22 at time 17:25, which the witness has proved as Ext.Ka.7 and Ext.Ka.8, respectively.

19. In cross-examination he has said that the same day Babu and others had lodged an FIR under Section 147, 148, 149 and 302 IPC against 15 accused and he had scribed the chik FIR of the aforesaid case. The witness has proved chik FIR as Ext. Kha-14 and its G.D. No.14, time 14:40 as Ext. Kha.15.

20. P.W.7, Sujan is the eye-witness of the alleged incident. He has supported the prosecution case and has said that he was going towards his well from his house alongwith

Har Lal, Ram Chandra Yadav, then upon hearing hue and cry over a quarrel, he reached at the spot. He saw accused committing maarpeet with lathi and sickle with Mannu Lal, Sukh Dayal, Jagat Singh, Lakkhi and Ratiram. Mannu Lal also wielded lathi and in self defence all the persons sustained injuries. Babu Lal, Ram Chandra Yadav, Jagat Singh's wife and Brij Lal's wife did not sustain any injury. The dispute had occurred due to harvesting maze crop. The above witness is the accused in the cross-case and has denied that Zalim and Bhagirath were lying in injured condition. He has said that he did not see any blood oozing out from their wounds. Both the parties were beating each other.

21. P.W.8 S.I. Narendra Pal Singh, is the Investigating Officer of the case. He has stated about the investigation carried out by him and has said that he inspected the place of occurrence and prepared its site-plan which he has proved as Ext. Ka.9. He has also said that after investigation he filed charge-sheet which was proved as Ext.Ka.10.

22. In cross-examination he has said that on the same day, accused Babu had also lodged an FIR upon a written application and he has investigated that case also. He had filed charge-sheet against 15 persons in that case. Bhagirath and Zalim were murdered in that case. He had found in the investigation of the cross-case that Bhagirath and others had reached at the Nazarbagh carrying lathi, axe, ballam and other weapons. He had recorded statement of Sujan after about three months because earlier he was not available. He did not found any lathi etc., from the place of occurrence.

23. After the closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C. in which they denied the prosecution case. It is admitted that in the village there is one Kalle son of Dallu and another person also by the name of Kalle son of Dallu but one Kalle's grand father is Maakhan and another Kalle's grandfather is Bhagante and they are Mahanate's relatives. They have admitted that proceedings under Section 145 Cr.P.C. was initiated but the possession over the disputed land belongs to them. They were harvesting the crop when they were beaten. They did not beat the first informant's party. The witnesses have deposed against them due to enmity. It is also submitted that there two persons were killed from their side and due to enmity and to save themselves the witnesses are deposing against them.

24. The defence has examined D.W. 1 Hannu who has said that he is the eye-witness of the alleged incident. He has said that upon hearing hue and cry he reached at the spot and saw accused harvesting the maze crop and were being beaten by Mannu, Sukh Dayal, Meghraj, Jagat Singh, Kalyan, Nanhu, Bhaiya Lal, Harlal, Sujan, Sitaram, Rajaram, Rati Ram, Lakkhi, Gebu, Halke. Lakkhi were carrying axe. Jagat Singh was carrying ballam and the rest were having lathis. Mehraj and Lakkhi assaulted axe upon Zalim. Jagat Singh struck ballam from the side of lathi and rest used lathis. The women Smt. Majhali Bahu wife of Baijnath, Smt. Badi Bahu @ Kanchan Devi, Smt.. Ram Dulari, Smt. Majhali Bahu wife of Jalim, Smt. Sajhali Bahu wife of Puttu and Smt. Sajhali Bahu wife of Bhajan Lal, were beaten with lathis. Zalim's wife came for her husband's rescue then she saved him with sickle which struck Lakkhi. Babu and others snatched lathis from informant's party and

wielded them in self defence. The accused did not commit any maarpeet with Meghraj and others. The disputed field belongs to the accused Babu.

25. After considering the evidence and arguments on behalf of both the parties, the learned trial court came to the conclusion that the prosecution case is proved beyond reasonable doubt. The plea of exercise of right of private defence of appellants was not accepted and accordingly, the appellants were convicted and sentenced to the term as indicated above.

26. Heard Shri Sanjeev Kumar Khare, learned Senior Advocate, assisted by Ms. Archana Chauhan, learned Counsel for the appellants and Shri Rajesh Kumar Rao, learned A.G.A on behalf of the State and perused the material on record.

27. Learned Counsel for the appellants has submitted that there are major contradictions in statement of prosecution witnesses which raises serious doubt over the prosecution case. It is also submitted that the disputed field belongs to appellants and it is the first informant's party which was aggressor and started committing maarpeet with them and in that process they killed Zalim and Bhagirath and also caused injuries to others. Then the appellants party wielded lathi in their self defence. Thus the learned trial court failed to appreciate the evidence on record correctly and reached at the wrong conclusion of guilt of the appellants.

28. Per contra, learned A.G.A. has submitted that the prosecution case is proved beyond reasonable doubt. Ocular evidence is supported by medical evidence. There are no major contradictions to disbelieve the prosecution witnesses. Admittedly, the injuries were sustained by the first informant's party from the assault committed by the appellants. It is the appellants who were aggressor as they started harvesting crop which belongs to the first informant and upon protest they started beating the first informant's party. Therefore, the right of exercise of private defence was not available to the appellants. Thus, the learned trial court has rightly convicted and sentenced the appellants.

29. The first submission on behalf of the appellants is that the matter relates to cross-case and two persons from the side of the accused have been murdered in the said incident. Beside, some others from appellant's side also sustained injuries and it is the first informant's side, which was aggressor and the accused exercised their right of private defence of person in which the first informant's party sustained injuries. With regard to the cross-case P.W.1 Mannu Lal has admitted that he is accused in the cross-case which is pending against him. P.W.2 Lakkhi the injured witness. P.W.3 Meghraj and P.W.7 Sujan have also stated the same that they are accused in the cross-case. P.W.6 Constable Babu Lal has scribed chik FIR of the present case and he has stated that on the same day, he has also scribed FIR of the cross-case. P.W.8 S.I. Narendra Pal Singh, is the Investigating Officer of this case and he has stated that upon FIR lodged by Babu in Case crime No. 89 of 1981, under Sections- 147, 148, 149 and 302 IPC, he investigated the cross-case and filed charge-sheet against 15 persons, to wit, Babu s/o Kalley, Puttu s/o Kalley, Halkey s/o Moti Kachi, Bhajan Lal s/o Moti Kachi, Baijnath s/o Moti Kachi, Ramanand s/o Punnu, Smt. Ram Dulari w/o Jugraj, Smt. Manjhali Bahu w/o Jalim, Smt. Manjhali Bahu w/o Baijnath, Smt. Sanjhali

Bahu w/o Puttu, Smt. Sanjhali Bahu w/o Bhajan Lal, Smt. Badi Bahu @ Kanchan Devi w/o Jassu. Even D.W.1 Hannu, the witness produced by the defence has also stated that both the parties assaulted each other. In view of the above, it is established that the matter relates to cross-case and as it is defence case that the first informant's party also sustained injuries while the accused exercised their right of private defence of person. Therefore, the date, time and place of the alleged incident is not in dispute.

30. It is also not in dispute that at the time of incident the appellant's party was harvesting the Maze crop over the disputed land. Now the first question which arises for consideration is which party was aggressor and which party had sown the Maze crop over the disputed land. In this regard, the public witness examined on behalf of prosecution have stated that it is the Mannu Lal who had sown the crop and the accused illegally started harvesting the crop. The prosecution has produced some documentary evidence which goes to show that there was litigation pending between both the parties with regard to disputed land. The defence case is that Maze crop was sown by the accused side. There is no clear evidence to prove which party had sown the crop over the disputed land, so which party was the owner or which party has sown the crop is not clear, but it is not in dispute that the accused were harvesting the crop when the incident started. Now when it is not established by the prosecution that the disputed land or the crop belongs to the informant's side, then their right of private defence of property, does not arise in this case.

31. Now the question arises which party started the assault upon the other, in other words which party was the aggressor. In this regard, also the evidence on record is not very clear. On the one hand, the prosecution witnesses say, that when they objected the appellants of harvesting the crop then the appellants resorted and started beating the first informant's side then in their right of private defence they snatched lathi and sickle from the appellant's side and wielded lathi in their self defence. On the other hand, the defence evidence shows that it is the first informant's side which started beating the appellant's side then in exercise of right of their private defence of person they wielded lathi and sickle which caused injuries to the first informant's side. So, when it is not clear from evidence which party was the aggressor, then it would be deemed that it was a free fight. In case of free fight each person/ party is responsible for its act.

32. The appellants admit the injuries sustained by the first informant's side which is corroborated by medical evidence, in the form of injury reports and the statement of the treating doctor. Therefore, it is not in dispute that first informant's side sustained injuries in the said incident which were caused by the appellant's side.

33. A perusal of statement of P.W.1 Munna Lal, P.W.2 Lakkhi, P.W.3 Meghraj and P.W.7 Sujan, goes to show that there is major discrepancy in their statements, so far as the role of surviving appellants namely, Smt. Badi Bahu @ Kanchan Devi, Smt. Sanjhali Bahu wife of Bhajan Lal, Smt. Manjhli Bahu wife of Baijnath and Smt. Manjhali Bahu wife of Zalim are concerned, so their participation in the said incident is not established. Though, these witnesses have said that they saw them present at the spot, but P.W.1 Mannu Lal has not said, in clear words, that they had participated in the assault. P.W.2 Lakkhi, the injured

witness, has also said that the women present there did not pick up the lathi and he did not see that they committed any maarpeet. P.W.7 Sujan, has also said that the women were present there, but he did not see them causing any assault. None of the women assaulted to anyone, and it was both the parties who were assaulting each other. Thus, there is no clear evidence that appellants Smt. Badi Bahu @ Kanchan Devi, Smt. Sanjhali Bahu wife of Bhajan Lal, Smt. Manjhli Bahu wife of Baijnath and Smt. Manjhali Bahu wife of Zalim, participated in the crime. There is also no evidence that they shared any common object with other co-accused. Therefore, they deserve to get the benefit of doubt.

34. So far as the surviving appellants Bhajan Lal and Ramanand are concerned, there is specific evidence against them that they have participated in the said crime and committed assault upon the first informant's side. Therefore, prosecution has been able to prove its case beyond reasonable doubt against them. Thus, the learned trial court has not appreciated the evidence on record correctly and reached at the wrong conclusion of the guilt of **Smt. Badi Bahu @ Kanchan Devi, Smt. Sanjhali Bahu wife of Bhajan Lal, Smt. Manjhli Bahu wife of Baijnath and Smt. Manjhali Bahu wife of Zalim** and so far as the appellants Bhajan Lal and Ramanand are concerned, they have been rightly convicted by the learned trial court.

35. In view of the above discussion, this appeal is partly allowed with regard to appellants **Smt. Badi Bahu @ Kanchan Devi, Smt. Sanjhali Bahu wife of Bhajan Lal, Smt. Manjhli Bahu wife of Baijnath and Smt. Manjhali Bahu wife of Zalim** and the impugned judgment and order dated 14.06.1988 passed in Sessions Trial No.55 of 1986 with respect to them, is **set aside** and they are **acquitted** of the offence under Section 147 and 323, 324 read with 34 IPC.

36. The appellants, to wit, **Smt. Badi Bahu @ Kanchan Devi, Smt. Sanjhali Bahu wife of Bhajan Lal, Smt. Manjhali Bahu wife of Baijnath and Smt. Manjhali Bahu wife of Zalim** are on bail. They need not surrender. Their personal bonds and surety bonds are cancelled and sureties are discharged of their liabilities.

37. And, with regard to appellant nos. 4 Bhajan Lal and 6 Ramanand, this appeal is **dismissed** and the impugned judgment and order against them is **upheld** and the conviction and sentence of the appellant nos. 4 **Bhajan Lal** and **appellant no.6 Ramanand**, is **affirmed**. Appellants Bhajan Lal and Ramanand are on bail. They are directed to appear before the learned Trial Court within one month from today and instead of serving the sentence, they shall execute the bonds as directed by the learned Trial Court for maintaining good behavior, upon their being released on probation to maintain good conduct for a period of one year, by giving them the benefit of Section 4 of Probation of Offenders Act, 1968.

38. Let a copy of this order be sent to the Trial Court concerned alongwith the Trial Court record for information and necessary compliance.

(2026) 7 ILRA 1847
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1777 of 2020

Dileep @ Dalda **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution has proved beyond reasonable doubt that appellants in furtherance of common intention, murdered by firearm shots.
Whether the identification of appellants based on res-gestae witnesses and subsequent recovery of weapons is reliable and sufficient.
Whether conviction under Section 302/34 IPC and sentence of life imprisonment warrants interference.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 313, 374(2) – Indian Penal Code, 1860 – Section 34, 302 – Indian Evidence Act, 1872 – Section 9:- Two Criminal Appeals - against conviction and sentence – offence of murder – FIR lodged promptly – witnesses PW-1 and PW-2 reached spot immediately after shots, saw deceased lying in blood and assailants escaping – Identification based on fleeting glimpse - no Test Identification Parade held – Appellants arrested two months later after encounter with police - recovery of country-made pistols with freshly fired empties – Disclosure statements admitting involvement and motive of robbery – Medical evidence corroborated firearm injuries – court finds that, entire edifice of the prosecution case is demonstrably built on conjecture and cannot substantiate the charge brought against the appellants in the least measure, - absence of Test Identification Parade weakens dock identification, but recovery of weapons, confessional disclosures, and corroborative circumstances complete chain, Motive of robbery established – court held that, the prosecution have miserably failed to prove the charges against both the appellants and the learned Trial Judge went wrong in convicting them of the offence under Section 302 read with Section 34 IPC – hence, appeal allowed – impugned order of conviction and sentences are set-aside – both appellants are acquitted- directions issued accordingly.

(Paras 33, 35, 48, 49, 50, 51, 52)

Appeals Allowed. (E-11)

CASE LAW CITED

Mulla v. State of U.P., (2010) 3 SCC 508
Prakash v. State of Karnataka, (2014) 12 SCC 133

LIST OF ACTS

Code of Criminal Procedure, 1973 - Indian Penal Code, 1860 - Indian Evidence Act, 1872 - Arms Act.

LIST OF KEYWORDS

Criminal Appeal – Section 302/34 IPC – Murder by firearm – Res gestae witnesses – Dock identification – Recovery of weapons – Disclosure statements – Motive of robbery – Chain of circumstance.

CASE ARISING FROM

Judgment and order dated 28.01.2020 and sentence order dated 30.01.2020 passed by the Additional Sessions Judge/ Special Judge (E.C. Act), Mainpuri in - Sessions Trial No. 700151 of 2008 arising out of - Case Crime No. 2486 of 2007, Police Station Kotwali, District Mainpuri.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Arun Kumar Bhatt, Ms. Abhilasha Singh.
Counsel for Respondent(s): Shri Ghanshyam Kumar learned AGA-I, Mr. Brij Raj Singh.

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

1. This judgment will decide Criminal Appeal No. 1777 of 2020 and connected Criminal Appeal No. 1743 of 2020, both arising out of Case Crime No. 2486 of 2007, under Section 302/34 of the Indian Penal Code, 1860 (for short, 'IPC'), Police Station Kotwali, District Mainpuri. The convict Dileep @ Dalda in Criminal Appeal No. 1777 of 2020 and the convict Sunil in Criminal Appeal No. 1743 of 2020 stood their trial before Mr. Ashok Kumar, the then Special Judge (E.C. Act), Mainpuri on the charges of murdering one Mohd. Javed son of Jabbar Husain with a common intention on 03.10.2007 at about 8.30 p.m. in the night, outside the door of the latter's house. Both the appellants were convicted of the offence punishable under Section 302/34 IPC by the learned Additional Sessions Judge/ Special Judge (E.C. Act), Mainpuri in Sessions Trial No. 700151 of 2008 vide judgment and order dated 28.01.2020 and, later on, sentenced by an order dated 30.01.2020 to suffer imprisonment for life, besides being imposed with a fine of Rs.10,000/- each. In the event of default, the convict defaulting was ordered to suffer additional simple imprisonment for a month.

2. A written report was lodged by Mohd. Abid son of Jabbar Husain, a brother of the deceased on 03.10.2007 at 10.30 p.m. with a case that on 03.10.2007, his elder brother Mohd. Javed had closed his shop and rode his motorcycle back home. Mohd. Javed, as soon he reached the gate to his house at 8.30 p.m., was shot twice. The informant and his brother, hearing the shots ring out, reached the gate and saw that their brother had been shot and was lying on the ground. The assailants were three in number. They were riding a motorcycle. They rode away towards Mehmood Nagar, going inside the locality. The informant brought his injured brother to the hospital, where he breathed his last. His dead body was lying in the hospital and the informant said that he had come to the station to lodge a report for the purpose of necessary legal action. The written report handed over to the Police is on record as Ex. Ka-1. On the basis of the written report, a check First Information Report ('FIR' for short) was registered on 03.10.2007 at 10.30 p.m., giving rising to Crime No. 2486 of 2007, under Section 302 read with Section 34 IPC, P.S. Kotwali, District Mainpuri. This FIR was registered against unknown offenders.

3. About two months later on 10.12.2007, Sub-Inspector Nanhe Lal Yadav, Station Officer, P.S. Kotwali, Mainpuri, was on the look out of a wanted offender. When this police party reached Karhal Road near the FCI Godown, they got information through a secret informer that in the Javed murder case, the accused were about to proceed riding their motorcycle on the Karhal-Mainpuri Road in order to commit some crime. It was reported that they would proceed to Karhal. If prompt steps were taken, they could be apprehended. The police party reached the spot, trusting the information and solicited passersby to stand witness to the arrest. All those asked to witness

without disclosing their name and address, citing reasons of buying hostility, declined to witness the arrest. In the meantime, S.I. Anoop Kumar Yadav arrived and took the station officer along with the informer to the broken culvert located beyond the FCI Godown. At that time, four men, riding two motorcycles, were seen moving on the Karhal Road. The informer said that they were the offenders involved in the Javed murder case and went away. The riders were signalled to stop.

4. Upon seeing the Police, both the motorcycles changed course and went along the road going to Nagla Harsurat, speeding away in order to escape the Police. The Police gave them a chase, in consequence of which the pillion riders opened fire at the Police with an intent to kill. The Police escaped unhurt and overpowered two of the offenders at about 4.00 p.m. The other two made good their escape. Those apprehended were asked to disclose their names and subjected to a search their person. The first of them disclosed his name as Dileep @ Dalda son of Shiv Ram Shukla and a resident of Mohalla Kheda, Qasba & P.S. Karhal. The search of his person led to the recovery of a country-made pistol held in his right hand. Upon opening the barrel of the pistol, a recently fired empty of 0.315 caliber was recovered. The gun was in working condition. And from the right hand side of his pants, two live cartridges of 0.315 caliber were also recovered. The second man disclosed his name as Sunil son of Sonelal, a resident of Mohalla Bhatela, Qasba & P.S. Karhal, District Mainpuri. The search of his person led to the recovery of a country-made pistol held in his right hand. The barrel had a freshly fired empty of 0.315 caliber. The gun was in working condition. From the left hand side pocket of this man, two live cartridges of 0.315 caliber were recovered.

5. The police party say in the recovery memo that both the apprehended men were asked about the Javed murder case, in consequence of which Dileep @ Dalda revealed that he had been given information that around Diwali, Javed has a handsome amount of cash on him, which he utilizes to buy wares in Delhi, presumably for his shop. Dileep @ Dalda revealed that with an intent to commit robbery on 03.10.2007, he and Sunil, along with Guddu, planned to kill Javed in the evening, when he closed shop and rob him of his money. According to plan, all three of them proceeded on a motorcycle at about 8 p.m. to Javed's shop, and after he closed shop, they followed him. As soon as he arrived close to his house and knocked at his gate, the offenders, with an intent to rob him, shot him to death, with Sunil and Guddu firing a round each. Javed collapsed on the spot. Thinking that he was dead, the offenders escaped. Since then, they were roaming about hiding themselves. On that day, they disclosed that they were proceeding from Karhal to Mainpuri after committing a robbery, when they were apprehended. The other man apprehended, that is to say, Sunil said that on 03.10.2007, according to Dileep @ Dalda's plan, Dileep and Guddu attempted to rob Javed at 8.30 p.m. in front of his house, but the attempt remain abortive. In consequence, Sunil and Guddu shot Javed, firing a round each. Sunil said that the weapon, that he possessed on that day when he was arrested by the Police, was the same that he had used to shoot Javed. The arrested man also said that all three of them escaped riding the solitary motorcycle and were moving as fugitives. It was said by Sunil that on that day, they were proceeding from Karhal to Mainpuri with an intention to commit robbery, when the police party apprehended them. Thereupon, both the men were asked to show their licenses for the country-made pistols, which they obviously could not. Both the appellants were then arrested by this police party in connection with Case Crimes Nos. 3306 of 2007 and 3307 of 2007, under Section 25 of the Arms Act, P.S. Kotwali, District Mainpuri.

6. Reverting back to the facts of the murder case, which had happened two months antedating the appellants' arrest, an inquest was held on 03.10.2007, marked Ex. Ka-2. The deceased's body was subjected to autopsy and the autopsy report is on record as Ex. Ka-9. Blood stained and plain concrete were recovered from the scene of crime, regarding which a memo was drawn up, marked as Ex. Ka-12. The Investigating Officer, after concluding the investigation, filed a charge-sheet in the murder case on 23.12.2007, which is on record as Ex. Ka-11.

7. The learned Chief Judicial Magistrate, Mainpuri took cognizance and furnished copies of the relevant prosecution papers to the appellants as provided under Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Thereafter, the learned Magistrate vide order dated 01.04.2008 committed the case to the Court of Sessions for trial.

8. The case came up before Mr. Tanwir Ahmad Siddiqi, the then Sessions Judge, Mainpuri for framing of charges. The learned Sessions Judge, vide order dated 28.04.2008, framed a charge against both the appellants, jointly under Section 302 read with Section 34 IPC, regarding intentionally committing the murder of Javed employing a firearm on 03.10.2007 at 8.30 p.m. in Mohalla Mehmood Nagar, Mainpuri City, within the circle of P.S. Kotwali, District Mainpuri in furtherance of a common intention.

9. In support of their case, the prosecution examined the following witnesses:

1. PW-1 - Mohd. Abid Ansari, the first informant and brother of the deceased,
2. PW-2 - Mohd. Aqil, another brother of the deceased,
3. PW-3 - Jabbar Hussain, father of the deceased,
4. PW-4 - Sharafat Ali, relative of the deceased,
5. PW-5 - Shahid, relative of the deceased,
6. PW-6 - Mohd. Imran, brother of the deceased,
7. PW-7 - Ram Sharan Singh, P.S. Bevar, District Mainpuri, then posted as S.I. at P.S. Kotwali, Mainpuri,
8. PW-8 - Dr. K.C. Bhardwaj, U.H.M. Kanpur, then posted in Mainpuri, who conducted postmortem of the deceased,
9. PW-9 - S.H.O. Daya Shankar Singh, P.S. Karhal, Mainpuri, then posted at P.S. Kotwali, Mainpuri, who started investigation of the case and submitted the charge-sheet,
10. PW-10 - Neeraj Gupta @ Lalaiya, an independent witness,
11. PW-11 - Ramesh Singh Rathore, Inspector P.S. G.R.P., Gonda Junction, then posted at P.S. Kotwali, Mainpuri, who also conducted investigation partly,
12. PW-12 - Vijay Singh, A.S.I. P.S. Bichhva, Mainpuri, then posted C/C at P.S. Kotwali, District Mainpuri.

10. The prosecution produced the following documentary evidence to prove their case:

Sr. No.	**Exhibit No.**	**Exhibited documents with brief particulars**
1	Ex. Ka-1	Written report dated 03.10.2007 lodged with Police Station Kotwali, District Mainpuri, proved by PW-1, Mohd. Abid

2	Ex. Ka-2	Inquest report of the deceased dated 03.10.2007, proved by PW-7, S.I. Ram Sharan Singh
3	Ex. Ka-3	Letter to the C.M.O. dated 03.10.2007 for conducting postmortem of the deceased, proved by PW-7, S.I. Ram Sharan Singh
4	Ex. Ka-4	Photo Lash of the deceased dated 03.10.2007, proved by PW-7, S.I. Ram Sharan Singh
5	Ex. Ka-5	Challan Lash of the deceased dated 03.10.2007, proved by PW-7, S.I. Ram Sharan Singh
6	Ex. Ka-6	Carbon copy of G.D. Entry of the letter of the E.M.O. dated 03.10.2007, proved by PW-7, S.I. Ram Sharan Singh
7	Ex. Ka-7	Letter to the In-charge Kotwali, Mainpuri by the E.M.O. dated 03.10.2007, proved by PW-7, S.I. Ram Sharan Singh
8	Ex. Ka-8	Letter to the District Magistrate dated 03.10.2007 for conducting postmortem in the night, proved by PW-7, S.I. Ram Sharan Singh
9	Ex. Ka-9	Postmortem report of the deceased dated 04.10.2007, proved by PW-8, Dr. K.C. Bhardwaj
10	Ex. Ka-10	Site-plan regarding recovery of the weapon of offence and arrest of the accused dated 23.12.2007, proved by PW-9, S.H.O. Daya Shankar Singh
11	Ex. Ka-11	Charge-sheet dated 23.12.2007, proved by PW-9, S.H.O. Daya Shankar Singh
12	Ex. Ka-12	Recovery memo of bloodstained and plain concrete dated 03.10.2007, proved by PW-11, Inspector Ramesh Singh Rathore
13	Ex. Ka-13	Site-plan of the place of occurrence dated 04.10.2007, proved by PW-11, Inspector Ramesh Singh Rathore
14	Ex. Ka-14	Check FIR dated 03.10.2007, proved by PW-11, Inspector Ramesh Singh Rathore
15	Ex. Ka-15	GD Entry No. 51 Time 22.30 hours dated 03.10.2007 endorsing the check FIR, proved by PW-12 A.S.I. Vijay Singh
16	Ex. Ka-16	Check FIR dated 10.12.2007 regarding Arms Act, proved by PW-12 A.S.I. Vijay Singh
17	Ex. Ka-17	GD Entry No. 49 Time 18.30 hours dated 18.12.2007 relating to Arms Act, proved by PW-12 A.S.I. Vijay Singh

11. After the prosecution evidence was over, the statement of the appellant Dileep @ Dalda was recorded under Section 313 Cr.P.C. on 23.09.2016 and that of the appellant Sunil also on the said date.

12. The appellant Dileep @ Dalda produced DW-1 Lal Singh son of Ramphal in his defence as well as DW-2 Satendra Kumar. The other appellant Sunil examined Lal Singh son of Prabhu Dayal as DW-3 in support of his defence.

13. After hearing the learned Counsel for both parties, the Additional Sessions Judge/ Special Judge (E.C. Act), Mainpuri by the judgment and order impugned dated 28.01.2020 convicted the

appellants as aforesaid and by the latter order dated 30.01.2020 sentenced them in the manner already indicated.

14. Aggrieved, these two criminal appeals have been preferred.

15. Heard Mr. Arun Kumar Bhatt, learned Counsel for the appellant in support of Criminal Appeal No. 1777 of 2020 and Ms. Abhilasha Singh, learned Counsel for the appellant in support of Criminal Appeal No.1743 of 2020. Mr. Ghanshyam Kumar, learned Additional Government Advocate-I has been heard on behalf of the State whereas Mr. Brij Raj Singh, learned Counsel has been heard on behalf of the informant in both the appeals.

16. So far as the date, time and place of occurrence is concerned, according to the FIR, the deceased was shot on 03.10.2007 when he was riding back home from his shop and had just reached the main gate to his house. He was shot there at 8.30 p.m. by motorcycle borne offenders, numbering three, who proceeded towards Mehmood Nagar, entering that locality and going trace-less. PW-1 and PW-2, who claim to be eye-witnesses of the occurrence, in their testimony in Court, have stood by this version in the FIR. PW-1 is the first informant and a brother of the deceased. He has said in his examination-in-chief that on 03.10.2007, Mohd. Javed closed shop and rode his motorcycle back home. He reached the gate to his house at 8.30 p.m., when the three motorcycle borne offenders approached from the side of the Salim Children Public School and shot Mohd. Javed in the back. The witness says that he heard two shots ring out. As soon as this witness, along with his other brother Mohd. Aqil, reached the gate and opened it, they found their deceased brother Javed lying on the entrance to the gate. There was a lot of blood effusing, apparently from the wound and his motorcycle was lying there. He saw the assailants escape on the motorcycle they were riding towards Mehmood Nagar. There is not much elicited during cross-examination to discredit the date, time and place of occurrence.

17. Likewise, is the testimony of PW-2. He has said that this witness were in all five brothers. The eldest of them was Mohd. Javed. He would run an electrical and electronics repair shop in the market. On the 3rd of October, 2007, the witness's elder brother Javed was proceeding home after closing shop. As soon as he reached the gate to his house at 8.30 p.m., three motorcycle borne men shot him. Upon hearing the shot rings out, he and his brother Abid opened the gate and saw that their brother was lying on the entrance of the gate soaked in blood. His motorcycle was lying nearby. The three motorcycle borne offenders made good their escape. This witness says that he and his brother Abid had seen the offenders escape on the motorcycle. There is nothing elicited in the cross-examination of this witness too, which may detract from the date, time or place of occurrence.

18. We are, therefore, of opinion that testimony of PW-1 and PW-2, who reached the spot soon after the occurrence, and the FIR version put together, establishes the date, time and place of occurrence as that what has been propounded by the prosecution. We are also minded to think on the testimony of these witnesses that the manner of occurrence is also well proven. The first information version and the dock evidence of PW-1 and PW-2 establish the date, time, place and manner of occurrence beyond reasonable doubt. The place of occurrence is additionally proved by the fact that blood-stained and plain concrete was picked up from the spot by the Investigating

Officer on the same day, as would be evident from the recovery memo dated 03.10.2007, Ex. Ka-12.

19. This brings us to the cardinal question, if indeed it was the appellants along with an elusive companion, the third rider on the motorcycle, who had shot Javed to death on 03.10.2007 outside his house at the gate at 8.30 p.m. It is ultimately the prosecution's burden to prove their case beyond reasonable doubt. Any reasonable and substantial doubt about the prosecution would enure to the benefit of the accused, entitling them to acquittal. Of course, the doubt should not be fanciful, remote or one inferable from a minor and inconsequential contradiction between the accounts of witnesses.

20. The prosecution have examined seven witnesses of fact, to wit, PWs-1, 2, 3, 4, 5, 6 and PW-10. Of these witnesses, PW-1 and PW-2, who are the brothers of the deceased, one of them being the first informant, have been projected as eye-witnesses. Though considering the place of occurrence, both PW-1 and PW-2 are natural witnesses as they are the deceased's brothers, living under a common roof and the place of occurrence being the gate or the entrance to their house, but we cannot agree with the prosecution that either of these witnesses are eye-witnesses. They are witnesses of res gestae, who reached the place of occurrence moments after the evil deed had been done and the unknown offenders were making good their escape on their motorcycle towards Mehmood Nagar. As we would presently elucidate with reference to specific portions of their testimony, these witnesses never saw the deceased being shot by the assailants. When the shots rang out, they were inside the house and promptly emerged upon hearing the shots. It is then that they saw the deceased lying in a pool of blood by the entrance of the gate and the offenders escaping on their motorcycle towards Mehmood Nagar. Thus, what the witnesses heard and saw, were the relevant facts of two shots ringing out that made them rush out of their house to the main gate, the fact that the deceased was lying there in a pool of blood and the fact that three assailants were making good their escape on a motorcycle towards Mehmood Nagar. These are all relevant facts, on the basis of which the prosecution wants us to draw the conclusion that it was the appellants before us, who shot the deceased, on the credit of the testimony of PW-1 and PW-2, amongst others.

21. In the nature of things that we have noticed, we have to evaluate the testimony of these witnesses of res gestae, if either of them could indeed identity the appellants as the assailants. It is common ground between parties that the appellants were not known to the witnesses beforehand. Therefore, what the witnesses saw of the assailants was a fleeting glimpse as they sped away towards Mehmood Nagar after doing the evil deed. A perusal of the site-plan, Ex. Ka-13, shows that the witnesses saw the assailants escape from point 'D', which at best can be regarded as their gate, though it is shown somewhat inside the house. The assailants had sped away towards the west coming as they did from the east. The witnesses, therefore, would at best have seen the assailants from their backside on a speeding motorcycle. This can be no more than a fleeting glimpse, as remarked earlier.

22. The most elaborate testimony, amongst these two witnesses, who were closest to the event, is that of PW-1, the first informant. This witness has said in his examination-in-chief, in the substance of it, 'The incident is dated 03.10.2007. My brother Mohd. Javed was returning home

after closing shop riding his motorcycle. At about 8.30 in the evening, as soon as he reached the gate of his house, a motorcycle approached from the side of Salim Children Public School, which had three men riding it. These motorcycle borne assailants shot his brother from the backside. I heard two shots ring out and upon hearing these shots, I and my brother Mohd. Aqil went to the door and opening it saw our brother Javed lying on the entrance. There was a lot of blood profusing. I saw the assailants escape on the same motorcycle that they had come by towards Mehmood Nagar.' At this stage, upon seeing the appellants in the dock, this witness said, 'These are the two men, with whom there was another one, who had ridden the motorcycle and shot his brother.'

23. In his cross-examination, this witness said, 'When I heard the shots ring out, I was in the lawn. There is a boundary wall after the lawn, five feet high. I was sitting inside the boundary wall. The main gate, securing the boundary wall, was closed. Two shots were fired. After the shots had rang out, it would have taken me a minute to come out. When I came out, I had with me, my younger brother Mohd. Aqil as well. There was none other. At that time, my brother was lying in an injured state. I have passed my intermediate examination. I scribed the FIR myself. I have written there that the assailants riding the motorcycle escaped towards Mehmood Nagar. I had not got it recorded that I identified the assailants.' In his cross-examination later on, he has said, 'I was sitting in the lawn outside my house. The place I was sitting in and the alley, are located at a distance of 6-7 feet. The gate, that opens into the alley, is secured by an iron gate. The alley is clearly visible from this gate.'

24. This witness has said further on in his cross-examination, 'After I reached home that day, 10-12 minutes later the deceased Javed arrived at the gate. When I reached home, electricity supply was there, though it was night time. The gate is illuminated by two bulbs. It would have taken me less than a minute to come out of the house as soon as the deceased was shot. That time, the deceased was lying at the door. When I came out of the house, the offenders had moved ahead of the place of occurrence by 10-12 paces. The motorcycle was being driven by the appellant Sunil. The man sitting on the pillion after Sunil was a thin and wiry boy and, the last on the pillion, was the appellant Dileep @ Dalda. I came to know that the boy, who was sitting in between these two appellants, is called Guddu Musalman. I had told the Daroga that Sunil and Dileep @ Dalda were involved in this case. I had said that they had committed the murder. The Daroga has not mentioned this fact in my statement. When the accused were caught, the Daroga had not called me over for identification. I had not seen the accused before seeing them in Court.' He then said, 'I had seen them at the time of occurrence.' Still later in his cross-examination, he says, 'My statement was recorded on the 4th at 7 o'clock in the morning. That day, my statement alone was recorded. I had spoken in my statement about the accused to the Daroga, but not disclosed their names. It is incorrect to say that after the accused were arrested by the Police in the case under Section 307 IPC and Section 25 of the Arms Act, I came to know about them.' It is in the last said that the names of the accused were disclosed to this witness by the Police.

(emphasis by Court)

25. The other witness, who is said to be an eye-witness, is PW-2. We have already remarked that like his brother, he is a witness of res gestae. This witness has recounted the events of the fateful day more or less in his examination-in-chief consistently with his brother. He has, however,

said a few things additionally. He says, 'I got information of the arrest on 11.12.2007 in the evening. I went to the Kotwali and saw these accused present in Court, identified them and told about them to the Daroga.' This witness then says, 'The accused present in Court had murdered my brother on the bidding of Habib and Rafiq for money's sake. Habib and Rafiq live in Mohalla Purohitana and they are my uncles. Dileep @ Dalda's mother's home is located five houses away from that of Habib and Rafiq. Habib and Rafiq had got my father forcibly sign a sale deed. When we grew up, we brought pressure on them to return the land, which led to exchange of sharp words with those two men. Habib and Rafiq harbours animosity against us. Habib and Rafiq had got my brother killed by Dileep @ Dalda, Sunil and Guddu Musalman after paying them money. This fact was made known to me by Sharafat Ali and Shahid Ali, when they had come over to my house on the 20th day ceremony. I had informed the Police and the higher officers about it.'

26. In his cross-examination, this witness said, 'I had given my statement to the Daroga that when my brother was shot and I heard it, I was sitting in my lawn. If the Daroga had not recorded the fact, I cannot say the reason why. I had told the Daroga that when we opened the door, our brother was lying at the entrance drenched in blood. It is correct to say that when we opened the door, the assailants were not on the spot. They had moved away by 10-12 paces. They were proceeding towards the west. I had seen the assailants from the backside moving away. I had seen them at the time of occurrence and not earlier. I had given my statement to the Police after a month and a quarter, but not disclosed the name of the assailants, though I disclosed their getup. If the Daroga had not taken down the getup of the assailants, I cannot say the reason why.'

(emphasis by Court)

27. The totality of the testimony of these two witnesses places them the way, we have earlier judged them. They reached the place of occurrence soon after the event and saw a fleeting glimpse of the assailants, on the basis of which they could not have identified them in the dock for the first time, as they say they did. Though a Test Identification Parade rightfully belongs to the arena of investigation, but in a case like the present one, if a TI Parade were held shortly after the occurrence, or very soon thereafter with a good identification of the two appellants, the identification in the dock would have stood on surer ground. There cannot be any insistence on a TI Parade, but the lack of it in a case of doubtful identification of entirely unknown offenders, like the present one, may not help the prosecution establish identify of the offenders. The law in this regard has been summarized by the Supreme Court in **Mulla v. State of U.P., (2010) 3 SCC 508,** where it has been held:

"41. Now, let us consider the arguments of the learned amicus curiae on the delay in conducting the test identification parade. The evidence of test identification is admissible under Section 9 of the Evidence Act, 1872. The identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in court. There is no provision in CrPC entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court.

42. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in court, it should not form the basis of conviction.

43. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75: 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406: 1973 SCC (Cri) 828].)

44. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

45. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

46. In Subash v. State of U.P. [(1987) 3 SCC 331: 1987 SCC (Cri) 573] the parade was held about three weeks after the arrest of the accused. Therefore, there was some room for doubt if the delay was in order to enable the identifying witnesses to see him in jail premises or police lock-up and thus make a note of his features. Moreover, four months had elapsed between the date of occurrence and the date of holding of the test identification parade. The descriptive particulars of the appellant were not given when the report was lodged, but while deposing before the Sessions Judge, the witnesses said that the accused was a tall person with shallow (sic sallow) complexion. The Court noted that if on account of these features the witnesses were able to identify the appellant Shiv Shankar at the identification parade, they would have certainly mentioned about them at the earliest point of time when his face was fresh in their memory.

47. It is important to note that since the conviction of the accused was based only on the identification at the test identification parade, the Court in Subash case [(1987) 3 SCC 331: 1987 SCC (Cri) 573] gave him the benefit of doubt while upholding the conviction of the co-accused. This is also a case where the conviction of the appellant was based solely on the evidence of identification. There being a delay in holding the test identification parade and in the absence of corroborative evidence, this Court found it unsafe to uphold his conviction."

28. In the context of the idea behind holding a TI Parade, it was held by the Supreme Court in **Prakash v. State of Karnataka, (2014) 12 SCC 133:**

"15. An identification parade is not mandatory [Ravi Kapur v. State of Rajasthan, (2012) 9 SCC 284: (2012) 4 SCC (Civ) 660: (2012) 3 SCC (Cri) 1107] nor can it be claimed by the suspect as a matter of right. [R. Shaji v. State of Kerala, (2013) 14 SCC 266: (2014) 4 SCC (Cri) 185] The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. [Rameshwar Singh v. State of J&K, (1971) 2 SCC 715: 1971 SCC (Cri) 638] If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable [Mulla v. State of U.P., (2010) 3 SCC 508: (2010) 2 SCC (Cri) 1150; Kishore Chand v. State of H.P., (1991) 1 SCC 286: 1991 SCC (Cri) 172] unless the suspect has been seen by the witness or victim for some length of time. [State of U.P. v. Boota Singh, (1979) 1 SCC 31: 1979 SCC (Cri) 115] In Malkhansingh v. State of M.P. [(2003) 5 SCC 746: 2003 SCC (Cri) 1247] it was held: (SCC pp. 751-52, para 7)

"7. - The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact.'

16. However, if the suspect is known to the witness or victim [Jadunath Singh v. State of U.P., (1970) 3 SCC 518: 1971 SCC (Cri) 124] or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media [R. Shaji v. State of Kerala, (2013) 14 SCC 266: (2014) 4 SCC (Cri) 185] no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In Visveswaran v. State [(2003) 6 SCC 73: 2003 SCC (Cri) 1270] it was held: (SCC p. 78, para 11)

"11. The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

29. There is absolutely no quarrel on facts that neither PW-1 nor PW-2 knew the appellants beforehand. To believe, therefore, that at a time when darkness had overtaken and the two witnesses arrived soon after the event, and the offenders, making good their escape, had moved away few paces from the place of occurrence, the witnesses could have identified them from a backside vantage, is too strained logic to accept. There is no basis in the entire testimony of these witnesses to accept the fact that they could indeed identify the appellants as the assassins. So far as PW-1 is concerned, a TI Parade if held with identification that was considered good, some assurances might have been lent to the dock identification. So far as PW-2 is concerned, even that would not have helped the prosecution, since it has come in his cross-examination that he identified the appellants at the police station on 11.12.2007, after they were arrested. Whichever way the evidence as a whole is looked at, it is difficult to accept that these two witnesses, based on their re-collection of the moments of crime when they virtually saw nothing, could have identified these strangers in the dock. We, thus, hold that the appellants were not identified by any of the witnesses, who are said by the prosecution to have most closely seen them committing the evil deed.

30. We would now advert to the fact how the appellants came to be connected to the present crime. As it appears from the record, the name of the appellants did not come to light until statement of Neeraj Gupta @ Lalaiya was recorded by the Police, who is said to have disclosed the appellants' name, besides that of the absconding accused Guddu Musalman. This witness, Neeraj Gupta @ Lalaiya, worked as a salesman on a bhang shop, located near the Mainpuri Roadways Bus Stand owned by a certain Anil Gupta, popularly called Netaji. The Police have recorded statements of Neeraj Gupta @ Lalaiya, where he is said to have told the Police that on 03.10.2007 at about 9.45 p.m., Dileep @ Dalda, Sunil and Guddu Musalman, came over to this witness and said that they had murdered Javed son of Jabbar Husain for the lucre of money that they would get because they had heard that the victim went about carrying a lot of money on him, but on one hand, they did not get the money, and on the other, committed murder. There are other statements recorded under Section 161 Cr.P.C. attributed to Neeraj Gupta @ Lalaiya, all of which point to the appellants, besides the absconding accused, as the perpetrators of the crime.

31. Interestingly, this witness was examined by the prosecution as PW-10 and he turned utterly hostile, disowning all the statements made to the Police. The disowned statements, though put to the witness in the witness-box, were not distinctively marked by any symbols or letters, and upon their denial by the witness, never required to be proved by the Investigating Officer, who had recorded these statements. It was through this kind of an apparently made up introduction of the appellants' name that they were put in the dock as the accused. The statement of this witness under Section 161 Cr.P.C. was recorded by the Investigating Officer, PW-9, Daya Shankar Singh, on 07.11.2007, as would appear from his examination-in-chief. Thereafter, the Investigating Officer went about raiding places, seeking to arrest the appellants and the absconding accused. He also obtained processes under Section 82 Cr.P.C. The processes under Section 82 Cr.P.C. were served on the appellants and the absconding accused by pasting it on their premises on 03.12.2007. In a surprising turn of events on 11.12.2007, the appellants Dileep @ Dalda and Sunil were engaged in an encounter by the Special Operations Group, headed by its In-charge Nanhe Lal Yada and his companion policemen, who arrested them along with weapons. The appellants, after they were arrested by the S.O.G., confessed to the present crime.

32. We have already held that the two witnesses of res gestae, to wit, PW-1 and PW-2, never saw the assailants and the identification of the appellants by these two witnesses in the dock is far from acceptable. Taking the totality of circumstances into consideration and the evidence, on the basis of which the appellants have been connected to the crime, it leaves us in no manner of doubt that they have been falsely implicated by the Police in order to show a working out of the case, perhaps for public consumption or other motivation, best known to the police officers involved. The witness, on whose statements the appellants were implicated, went so utterly hostile in the witness-box with no proof of his earlier statement being even attempted by the Police that all statements, on the foot of which the names of the appellants were introduced, readily as the accused in this case, have to be regarded as concoctions by the Police and a frame up for the appellants. We would come back to the testimony of PW-10, the hostile witness, and the Investigating Officer, PW-9, later in the course of this judgment. We hold, therefore, that the very connection of the appellants with the crime in this case by the Police and on the evidence offered stands to be rejected outright.

33. The prosecution have put forward two different stories to propound the complicity of the appellants in the crime along with Guddu Musalman. We are aware of the fact that this case is sought to be established as one of direct evidence, and in a case of direct evidence, motive has a scanty role; hardly of any significance for the defence. But, what we cannot disregard is the fact that though this case has been endeavoured to be established as one of direct evidence, in fact, it is not at all the case. There is absolutely no eye-witness to the occurrence and the closest men, who have seen it, are no more that witnesses of res gestae, who arrived at the scene of crime soon after its accomplishment; may be moments later. The case would, therefore, remain in its essence a case that is one essentially of circumstantial evidence and has to be proved by the prosecution and judged by the Court as one. Therefore, motive, as a circumstance in the chain, cannot be discounted.

34. Now, the Police, very feebly and by inadmissible evidence, have endeavoured to prove that the appellants, along with the absconding accused, attempted to rob the deceased of his money and ended up murdering him. They have also put forward a completely different motive for the accused to commit the crime. This motive came from the prosecution propounding contract killing, where the appellants were the contract killers. About this motive, the prosecution have led evidence as well. They have examined PW-4 and PW-5, to wit, Sharafat Ali and Shahid Ali, respectively. We must note here that the testimony of PW-4 and PW-5 was not produced by the prosecution to explain the motive of the crime alone, but also prove the complicity of the appellants and the conspiracy of their masters, who hired them to kill Javed, that is to say, Habib Ahmad and Rafiq Ahmad. By this theory, that the prosecution propounded to explain the appellants' complicity, the two men who hired them to kill, Habib Ahmad and Rafiq Ahmad, would also be guilty by conspiracy.

35. We would soon advert to the testimony of PW-4 and PW-5, but before we do that we must notice how Habib Ahmad and Rafiq Ahmad escaped being arraigned and tried. The Police, who came up with this story of the appellants acting at the behest of Habib Ahmad and Rafiq Ahmad as hired killers to commit the crime, somehow did not charge-sheet these masterminds. Apparently, after the testimony of PW-1, PW-2, PW-3, and particularly PW-4 and PW-5 as also PW-6, was heard, an application made on behalf of the informant Mohd. Abid under Section 319 Cr.P.C. to summon Habib Ahmad and Rafiq Ahmad as accused to face trial. This application under Section 319 Cr.P.C. was rejected by the learned Additional Sessions Judge vide order dated 23.05.2016. The order of the Trial Judge was questioned before this Court in Criminal Revision No. 2599 of 2016, again by Mohd. Abid, but this revision too failed and was dismissed vide order dated 01.08.2018. This order has apparently attained finality and was not further questioned before the Supreme Court, as far as we are informed and the records show.

36. Now, to turn to the testimony of PW-4, Sharafat Ali, through whose mouth, the appellants' involvement was sought to be proven by the prosecution as contract killers. PW-4 has testified in his examination-in-chief:

"मोहम्मद जावेद @ गुड्डू मेरे दामाद लियाकत अली के भान्जे थे जिनकी हत्या हो गई थी। मेरे दामाद लियाकत अली तीन भाई है। जिनमे मकसूद अहमद उनसे बड़े नफीसुल हसन है।

मेरे दामाद लियाकत अली जमालपुर अलीगढ़ में रहते है। और उनके बड़े भाई नफीशुल हसन मेहमूद नगर मैनपुरी में रहते है। मेरा रिश्तेदारी होने के कारण जव्वार हुसैन के घर आना जाना है। दिनांक 30-9-2007 को मै जब्बार हुसैन के घर मोहल्ला मेहमूद नगर मे अपने लड़के दिलशाद के साले साहिद की बहन के लिए लड़का देखने आये थे और रात मे मै जब्बार हुसैन के घर रूके थे। और दूसरे दिन 01-10-2007 को मैं अपने दामाद के बड़े भाई नफीशुल हसन के घर सुबह गया था। इसके बाद उसी दिन लगभग 9.00 बजे दिन मै और शाहिद हवीव अहमद व रफीक अहमद के मकान पर पहुँचे। ये दोनो जब्बार हुसैन के बड़े भाई है। इसलिए रिश्तेदारी होने के कारण मैं वहां गया था मैं जाकर उनकी बैठक में शाहिद के साथ बैठा था। मेरे पहुँचने से पहले उनकी बैठक में हवीव अहमद, रफीक अहमद व अन्य तीन लोग और बैठे थे। मेरे पहुँचने पर रफीक अहमद व हबीब अहमद से दुआ सलाम हुई। उन्होने मुझसे मेरी खैरियत मालूम की। इसके बाद रफीक अहमद चाय की कह कर अन्दर जाने लगे तो मैने कहा मेरा रोजा है मैं चाय नही पीऊँगा। इस पर रफीक अहमद अन्दर चले गये। अन्दर से जब वह बाहर निकल कर आये (रफीक अहमद) तो वह पाँच पाँच सौ रूपये के नोटो की गड्डी लेकर इन आये। गुड्डी हबीब अहमद के हाथ में देते हुए कहा कि इन लोगो को जाने दो रिश्तेदारो से बैठकर बात करेगे। हबीब अहमद ने वह गड्डी डालडा नाम के व्यक्ति को देते हुए कहा कि ये पैसे को तुम्हे जावेद का काम करना है। बकाया पैसा काम करने के बाद मिल जायेगा। इसके बाद तीनो लोग रूपया लेकर चले गये। जावेद को मैं गुड्डू के नाम से जानता था। इसलिए मैंने कोई शक नहीं किया। गुड्डू की हत्या के बाद उसके बीसवे फाथा की सूचना मुझे खत द्वारा मालूम हुई। तो मैं 21-10-2007 को गुड्डू के खर्वे? फाथा में शिरकत करने के लिए मैनपुरी आया। तब वहाँ मुझे यह जानकारी हुई कि गुड्डू का असली नाम जावेद है। तव मुझे रफीक के घर हुई रूपये के लेनदेन की जानकारी हुई कि गुड्डू @ जावेद की हत्या रूपया देकर कराई है। अब मुझे अभि० डालडा के अलावा अभियुक्त सुनील, एक गुड्डू मुसलमान है जिनसे हत्या कराई गई है। तब गुड्डू के फाथा के दिन सारी उपरोक्त बात जब्बार हुसैन व उनके लड़को को बताई थी।"

(emphasis by Court)

37. In his cross-examination, this witness has said:

"मैं 30-9-2007 को जब्बार हुसैन के घर रूका था। सुबह मैं अपने दामाद के भाई के घर गया था। उनके घर मैं लगभग आधे घण्टे तक रूका था। वहाँ से मैं रफीक अहमद व हवीव अहमद के घर सुबह 9.00 बजे गया था। करीब आधा घण्टा बैठा था। रूपयो की एक गड्डी थी मैने रूपये नही गिने थे कि कितने रूपये थे। उनकी कोठी में 3 अज्ञात व्यक्ति बैठे थे उनको पहले से नही जानता उसी दिन देखा था। नोटो की गड्डी देने के बाद में आधे घण्टा और रूका था। नोटो की

गड्डी देने वाली बात मैने जब्बार को नही बताई थी। इस घटना की वावत विवेचक ने मेरा कोई बयान नही लिया था। इस घटना की वावत आज मैं पहली बार अदालत में बयान दे रहा हूँ। मैने न तो घटना को देखा और न योजना बनाते देखा। केवल रूपये देते हुए देखा है।"

(emphasis by Court)

38. To the same effect is the testimony of PW-5 Shahid Ali. Both these witnesses are not directly related to the parties, that is to say, Jabbar Husain or his brothers, but have propounded a case for the prosecution that Jabbar Husain, on one hand, and his brothers Habib Ahmad and Rafiq Ahmad, on the other, were estranged on account of property disputes, regarding which litigations were pending between them. This fact too has figured in the cross-examination of this witness, where he says:

"मुझे मनमुटाव आपस में भाईयो मे होने वाली बात मुझे जब्बार हुसैन ने कभी नहीं बताई।"

39. The testimony of PW-4 and PW-5 is so incredible that we are minded to reject it with all the contempt it deserves. Incredible, we say, because it is unheard of in human affairs that a man, or may be two or more of them, who hire killers, would not pay them in the presence of others, and that too accompanied by words divulging their plans. No man, in possession of his good sense, would do that and to believe PW-4 and PW-5 that Habib Ahmad and Rafiq Ahmad did it, is to accept the absurdity of the highest order. Such conspiracies and evil contracts are hatched in darkness and accomplished in secrecy. They are not announced even to the walls, let alone human ears. This story, therefore, propounded by the prosecution, different from the motive that the Police cited for the appellants, along with the absconding co-accused Guddu Musalman, to commit the crime, that is to say, going after the deceased's money and intending to rob him, but ending up killing him, is more absurd than the police version figuring in the investigation papers. The police version is also absurd because the corpus delicti shows that there was no attempt to rob the deceased, but a case of murder, plain and simple. The deceased was targeted and killed at his gate, according to the witnesses of res gestae, to wit, PW-1 and PW-2.

40. But, this does not end the chapter about the motive for the appellants to kill the deceased. PW-3 Jabbar Husain, who is the father of the deceased and a brother of Habib Ahmad and Rafiq Ahmad, has given minute details of their business even before their father's death in the year 1978. He has given graphic details of strife in the family over division of property between the brothers, and particularly threats that came to pass on 21.08.1992 and 12.11.1992, when Habib Ahmad and Rafiq Ahmad, along with goons, had entered his premises and threatened to wipe out the entire family and ultimately made him sign documents, parting with his interest in favour of Habib Ahmad and Rafiq Ahmad unfairly. It is also figured in the examination-in-chief of this witness that these facts were reported to the Superintendent of Police and the Collector as also the Home Minister, but to no avail. After his children were born and the eldest son, the deceased Mohd. Javed grew up, he would ask Habib Ahmad and Rafiq Ahmad, his father's brothers, to return what was forcibly taken away from his father. It is said in the examination-in-chief that fearing that they might have to part with money to settle matters of property, Habib Ahmad and Rafiq Ahmad hired

the appellants and the absconding co-accused Guddu Musalman to eliminate Javed. It is said in the testimony further that the conspiracy fructified on 03.10.2007, when Javed after closing shop arrived at his gate and sounded the horn, his younger brother Mohd. Abid and Mohd. Aqil went to open the gate and when they arrived there, the appellants along with Guddu Musalman, riding a motorcycle, shot him to death from the rear side and escaped on the motorcycle they were riding. He then narrates how on the occasion of the 20th day ceremony, Sharafat Ali and Shahid Ali, his relatives, told him how Habib Ahmad and Rafiq Ahmad paid money to the appellants in the presence of these men, telling the appellant Dileep @ Dalda that he had to finish off Mohd. Javed. These matters were then brought to the notice of the Superintendent of Police and the Circle Officer, City as also the Chief Minister and the Home Minister, but all to no avail. In his cross-examination, this witness after sticking to his stand about the history of the dispute and the earlier threat to his life and security from Habib Ahmad and Rafiq Ahmad has stated in his cross-examination:

"यह मोटर साइकिल मेरे मृतक पुत्र जावेद के नाम थी। बजाज कम्पनी की थी प्लेटिना तथा काली महरुम कलर की थी। घटना से करीब छः माह पहले खरीदी थी अपने दोस्त से। गुड्डू मुसलमान इस केस में अभी तक हाजिर नहीं हुआ है। मैं मौके पर नहीं था इसलिए मैं "उसी समय दिलीप उर्फ डाल्डा, गुड्डू मुसलमान व सुनील जो कि मोटर साइकिल सवार थे ने पीछे से दो फायर किये जिससे मोहम्मद जावेद की मृत्यु हो गई।" यह सुनी सुनाई बात बता रहा हूँ। मैने घटना होते व मुल्जिमानो को नहीं देखा। रफीक अहमद व हबीब अहमद के घर से दिलीप उर्फ डालडा की ननिहला लगभग 50 कदम की दूरी पर उसी गली में पश्चिम दिशा में है। दिलीप के नाना का नाम राधे पांडे था।

यह सच है कि यह घटना मैने अपनी आँखो से नही देखी है। यह सही है कि मुझे विवेचनाधिकारी ने मुझे गवाह नही बनाया है। पुलिस को मेने बयान दिया था लेकिन 161 crpc के ब्यान में नहीं लिखा गया है।

यह कहना सही है कि मैने न्यायालय में प्रार्थना पत्र देकर अपना ब्यान कराया है। यह कहना सही है कि मैने कोई घटना नही देखी हो सुनी सुनाई कह रहा हूँ।"

(emphasis by Court)

41. In his cross-examination, this witness makes it vivid that he is not an eye-witness of any kind; not even a witness of res gestae. All that he has said about the occurrence or the fact of the money being paid to eliminate the deceased by Habib Ahmad and Rafiq Ahmad, is all based on hearsay. His testimony is relevant only about the fact that there were property disputes in the past between the brothers and there was a case of threat and violence to eliminate the family long back in the year 1992. There is also mention of the motive in presenti in terms that since the deceased was demanding back properties that were snatched away from the hands of PW-3, their father, this witness felt that this served as the motivation for his brothers Habib Ahmad and Rafiq Ahmad to get the deceased eliminated, hiring the services of the appellants and the absconding co-accused. But, a wholesome reading of this part of the assertion about the motive except for the fact that long back in the past, there were property disputes, and may be threatened violence, is all

based on hearsay and conjecture. There is no evidence aliunde in the sense of a relevant circumstance to connect Habib Ahmad and Rafiq Ahmad to the crime, and a fortiori the appellants. It is for this obvious reason that Habib Ahmad and Rafiq Ahmad were never charge-sheeted, and the effort of the first informant to get them summoned during trial, after substantial evidence was heard, failed.

42. We are minded to think that the story about hiring of professional shooters by Habib Ahmad and Rafiq Ahmad could have emerged from the depths of familial animosity between the brothers referable to their property disputes of the past, but connecting the appellants to the crime during investigation, when no such story had surfaced before the Police, was a fabrication and concoction of the Police themselves. At that time, therefore, they assigned for the motive of crime the appellants' intention to rob the deceased of his money, which he was reputed to be carrying around. This story, connecting the appellants to the crime, was fabricated by the Police by putting words into the mouth of PW-10, Neeraj Gupta @ Lalaiya, who during his cross-examination went utterly hostile. We again notice that when his previous statement to the Police were put to this witness and denied, the Police never mustered courage of asking the Investigating Officer, who had recorded these statements, to enter the witness-box and prove the statements, which PW-10 denied as never having been made by him.

43. We must briefly take note of the testimony of PW-6 Mohd. Imran, another brother of the deceased. He is a witness of the inquest and has fairly stated in his cross-examination that he never saw the occurrence. His testimony, therefore, does not carry much value or worth.

44. PW-7 Ram Sharan Singh is a Sub-Inspector of Police, who was posted at the relevant at P.S. Kotwali, Mainpuri. He held the inquest and drew up the inquest report. He is a formal witness, who has proved the inquest report. He has also proved some other formal documents.

45. PW-8 is Dr. K.C. Bhardwaj, who is the autopsy doctor. He has testified to a single entry wound in the back with blackening around it and margins inverted, and another wound semi-torn towards the chest, below the fourth rib. The fourth rib was found fractured. The bullet was lodged there. Apparently, the bullet did not exit the body. The doctor opined that death was caused as a result of the gunshot wound, leading to excessive bleeding. He has proved the autopsy report, already noticed to be marked Ex. Ka-9. There is nothing remarkable in his testimony either.

46. PW-11 Ramesh Singh Rathore is the Inspector of Police, who was posted as the Station Officer Kotwali, Mainpuri at the relevant time. He was the first Investigating Officer of the case. A perusal of his testimony shows that he took initial steps of investigation as his examination-in-chief would show. In his cross-examination, at the instance of the appellants, he has stated:

"जिला मैनपुरी में करीब एक साल तैनात रहा है सही अदांज नही है। घटना की रिपोर्ट अज्ञात में दर्ज हुयी थी। मुझे नही पता कि मुलजिमान दिलीप, प्यारेलाल व सुनील का नाम कब

घटना मे कितने दिन बाद आया। मेरे सामने तक नाम पता नही चले थे। मैंने किसी मुलजिमान की गिरफ्तारी नही की थी।"

47. This testimony of the first Investigating Officer also points to the conjuring up of the appellants' name and connecting it to the crime, putting words in the mouth of Neeraj Gupta @ Lalaiya, who disowned making any statement to the Police ever. The manipulation apparently happened after the next Investigating Officer, that is to say, PW-9 Daya Shankar Singh took over investigation. There is something noteworthy which we cannot spare unnoticed. Admittedly, Guddu Musalman, the third co-accused was never apprehended or tried. To all appearances, he became an absconder and a fugitive.

48. So far as the statements of the accused under Section 313 Cr.P.C. are concerned, we notice that apart from offering a denial to the incriminating circumstances and saying that the appellants have been falsely implicated, there is no definitive explanation offered. The three defence witnesses have more or less testified to the good character of the appellants and their testimony is not of much assistance to the appellants on its own force.

49. There is one fact, which deserves particular mention. What we notice is that there is no evidence aliunde appearing against the appellants, connecting them to the crime, like recovery of any incriminating evidence at their pointing, say the weapon of crime, that would be admissible under Section 27 of the Indian Evidence Act. The entire edifice of the prosecution case is demonstrably built on conjecture and cannot substantiate the charge brought against the appellants in the least measure.

50. In the totality of circumstances, we are of opinion that the prosecution have miserably failed to prove the charges against both the appellants and the learned Trial Judge went wrong in convicting them of the offence under Section 302 read with Section 34 IPC.

51. In the result, these appeals succeed and are **allowed**. The impugned judgment and order of conviction dated 28.01.2020 and the order of sentence dated 30.01.2020 passed by the Special Judge (E.C. Act), Mainpuri in Sessions Trial No. 700151 of 2008 is hereby set aside and the appellants **acquitted**. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and the sureties discharged.

52. The appellants shall execute a personal bond in the sum of Rs.25,000/- each under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against their acquittal.

53. Let the lower court records be returned.

(2026) 7 ILRA 1865
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 2062 of 1989

Chandra Bhan & Anr. ...Appellant(s)
Versus
State of U.P. ...Respondent(s)

ISSUE FOR CONSIDERATION

Whether the prosecution has been able to prove beyond reasonable doubt that cruelty or harassment to the deceased was committed in connection with any demand for dowry as contemplated under Sections 498-A and 304-B IPC ?

Whether the prosecution could be able to prove it's case against the appellant- convict beyond reasonable doubt?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 222, 313, 374(2), 437-A, – Indian Penal Code, 1860 – Sections 302, 304-B, 498-A, – Dowry Prohibition Act, 1961 – Section 2, 3, 4 - Indian Evidence Act,- Section – 113-B : - Criminal Appeal – against conviction and sentence – FIR lodged by father alleging dowry demand of scooter/₹10,000 – offence of cruelty and harassment – investigation conducted – statements recorded – recovery not in issue – charge-sheet filed – trial initiated – applicant pleaded innocence – Court finds that, though marriage was recent and death occurred within seven years, prosecution failed to establish nexus between alleged demand and specific acts of cruelty - reasons recorded in impugned judgment found perverse - ingredients of Sections 304-B and 498-A IPC not made out – dying declaration carefully scrutinized but held insufficient to convict surviving appellant - prosecution failed to prove that all accused resided together - no explanation for burn injuries sustained by appellant - no charge framed under Section 302 IPC, hence conviction under that provision impermissible – held that, appellants cannot be convicted under Sections 304-B/498-A IPC, nor under Section 302 IPC in absence of charge – consequently, appeal allowed - conviction and sentence set aside – further, court observed that, Trial Courts must carefully examine evidence in dowry death cases and frame the main charge under Section 302 IPC, with an alternative charge under Section 304-B IPC, wherever the material indicates homicide - direction issued for compliance, accordingly.

(Para - 52, 54, 57, 58, 59, 60, 61)

Appeal Allowed. (E-11)

CASE LAW CITED

Karan Singh vs. State of Haryana, 2025 SCC OnLine 214,
Satbir Singh and another vs. State of Haryana, (2021) 6 SCC 1,
Shamnsaheb M. Multtani vs. State of Karnataka, (2001) 2 SCC 577

LIST OF ACTS

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

Indian Evidence Act,

LIST OF KEYWORDS

Criminal Appeal – Conviction and Sentence - FIR - Dowry demand - Cruelty and harassment – Investigation – Statements recorded - Charge-sheet filed - Trial initiated - Dying declaration - Dowry death - Charge framing - Perverse findings - No nexus between demand and cruelty - Burn injuries of accused - Residing together not proved - Failure of Investigating Officer - Failure of Presiding Officer – Homicide - Appropriate charges - Appeal allowed - Conviction set aside - Directions - Appeal partly allowed.

CASE ARISING FROM

Judgment and order dated 04.10.1989 passed by the 1st Additional Sessions Judge, Etawah, in Sessions Trial No. 190 of 1988 (State Vs Chandra Bhan) connected with Session Trial No. 256 of 1988 (State vs. Jairam) arising out of Case Crime No. 101 of 1988, Police Station Kotwali, District Etawah.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Harish Chandra Shukla, assisted by Shri Adesh Pal,
Counsel for Respondent(s): Ms. Archana Singh, A.G.A.-I

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Sri Harish Chandra Shukla, advocate assisted by Sri Adesh Pal, learned counsel for the appellants and Sri Vikas Goswami, learned AGA for the State.

2. Challenge in this criminal appeal is to the judgment dated 04.10.1989 passed by Ist Additional Sessions Judge, Etawah in Sessions Trial No. 190 of 1988 (State Vs. Chandra Bhan) connected with Session Trial No. 256 of 1988 (State vs. Jairam) arising out of Case Crime No. 101 of 1988, under Sections 302 IPC and Section 3/4 of the Dowry Prohibition Act, Police Station-Kotwali, District Etawah, whereby learned trial Court has convicted the accused- appellants Jairam and Chandra Bhan for the offence under Sections 304-B, 498-A IPC and sentenced each to undergo rigorous imprisonment for life under Section 304-B IPC and three years rigorous imprisonment under Section 498-A IPC. All the sentences were directed to run concurrently.

3. The present appeal has been filed by accused- convicts Chandra Bhan and Jairam. Accused Chandra Bhan and Jairam were separately tried in Sessions Trial No. 190 of 1988 and Sessions Trial No. 256 of 1988, and both were convicted by a common judgment dated 04.10.1989. During pendency of this criminal appeal, appellant no. 2 Jairam died and this appeal already stands abated against the appellant no. 2 Jairam vide this Court's order dated 16.10.2025. Now this appeal is being heard and disposed of for surviving appellant no. 1 namely Chandra Bhan.

4. Brief facts of the case are that first informant Sri Mahesh Chandra, (father of the deceased Munni Devi) had got lodged FIR on 01.03.1988 at 5:45 am against the appellant- accused Chandra Bhan and three others on the ground that the marriage of his daughter Munni Devi was performed with the accused Chandra Bhan son of Badri Prasad resident of village Sakuva, Etawah about 8-9 months ago. He could not give Scooter in the dowry at the time of marriage of his daughter, hence the accused Chandra Bhan and his family members used to harass his daughter. Chandra Bhan visited their residence in October, 1987 with his daughter, then his daughter told him that her in-laws used to physically torture her for not giving Scooter and also used to state that either a Scooter

be given or Rs. 10,000/- cash be given else she will face dire consequences. On 29.02.1988, he has received information that his daughter Munni Devi was burnt, thus, he came to Etawah at Mohalla Madhaiyan Khayaliram, Etawah city and it came to his knowledge that his daughter was burnt to death. Sri Shiv Singh, Din Dayal and other persons of the said locality informed him that his daughter has died in Sadar Hospital due to said reason. His daughter was burnt to death by the accused- appellants including the wife of Sri Prabhu Dayal and Badri Prasad, who were residing at the time of the incident in a rented house in Mohalla Khayaliram due to non fulfillment of demand of dowry.

5. In view of above, Sri Mahesh Chandra, first informant has submitted a written report (Ext.Ka-2) at P.S. Kotwali, District Etawah alleging therein that the accused- appellants and two others have committed dowry death of his daughter. On the aforementioned written information of the first informant, an FIR was registered on 29.02.1988 as Case Crime No. 101 of 1988, under Section 302 IPC, Police Station- Kotwali, District Etawah.

6. After completion of investigation, charge-sheet was submitted against appellants. Thereafter, cognizance was taken upon same and the case was committed to the Court of Sessions. After hearing both the parties, charges were framed under Sections 498A, 304-B IPC against appellants on 01.02.1989.

7. In order to prove it's case, the prosecution adduced PW-1 Mahesh Chandra (informant and father of deceased), PW-2 Smt. Vimla Devi (mother of deceased), PW-3 Head constable Sri Bhola Prasad Pal (chik writer), PW-4 Dr. S.C. Gupta (who gave fitness certificates before and after dying declaration), PW-5 Sri Udai Vir Singh (Tehsildar, who recorded dying declaration), PW-6 Dr. S.K. Srivastava (Autopsy Surgeon), PW-7 Dr. P.K. Srivastava (who medico legally examined the injured and prepared her injury report), PW-8 (2nd I.O.) Sri Prem Prakash Srivastava (the then Circle Officer, who conducted the final investigation), PW-9 S.I. Sri Sukhvir Singh (1st I.O.) and PW-10 constable Sri Raj Kumar (G.D. writer). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 25 prosecution papers and 08 material objects, which were marked as exhibits. The same are tabulated herein below:-

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Mahesh Chadra	First informant & father of the deceased	Letter of the deceased as Ext. Ka-1, Written report/ Tehrir as Ext. Ka-2
PW-2	Vimla Devi	Mother of the deceased and witness of fact regarding demand of dowry & harassment to the deceased	-
PW-3	Bhola Prasad Pal	Scribe of the FIR	Chik FIR as Ext. Ka-3
PW-4	Dr. S.C. Gupta	Doctor, who examined the deceased in Sadar hospital and gave fitness certificates before and after dying declaration	Fitness certificates as Exts. Ka-5 and 6

PW-5	Uday Veer Singh (Tehsildar)	Who recorded dying declaration	Dying declaration as Ext. Ka-7
PW-6	Dr. S.K. Srivastava	Autopsy Surgeon	Post mortem report as Ext. Ka-2
PW-7	Dr. P.K. Srivastava	Who examined the deceased in emergency ward, and also examined the appellant Chandra Bhan	Injury report of deceased as Ext. Ka-9 Injury report of accused Chandra Bhan as Ext. Kh-1
PW-8	Prem Prakash Srivastava, CO	2nd I.O.	Charge-sheet against Jairam as Ext. Ka-10 and charge-sheet against Chandra Bhan as Ext. Ka- 11
PW-9	Sukhveer Singh, S.I.	1st I.O.	Site plan as Ext. Ka-12, two quilts as material Ext-I & II, cane of kerosene oil and match box as material Ext. III & IV, recovery memo of quilts as Ext. K-13, recovery memo of cane of kerosene oil and match box as Ext. Ka-14, Red colour Saree and dhoti as material Ext. V & VI and its recovery memo as Ext. Ka-15, Frock and Stove as material Ext. VII & VIII and its recovery memo as Ext. Ka-16, Panchayatnma as Ext. -17, Chalan Nash as Ext. Ka-18, Sample seal as Ext. Ka-19, Photo Nash as Ext. Ka-20, Letter to CMO as Ext. Ka-21, Letter for recording dying declaration as Ext. Ka-22
PW-10	Raj Kumar Singh	G.D. writer	G.D. entry as Exts. Ka-23, 24 & 25

8. After completion of the prosecution evidence, the statement of the accused persons were recorded under section 313 Cr.P.C. They denied the prosecution version and commission of alleged offence. The accused also claimed their innocence. They stated that prosecution witnesses have given false evidence against them.

9. By the impugned judgment dated 04.10.1989, trial Court convicted and sentenced the accused- appellants Chandra Bhan and Jairam of the charges under Sections 498-A and 304-B IPC.

Feeling aggrieved by the said judgment, present appeal has been preferred by the appellants-convicts.

10. Learned counsel for appellant submits that the impugned judgment is illegal, erroneous and, therefore, liable to be set-aside by this Court. He further submits that Court below without appreciating the prosecution evidence has illegally and erroneously, convicted him of the charges. As such, the impugned judgment is illegal and perverse and therefore liable to be set-aside by this Court.

11. It has been argued by the learned counsel for appellant that the prosecution has failed to prove the very story, which, it set out to prove. The prosecution story is based solely on the allegation that the deceased was harassed on account of non fulfillment of additional demand of dowry, but after appreciation of evidence of PW-1 and PW-2, there is no evidence that the alleged Scooter/ amount was ever demanded and no specific instance regarding cruelty coupled with persistent harassment was brought on record, there was no harassment of the deceased on account of non fulfillment of additional demand of dowry soon before death and prosecution has failed to prove the essential ingredients of Section 304-B IPC, therefore, the trial court has wrongly convicted the appellant and as such, the impugned judgment is liable to be set aside by this Court.

12. Learned A.G.A. for State has vehemently opposed the present appeal. He submits that the impugned judgment passed by Court below does not suffer from any illegality of law or fact much less an illegal error so as to warrant interference by this Court. Court below has examined the prosecution case in the light of the evidence on record threadbare without leaving any aspect of the matter untouched. Court below has thus, rightly convicted the accused persons. Lastly, it has been argued that no ground to interfere in the impugned judgment is made out. Learned A.G.A. thus urged for dismissal of the present appeal.

ANALYSIS

13. In the light of above arguments, following questions arise for consideration in present appeal:-

(I) Whether the prosecution has been able to prove beyond reasonable doubt that cruelty or harassment to the deceased was committed in connection with any demand for dowry as contemplated under Sections 498-A and 304-B IPC?.

(II) Whether the prosecution could be able to prove it's case against the appellant-convict beyond reasonable doubt?.

ORAL EVIDENCE ON RECORD

14. PW-1, who is father of the deceased Munni Devi, has stated in his examination-in-chief that Munni Devi was his daughter. About more than a year ago, he was informed by someone that his daughter Munni Devi has been burnt at her in-laws' house in Madhaiyan Khayaliram. He had married Munni Devi to Chandra Bhan. The accused Jairam is brother-in-law (Jeth) of Munni Devi. At the time of the incident, Munni's brother-in-law Jairam, sister-in-law Sunita and father-in-law

Badri Prasad resided at her in-laws' house. Munni Devi was married 8-9 months before the incident. After the marriage, Chandra Bhan, Sunita and Jairam had demanded a Scooter. When he was unable to fulfill their demand, they started beating his daughter and accusing her. These persons also said that if you cannot give a Scooter, then give Rs. 10,000/-. All these things were told by his daughter Munni Devi. A letter written by his daughter was received by him through post office, which was produced and proved by this witness as Ext. Ka-1. His daughter had studied till 4th grade. Upon receiving information about this incident, he went to Madhaiyan Khayaliram. where, Shiv Singh and Deen Dayal told that your daughter has been burnt to death.

15. PW-1 in his cross-examination has stated that Badri Prasad is his Samadhi (father-in-law of his daughter). He is 70-80 years old. He is a resident of village Sabuan, police station Jaswant Nagar. He had five sons, out of which one has died and four are alive. The son who died was named Prabhudayal. He was Supply Inspector. Now his wife and three children are alive. His wife's name is Prago alias Sunita. After her husband's death, she got Chandra Bhan appointed in the supply office in place of his brother (i.e. husband of Sunita). Prabhudayal was elder brother of Chandra Bhan, whose residence is situated in Shanti Colony at Mainpuri Road. His son-in-law, Chandra Bhan was living with his daughter in a rented house situated at Mohalla Madhaiyan Khayaliram in Etawah City. **Prabhudayal's house and Chandra Bhan's rented house are about a mile apart. His daughter's marriage with Chandra Bhan was arranged by Maniram, who is brother-in-law of Prabhudayal's wife. It was Chandra Bhan's first marriage. No dowry was fixed at the time of marriage. His daughter visited his house two or three times after the marriage and Chandra Bhan also used to visit. His daughter also sent letters to him. His daughter never wrote to him in any letter that her husband was demanding a Scooter. This witness himself stated that his daughter had told him about this verbally. She also didn't mention the demand for ten thousand rupees and a watch in any letter.**

16. PW-1 further stated in his cross-examination that Chandra Bhan sent a letter to his daughter when she was at her parents' home. In the said letter also there was no demands for a Scooter or money or a watch. When this incident occurred, a boy from Madhaiyan Khayaliram came to inform him. He didn't ask him who had sent him. He doesn't know the boy's name. He told him that Munni Devi's in-laws had set her on fire and burnt her. They had poured kerosene on her. At that time, the boy didn't reveal any names. He told him that he had left Munni at home. The boy arrived at his place around 10-11 pm. It takes him 2- 2.5 hours to reach Etawah from his place. Upon receiving the information, Harischandra, Suresh Chandra and he left for Etawah. They came by jeep; the fourth man was the driver. After reaching Etawah, he first reached Madhaiyan Khayaliram. It was 5:20 in the morning. He met Shiv Singh and Deen Dayal at Madhaiyan Khayaliram. He spoke to these two. There were other people as well. They told him that Chandra Bhan, Jairam, Sunita alias Prago, and Badri Prasad had killed his daughter by pouring kerosene on her. This conversation took 2-3 minutes. He was told that the girl was at Madhaiyan Khayaliram. Shiv Singh and Deen Dayal told him at the same time that the girl was in the hospital. He did not go to the hospital at that time. He reached the hospital at 6.30 in the morning. He reached the hospital after filing the report. **His wife had come to Etawah at 6.30-7 in the morning and 2-4 women were with her. His daughter already died at that time.**

17. In the written report, Ext. Ka-2, there is no mention of burning by pouring kerosene oil, however, he (PW-1) cannot give any reason for this. In the written report/ Ext. Ka-2, the names of Prago alias Sunita and Badri Prasad are not mentioned among those who set the fire, he cannot give any reason for this. When he went to the police station with his written report, witness Shiv Singh was not with him. While filling the Panchayatnama, Harischandra, Vidyaram, he and there may be others too whose names he does not know, were present. He does not remember whether his signature was obtained on the Panchayatnama or not. Only two witnesses Harischandra and Vidyaram from the place where he lived, were present at the time of Panchayatnama. No one else was from his place, they must be from Etawah. **Chandra Bhan met him in the hospital. His hands were burnt, and his face was also burnt. It is wrong to say that he fabricated this case for blackmailing.**

18. At this juncture, Ext. Ka-1 is perused. Ext. Ka-1 is letter dated 29.11.1987, which was written by the deceased to his father i.e. informant Mahesh Chandra PW-1. In this letter the deceased had stated that on 2nd day after the return of her father from her matrimonial home, her husband stayed in Shanti Colony and even slept there. The deceased waited whole night and when her husband did not return in the morning of next day, then she sent son of his landlord in the office of her husband, where her husband was present and he returned home in the evening. She asked her husband that if he has to go anywhere then she be informed, then he (her husband) stated that who is she to stop him, he will be visiting daily and will also be sleeping there. Her husband is daily visiting Shanti colony. She is writing letter at 10 PM and her husband had yet not returned from Shanti Colony. She even requested her husband that she be allowed to visit her parental home for a night but he has bluntly refused.

19. Perusal of this letter clearly reveals that the deceased was much depressed for the reason that her husband used to visit Shanti Colony nearly daily and also used to stay there in night. There is not an iota of inference in this letter that the deceased was being ever harassed on account of any dowry demand. In this letter the deceased has clearly written that except above mentioned fact rest everything is alright. It is thus crystal clear that the deceased had not written any fact regarding demand of Scooter or cash in lieu thereof. Therefore, as per this letter dated 29.11.1987, the deceased was not being harassed on account of any demand of dowry.

20. Smt. Vimla Devi PW-2 is mother of the deceased who in her examination in chief has stated that she had performed marriage of her daughter Munni Devi with accused Chandra Bhan. Sunita is sister-in-law (Jethani) of her daughter. Accused Jairam is brother-in-law (Jeth) of her daughter. Her daughter was burnt to death in her in-laws house. She (deceased) was married 8-9 months before this incident. When her daughter Munni Devi came to their house then she told her that her in-laws used to beat her and were demanding a Scooter. She (deceased) further told that if they cannot give a Scooter then accused were demanding Rs. 10,000/- in cash. We could not fulfill their demand. **At the time of incident, accused Chandra Bhan, Jairam and Sunita were residing with her daughter in one common house.**

21. In her cross examination PW-2 stated that one man from Etawah came at her house at 11pm, who told that her daughter had been burnt to death. Said person also told that Jairam, Chandra Bhan, Badri Prasad and Sunita had burnt her daughter. It was also told that her daughter

was burnt at 5:00 pm by pouring kerosene oil on her. It was also informed that her daughter was admitted in the hospital. **She does not know who went to Etawah on this information because she was ill. She was suffering from fever and was feeling extreme weakness for the last 5-6 days. She was very weak and her fever returned for 4-6 days. Her husband told everything after returning. She stayed at her house and continued her treatment. Her husband returned after 2 days from Etawah. Whenever her daughter came to their house, she used to tell her that accused Chandra Bhan mostly stayed with his sister-in-law (Bhabhi) and sleeps there and rarely sleeps with her (deceased). Her daughter was absolutely convinced that her husband was having illicit relation with her sister-in-law Sunita. Her daughter used to tell this fact whenever she came to their house and also used to write the same to her. Sister-in-law (Bhabhi of accused Chandra Bhan) was living in Shanti Colony with her children and also sleeps at the same place, where Chandra Bhan also used to sleep there.**

22. PW-1 stated that his wife come to Etawah at 6:30 ' 7:00 am alongwith 2-4 women. Mother of deceased Smt. Vimla Devi PW-2 in her deposition has stated that she does not know who went to Etawah on receiving information that her daughter was burnt at 5am by pouring kerosene oil on her. She further stated that she was suffering from fever and remained at her house and continued her treatment, her husband returned after 2 days from Etawah. Thus it is clear that PW-2 had not gone to Etawah.

23. From the deposition of this witness it is clear that the deceased was convinced that her husband (appellant Chandra Bhan) was having illicit relation with his sister-in-law/ Bhabhi Sunita and the deceased used to tell this fact whenever she visited her parental home. The letter dated 29.11.1987 further corroborates this part of deposition of this witness, however except a general and vague allegation regarding demand of Scooter or Rs. 10,000/- in cash and beating the deceased for this demand, no specific instance of cruelty has been narrated by this witness in her whole deposition.

24. Head constable Bhola Prasad PW-3 is a formal witness, who was scribe of the FIR of Case Crime No. 101 of 1988, who on oath has stated that he recorded FIR (Ext. Ka-3). He also made an entry of FIR in GD No. 12 at 5:45 am on 1.3.1988, which GD entry has been proved by this witness as Ext. Ka-4.

25. Dr. S.C. Gupta, Medical Officer, District Hospital Etawah has been examined as PW-4. This witness in his deposition has stated that he examined Smt. Munni Devi wife of Chandra Bhan in Sadar hospital, Etawah and found that she was fit to give her dying declaration. He gave a certificate to this effect before recording her dying declaration, which certificate has been proved by this witness as Ext. Ka-5. The victim remained fully consciousness during her statement and he gave a certificate to this effect at the end of dying declaration which certificate has been proved by this witness as Ext. Ka-6. This witness also confirmed that aforesaid declaration bears thumb impression of the victim Munni Devi. In his cross examination this witness has stated that during victim's statement, her words were coming clearly. Victim's condition was serious at the time of recording of her statement. He cannot tell whether she was dying or not because a person who has been burnt 99% can die any time. He denied the suggestions that the victim was not fit for giving dying declaration.

26. Udaiveer Singh PW-5 in his deposition has stated that on 01.03.1988 he was posted as Tehsildar, Etawah. On the said day he received information in night from police petrol jeep that dying declaration of Munni Devi wife of Chandra Bhan is to be recorded in Sadar hospital, Etawah. He arrived there and contacted duty doctor who declared Smt. Munni Devi as mentally fit to give dying declaration. Thereafter, he recorded the dying declaration of the victim by asking her a question regarding her burning. Whatever was stated by Munni Devi he recorded the same as dying declaration of the victim. After recording her statement in his own handwriting and signature he took thumb impression of the victim. The victim told her that her sister-in-law (Jethani) and brother-in-law (Jeth) and Chandra Bhan have burnt her yesterday evening after pouring kerosene oil over her. **At that time it was about 6:00 pm.** Chandra Bhan used to stay 3 days with his sister-in-law (Bhabhi) and one day at their house. Her sister-in-law (Jethani) is a widow. After recording the aforesaid statement he narrated the same to the victim and got her thumb impression. He proved the dying declaration as Ext. Ka-7. In his cross examination he has stated that the victim was extensively burnt. Victim was in dying state but was speaking and her words were clear and audible. She was not speaking like a healthy person. Whatever she uttered, he wrote the same. He denied the defense suggestion that the dying declaration of the victim was recorded after her death on the direction of one leader Ram Nath.

27. Dying declaration (Ext. Ka-7) of the deceased is reproduced verbatim herein-below:-

"मुन्नी देवी पत्नी चन्द्रभान उम्र 22 वर्ष निवासी मेडैया खयालीराम ने आज जिला चिकित्सालय मे मरनासन्न अवस्था मे बयान दिया कि मुझे मेरी जेठानी सुनीता व जेठ जैराम व चन्द्रभान ने कल शाम को पांच लीटर मट्टी का तेल मेरे श्पर छिडक कर जला दिया है उस समय करीब 6 बजे शाम थी। चन्द्रभान तीन भौजाई के साथ व एक दिन घर पर रहता था। मेरी जेठानी विधवा है।"

English translation of aforesaid dying declaration is as under:-

"Munni Devi, wife of Chandrabhan, 22 years old, resident of Madiya Khayali Ram, stated today in dying state at the District Hospital that her sister-in-law (Jethani), Sunita and brother-in-law (Jeth) Jairam and Chandrabhan, poured five liters of kerosene oil on her and burnt her yesterday evening. It was around 6 p.m. Chandra Bhan with his sister-in-law (Bhabhi) 3 and 1 day resided at his house. Her sister-in-law (Jethani), Sunita, is a widow."

28. Dr. S.K. Srivastava PW-6 is autopsy surgeon who has conducted the post mortem examination of the deceased Munni Devi on 1.3.1988. Victim died in District Hospital at 5:10 am on 1.3.1988 as per hospital records. On external examination body of the deceased was average built, abdomen slightly distended, knee and elbow flexed. He found following ante mortem injuries on her person:

"99% burn injuries over the body, first to third degree, sparing both soles and back of right leg, lower 1/3rd scalp hair of private parts and of body were found burnt and blackened. Black particles stickes on finger. Line of redness and of vesication seen."

"On internal examination, membrane of brain, larynx, trachea lungs were found congested, dark blood was found on the cut of lungs, abdomen and urine bladder were found empty. Cause of death was due to shock as a result of ante mortem injuries."

In cross examination this witness has stated that the deceased could have spoken after burning and before her death and she also could not speak.

29. Dr. P.K. Srivastava, PW-7 in his deposition has stated that on 29.2.1988, he was posted as surgeon in District Hospital, Etawah and was on emergency duty. **On that day at 6:45 pm he medico legally examined Munni Devi wife of Chandra Bhan who was brought by her husband.** He noted following injuries on her person, 'deep to superficial thermal burns on face, neck, both upper limbs, chest, abdomen, back, both lower limbs, burnt area in total was around 90%, general condition was poor, pulse 102 per minute, R/R 22 per minute, dehydrated, urine not passed, no vomiting, police informed for necessary action and for dying declaration. 'Victim was admitted and her treatment was started, referred to surgeon, cut open done.' In his opinion, said burns were deep to superficial burns about 90%. He proved the injury report as Ext. Ka-9. Thumb impression of Munni Devi was also taken on original register. The said memo sent by Dr. P.K. Srivastava was received at P.S. Kotwali Etawah and entry of same was made in GD No. 54 at 7pm on 29.2.1988. The aforesaid GD has been proved by constable clerk Raj Kumar PW-10 as Ext. Ka-23 and on the same day, one memo regarding burnt condition of accused Chandra Bhan was also received at Police Station at 7:25 pm and entry of same was also made in GD which has been proved as Ext. Ka-24.

30. In his cross examination, PW-7 has stated that he also examined injuries of accused Chandra Bhan on that day at 7:00 pm and noted 'deep to superficial thermal burns on part of face, part of right knee joint, part of dorsum of left foot and part of left hand, total area of burn injuries was about 15%'. In his opinion, his (accused Chandra Bhan) burn injuries was around 15% thermal burn. He has proved the injury report as Ext. Kh-1. He also stated that Chandra Bhan could have sustained these injuries while saving or while pushing, his part of left and right hand was burnt.

31. Deputy Commandant Prem Prakash PW-8 was 2nd IO who in his deposition has stated that he took over the investigation himself on 10.3.1988 as he was posted at that time as CO City for the reason that it was dowry death. After recording post mortem report in the case diary he searched for other accused, however, they could not be traced, he also recorded discharge slip of accused Chandra Bhan in case diary. He recorded statement of constable who brought the dead body as well as statement of witnesses of inquest. He also recorded dying declaration of the deceased Munni Devi in case diary. Remaining accused could not be traced, therefore, he concluded the investigation and filed charge-sheet against the accused Chandra Bhan and Jairam. He proved charge-sheet filed against these accused as Ext. Ka-10 and 11. **In his cross examination this witness has stated that accused Chandra Bhan was discharged from hospital on 15.3.1988 as per his discharge slip.**

32. Sub Inspector Sukhbir Singh PW-9 was 1st IO who received investigation of this case on 1.3.1988. He inspected the spot and prepared site plan which has been proved by this witness as Ext. Ka-12. He prepared recovery memo which has been proved by this witness as Ext. Ka-13. He proved 2 quilts as material Ext. 1 and 2, 5 liter cane of kerosene oil with its cover lid and match box as material Ext. 3 and 4. Recovery memo of quilts has been proved by this witness as Ext. Ka-13, recovery memo of 5 liter cane and match box has been proved as Ext. Ka-14, one red colour Saree and Dhoti as material Ext. 5 and 6 and its recovery memo as Ext. Ka-15, recovery of one frock of girl having blackening and stove has been proved by this witness as material Ext. 7 and 8 and its recovery memo as Ext. Ka-16. Thereafter, he recorded statement of Mahesh Chandra, Shiv Singh, Deen Dayal, Vidyaram Maurya, Smt. Hardevi, Mohan Lal and others. Accused Chandra Bhan was

admitted in hospital at that time, therefore, he submitted a report for taking him into police custody and also recorded his statement. He deposited all recovered items in police Station Kotwali vide GD No. 37 at 3:40 pm on 2.3.1988. He received post mortem report of the deceased Munni Devi and arrested the accused Badri Prasad. He also recorded statement of some other persons on 3.3.1988. Thereafter, investigation was taken over by the Circle Officer. SI Ram Singh also went on the spot with this witness who conducted the inquest proceedings of the deceased Munni Devi. He proved the inquest report in secondary evidence as Ext. Ka-17, Chalan Nash as Ext. Ka-18, Sample Seal as Ext. Ka-19, Photo Nash as Ext. Ka-20, Letter to CMO as Ext. Ka-21, by identifying signature of Sub Inspector Ram Singh. He also proved the report signed by P.S. Srivastava, the then CO City which was sent to Superintendent, Copying Centre for recording of dying declaration in secondary evidence as Ext. Ka-22. In his cross examination this witness has stated that none of the recovery memos or in the case diary recorded by this witness, there is mention that there was smell of kerosene oil. He deposited recovered articles on 2.3.1988 at 3:40 pm. For the delay in depositing the recovered articles this witness stated that as he recorded statement of other witnesses, inspected the spot, prepared recovery memos and thereafter copied the recovery memos in the case diary and that's why he could not deposit those articles on 1.3.1988.

33. Constable Raj Kumar Singh PW-10 in his deposition has stated that a memo from District Hospital, Etawah was received regarding recording of dying declaration of Munni Devi. He made an entry of same in GD No. 54 at 7pm on 29.2.1988. He proved aforesaid GD as Ext. Ka-23. On that day at 7:25 pm he also received a memo regarding burnt condition of accused Chandra Bhan. He made an entry of same in GD No. 55 which GD has been proved by this witness as Ext. Ka-24. On 1.3.1988 at 5:15 am he received a memo from District Hospital Etawah regarding death of Munni Devi. He made an entry of same in GD No. 11 on 1.3.1988 which GD has been proved by this witness as Ext. Ka-25.

NO DELAYED F.I.R.

34. A perusal of written report (Ext. Ka-2) reveals that the informant Mehesh Chandra PW-1 received information that his daughter Munni Devi was burnt on 29.2.1988 and on receiving this information, he came to the house of in-laws of his daughter, which was situated at Mohalla Madhaiya Khayaliram, Etawah. The informant Mahesh Chandra PW-1 has affirmed this fact as narrated in his written report, in his oral deposition. PW-1 in his cross examination has specifically stated that he came to Etawah by Jeep and he reached the house of in-laws of his daughter at 5:20 am, however, it has come in his deposition that he was informed by a number of persons that his daughter had been killed by pouring kerosene oil on her, however, he did not go to the hospital immediately at that time, but reached the hospital at 6:30 am after filing his report. The informant received information on 29.2.1988 at his residence and as per his deposition, he arrived at Etawah at 5:20 am on 30.2.1988, however, FIR has been promptly lodged on 1.3.1988 at 5:45 am, meaning thereby that there is no delay in registration of FIR.

Question No. 1.

Whether the prosecution has been able to prove beyond reasonable doubt that cruelty or harassment to the deceased was committed in connection with any demand for dowry as contemplated under Sections 498-A and 304-B IPC?.

35. While dealing with an appeal against conviction for dowry death, the Supreme Court in **Karan Singh vs. State of Haryana, 2025 SCC OnLine 214,** has observed as under:-

"5. Sections 498-A and 304-B IPC read thus:

"498-A IPC- Husband or relative of husband of a woman subjecting her to cruelty- however, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, "cruelty" means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

"304-B IPC- Dowry death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation- For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

6. The following are the essential ingredients of Section 304-B IPC:

a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;

b) The death must have been caused within seven years of her marriage;

c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and

d) Cruelty or harassment must be for, or in connection with, any demand for dowry.

7. If the aforesaid four ingredients are established, the death can be called a dowry death, and the husband and/or husband's relative, as the case may be, shall be deemed to have caused the dowry death. Section 2 of the Dowry Prohibition Act, 1961 provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties. The term valuable security used in Section 2 of the Dowry Prohibition Act, 1961 has the same meaning as in Section 304-B of IPC."

In this case Hon'ble Supreme Court also found that PW-6 has not deposed to any particular act of cruelty or harassment by the appellant, which was an essential ingredients of Section 304-B thus, offence was not made out from the evidence of PW-6.

36. While setting aside the judgment of conviction, it has also been observed in the above mentioned judgment that the presumption under Section 113-B of Indian Evidence Act, will apply when it is established that soon before her death, the woman was subjected to cruelty or harassment for, or in connection with, any demand for dowry by the accused. Therefore, even for attracting Section 113-B, the prosecution must establish that the deceased was subjected to cruelty or harassment for or in connection with any demand of dowry soon before her death by the accused. Unless the said burden is discharged by the prosecution, the presumption under Section 113-B of the Evidence Act cannot be invoked.

BASIC PROSECUTION STORY

37. The basic prosecution story as it emerges from the written report (Ext.Ka-2) is that the deceased Munni Devi was being harassed by her in-laws for additional demand of dowry. In-laws of the deceased were demanding either Scooter or Rs. 10,000/- and she was being harassed for non fulfilling this additional demand of dowry. When aforesaid demand of appellant was not fulfilled then she was burnt to death by pouring kerosene oil over her.

APPRECIATION OF EVIDENCE

38. To prove demand of additional dowry and harassment of deceased on account of non fulfillment of demand of additional dowry, prosecution has examined informant as PW-1 and his mother as PW-2. We have carefully perused the statements of informant PW-1 and PW-2, as referred to in the impugned judgment to find out that whether as per the depositions of PW-1 and PW-2, the necessary ingredients of the charging Sections are borne out/satisfied or not.

39. The brief prosecution story, as unfolded in the first information report, is that within 8'9 months of the marriage of deceased with appellant Chandra Bhan, she was burnt to death on account of non-fulfillment of demand of scooter or Rs.10,000/- in cash. It has been specifically stated in the first information report that the informant could not give scooter in the dowry at the time of marriage, therefore, the accused-appellant Chandra Bhan and his family members started harassing the deceased. It has specifically come on record that the deceased on her visit to her parental home in the month of October, 1987 told the informant regarding this as well as her beating by her in-laws for not giving the scooter in the marriage. Thereafter, the informant, on 29.02.1988, received an information regarding her daughter being burnt by the appellants. However, the informant Mahesh Chand P.W.1 has clearly stated in his deposition that his Samdhi i.e. father-in-law of his daughter had five sons and out of them his son Prabhu Dayal died, who was working as Supply Inspector. Prabhu Dayal was married to co-accused Sunita @ Prago and was having three children out of this wedlock. Co-accused Sunita @ Prago got appointed the accused-appellant Chandra Bhan in the Supply Office in place of her deceased husband Prabhu Dayal. The co-accused Sunita @ Prago was residing in the house of Prabhu Dayal, which was situated in Subhash Colony on Mainpuri Road. However, son-in-law of the informant namely, Chandra Bhan was living with his wife (daughter of the informant) in a rented house in Etawah City and both these house were about a mile apart. Therefore, it is clear that co-accused Sunita @ Prago was living separately with her three children and accused-appellant Chandra Bhan was living separately with his wife i.e. the deceased. P.W.1 has also clearly stated that demand of scooter or Rs.10,000/-

cash and harassment of her daughter in the shape of beating was told by her daughter to the informant. Meaning thereby, that none of the accused ever personally demanded any additional dowry from the informant or his wife and the informant or his wife had also not seen any incident of harassment or beating of their daughter at the hands of accused persons. Informant and his wife in their depositions have also not stated that they ever saw any mark of injury on the body of their daughter, whenever she visited her parental home. Therefore, the knowledge of demand of additional dowry and harassment as per deposition of informant and his wife is based on the statement of the deceased made to these witnesses in her parental home.

40. In written report Ext. Ka.-2, the informant (PW-1) has clearly stated that his daughter lastly visited him in the month of October, 1987 when she narrated about her torture and harassment on account of non-fulfillment of demand of scooter or Rs.10,000/-, else she will face dire consequences. However, no report whatsoever was lodged by either the informant or her daughter regarding this. Even no complaint whatsoever was made by them in this regard. There is no evidence given by this witness (PW-1) that after the month of October, 1987 to the date of death of her daughter i.e. 01.03.1988 the deceased ever informed him again regarding her continuous harassment on account of aforesaid demand of scooter or cash. Surprisingly, the informant P.W.1 has proved a letter dated 29.11.1987 as Ext. Ka.-1, which was written by the deceased to the informant and the aforesaid letter was written after the month of October, 1987 and in Ext. Ka.-1, there is no mention whatsoever regarding any demand of dowry or demand of scooter or cash in lieu thereof. The aforesaid letter Ext. Ka.-1 actually belies the very basic prosecution story put forth by the informant by way of his written report / tehrir Ext. Ka.-2. In Ext. Ka.-1 it is specifically stated by the deceased that her husband accused-appellant Chandra Bhan used to regularly visit the house of co-accused Sunita @ Prago and he also used to stay at nights at her residence and this was the reason that the deceased was much depressed. It has come in the evidence of P.W.1 that it was the co-accused Sunita, who got appointed accused-appellant Chandra Bhan in place of her deceased husband Prabhu Dayal. Therefore, it was not only the moral duty of the accused-appellant Chandra Bhan but was also his social and statutory obligation to maintain the family members of his brother late Prabhu Dayal including Prabhu Dayal's wife Sunita and their three minor children, because he got appointment in place of his deceased brother Prabhu Dayal in dying in harness. The deceased was annoyed because of her husband's maintaining / taking care of the wife and children of his late brother Prabhu Dayal.

41. Informant (PW-1), in his cross-examination, has clearly stated that there was no demand of dowry at the time of marriage. It is also clear that there was no demand of dowry even prior to marriage. The informant has clearly admitted when his daughter sent him letter, but in none of her letters there was ever mention of demand of Scooter. The informant also fairly conceded that accused-appellant Chandra Bhan also sent a letter to his daughter that his daughter was residing at his residence, but there was no demand for a scooter or money or a watch in the said letter by Chandra Bhan. Thus, there is no mention of demand of Scooter or anything else in the letters written by the daughter of informant.

42. The mother of deceased Smt. Vimla Devi P.W.2 in her deposition has although stated that in-laws of her daughter used to beat her and were demanding a scooter or cash of Rs.10,000/- in lieu thereof. However, in her cross-examination, she has clearly stated that whenever her daughter

came to their house, she (the deceased) used to tell her that accused Chandra Bhan mostly stayed with his sister-in-law (bhabhi) and sleeps there and rarely sleeps with her. She further stated that her daughter was absolutely convinced that her husband was having illicit relations with her sister-in-law (bhabhi) Sunita. She further stated that her daughter used to tell this fact whenever she came to her house and also used to write the same to her. The aforesaid part of deposition of this witness is strengthened by the letter dated 29.11.1987 (Ext.Ka.-1) written by the deceased to her father.

43. Informant Mahesh Chandra PW-1 and Vimla Devi PW-2 both in their oral deposition have supported the prosecution version as put-forth in the written report (Ext. Ka-2) and have deposed that the accused were demanding Scooter or Rs. 10,000/- in cash and the deceased was being harassed and torture for this additional demand of dowry. None of these witnesses in their deposition have stated that when the deceased told this specific fact of additional demand of dowry and her (deceased) harassment on account of this, both these witnesses have not specified any date, time and place of last alleged harassment and even no specific instance of harassment or cruelty to their daughter Munni Devi has been narrated by these witnesses in their oral deposition. Notwithstanding of the fact that the death occurred within a year of the marriage of the appellant alongwith the deceased, there is no evidence to indicate that the deceased was subjected to cruelty or harassment at the hands of the appellant. For the reason that except for a general and vague allegation that there was a demand for scooter or Rs. 10,000/- as additional dowry by the appellant and his relatives and harassment of the deceased on account of this demand, there is not a single instance specifically attributed to the appellant regarding mental and / or physical harassment of the deceased on a particular date, time and place. Therefore, the prosecution has failed to bring on record atleast some specific instance of cruelty or harassment being caused to the deceased in connection with any demand for dowry. Moreover, none of the appellants has ever demanded anything directly from these witnesses. Admittedly, there was no demand of dowry prior to marriage or even at the time of marriage. The letter written by the deceased to her father Ext. Ka-1 also does not support this part of the prosecution story regarding demand of dowry. There is no evidence on record regarding any physical harassment to the deceased on account of alleged demand of dowry. As the prosecution has failed to prove any specific instance of cruelty or harassment, therefore, in our considered opinion, the prosecution has miserably failed to prove that there was any demand of dowry from the side of appellants, as alleged by the prosecution, after the marriage of the deceased and before her death. Thus, the prosecution has not been able to prove beyond reasonable doubt that the cruelty or harassment to the deceased was committed in connection with any demand for dowry and Question No. 1 is, therefore, accordingly decided in negative.

Question No. 2

Whether the prosecution could be able to prove it's case against the appellant- convict beyond reasonable doubt?.

44. As the prosecution has failed to prove any demand of dowry or harassment of the deceased on account of non fulfillment of demand of dowry, therefore, the prosecution has failed to prove the very basic ingredients of dowry death, even otherwise the informant and his wife allegedly got information of harassment of their daughter in the month of October, 1987. Hon'ble Supreme Court

in **Satbir Singh and another vs. State of Haryana, (2021) 6 SCC 1,** has explained the phrase 'soon before'. In para 15, 16 and 38.3 which are reproduced herein-below:-

15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, 'soon before' they did not mean 'immediately before'. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exactly the phrase 'soon before' entails.

16. The aforesaid position was emphasised by this Court in *Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000)* 5 SCC 207 : 2000 SCC (Cri) 935] , wherein the three-Judge Bench held that : (SCC pp. 222-23, para 15)

"15…..'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. ' In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. ' Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

(emphasis supplied)

A similar view was taken by this Court in R*ajinder Singh v. State of Punjab [Rajinder Singh v. State of Punjab,* (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225]

38.3. The phrase 'soon before' as appearing in Section 304-B IPC cannot be construed to mean 'immediately before'. The prosecution must establish existence of 'proximate and live link' between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

45. Even for the sake of argument if it is presumed that there was any demand of dowry, then the prosecution has also miserably failed to prove that the aforesaid demand of dowry was ever made soon before the death of the deceased, because as per prosecution evidence, the last knowledge of aforesaid demand of dowry was in the month of October, 1987 whereas the alleged incident had happened on 29.02.1988 and there is no proximate and live link between death of the deceased and cruelty or harassment made for demand of dowry by the appellants. Thus, it is clear that the alleged harassment, if any, was informed by the deceased to her parents in the month of October, 1987 and thereafter no such complaint was made by the deceased to her parents. There is no evidence on record that the deceased either visited her parents after October, 1987 or informed her parents after October, 1987 regarding her continuous harassment on account of additional demand of dowry. We are therefore, of the opinion that the alleged harassment, if any, was not having any proximate and live link between death of the deceased and her harassment for alleged dowry demand as she died on 1.3.1988.

CONDUCT OF APPELLANT

46. It is specific case of surviving appellant Chandra Bhan that on the fateful day when he returned to his home from the office at 6pm, he saw his wife burning, he tried to put off the fire by placing the quilts but he himself got burnt. Thereafter, he has taken his wife to the hospital. A perusal of the injury report Ext. Ka-9 of the deceased reveals that the deceased Munni Devi was brought by her husband to the hospital on 29.2.1988 at 6:45 pm, where she was medico legally examined. Dr. P.K. Srivastava PW-7 has also stated on oath that Munni Devi (deceased) was brought by her husband Chandra Bhan. A perusal of injury report Ext. Kh-1 of surviving appellant Chandra Bhan reveals that he was also medico legally examined at 7pm on 29.2.1988 and he was also found burnt 15% thus, it was the appellant who brought the deceased to the hospital and even the appellant himself was in burnt condition at that time, which is indicative of his conduct whereby he tried to save the life of his wife Munni Devi.

DYING DECLARATION

47. A perusal of dying declaration of the deceased reveals that she has not alleged any harassment or her torture on account of demand of additional dowry at the hands of appellant. She has not even uttered a single word regarding any demand of dowry or her harassment on account of non fulfillment of such demand if any. Her dying declaration is although brief and precise to the fact that her sister-in-law Sunita, brother-in-law Jairam and Chandra Bhan have burnt her after pouring kerosene oil from a 5 liter cane at about 6pm. In her dying declaration the deceased has stated that Chandra Bhan 3 with his sister-in-law and 1 day resided at his house. She however, stated that her sister-in-law (Jethani) is a widow. However, the aforesaid portion of her dying declaration is little bit vague, but it means that the accused Chandra Bhan used to reside with his sister-in-law (Bhabhi) for 3 days and used to stay at his house for 1 day.

48. In this background the deposition of PW-1 become material. PW-1 in his examination in chief has not stated anything regarding aforesaid contents of the dying declaration of his daughter. However, PW-1 in his deposition has proved a letter (Ext. Ka-1) of his daughter Munni Devi, which has been carefully perused by us. The aforesaid letter is dated 29.11.1986 which is written by Munni Devi to his father Mahesh Chandra, there is no allegation regarding either demand of additional dowry or harassment of Munni Devi on account of non fulfillment of demand of dowry. However, it is specifically mentioned in this letter that her husband stayed in Shanti Colony and had not returned to her house. She waited whole night but her husband had not turned up even in morning then he sent son of their house owner in the office of her husband where her husband was found and he returned in the evening. She stated to her husband that whenever you are going somewhere then please inform her. On this her husband got excited and said who are you to stop him, I shall go daily there and will also sleep there. Now he is daily going in Shanti Colony. This letter reveals that the deceased was annoyed as her husband (present surviving appellant) used to continuously stay in Shanti Colony and was not returning to his own rented house and this fact was the principle bone of contention between the deceased and her husband. Through this letter (Ext. Ka-1) the deceased has informed this fact to her father.

49. Vimla Devi PW-2 in her cross examination has stated that accused Chandra Bhan mostly stayed with his Bhabhi (sister-in-law) and also used to sleep there and rarely slept with the deceased and therefore, her daughter was absolutely convinced that her husband was having illicit

relation with her Bhabhi (sister-in-law Sunita). She however conceded that her daughter used to tell this fact that whenever she came to their house and also used to write the same.

50. It is thus clear that there was no demand of dowry as alleged in the prosecution story. However, the deceased was apprehending illicit relationship between her husband Chandra Bhan and her husband's Bhabhi Sunita. In this background, the dying declaration of the deceased gains importance. However, the prosecution instead of prosecuting the accused on account of murder of deceased because of the alleged illicit relationship put forward a specific story that the deceased was being harassed and tortured on account of demand of dowry.

51. The appellant- accused Chandra Bhan had taken specific stand in his statement recorded under Section 313 Cr.P.C. that neither he nor his family members have burnt the deceased. He was in his office and returned at about 6:00 PM and saw that his wife Munni Devi was burning. He tried to douse the fire by placing quilt over her (his wife). He himself got burnt. Thereafter, he took his wife to the hospital. He has further stated that his Bhabhi (sister-in-law/ co-accused Sunita) gave her job. Therefore, he used to help her. He denied that he ever slept there. Accused- appellant Chandra Bhan was injured in the incident and his injury report has been proved as Ext. Kh-1. Sustaining burn injuries in the incident, clearly signifies his presence on the spot, which is further strengthened by his burn injuries. Sustaining burn injuries and taking the deceased to the hospital cannot itself be a factor for giving any benefit to the appellant- accused Chandra Bhan. However, it remains relevant fact to be considered. PW-1 in his cross examination has fairly conceded that he found Chandra Bhan in the hospital when he arrived, therefore, accused- appellant Chandra Bhan had not only got admitted his wife to the hospital but also remained there and had not fled away. Admittedly, co-accused Sunita was residing separately, therefore, in the totality of circumstances, there is great probability that the accused- appellant actually tried to save his wife and sustained burn injuries and got her admitted for treatment, where he also met the informant.

52. Both PW-1 and PW-2 while deposing about demand of dowry have not deposed to any particular act of cruelty or harassment by the appellant. This is an essential ingredients of Section 304-B and 498-A IPC which is not made out from their evidence. From the deposition of PW-1 and PW-2 it can be seen that except for general and vague statement about demand of Scooter or Rs. 10,000/- cash and physical harassment in the nature of beating, being inflicted on the deceased by the appellant, there is not a single instance specifically attributed to the appellant. Both these witnesses have not deposed about any specific instance narrated to them by the deceased that could indicate that the deceased was subjected to cruelty or harassment specifically by the appellant. Their depositions are in general terms without giving any specific details of any instance of cruelty or harassment meted out to the deceased. It is one thing to make a demand for dowry and another thing to inflicted cruelty for dowry. For sustaining the conviction under Section 304-B IPC, it would be necessary for the prosecution to bring on record atleast some specific instance of cruelty or harassment being caused to the women in connection with any demand for dowry that results in her death occurring otherwise then under normal circumstances within 7 years of the marriage. Such evidence however is missing in the present case, even otherwise the alleged narration of demand of dowry and harassment pertains to October, 1987, however, the present incident had happened on 29.2.1988. Therefore, the incident, if any, of alleged demand of dowry and harassment in lieu thereof did not happen soon before the death. It is not the case of prosecution

that the deceased allegedly visited her parental house a week or 15 days or even a month before the incident and she complained about any cruelty or any harassment on account of non fulfillment of demand of dowry. Thus in the totality of the circumstances, none of the statement of these two witnesses i.e. PW-1 and PW-2 contained any specific instance of cruelty or harassment. Resultantly the prosecution failed to prove the material ingredients of the offence punishable under Section 304-B IPC. Not a single instance of cruelty covered by Section 498-A IPC was proved by the prosecution. Therefore, Section 113-B of Evidence Act would not be applicable. **There does not appear to be any nexus between the alleged demand (although the prosecution has failed to prove the same) and any specific case of cruelty or harassment of the deceased, which resulted in her death, therefore, we find that the reasons recorded in the impugned judgment being against material on record, are perverse and we find that the ingredients of Section 304-B and 498-A IPC are not made out.** Therefore, Question No. (II) is also answered in the negative.

Whether surviving appellant can be convicted under Section 302 IPC.

53. After completion of investigation, charge-sheet was submitted only under Sections 304B, 498A IPC and ' of D.P. Act, however, charge against the appellant was framed only under Sections 498A, 304-B IPC, even no alternative charge under section 302 IPC was framed. As the prosecution has miserably failed to prove any demand of dowry or harassment in lieu thereof. When the prosecution has failed to prove the charge under Section 498-A IPC, presumption under section 113-B of Evidence Act also does not attract and, therefore, the prosecution has also miserably failed to prove the ingredients of Section 304-B IPC..

54. Resultantly, the prosecution has failed to prove that the appellant- accused caused dowry death of the deceased. **However, at this juncture, dying declaration of the deceased is again carefully perused with the objective that whether the appellant- accused can be convicted under Section 302 IPC or not.** The dying declaration of the deceased is categorically clear that the appellant- accused poured 05 liters kerosene oil on the deceased and burnt her. However, Section 302 IPC is graver section than 304-B IPC. The appellant- accused were not tried under Section 302 IPC. Even no question has been put to the appellant-accused regarding commission of murder of the deceased by pouring kerosene oil on her and thereafter burning her in his statement recorded under Section 313 Cr.P.C.

55. The expression 'minor offence' found in Section 222 is not defined under the Code, it can be discerned from the context which is not merely that the prescribed punishment is less than the major offence. In other words, if the two offences are cognate offences and the main ingredients are common, the offence punishable with lesser sentence can be considered as a minor offence with reference to the other offence. The Hon'ble Apex Court in **Shamnsaheb M. Multtani vs. State of Karnataka, (2001) 2 SCC 577** has held as under:-

"16. What is meant by 'a minor offence' for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-'-vis the other offence.

17. The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-'-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (husband or relative of husband of a women subjecting her to cruelty). As the word 'cruelty' is explained as including, inter alia, 'harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand".

56. Section 222(1) of the Code deals with a case where a person is charged with an offence consisting of several particulars. The Section permits the Court to convict the accused of the minor offence though he was not charged with it. Sub section (2) deals with a similar, but slightly different situation. When a person is charged with an offence and facts are proved which reduces it to a minor offence he may be convicted of the minor offence although he is not charged with it. As noticed hereinabove, the expression 'minor offence' is not defined under the Code. Punishment prescribed under Section 302 IPC is death or life imprisonment, whereas punishment thereafter under Section 304-B IPC is not less than seven years, but may extend to life imprisonment, therefore, when Section 304-B is compared with Section 302 it would clearly indicate that they are separate and distinct offences and by no stretch of imagination can be construed as cognate offences and moreover punishment prescribed under Section 302 IPC is more stringent than 304-B IPC.

57. In the present case admittedly the appellant- accused Chandra Bhan and co-accused Sunita were living separately. It has been specifically averred by the deceased that the appellant and other two co-accused poured kerosene oil on her and thereafter she was burnt, but it has clearly come in the prosecution evidence that the deceased was perturbed on account of appellant- accused Chandra Bhan maintaining the family of co-accused Sunita for the reasons that he (Chandra Bhan) got government job in place of deceased husband of co-accused Sunita, who was his elder brother. The deceased in her letter dated 29.11.1987 i.e. Ext. Ka-1 and PW-2 in her oral deposition have clearly stated that the appellant-accused Chandra Bhan used to reside at the residence of co-accused Sunita and even used to stay in nights. In this background, we have carefully perused the oral as well as documentary medical evidence which clearly indicates that it was the appellant ' accused Chandra Bhan who brought her wife (deceased) to the hospital and he had actually sustained burn injuries in this incident. We have already come to its conclusion that there is greater possibility of appellant-accused Chandra Bhan trying to save his wife on seeing her burning, when he returned at his home after office hours at about 6:00 pm. It has come on record that the accused sustained burn injuries and had brought the deceased to the hospital in an injured (burnt) condition. It has also come on record that the informant PW-1 met the appellant- accused Chandra Bhan in the hospital, who had not fled away from the hospital even after admitting his wife. There is no other ante-mortem injuries on the body of the deceased except burn injuries which could have been indicative of the fact of physical harassment of the deceased at the hands of the appellant prior to her death. The prosecution has also failed to prove that all the accused named in the FIR were residing together under one roof. There is no explanation from the side of prosecution regarding burn injuries so sustained by the appellant- accused Chandra Bhan in the incident.

58. Therefore, we are of the opinion that even the dying declaration is not free from doubts. Thus in the present case even the surviving appellant could not be convicted only on the strength of the dying declaration. Moreover, no charge has been framed under Section 302 IPC and incident pertains to the year 1988, therefore, it is also not appropriate to remand the matter back to the learned trial Court for re-trial of the appellant after framing appropriate charges. Resultantly, this criminal appeal is liable to be allowed.

59. The impugned judgment and order dated 04.10.1989 passed by Ist Additional Sessions Judge, Etawah in Sessions Trial No. 190 of 1988 (State Vs. Chandra Bhan) connected with Session Trial No. 256 of 1988 (State vs. Jai Ram) arising out of Case Crime No. 101 of 1988, under Sections 302 IPC and Section 3/4 of the Dowry Prohibition Act, Police Station- Kotwali, District Etawah is liable to be set aside.

60. Before parting with the judgment we would like to say few words regarding proper investigation of dowry death cases as well as framing of appropriate charges in such cases. The dying declaration of the victim was clear to the extent that it was a case of homicide, however to the utter surprise, the then Investigating Officer submitted the charge-sheet only under Section 304-B IPC even without perusal of the contents of the dying declaration of the deceased. It clearly reflects not only lack of knowledge on the part of Investigating Officer but also is indicative of his failure to perform statutory duties regarding fair investigation. Moreover, the then Presiding Officer of the learned trial Court was also required to be more careful while framing charges. If he (the then Presiding Officer of the learned trial Court) would have been a little vigilant and had gone through the dying declaration of the victim, he must have framed the main charge under Section 302 IPC and thereafter would have framed alternative charge under Section 304-B IPC. On account of failure of both i.e. the then Investigating Officer and the then Presiding Officer of the learned trial Court, no charge could have been framed under Section 302 IPC and we have not referred back the matter to the learned trial Court for re-trial of the appellant after framing appropriate charges for the reasons that incident pertains to the year 1988. Therefore, we are of the opinion that it is the duty of the trial Courts to frame appropriate charges in cases of dowry death. In such cases, the evidence collected by the Investigating Officers during course of investigation should be carefully gone through at the time of framing of charge and if there is evidence either direct or circumstantial to prima facie support a charge under Section 302 IPC, the trial Courts are duty bound to frame charge under Section 302 IPC and also frame an alternative charge under Section 304-B IPC. Addition of Section 302 IPC should not be mechanical and it should be framed if the evidence collected during course of investigation support framing of charge under Section 302 IPC. It is also important to observe here that the charge under Section 302 IPC should be the main charge rather than an alternative charge. The cases like the present one, clearly signifies the commission of homicide and, therefore, in such cases, framing of main charge under Section 302 IPC is inevitable. **We hope and trust that the trial Courts shall frame appropriate charges in cases relating to dowry death. A copy of this judgment be circulated amongst all Judicial Officers of the State of Uttar Pradesh through Registrar (compliance).**

61. Consequently, this appeal for surviving appellant, Chandra Bhan, is **allowed**. The judgment and order dated 04.10.1989 passed by Ist Additional Sessions Judge, Etawah in Sessions Trial No. 190 of 1988 (State Vs. Chandra Bhan) arising out of Case Crime No. 101 of 1988, under Section 302 IPC and Section 3/4 of the Dowry Prohibition Act, Police Station- Kotwali, District Etawah for the surviving appellant, Chandra Bhan, is hereby set aside. The surviving appellant, Chandra Bhan, is acquitted of all the charges for which he has been tried. The surviving appellant is reported to be on bail, therefore, he need not surrender subject to compliance of provision of Section 437-A of Cr.P.C. to the satisfaction of the trial Court concerned at the earliest. His bail bonds are cancelled and sureties are discharged.

62. Original record has not been sent by the trial Court. Therefore, photostat copy of the record of the 'Trial Court' be retained and a copy of this judgment be immediately sent back to learned trial Court for necessary information and compliance.

(2026) 7 ILRA 1886
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.07.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 2247 of 1984

Roshanlal & Ors. **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution proved beyond reasonable doubt the guilt of the surviving appellant for offences under Sections 323/34 and 324/34 IPC and whether the sentence of rigorous imprisonment awarded by the trial court requires modification in view of the appellant's advanced age, infirmity, long pendency of the appeal and the period already undergone.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Section 374(2), 207, 313, - Indian Penal Code, 1860 - Sections 308, 324, 323, 34, 307: - Criminal Appeal – against conviction and sentence - FIR - alleging that the accused, including the appellant, attacked the informant and his father with spear, lathi and spade over cattle damaging mustard crop, causing injuries – investigation - statements - site plan - blood-stained articles recovered - charge-sheet - trial initiated, charges framed - prosecution examined injured witnesses (PW-1 and PW-2), eyewitness (PW-3), Investigating Officer and doctor, whose evidence was found consistent and medically corroborated – appellant pleaded false implication due to prior enmity and complained of material contradictions, acquittal of co-accused and non-sending of articles for chemical examination – Court finds that ocular evidence of injured and independent witnesses is reliable and corroborated by medical evidence establishing simple injuries by sharp and blunt weapons, that the assault was in furtherance of common intention during a sudden fight without premeditation or intention to cause death, and that minor investigative lapses do not affect the prosecution case – held, conviction under Sections 323/34 and 324/34 IPC is confirmed, but sentence is modified to the period already undergone (about one month) keeping in view the appellant's advanced age of 92 years, infirmity and pendency of the appeal for over 42 years – hence appeal partly allowed - appellant need not surrender; bail bonds cancelled and sureties discharged – trial court record directed to be transmitted for compliance.

(Para – 24, 25, 26, 27)

Appeal Allowed in Part. (E-11)

CASE LAW CITED

Not given.

LIST OF ACTS

Code of Criminal Procedure, 1973
Indian Penal Code, 1860

LIST OF KEYWORDS

Criminal Appeal - Criminal Appeal - Common intention - Ocular evidence - Medical corroboration - Sudden fight - Sentence modification - Advanced age - Period already undergone - Benefit of doubt (co-accused) – Allowed in part.

CASE ARISING FROM

Judgment and order dated 09.08.1984 passed by Additional Sessions Judge-IV, Pilibhit in Sessions Trial No. 47 of 1983 (State vs. Roshan Lal and Others) arising out of Case Crime No. 218 of 1982, Police Station Bilsanda, District Pilibhit.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri R.N. Srivastava
Counsel for Respondent(s): Shri Akhilesh Kumar Mishra, learned A.G.A.

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

1. This criminal appeal has been filed, under Section 374 (2) Code of Criminal Procedure, 1973 (in short Cr.P.C.), by appellants Roshan Lal and Chote Lal, against the judgment and order, dated 09.08.1984, passed by Shri Shiv Shankar, Additional Sessions Judge-IV, Pilibhit, in Sessions Trial No.47 of 1983 (State Vs. Roshan Lal and Others), arising out of Case Crime No. 218 of 1982, under Section 308, 324 and 323 Indian Penal Code (in short I.P.C.), Police Station- Bilsanda, District- Pilibhit.

2. By the impugned judgment and order, dated 09.08.1984, the learned trial court has acquitted co-accused Lala Ram, giving them the benefit of doubt and has convicted the appellants for offence punishable under Section 324/34 of IPC and sentenced to undergo rigorous imprisonment for a period of three years, they were further convicted under Section 323/34 IPC and sentenced to undergo rigorous imprisonment for a period of six months and a fine of Rs. 500 /- each. In default of payment of fine, they were further directed to undergo 15 days rigorous imprisonment. It was further directed that all the sentences shall run concurrently.

3. During the pendency of this appeal, the appellant No.1 Roshal Lal has died and the appeal on his behalf stands abated vide order dated 15.11.2017. Now this appeal survives only on behalf of appellant no.2 Chhotey Lal only.

4. Brief facts of the prosecution case are that informant Bikarudeen Khan son of Gayasuddin Khan, resident of Village- Paharganj, Police Station- Bilsanda, District- Pilibhit, submitted a written application dated 30.10.1982, before the incharge Police Station- Bilsanda, stating that he has a 30 bigha chak (agricultural land) to the south of his village. Adjacent to this field, there is Roshan Lal's land. Today at about 09:00 a.m. the first informant and his father reached at the field and saw that Roshan Lal's cattle were grazing his laahi (mustard crop). The first informant and his father asked Roshan Lal why he is causing damage to their crop thereupon, Roshan Lal, Lala Ram and Chhotey Lal carrying lathi, ballam and spade (fawda), started hurling abuses and said that they would do so. Upon resistance, Chhotely Lal with spear, Roshal Lal with lathi and Lala Ram with spade attacked them. His father fell on the ground and upon alarm the persons working in the field namely, Ayub Khan, Shahzade and others came and save them. Upon this information FIR under Case Crime No. 218 of 1982, under Sections- 308, 324 and 323 I.P.C., was lodged at the Police Station on 30.10.1982 at 13:45. The investigation was

entrusted to S.I. Bhisham Lal, who recorded the statements of injured and other witnesses, reached at the place of occurrence and prepared its site-plan (Ext.Ka.7). The injured were medically examined and the injury reports were collected. The I.O. collected spade, banyan (vest) and blood-stained agoncha (piece of cloth) and prepared its fard baramadagi(recovery memo), Ext.Ka.6, Ext.Ka.3 and Ext.Ka.2, respectively. The charge-sheet (Ext. Ka-8) was filed under Sections 308 and 324 IPC before the concerned court.

5. The court concerned took cognizance of the offence and summoned the accused, they appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

6. The accused appeared before the learned trial court, where charge under section 307 read with 34 IPC was framed against them to which they pleaded not guilty and claimed to be tried.

7. The prosecution has examined five witnesses, to wit, P.W.1 Gayasuddin Khan; P.W. 2 Viqaruddin @ Acchu; P.W.3 Ayub Khan; P.W.4 S.I. Bhisham Lal (I.O.) and P.W. 5 Dr. G.M. Mohnor, to prove its case.

8. P.W. 1 Gayasuddin, is the father of the first informant and also one of the injured who sustained injuries during the incident. P.W. 2 Viqaruddin @ Acchoo, is the first informant and is also one of the injured of the case. P.W.3 Ayub Khan, is one of the eye-witness of the incident. P.W.4 S.I. Bhisham Lal, is the investigating officer and he has stated about the investigation carried out by him and has proved as secondary witness, the chick FIR (Ext. Ka.-4) and copy of G.D. (Ext.Ka.-5). He has also proved the site-plan as (Ext.Ka.-7) and the charge-sheet as (Ext.Ka.-8).

9. P.W. 2 Viqaruddin @ Acchoo, is the first informant and is also one of the injured of the case.

10. P.W.3 Ayyub Khan, is one of the eye witness of the incident.

11. P.W.4 S.I. Bhisham Lal, is the investigating officer and has stated about the investigation carried out by him and has proved as secondary witness, the chick FIR Ext.Ka. 4 and copy of G.D. Ext.Ka. 5. He has also proved the site plan as Ext.Ka.7 and the charge-sheet as Ext.Ka.8.

12. P.W. 5 Dr. G.M. Mohnor, is the formal witness who prepared the injury reports of injured Gayasuddin and Viqaruddin @ Acchu, on 30.10.1982 while being posted as Medical Officer, Incharge Bilsanda P.H.C., District- Pilibhit. He has said that he examined injured Gayasuddin and found following injuries:-

(i) Incised wound of the size of 7.5 cm x 2 cm x bone deep, at the front of scalp, 12 cm above left ear.

(ii) Abrasion over the part of right forearm of the size of 1 cm x 0.5 cm x 3 cm above the right wrist joint.

In the opinion of the doctor the injury no.1 was caused by any sharp edged weapon and was kept under observation and advised for X- ray. Injury no.2 was caused by any hard and blunt object. Injuries were simple in nature. He has also said that the same day, he examined Viqaruddin and found following injuries:

(i) Incised wound 5 cm x 1.5 cm x 1 cm to the back of skull, 5 cm away from the back.

(ii) Incised wound 0.5 cm x 0.5 cm x skin deep to the left of forehead, 2.5 cm above the left eyebrow.

(iii) Abraded contusion 3 cm x 2 cm to the front of right forearm, 7 cm above the wrist joint.

(iv) Incised wound 1/5 cm x 0.5 cm x muscle deep near left hip.

In the opinion of the doctor, the injuries were simple in nature, except injury no.1, which was kept under observation and advised X-ray. Injury no. 1 and 4 was caused by sharp edged weapon and injury no.3 was caused by blunt object. The witness has proved both the injury reports as Ext.-Ka.9 and 10, respectively. He has also said that both the injured could have sustained these injuries on 30.10.1982 at about 09:00 a.m. and injury no.1 of Gayasuddin could have been caused by a spade. Injury no.1, 2 and 4 of Viqaruddin could have been caused by sharp edged weapon such as spear.

13. After closure of prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C., in which they have denied the prosecution case. Further, it is stated that the appellant Chhotey Lal had made a complaint against Gayasuddin regarding which the case was lodged and Gayasuddin and his father were directed to pay fine. As a result, the appellants have been falsely implicated in this case, due to enmity.

14. The accused have not filed any evidence in defence.

15. The learned trial court after perusing the evidence on record, found that the prosecution has been able to prove its case beyond reasonable doubt, so far as the appellants Roshan Lal and Chhotely Lal are concerned and they were, accordingly, convicted for offence punishable under Sections 323/34 and 324/ 34 IPC and sentenced to the term as indicated as above. The learned Trial Court did not found any sufficient evidence against co-accused Lala Ram and he was given benefit of doubt and acquitted of the offences charged with.

16. Heard Shri R.N. Srivastava, learned Counsel for the surviving appellant Chote Lal and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

17. It is submitted by learned Counsel for the appellant that there are material contradictions in the statement of prosecution witnesses which raises serious doubt over the prosecution case. It is further submitted that co-accused Lala Ram who has been assigned of causing assault by farsa has been acquitted. The doctor has given contradictory

opinion. The vest and another articles were not sent for chemical examination. It is also submitted that the appellant is currently 92 years old person.

18. Learned A.G.A. has submitted that prosecution has proved its case beyond reasonable doubt. The injured and public witnesses have supported the prosecution case. The ocular evidence is supported by medical evidence. If there is any defect on the part of the I.O., by not sending articles for chemical examination then it would have no bearing over the prosecution case because from other evidence, the case is proved beyond reasonable doubt. In view of the above, the appellant has been rightly convicted and this appeal has no force and is liable to the dismissed.

19. In view of submissions of both the parties and the vidence on record let us see whether the prosecution has been able to prove its case beyond reasonable doubt. As we know, in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the prosecution case is that the appellant alongwith other co-appelant and co-accused, in furtherance of their common intention, committed maarpeet by deadly weapons, causing injuries to the first informant and his father. To prove it, the prosecution has examined P.W. 1 Gayasuddin, the injured and father of the first informant. He has supported the prosecution case and has said that at the time of incident, he alongwith his son Viqaruddin Khan had gone to his field to irrigate. He had taken a pump set and engine with him on a buffalo cart,. In the meantime, Roshan Lal and Chhotely Lal□s buffaloes entered his field and started grazing the laahi (mustard) crop, when his son pushed them outside the field, then all the three accused reached. Chhotey Lal was having spear in his hand, Roshan Lal was having lathi and Lala Ram was carrying a spade and when his son asked them why they are causing damage to their crop then, they got agitated and attacked them. He has said that Chhotey Lal had beaten him and he fell on the ground and become unconscious. He sustained an injury from spear. The witness has been declared hostile and has been cross-examined by the prosecution. He has supported the prosecution case to the extent that all the three accused committed maarpeet with him and his son, causing them injuries. No material contradiction has come in his testimony to raise any suspicion over his evidence.

20. P.W. 2 Viqaruddin @ Acchoo, is the first informant and also one of the injured of this case. He has also supported the prosecution case and has said that the accused attacked him and his father carrying weapons in their hands, causing injuries to both of them. He has said that he and his father were medically examined at Bilsanda Hospital and after about 7 days from the date of incident, he handed over blood-stained vest and angocha to the I.O. regarding which fard baramadagi was prepared which he proved as Ext.Ka.2 and 3. This witness has been cross-examined at length and nothing material has come in his testimony to raise any suspicion over his evidence.

21. P.W.3 Ayub Khan, is the eye-witness. He has also supported the prosecution case and has said that the accused assaulted the first informant and his father as a result, they sustained injuries. This witness has also been cross-examined at length, but no material contradiction has come in his testimony to raise any suspicion.

22. Therefore, from the evidence of P.W.1, P.W.2 and P.W.3, the prosecution has proved its case that surviving appellant, along with other accused, assaulted the first informant and his father.

23. So far as the ocular and medical evidence is concerned, medical evidence corroborates with the oral evidence. The doctor has said that the injuries could be caused by hard and blunt object, like lathi and sharp cutting weapon, like spear. The witnesses have stated about the use of these weapons by the appellant and co-accused, in the incident.

24. As it was a sudden fight, without any previous enmity or pre-meditation and there was no intention on the part of the appellant to cause death of the injured. The injuries were caused by hard and blunt object as well as sharp edged weapon, therefore, the act of the appellant falls under Sections 323/34 and 324/34 IPC, because all the accused jointly attacked the first informant and his father which goes to show that they shared pre-arranged plan and acted in furtherance of their common intention.

25. Therefore, from the evidence on record, it is proved that on 30.10.1982 at about 09:00 a.m., the appellant, in furtherance of their common intention with co-appellant and co-accused, caused simple hurt to the first informant and his father, thus the appellant is guilty of the offence punishable under Sections 323 read with 34 IPC and 324 read with 34 IPC. Thus, the learned trial court has rightly convicted the appellant for offence punishable under Sections 323 read with 34 IPC and 324 read with 34 IPC.

26. So far as the sentence awarded to the appellant is concerned, it is submitted by learned Counsel for the appellant that the appellant is currently 92 years old, ill and infirm person and also the appeal is pending since more than 42 years. Therefore, no purpose would be served to send the appellant in jail. In view of the above submission of learned Counsel for the appellant and from perusal of record, it is clear that the incident is of the year 1982 and the appellant was convicted in the year 1984. Since then 42 years have passed. The appellant is currently 92 years old, infirm person and the offence is minor in nature. The appellant has already served about one month in jail, therefore, it would meet the ends of justice if he is sentenced to the term already undergone and served by him in prison.

27. Therefore, this appeal is **allowed** in **part**, and the conviction of the appellant under Sections 323 read with 34 IPC and 324 read with 34 IPC is **confirmed**, but the sentenced awarded to him is **modified** and he is **sentenced** for the period he had alr**eady undergone** in jail. He need not surrender. His bail bonds and personal bond are cancelled the sureties are discharged of their obligations.

28. Office is directed to transmit the trial court record alongwith a copy of this judgment to the learned trial court for information and necessary compliance.

(2026) 7 ILRA 1892
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE PADAM NARAIN MISHRA, J.

Criminal Appeal No. 2262 of 1989

Jai Narain **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the act of appellant in firing a single shot at the deceased constituted murder under Section 302 IPC or culpable homicide not amounting to murder under Section 304 Part II IPC.

Whether the sentence awarded requires modification considering lapse of time, age of appellant, and mitigating circumstances.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 313, – Indian Penal Code, 1860 – Sections 34, 201, 299, 300, 302, 304 Part II: - Criminal Appeal – against conviction and sentence – FIR lodged by son of deceased alleging firearm assault – offence of murder – investigation conducted - statements recorded - recovery of weapon and blood-stained articles – charge-sheet filed – trial initiated – applicant pleaded innocence – Appeal confined to nature of offence – Evaluation of evidence – Court finds that fatal shot was fired by appellant during sudden quarrel without premeditation, long-standing cordial relations, no prior hostility, exhortation by co-accused, circumstances disclose knowledge but not intention to cause death – observations on distinction between Sections 299 and 300 IPC – held, offence falls under Section 304 Part II IPC, not Section 302 IPC – hence, intention to cause death not proved, but knowledge of likely consequence established - conviction altered, appellant sentenced to period already undergone with fine of Rs 1,00,000, default one year RI – directions issued for compliance and transmission of record - Appeal partly allowed – direction issued accordingly, for information and compliance.

(Paras 25, 26, 28, 29, 30, 31, 33)

Appeal Partly Allowed. (E-11)

CASE LAW CITED

Anbazhagan v. State, (2024) 20 SCC 500
Jawahar Lal v. State of Punjab, (1983) 4 SCC 159

LIST OF ACTS

Code of Criminal Procedure, 1973
Indian Penal Code, 1860

LIST OF KEYWORDS

Criminal Appeal, sudden quarrel, culpable homicide, murder, intention vs knowledge, firearm injury, exhortation, downgrading conviction, sentencing, advanced age, heavy fine - accused denied - prosecution allegations - previous enmity - appreciation of the evidence - absence of premeditation - true mental element

- cordial relations - any deep-seated animosity - settled intention - prior deliberation or preparation - occurrence unfolded - a substantial term of imprisonment - proportionate to the degree of criminality - altering the conviction - rigorous imprisonment - partly allowed.

CASE ARISING FROM

Judgment and order dated 25.11.1989 passed by the Additional Sessions Judge, Pilibhit in Sessions Trial No. 194 of 1984, arising out of FIR lodged at Police Station Barkhera, District Pilibhit, Case Crime registered under Sections 302 and 201 IPC.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Apul Mishra, Senior Advocate assisted by Shri Devrat Mishra
Counsel for Respondent(s): Ms. Archana Singh, A.G.A.-I

(Delivered by Hon'ble Salil Kumar Rai, J.
&
Hon'ble Padam Narain Mishra, J.)

1. Heard Shri Apul Mishra, Senior Advocate assisted by Shri Devrat Mishra, counsel for the appellants and Ms. Archana Singh, A.G.A.-I for the State.

2. This appeal is directed against the judgment and order dated 25.11.1989 passed by the Additional Sessions Judge, Pilibhit in Sessions Trial No. 194 of 1984, whereby appellant No. 2, Kanauji Lal, along with appellant No. 1, Jai Narain, was convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life. The other accused, Rajendra, was acquitted of the charge under Section 302/34 IPC but was convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 500/-. During the pendency of the appeal, appellant No. 1, Jai Narain, died and the appeal has been declared as abated so far as he was concerned. Consequently, the present appeal survives only at the instance of appellant No. 2, Kanauji Lal.

3. The prosecution case, in brief, is that the deceased, Gaindan Lal, and the appellant, Kanauji Lal, had remained close friends for a considerable period. Both had jointly purchased a tractor by raising a loan after mortgaging their respective agricultural holdings. Their relationship was further strengthened by matrimonial alliances, inasmuch as the sons of both families had been married into the same family. Jai Narain was the samdhi of Kanauji Lal and his daughter had been married to Jai Narain's son only about a week prior to the occurrence.

4. According to the prosecution, Jai Narain had borrowed four sacks of wheat from the deceased. On the morning of 15.05.1984, the deceased demanded that Jai Narain return the wheat or render an account thereof. Jai Narain declined to do so and asserted that he would settle the matter only after the deceased accounted for the financial liabilities arising out of the jointly purchased tractor. Kanauji Lal, who was present there, supported Jai Narain and insisted that the tractor accounts should be settled first. The deceased, however, persisted in demanding the return of the wheat. A heated exchange followed between the parties, which was eventually pacified by the intervention of the villagers. The parties thereafter dispersed.

5. The prosecution further alleges that at about 8.00 a.m., when the deceased was going to his agricultural field accompanied by his son, Shanti Swaroop (PW-1), Rajendra called him near the flour mill with the assurance that the dispute could be amicably settled. The deceased accordingly sat on a takhat placed outside the premises. Shortly thereafter, Kanauji Lal and Jai Narain also reached the spot. Kanauji Lal was carrying his licensed SBBL gun. The discussion soon degenerated into another quarrel regarding the same dispute. According to the prosecution, Jai Narain exhorted Kanauji Lal to kill the deceased, whereupon Kanauji Lal fired a single shot which hit the chest of the deceased. The deceased collapsed on the spot and succumbed to the injury almost instantaneously. The prosecution further alleges that after the deceased fell down, Kanauji Lal attempted to drag the body towards his cattle shed. Anarkali, the widow of the deceased, rushed to the spot and threw herself over the body, thereby preventing its removal. It is also alleged that Rajendra washed the blood stains from the takhat on which the deceased had been seated.

6. On the written report submitted by Shanti Swaroop at Police Station Barkhera at about 10.30 a.m. on the same day, a case was registered under Sections 302 and 201 IPC against Kanauji Lal, Jai Narain and Rajendra. The distance between the place of occurrence and the police station was about six miles. The prompt lodging of the First Information Report has not been questioned before us and lends assurance to the prosecution version regarding the genesis and time of the occurrence.

7. The investigation commenced immediately. The Investigating Officer reached the place of occurrence, prepared the inquest report and other necessary papers, and forwarded the dead body for post-mortem examination. The post-mortem was conducted on 16.05.1984 at 2.30 p.m. The autopsy disclosed a firearm entry wound measuring 3 cm □ 3 cm on the front of the chest with an abrasion collar. There was no blackening, tattooing or scorching. On internal examination, the sternum, ribs, heart, left lung and major blood vessels were found extensively lacerated. One tikli was recovered from the body. Four corresponding exit wounds were present on the lower left side of the chest. The doctor opined that death had occurred due to haemorrhage and shock resulting from the ante-mortem firearm injury.

8. During the course of investigation, blood-stained earth and plain earth were collected from the place of occurrence. Subsequently, the SBBL gun allegedly used in the commission of the offence, along with cartridges and the blood-stained clothes of the deceased, were recovered. The serological examination confirmed the presence of human blood on the articles sent for forensic examination. On completion of the investigation, a charge-sheet was submitted against all the accused under Sections 302 and 201 IPC, whereupon the case was committed to the Court of Session.

9. To prove its case, the prosecution examined Shanti Swaroop (PW-1), the son of the deceased and the informant, and Gokaran Prasad (PW-2) as eyewitnesses to the occurrence. The doctor who conducted the post-mortem examination was examined as PW-4 and proved the post-mortem report. The Investigating Officer entered the witness box as PW-5, while PW-3 was examined as a formal witness. The accused denied the prosecution allegations in their statements recorded under Section 313 Cr.P.C. and pleaded false implication on account of previous enmity.

Rajendra specifically asserted that he had been implicated merely because he happened to be the nephew of Kanauji Lal.

10. The trial court, upon appreciation of the evidence on record, accepted the testimony of PW-1 and PW-2 insofar as Kanauji Lal and Jai Narain were concerned and held that the prosecution had proved beyond reasonable doubt that Kanauji Lal fired the fatal shot at the exhortation of Jai Narain. However, the trial court found no material to conclude that Rajendra had shared the common intention to commit the murder and, accordingly, acquitted him of the charge under Section 302/34 IPC while convicting him under Section 201 IPC. Kanauji Lal and Jai Narain were consequently convicted under Section 302 read with Section 34 IPC and sentenced to imprisonment for life.

11. Learned counsel appearing for the appellant has, however, fairly stated that the finding recorded by the trial court that the fatal shot was fired by Kanauji Lal is not under challenge. The appellant does not dispute either his presence at the place of occurrence or the fact that the firearm injury sustained by the deceased proved fatal. The submission advanced before us is confined to the nature of the offence. According to the learned counsel, even if the prosecution case is accepted in its entirety, the facts proved on record do not attract the offence of murder punishable under Section 302 IPC. It is urged that the occurrence was the outcome of a sudden quarrel arising out of an existing dispute between the parties and that the surrounding circumstances unmistakably indicate that the appellant possessed only the knowledge that his act was likely to cause death, but lacked the intention necessary to constitute murder under Section 300 IPC. It is, therefore, submitted that the conviction deserves to be altered to one under Section 304 Part II IPC.

12. Per contra, learned Additional Government Advocate has supported the judgment of the trial court. It is submitted that the appellant had reached the place of occurrence armed with an SBBL gun and deliberately fired at the chest of the deceased, a vital part of the body. According to the learned A.G.A., the use of a deadly weapon coupled with the situs of the injury clearly establishes the intention to cause death or, at any rate, the intention to inflict such bodily injury as was sufficient in the ordinary course of nature to cause death. It is, therefore, contended that the conviction recorded under Section 302 IPC warrants no interference.

13 Having bestowed our anxious consideration to the rival submissions and having carefully examined the entire evidence on record, we find that the principal controversy before us is not whether the appellant caused the death of the deceased. That fact stands established beyond reasonable doubt by the consistent testimony of the eyewitnesses, which receives complete corroboration from the medical evidence. The real question is whether, on the facts proved by the prosecution, the mental element accompanying the act of the appellant answers the description of intention contemplated under Section 300 IPC or whether the case discloses only the knowledge envisaged under Section 299 IPC.

14. Sections 299, 300 and 304 of the Indian Penal Code embody the legislative distinction between culpable homicide and murder. Section 299 defines culpable homicide, while Section 300 specifies the circumstances in which culpable homicide amounts to murder. Section 304 prescribes the punishment where the act does not amount to murder, either because it does not satisfy any of

the clauses of Section 300 or because it falls within one of the statutory exceptions. The distinction between these provisions has engaged the attention of the Courts on numerous occasions and has often been described as one of the most difficult branches of criminal jurisprudence. The difficulty lies not in the language of the statute but in its application to the infinitely varying factual situations that arise before the courts.

15. The Supreme Court, in **Anbazhagan v. State**, (2024) 20 SCC 500, after referring to the earlier decision in **Jawahar Lal v. State of Punjab**, (1983) 4 SCC 159, reiterated that the determination of the accused's mental element cannot rest upon any isolated circumstance, such as the fact that only one injury was inflicted or that the injury proved fatal. The Court emphasised that the enquiry has to be directed towards the entire factual matrix. The nature of the weapon used, the part of the body targeted, the force employed, the extent of the injury and the manner of assault are undoubtedly relevant considerations. Equally relevant, however, are the circumstances preceding the occurrence, the events immediately attendant upon the assault, the relationship between the parties, the genesis of the dispute and the conduct of the accused before and after the occurrence. These surrounding circumstances frequently provide the clearest indication of the accused's state of mind.

16. The Supreme Court further observed that intention, being a state of mind, is seldom capable of direct proof and has necessarily to be inferred from the proved facts. There is no inflexible rule that the infliction of a single injury necessarily negatives the intention required under Section 300 IPC, nor can the use of a deadly weapon or the fatal nature of the injury, by themselves, be regarded as conclusive of the existence of such intention. Whether the accused acted with guilty intention or merely with guilty knowledge is essentially a question of fact to be determined upon a cumulative assessment of all the surrounding circumstances. Where the evidence establishes an intention to inflict the particular bodily injury which is sufficient in the ordinary course of nature to cause death, the case would ordinarily fall within Clause Thirdly of Section 300 IPC. Conversely, where the surrounding circumstances disclose absence of premeditation, a sudden quarrel, a sudden fight, an accidental or unintended injury, or an intention merely to cause a simple injury coupled only with the knowledge that death was a likely consequence, the offence would appropriately fall within Section 304 Part II IPC.

17. It is in the light of these settled principles that the evidence in the present case is required to be examined. The determination cannot rest solely on the circumstance that the appellant used an SBBL gun or that the firearm injury was inflicted on the chest of the deceased. Those facts undoubtedly constitute important circumstances, but they cannot be viewed in isolation. The Court is required to examine the entire chain of circumstances preceding and accompanying the occurrence in order to ascertain the true mental element with which the appellant acted.

18. The evidence on record unmistakably establishes that the appellant and the deceased had enjoyed cordial relations for several years preceding the occurrence. They had jointly purchased a tractor by raising a loan after mortgaging their respective agricultural lands, thereby entering into a financial arrangement founded on mutual confidence. Their relationship was further reinforced by close matrimonial ties between the two families. The prosecution has not brought on record any evidence to indicate that the appellant bore any longstanding grudge or hostility against the

deceased. On the contrary, the evidence suggests that their relationship had remained cordial and that no dispute had arisen between them until the events immediately preceding the occurrence.

19. The genesis of the occurrence also assumes considerable significance. The prosecution itself attributes the immediate cause of the dispute not to any disagreement between the appellant and the deceased but to Jai Narain's refusal to return or account for the four sacks of wheat borrowed from the deceased. It was only when the deceased insisted upon repayment that Jai Narain sought to link the issue with the unsettled accounts relating to the jointly purchased tractor. The appellant appears to have intervened in support of Jai Narain, who had become closely related to him by reason of the marriage performed scarcely a week earlier. Significantly, there is no evidence to suggest that, at any point of time prior to the occurrence, the appellant himself had demanded settlement of the tractor accounts or had raised any grievance against the deceased on that score. Had there existed any deep-seated animosity arising out of the tractor transaction, one would reasonably expect some evidence of previous discord between them. The prosecution has led none.

20. The sequence of events preceding the occurrence also does not disclose any pre-conceived plan to eliminate the deceased. The first altercation ended with the intervention of the villagers, whereafter the parties dispersed. It is the prosecution case itself that the deceased was thereafter called by Rajendra on the pretext that the dispute could be amicably resolved. The deceased, believing that an effort was being made to bring about a settlement, voluntarily went to the place where the parties again assembled. These circumstances are inconsistent with a carefully designed plan to commit murder. Had there been any settled intention to take the life of the deceased, the prosecution would have been expected to produce some evidence suggesting prior deliberation or preparation. The record is conspicuously silent in this regard.

21. Equally significant is the manner in which the occurrence unfolded. The prosecution does not allege that immediately upon reaching the spot the appellant opened fire. On the contrary, another exchange of words took place regarding the same dispute. It was during the course of this altercation that Jai Narain is stated to have exhorted the appellant to kill the deceased. According to the eyewitnesses themselves, the firearm was discharged immediately thereafter. This sequence of events indicates that the fatal act was committed during the heat of the altercation and not pursuant to any prior determination to cause death. The exhortation attributed to Jai Narain, whether accepted in its entirety or not, is itself indicative of the fact that the decision to use the firearm was taken in the course of the quarrel and not before it.

22. Much emphasis has been laid by the learned A.G.A. on the circumstance that the appellant had come to the place of occurrence carrying an SBBL gun. It is undoubtedly true that the appellant was armed with a firearm and that the shot struck the chest of the deceased. These are relevant circumstances and cannot be ignored. At the same time, they do not conclude the enquiry. As noticed earlier, the Supreme Court has repeatedly held that neither the nature of the weapon nor the situs of the injury is by itself decisive of the

question whether the accused acted with the intention required under Section 300 IPC. The Court must evaluate these circumstances in conjunction with the entire factual background. In the present case, the long-standing cordial relationship between the parties, the absence of previous hostility, the sudden revival of the quarrel regarding the wheat transaction, the intervention of the appellant on behalf of his samdhi, and the firing of a single shot in the midst of the altercation are all circumstances which cannot be ignored while assessing the appellant's state of mind.

23. The trial court appears to have proceeded substantially on the premise that since the appellant had fired at the chest of the deceased with a firearm, the offence must necessarily amount to murder. Such an approach overlooks the distinction which the law has consistently maintained between the act and the mental element accompanying the act. The physical act of causing death may remain the same; what determines the nature of the offence is the state of mind with which that act is committed. It is for this reason that the Supreme Court in Anbazhagan cautioned that the enquiry cannot be confined to the injury alone but must extend to the entire factual matrix, including the circumstances preceding and attendant upon the occurrence.

24. Viewed cumulatively, the circumstances proved by the prosecution do not persuade us to hold that the appellant had formed the intention either to cause the death of the deceased or to inflict that particular bodily injury which he knew to be sufficient in the ordinary course of nature to cause death. At the same time, it would be wholly unrealistic to suggest that the appellant was unaware of the likely consequences of his act. A person who discharges a firearm at another, even in the course of a sudden quarrel, must ordinarily be attributed with the knowledge that such an act is likely to cause death. The knowledge contemplated by Part III of Section 299 IPC is, therefore, clearly established. What is not established beyond reasonable doubt is the higher degree of mens rea necessary to attract Clause Thirdly of Section 300 IPC.

25. The cumulative effect of the circumstances, therefore, persuades us to hold that the present case falls outside the ambit of Section 300 IPC and is more appropriately covered by Section 304 Part II IPC. The conviction of the appellant under Section 302 IPC recorded by the trial court cannot, therefore, be sustained and deserves to be altered accordingly.

26. The conviction of the appellant is accordingly altered from Section 302 read with Section 34 IPC to Section 304 Part II IPC.

27. The only question that now survives for consideration is the appropriate sentence to be imposed upon the appellant.

28. Ordinarily, an offence punishable under Section 304 Part II IPC would merit a substantial term of imprisonment, having regard to the gravity of the consequence resulting from the act. At the same time, sentencing is not an inflexible exercise. It must be informed not merely by the nature of the offence but also by the circumstances attending its commission, the passage of time since the occurrence, the conduct of the accused and other mitigating circumstances which have emerged on the record.

29. The occurrence in the present case took place on 15.05.1984, more than four decades ago. During this prolonged period, the appellant has remained under the shadow of criminal proceedings. It has been brought to our notice that he is now about ninety years of age. There is nothing on record to indicate that after the present occurrence he was involved in any other criminal activity. The incident itself arose out of a sudden quarrel relating to a dispute with Jai Narain, the deceased appellant and a co-accused, and was not the result of any premeditated design to eliminate the deceased. While none of these circumstances diminish the seriousness of the act, they nevertheless constitute relevant considerations while determining the appropriate sentence.

30. The object of sentencing is not merely to punish the offender but also to ensure that the punishment is proportionate to the degree of criminality established by the evidence. Once it is held that the prosecution has failed to prove the intention necessary to constitute murder and that the case falls under Section 304 Part II IPC, the sentence must reflect that altered degree of culpability. In the peculiar facts of the present case, particularly the advanced age of the appellant, the extraordinary lapse of time since the occurrence and the circumstances in which the offence was committed, we are of the considered opinion that the ends of justice would be adequately served by sentencing the appellant to the period already undergone coupled with payment of heavy fine.

31. Accordingly, while altering the conviction of the appellant from Section 302 read with Section 34 IPC to Section 304 Part II IPC, we sentence him to the period of imprisonment already undergone and a fine of Rs. 1,00,000/- (Rupees One Lakh) which shall be deposited by the appellant before the trial court within a period of three months from today. In the event of failure to deposit the aforesaid amount within the stipulated period, the appellant shall undergo rigorous imprisonment for one year.

32. The conviction of Rajendra under Section 201 IPC is not the subject matter of the present appeal. No further orders are, therefore, required in that regard.

33. The appeal is, accordingly, ***partly allowed***. The conviction and sentence of the appellant under Section 302 read with Section 34 IPC are set aside. Instead, the appellant is convicted under Section 304 Part II IPC and sentenced in the manner indicated above.

34. Since the appellant is on bail, he shall not be required to surrender, subject to his depositing the amount of fine within the period stipulated herein. His bail bonds and sureties shall stand discharged upon such deposit. In case of default, the trial court shall take appropriate steps in accordance with law to enforce the sentence and recover the fine as directed above.

35. Let the trial court record be transmitted forthwith to the trial court and the judgement be also certified to the trial court for information and compliance.

(2026) 7 ILRA 1900
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 3037 of 1982

Gajendra **...Appellant(s)**
Versus
State of U.P. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the sole testimony of the injured victim (P.W.1) is reliable and sufficient to sustain conviction despite the two independent witnesses being declared hostile.

Whether the ingredients of Section 307 IPC and Section 452 IPC stand established on the evidence.

Whether the sentence awarded by the trial court calls for any interference, including on the question of fine not having been imposed and the request for benefit of probation.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 374(2), 386, 428 – Indian Penal Code, 1860 – Sections 452, 307, 324, 325: - Criminal Appeal - against conviction and sentence – FIR - injured victim alleging that appellant entered her house armed with knife while she was alone and inflicted ten incised wounds on various parts of her body – investigation conducted - statements recorded - site-plan prepared - blood-stained and plain earth collected – charge-sheet filed under Sections 452/307 IPC – charges framed – prosecution examined - injured victim, two witnesses of occurrence (declared hostile), doctor and Investigating Officer – appellant pleaded that conviction rests on solitary uncorroborated testimony, motive not proved, and injuries consistent with some other origin – Court finds that, law does not require plurality of witnesses and conviction can rest on wholly reliable sole testimony of injured victim which carries inherent guarantee of truthfulness - her consistent account is fully corroborated by medical evidence as to number, nature, location and timing of injuries and partly by admission of hostile witness regarding appellant's presence - non-proof of motive is not fatal where direct evidence is cogent - nature of weapon, number and location of wounds (including vital parts), defensive injuries and premeditated entry when victim was alone establish intention under Section 307 IPC - ingredients of Section 452 IPC also made out – held, conviction under Sections 452 and 307 IPC and concurrent sentences of five years and two years rigorous imprisonment respectively are affirmed - benefit of probation declined having regard to gravity and brutality of offence - no enhancement of sentence by imposing fine in absence of State appeal – therefore, appeal is dismissed – bail bonds cancelled - appellant directed to surrender within two weeks to serve remaining sentence - entitlement to set-off under Section 428 Cr.P.C. – directions issued for compliance accordingly.

(Paras 12, 15, 16, 17, 18, 19, 20, 21)

Appeal Dismissed. (E-11)

CASE LAW CITED

Not cited.

LIST OF ACTS

Code of Criminal Procedure, 1973

Indian Penal Code, 1860
Probation of Offenders Act, 1958

LIST OF KEYWORDS

Criminal Appeal – Sections 452 & 307 IPC – Sole testimony of injured victim – Hostile witnesses – Medical corroboration – Intention to cause death – House-trespass after preparation to cause hurt – Motive not proved – Sentence not excessive – Probation declined – Appeal dismissed.

CASE ARISING FROM

Judgment and order dated 27.11.1982 passed by the IV Additional Sessions Judge, Bijnor in Sessions Trial No. 203 of 1982 (State of U.P. Vs. Gajendra), arising out of Case Crime No. 231 of 1982, Police Station Kotwali City, District Bijnor.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Bhupendra Kumar Tripathi, D.N. Wali, Gaurav Kakkar, Ramesh Chandra Yadav
Counsel for Respondent(s): A.G.A.

(Delivered by Hon'ble Santosh Rai, J.)

1. Heard Sri Gaurav Kakkar, learned counsel for the appellant; Sri Shyam Narain Rai, learned AGA for State and perused the material on record.

2. This criminal appeal is preferred under Section 374(2) of Cr.P.C., by the accused appellant Gajendra to set aside the judgment and order dated 27.11.1982, passed by the IV Additional Sessions Judge, Bijnor in Sessions Trial No.203 of 1982 (State of U.P. Vs. Gajendra), arising out of Case Crime No.231 of 1982, under Sections 452, 324, 325, 307 IPC, Police Station'Kotwali City, District'Bijnor, whereby the appellant has been sentenced to five years rigorous imprisonment under Section 307 IPC, sentenced to two years rigorous imprisonment under Section 452 IPC. All the sentences are directed to run concurrently.'

3. Briefly stated, the prosecution case is that on 19.5.1982 at about 9.30 a.m., the victim, Km. Rekha, was'alone in her house in village Bharera, within the circle of P.S. Kotwali City, District Bijnor, cleaning and'washing pulses (dal) at the handpump in the courtyard, the main door of the house being open at the time.'It is alleged that the appellant, armed with a knife, entered the house, caught hold of the victim from behind'and inflicted as many as ten incised wounds on different parts of her body with the intention of causing her'death. On her raising an alarm, Mahender Singh and Moola Singh, residents of the locality, arrived at the'spot and reprimanded the appellant, whereupon he fled. The victim's parents, who had gone to the fields,'returned on being informed and took her to the District Hospital, Bijnor, where Dr. V.K. Goel (P.W.4)'examined her injuries at 11.20 a.m. the same day and found ten incised wounds on her lip, chest, both'forearms, left hand, left palm, left index finger, right thigh, left thigh and left leg, all noted as clean-cut,'bleeding and clotted, and opined that the injuries were caused by a sharp-edged weapon such as a knife,'that they were consistent with having been inflicted at about 9.30 a.m. on 19.5.1982, and that the cumulative'effect of the said injuries was sufficient, in the ordinary course, to cause death.'After medical examination, the victim lodged a written report at the police station on the basis of which'a case was registered as Crime No.231 under Sections 452/324 IPC.

4. On completion of investigation, the'Investigating Officer, having recorded the statements of witnesses, prepared the site-plan and collected'blood-stained and plain earth from the spot, formed the opinion that the case fell under Section 307 IPC,'and the offence was accordingly amended. A charge-sheet was submitted on 6.7.1982, and the case was'committed to the Court of Sessions. The trial court framed charges against the appellant under Sections'452, 307, 324 IPC. The appellant pleaded not guilty and claimed trial, denying the occurrence in its'entirety.'

5. In support of its case, the prosecution examined five witnesses: P.W.1 Km. Rekha, the injured'complainant; P.W.2 Mahender Singh and P.W.3 Moola Singh, witnesses of the occurrence, both of whom'were declared hostile; P.W.4 Dr. V.K. Goel, who medically examined the injured; and P.W.5 Banwari Lal,'the Investigating Officer. P.W.2 and P.W.3, though declared hostile, admitted in cross-examination by the'learned defence counsel that the victim had, in fact, sustained knife injuries on the date and at the time'alleged, and P.W.3 further admitted to having seen the appellant standing outside the complainant's house.'

6. The prosecution has produced Ex.Ka.1 Tehrir, Ex.Ka.2 recovery memo of blood stained Parchajat, Ex.Ka.3 injury report, Ex.Ka.4 Site Plan, Ex.Ka.5 recovery memo of blood stained & plain soil, Ex.Ka.6 Chik report, Ex.Ka.7 Duplicate Report No.30, Ex.Ka.8 True statement of Mahendra, Ex.Ka.9 True statement of Mool Singh, Ex.Ka.10 Charge-sheet, Ex.Ka.11 True copy of GD, as documentary evidence in support of its case.

7. In brief the grounds of appeal are that the conviction of the appellant is against the weight of evidence on record and the conviction of the appellant is bad in law. The sentence is too severe.

8. The trial court, on a consideration of the evidence on record, found that although the motive set up by'the prosecution namely, a long-standing dispute over a right of way between the families was not'established to be of a serious or continuing character, non-proof of motive did not, by itself, demolish the'prosecution case where the occurrence stood otherwise proved by credible evidence. The trial court further'held that the sole testimony of the injured witness, P.W.1, was wholly reliable and trustworthy, being that'of a natural witness who was present in her own house, was consistent with the medical evidence in every'material particular, and stood corroborated, to the extent of the appellant's presence at the spot, by the'admission of the hostile witness P.W.3. On this basis, the trial court convicted the appellant under Sections'452 and 307 IPC and sentenced him as stated above. Aggrieved thereby, the appellant has preferred the'present appeal.'

9. Learned counsel for the appellant has assailed the impugned judgment on the following grounds: (i) that'the conviction rests on the solitary, uncorroborated testimony of P.W.1, the two independent witnesses of'the occurrence having been declared hostile; (ii) that the motive set up by the prosecution stood disproved'on the prosecution's own showing, the alleged dispute being two years old, minor and never the subject of'any complaint or report; (iii) that P.W.1 admitted in cross-examination that although the Investigating'Officer visited the house on the very day of occurrence and enquired into the matter, she did not reduce her'version to writing at that stage, which renders her subsequent version unsafe to act upon; and (iv) that the'nature and spread of the injuries on the hands, fingers, legs and chest are consistent with a struggle of a'different origin altogether, and it has not been ruled out that some person other than the appellant was the'real assailant. And the

conviction resting on the testimony of a solitary witness must satisfy a standard of'unimpeachable reliability, and that a witness whose evidence appears to have been moulded to suit a chosen'prosecution theory ought not to be treated as a reliable witness.'

10. Learned AGA, per contra, has supported the impugned judgment and'submitted that P.W.1 is not merely a witness but the injured victim herself, whose presence at the place of'occurrence is beyond question and whose testimony carries an inherent guarantee of truthfulness, her'version is fully corroborated by the medical evidence of P.W.4 as to the number, nature, location and timing'of the injuries, and by the admission of the hostile witness P.W.3 that he had seen the appellant standing'outside the complainant's house. The alleged omission to reduce her statement to writing before the'Investigating Officer on the day of occurrence is a wholly peripheral matter that does not touch the core of'her testimony; and the nature of the injuries ten incised wounds inflicted with a knife on a lone, defenceless'girl, including wounds on the face, chest and both thighs, coupled with defensive wounds on the fingers'and palms unerringly point to an intention on the part of the appellant to cause her death, thereby satisfying'the ingredients of Section 307 IPC.'

11. On the rival submissions, the following points arise for determination, whether the trial court correctly'appreciated the evidence of P.W.1 and rightly held it to be reliable and trustworthy despite the absence of'independent corroboration in the strict sense, whether the ingredients of Section 307 IPC, namely the'requisite intention or knowledge, stand established on the evidence on record, whether the conviction under'Section 452 IPC is sustainable; and whether the sentence awarded by the trial court calls for any'interference, including on the question of the fine not having been imposed.'

12. Reliability of the testimony of P.W.1. It is well settled that the law does not insist on plurality of'witnesses, and a conviction can be founded on the testimony of a single witness if it is found to be wholly'reliable. The witnesses have been classified into three categories wholly reliable, wholly unreliable, and'neither wholly reliable nor wholly unreliable and that in the case of a wholly reliable witness, a court can'and should, act on the testimony of a single witness. Where, in addition, the witness is the injured victim'herself, her testimony carries a built-in guarantee of truthfulness and, ordinarily, requires no further'corroboration, unless there exist strong and cogent grounds to doubt it. On a careful perusal of the'deposition of P.W.1, this Court finds nothing in her testimony, or in the cross-examination directed at her,'which detracts from its inherent probability. She has given a consistent account of the manner in which the'appellant entered the house when she was alone, caught her from behind, and inflicted injuries upon her;'her account is corroborated in material particulars by the medical evidence of P.W.4 as to the number,'location, nature and approximate time of infliction of the injuries. It is further corroborated, to the extent of'the appellant's presence at the spot at the relevant time, by the admission extracted from the hostile witness'P.W.3 in cross-examination. The evidence of a witness declared hostile is not to be rejected in its entirety;'that part of it which finds support from other reliable material may be relied upon. The omission of P.W.1'to reduce her account to writing when first questioned by the Investigating Officer on the date of occurrence'is, at best, a discrepancy touching a wholly collateral matter and does not go to the root of the prosecution'case. Trivial variations of this kind, particularly in the testimony of rustic or unlettered witnesses recalling'a traumatic event, do not warrant rejection of otherwise trustworthy evidence.'

13. As regards motive, the trial court concluded that the dispute over the right of way, though spoken to by'P.W.1, was not shown to have been serious or of recent origin, no report having been lodged in that regard'for nearly two years preceding the occurrence. This Court is in agreement with the trial court that the motive,'as pleaded, does not appear to have been made out with the degree of gravity attributed to it by the'prosecution. However, it is settled law that failure to prove motive is not, by itself, fatal to the prosecution'case where the occurrence is otherwise established by cogent direct evidence; motive assumes significance'principally in cases resting on circumstantial evidence, and its absence or non-proof cannot outweigh clear,'direct and corroborated testimony of the kind available in the present case.'

14. Section 307 IPC does not require that the injury actually inflicted be'sufficient, in the ordinary course of nature, to cause death; what is essential is that the act be done with such'intention or knowledge, and under such circumstances, that if death had resulted, the offence would have'amounted to murder. The intention or knowledge of the accused is to be gathered from the nature of the'weapon used, the manner and severity of the assault, the part of the body targeted, and the surrounding'circumstances, including the number of blows inflicted. In the present case, the appellant, armed with a'knife, entered the house of the victim after satisfying himself that she was alone, and inflicted as many as'ten incised wounds on her body, including wounds on the face, close to the mouth, and on the chest region,'in addition to wounds on both thighs and the leg. The wounds on the palms and fingers of the victim are'consistent with defensive injuries sustained while warding off the blows, indicative of a sustained and'determined assault rather than a solitary or impulsive act. The medical evidence establishes that the'cumulative effect of the injuries was sufficient to cause death. The premeditated manner of entry timed to'when the victim was alone the choice of weapon, the number and location of the wounds, and the fact that'a life-threatening injury on the chest was inflicted, taken cumulatively, admit of no inference other than that'the appellant acted with the intention of causing the death of the victim. The trial court's finding that the'ingredients of Section 307 IPC stand fully established is, therefore, affirmed.'

15. The evidence establishes that the appellant entered the dwelling house of the victim without lawful'authority, at a time when she was alone, for the purpose of committing an offence upon her person, and in the course of such trespass he inflicted the injuries referred to above. The ingredients of house-trespass'having been committed after preparation for causing hurt, within the meaning of Section 452 IPC, are,'accordingly, made out, and the conviction of the appellant thereunder is upheld.'

16. Learned counsel for the appellant has made a faint submission that, having regard to the appellant's age'and the absence of any prior conviction, the sentence be reduced, or that the benefit of probation under the'Probation of Offenders Act, 1958 be extended to him. This Court is unable to accede to the submission.'The offence involved the brutal and repeated stabbing of a lone, defenceless young girl in her own home,'resulting in as many as ten incised wounds spread across virtually every part of her body, inflicted with a'degree of determination and violence sufficient, on the medical evidence, to have caused her death. The'nature and multiplicity of the injuries, the vulnerability of the victim, and the calculated manner in which'the appellant awaited an opportunity to find her alone before entering the house, are all circumstances of'aggravation. Having regard to the gravity, brutality and premeditated character of the offence, this is'manifestly not a case in which it would be appropriate, or in the interest of society, to extend to the appellant'the benefit of release on probation in lieu of sentence. The sentence of five years' rigorous imprisonment'under Section 307 IPC and two years' rigorous imprisonment under

Section 452 IPC, directed to run'concurrently, cannot be said to be excessive or disproportionate to the gravity of the offence, and calls for'no interference.'

17. One aspect requires notice. It has been pointed out that the trial court, while sentencing the appellant,'did not impose any sentence of fine. Section 307 IPC renders an offender "liable to fine" in addition to'imprisonment; the imposition of fine under this provision is a mandatory concomitant of the sentence of'imprisonment. Where the IPC provision prescribes punishment in the form:"shall be'punished with imprisonment ' and shall also be liable to fine', or"with'imprisonment and fine', the trial court is expected to impose fine also. Failure to'impose fine amounts to an error in sentencing.'The absence of fine, under section 307 IPC therefore, by itself constitute an infirmity in the sentence as'recorded. It may further be noted that neither the State nor the complainant has preferred any appeal or'revision under Section 377 Cr.P.C. seeking enhancement of the sentence by imposition of a fine. In an'appeal preferred solely by the convict under Section 374 Cr.P.C., this Court, exercising jurisdiction under'Section 386 Cr.P.C., cannot enhance the sentence to the appellant's prejudice in the absence of a cross-'appeal or notice for enhancement. No order is, therefore, called for on this count, and the sentence as'awarded by the trial court is maintained in its entirety.'

18. For the reasons stated above, this Court finds no infirmity, legal or factual, in the judgment and order'dated 27.11.1982 passed by the IV Additional Sessions Judge, Bijnor in Sessions Trial No.203 of 1982 (State of U.P. Vs. Gajendra), arising out of Case Crime No.231 of 1982, under Sections 452, 324, 325, 307 IPC, Police Station'Kotwali City, District'Bijnor. The findings of the trial court on the'reliability of the testimony of the injured witness, the corroborative value of the medical evidence, the'establishment of the ingredients of Section 307 IPC, are affirmed.'

19. The appeal is, accordingly, **dismissed**. The conviction and sentence recorded by the trial court are upheld'in their entirety.

20. The bail bonds of the accused-appellant stand canceled with intimidate effect. If the appellant is currently on bail, he is directed to surrender before the trial court concerned within a period of **two weeks from today** to serve out the remainder of substantive sentence.

21. If the appellant fails to surrender within stipulated period as above, learned trial court is directed to take immediate legal steps adopting coercive measures including issuance of non bailable warrant to take the appellant into custody for execution of sentence in accordance with law.

22. The appellant shall be entitled to benefit set up under Section 428 Cr.P.C.

23. Let trial court record along with copy of this judgment be transmitted 'forthwith' to the court concerned for information and necessary compliance.

24. The trial court is directed to submit its compliance report within two months from the date of receipt of this order. Further more, the registry is also directed to place the compliance report on record.

25. The Registrar (Compliance) is also directed to serve a copy of this order within one week by FAX/e-mail to the concerned court through District & Sessions Judge, Bijnor for compliance.

(2026) 7 ILRA 1906
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 3107 of 2013

Dinesh Chandra Shukla & Ors. ...Appellant(s)
Versus
State of U.P. ...Respondent(s)

ISSUE FOR CONSIDERATION

Whether PW-1 and PW-2 were present on the spot at the time of incident and their depositions are reliable or not?

Whether there is any inconsistency in the prosecution version of the incident and the medical evidence of the deceased available on record.

Whether in the present case, the FIR can be said to be ante timed FIR or not?

Whether the Ballistic Report denying use of recovered firearm weapons, makes the prosecution story suspicious or not?

Whether the prosecution could be said to have proved it's case against the appellants-convicts beyond reasonable doubt?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 157, 174, 313, 374(2), – Indian Penal Code, 1860 – Sections 34, 302 : - Criminal Appeal - against conviction under Section 302 IPC and sentence of life imprisonment with fine – FIR - alleging that appellants armed with guns and rifle fired upon the deceased (who had recently purchased a disputed house) and others during talks of compromise, resulting in fatal firearm injuries – investigation – inquest - post-mortem - recoveries of empty cartridges, blood-stained soil and two DBBL guns - site plan prepared - charge-sheets filed – charges framed under Section 302/34 IPC – prosecution examined informant (son of deceased), eye-witness (brother of deceased), scribe, doctor and Investigating Officer – appellants pleaded false implication, absence of eye-witnesses, ante-timed FIR, inconsistency with medical evidence, non-matching ballistic report and absence of specific role/common intention – Court finds that, depositions of PW-1 and PW-2 are consistent regarding date, time, place and manner of incident and fully corroborated by site plan and medical evidence of ante-mortem firearm injuries - minor contradictions are natural and do not affect credibility - FIR was promptly lodged and cannot be treated as ante-timed merely because of delayed receipt by Magistrate when other documents bear the correct date - non-matching of recovered firearms with empty cartridges is not fatal as recovery of weapon is not sine qua non and actual weapons used may not have been recovered - all appellants arrived together armed, exhorted, surrounded the deceased and fired indiscriminately, establishing common intention – held, prosecution proved its case beyond reasonable doubt - conviction under Section 302 IPC is altered to Section 302 read with Section 34 IPC and sentence is affirmed – hence appeal dismissed – directions issued accordingly.

(Para – 35, 37, 38, 39, 40, 45, 46, 56, 59, 69, 71, 73, 74, 75, 76, 77, 78)

Appeal Dismissed. (E-11)

CASE LAW CITED

Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365
Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537
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LIST OF ACTS

Code of Criminal Procedure, 1973
Indian Penal Code, 1860

LIST OF KEYWORDS

Criminal Appeal – Section 302/34 IPC – Eye-witnesses – Common intention – Firearm injuries – Motive (property dispute) – Ante-timed FIR – Ballistic report – Recovery of weapon not sine qua non – Conviction altered and affirmed – Appeal dismissed.

CASE ARISING FROM

Judgment and order dated 03.07.2013 passed by Additional District and Sessions Judge, Court No. 3, Fatehpur in Session Trial No. 38 of 2009 under Sections 302/34 IPC, Police Station Kishunpur, District Fatehpur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Mangla Prasad Rai, Senior Counsel assisted by Sri Pawan Kumar Pandey
Counsel for Respondent(s): Sri Vikas Goswami, learned A.G.A. for State and Sri Kamal Krishna, Senior Counsel assisted by Sri Vivek Kumar Singh for informant.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Sri Mangla Prasad Rai, learned Senior Counsel assisted by Sri Pawan Kumar Pandey, learned counsel for the appellants, Sri Vikas Goswami, learned Additional Government Advocate for the State-respondent, Sri Kamal Krishna, learned Senior Counsel assisted by Sri Vivek Kumar Singh, learned counsel for the informant and perused the record.

2. The instant Criminal Appeal under Section 374(2) of Cr.P.C. has been filed against the judgment and order dated 03.07.2013 passed by Additional District and Sessions Judge, Court No.3, Fatehpur in Session Trial No. 38 of 2009, under Sections 302/34 IPC, Police Station Kishunpur, District Fatehpur, whereby the appellants were convicted and sentenced for life

imprisonment and fine of Rs.10,000/- each for the offence under Section 302 IPC, in default of payment of fine, they have to undergo one year additional rigorous imprisonment.

3. Prosecution story, in nutshell, as unfolded in Written Report/Tehrir (Ex.Ka-1), is as follows:

The informant Rajendra Singh got a registered sale deed of fallen down kutcha house in the name of his father Bhura Singh @ Shivsharan Singh from Awadhram. On 11.10.2008, the first informant and his father were going to Ram Swaroop for a compromise. Jhaller Singh was also following behind. When the talks of compromise were going on, just then, the appellant Dinesh Chandra Shukla armed with single barrel gun, the appellant Akhilesh Chandra Shukla and Anil Kumar Shukla armed with double barrel guns and Sunil Kumar Shukla armed with rifle (which was Ram Swaroop's licensed rifle), came there and after exhortation, they started firing, consequently, father of the first informant Bhura Singh became injured. Hearing the sound of firing, many peoples of the village came at the place of the incident and an atmosphere of terror was created in the village. The informant and Jhaller Singh took Bhura Singh in an injured condition to Vijaipur Hospital, where the deceased succumbed to his injuries.

4. On the basis of aforementioned Written Report/Tehrir (Ex.Ka-1), a First Information Report (Ex.Ka-2) as Case Crime No. 273/08, under Section 302/34 IPC, was registered on 11.10.2008 at 5:30 PM at Police Station Kishunpur, District Fatehpur against the accused.

5. On 12.10.2008, the autopsy of the deceased Bhura Singh was performed by PW-4 Dr. P.K. Pandey at the Vijaipur Hospital, who found two multiple firearm wounds on his person and as per opinion of the Doctor, the cause of death of the deceased was shock and hemorrhage due to ante-mortem firearm injuries.

6. The Investigating Officer (the then S.O. Kishunpur) Ram Swaroop Verma PW-5 started the investigation and after inspection of the spot, prepared the site plan (Ex.Ka-11). He recorded the statements of the informant as well as Jhaller Singh on 11.11.2008. He conducted the inquest proceedings and prepared the inquest report (Ex.Ka-5). He also prepared documents related to the post mortem of the deceased Bhura Singh and sent the body for the post mortem after sealing. He proved Letter to C.M.O. (Ex.Ka-6), Sample Seal (Ex.Ka-7), Challan Nash (Ex.Ka-8), Photo Nash (Ex.Ka-9) and Letter to C.M.O. sent by R.I. (Ex.Ka-10). He inspected the crime scene and prepared its site plan (Ex.Ka-11). He recovered blood stained and plain soil and four 12-bore red coloured (K F Special make with brass base) empty cartridges and one plastic wad from the crime scene and prepared its recovery memo (Ex.Ka-12). Accused Dinesh Chandra Shukla and Sunil Kumar Shukla were arrested on 12.10.2008. He arrested Anil Kumar Shukla on 17.08.2008 and recovered DBBL gun used in the crime with its license. He prepared its recovery memo (Ex.Ka-13) and also prepared site plan of place of recovery of weapon of offence (Ex.ka-14). He obtained post mortem report and he also received photocopy of the sale deed and judgment of convictions regarding accused Akhilesh Chandra Shukla and Dinesh Chandra Shukla. He concluded the investigation against accused Dinesh Chandra Shukla, Anil Kumar Shukla and Sunil Kumar Shukla on 22.11.2008 and filed a charge sheet (Ex.Ka-15) under Section 302/34 IPC. Later on accused Akhilesh Chandra Shukla surrendered in Court and after recording his statement, he submitted a separate charge sheet (Ex.Ka-16) against him under Section 302/34 IPC on 20.12.2008.

7. Thereafter, cognizance was taken upon the said charge sheet and the case was committed to the Court of Sessions.

8. Accused appeared before the Court and after hearing both the parties, charges were framed under Section 302/34 IPC against the accused. The accused pleaded not guilty and claimed to be tried.

9. Trial started, in order to prove it's case, the prosecution adduced PW-1 informant Rajendra Singh (son of the deceased) PW-2 Jhaller Singh (eye witness of the incident and brother of the deceased), PW-3 Constable Santosh Kumar, (Scribe of Chik FIR), PW-4 Dr. P.K. Pandey (Autopsy Surgeon) and PW-5 Ram Swaroop Verma (Investigating Officer).

10. In support of oral version, following documents were filed and proved on behalf of the prosecution.

Written Report/Tehrir (Ex.Ka-1), First Information Report (Ex.Ka-2), G.D. of the registered case (Ex.Ka-3), Post Mortem Report (Ex.Ka-4), Inquest Report (Ex.Ka-5), Letter to C.M.O. (Ex.Ka-6), Sample Seal (Ex.Ka-7), Challan Nash (Ex.Ka-8), Photo Nash (Ex.Ka-9), Letter to C.M.O. sent by R.I. (Ex.Ka-10), Site Plan (Ex.Ka-11) Memo of taking blood stained and plain soil and four empty cartridges into possession (Ex.Ka-12), Memo of personal search and recovery of one DBBL Gun No. 11908 along with License No. 2528 and arrest of the accused (Ex.Ka-13), Site Plan of place of recovery of weapon of offence (Ex.Ka-14), Charge Sheets (Ex.Ka-15 and Ex. Ka-16) and Forensic Science Laboratory Report (Ex.Ka-17).

11. After the prosecution evidence was over, all adverse/ incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for their version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to them and said that the prosecution case is false, they are innocent and falsely implicated. Investigation was not done in fair and impartial manner.

12. The trial Court after having heard learned counsel for the parties and after going through the entire record, vide impugned judgment and order, convicted and sentenced the appellants-convicts under Section 302 IPC. Hence, feeling aggrieved with the said judgment and order, the appellants-convicts have filed the present criminal appeal.

13. Assailing the findings, learned Senior Counsel appearing for the appellants-convicts vehemently argued that the deceased Bhura Singh was having criminal history and was thus a man of bad character, therefore, he was murdered by someone else and the appellants-convicts have been falsely implicated in the present case. PW-1 and PW-2 both were not present on the spot and had not seen the incident. PW-2 has himself admitted in his cross-examination that he was not present on the spot and that is why he has not seen the injuries of the deceased. It has come in evidence that the concerned police station was situated prior to Vijaipur Hospital but the FIR was not registered promptly while bringing the deceased from the place of incident to Hospital, in the police station, which was on the way. The FIR has reached the concerned Magistrate on 15.10.2008 and thus, the FIR is anti timed and anti dated. There is inconsistency between the prosecution story

and the firearm injuries sustained by the deceased. The prosecution has not able to establish the place of incident. As per the prosecution story, four empty cartridges were recovered from the spot but the FSL report is clear that those empty cartridges did not match with the recovered DBBL guns, which were allegedly used by the appellants in the incident and were recovered as murder weapons, even one SBBL gun allegedly used in the alleged incident, was also not recovered, therefore, the prosecution has miserably failed to prove that the alleged murder weapons were used in the incident by the appellants. The learned trial Court has failed to appreciate that rifle was not used in the incident, therefore, the appellant Sunil Chandra Shukla did not share common intention to murder.

14. Lastly, it was argued that no specific role of any of the appellants has been assigned. All the appellants have been convicted under section 302 IPC, without aid of Section 34 IPC. For recording of conviction under Section 302 IPC, learned trial Court was bound to record a finding that which shot hit the deceased and at which part of his body. As the prosecution has failed to prove the same, therefore, the aforesaid judgment of conviction is bad in law. The learned trial Court has misinterpreted the evidence available on record. The prosecution has miserably failed to prove the charges against the appellants-convicts, however by misreading the evidence, the learned trial Court has wrongly convicted and sentenced the appellants-convicts.

15. Learned A.G.A. for the State and learned Senior Counsel for the informant vehemently opposed the submissions made on behalf of the appellants-convicts and submitted that the deceased purchased a fallen down house from one Awadhram and the appellants wanted to grab the same and got the land of this recently purchased house measured from one Advocate. When the deceased was talking to Ram Swaroop for the purpose of compromise regarding this recently purchased fallen house, the appellants came on spot and surrounded the deceased, who was at that time accompanied with his son (informant) and his elder brother Jhaller Singh. The deceased and both his companions tried to save their lives, then the appellants-convicts started indiscriminate firing from the roof of Ram Swaroop Singh. The prosecution has proved the motive behind this murder. Both the eye witnesses, i.e. the informant and Jhaller Singh were present on the spot and had seen the incident. Both the eye witnesses have been cross-examined at length, but their depositions as far as manner of incident are concerned, is consistent. The documentary as well as medical evidence clearly establishes that the deceased suffered ante-mortem firearm injuries and he finally succumbed to his ante-mortem firearm injuries.

16. It was argued that the depositions of PW-1 and PW-2 are fully reliable, which find corroboration from the medical evidence available on record. It has come on record that all the appellants came on the spot together and started indiscriminate firing, therefore, all the appellants shared a common intention to murder. There is no reason for false implication of the appellants in the present case. There is no inconsistency in the persecution version and the medical evidence, rather the depositions of PW-1 and PW-2 find full corroboration from the medical evidence available on record. The appellants have not denied the property dispute as well as the fact that the widowed daughter-in-law of Awadhram was working in the house of the appellants and even not a single suggestion has been given to the prosecution witnesses denying these facts.

17. It was lastly argued that FSL report is not helpful to the appellant as there is a possibility that actual murder weapons had not been recovered and that is why, the recovered weapons did not match with the recovered empty cartridges from the spot. The appellants-convicts have committed murder of the deceased with common intention and the learned trial Court while convicting the appellants has clearly stated so, in its conclusion recorded at page-24 of the impugned judgment. However inadvertently, section 34 IPC is missing. Section 34 IPC is not a substantive offence, thus, there is no merit in the appeal and learned A.G.A. as well as learned Senior Counsel for the informant, thus urged for dismissal of appeal.

18. In the light of above arguments, following questions arise for consideration of the present appeal.

1. Whether PW-1 and PW-2 were present on the spot at the time of incident and their depositions are reliable or not?

2. Whether there is any inconsistency in the prosecution version of the incident and the medical evidence of the deceased available on record.

3. Whether in the present case, the FIR can be said to be ante timed FIR or not?

4. Whether the Ballistic Report denying use of recovered firearm weapons, makes the prosecution story suspicious or not?

5. Whether the prosecution could be said to have proved it's case against the appellants-convicts beyond reasonable doubt?

ANALYSIS

ORAL EVIDENCE ON RECORD

19. In the present case, the prosecution has examined informant Rajendra Kumar PW-1 and Jhaller Singh PW-2 as eye witnesses of the incident. It is on the strength of depositions of these two eye witnesses clubbed with other evidence available on record, the learned trial Court has decided the case against the appellants-convicts. The evaluation of depositions of these two witnesses is very important to find out the involvement of appellants-convicts in the present incident. Therefore, the evaluation of their depositions will be dealt with later on in this judgment.

20. **PW-3 Constable Santosh Kumar** is a formal witness, who is scribe of the FIR. This witness has proved the FIR as Ex.Ka-2 and relevant G.D. as Ex.Ka-3. In his cross-examination, this witness has stated that the FIR was received in the Court concerned on 15.10.2008. No other FIR was registered on 11.10.2008.

21. **PW-4 Dr. P.K. Pandey**, Autopsy Surgeon has conducted the autopsy of the deceased Bhura Singh on 12.10.2008 and has proved post mortem report as Ex.Ka-4. The Autopsy Surgeon found following two multiple firearm injuries on his person:

(i) Multiple firearm entry wounds in an area of 40 x 30 cm, which were from below the neck to the chest and abdomen.

(ii) Multiple firearm wounds in an area of 6 x 18 cm on the left arm. Six small metal pellets were recovered from the body, which were sent to S.S.P., through the C.M.S.

22. This witness (PW-4) stated in his examination-in-chief that the age of the deceased was about 48 years. The deceased was of average height and build. Post-mortem rigor mortis had passed from the upper part and was passing from the lower part; the mouth was closed and the eyes were opened. In internal examination, one and half liters of blood and clots were found between the lung membranes. Heart was found empty. There was a hole in the heart membrane. Both lungs were pale. There was a hole in the left ventricle of the heart and one pellet was recovered from inside it. The brain and brain membranes were pale (congested). In the opinion of this Autopsy Surgeon, the cause of death was shock and hemorrhage due to ante-mortem firearm injuries and the time of death was one day before the incident. He further deposed that it is possible that the deceased could have died on 11.10.2008. at 4:00 pm from fire arm injuries.

23. In his cross-examination, this witness (PW-4) has stated that there could be difference of 4-6 hours in the time of death. The deceased could have died around 8:00 pm on 11.10.2008. All injuries of the deceased were on the front part of his body and therefore, injuries have been inflicted from the front side. These ante-mortem injuries must have been inflicted at-least from the distance of more than one meter. He cannot tell whether all injuries of the deceased could have been caused even by a single fire. The direction regarding firearm injuries has not been stated; an expert can tell this. The deceased must have eaten food within 6 hours of his death.

24. From the deposition of this witness (PW-4), it is clear that the deceased sustained two ante-mortem firearm injuries on his two different parts of the body, one firearm injury was on his chest and abdomen portion and other injury was on his left arm. One pellet was also recovered by the Autopsy Surgeon from the left ventricle of the heart. A total of six small pellets were finally recovered from the body of the deceased, which were sent to S.S.P. and those pellets were also sent to Forensic Science Laboratory for examination. **Therefore, from the deposition of this Autopsy Surgeon, it is clear that the deceased (Bhura Singh) sustained two firearm injuries on left side of his body. The deceased could have sustained these injuries at the time of incident and he finally succumbed to his firearm injuries.**

25. **The then S.O. Swaroop Verma** was the Investigating Officer, who has been examined as PW-5 and he in his examination-in-chief has deposed regarding investigation done by him. This witness has proved the inquest report and other police papers as Ex.Ka-5 to Ka-10. This witness has also proved various other prosecution papers like site plan, various recovery memos, charge sheets etc. as Exs. Ka-11 to Ka-16. The evidence related to this case was also sent by him to Forensic Science Laboratory, Lucknow for examination. He proved FSL report as Ex.Ka-17. He also proved one DBBL gun bearing No. 11908, which was recovered from the possession of accused Anil Kumar Shukla as Material Ex-1 and other gun of accused Akhilesh Chandra Shukla bearing No. 18755 as Material Ex-2. He also proved one plastic wad as Material Ex.3, four empty 12 bore cartridges (red-coloured, 'K F Special make with brass base) as Material Exs. 4, 5, 6 and 7. He also proved one sealed tin box containing plain soil as Material Ex.-8 and other containing blood stained soil as Material Ex.9. This witness has also been cross-examined at length. **He stated that as per the FIR, the informant Rajendra Kumar and Jhaller Singh both were the eye**

witnesses of the incident and both these witnesses were also present at the time of inquest, however, he has not made them witness of inquest. He conducted the inquest proceedings in Vijaipur Hospital. It is wrong to state that Written Report/Tehrir was prepared later on as anti timed and anti dated with his consultation. The place of incident is near Dharamshala. He has shown the spot from where he took plain soil and blood stained soil from bricks (this spot has been shown as pile of bricks near point 'B' in the site plan). It was mentioned in the FIR that licensee rifle of Ram Swaroop was used in the incident, however, the same was found to be false. In the FIR, use of SBBL gun of accused Dinesh Chandra Shukla was mentioned, however, during the course of investigation, he came to know that the aforesaid licensee SBBL gun of accused Dinesh Chandra Shukla was already deposited. The deceased was having criminal history, which has been recorded by him in the Case Diary. It is wrong to state that he has not conducted fair investigation in the matter. It is also wrong to state that he has filed false charge sheet against the accused.

Question No.1. Whether PW-1 and PW-2 were present on the spot at the time of incident and their depositions are reliable or not?

26. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365**, held the law in following words:

"Appreciation of oral evidence

25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the

accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

27. The Hon'ble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537**, explained that:

"19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a 'partisan' or 'interested' witness may lead to failure of justice. It is well known that principle 'falsus in uno, falsus in omnibus' has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

31. As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.

32. We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could

not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully.

28. In the light of above well settled legal position regarding appreciation of oral evidence of eye-witnesses, we shall now be evaluating the depositions of PW-1 Rajendra Kumar and PW-2 Jhaller Singh.

29. **PW-1 the informant Rajendra Singh** in his examination-in-chief has stated that his father has got a sale deed of the house and plot executed from Awadhram on 07.10.2008. The aforesaid house and plot is situated in front the house of Ram Swaroop Singh and Awadhram used to live therein alongwith his family. During rain, the said house fell down because of which, Awadhram started to live in another house. Awardhram's widowed daughter-in-law Rupa Devi used to live in the aforesaid house regarding which, sale deed was executed by Awadhram, all the accused used to provide shelter to Rupa Devi and she also used to work in the houses of accused Dinesh Chandra etc. Awadhram was also having 6-7 bighas of agricultural land and accused wanted that after his death, agricultural land and house would come in the name of Rupa Devi and they will take these from Rupa Devi. For this reason, all the accused alongwith Rupa Devi got a measurement of the aforesaid house and plot from Advocate Akhilesh Chandra Shukla and talked about filing of a civil suit. On this, they suspected that they would not get the possession of the house mentioned in the sale deed and their money would be lost, therefore, informant, his father and his uncle (called as 'Dada') Jhaller Singh went to Ram Swaroop Singh for a compromise. Ram Swaroop Singh was having acquaintance and good relations/rapport with Dinesh Chandra and that is why they had gone to Ram Swaroop.

30. PW-1 further stated that they were talking with Ram Swaroop Singh in front of door of his house, then accused Dinesh Chandra Shukla, carrying single barrel gun, Akhilesh Chandra Shukla, carrying double barrel gun, Anil Kumar Shukla, carrying a double barrel gun and Sunil Kumar Shukla, carrying a rifle in their hands, came there and exhorted to kill them and also said that they (informant's side) should not be allowed to escape. Seeing themselves surrounded, they all ran towards Dharamshala and then aforesaid four accused climbed onto the roof of Ram Swaroop Singh's house and reached near the corner of the roof and started indiscriminate firing. When these peoples were firing, then he and his grandfather hid behind the wall of Bhagat Singh's house. **His father was on the road at southern-western corner of Bhagat Singh's house, where he was shot.** After his father was shot, they took his father to Vijaipur Hospital in an injured condition on a motor-cycle and he died upon reaching the Hospital.

31. PW-1 further stated that he got scribed the Written Report/Tehrir from Neeraj Singh and presented the same in the police station on the same day. He proved the Written Report/Tehrir as Ex.Ka-1. The said incident had happened at 4:00 pm on 11.10.2008. After this incident, case for the house and plot related to the sale deed, was filed in the Munsif Court, Khaga, which is still pending. Accused Akhilesh Chandra Shukla was convicted under Section 302 IPC in a case of Khaga. Accused Dinesh Chandra Shukla was also sentenced to five years imprisonment in a case under Section 307 IPC, Police Station Kishunpur. He and his uncle (PW-2) have witnessed the said

incident. The Investigating Officer recovered blood stained, plain soil and four empty cartridges 12-bore from the spot and recovery memo was prepared and his signature was obtained on the same. The aforesaid recovery memo is available on record.

32. The examination-in-chief of this witness was recorded on 17.05.2010, however on an adjournment application of the defence, cross-examination of this witness was deferred for the next day. This witness was cross-examined on 19.05.2010 and 20.05.2010. In his cross-examination, this witness denied having knowledge that how many criminal cases were pending against his father. This witness denied the defence suggestion that the alleged incident had happened at a different time, in different situation and at a different place. He stated that they went to Ram Swaroop Singh for a compromise. He cannot tell that why the aforesaid fact is not written by the Investigating Officer in his statement. Rupa Devi is the wife of Madhurendra and is having one son and one daughter at the time of incident. She was residing in the house in question alongwith her children much before the execution of the sale deed. They went to Ram Swaroop for a compromise. The fact of compromise was not decided before hand and it is not that the accused fired during compromise. The place where the compromise was being talked, was shown to the Investigating Officer at the time of spot inspection. The Investigating Officer had done the spot inspection and had prepared the map at the same time. **There is an old Neem tree at the door of Ram Swaroop and charpai, takhat, etc. are not kept under it. The door of Ram Swaroop's house faces the east.** It was the month of October and was not dark at all. The discussion regarding compromise was not going on inside the house of Ram Swaroop, however, it was going on outside of his house.

33. **PW-1 further stated in his cross-examination that the place where the compromise was being discussed was situated at the distance of 10-12 feet south from the main door of Ram Swaroop. The aforesaid fact narrated by this witness in his cross-examination corroborates site plan (Ex.Ka-11) of the place of incident.** It has been shown in site plan (Ex.Ka-11) that the main door of the house of Ram Swaroop is situated on eastern direction and discussions were going on at some distance in southern direction from his main door. He further deposed that he got written in his report that at the time of incident, Sunil Kumar was carrying licensee rifle of Ram Swaroop Singh and had fired. He got written this in Written Report/Tehrir on the basis of suspicion. His father was not injured by the rifle as it hit the ground. He had got written the fact of rifle in the Written Report/Tehrir on the basis of suspicion that is why it was put in bracket. Except for the above matters, he did not write anything in his report on the basis of suspicion. Where they were standing the house of Bhagat Singh was approximately 25-30 steps to the south and Bhagat Singh's door opens in front of Ram Swaroop's house (this fact also corroborate the site plan). He further confirmed door of Bhagat Singh will be 20-25 steps to the south from the place, where they were standing and talking about the compromise. Bhagat Singh has a quite long and wide house. Adjacent to western wall of Bhagat Singh's house is the residential house of Sushil Kumar Singh. The path adjacent to the south of Sushil Kumar's house, is to the east-west. To the south of Sushil Kumar's house is Chavi Nath Maurya's house, to the east-south of Chavi Nath Maurya's house is the Dharamshala. This Dharamshala is longer in the east-west direction and it's door open in the north direction, i.e., towards the back of Bhagat Singh's house. A path goes east-west between Bhagat Singh's southern wall and the Dharamshala, it was behind this southern wall that he and his uncle hid at the time of incident. They were hiding at the southern corner of Bhagat Singh's house

and he had shown this place to the Investigating Officer. These facts also corroborates the site plan (Ex.Ka-11).

34. PW-1 further stated in his cross-examination that when they were running, he was leading, his uncle was behind him and his father was behind his uncle. **His father was shot, while standing.** He and his uncle were sitting at that time. They were sitting two steps behind the corner of the southern wall of Bhagat Singh's house. In total, 5-6 shots were fired from the roof of the spot, i.e. the place of incident. There was parapet on the south side of the roof of Ram Swaroop Singh's house and accused fired from two steps away from this parapet, however, neither he nor his uncle has received any injury because there was a wall between them, which belongs to Bhagat Singh. After getting injured, his father fell on his right side. He did not take his father to his home from the spot, but he took him to Vijaipur Hospital. He and his uncle took his father to the Hospital on motorcycle from the murder spot. Four empty cartridges of 12-bore were recovered from the spot. He signed the recovery memo.

35. We have carefully perused the whole deposition of this witness. He (PW-1) has been extensively cross-examined on two different dates. The deposition of this witness as far as date, time, place and manner of incident is concerned, is consistent in both his cross-examination as well as examination-in-chief. This witness was cross-examined at length as far as place of incident is concerned, he has answered all the questions relating to the place of incident including various houses, directions of various pathways on the spot and he has answered every question in his cross-examination very precisely and his answer qua place of incident, fully corroborates the contents of site plan. The manner of incident is also fully corroborated by the particulars mentioned in the site plan. It has been clearly shown in the site plan (Ex.Ka-11) that when they were talking to Ram Swaroop, they were standing at point 'A' from where they ran towards southern direction and took shelter of southern wall of Bhagat Singh's house. In front of southern wall of Bhagat Singh's house, a Dharamshala is situated. He has clearly depicted the position of houses of Bhagat Singh, Sushil Kumar Singh and Chavi Nath Maurya. He has also clearly depicted the position of point 'A' from the main door of Ram Swaroop. It is clearly shown in the site plan that this witness and his uncle were sitting at point 'C' and 'D' at the time of indiscriminate firing and his father was at point 'B' at the time, when he was shot. There is no contradiction in his whole deposition regarding the date, time, place and manner of incident. The documentary as well as ocular medical evidence also corroborates the deposition of this witness that the deceased sustained ante-mortem firearm injuries at the time of incident. **As his deposition is consistent, therefore, we are of the considered opinion that this witness was present on the spot at the time of incident and had seen the incident. This witness has narrated the whole incident and we find his deposition a reliable one.**

36. **PW-2 Jhaller Singh** in his examination-in-chief has stated that his brother Bhura Singh got a sale deed of a fallen down ruined house of Awadhram on 7.10.2008. This ruined house was situated in front of Ram Swaroop Singh's house. Before this incident, Awadhram had moved to another house. Rupa Devi is the daughter-in-law of Awadhram, who is a widow. Dinesh Chandra and Akhilesh Chandra used to give her (Rupa Devi) protection. They earlier wanted to take Awadhram's house by coaxing and misleading Rupa Devi. Rupa Devi used to do household work at the accused's house. The incident is dated 11.10.2008 and time of incident was about 4:00-4:15 pm.

The said accused got measurement of the ruined house from a lawyer and when his brother came to know about this fact, then he and his brother Bhura Singh and son of Bhura Singh, (Rajendra Singh) went together to the accused's benefactor Ram Swaroop Singh for the reason that accused were measuring the aforesaid recently purchased ruined house. As soon as they reached to Ram Swaroop and started talking, then at that very moment, Dinesh Chandra armed with a single barrel gun, Akhilesh Chandra armed with a double barrel bun, Anil Kumar armed with a double barrel gun and Sunil Kumar armed with a rifle arrived there and challenged them that they shall not be allowed to escape and exhorted to kill them. After this, when they saw themselves surrounded, then they ran towards the southern direction towards the Dharamshala from the south-west side of Shyam Sundar's house, then the accused entered Ram Swaroop's house, climbed onto the roof and all four accused started firing simultaneously. The pellets from the fire hit Bhura Singh due to which, Bhura Singh fell at that very spot. They (PW-2 and PW-1) were hiding behind Bhagat Singh's wall. Seeing Bhura Singh fall, they ran towards their home and took Rajendra Singh's motorcycle. Thereafter, he (PW-2) and Rajendra (PW-1) took Bhura to Vijaipur Hospital. The accused had already fled away from the spot, after shooting. As soon as they took Bhura Singh on the motorcycle in front of the hospital, he breathed his last. Thereafter, they (PW-1, PW-2 and Neeraj) went straightway to the police station and Written Report/Tehrir was prepared. Inquest report of his brother Bhura was prepared in his presence. Dinesh Chandra is a convict under Section 307 IPC and Akhilesh Chandra is a convict under Section 302 IPC.

37. The examination-in-chief of PW-2 was recorded on 16.12.2010 and his cross-examination was deferred on the request of defence and he was cross-examined at length on 18.12.2010. In his cross-examination, this witness stated that he is also known by another name Abhilash Singh and they are four brothers, he is eldest and thereafter Bhura Singh (who is the deceased) and whose other name is Shiv Saran Singh. Shiv Baran Singh alias @ Bhullu Singh is his third brother and the name of his fourth brother is Shiv Shankar Singh. **The aforesaid statement makes it clear that this witness is elder brother of the deceased and that is why son of the deceased PW-1 calls this witness as Dada meaning thereby as Tau (i.e. uncle).** He also denied having any knowledge that his brother Bhura Singh had gone to jail several times in several criminal cases. His brother Bhura Singh got a sale deed of Awadhram's house in his name, just four days before the incident. He had seen the aforesaid house, at that time, one room was built in the said house and rest of the house had fallen down. At the time of incident, no one was living therein and Awadhram was alive. Awadhram has three sons, the eldest son's name is Ayodhya, the second's name is Madhurendra and the third's name is Surendra. Rupa Devi's husband was Madhuredra. People told me that accused got measured the land relating to aforesaid sale deed from an Advocate, that is why he stated so in his examination-in-chief.

38. **He (PW-2) stated in his cross-examination that this incident happened in the south direction from Shyam Sunder's house from the place of incident. There was a temple 15-20 feet ahead. From the temple, this incident happened on the way to the north. This path goes from north to south and the temple is situated in the southern side of this path. The incident happened on this path. The aforesaid particulars qua the place of incident, narrated by this witness in his cross-examination finds corroboration from site plan (Ex.Ka-11)**

39. This witness further stated in his cross-examination that he had seen and heard the sound of the fire. At that time, his face was towards the south and Rajendra was also standing at that time. **The deceased Bhura Singh was ten paces south to him. Rajendra was five paces south of Bhura Singh. At the time of fire, Rajendra Singh's face was towards the south and Bhura Singh's face was towards the west. These fires came from the west direction.** The place from where the fire came and where the fire hit, there was a house in between. The fire of rifle did not hit Bhura Singh. Pellets came out from his body and one of the accused had a rifle, but he cannot say that whose rifle it was. At the time of incident, whether Ram Swaroop had a rifle or not, he do not know. He cannot say that whether rifle used in this incident was licensed or not. There is only one house of Ram Swaroop in the village, which has two main doors, both open towards the east direction. The distance between these two doors was about 25-30 feet. **There is also a Neem tree at Ram Swaroop's door.** It was not written in the report that the accused climbed onto the roof of Ram Swaroop's house and fired, which fire hit Bhura Singh. **He had not seen injuries of Bhura Singh. He cannot say whether blood was found on the ground or not, when the Investigating Officer visited, because he was not present on the spot at that time.** The police came to the village after the incident. The distance between Vijaipur outpost and the Hospital was about 40 feet. The Police Station Kishunpur is situated at the distance of 8 km from Vijaipur. It is wrong to state that he had not seen any incident. It is also wrong to state that his brother sustained injuries at some other places, at some other time and in different circumstances. It is also wrong to state that no one had seen the incident.

40. Thus, both PW-1 and PW-2 have been cross-examined regarding the place of incident and they have answered all the questions and description of place of incident finds full corroboration from the site plan prepared by the Investigating Officer. The incident started at place 'A', where the deceased and his family members were surrounded by the appellants, thereafter they ran towards southern direction and PW-1 and PW-2 took shelter of wall of Bhagat Singh' house. The deceased was behind PW-1 and PW-2 and was at point 'B' when he was shot. However, PW-1 and PW-2 were at point 'C' and 'D' shown in the site plan. All the particulars of the houses and the pathways shown in the site plan have been fully corroborated by these two witnesses in their depositions. **Therefore, the prosecution has successfully established the place of incident, which started from point 'A' and culminated at point 'B' (as shown in site plan (Ex.Ka-11), where the deceased was shot.**

41. It was argued that PW-2 in his cross-examination has stated that he had not seen the injuries of the deceased as he was not present at the spot. We have carefully perused this part of deposition of PW-2. The above paragraph as recorded in page-10 of the deposition of PW-2 cannot be read together to reach on aforesaid proposed conclusion. This paragraph consists of several lines. Learned Defence Counsel has first asked the question whether this witness had seen the injuries of the deceased or not. To this question, this witness has clearly stated that he had not seen the injuries of the deceased. Thereafter, learned Defence Counsel asked altogether different question regarding another aspect that whether he can tell that the Investigating Officer found any blood from the ground or not. On this specific question, this witness has clearly answered that as he was not present at that time (.i.e. time of spot inspection) on spot, therefore, he cannot tell that Investigating Officer found any blood from the spot or not. Lastly, this witness has answered that he had not seen that any gun shot struck on any wall, roof etc or not. The answer that he was not

present on the spot specifically relates to visit of the Investigating Officer on the spot after the incident, therefore, the answer to this question cannot be related to the answer where witness specifically stated that he had not seen the injuries of the deceased. The learned trial Court in its judgment has also dealt with this specific aspect and the trial Court also came to the conclusion that second statement relates to the visit of Investigating Officer after the incident. The above conclusion of trial Court is well reasoned and supported by the evidence available on record. Therefore, it cannot be said that he was not the eye witness of the incident. **In our considered opinion, PW-2 is an eye witness of the incident, who has consistently deposed regarding the date, time, place and manner of incident.**

42. The deposition of this witness (PW-2) as far as date, time place and manner of incident is concerned, remained consistent throughout. Inspite of extensive cross-examination, the defence failed to bring out any fact in his cross-examination, which makes the presence of this witness on spot suspicious one. This witness was present at the time of incident and had narrated the same. The particulars stated by this witness regarding the place of incident find corroboration from the site plan (Ex.Ka-11) also. **We have carefully gone through the deposition of this witness and found that he was present on spot at the time of incident and his deposition is a reliable one.**

43. It was strenuously argued by the learned counsel for the appellant that P.W.1 and P.W.2 inspite of being eye witnesses and also inspite of being present on spot at the time of inquest proceedings, had not signed police papers including the inquest report, therefore, they are not the eye witnesses and were not present on the spot. There is no requirement of law that an eyewitness, who if present on the spot at the time of inquest proceedings, is required to sign the inquest report and other recovery memos so as to prove his presence on the spot as well as to prove that he is an eye witness of the incident.

44. Hon'ble Supreme Court in **Brahm Swaroop and Another Vs. State of U.P., A.I.R. 2011 Supreme Court 280** in para 7 of this judgment has categorically held that evidence of eye witnesses cannot be discarded, if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of inquest. The whole purpose of preparing an inquest report is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. The object of the proceedings under Section 174 Cr.P.C. is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and if so, what was its apparent cause.

45. Similarly, Hon'ble Supreme Court in **Radha Mohan Singh Vs. State of U.P., (2006) 2 SCC 450** in para 15 has clearly held that an investigation under Section 174 Cr.P.C. is limited in scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. In **Shakila Khader v. Nausher Gama AIR 1975 SC 1324** the contention raised that non-mention of a person's name in the inquest report would show that he was not an eye

witness of the incident was repelled on the ground that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in **Eqbal Baig v. State of Andhra Pradesh, AIR 1987 SC 923,** that the non-mention of name of an eye-witness in the inquest report could not be a ground to reject his testimony. The view taken in **Podda Narayan v. State of A.P. (supra)** was approved by a three-Judge **Bench in Khujji @ Surendra Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853** and it was held that the testimony of an eye-witness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eye-witness. **Therefore, the contention of learned counsel for the appellants that P.W.1 and P.W.2 are not the eyewitnesses as they have not signed the inquest report or other police papers, is wholly devoid of merit.**

46. PW-1 in his deposition has clearly stated that when the Investigating Officer arrived at Vijaipur Hospital, at that time, he alongwith PW-2 and other family members were present. Even PW-2 has clearly stated in his examination-in-chief that the inquest was conducted in his presence. Therefore, we find no force in the arguments so raised by the learned counsel for the appellants and in our considered opinion, both PW-1 and PW-2 are the eye witnesses of the incident and their depositions cannot be thrown on the ground that inspite of both these witnesses being eye witnesses, they were not the witnesses to the inquest report. **Therefore, we find that both PW-1 and PW-2 were present on the spot at the time of incident and are reliable eye witnesses. Thus, Question No. 1 is answered in 'Affirmative'.**

Question No. 2. Whether there is any inconsistency in the prosecution version of the incident and the medical evidence of the deceased available on record.

47. It was argued that there is inconsistency in the prosecution version of the incident and the medical evidence, while relying upon the fact that alleged gun shot injuries were sustained by the deceased from front side, while running away from the assailants. The learned trial Court has dealt with this aspect at page-20 of the judgment. PW-1 and PW-2 both have consistently deposed that when they all (i.e. PW-1, PW-2 and the deceased) ran to save their lives, the deceased was in the last. PW-1 and PW-2 were running fast and took protection of the southern wall of Bhagat Singh's house. The deceased was running behind and had arrived near the southern corner of Bhagat Singh's house. PW-2 in his cross-examination has clearly stated that when shot hit his brother Bhura, his (the deceased's) face was towards west and fires were coming from western direction. At this particular point of time, it is clear that PW-1 and PW-2 had already taken shelter of southern wall of Bhagat Singh's house, however the deceased was little behind and had merely reached near the western-southern corner of Bhagat Singh's house. It is quite possible that at this point of time, he might have looked backward to find out that whether he is out of firing range of the assailants or not. This possibility is strengthen by the statement of PW-1 that at that time, the deceased's face was in the western direction and shots were coming from western direction and at that time, shots fired by the assailants hit the deceased. We have carefully perused the site plan (Ex.Ka-11) and found that the deceased was at point 'B' and was not yet fully protected from southern wall of Bhagat Singh. He was just looking back when his face was in the western direction, a shot hit him

while turning back, his left front side became open and that is why, shots struck on his left side of chest and left front hand. Therefore, we are of the considered opinion that there is no inconsistency in the prosecution version of the incident as well as medical evidence available on record. We find strength from the judgment of Apex Court in **State of Bihar v. Ram Padarath Singh (1998) 6 SCC 240,** where Apex Court has observed at page 246 in para 9 as under:

"9. The High Court also observed that it was not believable that Mangal had the courage to turn back and see what the assailants were doing after they had killed Boudhu. ***What the High Court failed to appreciate was that it was not a matter of courage but it was the instinct of self-preservation which could have prompted Mangal to look back, as he was also being chased. His brother was chased and beaten by the accused who were sworn enemies. It was for that reason that he had started running away from that place. It was therefore not only probable but quite natural for him after covering some distance to look back to find out whether he was being chased or not. Therefore, the evidence of the eyewitnesses that while running away Mangal was shouting 'bachao bachao' and the shot fired by Dilip had hit him on his thigh, when he had turned back for a moment while running, was really not inconsistent with the medical evidence and deserved to be accepted."***

Thus Question No. 2 is answered in 'Negative'.

Question No. 3. Whether in the present case, the FIR can be said to be ante timed FIR or not?

48. It was vehemently argued that the FIR is anti timed and anti dated. To press this argument, learned counsel for the appellants submitted that the FIR has been seen by the learned Chief Judicial Magistrate on 15.10.2008, meaning thereby that the FIR has been registered at a later date and later time.

49. The Apex Court in **Jafel Biswas v. State of W.B. (2019) 12 SCC 560** at page 565 in para 18 has reiterated the purpose and scope of Section 157 Cr.P.C. as under:

"18. In State of Rajasthan [State of Rajasthan v. Daud Khan, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] in paras 27 and 28, this Court has laid down as follows: (SCC pp. 620-21)

"27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of U.P. [Sheo Shankar Singh v. State of U.P., (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows: (SCC pp. 549-50, para 31)

31. In this context, we would like to refer to a recent decision of this Court in Sandeep v. State of U.P. [Sandeep v. State of U.P., (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62: (SCC p. 132)

"62. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh v. State of Punjab [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR

and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

28. It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR 'forthwith' ensures that there is no manipulation or interpolation in the FIR. [Sudarshan v. State of Maharashtra, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. [Meharaj Singh v. State of U.P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. Rattiram v. State of M.P., (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635"

50. Therefore, in cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground. In every case, from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown. On delayed dispatch of FIR, some prejudice has to be proved by accused.

51. The Apex Court in **Mehraj Singh V. State of UP (1994) 5 SCC 188**, at page 195 in para 12 has observed as under:

"12. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report."

52. The Allahabad High Court in **Rampal Singh and Others V. State of UP 2021 SCC OnLine All 195** has observed that two external tests had been relied in **Mehraj Singh v. State of U.P.; (1994) 5 SCC 188**. First external test is the report sent to the magistrate under Section 157 Cr.P.C. and the second external test is the copy of the FIR sent with the dead body, for postmortem examination and its reference on the inquest report.

53. The Apex Court in **Rama Devi v. State of Bihar (2024) 10 SCC 462** addressing the same principle has clearly observed that it is trite law that a delay in forwarding the FIR to the

jurisdictional Magistrate is not fatal to the prosecution case. When there is a delay in forwarding the FIR to the jurisdictional Magistrate and the accused raises a specific contention regarding the same, they must demonstrate how this delay has prejudiced their case. Mere delay by itself is not sufficient to discard and disbelieve the case of the prosecution. If the investigation starts in right earnest and there is sufficient material on record to show that the accused were named and pinpointed, the prosecution case can be accepted when evidence implicates the accused. The requirement to dispatch and serve a copy of the FIR to the jurisdictional Magistrate is an external check against ante dating or ante timing of the FIR to ensure that there is no manipulation or interpolation in the FIR. If the court finds the witnesses to be truthful and credible, the lack of a cogent explanation for the delay may not be regarded as detrimental.

54. In the light of above well settled proposition of law, we have carefully perused the oral and documentary evidence with regard to the date and time of registration of the FIR (Ex.Ka-2). A perusal of the FIR, (Ex.Ka-2) reveals that same was registered at 17:30 pm on 11.10.2008. It is also clear that the aforesaid FIR was sent through post from the police station and the concerned Circle Officer had ordered to send the aforesaid FIR to the Court concerned on 12.10.2008. Although, the Circle Officer has made his signature in blue ink and had not recorded the date in blue ink, but order, designation and date have been written in red ink. The date is clearly legible to be 12.10.2008. The informant Rajendra Kumar PW-1 in his deposition has clearly stated that from the spot, he and his uncle took the victim to Vijaipur Hospital, where his father died upon reaching the Hospital. Thereafter, he got scribed Written Report/Tehrir (Ex.Ka-1) and got registered the FIR (Ex.Ka-2). He has clearly stated that the aforesaid incident had happened on 4:00 pm on 11.10.2008. This witness has been extensively cross-examined, however, his deposition as far as, these two above facts are concerned, remains uncontroverted. The brother of the deceased and uncle of the informant Jhaller Singh @ Abhilash Singh PW-2 has also deposed on the similar lines. The depositions of both these witnesses, are consistent and corroborative to each other depositions. A perusal of the Written Report/Tehrir (Ex.Ka-1) also reveals that both these witnesses took the deceased to Vijaipur Hospital from the spot and when they arrived at Hospital, victim died just after reaching the Hospital. Thereafter, they went to the concerned police station and aforesaid Written Report/Tehrir was scribed and FIR was registered. The concerned police station is situated at a distance of 14 km from the place of incident. The informant PW-1 and PW-2 firstly travelled to Vijaipur Hospital and thereafter they went to the concerned police station for registration of the FIR.

55. It was argued that instead of promptly lodging the FIR first in the concerned police station, which was situated prior to Vijaipur Hospital, the deceased was taken to the Hospital, therefore, on this ground, the FIR was also said to be ante timed. There is no force in the argument so raised by the learned counsel for the appellants, because after some incident, when victim sustains some grievous injuries, in that eventuality, saving of life of the victim is far more important than lodging the FIR, specially when family members of the victim are there. It is their (family members) foremost duty to make all efforts to save the life of victim. Therefore, there is nothing suspicious in bringing the victim first to Vijaipur Hospital, before lodging of the FIR. As the time of incident is about 4:00 pm and FIR has been registered at 5:30 pm, therefore, there seems to be no delay in lodging the FIR. From the chronology of the above events, it is clear that victim was firstly taken to

Vijaipur Hospital and only thereafter the informant reached the concerned police station for lodging the FIR. In our considered opinion, the FIR has been promptly lodged.

56. It was vehemently argued that FIR was received in the office of learned Chief Judicial Magistrate on 15.10.2008, therefore, FIR is anti timed and anti dated. However, we have perused the inquest report (Ex.Ka-5). A perusal of the inquest report (Ex.Ka-5) reveals that the concerned S.H.O. started the inquest on 11.10.2008 at 18:45 pm and concluded at 19:45 pm on same day. The inquest proceedings were conducted on the same day in Vijaipur Hospital, which was situated at the distance of 6 km from the concerned police station. The case crime number and sections, under which the FIR has been registered, are clearly written on the top of Ex.Ka-5. After inquest, Letter to CMO (Ex.Ka-6), Sample Seal (Ex.Ka-7), Challan Nash (Ex.Ka-8) and Photo Nash (Ex.Ka-9) were prepared by the Investigating Officer, the then S.O. on 11.10.2008 with case crime number, sections of IPC. The G.D. (Ex.Ka-3), wherein details of case crime number and sections under which crime has been registered with brief description of contents of Written Report/Tehrir, was also recorded. All these documents were produced before the Autopsy Surgeon, at the time of conducting the post mortem examination of the deceased and have been signed by him with his stamp and date. The post mortem examination of the deceased was conducted on 12.10.2008, meaning thereby that all those documents were clearly available at the time of post mortem examination of the deceased. Therefore, only on the ground that FIR was allegedly received in the office of learned CJM on 15.10.2008, does not make the FIR as anti timed and anti dated. In out considered opinion, the FIR has been promptly lodged, there is no delay in lodging the same and the same cannot be treated as anti timed and anti dated. Moreover, the prompt and early reporting of the incident by PW-1 to the police with all vivid details gives an assurance regarding truth of his version of incident. **Question No.3 is answered in 'Negative'.**

Question No. 4. Whether the Ballistic Report denying use of recovered firearm weapons, makes the prosecution story suspicious or not?

57. Lastly, it was argued that FSL report has denied the use of recovered firearms in the incident. As per the prosecution story, the licensed guns, (which were used in the incident) were recovered and four empty cartridges 12-bore were recovered from the spot, but FSL report is categorically clear that three 12-bore empty cartridges recovered from the spot, were not fired from two DBBL guns (which were recovered from two of the appellants) and as far as fourth 12-bore empty cartridge is concerned, there was no sufficient individual characteristics to make a comparison with recovered DBBL guns. We have carefully perused the FSL report available on record. It is true that FSL report does not support the use of recovered guns as far as three 12- bore empty cartridges recovered from the spot is concerned, however, fourth empty cartridge could not be compared for lack of sufficient characteristics, therefore, there is no definite opinion regarding this regarding this fourth empty cartridge. However, the aforesaid FSL report is clear that all the four empty cartridges were cartridges of some firearm. Moreover, six pellets recovered from the body of the deceased, were also sent for FSL examination and finding number three of FSL report clearly states that those pellets are small deformed lead pellets, which appear to be fired pellets, meaning thereby that the aforesaid pellets recovered from the body of the deceased, were actually fired from some firearm and this part of FSL report supports the prosecution story to this extent.

58. At this juncture, we would like to cite some case laws of Hon'ble Apex Court . In **Vineet Kumar Chauhan v. State of U.P. (2007) 14 SCC 660**, at page 664 in para 11 while affirming the ratio laid down in **Gurcharan Singh v. State of Punjab AIR 1963 SC 340,** it has been observed that:

"11. It cannot be laid down as a general proposition that in every case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a ballistic expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by the post-mortem notes is consistent with the direct evidence, the examination of ballistic expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence."

Furthermore the Apex Court in para 13 of this judgment has also observed that:

"13. In the instant case, having regard to the ocular evidence adduced by the prosecution, there is no reason to discard the prosecution theory that the injury as a result whereof Smt Premwati suffered complete paralysis of both the lower limbs, etc. was caused by a bullet fired from a revolver. The nature of the injury as proved by Dr. P.S. Ahlawat (PW 5), under whose treatment the deceased remained at Moradabad and Dr. S.P. Singh (PW 7), who had conducted the post-mortem examination is wholly consistent with the prosecution version. It is clear that the bullet recovered by PW 7 at the time of post-mortem of the victim had traversed to thoracic spine through the neck from the face near the angle of the jaw, hitting the fifth thoracic vertebra, badly damaging the underlying spinal cord. ***We are therefore, of the view that on the facts of the present case the absence of ballistic expert's evidence is not fatal to the case of the prosecution, notwithstanding the fact that the forensic science laboratory in its report dated 18-2-1991 had not expressed a definite opinion about the bullet recovered from the place of occurrence."***

59. **The Apex Court in Rakesh and Another V. State of UP (2021) 7 SCC 188, has observed that so far as the submission on behalf of the accused that as per the ballistic report, the bullet found, does not match with fire-arm/gun recovered and therefore, use of gun as alleged is doubtful and therefore, benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore, the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW-1 and PW- 2.**

60. In the light of above proposition of law, we have carefully perused the depositions of eye witnesses, and in the present case, the depositions of PW-1 and PW-2 are consistent that two DBBL guns, one SBBL gun and one rifle were used in the incident, however as the appellants had licensee guns, therefore, it was easy for PW-1 and PW-2 to presume that assailants licensee guns have been used in the incident. It has also come on record that in the FIR it was mentioned that

appellant Sunil Kumar Shukla was carrying Ram Swaroop's licensee rifle, however, PW-1 and PW-2 have clearly stated in their depositions that aforesaid fact was got written in the Written Report/Tehrir on the basis of suspicion. During the course of the investigation, it was found by the Investigating Officer that the aforesaid licensee rifle of Ram Swaroop was not involved in the crime. The Investigating Officer also found that DBBL gun of appellant Dinesh Chandra Shukla was already deposited before the crime. Therefore, only two DBBL guns were recovered, which were licensee guns of Akhilesh Shukla and Anil Kumar Shukla.

61. The depositions of PW-1 and PW-2 that aforesaid licensee rifle of Ram Swaroop, was assigned to Sunil Kumar on the basis of their suspicion seems to be bona-fide as no role whatsoever has been assigned to Ram Swaroop in the incident, which could have been easily assigned by them. It is the case of the prosecution that PW-1 and PW-2 and the deceased went to Ram Swaroop for a compromise and were talking with him, when they were surrounded by the appellants, no further role of Ram Swaroop has been assigned, either in the FIR or in their depositions. Therefore, we are of the considered opinion that aforesaid fact (i.e. Sunil Kumar Shukla was carrying Ram Swaroop's rifle) seems to be got written in the FIR on the basis of bona-fide suspicion. The depositions of PW-1 and PW-2 are consistent that Akhilesh Shukla and Anil Shukla were armed with DBBL guns, Dinesh Chandra Shukla was armed with SBBL gun and Sunil Kumar Shukla was armed with rifle. Recovery of 12-bore empty cartridges from spot proves that DBBL and SBBL guns have been used in the incident. A total four 12-bore empty cartridges have been recovered from the spot and the deceased has also suffered firearm injuries and during his post mortem examination, Autopsy Surgeon has recovered six pellets from his body. Recovery of four cartridges has been duly proved by the prosecution. The aforesaid four 12-bore empty cartridges and six pellets were sent to FSL for examination and these recovered cartridges and pellets are found to be fired ones. The depositions of PW-1 and PW-2 fully corroborates each other depositions as far as date, time, place and manner of incident is concerned, their depositions are further corroborated by the particulars specifically shown in the site plan. Their depositions are also corroborated by the ante-mortem injuries found on the body of the deceased, therefore, in the peculiar facts and circumstances of the case, at the maximum it can be presumed that the licensee guns of the appellants were actually not used in the crime and actual weapons (i.e. 2 DBBL guns, one SBBL gun and one rifle) which were used in the crime, were not got recovered from the appellants, therefore, FSL report does not caste any shadow on the truthfulness of the prosecution story. **Question No. 4 is also answered in 'Negative'.**

Question No. 5 Whether the prosecution could be said to have proved it's case against the appellants-convicts beyond reasonable doubt?

62. As per the FIR, purchase of fallen down mud house of Awadhram by Bhura Singh on 07.10.2008 was the motive behind the crime. Law is well established that first information report is not an encyclopedia. It is not the requirement of law that every minute details with description of every event leading to the commission of crime with detail sequencing of crime is required to be mentioned in the first information report. A very brief description of motive has been assigned in the Written Report/Tehrir (Ex.Ka.-1). The present case is based on direct evidence. Therefore, the lack or absence of motive is inconsequential when direct evidence establishes the crime. However, in the present case, the depositions of PW-1 and PW-2 are consistent that the deceased Bhura Singh

purchased a fallen down ruined house of Awadhram on 07.10.2008 through a registered sale deed. Appellants earlier wanted to take this house by misleading the widowed daughter-in-law of Awadhram namely, Rupa Devi. Rupa Devi used to do house-hold work at the accused house. A perusal of site plan (ExKa-11), reveals that this disputed fallen down house is situated near the house of appellant Dinesh Chandra Shukla. The deceased Bhura Singh as well as PW-1 and PW-2 got information that the appellants got measurement of their recently purchased house because of which, they apprehended that they will not obtain the possession of aforesaid house. Therefore, they approached Ram Swaroop Singh in this matter for compromise and when they were talking with Ram Swaroop Singh, they were surrounded by the appellants and finally this incident had happened. PW-1 and PW-2 have deposed that the appellants have committed the murder of the deceased in furtherance of their common intention. Therefore, in view of their depositions as eye witnesses of the crime, motive in the present case, pales into significance. However, the prosecution has been able to prove the aforesaid motive against the appellants.

63. It was vehemently argued that PW-1 and PW-2 have denied the criminal history of the deceased, therefore, the prosecution story cannot be believed. Admittedly, the deceased Bhura Singh was having criminal history and the Investigating Officer collected the same during the course of investigation and has also given details of seven criminal cases, which were pending against the deceased, in his deposition. However, admittedly, the appellant Akhilesh Chandra Shukla was convicted in a case of murder and appellant Dinesh Chandra Shukla was convicted under Section 307 IPC (as in their statements under Section 313 Cr.P.C., both these appellants have stated that their appeal against conviction were pending at that time) meaning thereby that both, the deceased and the assailants i.e. appellants, were having criminal history to their credit at that stage and appellants Akhilesh Chandra Shukla and Dinesh Chandra Shukla were having criminal history of conviction. Feigned ignorance of criminal history of the deceased Bhura Singh by PW-1 and PW-2 does not automatically make the prosecution story suspicious one. In the present case, the prosecution has proved the motive behind the commission of murder of the deceased Bhura Singh. Two of the appellants were convicted in two different cases of murder and attempt to murder, therefore, we find no force in the argument of learned counsel for the appellants that the denial of having any knowledge of criminal history on the part of PW-1 and PW-2 makes the prosecution story doubtful. Therefore, it cannot be presumed that on account of criminal history, the deceased was murdered by someone else at some other place, in other circumstances.

64. From the perusal of the records, it is reflected that blood stained soil collected by the Investigating Officer from the place of incident, was not forwarded to find out the origin of blood. However, it is an omission on the part of the Investigating Officer indicative of defective investigation and in the light of trustworthy depositions of PW-1 and PW-2. This part of omission on the part of the Investigating Officer does not affect the prosecution version and in our considered opinion, the appellants are not entitled to get any benefit out this defective part of investigation by the Investigating Officer.

65. Lastly, it was argued that without assigning any specific role of the appellants, they have been wrongly convicted under Section 302 IPC without aid of section 34 IPC and therefore, their conviction is bad in law.

66. The FIR was lodged under Section 302/34 IPC, the charge sheet was also filed under Section 302/34 IPC. The learned trial Court also framed charges against the appellants under Section 302 read with 34 IPC, even in the statements recorded under Section 313 Cr.P.C., it was specifically asked in question no. 1 that the firing was resorted to with common intention to murder Bhura Singh. Learned trial Court in its conclusion at page-24 of the judgment has clearly held that the accused in a pre-planned manner with common intention used firearms to kill Bhura Singh. However, while passing the order of conviction and sentence, the learned trial Judge has convicted the appellants under Section 302 IPC alone. It is seems to be mere an irregularity. Learned trial Court has concluded that accused were sharing common intention. Law is well settled that section 34 IPC is not a substantive offence in the present case, not only FIR was registered under Section 302/34 IPC but after investigation, the charge sheet was also submitted under the same section. The charges were also framed under Section 302 read with section 34 IPC and even under Section 313 Cr.P.C., they were specifically asked regarding their common intention to murder.

67. A three Judges Bench of Hon'ble Supreme Court has dealt with scope of interpretation of Section 34 IPC in **Suresh and another vs. State of U.P. (2001) 3 SCC 673.** In this judgment Hon'ble Supreme Court has expressed its view in the light of several judicial pronouncement by starting privy council to Supreme Court. The most relevant paragraphs 19, 22, 23, 24, 37, 38, 39, 41 and 50 are reproduced herein-below:-

"19. Hence, under Section 34 one criminal act, composed of more than one act, can be committed by more than one persons and if such commission is in furtherance of the common intention of all of them, each would be liable for the criminal act so committed."

"22. Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract Section 34, e.g. the co-accused can remain a little away and supply weapons to the participating accused either by throwing or by catapulting them so that the participating accused can inflict injuries on the targeted person. Another illustration, with advancement of electronic equipment can be etched like this: One of such persons, in furtherance of the common intention, overseeing the actions from a distance through binoculars can give instructions to the other accused through mobile phones as to how effectively the common intention can be implemented. We do not find any reason why Section 34 cannot apply in the case of those two persons indicated in the illustrations.

23. Thus to attract Section 34 IPC two postulates are indispensable: (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons.

24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32 IPC. So the act mentioned in Section 34 IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act, e.g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim

from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34 IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC."

"37. For the applicability of Section 34 to a co-accused, who is proved to have common intention, it is not the requirement of law that he should have actually done something to incur the criminal liability with the aid of this section. It is now well settled that no overt act is necessary to attract the applicability of Section 34 for a co-accused who is otherwise proved to be sharing common intention with the ultimate act done by any one of the accused sharing such intention.

38. Section 34 of the Penal Code, 1860 recognizes the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives statutory recognition to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case.

39. The dominant feature for attracting Section 34 of the Penal Code, 1860 (hereinafter referred to as 'the Code') is the element of participation in absence resulting in the ultimate 'criminal act'. The 'act' referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.

40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word 'act' used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in'Satrughan Patar'v.'Emperor'[AIR 1919 Pat 111 : 20 Cri LJ 289] held that it is only when a court with some certainty holds that a

particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied."

"50. Again a three-Judge Bench of this Court in'State of U.P.'v.'Iftikhar Khan'[(1973) 1 SCC 512 : 1973 SCC (Cri) 384] after relying upon a host of judgments of the Privy Council and this Court, held that for attracting Section 34 it is not necessary that any overt act must be done by a particular accused. The section will be attracted if it is established that the criminal act has been done by one of the accused persons in furtherance of the common intention. If this is shown, the liability for the crime may be imposed on any one of the person in the same manner as if the act was done by him alone. In that case on proof of the facts that all the four accused persons were residents of the same village and Accused 1 and 3 were brothers who were bitterly inimical to the deceased and Accused 2 and 4 were their close friends, Accused 3 and 4 had accompanied the other two accused who were armed with pistols; all the four came together in a body and ran away in a body after the crime, coupled with no explanation being given for their presence at the scene, the Court held that the circumstances led to the necessary inference of a prior concert and prearrangement which proved that the 'criminal act' was done by all the accused persons in furtherance of their common intention."

68. In **Ram Naresh Vs. State of U.P. (2024) 1 SCC 443,** the appellant challenged the judgment of trial Court and High Court whereby he was convicted under Section 302 read with Section 34 IPC on the ground that there was no common intention on his part and therefore, Section 34 IPC cannot be applied so as to convict him (appellant). The Hon'ble Supreme Court while rejecting his argument observed as under:-

"11. Assistance has been taken of para 26 of the decision of this Court in'Krishnamurthy'v.'State of Karnataka (2022) 7 SCC 521, which is reproduced herein below: (SCC p. 537)

"26. Section 34IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34I PC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34IPC is not necessary as the said perpetrator is himself individually liable for having

caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

12. A plain reading of the above paragraph of'Krishnamurthy case' reveals that for applying Section 34IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence."

69. Therefore, law of common intention can be crystallized that it is not a substantive offence and does not create an offence by itself. It is a rule of evidence that recognizes principle of constructive liability. To attract Section 34 IPC two conditions are indispensable. First condition is that the criminal act consisting of a series of acts must have been done not by one person alone, but by more than one person. The second condition is that doing of every such individual act cumulatively resulting in commission of criminal offence, must have been in furtherance of the common intention of all such persons. When both conditions are proved, then each of the accused is liable for the criminal act as if it was done by him alone. The accused who is to be fastened with liability on the strength of Section 34 IPC, should have done some act, which has nexus with the offence and such act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of offence, but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. **The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case. Even where there is no evidence of prior meeting of minds, but when sequence of events which unfolded during course of occurrence clearly indicates the pre determination of mind of the accused persons not to cause injury alone but to kill the deceased, their common intention can be inferred from such circumstance. Direct proof of common intention is generally difficult to obtain and therefore, it is not necessary to adduce direct evidence of common intention, which may be inferred from surrounding circumstances and the conduct of the parties. Common intention is a state of mind of an accused which may be inferred objectively from his conduct displayed in the course of commission of crime as also prior and subsequent attendant circumstances.**

70. In **Gurpreet Singh vs. State of Punjap, (2005) 12 SCC 615,** the appellant was convicted under Section 302 IPC, however, Hon'ble Apex Court found that fatal injuries could not be attributed the appellant but finding common intention in the incident, without their being any charge framed under Section 34 IPC, the conviction of the appellant was altered from section 302 IPC to one under Section 302 read with section 34 IPC, while rejecting the appeal of the appellants.

71. Therefore, even when the charge under Section 34 IPC is not framed, but the prosecution has led the evidence regarding common intentnion of the assailants and the witnesses have also

been cross-examined with respect to such evidence being led by the prosecution, then the assailants can be convicted with the aid of section 34 IPC.

72. The Hon'ble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545,** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

73. From the depositions of PW-1 and PW-2, it is crystal clear that all the appellants arrived on the spot, armed with deadly weapons and surrounded the deceased, the informant and Jhaller Singh. Soon after surrounding the deceased and his family members, they exhorted to kill them. The deceased, the informant and Jhaller Singh ran to save their lives and the appellants, thereafter climbed onto the roof of Ram Swaroop's house and started indiscriminate firing on the deceased and his family members, who were running to save their lives. However, PW-1 and PW-2 saved their lives by taking shelter of southern wall of Bhagat Singh's house, but the deceased could not take shelter of this wall and was running behind PW-1 and PW-2 and had arrived near the corner of this wall and when he saw back, he was hit with gun shots, which were being fired by the appellants. The deceased sustained firearm injuries and fell down on the spot, thereafter all the appellants ran away from the spot with their deadly weapons. Therefore, the above chain of events and surrounding circumstances, clearly establishes that the appellants arrived on spot with their common intention to murder the deceased and his family members and in furtherance of this common intention, they firstly surrounded the deceased and his family members and when they ran, the appellants fired indiscriminately on them after climbing onto the roof of Ram Swaroop's house. The appellants' conduct starting from their arrival on the spot and lastly their leaving from the place of incident after commission of crime, clearly establishes their pre-arranged plan and common intention to murder. Therefore, the prosecution has successfully proved common intention to murder the deceased on the part of the appellants and the learned trial Court has also clearly held so in its conclusion recorded at page-24 of the impugned judgment. However, in operative portion of the order of judgment and order of sentence, section 34 IPC is missing, which is a minor irregularity.

74. As per the FIR, both the informant and Jhaller Singh are the eye witnesses of the incident. Both these witnesses have consistently stated that when the deceased, informant and Jhaller Singh were talking to Ram Swaroop Singh regarding compromise, then the appellants came on spot, who were armed with deadly weapons and exhorted to kill them. When both these witnesses and deceased found themselves surrounded by them, they all ran towards Dharamshala, upon which, the assailants climbed onto the roof of Ram Swaroop's house and after reaching the corner, they started indiscriminate firing, the deceased sustained gun shot injuries. He was at the southern-western corner of Bhagat Singh's house. Both these witnesses have consistently stated that they took the deceased on a motorcycle from the spot to Vijaipur Hospital, where on arrival, victim died. Thereafter, they went to the concerned police station for registration of the FIR. Both PW-1 and PW-2 have been cross-examined at length

regarding manner of incident, place of incident and areas surrounding the place of incident as well as directions of the spot. PW-1 and PW-2 have clearly answered all the questions so put to these witnesses and their respective answers find corroboration from the site plan (Ex.Ka-11). There is no contradiction whatsoever regarding date, time, place and manner of incident. There is only one minor contradiction in the depositions of PW-1 and PW-2 that as per PW-1, they (i.e. PW-1 and PW-2)were sitting when gun shots hit his father and as per PW-2, they were standing when gun shots hit this brother. However, their depositions are consistent that when gun shots hit the deceased, he (the deceased) was standing and they (i.e. PW-1 and PW-2), were behind the southern wall of Bhagat Singh's house, which minor contradiction is a natural one and does not affect the prosecution story at all. The oral as well as documentary evidence establishes that the deceased had died on account of sustaining gun shot injuries and those injuries could have been caused at 4:00 pm on 11.10.2008. The prosecution has successfully proved the common intention of the appellants behind commission of crime.

75. The ocular as well as documentary medical evidence supports the prosecution version, even the FIR has been promptly lodged giving brief description of the incident as well as motive behind the incident. The prosecution has successfully proved the motive behind the incident. Thus from the totality of the circumstances, the prosecution has successfully proved its' case against the appellants-convicts beyond reasonable doubt. ***Question No. 5 is thus, answered in 'Affirmative'.***

76. In the light of foregoing discussions and considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, we are of the view that the impugned judgment and order passed by the trial Court is well thought and well discussed and the trial Court has rightly held that the prosecution has succeeded to prove the guilt of the appellants-accused beyond reasonable doubt. The conviction in the case in hand is a right ending and sentence as imposed is proper. As such, the impugned judgment and order passed by the trial Court is liable to be upheld and the Appeal having no force is liable to be dismissed.

77. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus, there is no merit in the present criminal appeal. Consequently, the judgment and sentence dated 03.07.2013 passed by Additional District and Sessions Judge, Court No. 3, Fatehpur in Sessions Trial No. 38 of 2009, under Sections 302/34 IPC, Police Station Kishunpur, District Fatehpur, qua appellants-convicts Dinesh Chandra Shukla, Anil Kumar Shukla, Sunil Kumar Shukla and Akhilesh Chandra Shukla, under Section 302 IPC, is hereby ***'Affirmed'***, while altering the same from Section 302 IPC to Section 302 read with Section 34 IPC.

78. The appellants are on bail. Their bail bonds and sureties shall stand cancelled and they are directed to be taken back to the custody forthwith to serve the remaining part of the sentence imposed upon them by the trial Court.

79. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

80. The present appeal fails and is hereby ***Dismissed***.

81. Pending applications, if any, stand disposed of accordingly.

(2026) 7 ILRA 1936
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 4676 of 2022

Sunil **...Appellant(s)**
Versus
State of U.P. & Ors. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution established the foundational facts necessary to sustain the charge of penetrative sexual assault/rape and to invoke the statutory presumption under Section 29 of the POCSO Act.

Whether the ocular evidence of the child victim and her mother, particularly the allegation of bleeding, stands contradicted by contemporaneous medical evidence and surrounding circumstances.

Whether the evidence nevertheless established the lesser offence of aggravated sexual assault under Sections 7/9(m)/9(n) punishable under Section 10 of the POCSO Act.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 164, 294, 313, 374(2) – Indian Penal Code, 1860 – Section 376(2)(i) – Protection of Children from Sexual Offences Act, 2012 – Sections 3, 5(m), 5(n), 6, 7, 9(m), 9(n), 10, 29, 30: - Criminal Appeal - against conviction and sentence – offence under Section 376(2)(i) IPC and Sections 5(m)/5(n) read with Section 6 POCSO Act – FIR lodged by father of minor victim alleging that appellant took her to terrace and committed objectionable acts causing bleeding – investigation conducted - medical examination of victim and accused - statement under Section 164 Cr.P.C. recorded - charge-sheet – charges framed – prosecution examined victim, parents, doctor, Municipal clerk and Investigating Officers - defence examined three witnesses regarding prior dispute – appellant pleaded failure to prove foundational facts, medical contradiction of bleeding, silence of victim on meaning of "gandaa kaam", delayed Section 164 statement, non-production of forensic reports and false implication due to enmity – Court finds that, statutory presumption under Section 29 POCSO Act arises only after foundational facts are proved by reliable evidence - medical examination within hours revealed no external/internal injury - intact hymen and no bleeding - completely contradicting allegation of bleeding relied upon to infer penetration - statement under Section 164 Cr.P.C. is not substantive evidence and cannot supply facts not deposed before Court - delayed recording of Section 164 statement and non-production of forensic reports further weaken the case of penetrative assault - presumption under POCSO Act cannot be used to convict/sentence under IPC - however, consistent evidence that appellant took the child to terrace, made her lie down, positioned himself over her and assaulted/touched her genital area proves sexual assault with sexual intent – held, conviction under Section 376(2)(i) IPC and Sections 5(m)/5(n) read with Section 6 POCSO Act set aside - appellant convicted under Section 7 read with Sections 9(m) and 9(n) punishable under Section 10 POCSO Act and sentenced to the period already undergone with fine of Rs. 50,000/- – hence Appeal partly allowed - appellant on bail need not surrender - bonds cancelled and sureties discharged – directions issued accordingly.

(para -)40, 41, 46, 47, 51, 52, 53, 54, 55, 56, 57, 58)

Appeal Partly Allowed. (E-11)

CASE LAW CITED

Noor Aga v. State of Punjab (2008) 16 SCC 417
Gorakh Nath Prasad v. State of Bihar (2018) 2 SCC 305
Subrata Biswas v. State (2019) SCC OnLine Cal 1815
Sahid Hossain Biswas v. State of West Bengal (2017) SCC OnLine Cal 5023
Justin v. Union of India (2020) SCC OnLine Ker 4956
Monu Thakur v. State of U.P. (2022) SCC OnLine All 1098
Abdul Rashid Ibrahim Mansuri v. State of Gujarat (2000) 2 SCC 513
Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606
State of U.P. v. Hari Chand (2009) 13 SCC 542
Bhajan Singh v. State of Haryana (2011) 7 SCC 421
Kapildeo Mandal v. State of Bihar (2008) 16 SCC 99
Mani Ram v. State of Uttar Pradesh 1994 Supp (2) SCC 289
Sadashiv Ramrao Hadbe v. State of Maharashtra (2006) 10 SCC 92
Manak Chand v. State of Haryana (2024) 20 SCC 561
Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21
Akhtar v. State of Uttaranchal (2009) 13 SCC 722

LIST OF ACTS

Code of Criminal Procedure, 1973,
Indian Penal Code, 1860,
Protection of Children from Sexual Offences Act, 2012,
Constitution of India.

LIST OF KEYWORDS

Criminal Appeal – POCSO Act – Section 376(2)(i) IPC – Penetrative sexual assault - Aggravated sexual assault - Reverse onus – Foundational facts – Section 29 presumption – Medical evidence contradicting bleeding – Statement under Section 164 Cr.P.C. – Sterling witness – Section 10 POCSO Act – Sentence modified to period already undergone –- Child victim testimony - bleeding allegation - Sterling witness - Falsus in uno - Sentence for remainder of natural life - Age of victim - Sexual intent - Appeal partly allowed

CASE ARISING FROM

Judgment and order dated 17.06.2022 passed by the Special Judge (POCSO Act)/Additional District and Sessions Judge, Varanasi in Special Sessions Trial No. 214 of 2017 arising from Case Crime No. 800 of 2017, Police Station Rohaniya, District Varanasi.

APPEARANCE OF PARTIES

Counsel for Appellant(s): P.K. Singh
Counsel for Respondent(s): Ajeet Kumar Madhesia, G.A., Shabana Nizam

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

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ("Cr.P.C.") is directed against the judgment and order dated 17.06.2022 passed by the Special Judge (POCSO Act)/Additional District and Sessions Judge, Varanasi in Special Sessions Trial No. 214 of 2017. By the impugned judgment, the appellant was convicted under Section 376(2)(i) of the Indian Penal Code, 1860 ("IPC") and Sections 5(m) and 5(n), read with Section 6, of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"). He was sentenced to imprisonment for life, being imprisonment for the remainder of his natural life, and to pay a fine of Rs. 50,000/-, of which 80%

was to be paid to the victim. The trial arose from Case Crime No. 800 of 2017, initially registered under Section 376 IPC and Sections 3 and 4 of the POCSO Act at Police Station Rohaniya, District Varanasi.

2. The First Information Report in Case Crime No. 800 of 2017, under Section 376 IPC and Sections 3 and 4 of the POCSO Act, was lodged at 10:45 p.m. on 07.09.2017 by the father of the victim. According to the FIR, at about 12:30 p.m. on the same day, the victim came down crying from the terrace of the appellant's house. Blood was allegedly noticed on her undergarments and legs. The victim is stated to have told her mother that the appellant had taken her upstairs and done objectionable things ('gandaa kaam') with her and had fled when she began to cry. The victim was stated to be five years old on the date of the incident. The written report was exhibited as Exhibit Ka-2 before the Trial Court.

3. The record further indicates that, on the same night, the Investigating Officer caused the victim's statement to be recorded by Woman Sub-Inspector Pushpa Singh. The statement, recorded on a separate sheet, bears the right-thumb impression of the victim and the signatures of her mother and of Pushpa Singh. It was marked as Paper No. 7-Ka before the Trial Court. In that statement, the victim stated that the appellant had taken her to the terrace, made her lie down, positioned himself over her, and done objectionable things (gandaa-kaam) with her. The Sub-Inspector recorded that the victim was unable to say anything further.

4. The victim was examined by the Emergency Medical Officer at 11:55 p.m. on 07.09.2017. The medical report records no external or internal injury on her body. Two vaginal slides, an oral smear, and nail clippings were sent for pathological examination. The clothes handed over to the doctor were also collected by the Investigating Officer. The pathological report, received on 11.09.2017, disclosed no sperm. In the supplementary medico-legal report, the doctor noted that no definite opinion regarding recent sexual act could be given. The medical report and supplementary medical reports were exhibited as Exhibits Ka-3 and Ka-4 before the Trial Court.

5. The appellant was arrested at 5:15 a.m. on 08.09.2017. He was medically examined at 12:13 p.m. on the same day by the Medical Officer, Community Health Centre, Misirpur, Varanasi. His medical report records no injury or other complication. The report is available on the Trial Court record as Paper No. 8-Ka/5. Although the prosecution did not formally prove it in trial and it was, therefore, not marked as an exhibit, the defence did not dispute its genuineness.

6. The victim's statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate on 10.11.2017, approximately two months after the incident. In that statement, while pointing towards her pelvic area, the victim stated that the appellant had hit her with his fist on the lower part of her body. She further stated that the appellant had opened his zipper and removed her undergarments. She also stated that she had bled, experienced pain, and that her undergarments were stained with blood. The statement was exhibited as Exhibit Ka-1 before the Trial Court.

7. Upon completion of the investigation, a charge-sheet was submitted under Section 376(2)(i) IPC and Sections 5(i) and 6 of the POCSO Act. Special Sessions Trial No. 214 of 2017 was registered before the Special Judge (POCSO Act)/Additional District and Sessions Judge, Varanasi.

The appellant was charged under Section 376(2)(i) IPC and Sections 5(m) and 5(n), read with Section 6, of the POCSO Act. He denied the charges and claimed trial.

8. To establish its case, the prosecution examined the victim as PW-1; her father and the first informant as PW-2; her mother as PW-3; the doctor who examined the victim as PW-4; the clerk of Nagar Nigam, Varanasi as PW-5; the Investigating Officer who took over the investigation from 09.09.2017 as PW-6; and the Investigating Officer who conducted the investigation on 07.09.2017 and 08.09.2017 as PW-7.

9. In her examination-in-chief, PW-1 reiterated that the appellant had done objectionable or "dirty" things (gandaa kaam) with her. She stated that the appellant made her lie down on a bed, withdrew her undergarments, and positioned himself above her. According to her, the appellant fled when she cried in pain. She stated that she informed her mother and that she later went to the police station with her father and told everything to the "police aunty". PW-1 proved her statement under Section 164 Cr.P.C., although she could not identify the photographs affixed to the memorandum containing that statement. She did not depose before the trial court that she had bled. During cross-examination, when asked what she meant by "gandaa kaam", PW-1 remained silent.

10. PW-2 proved the written report and deposed that he learnt of the incident from his wife and father upon returning home. He initially stated that the victim was sad and crying and had narrated the incident to him. In cross-examination, however, he stated that the victim was asleep when he reached home and did not tell him anything. He further stated that he, his father, and his wife approached the Gram Pradhan, but the Pradhan's husband declined to intervene. PW-2 stated that a hospital and three to four medical practitioners were available in the village. He had worked in the healthcare sector for ten years and ordinarily consulted Dr. Manoj Kumar Singh when members of his family fell ill. He stated that the family first went to the Pradhan and thereafter purchased antibiotics and painkillers for the victim from a nearby medical store in the evening. He denied any dispute between the two families regarding the flow of water over his plot. His evidence also shows that he was employed with Punjab National Bank.

11. PW-3, the mother of the victim, stated that the victim was aged four years and ten months on the date of the incident. She deposed that, upon hearing the victim cry, she noticed blood on the undergarments of the victim and was told by the victim that the appellant had hit her genital area. In cross-examination, PW-3 stated that she did not consult a doctor for the victim. She denied that PW-2 was present at the police station on 07.09.2017 and stated that, at the request of persons present at the police station, she signed the documents prepared there.

12. PW-4, the Emergency Medical Officer who examined the victim, proved the medical and supplementary medical reports. She stated that there were no external or internal injury on the victim's body, that the hymen was intact, and that the examination was otherwise normal. There was no bleeding or other discharge from any part of the victim's body, and no injury was found in or around the genital region. PW-4 further stated that the victim's undergarments were collected and handed over to the police for DNA examination.

13. PW-5, a clerk of the Municipal Corporation, Varanasi, proved the relevant entries in the Register of Births and Deaths and the birth certificate issued by the Corporation. The certificate records the victim's date of birth as 13.10.2013 and was exhibited as Exhibit Ka-5.

14. PW-7, who investigated the case on 07.09.2017 and 08.09.2017, stated in his cross-examination that the victim had told him that the appellant had taken her to the terrace and done dirty things with her. The witness also stated that senior police officers, including the Circle Officer and the SPRA, visited the place of occurrence on the following day.

15. PW-6, who investigated the case from 09.09.2017 onwards, was a formal witness. He stated that no laboratory report was filed and that he did not seek the assistance of any expert while inspecting the place of occurrence. He found nothing significant at the site; no blood, clothes, or instrument was recovered therefrom.

16. In his statement under Section 313 Cr.P.C., the appellant denied the charges and his presence at the spot. He asserted that he was innocent, that the investigation was not fair, and that the prosecution witnesses had deposed falsely. In defence, he examined three witnesses in support of his plea.

17. The defence examined as D.W.-1 the husband of the Gram Pradhan, referred to in the evidence of PW-2 and PW-3, and also examined two village residents as DW-2 and DW-3. According to these witnesses, there existed a dispute between the two families regarding the flow of water over the first informant's plot, which had caused bitterness between the families. They stated that a panchayat had been convened in connection with the dispute. DW-1 stated that, at the panchayat held on 20.08.2017, the first informant threatened to have the appellant's father sent to jail. DW-2 stated that the first informant threatened to have every member of the appellant's family, including the appellant, sent to jail.

18. The Trial Court held that the testimony of PW-1 was trustworthy and substantially consistent with her statement recorded under Section 164 Cr.P.C. It further held that the allegation of sexual assault remained unchallenged as the defence had not cross-examined PW-1 on that aspect. The Trial Court was of the view that the prosecution case stood proved notwithstanding the medical evidence, observing that ocular evidence ordinarily prevails over medical opinion. It also invoked the statutory presumption under Section 29 of the POCSO Act and held that the appellant had failed to rebut the same. The defence evidence was discarded on the ground that the defence witnesses were not consistent regarding the date and nature of the alleged prior dispute. On those grounds, it recorded the conviction and imposed the sentence.

19. Learned counsel for the appellant submits that the prosecution has failed to establish the foundational facts necessary to sustain the charge of penetrative sexual assault or to invoke the presumption under Section 29 of the POCSO Act. It is argued that the medical evidence, comprising the medical reports and the testimony of PW-4, fundamentally contradicts the ocular version of PW-1 and PW-3. According to the prosecution, the victim had suffered bleeding following the assault; however, the medical examination, conducted on the very day of the incident, disclosed no external or internal injury, no injury to the genital region, and no bleeding, rendering

the prosecution version inherently improbable. It is further submitted that the victim's silence in cross-examination when asked to explain what she meant by "objectionable things" (gandaa kaam) creates serious ambiguity regarding the allegation of penetration. Counsel further contends that the statement of the victim under Section 164 Cr.P.C., recorded after an unexplained delay of about two months, cannot be treated as substantive evidence or relied upon to supply material facts not deposed to by the victim before the Trial Court. It is also argued that the prosecution failed to produce the victim's clothes or the forensic laboratory reports, despite their collection during investigation, thereby withholding material evidence. Attention is also drawn to the conduct of PW-2 and PW-3 in not obtaining immediate medical treatment for the child despite alleging bleeding, which, according to the appellant, is inconsistent with ordinary human conduct. Lastly, it is submitted that the Trial Court erroneously rejected the defence evidence on the basis of insignificant discrepancies while overlooking the substance of the defence case. The appellant, therefore, prays that the judgment and order dated 17.06.2022 be set aside and that he be acquitted of the charges.

20. Learned AGA, replying for the State, submits that the testimony of PW-1 is consistent and inspires confidence. It is argued that medical evidence is not indispensable in a prosecution for sexual assault and cannot override otherwise reliable ocular evidence. The prosecution further submits that a child victim cannot be expected to give a graphic or technically precise account of the incident and that her evidence must be assessed with sensitivity. According to the prosecution, the foundational facts were proved, the presumption under Section 29 was correctly invoked, and the appeal is liable to be dismissed.

21. We have given our anxious consideration to the rival submissions and carefully perused the original record.

22. While recording conviction, the Trial Court invoked Section 29 of the POCSO Act and held that the appellant had failed to rebut the statutory presumption. It is, therefore, appropriate to reproduce Sections 29 and 30 of the POCSO Act:

"29. Presumption as to certain offences*-Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.*

30. Presumption of culpable mental state.'(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation - In this section, 'culpable mental state' includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

23. Sections 29 and 30 of the POCSO Act embody statutory reverse-onus provisions, constituting an exception to the ordinary rule of criminal jurisprudence that every accused is presumed innocent until proved guilty beyond reasonable doubt. The validity and operation of such provisions are, however, conditioned upon fairness and reasonableness under Articles 14 and 21 of the Constitution. Consequently, the statutory presumptions do not arise automatically upon the institution of a prosecution but become operative only after the prosecution has first established, by legally admissible evidence, the foundational facts necessary to attract them.

24. The principles governing reverse-onus provisions have been authoritatively explained by the Supreme Court in ***Noor Aga v. State of Punjab (2008) 16 SCC 417,*** while interpreting Sections 35 and 54 of the NDPS Act. The Court held that although reverse burdens are constitutionally permissible, such provisions must be strictly construed and can operate only after the prosecution has proved the foundational facts beyond reasonable doubt. Having regard to the stringent consequences flowing from such provisions, the Court emphasised that the prosecution's evidence must be subjected to heightened judicial scrutiny and reiterated the settled principle that suspicion, however grave, can never substitute legal proof. Once the foundational facts are established, the evidentiary burden shifts to the accused, who is required to rebut the statutory presumption only on the standard of a preponderance of probabilities.

25. The same principle was reiterated in ***Gorakh Nath Prasad v. State of Bihar (2018) 2 SCC 305,*** wherein the Supreme Court held that the mere registration of a case under a statute incorporating a reverse burden does not, by itself, shift the burden of proof to the accused. The prosecution must first establish a prima facie case by strict compliance with the statutory requirements, and any reasonable doubt at that stage must necessarily enure to the benefit of the accused.

26. The same principles were applied by the Calcutta High Court in ***Subrata Biswas v. State (2019) SCC OnLine Cal 1815*** and ***Sahid Hossain Biswas v. State of West Bengal (2017) SCC OnLine Cal 5023*** while considering Section 29 of the POCSO Act. The Court held that the prosecution must first lay the foundation of its case through cogent, reliable and legally admissible evidence, free from patent absurdity or inherent improbability, before the statutory presumption can be invoked. The presumption does not require the Court to mechanically accept the prosecution version as gospel truth, nor does it relieve the Court of its obligation to evaluate the credibility, probability and inherent consistency of the prosecution evidence.

27. The Kerala High Court in ***Justin v. Union of India (2020) SCC OnLine Ker 4956,*** identified the foundational facts which ordinarily require proof in a prosecution under the POCSO Act, namely, that the victim was a child within the meaning of the Act, that the alleged incident occurred, and that the accused committed the offence. Where the prosecution relies upon physical injury as a material circumstance in support of the charge, the allegation must ordinarily be supported by the medical evidence or the inconsistency satisfactorily explained.

28. The same approach has been adopted by a Division Bench of this Court in ***Monu Thakur v. State of U.P. (2022) SCC OnLine All 1098*** wherein it has been held that the statutory presumption does not dispense with the prosecution's obligation to prove, by legally admissible

evidence, the foundational facts relating to the commission of the offence by the accused. Mere registration of a case or submission of a police report does not shift the burden to the accused. Such an interpretation alone preserves the constitutional validity of Section 29 by ensuring that the reverse burden operates consistently with the guarantees of fairness embodied in Articles 14 and 21 of the Constitution.

29. As regards the manner in which the statutory burden may be discharged, the Supreme Court in ***Abdul Rashid Ibrahim Mansuri v. State of Gujarat (2000) 2 SCC 513***, held that an accused is not required to prove his innocence beyond reasonable doubt. The burden may be discharged by relying upon the prosecution evidence itself, by eliciting favourable admissions during cross-examination, by exposing contradictions, omissions, inherent improbabilities or patent infirmities in the prosecution case, or, where necessary, by leading defence evidence. The standard of proof required of the accused remains only that of a preponderance of probabilities.

30. The cumulative effect of the aforesaid authorities is that the statutory presumptions contained in Sections 29 and 30 of the POCSO Act do not displace the Court's fundamental duty to scrutinise the prosecution evidence with care. Before the presumption can be invoked, the prosecution must establish the foundational facts by legally admissible and reliable evidence. Only thereafter does the evidentiary burden shift to the accused, who may rebut the presumption on a preponderance of probabilities by leading defence evidence or by demonstrating, from the prosecution evidence itself, material inconsistencies, omissions, inherent improbabilities or other infirmities which render the prosecution case doubtful. The statutory presumption is thus a rule of evidence and not a substitute for proof of the foundational facts upon which its operation depends.

31. The appellant was charged under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act and under Section 376(2)(i) IPC. The alleged incident occurred on 07.09.2017. It is, therefore, appropriate to reproduce the relevant provisions of the POCSO Act as they stood on that date:

"3. Penetrative sexual assault - A person is said to commit 'penetrative sexual assault' if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault. - *Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which* ***shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.***

5. Aggravated penetrative sexual assault *- (m) whoever commits penetrative sexual assault on a child below twelve years; or*

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

6. Punishment for aggravated penetrative sexual assault *- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.*

7. Sexual assault - *Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.*

8. Punishment for sexual assault - *Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term* ***which shall not be less than three years but which may extend to five years, and shall also be liable to fine.***

9. Aggravated sexual assault - *(m) whoever commits sexual assault on a child below twelve years; or*

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

10. Punishment for aggravated sexual assault - *Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which* ***shall not be less than five years but which may extend to seven years, and shall also be liable to fine."***

32. The POCSO Act was subsequently amended by Act No. 25 of 2019, notified in the Gazette of India on 06.08.2019 and brought into force on 16.08.2019. Among other provisions, the amendment altered Sections 4 and 6 of the Act. The amended provisions read as follows:

"4. Punishment for penetrative sexual assault-*[(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term* ***which shall not be less than [ten years] but which may extend to imprisonment for life, and shall also be liable to fine.***

[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which ***shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.***

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

6. Punishment for aggravated penetrative sexual assault.-*(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term* ***which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.***

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]"

33. The appellant could have been convicted and sentenced under Sections 4 and 6 of the POCSO Act, as they stood on the date of the incident, only if the prosecution proved the ingredients of Section 3 read with Sections 5(m) and 5(n) of the Act. The alleged offence was committed on 07.09.2017, before Act No. 25 of 2019 came into force. In view of Article 20(1) of the Constitution, the appellant could not be sentenced under the enhanced provisions introduced by that amendment. The appellant was also charged under Section 376(2)(i) IPC, which, in 2017, prescribed rigorous imprisonment of not less than ten years and which could extend to imprisonment for life, meaning imprisonment for the remainder of the offender's natural life, for rape of a woman under sixteen years of age. That provision was subsequently omitted by Act No. 22 of 2018, with effect from 21.04.2018. Section 376(3) was thereafter inserted and provided as follows:

"(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term ***which shall not be less than twenty years,*** *but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:*

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.]"

34. The appellant could have been convicted and sentenced under Section 376(2)(i) IPC, as it stood in 2017, only if the prosecution proved the ingredients of rape under Section 375 IPC. The Trial Court convicted the appellant under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act and under Section 376(2)(i) IPC, after invoking the presumption under Section 29 of the POCSO Act. It nevertheless imposed sentence under Section 376(2)(i) IPC, apparently to award the maximum available sentence rather than under Sections 4 or 6 of the POCSO Act as they stood before the 2019 amendment.

35. The presumptions under Sections 29 and 30 of the POCSO Act are confined to the offences specified in that Act. They do not apply to an offence punishable under the IPC, nor can they be used to impose a sentence under the IPC that was unavailable under the POCSO Act as it stood on the date of the alleged offence. The appellant could not have been sentenced to imprisonment for the remainder of his natural life under the POCSO Act as it stood in 2017; that sentence was available only under Section 376(2)(i) IPC. It would be impermissible to hold an accused guilty with the aid of a reverse-onus provision in one statute and then impose, under another statute that contains no such presumption, a punishment that the first statute did not then authorise. Such an approach would be arbitrary and inconsistent with the guarantees under Articles 14 and 21 of the Constitution.

36. The view that Sections 29 and 30 of the POCSO Act apply only to offences specified in that Act, and not to offences under another statute including the IPC, finds support in paragraph 36 of the judgment of a Division Bench of this Court in ***Monu Thakur (supra):***

"36. At this stage, we may clarify that though the presumptive provisions contained in sections 29 and 30 are there in the Act but their operation is limited to the offences specified therein. *No doubt, by virtue of sub-section (2) of section 28 of the Act, while trying an offence under the Act, a Special Court has also to try an offence other than the offence referred to in sub-section (1) of section 28 of the Act (i.e. the offences punishable under the Act), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial but, as the presumptive provisions of section 29 are applicable only to the offences specified therein, they would not apply to prove an offence of murder punishable under section 302 IPC. In our view therefore, the trial court completely misunderstood the true import of the presumptive provisions contained in section 29 of the POCSO Act."*

(emphasis supplied)

37. The Trial Court appears to have been influenced by the gravity of the allegations while recording conviction and imposing sentence. A court, however, must assess the prosecution case dispassionately and with complete objectivity. The seriousness of an accusation cannot be allowed to cloud judicial clarity either in determining guilt or in imposing sentence.

38. The allegations in the present case are undoubtedly grave: the appellant was charged with rape and aggravated penetrative sexual assault upon a five-year-old child. The age of the victim was not seriously disputed by the defence. In any event, her date of birth was proved through the relevant certificate and the evidence of the concerned officer of the local body. No challenge to the Trial Court's finding on age has been raised in this appeal. Nevertheless, as observed in ***Noor Aga (supra),*** the more serious the charge, the greater the care required in assessing whether the prosecution had discharged its burden.

39. The prosecution case rests principally on the evidence of PW-1, the victim, and PW-3, her mother. The defence submits that the prosecution failed to establish the foundational facts for an offence under Sections 3 and 5 of the POCSO Act and also failed to prove the charge under Section 376(2)(i) IPC beyond reasonable doubt. It is unnecessary to restate the evidence, which has already been set out. The Trial Court treated the testimony of PW-1 as corroborated by her statement under Section 164 Cr.P.C. For reasons stated below, however, it would not be safe to sustain the conviction under Sections 3 and 5 of the POCSO Act or under Section 376(2)(i) IPC on the evidence of PW-1 and PW-3. It is true that conviction for rape may rest upon the sole testimony of the prosecutrix if it inspires confidence; but there is no rule or presumption that such testimony is invariably free from embellishment or exaggeration.

40. Penetration is the sine qua non of rape under Section 375 IPC and of penetrative sexual assault under Section 3 of the POCSO Act, except in cases falling under Section 3(d), which is not the prosecution case here. In her statement on Paper No. 7-Ka, the victim stated that the appellant made her lie down, positioned himself over her, and did dirty things to her. In her deposition before the Court also, the victim did not state anything about bleeding. In her statement under Section 164 Cr.P.C., she stated that the appellant struck her genital area with his fist and did dirty things to her and she bled. It was only in the statement under Section 164 Cr.P.C. that she said she bled and that her undergarments were stained with blood. There is no specific allegation of penetration by the

victim. A reading of the Trial Court's judgment indicates that penetration was inferred from the allegation of bleeding.

41. A significant feature of the case is that the victim was medically examined at 10:45 p.m. on the date of the alleged occurrence, that is, within about twelve hours. The medical report records no external or internal injury and states that the examination was normal. PW-4 also testified that no abnormality was detected; there was no vaginal bleeding; and no injury was found on or around the private parts. The appellant contends that the medical evidence belies the prosecution case, whereas the State submits and the trial court has held that credible ocular evidence prevails over medical evidence.

42. It is settled that a credible ocular account cannot ordinarily be displaced merely because medical opinion suggests an alternative possibility. Medical evidence is essentially corroborative and opinionative in character, whereas ocular testimony constitutes substantive evidence. This principle, however, does not diminish the evidentiary value of objective medical findings. The presence or absence of visible injuries recorded during a medical examination is a matter of direct observation and not merely expert opinion. Consequently, where contemporaneous medical findings are wholly inconsistent with the prosecution's ocular version or render it inherently improbable, the inconsistency becomes a relevant circumstance in the appreciation of evidence and may disclose a fundamental defect in the prosecution case.

43. At this stage, we refer to decisions of the Supreme Court concerning the significance of medical evidence when it is inconsistent with ocular evidence.

44. The Supreme Court has consistently held that, as a general rule, credible ocular evidence prevails over medical evidence. In ***Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606*** (para 17), it was held that medical evidence is ordinarily opinionative and that an adverse inference may be drawn only where the medical evidence specifically rules out the injuries alleged by the eyewitnesses. The same principle was reiterated in ***State of U.P. v. Hari Chand (2009) 13 SCC 542*** (para 13), wherein it was observed that oral evidence has primacy unless it is wholly irreconcilable with the medical evidence. In ***Bhajan Singh v. State of Haryana (2011) 7 SCC 421*** (para 38), the Court crystallised the law by holding that although ocular testimony ordinarily carries greater evidentiary value, medical evidence assumes significance where it renders the ocular version improbable, and where it completely excludes the possibility of the ocular account being true, the Court may legitimately disbelieve such testimony.

45. The same principle was reiterated in ***Kapildeo Mandal v. State of Bihar (2008) 16 SCC 99*** (paras 23 & 27), wherein the eyewitnesses attributed firearm injuries to the accused whereas the medical evidence conclusively established the absence of any firearm injury. Referring to ***Mani Ram v. State of Uttar Pradesh 1994 Supp (2) SCC 289*** (para 9), the Supreme Court held that where direct evidence was wholly inconsistent with medical evidence on a material aspect of the prosecution case, and the inconsistency remains unexplained, such inconsistency constitutes a fundamental defect which may not merely discredit the ocular testimony but may undermine the prosecution case itself.

46. The aforesaid principles apply equally to prosecutions for rape and offences under the POCSO Act, subject to an important qualification. The mere absence of injuries on the person of the prosecutrix does not, by itself, falsify the allegation of sexual assault, nor is medical corroboration an indispensable requirement in every case. Whether the absence of injuries is of any significance depends upon the facts and circumstances of the particular case. In ***Sadashiv Ramrao Hadbe v. State of Maharashtra (2006) 10 SCC 92*** (para 9), reiterated in ***Manak Chand v. State of Haryana (2024) 20 SCC 561,*** the Supreme Court held that although an accused may be convicted on the sole testimony of the prosecutrix if it inspires confidence, the Court would be justified in declining to act upon such solitary testimony where it is unsupported by medical evidence and the surrounding circumstances render the prosecution version highly improbable.

47. Similarly in ***Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21*** (para 22), the Supreme Court explained that a conviction may safely rest on the sole testimony of the prosecutrix only where she is a "sterling witness", namely, a witness of such impeccable quality whose testimony inspires implicit confidence. ***The Court held that the hallmark of a sterling witness is the consistency of her version "right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court". Equally important, the Court observed that such testimony should correlate with the other supporting material, including the recoveries made, the manner in which the offence was committed, the scientific evidence and the expert opinion.*** The Court likened this test to that applicable in cases based on circumstantial evidence, observing that there should be no missing link in the chain of circumstances before the testimony can be accepted as sufficient, by itself, to sustain a conviction. Thus the consistency of the prosecutrix's testimony, both internally and with the surrounding objective evidence, remains an important test in evaluating whether her evidence is of sterling quality and capable of sustaining a conviction without further corroboration. The tests formulated in Rai Sandeep are cumulative and not independent. The testimony must be consistent from its inception, withstand cross-examination, and harmonise with the objective evidence, including the medical and scientific evidence. A material break in this chain may deprive the witness of the character of a "sterling witness" and require the Court to seek assurance from other reliable evidence before recording a conviction.

48. The aforesaid decisions do not lay down conflicting principles. They merely recognize that while the testimony of the prosecutrix may, in an appropriate case, by itself sustain a conviction, the Court cannot ignore contemporaneous medical, scientific or other objective evidence which fundamentally contradicts a material assertion forming the substratum of the prosecution case.

49. The cumulative effect of the above authorities is that while trustworthy ocular testimony ordinarily prevails over medical opinion, the Court cannot ignore contemporaneous medical findings which conclusively negate a material factual assertion made by the prosecution. In prosecutions for rape or penetrative sexual assault, the absence of injuries is not, by itself, decisive; however, where the prosecution itself relies upon a specific allegation of bodily injury or bleeding and the contemporaneous medical examination completely negatives such assertion without any satisfactory explanation, the inconsistency assumes considerable significance in evaluating whether the prosecution has proved its case beyond reasonable doubt.

50. We may now advert to the facts of the present case. In light of the aforesaid principles, the pivotal question is whether the prosecution has succeeded in establishing the foundational facts necessary to sustain the charge of penetrative sexual assault against the appellant and thereby attract the statutory presumption under Section 29 of the POCSO Act. In answering that question, the ocular testimony cannot be evaluated in isolation but must be examined in conjunction with the contemporaneous medical evidence and the other attending circumstances appearing on the record.

1. In her initial statement to the Woman Sub-Inspector, recorded as Paper No. 7-Ka, the victim did not state that the appellant's act caused bleeding, that her undergarments were stained with blood, or that blood was present on her legs. This was her earliest statement to the investigating agency. She stated only that the appellant had taken her to the terrace, made her lie down, positioned himself over her, and done dirty things to her. The record notes that she said nothing further. The absence of any reference to bleeding in this first statement, as well as in her deposition before the Court, raises a serious doubt about the subsequent allegation of bleeding made in the statement under Section 164 Cr.P.C., which was recorded two months later. PW-1 stated that she had told everything to the police aunty at the police station. Given the age of the child, the possibility that she was subsequently influenced by PW-2 and PW-3 before her statement under Section 164 Cr.P.C. cannot be excluded. The later statement may, therefore, contain an improvement. Though Paper No. 7-Ka may attract Section 162 Cr.P.C., it has been considered to assess the veracity of the witness, particularly as it bears the signature of the victim's mother and the right-thumb impression of the victim. This circumstance requires careful scrutiny of the prosecution evidence.

2. A statement under Section 164 Cr.P.C. is not substantive evidence and may be used only to corroborate or contradict the testimony of its maker. The victim did not state in her deposition before the Court that she bled. The statement under Section 164 Cr.P.C. could not, therefore, corroborate a fact not deposed to before the Court. To read the allegation of bleeding from the Section 164 statement as substantive evidence would be impermissible. The Trial Court consequently erred in relying upon that statement while recording conviction under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act and under Section 376(2)(i) IPC.

3. The incident is alleged to have occurred on 07.09.2017, whereas the victim's statement under Section 164 Cr.P.C. was recorded on 10.11.2017, almost two months later. The prosecution has not explained this delay. PW-7 stated that senior police officers, including the Circle Officer and the SPRA, visited the place of occurrence on the following day. Despite such attention to the case, no prompt effort was made to have the victim's statement recorded under Section 164 Cr.P.C.

4. The doctor handed over the victim's clothes to the police for forensic examination. The prosecution, however, did not file any laboratory report that could establish whether the clothes bore blood stains.

5. The record shows that the appellant was arrested at about 5:15 a.m. on 08.09.2017 and was thereafter medically examined. The report, available as Paper No. 8-Ka/5, notes no injury on his person. Although the report was filed by the prosecution and forms part of the Trial Court record, it was not formally proved or marked as an exhibit. The defence did not dispute its genuineness and it may, therefore, be read in evidence under Section 294(3) Cr.P.C. Section 294 Cr.P.C. is reproduced below:

"294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person by whom it purports to be signed;

Provided that the Court may, in its discretion, require such signature to be proved."

It would also be apt to refer to the judgment of the Supreme Court in ***Akhtar v. State of Uttaranchal, (2009) 13 SCC 722*** wherein the Court observed in paragraph 21 as follows:

"21. It has been argued that non-examination of the medical officers concerned is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC. ***It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-Section (3) of Section 294 CrPC.*** *Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined.'*

(emphasis supplied)

The absence of any injury on the appellant further supports the possibility that neither penetration nor the alleged bleeding occurred in the manner claimed by the prosecution.

6. PW-1, PW-2, and PW-3 stated that medical practitioners were available in the village and that the family ordinarily consulted them when required. Yet PW-2 and PW-3 did not promptly consult a medical practitioner for the victim. Instead, after returning from the residence of the Gram Pradhan in the late evening, they purchased antibiotics and other medicines from a medical store. In the circumstances alleged by the prosecution, this conduct is difficult to reconcile with the claim of bleeding, in which case, the child required prompt medical attention. PW-2 and PW-3 do not appear, from their evidence, to be illiterate or wholly unaware of the need to seek medical assistance. For the same reason, the testimony of PW-3 that she noticed blood on the clothes of the victim does not inspire confidence.

51. The foregoing deficiencies require a closer examination of the medical evidence to assess the reliability of the ocular account. The medical examination recorded no external or internal injury on the victim's body. The prosecution case is one of penetrative sexual assault accompanied by bleeding in a child of about five years of age. As the victim was examined at about 10:45 p.m., within approximately ten hours of the alleged occurrence at 12:30 p.m., the Court would ordinarily expect some corresponding sign of bodily injury or trauma if the allegation of bleeding were correct, unless the absence of such finding were medically explained. No such explanation has been offered. It is difficult to reconcile the categorical assertion of PW-3 that blood was present on the victim's undergarments and legs with the complete absence of external or internal injury in the contemporaneous medical examination. The victim's earliest statement to the Sub-Inspector did not mention bleeding; it stated only that the appellant made her lie down, lay over her, and did dirty things to her. The conduct of the parents, who did not promptly seek medical attention and instead first approached the Gram Pradhan, is also a circumstance to be assessed in the overall factual context. The Trial

Court did not evaluate these aspects in their proper perspective. It mechanically applied the general proposition that credible ocular evidence ordinarily prevails over medical evidence without examining whether that principle was attracted on the particular facts. The question is not whether medical evidence invariably prevails over ocular testimony, but whether the prompt medical findings are so fundamentally inconsistent with the prosecution version that they undermine the reliability of the ocular account. In the present case, the allegation of penetrative sexual assault accompanied by substantial bleeding receives no support from the contemporaneous medical evidence. This unexplained inconsistency goes to the root of the case and creates a serious doubt regarding the allegation of penetrative sexual assault.

52. In view of these shortcomings and the principles stated in ***Rai Sandeep (supra),*** PW-1 cannot be regarded as a sterling witness in relation to the allegation of penetrative sexual assault. The delayed statement under Section 164 Cr.P.C. raises a serious possibility of improvement in the allegation of bleeding. It would, therefore, be unsafe to rely upon the evidence of PW-1 and PW-3 concerning bleeding, particularly when it receives no support from the medical evidence. We also note the defence case that the appellant was falsely implicated because of enmity between the two families. The Trial Court rejected that defence on the superficial ground that the defence witnesses differed regarding the date of the panchayat. That ground was insufficient to discard the defence evidence in its entirety.

53. The Trial Court held that the appellant had failed to rebut the presumption under Section 29 because the defence did not cross-examine the victim on the allegation of rape. We are unable to accept that reasoning. The prosecution's case of rape and penetrative sexual assault rests upon the allegation of bleeding, coupled with the victim's statement that the appellant did dirty things to her. In cross-examination, the defence questioned the victim about her understanding of "dirty work"; she remained silent. That silence creates ambiguity as to whether the act, if any, fell within Section 3 or Section 7 of the POCSO Act, that is, whether it was penetrative sexual assault or sexual assault without penetration. We have already found that the claim of bleeding is not proved by the record and is contradicted by the medical evidence. In those circumstances, the defence's failure to put a specific question about penetration cannot, by itself, operate against it in relation to the charge under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act or Section 376(2)(i) IPC. The lack of articulation on the part of the victim may itself have limited the scope of a more specific cross-examination. In any event, cross-examination is a means of testing a witness; it does not prevent the defence from demonstrating that the prosecution evidence is inherently improbable or does not establish the charge.

54. Penetration is an essential ingredient for conviction under Section 376(2)(i) IPC and under Section 3 of the POCSO Act, except under Section 3(d), which is not invoked here. There is no specific evidence of penetration. The Trial Court appears to have inferred penetration from the allegation of bleeding. We have held that the allegation of bleeding cannot be accepted in view of the medical evidence and the other deficiencies already noted. Accordingly, after looking into prosecution evidence in its entirety this Court is not satisfied that penetration, which constitutes the essential ingredient of Section 3 of the POCSO Act and Section 375 IPC, has been proved beyond reasonable doubt. The prosecution, therefore, failed to establish the essential ingredients necessary for conviction under Sections 4 or 6 of the POCSO Act. The foundational facts for invoking Section 29 were not proved, and the Trial Court erred in law and on facts in invoking that presumption. Even assuming that the presumption arose, the appellant rebutted it, on a preponderance of probabilities, in relation to the offences under Sections 3 and 5(m) and 5(n) of the POCSO Act. The conviction under Section 376(2)(i) IPC and Sections 5(m) and 5(n), read with Section 6, of the POCSO Act

cannot be sustained. As already held, the presumptions under the POCSO Act could not have been invoked to convict and sentence the appellant under Section 376(2)(i) IPC.

55. Accordingly, the judgment of the Trial Court, insofar as it convicts the appellant under Section 376(2)(i) IPC and Sections 5(m) and 5(n), read with Section 6, of the POCSO Act, and sentences him under Section 376(2)(i) IPC, is liable to be set aside and is set-aside.

56. However, the conclusion that the prosecution has failed to prove the allegation of penetrative sexual assault does not require the Court to reject the testimony of PW-1 in its entirety. It is a settled principle of criminal jurisprudence that the evidence of a witness is not to be discarded as a whole merely because one part of the testimony is found to be unreliable. The Court is under a duty to separate the grain from the chaff and to rely upon those portions of the evidence which are found to be truthful, consistent and supported by the surrounding circumstances. The rule falsus in uno, falsus in omnibus has never been accepted as a sound rule of evidence in India. Applying that principle, while this Court is not prepared to accept the prosecution version insofar as it alleges penetration and bleeding, the remaining part of the victim's testimony may still be relied upon if it independently establishes the ingredients of a lesser offence.

57. The present case falls within that principle. While the allegation of penetration and bleeding cannot safely be accepted, the consistent allegation that the appellant took the child to the terrace, made her lie down, lay over her and assaulted her genital region remains substantially unimpeached. The evidence of the victim is, however, consistent from her initial statement to the Woman Sub-Inspector in respect of the allegation that the appellant took her to the terrace, made her lie down, positioned himself over her, and struck her genital area with his fist. The proved acts of taking a five-year-old child to the terrace, making her lie down, positioning himself over her and striking or touching her genital area admit of no reasonable inference other than that they were committed with sexual intent. The appellant has not been able to create any material doubt regarding this part of the evidence. The prosecution has proved the ingredients of Section 7 of the POCSO Act. As the victim was below twelve years of age and the appellant was a relative or person covered by Sections 9(m) and 9(n), the appellant is liable to be convicted for aggravated sexual assault punishable under Section 10 of the POCSO Act. The prescribed punishment is imprisonment for a term of not less than five years, which may extend to seven years, and fine.

58. The record shows that the appellant has already undergone imprisonment for five years and eight months. The Trial Court imposed a fine of Rs. 50,000/-, of which 80% was directed to be paid to the victim. We hold the appellant guilty under Section 7, read with Sections 9(m) and 9(n), and punishable under Section 10 of the POCSO Act. He is sentenced to imprisonment for the period already undergone and to pay a fine of Rs. 50,000/-. If the fine has not already been paid, it shall be deposited within three months from today. In default, the Trial Court shall take coercive steps in accordance with law for its recovery.

59. For the reasons stated above, the appeal is ***partly allowed.***

60. The appellant is on bail. He is not required to surrender. His bond is cancelled and sureties stand discharged.

61. The Trial Court record shall be remitted forthwith. The judgment of this Court shall be certified to the Trial Court for information and compliance.

(2026) 7 ILRA 1953
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.07.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 12592 of 2024

Ravi Shankar & Ors. **...Appellant(s)**
Versus
State of U.P. & Anr. **...Respondent(s)**

ISSUE FOR CONSIDERATION

Whether the prosecution proved beyond reasonable doubt the guilt of the surviving appellants.
Whether the female appellants participated in the assault or shared common object.
Whether the conviction and the benefit of probation granted by the trial court require interference.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 36, 173(2), 173(8), 161 – Indian Penal Code – Sections 323, 504, 506 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section - 30,– Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act – Section 14-A(1), 3(1)(x) : - Criminal Appeal - against order taking cognizance and summoning – FIR registered against accused persons – investigation conducted – statements under Section 161 Cr.P.C. recorded – draft final report prepared concluding no offence made out – superior police authority (Additional S.P.) returned the case diary with instructions for further investigation before submission of report to Court – Investigating Officer conducted further investigation and filed charge-sheet – cognizance taken and appellants summoned – appellants pleaded that superior police authority had no power to direct further investigation under Section 173(8) Cr.P.C. and that the order is based on surmises – Court finds that final report had not been submitted before the Magistrate, that superior police officers under Section 36 Cr.P.C./Section 30 BNSS possess supervisory powers to examine case diary, point out defects and return the same for further investigation before the police report is filed, - and such power is distinct from the power to order further investigation after submission of the report which requires Court's leave under Section 173(8) Cr.P.C., - and that the Investigating Officer had adduced prima facie material establishing sufficient grounds to proceed – held, no legal infirmity, procedural irregularity or jurisdictional error in the order taking cognizance and summoning the accused – hence appeal dismissed – impugned order affirmed.

(Paras 14, 17, 18, 21, 22, 23, 24)

Appeal Dismissed. (E-11)

CASE LAW CITED

Pramod Kumar v. State of U.P., (2026) 5 SCC 308
Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762
Vinubhai Haribhai Malaviya v. State of Gujarat, (2019) 17 SCC 1
Peethambaran v. State of Kerala, (2024) 16 SCC 65
State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554
Bohatie Devi (Dead) through LRs v. State of Uttar Pradesh & Others, (2023) 16 SCC 349

LIST OF ACTS

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

Code of Criminal Procedure, 1973
Bharatiya Nagarik Suraksha Sanhita
Indian Penal Code, 1860
U.P. Police Regulations

LIST OF KEYWORDS

Criminal Appeal – SC/ST Act – Cognizance – Summoning order – Further investigation – Supervisory power of superior police officer – Section 36 Cr.P.C. – Section 173(8) Cr.P.C. – Final report not submitted to Court – Prima facie case – Appeal dismissed.

CASE ARISING FROM

Order dated 16.01.2019 passed by Special Judge (SC/ST) (Prevention of Atrocities) Act, Jaunpur in Session Trial No. 18/2019 (State Vs. Devraj & others) arising out of Case Crime No. 188 of 2016, P.S. Machhalishahar, District Jaunpur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Gulab Chandra Tiwari, Uday Shankar Tiwari
Counsel for Respondent(s): Dilip Kumar Dubey, G.A., Prabhat Kumar Tiwari

(Delivered by Hon'ble Santosh Rai, J.)

1.Heard Sri Gulab Chandra Tiwari, learned counsel for the appellants, Sri Prabhat Kumar Tiwari, learned counsel for opposite party no.2 and learned A.G.A. and perused the record.

2.'This criminal appeal under Section 14 A (1) of S.C.& S.T. Act has been filed against'order dated 16.01.2019 passed by' Special Judge (SC/ST) (Prevention of Atrocities) Act, Jaunpur in Session Trial No 18/2019 (State Vs. Devraj & others) arising out of Case Crime No. 188 of 2016, under Sections 323, 504 and 506 I.P.C. and Section 3(1) (x) SC/ST Act, P.S. Machhalishahar, District-Jaunpur whereby cognizance has been taken against the appellants and appellants have been summoned.

3. Tersely, opposite party no. 2 registered an' F.I.R. against five accused persons at P.S. Machhalishahar. Following the initial F.I.R. against the appellants, the investigating officer recorded witness statements under Section 161 of the Cr.P.C. and initially compiled a final report on June 9, 2016, concluding that no offences were made out against the appellants; this report was submitted before the superior officer. In the light of direction of superior police officer, the investigating officer forwarded Charge Sheet No. 27/2017 on May 3, 2017 against four persons under Sections 323, 504, 506 of the IPC and Section 3(1)(x) of the SC/ST Act, noting that the first accused, Devraj, had passed away.

4. Briefly, the grounds of the appeal are that the impugned order dated 16.01.2019 passed' Special Judge (SC/ST) (Prevention of Atrocities) Act, Jaunpur' is totally unjust improper' and is based upon surmises and conjunctures which is not supported by any documentary evidence."

5.'Learned counsel for the appellants submitted that the trial court has wrongly taken cognizance in this case whereas during course of investigation, the investigating officer has sent charge-sheet before the Superior Police Authority. The Superior Police Authority has not empowered to issue direction for further investigation as provided under section 173(8) CRPC. On

the basis of direction given by the Superior Police Authority, charge-sheet was filed whereas, initial FR was submitted, and he draw attention of the Court towards the SCD parcha III, which is annexed as Annexure 2.

6. Learned counsel for the opposite party no.2 vehemently opposed the submission of learned counsel for the appellants, and submitted that the trial court has not committed any legal error by taking cognizance. The final report was not submitted before the court. Admittedly, after registering of FIR, the investigation has been handed over to I.O. He conducted investigation and recorded statement of some of the witnesses. As per CD III, which is annexed as Annexure 2, it appears that final report no.24 of 2016 was prepared on 09.06.2016, and the investigation was closed, by I.O. Thereafter the Superior Authority/Additional S.P. Gramin, Jaunpur, returned along with instructions. In the light of instructions received through Superior Police Authority, the I.O. again conduct the further investigation and submitted the charge-sheet. Thereafter, cognizance was taken in this case.

7. In the light of submission of learned counsel for both the parties, in this regard, it would be just, and proper to refer the provision of Section 36 CrPC/Section 30 BNSS "Police officers superior in rank to an officer in charge of a police station may exercise the same powers throughout the local area to which they are appointed." Consequently, the Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police, Circle Officer and other superior police officers possess co-extensive powers of investigation and are competent to supervise, direct or themselves undertake investigation in accordance with law.

8. The legal position has been explained by the Hon'ble Supreme Court in ***Pramod Kumar v. State of U.P., (2026) 5 SCC 308***, particularly in paragraphs 28 to 32 as under :-

28. The issue regarding the procedure to be followed for directing further investigation in a case has been dealt with by this Court in Vinay Tyagi'v.'Irshad Ali, (2013) 5 SCC 762, wherein this Court while dealing with the contours of Section 173(8)CrPC relating to further investigation, propounded that the police ought to follow the procedure of seeking permission from the Court to conduct 'further investigation' and file a supplementary charge-sheet. The relevant paragraphs from the judgment are reproduced as under : (SCC p. 790, para 40)

'40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in sub-para 40.2 above is in conformity with the principle of law stated in'Bhagwant Singh case'[Bhagwant Singh'v.'Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of

Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6.'It has been a procedure of propriety that the police has to seek permission of the court to continue 'further investigation' and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.'

(emphasis supplied)

29.'In this very judgment, this Court while noting that although there is no explicit mandate under Section 173(8) CrPC to seek leave of the Court before conducting further investigation, nevertheless, over the time, a practice has been developed to seek permission of the Court. Therefore, the practice of seeking the leave of the Court will have to be read into the provisions of Section 173(8) CrPC, and it is essentially a prerequisite for directing further investigation. This Court therein held as follows : (Vinay Tyagi case'[Vinay Tyagi'v.'Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , SCC p. 793, paras 49-50)

'49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies.'It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct 'further investigation' or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct 'further investigation' and file 'supplementary report' with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct 'further investigation' and/or to file a 'supplementary report' will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

50. Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.'

(emphasis supplied)

30.'The proposition of the law laid down in'Vinay Tyagi'[Vinay Tyagi'v.'Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] has been further affirmed by the three-Judge Bench of this Court in'Vinubhai Haribhai Malaviya'v.'State of Gujarat'[Vinubhai Haribhai Malaviya'v.'State of Gujarat, (2019) 17 SCC 1 : (2020) 3 SCC (Cri) 228] .

31.'This Court has dealt with a similar situation in 'Peethambaran'v.'State of Kerala'[Peethambaran'v.'State of Kerala, (2024) 16 SCC 65] , wherein the District Police Chief i.e. Superintendent of Police, ordered further investigation. This Court therein, while quashing the order passed by the District Police Chief, held that the power to order further investigation rests either with the Magistrate concerned or a higher court, but not with the investigating agency. The relevant paragraphs from the judgment are reproduced as follows : (SCC pp. 74 & 77, paras 19-20 & 28)

'19.'The Chief Police Officer of a district is the Superintendent of Police who is an officer of the Indian Police Service. Needless to state, an order from the District Police Chief is not the same as an order issued by the Magistrate concerned. Referring to'Vinay Tyagi'[Vinay Tyagi'v.'Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , this Court in'Devendra Nath Singh'v.'State of Bihar'[Devendra Nath Singh'v.'State of Bihar, (2023) 1 SCC 48 : (2023) 1 SCC (Cri) 270] noted that there is no specific requirement to seek leave of the court for further investigation or to file a supplementary report but the investigating agencies, have not only understood it to be so but have also adopted the same as a legal requirement. The doctrine of contemporanea expositio aids such an interpretation of matters which have been long understood and implemented in a particular manner to be accepted into the interpretive process.'In other words, the requirement of permission for further investigation or to file a supplementary report is accepted within law and is therefore required to be complied with.

20. In the facts at hand, it is clear that such a permission was never taken, granted or ordered. Consequently, FR-II is without basis. In FR-I it has been stated that in the absence of any documents in respect of the financial transactions, the instant case may be treated as a false case. This, then would necessarily imply that after due investigation conducted by a duly authorised person, the conclusion is that the ingredients of the section mentioned in the FIR have not been met and no case is made out.

28. In terms of second question, the above discussion makes clear that the District Police Chief, Kottayam could not have ordered further investigation, as that power rests either with the Magistrate concerned or with a higher court and not with an investigating agency.'

(emphasis supplied)

32.'In light of the legal position as settled by this Court through the above judgments, it is safe to say that the power to direct further investigation in a case rests solely at the discretion of the Magistrate/Court concerned. In the event, the police/investigating agency is of the opinion that further investigation is necessary in any particular case to cull out complete facts and truth in the case, it is binding upon them to file an appropriate application before the Magistrate/Court, without directing an order for further investigation by themselves. Once such an application is filed by the investigating agency, the Magistrate/Court would apply its judicial mind, in light of the facts and circumstances of the particular case and the reasons demonstrated by the investigating agency, in order to exercise its discretion for exercise of its power to decide whether or not further investigation is to be ordered under the purview of Section 173(8)CrPC.

9. A superior police officer may himself investigate or supervise investigation under Section 36 CrPC /Section 30 BNSS."Only the officer who conducts the investigation (or a superior officer who has himself taken over the investigation) is competent to submit the police report before the Magistrate. The report represents the opinion of the Investigating

Officer. A superior administrative authority cannot compel the I.O to file a charge-sheet if the investigation discloses no offence. Although, CrPC/BNSS does not expressly use the words "return the case diary", supervisory power necessarily includes the authority to examine investigation and require further investigation before approval of the final report. Thus, the following principles emerge; examine case diary, point out defects, direct examination of omitted witnesses, direct collection of scientific evidence, direct recovery of documents, require compliance with legal provisions, send the file back to I.O for completion of investigation. This is part of ***'supervisory jurisdiction'*** flowing from Section 36 CrPC/Section 30 B.N.S.S. and UP Police Regulations. There is provisions in Para 109 and 122 of UP Police Regulation' regarding completion of investigation and submission of charge-sheet or final report. However, the superior officer cannot substitute his own opinion merely to compel filing of charge-sheet without either, taking over investigation himself; or directing lawful instructions to the IO.

10. There is difference between 'Supervisory Power and Investigating Power'. Superior Officer may inspect investigation, issue instructions, return diary, monitor investigation. But ordinarily cannot dictate findings, fabricate evidence, compel filing of charge-sheet contrary to investigation. If he wishes to alter conclusions substantially, he should himself exercise powers under Section 36 CrPC/Section 30 BNSS and conduct investigation. Thus, Legal Position is that the scheme of the Code of Criminal Procedure recognizes that, before the police report under Section 173(2) CrPC/Section 193(3) BNSS is submitted before the Magistrate, the investigation remains under the administrative and statutory supervision of superior police officers. These provisions regulate the manner in which the police report is finalized and ensure that the investigation is complete, fair and legally sustainable before it reaches the Court. Section 36 CrPC/Section 30 BNSS empowers police officers superior in rank to the Officer-in-Charge of a police station to exercise the same investigative powers within their territorial jurisdiction. Consequently, officers such as the Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police and Circle Officer are competent to supervise the investigation, examine the case diary, and ensure that all relevant facts have been properly investigated.

11. The supervisory authority of superior police officers is also reflected in the U.P. Police Regulations, particularly Chapter XI relating to the duties of superior officers. Before a final report or charge-sheet is forwarded to the Court, the superior officer is entitled to scrutinize the case diary, identify deficiencies in the investigation, and return the record to the Investigating Officer with appropriate directions for conducting further investigation. Such directions may include examination of omitted witnesses, collection of additional documentary or scientific evidence, recovery of relevant material, removal of procedural defects, and compliance with statutory requirements. These 'supervisory directions' are intended to ensure that the investigation is complete, impartial and legally sound before the police report is submitted before the Magistrate. However, the supervisory jurisdiction of a superior police officer is distinct from the statutory function of the Investigating Officer. A superior officer cannot merely substitute his own opinion or compel the Investigating Officer to submit a charge-sheet contrary to the latter's independent assessment of the evidence. If the superior officer proposes to alter the

conclusions of the investigation substantially, he must himself assume the investigation by exercising powers under Section 36 CrPC/Section 30 BNSS. Thus, while supervision over the investigation is permissible, interference with the independent formation of opinion by the Investigating Officer is not.

12. The Hon'ble Supreme Court has consistently recognized this distinction. In ***State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554,*** it was held that the powers conferred under Section 36 CrPC are not confined merely to administrative supervision. A superior police officer possesses the same powers of investigation as the Officer-in-Charge of a police station and may himself investigate or supervise the investigation to ensure that the truth is discovered and justice is served. The object of such further investigation is not to nullify the earlier investigation but to supplement it by bringing all relevant facts before the Court. Similarly, in **Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762**, the Supreme Court explained the distinction between a 'fresh or de novo' investigation, which ordinarily requires judicial sanction, and further investigation, which is a continuation of the earlier investigation for discovering the truth. The Court emphasized that the police possess the inherent authority to undertake further investigation before the report attains finality, subject to the statutory safeguards contained in Section 173(8) CrPC. The object of such further investigation is not to nullify the earlier investigation but to supplement it by bringing all relevant facts before the Court.

13. At the stage prior to the submission of the police report under Section 173(2) CrPC/Section 193(3) BNSS, the investigation remains under the 'statutory and administrative supervision' of the superior police authorities. During this stage, a superior police officer is fully empowered under Section 36 CrPC/Section 30 BNSS and relevant rules to examine the case diary, scrutinize the investigation, withhold the proposed police report, and direct the Investigating Officer to conduct further investigation wherever the investigation is found to be incomplete, defective, or lacking in material evidence. The object of such supervision is to ensure that the investigation is complete, fair, impartial, and based upon all relevant evidence before the police report reaches the Magistrate.

14. The legal position changes once the police report has been submitted before the Magistrate under Section 173(2) CrPC/Section 193(3) BNSS. After submission of the police report, the superior police authority cannot unilaterally recall, withdraw, or cancel the charge-sheet already filed before the Court. At that stage, the investigation comes under the supervision of the Court, and any further investigation can only be undertaken in accordance with Section 173(8) CrPC/Section 193(9) BNSS by submitting a supplementary police report before the Magistrate. Thus, unlike the pre-submission stage, the superior police authority cannot exercise administrative powers to undo a police report that has already been filed before the Court. Any further investigation must follow the statutory procedure and remain subject to judicial supervision.

15. Thus, a clear distinction must be maintained between *'supervisory power'* and *'investigative power'*. A superior police officer is empowered to supervise the investigation by inspecting the case diary, pointing out defects, issuing lawful directions, and ensuring

that the investigation is conducted properly. For example, the superior officer may direct the Investigating Officer to verify 'an alibi', collect CCTV footage, examine additional witnesses, recover relevant documents, or obtain scientific evidence, etc. However, the superior officer cannot compel the Investigating Officer to sign or submit an opinion which the Investigating Officer does not honestly hold. If the superior officer is of the view that the investigation requires substantial alteration, he must either exercise his own powers of investigation under Section 36 CrPC/Section 30 BNSS or entrust the investigation to another competent Investigating Officer authorized to conduct the investigation and submit the report. Thus, supervisory control ensures the legality and completeness of the investigation, whereas the formation of the final opinion under Section 173 CrPC/Section 193 BNSS must remain the result of a lawful investigation conducted by the Investigating Officer.

16. In ***Bohatie Devi (Dead) through LRs v. State of Uttar Pradesh & Others, (2023) 16 SCC 349,*** Hon'ble Supreme Court has explained the limits of administrative interference after submission of the police report. The Court held that the Secretary (Home) or any other executive authority of the State Government cannot bypass the provisions of the Code of Criminal Procedure and direct a fresh investigation, reinvestigation, or further investigation by another investigating agency after a charge-sheet has already been submitted before the Magistrate and cognizance has been taken. Once the matter enters the judicial domain, executive authorities cannot interfere with the statutory procedure prescribed under the Code.

17. The Supreme Court further observed that if an accused person is aggrieved by the filing of a charge-sheet or supplementary charge-sheet, the proper remedy is to invoke the jurisdiction of the competent Court by filing proceedings such as a petition under Section 482 CrPC, a discharge application, or any other remedy available under law. The accused cannot seek administrative intervention from the Government or executive authorities to nullify or circumvent the judicial process. The Court also clarified that Section 173(3) CrPC, read with Section 158 CrPC, merely prescribes the channel through which the police report is to be forwarded to the Magistrate through the superior police officer. These provisions do not confer any independent authority upon the Home Secretary or any executive officer to transfer the investigation to another agency after the charge-sheet has been submitted or after the Court has taken cognizance. In Paragraph 20 of the said judgment, the Supreme Court specifically interpreted Sections 173(3) and 158 CrPC and held that these provisions regulate only the manner in which the police report is to be submitted before the Magistrate. The Court observed that where a superior police officer has been appointed under Section 158 CrPC, the police report shall be forwarded through such superior officer, and pending the orders of the Magistrate, the superior officer may direct the Officer-in-Charge of the police station to conduct further investigation. Therefore, the statutory power to direct further investigation before submission of the report remains with the superior police officer under the scheme of the Code.

18. Under the statutory scheme of the Code of Criminal Procedure and the U.P. Police Regulations, the investigation of a criminal case remains under the 'general control and

supervision' of superior police officers until the police report under Section 173(2) CrPC/Section 193(3) BNSS is submitted before the Magistrate. The purpose of such supervision is to ensure that the investigation is complete, fair, lawful, and based upon all relevant evidence before the matter reaches the Court. In the ordinary course, after completing the investigation, the Investigating Officer prepares the case diary together with a draft final report or charge-sheet. Before the report is forwarded to the Magistrate, it is examined through the departmental hierarchy, such as the Station House Officer, Circle Officer, Deputy Superintendent of Police, Additional Superintendent of Police or Superintendent of Police, as the case may be. These superior officers exercise supervisory jurisdiction to ensure that the investigation has been properly conducted and that the proposed police report is legally sustainable. During such scrutiny, the superior police officer is entitled to verify whether all material evidence has been collected, whether the statements of witnesses have been properly recorded, whether the relevant provisions of law have been correctly applied, and whether any important witness, document or circumstance has been overlooked.

19. If the investigation is found to be incomplete or defective, the superior officer 'may return' the case diary and the draft police report to the Investigating Officer with written directions requiring further investigation. The purpose of directions is not to interfere with the independence of the investigation but to remove deficiencies and ensure that the final police report is based upon a complete and lawful investigation. Once the Investigating Officer complies with those lawful directions and completes the investigation, the police report under Section 173(2) CrPC/Section 193(3) BNSS is submitted before the Magistrate through the prescribed channel. At that stage, the statutory obligation of the police to submit the report stands fulfilled. The internal administrative supervision exercised by superior police officers remains purely 'departmental in nature' and does not affect the jurisdiction of the Magistrate after the report has been filed.

20. Thus, the statutory scheme strikes a balance between effective departmental supervision and the independence of the investigating process. While superior police officers are duty-bound to ensure that investigations are thorough, impartial and legally sound before submission of the police report, they cannot substitute the opinion of the Investigating Officer or interfere with the 'judicial process' after the police report has been submitted before the competent Court.

21. Thus, the legal position may, therefore, be summarised as follows:

(i) A superior police officer possesses the same statutory powers of investigation as the Officer-in-Charge of a police station under Section 36 CrPC/Section 30 BNSS.

(ii) Before submission of the police report, the superior officer may examine the case diary and return it to the Investigating Officer with lawful directions for conducting further investigation to remove defects or collect relevant additional evidence. Such supervisory powers are recognized under the CrPC/BNSS as well as the U.P. Police Regulations.

(iii) A superior officer cannot compel submission of a charge-sheet merely by substituting his own opinion unless he himself assumes the investigation under Section 36 CrPC/Section 30 BNSS.

(iv) Once the police report has been submitted before the Magistrate/Court, any further investigation can only be undertaken in accordance with Section 173(8) CrPC/Section 193(9) BNSS by filing a supplementary police report in the light of principle as laid down by Apex Court as discussed herein above.

(v) The 'Statutory Power' to direct further investigation before submission of police report to the Magistrate/Court, remains only with 'Superior Police Officer' under the scheme of CrPC/BNSS, not other authority.

22. In the above-mentioned case, an objection has been raised by the Supervising Officer/ Additional Superintendent of Police (Rural), Jaunpur, in SCD lll ,stating that 'the medical examination of the complainant, Mr. Ram Pyare, and the injured person, Mr. Anuj Kumar Singh, has been conducted. On the basis of the medical report, for the legal disposal of the investigation of the said case, all original case records along with Final Report No. 24/16 (dated 09.06.2016) have been returned."admittedly, in this case, the final report had not been submitted before the court or magistrate, therefore, no cognizance has been taken up on the final report. The superior police officer/additional superintendent of police has not passed an order under section 173(8) CrPC, thus the argument of learn Counsel for the appellant that the superior police Authority has passed an order under section 173(8) CrPC, is not legally correct.

23. In the light of substratum of this case, the legal principals as discussed here in above detail, I am of considered view that the superior police officer in this case, has exercised 'administrative power' regarding return the case diary and final report draft to the investigating officer to conduct the investigation properly and legally in the light of instructions.

24. The Investigating Officer has adduced prima facie material establishing sufficient grounds to proceed against the appellants. Having carefully examined the record, the police report submitted under Section 173(2) Cr.P.C. and the impugned order passed by the learned Trial Court, this Court finds no legal infirmity, procedural irregularity, or jurisdictional error in the order taking cognizance and summoning the accused. Consequently, the present Criminal Appeal lacks merit and is hereby **dismissed**.

25. The order dated 16.01.2019, passed by the learned Trial Court is **affirmed**.

26. Before parting with the judgment, this Court records its appreciation for the sincere assistance extended by Research Associates, Mr. Shivansh Pandey and Mr. Sandeep Kumar Singh, in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(2026) 7 ILRA 1963
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ Tax No. 571 of 2026

Smt. Asha Dubey **...Petitioner(s)**
Versus
Union of India & Ors. **...Respondent(s)**

ISSUE FOR CONSIDERATION

a) Whether the revenue can invoke Section 159 of the Income Tax Act, 1961 to validate reassessment proceedings initiated against a person who was already dead on the date of initiation of the notice under Section 148?

b) Whether issuance of a notice under Section 148 to a deceased assessee is a mere "mistake, defect or omission" curable under Section 292B, or a substantive jurisdictional defect that cannot be cured?

c) Whether the legal heir can be said to have waived the jurisdictional objection or submitted to the jurisdiction of the Assessing Officer by filing returns/replies, in light of Section 292BB?

d) Whether reassessment proceedings under Section 148 can be justified on equitable grounds to protect the interests of the revenue, or must strictly satisfy the statutory requirements?

e) Whether a decision of the High Court quashing the Section 148 notice would amount to a "finding" or "direction" under Section 150(1) permitting issuance of a fresh notice against the legal representative beyond the limitation period under Section 149?

HEADNOTES

Tax Law – Constitution of India – Article 142, 226, 265 - Income Tax Act, 1961 – Section – 132, 140, 142(1), 147, 148, 148-A, 149, 150, 150(1), 150(2), 151, 156, 159, 159(2)(a), 159(2)(b), 277, 292-B, 292-BB :- Writ Petition under Article 226 – for quashing of the reassessment proceedings initiated under Section 148 of the Income Tax Act, in the name of petitioner's deceased husband - facts reveal that despite his death, notices were issued to him, followed by rejection of objections and assessment order raising demand of Rs. 39,67,330/- against deceased assessee - Petitioner pleaded that notices issued to a dead person is void ab initio – and section 159 of Income Tax Act, applies only when proceedings were validly initiated during lifetime, and Section 292-B cannot cure jurisdictional defects - limitation under Section 149 also bars reassessment – respondents contended petitioner misrepresented by filing ITR in deceased's name and section 159 ensures continuity of liability, and as such defect is curable under Section 292-B - - Court found that, a notice under Section 148 to a dead person is a foundational jurisdictional defect that is void *ab initio* and cannot be validated by Sections 159, 292B or 292BB, that equity and estoppel cannot confer jurisdiction, and that the High Court's order quashing the notice does not constitute a "finding or direction" under Section 150(1) - equitable doctrines cannot confer jurisdiction – court held that, - **(i)** Notice under Section 148 of the Income Tax Act, 1961 issued in the name of a deceased assessee is void *ab initio* and confers no jurisdiction on the Assessing Officer, – **(ii)** Section 159 does not validate proceedings initiated after the death of the assessee; fresh notice must be issued directly to the legal representative within the limitation

period under Section 149, – **(iii)** Issuance of notice to a dead person is a jurisdictional defect and not a curable mistake under Section 292B, – **(iv)** Participation or filing of returns by the legal heir does not cure the jurisdictional defect or attract the deeming fiction under Section 292BB, – **(v)** Equity, estoppel, waiver or acquiescence have no place in the interpretation of taxing statutes; jurisdiction must strictly flow from the statute, - **(vi)** Quashing of a void Section 148 notice by the High Court does not constitute a "finding" or "direction" under Section 150(1) enabling fresh notice beyond limitation., - **(vii)** Proceedings initiated and continued against a dead person, and all consequential orders, are null and void – consequently, writ petition, allowed, the impugned notice and all consequential orders were quashed, - with direction to the senior registrar of the court to transmitted the copy of the judgment to the Ministry of Finance for consideration of legislative amendment to plug the lacuna.

(Para – 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115)

Writ Petitions Allowed. (E-11)

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LIST OF ACTS

Income Tax Act, 1961 - Constitution of India.

LIST OF KEYWORDS

Writ Petition - Judicial Review - deceased assessee - Income Tax - Natural Justice - Maintainability - Relief sought - Administrative order - Estoppel - waiver - tax law - Reassessment - Notice for reassessment - Inquiry before assessment - Demand notice - Legal representatives - Technical defects - Participation in proceeding - Extension of limitation - False statement in verification - notice to dead person - reassessment jurisdiction - legal representative - void *ab initio* - finding or direction – equity in tax law - writ of certiorari.

CASE ARISING FROM

Search and seizure on Omaxe Group dated 01.04.2021 revealing alleged cash transaction of Rs. 27,44,000/- by late Shri Sanjay Dubey - Reassessment initiated against deceased assessee for AY 2021–22 - Notice dated 28 March 2025 under Section 148 of the Income Tax Act, 1961 for AY 2021-22, subsequent notices under Section 142(1), order dated 20.02.2026 rejecting preliminary objections, and the assessment/demand order dated 24.032026, all initiated/continued in the name of the deceased husband of the petitioner.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Kartikey Dubey, Ramesh Chandra Mishra,
Counsel for Respondent(s): A.S.G.I., Kushagra Dikshit, Paavan Awasthi, Neerav Chitravanshi.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

This is a writ petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the notice dated March 28, 2025 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Year 2021-22, the subsequent notice dated January 7, 2026 issued under Section 142(1) of the Act, the order dated February 20, 2026 rejecting the preliminary objections and consequential assessment as well as demand order dated March 24, 2026 respectively under Section 156 of the Act, inter alia, on the ground that the entire proceedings have been initiated and continued in the name of the deceased husband of the petitioner, as without jurisdiction rendering the same as null, void ab initio, and accordingly, all consequential orders being unsustainable in law.

FACTS

2. The factual matrix of the present lis has been delineated below:-

a. The husband of the petitioner, Shri Sanjay Dubey, was employed as Chief Management Officer in the U.P. Secretariat and was a taxpayer.

b. On October 15, 2020, the husband of the petitioner, along with his son Shri Prakhar Narayan, purchased a residential flat for a total sale consideration of Rs.82,83,353/- in Grand Omaxe, Lucknow. Out of the total consideration, a sum of Rs. 55,52,954/- was paid by the husband of the petitioner to M/s Omaxe Limited entirely through accounted banking channels, pursuant thereto an allotment letter dated October 15, 2020 was issued in his favour.

c. The Income Tax department conducted a search in accordance with Section 132 of the Act on April 1, 2021 on the Omaxe group wherein it was alleged that a cash transaction of Rs.25,97,000/- was made by the husband of the petitioner.

d. On January 7, 2024, the husband of the petitioner, passed away and after completing the last rites and necessary formalities, the petitioner left India on May 31, 2024 to stay with her daughter in the United States of America and returned to India on September 6, 2024.

e. Upon returning to India, petitioner instructed her Chartered Accountant to file the Income Tax Return for Assessment Year 2024-2025 on behalf of her husband, which was electronically transmitted on July 30, 2024 and ultimately filed on November 5, 2024 wherein the disclosed total income was Rs. 39,79,990/- and paid total tax of Rs. 9,29,754/-, comprising: (a) Rs. 4,45,540/- voluntarily paid as self-assessment tax; and (b) Rs. 4,84,214/- being TDS already adjusted. The said return was filed in the name of deceased assessee and verified through Aadhaar OTP.

f. After obtaining approval from the Principal Commissioner of Income Tax on March 20, 2025, for initiation of proceedings under Section 148 of the Act against the husband of the petitioner, the respondent authority proposed to reassess the income and issued the impugned notice dated March 28, 2025 under Section 148 of the Act in the name of the husband of the petitioner and directed for filing of Income Tax Return within 90 days. Such approval emanates from discrepancy amounting to Rs. 27,44,000/- found in the documents seized during a search conducted in the case of the Omaxe Group on April 1, 2021.

g. Thereafter, on January 7, 2026, another impugned notice under Section 142(1) of the Act was issued in the name of the husband of the petitioner, calling upon him to produce certain documents in respect of the Assessment Year 2021-22.

h. Upon receipt of the aforesaid notices, the petitioner submitted a reply dated February 2, 2026 informing the department of the death of her husband and, inter alia, raised preliminary objection with regard to proceedings being initiated against a deceased person as void ab initio.

i. Thereafter, another notice dated February 18, 2026 was issued under Section 142(1) of the Act in the name of the husband of petitioner for furnishing requisite documents.

j. Upon receipt of the said notice, the petitioner, vide representation dated February 19, 2026, again reiterated the preliminary objection, and further requested that the preliminary objection be decided prior to proceeding further in the matter. Respondent department passed the impugned order dated February 20, 2026 rejecting all the objections of the petitioner mainly on two grounds, firstly, the department was not intimated regarding death of assessee and secondly, active misrepresentation regarding factum of death by way of filing ITR. In the said order, the name of the petitioner was substituted in place of the deceased assessee being the legal representative and directed compliance with the earlier notices, for furnishing requisite documents by February 25, 2026.

k. The petitioner submitted another reply dated February 20, 2026 reiterating the preliminary objection as was raised by the petitioner on earlier occasions.

l. Another show cause notice dated March 6, 2026 was issued by the respondent in furtherance of the earlier notice under Section 142(1) dated January 7, 2026, extending the date of reply.

m. The petitioner submitted another reply dated March 11, 2026 reiterating her preliminary jurisdictional objection and also disputed the allegations on merits, by denying the alleged cash transaction of Rs. 27,44,000/-.

n. The respondent department thereafter passed the impugned assessment order under Section 147 of the Act in the name of petitioner being the legal heir and the consequential demand order dated March 24, 2026 under Section 156 of the Act, by assessing the additional income at Rs. 69,06,520/- and determining the tax liability at Rs. 39,67,330/- on account of the unaccounted cash transaction.

CONTENTIONS ON BEHALF OF PETITIONER

3. Mr. Kartikey Dubey and Mr. Ramesh Chandra Mishra, appearing on behalf of petitioner have made the following submissions:-

a. A notice issued under Section 148 of the Act in the name of the assessee subsequent to his death is null and void from its inception and cannot confer any jurisdiction upon the Assessing Officer to proceed further in the matter.

b. The respondent department cannot derive jurisdiction to proceed on the basis of a notice which is otherwise void ab initio merely because the respondent department was not informed regarding the death of the assessee as there exists no provision under the Act mandating intimation of death by legal heirs.

c. Section 159(2)(a) comes into operation only in a situation where proceedings had already been validly initiated against the assessee during his lifetime and thereafter, during the pendency of such proceedings, the assessee dies. Section 159(2)(b) requires that the proceedings are to be initiated directly against the legal representative and not against the deceased person. Therefore, Section 159 of the Act has no application in the facts of the present case as it applies only in situations where proceedings were validly initiated against an assessee during his lifetime and during the pendency of such proceedings the assessee expires. It is only in such circumstances that proceedings may continue against the legal representatives.

d. Neither clause 2(a) nor 2(b) of Section 159 contemplates or validates a situation akin to the present case where notice itself is issued in the name of a dead person.

e. The mere filing of an Income Tax Return by the petitioner after the death of assessee cannot cure the inherent jurisdictional defect in the notice issued under Section 148 of the Act.

f. The issuance of a valid notice under Section 148 is not a mere procedural formality but is a foundational and jurisdictional requirement for initiation of reassessment proceedings under the Act which needs to be fulfilled as the entire edifice of reassessment proceedings rests upon the existence of a valid notice under Section 148. In absence whereby, the Assessing Officer lacks inherent jurisdiction to proceed with the reassessment as in the present case.

g. The notice under Section 148 constitutes the very first step for assumption of jurisdiction and initiation of reassessment proceedings. In absence of a valid notice, no reassessment proceedings can lawfully continue or culminate into an assessment order. Since, the notice itself is legally non-existent in the present case, it must be deemed that no notice under Section 148 was ever issued in the eyes of law. Consequently, the entire proceedings initiated pursuant thereto are wholly without jurisdiction and unsustainable.

h. Once the statute itself mandates that proceedings, if initiated after the death of the assessee, are required to be initiated directly against the legal representatives, then mere participation by the

legal representative in the proceedings cannot confer jurisdiction upon the respondent authorities and validate the proceedings which are otherwise void ab initio and without jurisdiction.

i. The fact that petitioner had filed the Income Tax Return in name of the deceased cannot confer any jurisdiction upon the authorities by acquiescence, waiver, participation or conduct of parties to issue notice to a dead person.

j. Furthermore, the principles of estoppel, waiver, acquiescence, approbate and reprobate are all equitable doctrines that have no place in taxation statutes. Hence, jurisdiction which is otherwise absent under the statute cannot be conferred by consent, waiver, participation or estoppel.

k. Once the statute does not contemplate issuance of notice under Section 148 in the name of a dead person, the same cannot be validated on the basis of participation by the legal representatives or on equitable doctrines such as acquiescence, waiver, estoppel, or approbate and reprobate. Jurisdiction under a taxing statute must exist strictly in terms of the statute itself and cannot be conferred by conduct of parties.

l. The defect in the notice cannot be cured by resort to Section 292B of the Act as it merely protects notices, proceedings or returns from invalidation on account of technical mistakes, defects or omissions, provided that such notice or proceeding is otherwise in substance and in effect is in conformity with or according to the intent and purpose of the Act. The said provision does not cure a foundational or jurisdictional defect which goes to the very root of the matter. In the present case, issuance of notice against a dead person is itself contrary to the scheme, object and intent of the Act, particularly Sections 159 and 148 thereof. Therefore, the preconditions for applicability of Section 292B are themselves absent in the present case.

m. The applicability of Section 150(1) of the Act for extending the period of limitation for issuance of notice under Section 148 is expressly barred by Section 150(2) in the facts of the present case as Section 150(2) of the Act specifically carves out an exception to Section 150(1) and categorically provides that the benefit of Section 150(1) shall not be available in a case where reassessment for the relevant assessment year had already become barred by limitation at the time when the 'order' which was the subject matter of appeal, reference or revision was made.

n. The legislature has consciously and deliberately employed the expression 'order' in Section 150(2) of the Act and not the expression 'notice'. Therefore, the statutory requirement is that the 'order' (not notice) forming the subject matter of appeal, revision or reference must itself be within the prescribed period of limitation. The provision cannot be interpreted to mean that mere issuance of a notice within limitation would suffice.

o. If the benefit of Section 150(1) is extended in the present case, the same would amount to enlarging and rewriting the scope consciously provided by the legislature under the Act and would effectively amount to conferring jurisdiction upon the Assessing Officer which otherwise does not exist in view of the bar created under Section 149 of the Act. Moreover, the conferment of jurisdiction is purely a legislative function and jurisdiction cannot be created either by consent of

parties, acquiescence, waiver or even by orders of a superior court contrary to the statutory provisions.

p. In the present case, the assessment order dated March 24, 2026 itself is ex facie beyond limitation as the limitation for completing reassessment proceedings in the present case expired on March 31, 2025. Prior to expiry of limitation, only a notice under Section 148 dated March 28, 2025 had been issued. However, no assessment order came to be passed within the prescribed limitation period. Section 150(1) cannot be invoked to revive or validate proceedings which had already become time barred.

q. The present reassessment proceedings emanate from the search and seizure proceedings. However, despite possession of the alleged incriminating material, the respondent department admittedly took no action whatsoever for a period of more than three years and it was only on March 28, 2025, that is, merely three days prior to expiry of limitation, the notice under Section 148 of the Act was issued. Therefore, merely because the respondent department remained inactive and slept over the alleged documents for more than three years, the same cannot furnish any ground for extending limitation contrary to the statutory mandate.

r. To buttress his aforesaid arguments, counsel has placed reliance on the following precedents of the Supreme Court and various High Courts for respective propositions:-

I. Notice issued to a dead person is null and void as the sine qua non for issuing notice under Section 148 of the Act is that it is issued in the name of correct person and such defect cannot be cured under Section 292B of the Act. Moreover, the legal heirs are under no statutory obligation to inform the department regarding death of the assessee.

i. Alamelu Veerappan vs. Income Tax Officer;
ii. Savita Kapila vs. Assistant Commissioner of Income Tax;
iii. Satendra Kumar vs. State of U.P.;
iv. Shri Devendra vs. Addl./Joint Commissioner of Income Tax;
v. Sumit Balkrishna Gupta vs. Assistant Commissioner of Income Tax;
vi. Bhupendra Bhikhalal Desai vs. ITO;
vii. ITO vs. Bhupendra Bhikhalal Desai

II. Section 159(2)(b) is attracted where a valid notice is issued to the legal representative of the deceased assessee:

viii. Mrs. Vanitha Gopal Shetty vs. ACIT ;
ix. Rajendra Kumar Sehgal vs. Income Tax Officer;

III. Participation in the proceedings (Section 292BB) shall not make the notice issued to a dead person valid:

x. Principal Commissioner of Income Tax New Delhi vs. Maruti Suzuki India Limited;
xi. Krishnaawtar Kabra vs. Income Tax Officer;
xii. Meet Lalwani vs. CIT;
xiii. Sandeep Chopra vs. CIT;
xiv. Gourang Anil Wakade vs. CIT;
xv. Neena Jatin Shah vs. Income Tax Officer;

IV. Equity has no place in tax law:

xvi. Commissioner of Income Tax, Madras & Anr. vs. V. MR. P. Firm Muar & Ors.;

xvii. Commissioner of Income Tax vs. Calcutta Knitwears, Ludhiana;

xviii. Jagmittar Sen Bhagat vs. Director Heath Services Haryana;

V. On Interpretation of Statutes:

xix. Union of India vs. Deoki Nandan Agarwal;

xx. Yeshwant Nathuji Meshram vs. State of Maharastra;

xxi. Manish Goel vs. Rohini Goel;

xxii. Sandeep Kumar Bafna vs. State of Maharastra;

VI. Limitation period for issuance of notice under Section 148 cannot be extended beyond the statutory period prescribed under Section 149 of the Act.

xxiii. Sujata Devi vs. Income Tax Officer

xxiv. Commissioner of Income Tax Act vs. Hemkunt Timbers Ltd.;

CONTENTIONS ON BEHALF OF RESPONDENTS

4. Mr. Paavan Awasthi and Mr. Neerav Chitravanshi, appearing on behalf of respondents have meticulously made the following submissions:-

a. The present writ petition deserves to be dismissed on the ground of suppression, misrepresentation and blameworthy conduct attributable to the petitioner herself as the Income Tax Return for the Financial Year 2023'24 relevant to Assessment Year 2024'25 came to be electronically verified in the name of the deceased assessee through Aadhaar OTP authentication. The return acknowledgment itself records that the return was verified by deceased assessee through electronic verification mode. Thus, the petitioner fully admits the knowledge of death of the assessee at the relevant time and simultaneously admits her active role in causing filing/verification of the return even after the death of the assessee.

b. The aforesaid conduct strikes at the very root of the equitable jurisdiction as Section 140 of the Act, provides that the return of income shall be verified by the individual himself or where it is not possible for the individual to verify the return, it shall be done by any other person duly authorised by him in that behalf. Thus, under the scheme of Section 140 of the Act, 1961, once an assessee has expired, the return can only be verified by the legal representative and not in the name of the deceased person.

c. The verification of a return is not a mere procedural formality but a solemn statutory declaration affirming the correctness and authenticity of the contents of the return. Despite the death of assessee, the return was caused to be verified electronically in his own name several months after his death, which is ex facie contrary to the statutory scheme of Section 140 of the Act and the framework governing electronic verification and digital authentication. The petitioner, having admittedly instructed and facilitated such filing, cannot now seek to invoke discretionary and equitable writ jurisdiction by simultaneously disowning the legal consequences flowing from the same return and the participation thereby before the Income Tax department.

d. The conduct of the petitioner prima facie attracts the penal consequences contemplated under Section 277 of the Act, which penalizes for making of a false statement in verification or delivering an account or statement which is false and which the maker either knows or believes to be false, or does not believe to be true and also disentitled her from any equitable or discretionary relief on account of her own conduct in causing a false verification to be made before a statutory authority.

e. The petitioner, while asserting herself to be the legal heir/legal representative of deceased assessee, cannot be permitted to approbate and reprobate simultaneously by first causing the return to be filed and verified in the name of the deceased assessee and thereafter contending that the proceedings initiated on the basis of the records and representations available with the department are void.

f. The department was never informed through lawful statutory procedure about the death of the assessee prior to initiation of proceedings under Section 148 of the Act. On the contrary, the records available with the department continued to reflect active electronic compliance in the name of the assessee even after his death, including filing and verification of returns. The petitioner, having herself contributed to creation and continuation of such statutory record in the name of the deceased assessee, cannot now be permitted to take advantage of her own wrong and seek invalidation of proceedings by alleging that the notice was issued in the name of a dead person.

g. Section 159 expressly embodies the legislative intent that the death of an assessee does not result either in extinction of tax liability or in abatement of assessment proceedings. On the contrary, the statute specifically provides that where an assessee dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, and further deems the legal representative to be an assessee for the purposes of the Act.

h. Section 159 contemplates the principle that tax liabilities survive the death of the assessee and continue against the estate in the hands of the legal representative. Thus, the legislative policy underlying Section 159 is to ensure continuity of assessment, reassessment and recovery proceedings notwithstanding the death of the original assessee, so that public revenue is not defeated merely on account of death.

i. Section 159(2) further specifically contemplates continuation and initiation of proceedings even after death of the assessee. The provision expressly states that any proceeding taken against the deceased before his death may be continued against the legal representative and further authorizes that any proceeding which could have been taken against the deceased if he had survived may also be taken against the legal representative. The statutory scheme therefore makes it abundantly clear that the substance of liability and assessment survives and attaches to the legal representative notwithstanding death of the assessee.

j. In the present case, the petitioner steps into the shoes of the deceased assessee as the legal representative and heir by having participated in the reassessment proceedings via filing objections and replies before the assessing authority which itself invokes Section 159 of the Act.

k. That the object and purpose of Section 159 would stand completely frustrated if the interpretation sought to be canvassed by the petitioner is accepted. Such an interpretation would permit legal representatives, despite full knowledge of death and despite participating in tax compliances and proceedings, to withhold disclosure of death from the department, continue filings in the name of the deceased assessee, and thereafter seek annulment of proceedings on purely technical grounds after the limitation period expires. Such a construction would not only defeat the statutory scheme but would also cause manifest prejudice to public revenue and encourage abuse of process. The provisions of Section 159 are therefore required to be construed in a manner that advances the legislative object of preservation and continuity of tax liability rather than permitting its artificial extinguishment on account of procedural or technical objections.

l. The alleged defect, in issuance of notice under Section 148 in the name of deceased assessee is curable and protected under Section 292B of the Act which expressly provides that no return of income, assessment, notice, summons or other proceeding shall be invalid merely by reason of any mistake, defect or omission in such notice or proceeding if the same is in substance and effect in conformity with or according to the intent and purpose of the Act

m. The reassessment proceedings in the present case were initiated for lawful assessment of escaped income of deceased assessee and were at all times intended to operate against the estate represented by the legal representative. The substance, object and intent of the proceedings therefore remained fully consistent with the statutory scheme under Sections 147, 148 and 159 of the Act. Any defect in description of the notice or failure to substitute the name of the legal representative at the threshold is therefore curable under Section 292B.

n. The Department was under bona fide mistake regarding the death of the assesssee on the basis of official records available with it, which reflect active statutory compliance in the name of the assessee even after his death. The issuance of notice in the name of the deceased assessee therefore occurred solely on account of absence of disclosure by the petitioner and on the basis of records actively maintained and continued under her own instructions. In such circumstances, the defect, if any, is purely technical and procedural in nature and does not strike at the substantive jurisdiction of the department to assess escaped income which otherwise survives against the legal representative under Section 159 of the Act.

o. No prejudice has been caused to the petitioner on account of the notice being initially addressed in the name of the deceased assessee. The proceedings throughout remained referable to the escaped income and tax liability of late Shri Sanjay Dubey, which by operation of Section 159 statutorily survives against the legal representative. Merely because the notice initially bore the name of the deceased assessee would not invalidate the entire proceedings when the legal representative had complete knowledge of the proceedings, participated therein and contested the matter on merits.

p. Equitable jurisdiction under Article 226 of the Constitution of India, ought to construe Section 292B in a manner that advances the legislative object of preserving lawful assessment proceedings rather than frustrating them on account of technical defects which have caused no prejudice whatsoever to the petitioner.

q. This Hon'ble Court, while exercising jurisdiction under Article 226, may mould the relief, if at all required, by granting liberty/direction to the Department to issue fresh notice under Section 148 to the legal representative in terms of Section 150(1) and proceed in accordance with law as Section 150(1) of the Act was specifically enacted to meet such situations and expressly overrides the limitation contained in Section 149 by providing that a notice under Section 148 may be issued 'at any time' for the purpose of making an assessment, reassessment or recomputation in consequence of, or to give effect to, any finding or direction contained in an order passed by any authority in any proceeding under the Act by way of appeal, reference or revision, or by a Court in any proceeding under any other law. The very object of Section 150 is to ensure that lawful assessment or reassessment is not frustrated where action becomes necessary in consequence of a finding or direction of a Court or appellate/revisional authority.

r. The interpretation canvassed by the petitioner would render Section 150 otiose and defeat the legislative scheme. The petitioner cannot be permitted to argue, on the one hand, that the existing notice must be quashed as having been issued in the name of the deceased assessee and, on the other hand, that no fresh notice can be issued because limitation under Section 149 has expired. Such a contention would convert a procedural objection into complete immunity from assessment, despite the express mandate of Section 159 that tax liability survives against the legal representative and despite the overriding machinery contained in Section 150.

s. The provisions of the Income-tax Act, 1961, particularly the machinery provisions governing reassessment and continuation of proceedings against legal representatives, are required to be interpreted in a manner that advances the object of the statute and protects the legitimate interests of public revenue rather than in a manner which permits evasion or artificial extinguishment of tax liability on technical pleas. It is a settled principle that the Income-tax Act is not merely a taxing statute but also a complete machinery for assessment, recovery and protection of revenue.

t. Sections 159, 150 and 292B of the Act are manifestly machinery provisions as Section 159 enables continuation and enforcement of tax liability against legal representatives of a deceased assessee; Section 150 provides the machinery by which reassessment proceedings may be initiated notwithstanding ordinary limitation where findings or directions exist and Section 292B validates proceedings despite technical mistakes, defects or omissions. An interpretation that advances the statutory purpose should be construed liberally and purposively so as to make the statute workable and effective and not to defeat the object of taxation.

u. Writ jurisdiction under Article 226 is extraordinary, equitable and discretionary. It is intended to advance the cause of justice rather than defeat it on technical considerations.

v. To buttress his aforesaid arguments, counsel has placed reliance on the following precedents of the Supreme Court and various High Courts for respective propositions:-

I. Blameworthy conduct not entitled to equitable relief:
i. Union of India v. Maj. Gen. Madan Lal Yadav;
ii. Municipal Committee Katra v. Ashwani Kumar;

iii. Chandra Singh v. State of Rajasthan;
iv. State of Maharashtra v. Digambar;
II. Ommission or defect in service does not erase or efface the liability to pay tax:
v. Estate of Late Rangalal Jajodia v. Commissioner of Income Tax;
vi. Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax;
vii. Sunil Kumar Sahoo v. Deputy Commissioner of Income Tax;
viii. Maharaja of Patiala v. Commissioner of Income Tax;
ix. CIT v. Jai Prakash Singh;
III. Reassessment proceedings can be initiated against the legal heir of the deceased assessee:
x. Income-Tax Officer v. Eastern Coal Co. Ltd.;
xi. CIT v. Vikram Sujitkumar Bhatia;
IV. Fresh notice under Section 148 can be issued due to overriding nature of Section 150:
xii. Sukhdayal Pahwa v. Commissioner of Income Tax;
xiii. Commissioner of Income Tax v. Glass Equipment (India) Ltd.;
xiv. Mahadeo Prasad Bais v. ITO;
xvi. Union of India v. Ashish Agarwal;
xv. Comptroller and Auditor-General of India v. K.S. Jagannathan;
xvi. Common Cause v. Union of India;
xvii. State of Uttar Pradesh vs. Mohammad Nooh'
xviii. Roshan Deen vs. Preeti Lal;
xix. Gowthaman S vs. Income Tax Officer;
xx. Commissioner of Sales tax and Others vs. Subhash & Co.
V. Scheme of the Act:
xxi. Malabar Industrial Co. Ltd. vs. CIT;
xxii. CIT vs. Paville Projects Pvt. Ltd.;
VI. Interpretation of Taxing Statutes:
xxiii. CIT vs. National Taj Traders;
xxiv. Gursahai Saigal vs. CIT;
xxv. State of Tamil Nadu v. M. K. Kandaswami;
xxvi. CIT vs. Calcutta Knitwears;
xxvii. Mahadeo Prasad Bais v. Income Tax Officer;

ISSUES

5. Upon perusal of the contentions and submissions made on behalf of the counsel appearing on behalf of the parties, the following issues emerge for consideration:-

I. Whether the revenue can invoke Section 159 to validate proceedings that were initiated against a person who was already dead on the date of initiation?

II. Whether the issuance of a notice under Section 148 of the Act to a deceased assessee constitutes a mere "mistake, defect or omission" curable under Section 292B of the Act, or whether it amounts to a substantive jurisdictional defect going to the root of the matter that cannot be cured by any subsequent action of the revenue?

III. Whether the petitioner, legal heir of the deceased assessee, can be said to have waived her jurisdictional objection or submitted to the jurisdiction of the Assessing Officer by virtue of having filed returns and replies on behalf of deceased assessee in view of Section 292BB of the Act?

IV. Whether reassessment proceedings initiated under Section 148 of the Income-tax Act, 1961, can be justified on equitable grounds to protect the interests of the revenue, or whether such proceedings must satisfy the strict requirements of the statute?

V. If the High Court decides against the department with regard to the validity of the reassessment notice under Section 148 in the present writ petition, would the said decision amount to a 'direction' or 'finding' for issuance of a fresh show cause notice for reassessment against the legal representative of the deceased assessee?

RELEVANT PROVISIONS

6. The provisions of Act relevant to the present case are quoted hereinbelow:-

"142. Inquiry before assessment'(1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,'

(i) where such person has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or :

Provided that where any notice has been served under this sub-section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section,

(ii) to produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or

(iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require :

Provided that'

(a) the previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;

(b) the Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

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147. Income escaping assessment.'If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the

course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued undersub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

[Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.'Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.'For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:'

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

[(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]

(c) where an assessment has been made, but'

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

[(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]

[(d) where a person is found to have any asset (including financial interest in any entity) located outside India.]

[Explanation 3.'For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

[Explanation 4.'For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]

"148. Issue of notice where income has escaped assessment - Before making the assessment, reassessment or recomputation under Section 147, and subject to the provisions of Section 148-A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of Section 148-A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.'For the purposes of this section and Section 148-A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor-General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.'For the purposes of this section, where,-

(i) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under Section 133-A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under Section 132 or under Section 132-A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under Section 132 or Section 132-A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the

assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3-'For the purposes of this section, specified authority means the specified authority referred to in Section 151.'.

"148-A. Conducting inquiry, providing opportunity before issue of notice under Section 148.-The Assessing Officer shall, before issuing any notice under Section 148,'

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,-

(a) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132-A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132-A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation. -For the purposes of this section, specified authority means the specified authority referred to in Section 151.-

149. Time limit for notice.-(1) No notice under Section 148 shall be issued for the relevant assessment year,'

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of Section 148-A or the period during which the proceeding under Section 148-A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148-A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation. -For the purposes of clause (b) of this sub-section, 'asset' shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.'.

150. Provision for cases where assessment is in pursuance of an order on appeal, etc. - (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision [or by a Court in any proceeding under any other law].

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

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159. Legal representatives.-(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),-

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

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292B. Return of income, etc., not to be invalid on certain grounds ' No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

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292BB. Notice deemed to be valid in certain circumstances.-Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was'(a) not served upon him; or (b) not served upon him in time; or

(c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

ANALYSIS

7. We have heard the submissions canvassed on behalf of both the parties and perused the documents as well as compilation of judgments placed on record.

8. We attach a caveat herein at the onset. Through the course of the hearing, both sides have relied on a smorgasbord of judgments of the Supreme Court as well as High Courts to buttress their respective arguments. However, we would like to refer to **L.C. Quinn 'v- Leathem**, wherein the House of Lords had chosen to observe the following:-

"….that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides'.'

9. Adhering to the principles delineated in **L.C. Quinn** (supra), we are of the view that while certain judgments are merely replication of the principles of the judgments that have been considered in greater detail through the course of this judgment, some judgments are either not relevant or are distinguishable on facts. Ergo, only the judgments which were absolutely necessary for deciding this case have been considered and dealt with in detail so that brevity is not jeopardized.

10. The counsel on behalf of the petitioner mainly contends that the entire reassessment proceedings emanating from the issuance of notice under Section 148 of the Act against a deceased person is non est in the eyes of law and incapable of conferring any jurisdiction and the revenue cannot sustain the impugned reassessment proceedings by invoking the saving provisions of Sections 150, 159, 292B or 292BB of the Act. Furthermore, it was contended that the department cannot proceed further with liberty from the High Court by relying on Section 150 to issue a fresh notice for reassessment against the legal heir.

11. Per Contra, the learned counsel appearing on behalf of respondents vehemently rebutted the arguments of petitioner and submitted that issuance of notice in the name of deceased person does not constitute a jurisdictional defect but a procedural error. Additionally, it was submitted that notice was issued against the deceased assessee on the bona fide mistake that arose due to the fact that return of his income was filed on the portal in his name and also there was no intimation of death of assessee by the legal heirs. It was contended that such a defect was curable in view of Section 292B and revenue can proceed against the legal heir. Furthermore, Section 159 of the Act provides the revenue to proceed against the legal heir for reassessment of deceased assessee and the factum of filing a reply to the notice by the legal heir shall be deemed as valid notice, hence the legal heir cannot take advantage in terms of Section 292BB of the Act. Moreover, the issuance of fresh notice under Section 148 is not barred by limitation in terms of Section 150 of the Act.

12. It is an undisputed fact that the assessee died on January 7, 2024; Income Tax Return for Assessment Year 2023-24 of the deceased assessee was filed on July 30, 2024 by the petitioner in the name of deceased; notice under Section 148 was issued on March 28, 2025 in the name of deceased assessee; preliminary objection regarding issuance of notice against a dead person for the first time was filed by the petitioner on February 2, 2026 in response to notices issued under Section 142(1); and the Assessment Order was passed on March 24, 2026 in the name of petitioner.

13. One may firstly examine the scheme of the Act in relation to reassessment proceedings. Sections 147 to 151 deal with the procedure of reassessment. Section 148 mandates the assessing officer to serve a notice on the assessee to reopen past year's assessment upon credible evidence that taxable income has escaped assessment. Section 142(1) is a notice for inquiry before assessment to gather information and/or to examine if there is some discrepancy in filing of return. Section 149 restricts the department to issue a reassessment notice under Section 148 for income that has escaped assessment generally capping the window at three years with extensions upto ten or sixteen years in a galore evasion. On the contrary, Section 150 allows the department to issue a fresh show cause notice beyond the statutory period prescribed under Section 149 so as to give effect to a 'finding' or 'direction' made in the appellate order, revision, reference or court proceedings. Section 147 empowers the assessing officer to reopen assessment proceedings by passing a reassessment order, if he had 'reason to believe' that any income chargeable to tax has escaped assessment for the relevant assessment year. Section 159 allows the department to continue proceedings against the legal representative of the deceased upon the death of the assessee.

14. Issue I pertains to validating reassessment proceedings initiated against a dead person in terms of Section 159 and issue II deals with curing the defect in the said notice soliciting Section 292B. Both the issues are intrinsically linked and are therefore being dealt with together.

15. The petitioner contends that the notice issued against a dead person is non est in law and hence void ab initio. The department cannot take recourse to Section 159 of the Act for continuing against the legal heir by fitting the petitioner in the shoes of deceased assessee as that would amount to acting beyond the statute. Furthermore, it has been contended that the department cannot validate the proceedings by curing the defect under Section 292B as the defect is not merely clerical or technical but is a jurisdictional error which cannot be cured. For the aforesaid proposition counsel has placed reliance on, **Alamelu Veerappan** (Supra), **Savita Kapila** (Supra), **Satendra Kumar** (Supra), **Shri Devendra** (Supra), **Sumit Balkrishna Gupta** (Supra), **Bhupendra Bhikhalal Desai** (Supra), **ITO v. Bhupendra Bhikhalal Desai** (Supra), **Mrs. Vanitha Gopal Shetty** (Supra) and Rajendra Kumar Sehgal (Supra).

16. Per contra, respondent submits that the notice was issued to deceased assessee on the bona fide mistake of department that arose due to filing of Income Tax Return by the wife of deceased in the name of deceased via verifying through Aadhaar OTP authentication. Such a bona fide mistake comes under the ambit of curable defect in terms of Section 292B and hence liability for such escaped income can be imposed upon the legal heirs in accordance with Section 159 of the Act. Inter alia, the counsel for the respondents contends that not intimating the department with regard to the death of the assessee and filing false verification in the name of a dead person attracts a penal liability under Section 277 of the Act. For his aforesaid proposition counsel has placed reliance on **Estate of Late Rangalal Jajodia** (Supra), **Sky Light Hospitality LLP** (Supra), S**unil Kumar Sahoo** (Supra), **Maharaja of Patiala** (Supra), **Jai Prakash Singh** (Supra), **Sunil Kumar Sahoo** (Supra), **Eastern Coal Co. Ltd.** (Supra), **Vikram Sujitkumar Bhatia** (Supra), **Maj. Gen. Madan Lal Yadav** (Supra), **Municipal Committee Katra** (Supra), **Chandra Singh** (Supra) and **Digambar** (Supra).

17. We may first examine the judgments cited by the petitioner in support of his arguments in relation to the aforesaid two issues.

18. The Madras High Court speaking through T.S. Sivagnam, J. in **Alamelu Veerappan** (Supra) vide order dated June 7, 2018 while concluding that the notice issued against a dead person is wholly without jurisdiction that cannot be enforced in law, has observed that proceedings can be continued against the legal heir if the proceedings were initiated during the lifetime of the deceased assessee and permitted for proceeding against the legal heir. The relevant paragraphs of the judgment are quoted hereinbelow:-

"16. The settled legal principle being that a notice issued in the name of the dead person is unenforceable in law. If such is the legal position, would the Revenue be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that the notice is not defective. In my considered view, the answer to the question should be definitely against the Revenue.

17. This court supports such a conclusion with the following reasons:

Admittedly, the limitation period for issuance of notice for reopening expired on March 31, 2017. The impugned notice was issued on March 30, 2017 in the name of the dead person. On being intimated about the death, the Department sent the notice to the petitioner - his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after March 31, 2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation, i.e., March 31, 2017 is a nullity, unenforceable in law and without jurisdiction. Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the statute. Nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration."

18. In such circumstances, the question would be as to whether section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of section 159 of the Act have no application."

(Emphasis added)

19. Hon'ble Justice T.S. Sivagnam, scrutinized four aspects in **Alamelu Veerappan** (Supra), firstly, with regard to the issuance of show cause notice under Section 148 in the name of dead person or against a non-existent entity, secondly, continuation of existing liability upon the legal heirs in view of Section 159 after the death of the deceased assessee, thirdly, with regard to curing the defect under Section 292B of the Act, and fourthly, extending period of limitation for issuance of notice beyond the period prescribed under Section 149 of the Act.

20. The Madras High Court in the **Alamelu Veerappan** (Supra), inter alia has observed the following in the aforesaid aspects:-

I. The show cause notice under Section 148 of the Act cannot be issued to a dead person or against a non-existent entity as such issuing goes to the root of the matter, which is not a procedural irregularity but a jurisdictional defect.

II. For imposing liability upon the legal heir of the deceased in terms of Section 159, notice is required to be issued against and in the name of the legal representative/heir.

III. The issue of limitation is not a curable defect for the revenue to invoke Section 292B of the Act.

IV. There is no statutory obligation on the part of the legal representative to intimate about the death of the assessee and such non-intimation cannot extend the period of limitation prescribed under Section 149 of the Act.

21. The Division Bench of the Delhi High Court constituting *Manmohan and Sanjeev Narula, JJ.* in **Savita Kapila** (Supra) following the decision of Madras High Court in **Alamelu Veerappan** (Supra) vide its judgment dated July 16, 2020 has quashed the notice issued under Section 148 as well as all consequential orders/proceedings in pursuant thereto. The relevant paragraphs of the judgment are quoted hereinbelow:-

"26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See Sumit Balkrishna Gupta v. Asst. CIT (2019) 414 ITR 292(Bom); (2019) 2 TMI 1209-the Bombay High Court).

27. In Chandreshbhai Jayantibhai Patel v. ITO (2019) 413 ITR 276(Guj); [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) : "the question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection." Consequently, in view of the above, a reopening notice under section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.

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30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee. Since that is not the present factual scenario, section 159 of the Act, 1961 does not apply to the present case.

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32. This court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the

Income-tax Department. After all, there may be cases where the legal representatives are estranged from the deceased-assessee or the deceased-assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan (supra) it has been held "nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased-assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration".

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35. This court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, section 292B of the Act, 1961 does not apply to the present case.

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38. This court is also of the view that section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased-assessee, i.e., the petitioner, had neither co-operated in the assessment proceedings nor filed return or waived the requirement of section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased-assessee. In CIT v. M. Hemanathan [2016] 384ITR 177(Mad); [2016] (4) TMI 258-the Madras High Court it has been held (page 182 of 384 ITR) : "In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps co-operated. Therefore, the primary condition for the invocation of section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld".

(Emphasis added)

22. The Delhi High Court dissected the issue and has observed the following:-

I. Absence of valid notice under Section 148 strikes at the very root of the Assessing Officer's jurisdiction to proceed with the reassessment and consequently, vitiates the entire proceedings rendering them as null and void unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection.

II. Issuance of notice against dead person and non service of notice do not come under the ambit of mistake, defect or omission invoking Section 292B of the Act.

III. Section 159 is attracted when the assessee is alive and after his death the legal representative steps into the shoes of the deceased-assessee.

IV. Assumption of jurisdiction qua the petitioner for the relevant assessment years beyond the period prescribed, renders the proceedings barred by the limitation in view of Section 149 of the Act.

V. A duty of intimation of death cannot be cast upon the legal representative/heir in absence of statutory provision.

VI. Section 292BB is applicable to the assessee not to a legal representative.

The observation related to Section 292B and Section 292BB will be dealt with a little later while analysing Issue II and III respectively.

23. One may further look into another Division Bench judgment of the Bombay High Court constituting *Akil Kureshi and M.S. Sanklecha, JJ*. in **Sumit Balkrishna Gupta** (Supra) wherein the court had quashed the show cause notice issued under Section 148 of the Act against a dead person as well as further proceedings pursuant thereto being as invalid and not tenable in law. The relevant paragraphs of the judgment are quoted hereinbelow:-

"7. The issue of a notice under section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by the provisions of section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person, i.e., legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, section 292B of the Act cannot be invoked to correct a foundational/substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated March 29, 2018 and the impugned order dated November 13, 2018 are quashed and set aside. It is made clear that this order will not prohibit the Revenue from issuing a fresh notice for reassessment, if requirement of section 147/148 of the Act are satisfied, including the limitation period therein.'

(Emphasis added)

24. The Bombay High Court in **Sumit Balkrishna** (Supra) has dealt with a situation wherein the petitioner after the death of deceased has registered himself as the legal heir and filed return in the name of deceased assessee. The court reiterated the jurisdictional requirement of notice under Section 148 of the Act and has observed that such jurisdictional requirement is a foundational prerequisite which cannot be cured by invoking Section 292B of the Act.

25. The Division Bench of the Gujarat High Court constituting J.B. Pardiwala and Ilesh J. Vohra, JJ. in **Bhupendra Bhikhalal Desai** (Supra) speaking through Justice Pardiwala has held that want of a valid notice affects the jurisdiction of the Assessing Officer to proceed with the reassessment that cannot be cured under Section 292B. The relevant paragraphs of the judgment are quoted hereinbelow:-

"23. The following principles are discernible from the above referred judgment of this court :

"(i) The issuance of the notice to a dead assessee is not a mere technical defect which can be corrected under section 292B of the Act. The issuance of the notice to a dead assessee and the

consequent proceedings pursuant thereto would be without jurisdiction and, therefore, null and void.

(ii) The want of a valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection."

24. We are of the view that the same principle as referred to above would apply even to a notice issued to a dead assessee under section 153C of the Act. It is not in dispute that the legal heir of late Bhupendrabhai Desai had not participated in the proceedings. All that the legal heir of late Bhupendrabhai Desai did was to inform the Assessing Officer about the death of his father and requested to drop the proceedings. It is true that although the father passed away in the year 2017, yet the legal heir did not inform the Department up to October, 2019. However, at the same time, we should not overlook the fact that even after coming to know about the demise of late Bhupendrabhai, the Department could have issued a valid notice to the legal heir as the period of limitation of 21 months had not expired. We fail to understand what prevented the Department from issuing a valid notice to the legal heir within the prescribed time period."

26. The aforesaid judgment of **Bhupendra Bhikhalal Desai** (Supra) went in appeal before the Supreme Court54 and the same got dismissed.

27. The judgment of the Karnataka High Court in **Mrs. Vanitha Gopal Shetty** (Supra) penned by S. Sunil Dutt Yadav, J. wherein the court while dealing with the issue of invoking Section 159 of the Act has held that the proceedings ought to have been taken against the legal representatives of deceased at the first instance for invoking Section 159 of the Act for proceeding against the legal heir. The relevant paragraphs of the judgment are quoted hereinbelow:-

"13. It becomes clear that insofar as the proceedings against an assessee who is alive at the time of initiation of proceedings, the same proceedings could be continued as against his legal representatives from the stage at which it stood on the date of death of the deceased. Insofar as the right of the revenue to initiate proceedings as regards to the deceased assessee, Section 159(2)(b) permits proceedings to be initiated against the legal representatives as regards all proceedings which could have been taken against the deceased if he had survived.

14. In the present facts, admittedly, the proceedings are initiated under Section 148 for reassessment relating to escapement of income of late Kurkal Gopal Shetty and such proceedings as has been initiated in the year 2018 by when Kurkal Gopal Shetty had already died (on 11.11.2014). The proceedings in terms of Section 159(2)(b) ought to have been taken against the legal representatives of late Kurkal Gopal Shetty at the first instance. It ought to be noted that the period allowable for initiating the proceedings under Section 148 is the period prescribed under Section 149(1) (b) which position is not in dispute and accordingly, proceedings ought to have been initiated as on 31.03.2018.

15. The question as to whether proceedings initiated against the deceased Kurkal Gopal Shetty was sufficient to continue proceedings of reassessment as regards the legal representatives is a matter that requires to be answered. The learned counsel for the revenue would contend that the concept of abatement cannot be extended to assessment proceedings and where the original

assessee has died, the proceedings against his legal representatives would be good in law as made out under Section 159(2) of the Act as well as in light of the definition of assessee under Section 2(7)(b) read with Section 159 is a matter that also requires consideration.

16. There is no dispute as regards to the general proposition that proceedings against an assessee would continue even after his death as against his legal representatives and there would be no abatement of such proceedings. However, in the present case, the question is as regards to the initiation of proceedings under Section 148 vis-'-vis the legal representatives of the deceased Kurkal Gopal Shetty. As noticed earlier, notice issued at the first instance on 28.03.2018 is as regards Kurkal Gopal Shetty and at that relevant point of time, the said assessee was dead. It comes out from the subsequent proceedings that the revenue, upon being informed by the 2nd petitioner through an e-mail on 30.05.2018 that Kurkal Gopal Shetty had died, has issued notice to the legal representatives on 19.11.2018 and on 21.12.2018 under Section 142 and hence, in effect, there was no notice to the petitioners with respect to the initiation of proceedings for reassessment under Section 148. The proceedings under Section 142 being a part art of the re-assessment proceedings, the starting point for initiation of proceedings under Section 148 is the issuance of notice, which notice to be valid is required to be initiated within the time prescribed under Section 149(1)(b). Notice issued against Kurkal Gopal Shetty on 28.03.2018 being against a dead person, at the very inception would not be a tenable notice for initiation of proceedings under Section 148 as regards the legal representatives insofar as any proceedings against the legal representatives are to be governed by Section 159. While Section 159(2)(a) provides for continuation of proceedings against the legal representatives when initiated against the assessee when he was alive. Clearly Section 159(2)(b) would require a separate notice to be issued under Section 148 within the time prescribed under Section 149(1)(b) as against the legal proceedings are initiated beyond the time prescribed under Section 149(1)(b) such proceedings would not be valid."

28. Now we will examine the judgments cited by the counsel for the respondents in relation to Issue I and Issue II.

29. A pre-independence era judgment of Division Bench of the Bombay High Court in **Maharaja of Patiala** (Supra) penned by Beaumont, C.J. and Kania, J. in separate concurring decisions while answering a reference made by the tribunal has considered the question regarding certain technical defects alleged to exist in the order of assessment of Late Maharaja of Patiala. The court has specifically dealt with Section 24B of the Income Tax Act, 1922 which is akin to Section 159 of the Act. The relevant paragraphs of the judgment are quoted hereinbelow:-

"2. The late Maharaja of Patiala died on March 23, 1938, and the papers relating to the assessment on him were sent by the Commissioner of Income-Tax of the Punjab to the Commissioner of Income-Tax, Bombay, after the date of the Maharaja's death because of the decision of the Allahabad High Court, to which I will refer presently, which suggested that the estate of the late Maharaja could not be assessed unless a statutory agent were appointed under Section 43 of the Indian Income-Tax Act. After the papers reached Bombay, some correspondence took place between the Income-Tax Officer, Bombay, and a gentleman who is described as the Foreign Minister of the Patiala State, and eventually, in November, 1938, two notices were served on His Highness the Maharaja of Patiala, which in terms were issued under Section 22(2) of the Indian Income-Tax Act, one for the year 1937, and the other for the year 1938, requiring the

Maharaja (that is, the present Maharaja) to make a return of his income. Returns were made of the late Maharaja's income, and on September 16, 1940, assessment orders for the respective years 1937-38 and 1938-39 were passed. In those orders the name of the assessee is stated to be 'His Highness Maharajadhiraj Sir Bhupindra Singh,' that is, the late Maharaja, and subsequently notices to pay were served on the Foreign Minister on behalf of the late Maharaja in the case of one notice, and of the present Maharaja in the case of the other.

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14. In view of that answer, the assessment is illegal, and the first question is really of only academic interest. The first question is:

"Whether in the circumstances found by the Tribunal in its order under Section 33, the assessment was not made in accordance with the provisions of Section 24B of the Indian Income-Tax Act and is for that reason invalid?"

15. I observe in passing, with regret, that it seems from the wording of this question and others which have been submitted to us by the Tribunal that the Tribunal are adopting the practice followed by Subordinate Judges of framing issues in the negative, a practice which I have often condemned as inconvenient. A simple question 'Is the assessment valid' can be answered 'Yes' or 'No.' If the question be 'Is the assessment not valid' or 'not invalid,'? a simple answer either in the affirmative or in the negative becomes ambiguous, and one has to look at the reasons to see what is meant. The question here is whether the assessment was not made in accordance with the provisions of Section 24B. If the question is answered in the negative, thus introducing a double negative, would it mean that the assessment was made in accordance with the section? I hope that the Tribunal will abandon this practice of stating questions in the negative before it becomes a habit. However, I take the question as being whether the assessment was made in accordance with the provisions of Section 24B. Now, Section 24B deals with the assessment of a deceased person. In this case the person to be assessed was the late Maharaja, who had died before he was served with any notice under Section 22, and, therefore, the provisions of Section 24B (2) apply, and the Income-Tax Officer was entitled to serve on the executor, administrator or other legal representative of the deceased Maharaja a notice under Section 22(2) or under Section 34 as the case might be, and then proceed to assess the total income of the deceased Maharaja as if such executor, administrator or other legal representative were the assessee. As observed by the President of the Tribunal in his judgment, the Income-Tax Officer made no attempt to observe the provisions of that sub-section. He served the notice on the present Maharaja, without showing in what capacity. But the Tribunal have found, as a fact, that the present Maharaja is the legal representative of the deceased Maharaja, and although it would obviously have been better so to describe him in the notice, I am not prepared to say that the notice was bad, if it was served on the legal representative, merely because it omitted to state that it was served in that capacity. It should have been stated that it was served on the legal representative of the late Maharaja, and that the return required was of the late Maharaja's income. It was not so stated, and the present Maharaja himself may have had taxable income for the years in question; but I think there is a good deal of force in the contention of the Tribunal that any irregularities in this respect were waived by the Maharaja, because returns of the late Maharaja's income were made by the Foreign Minister on behalf of the Maharaja, and then subsequently corrections were made in the assessment at the instance of the Maharaja. There is no doubt that the present Maharaja knew perfectly well that what was being assessed was the income of his predecessor.

16. Then when one comes to the actual assessment, it is made on the deceased Maharaja. It is, of course, wholly irregular to assess a deceased person. The assessment should have been made on the legal representative in respect of the income of the deceased. However, there again, the Patiala authorities seem to have accepted the view that it was an assessment made on the agent in respect of the income of the deceased person, because they have actually appealed against the assessment, and if the assessment was an assessment on a dead man, it was obviously a nullity, and there is nothing to appeal from."

(Emphasis added)

30. In **Estate of Late Ranglal Jajodia** (Supra), the Constitution Bench of the Supreme Court speaking through A.N. Ray, J., in an appeal arising on a certificate to appeal against a judgment of Madras High Court on a reference has interpreted the second proviso to Section 34(3) that is akin to Section 150 whereby the reassessment is saved from the bar of limitation as well as whether legal representative is an assessee entitled to benefit of Section 34(3). The relevant paragraph of the judgment is quoted hereinbelow:-

"15. Counsel for Aruna Devi contended that the expression 'any person' occurring in the second proviso to Section 34(3) of the Act could not be referable to a stranger and that Aruna Devi was a stranger. In support of that proposition reliance was placed on the decision of this Court in S.C. Prashar v. Vasantsen Dwarkadas [49 ITR 1] . The facts of that case are entirely different and are of no assistance for the reason that in the present appeals Aruna Devi was impleaded as a party to the assessment proceedings as a legal representative of Rangalal Jajodia. The words 'any person' were construed in Murlidhar's case to be confined to a person intimately connected with the assessment year under appeal. It was said in that case that 'modification or setting aside of assessment made on a firm, joint Hindu family, association of persons for a particular year may affect the assessment for the said year on a partner or partners of the firm, member or members of the Hindu undivided family or the individual, as the case may be. In such cases though the latter are not so nominee parties to the appeal, their assessments depend upon the assessments on the former. The said instances are only illustrative. It is not necessary to pursue the matter further. We would, therefore, hold that the expression 'any person' in the setting in which it appears must be confined to a person intimately connected in the aforesaid sense with the assessments of the year under appeal'. In the present appeals the finding was that the assessment was made on Aruna Devi but no notice was given to her. The necessary direction was therefore given that notice should be given to her. Aruna Devi was heard and the assessment was made. She was not merely intimately connected with the assessment. She was in fact an assessee. Therefore, the second proviso to Section 34(3) applied.

16. We are therefore of opinion that the second proviso to Section 34(3) of the Act applies to the present appeals because, first the proceedings against Rangalal Jajodia commenced on filing of returns before the Income Tax authorities; secondly, the assessment proceedings continued after the death of Rangalal Jajodia against the legal representatives Shankerlal Jajodia and Aruna Devi; thirdly, the assessment proceedings on being set aside and not cancelled pursuant to the appeal filed by Shankerlal Jajodia on the ground that notice was not given to Aruna Devi were continued, and, fourthly, the setting aside of the assessment was only on the ground that notice was not given to Aruna Devi and therefore the finding and direction was vital to the

assessment proceedings. The High Court was in error in holding that the assessment proceedings were barred by limitation.

17. The other question is as to the applicability of Section 24-B of the Act. Counsel on behalf of Aruna Devi repeated the contentions advanced in the High Court that Section 24-B does not cover the entire field of procedure to be followed in assessing the income of the deceased person. The High Court held that Section 24-B of the Act applied but Aruna Devi should have been given opportunities to object to the assessment by repeating the entire procedure of Section 24-B of the Act as during the lifetime of the deceased. Counsel for the Revenue Authority did not impeach the conclusion of the High Court that in relation to Aruna Devi the provisions of Section 24-B of the Act were to be followed de novo. We are of opinion that the High Court correctly held that Section 24-B of the Act applies to the present case. The third sub-section of Section 24-B deals with a case of a person dying after having furnished a return. Further, in the present case the Income Tax Officer had reason to believe the return to be incorrect or incomplete, and he called upon Rangalal to furnish evidence. The Act further confers power on the Revenue Officer to make the assessment and determine the tax payable by the deceased on the basis of the assessment and for that purpose to issue appropriate notice which would have had to be served upon the deceased had he survived and in that behalf to require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of Sections 22 and 23 require from the deceased person. These provisions adequately answer the contention of the appellant Aruna Devi.

18. For these reasons we hold that the High Court was in error in holding that the second proviso to Section 34(3) of the Act did not save the assessments and therefore we set aside the judgment of the High Court and allow the appeals of the Revenue authority in CAs Nos. 2336-2339 of 1966.'

31. The aforesaid judgment of Supreme Court in **Estate of Late Ranglal Jajodia** (Supra) deals with the application of 34(3) akin to Section 150 to the peculiar facts of the case therein and procedure to be followed against the legal heir (Aruna Devi). Therefore, this case does not support the proposition of the counsel for the respondent for validating irregularity in defective notice.

32. The Supreme Court in **Jay Prakash Singh** (Supra) speaking through *B.P. Jeevan Reddy and S.B. Majumdar, JJ.* has considered the judgment of **Estate of Late Ranglal Jajodia** (Supra) and had approved **Maharaja of Patiala** (Supra). The relevant paragraphs of the judgment are quoted hereinbelow:-

"11. We are of the opinion that the High Court was not right in holding in the above circumstances that the assessment orders made are null and void. They are not. At the worst, they are defective proceedings ' or irregular proceedings ' as has been rightly held by the Appellate Assistant Commissioner and the tribunal. In Chatturam v. CIT [(1947) 15 ITR 302 (FC)] , it has been held by the Federal Court that the liability to pay the tax arises by virtue of Sections 3 and 4 of the Indian Income Tax Act, 1922 (charging sections) and that Section 22 and other sections of the said Act are merely machinery provisions to determine the quantum of tax. The following observations are apposite:

"The income tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income Tax Officer

to make the assessment or of the liability of the assessees to pay the tax. It may be urged that the issue and service of a notice under Section 22(1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. Suppose a person, even before a notice is published in the papers under Section 22(1), or before he receives a notice under Section 22(2) of the Income Tax Act, gets a form of return from the Income Tax Office and submits his return, it will be futile to contend that the Income Tax Officer is not entitled to assess the party or that the party is not liable to pay any tax because a notice had not been issued to him. The liability to pay the tax is founded in Sections 3 and 4 of the Income Tax Act, which are the charging sections. Section 22 etc. are the machinery sections to determine the amount of tax."

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15. The facts in this case are telling. They are: Rangalal Jajodia filed his income tax return for the Assessment Years 1942-43 and 1943-44 under the Income Tax Act as well as under the Excess Profits Tax Act, 1940. Before the assessments were completed, he died (on 11-1-1946). Rangalal had a son, Shankar Lal, by his predeceased wife. He married a second time and had children from the second wife, Aruna Devi. Rangalal executed a Will totally disinheriting Shankar Lal and appointing Aruna Devi and another as executors of his Will. The Income Tax Officer, probably unaware of the Will, gave notice to Shankar Lal, who objected that he is not the legal representative of the deceased and that the second wife (Aruna Devi) and the other executor are the proper persons to be notified. The Income Tax Officer called for a copy of the Will but it was not produced. The Income Tax Officer thereupon completed the assessment describing the assessee as 'the estate of late Shri Rangalal Jajodia by legal heirs and representatives Shri Shankar Lal Jajodia, son of Rangalal Jajodia, Smt Aruna Devi, wife of Rangalal Jajodia and her children'. Appeals were preferred by the second wife, Aruna Devi, contending inter alia that the assessments having been made without notice to her or the other executor were illegal and invalid. This plea was rejected by the Appellate Assistant Commissioner and the tribunal, who remitted the matters to the Income Tax Officer to complete the assessments after notice to Aruna Devi. The High Court too rejected the said contention whereupon the matter was brought to this Court, which held that absence of notice to Aruna Devi makes the assessment merely defective but not null and void. It is in this connection that the aforesaid observation was made. This Court sustained the direction given by the Appellate Assistant Commissioner to the Income Tax Officer to make fresh assessment on Aruna Devi in accordance with the provisions of the Act. This decision, in our opinion, is sufficient to reject the assessee's contention herein. If an assessment made with notice to Shankar Lal (who was not really the legal representative of the deceased Rangalal) and without serving notice upon the lawful legal representatives (Aruna Devi, the other executor or Aruna Devi's children) ' that too, despite the objection of Shankar Lal that he is not the legal representative and that notice must be sent to Aruna Devi etc., who are the legal representatives of the deceased Rangalal ' is only 'defective' and not null and void, it would be rather odd to contend that assessments made on the basis of returns filed by one of the legal representatives (disclosing the total income received by the deceased) is null and void on the ground that notices were not sent to other legal representatives. The principle that emerges from the above decision is that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions (charging sections). Any such omission or defect may render the order made irregular ' depending upon the nature of the provision not complied with ' but certainly not void or illegal."

(Emphasis added)

33. In **Maharaja of Patiala** (Supra), the court while dealing with the issue of validity of such notices, adopted a liberal and substance-oriented interpretation and held that mere technical defects in the notice would not invalidate the assessment proceedings when the substance and purpose of the notice were fully understood by the assessee's representative. The Court further observed that the Foreign Minister, who was managing the affairs of the deceased Maharaja, clearly understood that the notices related to the income and assessment was issued for late Maharaja and had in fact participated in the proceedings by filing returns and pursuing appeals. The Court specifically held that although it would have been more proper to describe the noticee expressly as legal representative, the defect was merely technical and not fatal.

34. We are of the view the ratio laid down in **Maharaja of Patiala** (Supra) is not applicable to the facts of the present case as in that case return and appeal were filed by foreign minister of present Maharaja. However, both the concurring judges were at consensus ad idem on the proposition that the assessment on a dead person is obviously a nullity and for the same appeal does not lie. Though this judgment was relied upon by the counsel for the respondent but the per curium was in favour of assessee.

35. The Supreme Court in **Estate of Rangalal** (Supra) has validated the assessment proceedings in view of Section 24B but we are of the opinion that the case is distinguishable from the present case as the proceedings in the former case commenced during the lifetime of the deceased and continued after death. Moreover, the return was filed and notices were issued on the deceased during his lifetime, thereby making the assessment proceedings against legal representative valid.

36. Furthermore, in **Jai Prakash Singh** (Supra) quoted above, the Supreme Court holding in the peculiar facts of the case has held in favour of revenue, observing that failure to serve notice upon all the legal representatives within the period of limitation of a deceased assessee does not automatically render the assessment proceedings void ab initio, particularly where the legal representatives who were served had participated in the proceedings without prejudice. The Court observed that such defect in service of notice is essentially a procedural irregularity and not a jurisdictional nullity, unless prejudice is demonstrated.

37. The judgment in **Jay Prakash Singh** (Supra) is in a different periphery from the present one. It examines the situation where the notice was not served on all the legal heirs but the order mentions the names of all the legal heirs. Moreover, some of the legal heirs have filed return, appeared and produce relevant books and accounts in response to notice under Section 142 unlike the present situation where the petitioner has filed preliminary objection after receiving notice under Section 142 of the Act. Accordingly, the present one is clearly distinguishable on facts from **Jay Prakash Singh** (Supra) wherein the service of notice was held to be defective and hence was cured.

38. The Supreme Court in **Skylight Hospitality LLP** (Supra) has held as follows:-

"In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed. Pending applications stand disposed of."

39. In so far as the judgment of **Skylight Hospitality LLP** (Supra) is concerned, the Supreme Court holding in favour of revenue in the peculiar facts of the case has held that wrong name given in the notice was merely a clerical error which could be corrected under section 292B as the Skylight Hospitality LLP, a limited liabilities partnership had taken over and acquired the rights and liabilities of M/s Skylight Hospitality (P) limited. Therefore, the decision in the case of Skylight Hospitality (Supra) is clearly distinguishable on facts and it does not support the case of revenue.

40. Furthermore, the judgment of Orissa High Court in **Sunil Kumar Sahu** (Supra) relied upon by the respondents deals with the distinction between issuance of notice and service of notice and the facts of the case clearly reveals that the notice was issued on the assessee who was alive within the limitation period even if the service of notice took place subsequently. Under such circumstances, the court has held that as long as service has taken place subsequently and the notice has been issued within the period of limitation, there would be no question of lack of jurisdiction on the part of the assessing officer. These facts are in complete contradiction to the present case wherein the notice was issued upon a dead person.

41. The judgment of the Madras High Court in **Gowthaman S** (Supra) relied upon by the respondents, delivered by a Single Judge is in our view not the correct view in law as the same holds that proceedings against the dead person would be covered under Section 159(2)(b) of the Act. The reasoning therein is based on the fact that Section 159(3) of the Act makes it clear that the legal representative of the deceased shall for the purposes of the Act be deemed to be an assessee. The court therein upon examining Section 159 has come to the conclusion that if the petitioner has not taken any steps to inform the department about the death of the deceased assessee, the department can issue notice upon the dead assessee within the period of limitation and such issue of reassessment proceedings would be valid in law and the legal representative would be liable to participate in proceedings and face the consequences thereof. In our view, this interpretation would expand the scope of Section 159(2)(b) and allow the issue of reassessment notice on a dead person. In our view, Section 159(2)(b) only allows proceedings to be initiated against the legal representative within the time limitation provided. The sub-clause does not allow issue of a show cause notice on the dead assessee. The deeming provision under section 159(3) would only allow the revenue to issue notice under section 159(2)(b) as the legal representative would be deemed to be assessee. In our view, treating the deeming provision as an enabling provision to issue reassessment notice on the dead person and continue the same against the legal representative would amount to adding words to the statute or/and interpreting the statute in a broader and liberal manner. Such an interpretation in taxing statutes is not allowed keeping in view Article 265 of the Constitution of India and the interpretation of taxing as held in a catena of the Supreme Court judgments that have been discussed in greater detail in issue IV.

42. The Division Bench of the Delhi High Court in Spice Entertainment Ltd. v. CST55 had held that framing of assessment against a non-existent entity/individual is impermissible and such defect cannot be cured. The relevant paragraphs of the judgment are quoted hereinbelow:-

"3. In this backdrop, the question that arises for consideration is as to whether the assessment in the name of a company which had been amalgamated and had been dissolved with the said amalgamating company will be null and void or whether framing of assessment in the name of such a company is a mere procedural defect which can be cured. The appeals were, thus, finally admitted and heard on the following questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the action of the Assessing Officer in framing assessment in the name of 'Spice Corp Ltd', after the said entity stood dissolved consequent upon its amalgamation with Mcorp (P) Ltd. w.e.f 1-7-2003, was a mere 'procedural defect'?

(ii) whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that in view of the provisions of Section 292B of the Act, the assessment, having in substance and effect, been framed on the amalgamated company which could not be regarded as null and void?'

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13. The Punjab & Haryana High Court stated the effect of this provision in CIT v. Norton Motors, 2004 SCC OnLine P&H 1276 : (2005) 275 ITR 595 : 275 ITR 595 in the following manner:

"A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, Section 292B can be relied upon for resisting a challenge to the notice, etc. only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to Section 292B.

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16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292B of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a 'dead person"."

(Emphasis added)

43. The aforesaid judgment of the Delhi High Court was affirmed by the Supreme Court in **CIT v. Spice Enfotainment Ltd.** by dismissing the appeal being devoid of merits.

44. If the show cause notice is issued upon the legal representative within the time period prescribed the notice would be valid, otherwise the same would be liable to be fail. This

proposition has been supported by the judgments in **Alamelu Vee**rappan (Supra), Savita Kapila (Supra), Shri Devendra (Supra), Bhupendra Bhikhalal Desai (Supra) and **Mrs. Vanitha** (Supra).

45. All the other judgments cited by the counsel for respondents are patently distinguishable from the present case, and hence, cannot come to the rescue of the respondent with regard to the second issue.

46. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he was alive and after his death the legal representative steps into the shoes of the deceased-assessee.

47. The scheme of Section 159(2) operates in two distinct fields: Section 159(2)(a) operates where proceedings have already been initiated against the deceased before his death and are thus deemed to have been taken against the legal representative, and may be continued from the stage they stood on the date of death; and Section 159(2)(b) where proceedings which could have been taken against the deceased if he had survived may be taken against the legal representative, meaning fresh proceedings must be initiated in the name of the legal representative, not in the name of the dead person.

48. As has been clearly articulated, after the death of the assessee, proceedings must be initiated against the legal heirs to treat the legal heirs as deemed assessees. Any notice issued in the name of a dead person cannot make the legal heirs binding unless a proper notice is issued on the legal heirs within limitation for liability of deceased assessee.

49. The revenue's invocation of Section 159 to validate a notice issued after the death of the assessee is, therefore, wholly misconceived. Section 159 presupposes a valid foundational notice issued during the lifetime of the assessee. Where the initiating notice itself is void, Section 159 has no substratum to operate upon. The correct course, as mandated by Section 159(2)(b), was to issue a fresh notice within limitation directly upon the legal representative which was admittedly never done in the present case.

50. Upon perusal scheme of Section 159 of the Act as well as judgments of the High Courts in **Alamelu Verrappan** (Supra), **Savita Kapila** (Supra), **Devendra** (Supra), **Bhupendra Bhikalal Desai** (Supra) and **Mrs. Vanitha Gopal Shetty** (Supra) as well as the judgment of the Supreme Court in **Spice Infotainment** (Supra) and **Bhupendra Bhikhalal** (Supra), we may unequivocally hold that notice under Section 148 of the Act against a dead person is void ab initio rendering all the proceedings pursuant thereto as null and void. Moresoever, stepping the legal representative/heir into the shoes of the deceased assessee for continuing proceedings, initiated against the deceased subsequent to his death cannot be taken recourse to under Section 159. If the proceedings were not initiated during the lifetime of the deceased and the notice was issued against the assessee subsequent to his death then the proceedings in terms of Section 159 cannot be continued against the legal representative/heir of the deceased. For proceeding against the legal representative of the deceased the notice under Section 148 ought to have been issued against the legal representatives of deceased assessee at the first instance within limitation. Since, the statute does not provide for intimation of death of deceased to the department, such duty with regard to

factum of death cannot be cast upon the legal representative. Accordingly, the first issue is answered in the negative.

51. The judgments of **Devendra** (Supra), **Alamelu Veerappan** (Supra), S**avita Kapila** (Supra), **Bhupendra Bhikalal Desai** (Supra), **Spice Enfotainment Ltd.** (Supra) and **Skylight Hospitality** (Supra) have already been discussed while dealing with the first issue wherein it has been consistently held that Section 292B, provides for curing the defect of the notice issued if the notice is in substance and in conformity with the intent and purpose of the Act. Indubitably, the issuance of notice against a dead person, in substance is not in conformity with the provision of Section 148 which is the foundation for reopening an assessment and jurisdiction can only be acquired, if the notice is issued to the correct person. Issuance of notice to a dead person is not merely a procedural error but a jurisdictional error that renders the entire proceedings void.

52. The revenue cannot validate a notice under Section 148 against a dead person by invoking Section 292B as it is not a mere procedural defect. Ergo, the notice issued against a dead assessee is void ab initio that cannot be cured taking recourse to Section 292B. We do not agree with the submission of the respondent that notice addressed to a dead person can be cured by substituting the name of deceased assessee with his legal heir. Accordingly, the second issue is also answered in the negative.

53. Now advancing to the third issue with regard to the contention of the respondent that petitioner has waived of its objection by filing return and participating in re-assessment proceedings.

54. It was contended by the counsel for the petitioner that the petitioner did not file reply and return in response to notice under Section 142, and therefore, never submitted to the jurisdiction of the assessing officer. In fact, at every stage the petitioner specifically raised the objection that the proceedings initiated against the deceased person was void ab initio and without jurisdiction. Even if there is implicitly a waiver, acquiescence or consent by mere participation in proceeding that would not halt the petitioner from challenging the jurisdiction of the assessing officer for the reason that acquiescence, waiver or consent cannot confer jurisdiction upon an authority when the statute does not provide for it. For this proposition, counsel for the petitioner has placed reliance on the **Maruti Suzuki India limited** (Supra), **Krishnaawtar Kabra** (Supra), **Meet Lalwani** (Supra), **Sandeep Chopra** (Supra), **Gourang Anil Wakade** (Supra), **Neena Jatin Shah** (Supra).

55. On the contrary, the respondents submit that since the petitioner has filed the Income Tax Return in the name of the deceased representing him to be a living person, therefore, the blameworthy conduct cannot estop the department from continuing proceedings against the legal heir.

56. At this juncture one may look to the Division-bench judgment of the Bombay High Court in **Shri Devendra** (Supra) wherein the court had quashed the show cause notice under Section 148 as the jurisdictional requirement was not fulfilled and also held that resort to Section 292BB cannot be invoked as the primary condition for invoking Section 292BB is that assessee is put on notice and not the legal heir. The relevant paragraph of the judgment is quoted hereinbelow:-

"14. Another contention of the respondents is that as the petitioner has responded to the notice and participated in the proceeding, section 292BB comes into picture and the notice issued against a dead person cannot be a nullity'

"14. A cursory look at section 292BB would show that the same would apply only to two types of proceedings, namely, (i) proceedings, in which, the assessee had appeared and (ii) any inquiry, in which, the assessee had co-operated.

15. In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps co-operated. Therefore, the primary condition for invocation of section 292BB is absent in the case on hand.

16. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person."

(Emphasis added)

57. In **Maruti Suzuki India limited** (Supra), the two-judge bench of the Supreme Court speaking through Dr. D.Y. Chandrachud, J. held in favour of assessee, and authoritatively observed in relation to Section 292B and Section 292BB, that the framing of assessment against a non-existent entity is impermissible and participation of new entity/person who was not an assessee does not create estoppel against law or validate proceedings that are otherwise void ab initio. The relevant paragraphs of the judgment are quoted hereinbelow:-

"21. In Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143(2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law : (SCC OnLine Del paras 11-12)

"11. After the sanction of the scheme on 11-4-2004, Spice ceases to exit w.e.f. 1-7-2003. Even if Spice had filed the returns, it became incumbent upon the Income Tax Authorities to substitute the successor in place of the said 'dead person'. When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the assessing officer made the assessment in the name of M/s Spice which was non-existing entity on that day. In such proceedings an assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.

12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292-B of the Act."

Following the decision in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , the Delhi High Court quashed assessment orders which were framed in the name of the amalgamating company in:

(i) Dimension Apparels [CIT v. Dimension Apparels (P) Ltd., 2014 SCC OnLine Del 7588 : (2015) 370 ITR 288] ;

(ii) Micron Steels [CIT v. Micron Steels (P) Ltd., 2015 SCC OnLine Del 7321 : (2015) 372 ITR 386] ; and

(iii) Micra India [CIT v. Micra (India) (P) Ltd., 2015 SCC OnLine Del 14631] .

22. In Dimension Apparels [CIT v. Dimension Apparels (P) Ltd., 2014 SCC OnLine Del 7588 : (2015) 370 ITR 288] , a Division Bench of the Delhi High Court affirmed the quashing of an assessment order dated 31-12-2010. The respondent had amalgamated with another company and thus, ceased to exist from 7-12-2009. The Court rejected the argument of the Revenue that the assessment was in substance and effect in conformity with the Act by reason of the fact that the assessing officer had used correct nomenclature in addressing the assessee; stated the fact that the company had amalgamated and mentioned the correct address of the amalgamated company. It was the Revenue's contention that the omission on the part of the assessing officer to mention the name of the amalgamated company is a procedural defect. The Delhi High Court rejected this contention. In doing so, it relied on the holding in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , where the High Court expressly clarified that 'the framing of assessment against a non-existing entity/person' is a jurisdictional defect. The Division Bench also relied on the holding in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] that participation by the amalgamated company in proceedings does not cure the defect as 'there can be no estoppel in law', to affirm the quashing of the assessment order.

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36. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] on 2-11-2017. The decision in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] has been followed in the case of the respondent while dismissing the special leave petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] ."

(Emphasis added)

58. Section 292BB creates a statutory estoppel wherein an assessee has appeared or cooperated in proceedings without objecting to the service of notice; such an assessee shall be deemed to have been duly served and cannot raise a plea of non-service thereafter.

59. From the perusal of Section 292BB it is clear that it applies only to two types of proceedings; namely when the assessee had himself appeared, and secondly, when the assessee had cooperated in the enquiry. In the present case, the assessee was dead at the time of issuance of notice. It was the assessee's wife who appeared and allegedly cooperated in the proceedings.

60. The primary condition for invocation of Section 292BB is absent in the present case. Section 292BB is in place to take care of contingencies where assessee is put on notice of the initiation of proceedings. The purpose behind the enactment of Section 292BB is to make the noticee aware of the nature of proceedings and once the nature of proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects.

61. The argument of the respondent that the petitioner has waived of its objection by participation in proceeding cannot be countenanced by us for two reasons. Firstly, petitioner has filed objection before the department after receiving notice stating that the assessee has already died, and secondly, even if it is assumed that the petitioner has participated then also mere participation cannot confer jurisdiction upon the authority when the statute is silent on the same as observed by the Supreme Court in **Maruti Suzuki** (Supra).

62. In the present case, right from the inception the petitioner has objected to the validity of the notice, and thereafter, to the continuation of proceeding and has at no point of time participated in the proceedings, by providing documents in response to notice issued under section 142.

63. Consequently, the third issue is answered in the negative, with the court holding that a notice issued in the name of the deceased person is not saved by Section 292BB of the Act and is therefore legally unsustainable.

64. Moving towards the fourth issue with regard to the justification of reassessment proceedings on equitable grounds and interpretation of taxing statutes.

65. It has been been submitted by the petitioner that validating reassessment against the dead by taking recourse to the principles of estoppel, waiver, acquiescence, approbate and reprobate which are all equitable doctrines cannot be countenanced as it is trite law that equity has no place in taxation statutes.

66. Per contra, the counsel for the respondent contends that the conduct of the petitioner completely disentitles her from invoking discretionary writ jurisdiction under Article 226 in view of the return of income having been filed and electronically verified in the name of the deceased amounting to deliberate concealment and abuse of the provisions of law by legal representatives. For this proposition reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in **V. MR. P. Firm Muar** (Supra).

67. I must attach a caveat here that estoppel, waiver and acquiescence, approbate and reprobate are all equitable doctrines. Traditionally tax laws have their own interpretation regime wherein strict interpretation of the statute and preference for literal meaning is the order of the day.

68. The kenspeckle observation of Rowlett, J. adroitly remarked in the judgment of **Cape Brandy Syndicate v. Inland Revenue Commissioners** which is pertinent to be looked into is quoted hereinbelow:-

'There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'

(Emphasis added)

69. The doctrine of estoppel puts an embargo on a party from resiling from a representation upon which another has relied to his detriment. In ordinary civil law, estoppel is a powerful weapon. In tax law, however, it operates under severe constraints.

70. Furthermore, in a three judge-Bench constituting *J.C. Shah, S.M. Sikri and K. Subba Rao, JJ.*, the Supreme Court in **MR. P. Firm Muar** (Supra) speaking through K.Subba Rao, J., has held that doctrine of estoppel would not hold the field in tax law in the case where a non taxable income under Income Tax Act, has been taxed. The relevant paragraph of the judgment is quoted hereinbelow:-

"13. The Central Board of Revenue issued further instructions on the above scheme by its letter dated December 1, 1947. One of the instructions was that debts due to the assessee if paid in Japanese currency would be taken to have been satisfied to that extent and excluded from the asset side in the balance sheet, provided that if any recovery was subsequently made, it was to be taken as income. Briefly stated, under the scheme the losses suffered by an assessee during Assessment Years 1942-43 to 1946-47 were set off against his profits for Assessment Years 1942-43 and 1941-42 and any unabsorbed loss could not be carried forward. The debts discharged in Japanese currency were excluded from the assets side in the balance sheet but the authority reserved for itself the right to treat any recoveries subsequently made as income. The contention is that the assessees having opted to accept the scheme, derived benefit thereunder, and agreed to have their discharged debts excluded from the asset side in the balance sheet subject to the condition that subsequent recoveries by them would be taxable income, they are now precluded, on the principle of 'approbate and reprobate', from pleading that the income they derived subsequently by realization of the revived debts is not taxable income. The doctrine of 'approbate and reprobate' is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute. If a particular income is not taxable under the Income Tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income Tax Officer has no power to impose tax on the said income."

(Emphasis added)

71. Another recent locus classicus on this aspect is the decision of Constitution Bench of the Supreme Court in **Commr. of Customs v. Dilip Kumar & Co.** presided over by *Ranjan Gogoi, N.V. Ramana, R. Banumathi, M.M. Shantanagoudar And S. Abdul Nazeer, JJ.* wherein the court speaking through N.V. Ramana, J. has regimented the proposition that in case of ambiguity, a taxing statute should be construed in favour of the assessee. Forbye, the court has held that every

taxing statute including charging, computation and exemption clauses at the threshold stage should be interpreted strictly and after becoming eligible at later stage should be construed liberally. The relevant paragraphs of the judgment are quoted hereinbelow:-

"26. Next, we may consider the meaning and scope of 'strict interpretation', as evolved in Indian law and how the higher courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) 'strict interpretation' is described as under:

Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. Also termed as close interpretation; interpretatio restrictive. See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.' Willam M. Lile et al., Brief Making and the Use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d Edn. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e. narrow) sense is not necessarily the strict (i.e. literal) sense.' John Salmond, Jurisprudence 171 n. (t) [Glanville L. Williams (Ed.), 10th Edn. 1947].

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34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi and Sons Ltd. [CIT v. Kasturi and Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter referred to as 'Kesoram Industries case', for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

"(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."

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55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be

specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.'

(Emphasis added)

72. A conjoint reading of the preceeding judgments leads to the inexorable conclusion that if income is not taxable under the statute, the tax authorities cannot compel the assessee into paying tax by pointing to some prior representation or admission by the assessee that the income is taxable. The charge must flow from the statute but not from any representation/reply. The provision of taxing statutes should operate within the fringes of its jargon and not beyond it for conferring jurisdiction in case it is not provided. Apropos the waiver and acquiescence, a taxpayer cannot implicitly waive his right and allow the revenue to forgo to the statutory conditions for imposing a tax. There is no waiver or estoppel against a statute. Hence, where the statute prescribes a jurisdictional condition such as the requirement that a notice under Section 148 be served on a living person, the conduct of the legal heir cannot waive compliance with that jurisdictional requirement.

73. In re 'qui approbat non reprobat' that is the doctrine of approbate and reprobate which proffers that a party cannot be allowed to 'blow hot and cold'. We hold that this doctrine can apply only within the statutory framework. For instance, if an assessee who has claimed and received a deduction under a particular head cannot simultaneously contend that the income under that head is not taxable. But this operates only where both positions are within the statutory framework, not as a means to impose or excuse a liability that the statute creates or excludes. Furthermore, it has been contended by the department that the estate of a deceased assessee or a taxpayer who has taken advantage of a procedural defect is being "unjustly enriched" at the expense of the public exchequer. The aforesaid argument of unjust enrichment as contended by the counsel for the respondent has no relevance in the context of tax law. If the assessee is not liable to pay tax under

the statute, the fact that he may benefit from the strict application of the law does not justify imposing the tax by importing equitable notions of unjust enrichment.

74. The reason for the strict exclusion of equity is well-reasoned and principled as the citizen's liability to pay tax must be certain and predictable, arising only from clear statutory language. If equity were allowed to operate in tax law, the clarity and certainty that the rule of law requires in the imposition of fiscal burdens would be annihilated.

75. Now comes the issue of interpretation of Section 148 that has a unique interpretative paradox in the Act.

76. The Supreme Court has authoritatively resolved this paradox by holding that Section 148 operates on a two-tier interpretive framework. Jurisdictional conditions and conditions precedent within Section 148 which is to be strictly construed and procedural aspects, forms, and technical requirements which is to be liberally and purposively construed to ensure the charge does not fail.

77. The Supreme Court in CIT v. Amarchand N. Shroff59, laid down the foundational principle that elaborate provisions were made in the Act specifically because the statute requires the person sought to be assessed to be in existence at the time of assessment. The relevant paragraph of the judgment is quoted hereinbelow:-

"The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year: Wallace Brothers & Co. Ltd. v. Commissioner of Income-tax [1948] 16 I.T.R. 240, 244 (P.C). By section 24B the legal representatives have, by fiction of law, become assessee as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this court in Bengal Immunity Co. Ltd. v. State of Bihar ((1955) 2 S.C.R. 603, 646) legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub-sections of section 24B and cannot be extended further than the liability for the income received in the previous year.'

(Emphasis added)

78. The Supreme Court in **Calcutta Knitwears** (Supra) in relation to strict interpretation of taxing statute has held as follows:-

"20. Section 158-BD of the Act provides for 'undisclosed income' of any other person. Before we proceed to explain the said provision, we intend to remind ourselves of the first or the basic principles of interpretation of a fiscal legislation. It is time and again reiterated that the courts, while interpreting the provisions of a fiscal legislation should neither add nor subtract a word from the provisions of instant meaning of the sections. It may be mentioned that the foremost principle of interpretation of fiscal statutes in every system of interpretation is the rule of strict interpretation which provides that where the words of the statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. (Swedish Match AB v.

SEBI [(2004) 11 SCC 641 : AIR 2004 SC 4219] and CIT v. Ajax Products Ltd. [(1965) 55 ITR 741 (SC)])

23. Lord Granworth in Gundry v. Pinniger [(1852) 21 LJ Ch 405 : (1843-60) All ER Rep 403 : 42 ER 647] , has observed that: (ER p. 648)

"…to adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

That is to say, once the literal rule is departed, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of the edifice of fiscal legislations which impose economic duties and sanctions.

24. In taxing statutes, even if the literal interpretation results in hardship or inconvenience, it has to be followed (G.P. Singh's Principles of Statutory Interpretation, 12th Edn., 2010, Lexis Nexis Butterworths Wadhwa Nagpur; Bennion on Statutory Interpretation, 5th Edn., Lexis Nexis, p. 863; Vepa P. Sarathi, Interpretation of Statutes, 5th Edn., Eastern Book Company, Chapter VIII, Taxing Statutes). This Court in CIT (Ag) v. Keshab Chandra Mandal [1950 SCC 205 : AIR 1950 SC 265], has held that hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear and apparent. Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint to do so. (Pandian Chemicals Ltd. v. CIT [(2003) 5 SCC 590] , Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577 : AIR 2003 SC 1543] , Bhaiji v. SDO [(2003) 1 SCC 692] , J.P. Bansal v. State of Rajasthan [(2003) 5 SCC 134 : 2003 SCC (L&S) 605] , State of Jharkhand v. Govind Singh [(2005) 10 SCC 437 : 2005 SCC (Cri) 1570] , Jinia Keotin v. Kumar Sitaram Manjhi [(2003) 1 SCC 730] , Shiv Shakti Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659] , Grasim Industries Ltd. v. Collector of Customs [(2002) 4 SCC 297] and Union of India v. Hansoli Devi [(2002) 7 SCC 273] .)

25. The Australian High Court in Federal Commr. of Taxation v. Westraders Pty. Ltd. [(1980) 144 CLR 55 (Aust)] , considered the scope of Section 36-A of the Income Tax Assessment Act, 1936 (Cth), which on a literal interpretation allowed the taxpayer to make a profit and still claim a loss for tax purposes. The Commissioner argued that the taxpayer's conduct amounted to a tax avoidance scheme and should therefore be disallowed under Section 260 of the Income Tax Assessment Act, 1936 (Cth). The Court held that under a literal interpretation Section 36-A could apply to allow the taxpayer to claim a loss. Barwick, C.J., speaking for the majority relied on the decision in IRC v. Duke of Westminster [1936 AC 1 : 1935 All ER Rep 259 (HL)] , which advocated that the literal approach be applied when interpreting taxation legislation and stated the following:

"It is for Parliament to specify, and to do so, in my opinion, as far as language will permit, with unambiguous clarity, the circumstances which will attract an obligation on the part of the citizen to pay tax. The function of the court is to interpret and apply the language in which Parliament has specified those circumstances. The court is to do so by determining the meaning of the words employed by Parliament according to the intention of Parliament which is discoverable from the language used by Parliament. It is not for the court to mould or to attempt to mould the language of the statute so as to produce some result which it might be thought Parliament may have intended to achieve, though not expressed in the actual language employed."

26. In Cooper Brookes (Wollongong) Pty. Ltd. v. Federal Commr. of Taxation [(1981) 147 CLR 297 (Aust)] it is held that in a taxing statute if the language is unambiguous, departing

from the literal approach 'may lead Judges to put their own ideas of justice or social policy in place of the words of the statute'. Similar view was espoused in C. & J. Clark Ltd. v. IRC [(1975) 1 WLR 413 : (1975) 1 All ER 801 (CA)] and BP Refinery (Westernport) Pty. Ltd. v. Shire of Hastings [(1977) 180 CLR 266 (Aust)] .

27. In Hepples v. Federal Commission of Taxation (No. 2) [(1992) 173 CLR 492 (Aust)] , the High Court of Australia unequivocally favoured the principle that taxation legislation should be subject to a strict literal interpretation and opined that such an approach was supported by 'common sense'. Therein, the taxpayer, on ceasing to be employed, was paid $40,000 by his employer in exchange for the taxpayer agreeing that he would not carry on or be interested in certain businesses and would not divulge any trade secrets. The issue before the Court was whether or not such payment would form part of the taxpayer's assessable income for the purposes of the Income Tax Assessment Act, 1936 (Cth). It was held that since the Act did not provide for such payments to form part of a taxpayer's assessable income, the payment would not be assessable.

29. In Prakash Nath Khanna v. CIT [(2004) 9 SCC 686] , this Court has explained that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency. Where the legislative intent is clear from the language, the Court should give effect to it. (Delhi Financial Corpn. v. Rajiv Anand [(2004) 11 SCC 625] and State of A.P. v. Road Rollers Owners Welfare Assn. [(2004) 6 SCC 210])

31. Thus, the language of a taxing statute should ordinarily be read and understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. State of A.P. [(2006) 12 SCC 607 : (2006) 13 Scale 27] and Jagdambika Pratap Narain Singh v. CBDT [(1975) 4 SCC 578 : 1975 SCC (Tax) 356 : (1975) 100 ITR 698] .)'

(Emphasis added)

79. The recent Division bench judgment of the Supreme Court in **Vikram Sujitkumar Bhatia** (Supra), penned by M.R.Shah, J. has clarified the law with regard to interpretation of Section 153-C of the Act and had held it to be a machinery provision. The ratio laid down in the aforesaid judgment is quoted hereinbelow:-

"62. Therefore, if the submission on behalf of the respective respondent assessees that despite the fact that the incriminating materials have been found in the form of books of account or documents or assets relating to them from the premises of the searched person, still they may not be subjected to the proceedings under Section 153-C solely on the ground that the search was conducted prior to the amendment is accepted, in that case, the very object and purpose of the amendment to Section 153-C, which is by way of substitution of the words 'belongs or belong to' to the words 'pertains or pertain to' shall be frustrated. As observed hereinabove, any interpretation, which may frustrate the very object and purpose of the Act/statute shall be avoided by the Court. If the interpretation as canvassed on behalf of the respective respondents is accepted, in that case, even the object and purpose of Section 153-C, namely, for assessment of income of any other person (other than the searched person) shall be frustrated."

(Emphasis added)

80. The Supreme Court in **Vikram Sujitkumar Bhatia** (Supra) has interpreted Section 153-C as a machinery provision as the primary intention of the parliament behind that provision was to proceed against the third party in case any incriminating material was found against the third party during the search conducted by the department which was being frustrated, if it was construed strictly. In the peculiar facts of the aforesaid case the provision was interpreted liberally to suppress the mischief the legislature intended to suppress so that the charge did not fail.

81. Following the judgments of the Supreme Court in **Amarchand N. Shroff** (Supra), the judgment of Bombay High Court in **Sumit Balkrishna** (Supra) and the judgment of Delhi High Court in **Savita Kapila** (Supra), it is abundantly clear that Section 148, at the very inception of reassessment should be construed strictly, as it is not merely a machinery provision but also a jurisdictional provision by reason of its dual and paradoxical nature. The following principles may be culled out for construing Section 148 with strict rigour:-

I. Reason to believe and recording of reason;
II. Prior Approval under Section 151 before issuing notice;
III. The limitation period (Section 149);
IV. The identity of the person to whom the notice is addressed; and
V. The jurisdictional competence of the issuing authority;

82. In the present case, it is undisputed that the Income Tax Return was filed in the name of the deceased assessee and verified through the Aadhaar OTP of the deceased, subsequent to his death, by the petitioner. The revenue is correct in its stand that the petitioner has wrongly filed the return contrary to the provisions of Section 140 of the Act and the same may also attract penal consequences under Section 277 of the Act on the ground of false verification. Therefore, the revenue is at liberty to proceed against the petitioner for violation of the provisions of Section 140 of the Act. However, the argument of the revenue, that the petitioner on the grounds of equity should not be allowed to invoke the discretionary and equitable writ jurisdiction, is without any basis in law as a writ of certiorari is being sought for quashing of a show cause notice on the ground that the same is void ab initio. The conduct of the petitioner in filing the return of her husband after his death does not confer jurisdiction upon the revenue to act in a manner contrary to the Act. The revenue cannot be allowed to defend its action and act in an illegal manner by issuing a notice which is void ab initio taking the plea that the petitioner had acted in an illegal manner.

83. Ergo, the reassessment proceedings initiated under Section 148 of the Income-tax Act, 1961, cannot be sustained on equitable considerations merely to safeguard the interests of the revenue. It is a settled principle that equity has little or no role to play in the interpretation of taxing statutes, particularly where the provision confers jurisdiction upon the assessing authority. The validity of reassessment proceedings must, therefore, be tested solely on the touchstone of the statutory requirements prescribed under the Act. If the mandatory conditions precedent for the assumption of jurisdiction are not strictly fulfilled, the proceedings are rendered void, irrespective of the amount of tax sought to be recovered or the perceived loss to the revenue. Accordingly, the fourth issue is answered in the negative.

84. Closing in on towards the fifth issue with regard to the issuance of fresh show cause notice by lifting the bar of limitation in terms of Section 150(1) of the Act.

85. The counsel for the petitioner relies on sub-section(2) of Section 150 and has submitted that no fresh show cause notice can be issued as the limitation period has already expired. The protection under Section 150(1) could have been available to the respondents only if the assessment 'order' itself had been passed within the statutory period of limitation. Since the order itself is beyond limitation, Section 150(1) affords no assistance whatsoever to the respondent department. Accordingly, the very 'order' sought to be relied upon by the respondent department is itself barred by limitation. Once the assessment 'order' itself is beyond limitation, Section 150(1) cannot be invoked to revive or validate proceedings which had already become time barred.

86. Furthermore, it has been submitted that extending the benefit of Section 150(1) in the facts of the present case would effectively amount to conferring jurisdiction upon the Assessing Officer which otherwise does not exist in view of the bar created under Section 149 of the Act as conferment of jurisdiction is purely a legislative function and jurisdiction cannot be created either by consent of parties, acquiescence, waiver or even by orders of a superior court contrary to statutory provisions. This submission relates to role of equity in taxation statutes which we have already dealt with in the fourth issue.

87. For his aforesaid proposition counsel for the petitioner has relied on **Deoki Nandan Agarwal** (Supra), **Jagmittar Sen Bhagat** (Supra), **Sujata Devi** (Supra), **Sukhdayal Pahwa** (Supra), **Eastern Coal Co. Ltd.** (Supra), **Glass Equipment (India) Ltd.** (Supra) and **Mahadeo Prasad Bais** (Supra).

88. Per contra, counsel for the respondent relies on sub-section(1) of Section 150 of the Act and submitted that a 'finding' or 'direction' by the Court that the escaped income of deceased assessee is required to be assessed in the hands of/through his legal heir under Section 159 would automatically amount to a consequential direction to the Assessing Officer to proceed afresh by issuing notice to the legal heir. Such notice would fall squarely within the ambit of Section 150(1) and would not be barred by Section 149. The very object of Section 150 is to ensure that lawful assessment or reassessment is not frustrated where action becomes necessary in consequence of a 'finding' or 'direction' of a Court or appellate/revisional authority.

89. Furthermore, the counsel for the respondent submits that the interpretation canvassed by the petitioner would render Section 150 otiose and defeat the legislative scheme. The petitioner cannot be permitted to argue, on the one hand, that the existing notice must be quashed as having been issued in the name of the deceased assessee and, on the other hand, that no fresh notice can be issued because limitation under Section 149 has expired. Such a contention of petitioner would convert a procedural objection into complete immunity from assessment, despite the express mandate of Section 159 that tax liability survives against the legal representative and despite the overriding machinery contained in Section 150.

90. For his aforesaid proposition counsel for the respondent has relied on **Sukhdayal Pahwa** (Supra) , **Eastern Coal Co. Ltd.** (Supra), **Glass Equipment (India) Ltd.** (Supra), **Ashish Agarwal** (Supra) and **Mahadeo Prasad Basis** (Supra).

91. At this moment, it is pertinent to look at sub-clause (1) and (2) of Section 150, which is quoted hereinbelow:-

"150. (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken."

92. Moreover, it is also pertinent to refer to Section 153(2) of the Act and the proviso to this subsection as amended w.e.f. 1st April, 2017 that provides for timeline for completion of reassessment proceedings and passing an order under Section 147 which is quoted hereinbelow:-

"No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served: Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."

93. With regard to lifting bar of limitation for issuance of fresh notice under Section under Section 148, a three-judge Bench judgment of the Supreme Court in **Mahadeo Prasad Bais** (Supra) may be looked into wherein the court recognized the broad remedial scope of Section 150 of the Income-tax Act and approved the principle that the provision is intended to preserve the efficacy of reassessment proceedings undertaken pursuant to findings or directions contained in appellate proceedings. The Hon'ble Supreme Court approved the reasoning adopted in **Eastern Coal Co. Ltd.** (Supra) and emphasized that Section 150 operates to remove the ordinary bar of limitation where reassessment becomes necessary to give effect to such findings or directions. The relevant paragraphs of the judgment are quoted hereinbelow:-

"4. The issue involved in this appeal is basically a short one turning on the language of Section 150(1). Before considering the interpretation of this section, we may, however, point out that, on this question, there appears to be a conflict of judicial opinion between the several High Courts. The Allahabad High Court, in the decision presently under appeal [(1980) 125 ITR 49 : 1978 TLR 344 (All)] and the Calcutta High Court in ITO v. Eastern Coal Co. Ltd. [(1975) 101 ITR 477 (Cal)] have taken the view that a reassessment in such circumstances is saved by the provisions

of Section 150(1) of the 1961 Act. An earlier Allahabad decision in CIT (Addl.) v. Kamalapat Motilal [(1977) 110 ITR 769 : 1977 TLR 233 : 1976 UPTC 693 (All)] and an earlier Bombay decision in Ambaji Traders P. Ltd. v. ITO [(1976) 105 ITR 273 (Bom)] took a similar view on the analogous provision contained in Section 153(3) of the 1961 Act but a contrary view was taken by the latter High Court in the later case reported as CIT v. T.P. Asrani [(1980) 122 ITR 735 : (1979) 11 CTR (Bom) 298] . Both sets of decisions have placed reliance on certain observations of this Court in differing contexts. But it will be best to have a look at the statutory provisions first, in the context of the facts of the present case.

5. To start with, there is no dispute that reassessment proceedings were rightly initiated under Section 148 of the Act. It is also common ground that on the language of Section 148, as it stood at the relevant time, no notice under Section 148 could have been issued in March 1977 for the assessment years in question. The revenue can successfully support the validity of this notice only by reference to Section 150(1). Two questions then arise: (i) Are the provisions of Section 150(1) attracted? (ii) If yes, do they save the impugned proceedings? The answer to the first question is furnished by Section 297(2)(d)(ii), the very clause which authorises the issue of the notice of reassessment under Section 148. It permits the issue of the notice under Section 148, 'subject to the provisions contained in Section 149 or Section 150'. Though the words 'subject to' may be appropriate in the context of Section 149 and Section 150(2) (which place restrictions on the issue of the notice under Section 148), they are somewhat inappropriate apropos Section 150(1) which relaxes the conditions for issue. But there is no doubt that the statute clearly intends that the benefit of enlargement of the time limited under Section 149 should be available in respect of the notice issued under Section 148 read with Section 297(2)(d)(ii). The answer to the second question is furnished by Section 150(1) itself. It removes the bar of time when the reassessment proceedings are initiated in consequence of or to give effect to a finding contained in an order passed by any authority in any proceeding by way of appeal, reference or revision. There is no difficulty here for the orders of the Tribunal and the High Court for the several years between 1949-50 and 1961-62 were passed in proceedings by way of appeals and reference and there is no dispute that the reassessment proceedings have been initiated to give effect to findings in such orders. There is, however, a catch in applying the terms of Section 150(1) to this case. There is no doubt that the whole idea of the sub-section was to lift the embargo placed on initiation of reassessment proceedings and to remove the time-limit where the notice of reassessment is issued with a view to give effect to a direction or finding contained in an appellate order or an order passed on revision or on reference. Unfortunately, however, in expressing its above intention, the legislature has worded the exemption from time-limit so as to cover only cases where the finding or direction is contained in an order passed by any such authority in any such proceeding 'under this Act' i.e. the 1961 Act. In the present case the assessments for 1949-50 and subsequent years in the case of the family were made under the old Act and were the subject matters of appeal to the Appellate Assistant Commissioner and Tribunal and of reference to the High Court under the provisions of the 1922 Act. In other words, the finding in consequence of which the assessments presently under consideration are being sought to be reopened is a finding contained in orders passed not 'under this Act' but in orders passed under the 1922 Act. Literally applied, therefore, the language of Section 150(1) does not help the department to overcome the bar of limitation otherwise imposed by Section 149.

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10. The position is no doubt a little different here. The provisions of Section 150(1) have been specially made applicable and operative in respect of the notice under Section 148 issued in pursuance of Section 297(2)(d)(ii) and, as pointed out earlier, the application of the provisions of Section 297(2)(d)(ii) gives rise to two sets of situations to one of which the language of Section 150(1) would squarely apply and so the interpretation sought for by the appellant does not render the words of Section 150(1) redundant. Despite this point of difference in the two situations, we think that the principle of the above decisions that the mutatis mutandis rule should be invoked in interpreting Section 297(2) has application here also. Not to do so would no doubt not make Section 150(1) redundant but it will bring about an unintended and inequitable situation. It is clear that Section 150(1) will operate to lift the time bar in cases where the reassessment is initiated under Section 148 to give effect to an order passed under the 1961 Act. Equally, where assessments had been reopened under Section 34 of the 1922 Act before April 1, 1962 to give effect to orders passed under the 1922 Act and are continued after that date by virtue of Section 297(2)(d)(ii), the provisions of the second proviso to Section 34(3) of that Act would preclude the operation of the normal rule of limitation for reassessments. In this situation, it will be a great anomaly to reach the conclusion that the time-limit will operate in cases where proceedings under Section 148 are initiated to give effect to an order on appeal, revision and reference merely because such order is one passed under the 1922 Act. Neither reason nor rhyme can explain how the statute could have intended such anomaly or why it should be so interpreted as to result in a discriminatory treatment only to this class of cases. An interpretation which will result in such anomaly or absurdity should be avoided. It is also necessary to remember that Section 297(2) is a provision enacted with a view to provide for continuity of proceedings in the context of repeal of one Act by a fresh one broadly containing analogous provisions and the transitory provisions should, as far as possible, be construed so as to effect such continuity and not so as to create a lacuna. For these reasons we think that it will be appropriate to so read the words of Section 297(2)(d)(ii) as to permit the applicability of Section 150 (or Section 153) with the necessary modifications. To paraphrase, the last words of Section 297(2)(d)(ii) should be read to mean that where the proceedings initiated under Section 148, subject to the relaxations and limitation of Sections 149 and 150, all the provisions of the Act shall apply accordingly: that is to say, in the same manner as they would apply in case of proceedings normally initiated under these provisions. Since reassessment proceedings so initiated to give effect to orders on appeal, revision or reference will not be subject to a time-limit, the proceedings likewise initiated under Section 297(2)(d)(ii) read with Section 148 will also not be subject to any limitations save to the extent mentioned in Section 150(2).

11. We would like to add that, even if Section 150(1) is to be read literally and considered as posing a hurdle as contended for by the appellant, we think this result can be overcome by a liberal interpretation of Section 297(2)(k). This clause reads:

"(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of

this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;"

(emphasis added)

This is principally a provision intended to save administrative steps taken under the 1922 Act by deeming them to be steps taken under the 1961 Act. Strictly construed, the words 'order issued' also would seem, prima facie, to carry only a similar connotation. But we see no objection, for our present purposes, in the way of our construing these words liberally and consequently deeming the orders passed and issued by the Tribunal and the High Court in this case for the assessment year 1949-50 and subsequent assessment years as orders passed or issued under the corresponding provisions of the new Act. Once this deeming is made, there is no difficulty in the way of accepting the revenue's contention. We think that the circumstances justify a slight straining of the language of this clause and applying it so interpreted to the problem before us so as to avoid a meaningless anomaly. Thus construed, the statute can be said not to have misfired in its application to the situation in the present case."

94. The counsel for the respondent, relying on the judgment of **Mahadeo Prasad** (Supra) contends that this case is squarely covered by the aforesaid judgment whereas the counsel for the petitioner contends that this case is not applicable to the present facts as the aforesaid judgment does not consider the effect and applicability of Section 150(2) nor do they deal with a situation where reassessment proceedings had already become barred by limitation under Section 149 of the Act.

95. However, upon a careful perusal of the judgment in **Mahadeo Prasad** (Supra), we find that the aforesaid judgment is distinguishable from the present case as it deals with a situation where the notice under Section 148 of the Act is issued in pursuance of Section 297(2)(d)(ii), the repeal and savings clause in the Act unlike the present scenario where notice is issued pursuant to search conducted under Section 132 of the Act. Section 297(2) is a provision enacted with a view to provide for continuity of proceedings in the context of repeal of one Act by a fresh one broadly containing analogous provisions and the transitory provisions should, as far as possible, be construed so as to effect such continuity and not so as to create a lacuna.

96. The Supreme Court in **Ashish Agarwal** (Supra) while dealing with a bunch of petitions from all over the High Courts has held that the respective Section 148 notices impugned therein issued to the respective assessees shall be deemed to have been issued under Section 148-A of the Act as substituted by the Finance Act, 2021 and treated to be a show-cause notices in terms of Section 148-A(b). The relevant paragraphs of the judgment are quoted hereinbelow:-

"22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment

years, provided Section 148 notice has been issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so.

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23. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted Sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bona fide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under Section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended Section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021.

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24. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bona fide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of the IT Act, the High Courts ought to have passed an order construing the notices issued under the unamended Act/unamended provision of the IT Act as those deemed to have been issued under Section 148-A of the IT Act as per the new provision Section 148-A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of Sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law.

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25.1. The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter.

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27. Therefore, we have proposed to pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed

by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA."

97. The Supreme Court in **Ashish Agarwal** (Supra) has held that the revenue cannot be rendered remediless merely because of technical or procedural defects in the notices, and accordingly, exercised its power under Article 142 to preserve the reassessment proceedings. The Supreme Court while explaining the changes brought into effect vide Finance Act, 2021 has specifically dealt with the issue of application of substituted Sections 147 to 151 vide Finance Act, 2021 and extended the benefit of the substituted provisions to past assessment years in cases where notice was issued under the erstwhile Section 148 but post April 1, 2021. The Supreme Court had specifically stated that they have exercised their powers under Article 142 of the Constitution of India in the peculiar facts and circumstances of the case, that being the case, the judgment of the Supreme Court in **Ashish Agarwal** (Supra) cannot be used as a precedent. The aforesaid judgment was passed to ensure continuity of the substituted provisions of law in the Act and does not lay down any ratio with regard to curing the jurisdictional defect.

98. The Madras High Court in **Alamelu Veerappan** (Supra), Delhi High Court in **Savita Kapila** (Supra), the Bombay High Court in **Devendra** (Supra) and **Sumit Balkrishna Gupta** (Supra) while quashing the notice under Section 148 issued against the deceased assessee, held that a notice issued to a dead person does not fulfill the sine qua non for assumption of jurisdiction under Section 148. The Court held that since the notice itself was void and non est, there were no valid proceedings before the court. In essence, although the courts did not specifically deal with Section 150, therefore, no liberty was given to issue a fresh notice.

99. A perusal of sub-section(1) of Section 150 of the Act carves out an exception to the period of limitation prescribed under Section 149. It provides that notwithstanding anything contained in Section 149, an assessment or reassessment may be made at any time for the purpose of giving effect to any finding or direction contained in an order passed by a court in any proceeding under any law, including by way of appeal, reference, revision, or writ.

100. However, Section 150(2) imposes a critical caveat, the benefit of Section 150(1) is expressly denied if the relevant assessment year had already become barred by limitation at the time when the 'order' (not the notice) which was the subject matter of such proceeding was itself made.

101. In essence, the revenue seeks to use the very order of quashing passed in favour of the assessee as a springboard to revive otherwise time-barred proceedings.

102. The legal position, as consistently affirmed by the various High Courts and the Supreme Court, is that where a notice under Section 148 is issued against a deceased assessee and is quashed by a court as void ab initio, the revenue cannot invoke Section

150(1) to issue a fresh notice against the legal representatives beyond the period of limitation.

103. At this point, we make it clear that the order of quashing of the show cause notice by the High Court does not constitute a "finding or direction" within the meaning of Section 150(1), because the notice itself being void, no valid proceeding was ever pending before the court. Furthermore, the correct course mandated by Section 159(2)(b) was for the revenue to have initiated fresh proceedings directly against the legal representatives within the prescribed period of limitation, which having not been done the entire reassessment proceedings was foreclosed in law.

104. In view of the above, the argument of the respondent that the bar of limitation can be lifted in view of any 'finding' or 'direction' of any court by way of appeal, reference or revision is unsustainable in law as the order of the High Court observing the void initiation of proceedings against the dead cannot ipso facto amount to a 'finding' or 'direction' for the purpose of lifting bar of limitation for reassessment. Ergo, the department cannot, after the invalid initiation of reassessment proceedings against a deceased assessee, circumvent the statutory bar of limitation by issuing a fresh notice under Section 148 to the legal representative by invoking Section 150(1) of the Act. Furthermore, the argument of the petitioner that the assessment order itself was passed beyond limitation cannot be countenanced by us as the proviso to Section 150(2) provides that the assessment order under Section 147 shall be made within 12 months from the end of financial year of notice, if the notice was served on or after April 1, 2019. In our view, Section 150(1) of the Act has no application whatsoever in the present case wherein the reassessment notice has been issued to a dead person and is accordingly a void initiation of proceedings. Section 150(1) does not come into operation at all as the same would come into operation only when there is a finding or direction by an authority by way of appeal, reference, or revision or by any court in any proceeding under any other law. In the present case, there is no such order passed by any authority whatsoever and the present order of the High Court is simpliciter a reassertion of the fact that the initiation of the reassessment proceedings were void ab initio. This order is definitely not a finding or direction that would require a reassessment or recomputation in consequence of the finding that the issuance of the notice is invalid. Where the time prescribed under Section 149 for issuance of a notice under Section 148 has expired, the Department cannot revive a time-barred proceeding merely on equitable considerations or by relying upon Section 150(1). Consequently, if the limitation prescribed under Section 149 has lapsed, the issuance of a fresh notice to the legal representative is impermissible in law and the reassessment proceedings are barred by limitation. Hence, the fifth issue is also answered in the negative.

CONCLUSION

105. Upon sifting through the ratios laid down in multifarious views of various High Courts and the Supreme Court, the following principles can be culled out:-

I. A notice under Section 148 for reopening past years assessment is a jurisdictional notice that must be issued in the name of the correct person and not against the dead and such issuance of notice against a dead person is void ab initio rendering all the consequential proceedings as null and void.

II. The department can continue reassessment proceedings against the legal representative of the deceased assessee invoking Section 159 if the notice at the very first instance was issued on the assessee when he was alive [Section 159(2)(a)]; and after his death against the legal representative/heir of the deceased assessee within the prescribed limitation under Section 149 of the Act [Section 159(2)(b)].

III. The fact of issuance of notice against a dead person is a jurisdictional error that cannot be cured resorting to Section 292B of the Act.

IV. The estoppel created under Section 292BB applies to original assessee and not to other individuals as the estoppel created under the statute operates within the fringes of its jargon and not beyond it for conferring jurisdiction.

IV. In interpreting taxing statutes equitable considerations should be entirely out of place and cannot be interpreted on any presumption or assumption and have to be interpreted in light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency.

V. Equity and tax are strangers to each other. If a particular income is exigible to tax under the taxing statute, then the individual may be taxed and if inexigible, then cannot be taxed.

VI. The order of this court quashing the show cause notice under Section 148 holding the same as void ab initio does not amount to 'finding' or 'direction' within the meaning of Section 150(1) of the Act so as to lift the bar of limitation as provided under Section 149 of the Act.

106. Before parting with this matter, this Court deems it apposite to observe that the present case is an illustration of lackadaisical attitude of the department. The Income Tax Department, armed with the vast machinery of the State and entrusted with the solemn responsibility of administering a complex fiscal statute, proceeded to initiate, pursue, and conclude reassessment proceedings initiated against a dead person undeterred by categorical intimations of his death, and apparently oblivious to the foundational legal principle that a dead person is not a legal entity and cannot be subjected to reassessment proceedings.

107. It would be an act of audacity if I miss to quote Benjamin Franklin: *'nothing is certain except death and taxes.'* To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such a person's property.

108. To tax the dead is, in the rudimentary sense, a contradiction in terms, for taxation, as a statutory exercise of sovereign power, operates upon living persons possessed of legal personality, capacity to respond, and ability to participate in proceedings. A dead man can do none of these things. He can neither receive a notice, nor file a reply, nor appear before an authority, nor challenge an order. The impugned proceedings in the present case were, therefore, not merely void ab initio in the technical sense but were void in the most profound and elementary sense and furthermore such an order of a High Court quashing a notice under Section 148 issued to a deceased assessee as void ab initio does not constitute a 'finding' or 'direction' within the meaning of Section 150(1) for reassessment. Ergo, the revenue is not allowed to derive benefit from its own jurisdictional transgression.

109. This Court, accordingly, quashes the impugned notice dated March 28, 2025 under Section 148 of the Act, and all proceedings, orders, and demands consequential thereto are quashed and set aside. Accordingly, writ petition is **allowed**.

110. This court would like to put on record its appreciation with regard to the arguments placed by the counsel appearing on behalf of both the parties and the diligent spadework in preparation of notes of arguments. I would also like to thank my Research Associate Ms. Saumya Patel for the painstaking and assiduous dexterity in the research carried out by her.

(Shekhar B. Saraf, J.)

I agree

(Abdhesh Kumar Chaudhary, J.)

EPILOGUE

111. The ticklish and complex issues that have arisen in the present writ petition, makes one fathom the intricacies of the law applicable in the present case. Article 265 of the Constitution of India categorically states that 'No tax shall be levied or collected except by authority of law'. In the present case, we have held that the revenue authorities cannot proceed against the petitioner as the show cause notice issued for reassessment was issued on the deceased-husband of the petitioner. The facts have clearly revealed that the petitioner by filing return in the name of the late deceased husband by using the authentication of the deceased person has also acted in an illegal manner. However, taxing statutes require a strict interpretation of the law and for the various reasons discussed above, the notice has been held to be void ab initio and the proceedings taken thereunder have been quashed by us.

112. The arguments raised by the department have to be negated by the Bench simpliciter, due to a lacuna in the law that proscribed proceedings against the estate of the deceased in the manner discussed above. There is no doubt that the loophole in the law has caused prejudice to the department and possibly loss to the public exchequer. However, keeping in view the general principles of separation of powers under the Constitution of India, this Court has not ventured into reading down any provision and/or adding to a provision of a taxing statute keeping in mind the principles established in law by the Hon'ble Supreme Court with regard to the interpretation of taxing statutes.

113. We are of the view that the present loophole that exists is one that is required to be plugged by the Parliament with regard to the Act and other taxing statutes, where similar provisions have been enacted.

114. In light of the same, we direct transmission of the judgment to the Ministry of Finance, Government of India, so that the Government of India may make elaborate deliberations on this loophole and if they consider it necessary, the Parliament may step in, to remove the lacuna by appropriate amendments to the law.

115. Accordingly, the Senior Registrar of this Court is directed to send a copy of this judgment to the Ministry of Finance, Government of India.

(2026) 7 ILRA 2019
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 23087 of 2015

Kishan Lal Ahuja & Anr. ...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue for Consideration

(i) Did the State Government have power to stay the District Magistrate's order dated 16.01.2015, through the Government Order dated 30.01.2015 and the order dated 31.03.2015?
(ii) Can the finding of lapse under Section 24(2) of the Act, 2013 be upheld on the facts of this case?

Headnotes

Land Acquisition Act, 1894, Sections 11, 48 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24 - Disputed land formed part of a larger acquisition of 9.270 hectares comprising 28 gatas in Village Manoharpur - Acquisition commenced with notification dated 06.04.2000 issued under Section 4(1) read with Section 17(4) of the Land Acquisition Act, 1894, invoking the urgency provisions under Section 17(1) - land was required by the Moradabad Development Authority (MDA) for developing a planned residential colony - No award under Section 11 of the Land Acquisition Act, 1894 was ever made in respect of the petitioners' land - A possession memo dated 02.04.2003 recorded that possession of the entire 9.270 hectares, including the disputed land had been taken after Rs.1.07 crore, stated to be 80% of the estimated compensation, was deposited in the Government Treasury - petitioners asked the State Government to exempt their land from acquisition - Vice Chairman of the MDA informed the State Government that exemption of the petitioners' land from acquisition would not adversely affect the MDA's scheme - State Government directed the Vice Chairman of the MDA to adjust the petitioners' land - proposal was placed before the MDA Board in its meeting and was rejected - petitioners and their co-sharers filed Writ Petition seeking, inter alia, a declaration that the acquisition had lapsed under Section 11-A of the Act, 1894 - Writ Petition was decided and it was directed that, if the petitioners had made an application under Section 48 before 02.04.2003, the same be considered and decided within six weeks, with status quo regarding possession for six weeks - petitioners submitted a representation - State Government rejected it stating that possession had already been handed over to the MDA and there was no reason to exempt or adjust the land - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force on 01.01.2014 and repealed the Act, 1894 subject to the saving provisions contained in Section 24 - petitioners thereafter moved an application dated 03.02.2014 before the Collector, Moradabad, contending that neither an award had been made nor possession had been taken - By a detailed order dated 16.01.2015, the District Magistrate held that the acquisition had lapsed under Section 24(2) of the Act, 2013, relying upon the Tehsil report to hold that physical possession remained with the petitioners and upon Pune Municipal Corporation to hold that deposit of 80% compensation in the Government Treasury did not amount to payment to the tenure-holders - State Government passed the impugned order dated 31.03.2015 staying the District Magistrate's order with immediate effect and directing further action under the Government Order dated 30.01.2015 - Aggrieved by the Government Order dated 30.01.2015 and the consequential order dated 31.03.2015, the petitioners filed the present writ petition.

Held:

A. District Magistrate had acted pursuant to the Division Bench order dated 07.10.2014, had issued notice to the parties, heard both sides and passed a reasoned order dated 16.01.2015 - District Magistrate's order dated 16.01.2015 was not a simple administrative order but a quasi-judicial order passed after deciding a legal dispute between the parties - once such a quasi-judicial order is passed, it can be changed only in the manner provided by law, such as through an appeal, revision, or judicial review by a competent court, if the statute permits - Section 24 of the Act, 2013 does not give the State Government any power to review or set aside an order passed under that provision - power to alter, review or set aside a decision already rendered is not an inherent power and must be conferred by law, either expressly or by necessary implication - Government Order dated 30.01.2015 came into existence only after the District Magistrate had passed his order dated 16.01.2015 - no provision was shown giving the Government Order dated 30.01.2015 any retrospective effect - it could not, therefore, be used to reopen a decision already taken - Government Order dated 30.01.2015 and the order dated 31.03.2015 were without jurisdiction and could not stand - action amounted to colourable exercise of power and was arbitrary and perverse in law. [Paras 8.2-8.10]

B. MDA's submission that the District Magistrate had no jurisdiction to decide the petitioners' claim under Section 24 rejected - State Government's own Government Order dated 24.03.2014 directed District Magistrates across the State to decide such claims by passing speaking orders - Division Bench order dated 07.10.2014 sent the matter back to the Collector concerned for decision afresh after due notice to the parties - MDA did not challenge that order and could not subsequently contend that the very authority to whom the matter was sent lacked jurisdiction to decide it. [Paras 8.7-8.9]

C. Where no award under Section 11 of the Act, 1894 had been made, Section 24(1)(a) applied and only the provisions relating to determination of compensation under the Act, 2013 applied - No award under Section 11 had ever been made in respect of the petitioners' three gatas and, therefore, their case appeared to fall under Section 24(1)(a) and not Section 24(2) - District Magistrate had relied upon Pune Municipal Corporation v. Harakchand Misrimal Solanki, which stood overruled by the Constitution Bench in Indore Development Authority v. Manoharlal - Finding of lapse under Section 24(2) suffered from two serious legal difficulties, namely, applicability of Section 24(2) where no award under Section 11 was ever made and the District Magistrate's conclusion regarding payment of compensation being based on a legal position which had since been overruled by the Constitution Bench - Court did not consider it necessary to finally decide the issue of applicability of Section 24(2) in the present case and left it open for an appropriate case - Finding of lapse under Section 24(2) was not free from legal doubt and could not by itself be made the sole basis for granting relief to the petitioners. [Paras 8.11-8.16]

D. Petitioners had from the very beginning sought release of their land under Section 48 of the Act, 1894 - Section 48 gives the Government the power to withdraw from acquiring any land as long as physical possession of the land has not been taken - power to release land from acquisition under Section 48 lies with the State Government and not with the MDA - State Government directed to decide the petitioners' long-pending application for release of the land under Section 48 of the Act, 1894, after considering all relevant records including the Tehsil report, possession memo, Board's resolution and letters of the Vice Chairman - writ petition partly allowed - Government Orders dated 30.01.2015 and 31.03.2015 quashed - matter remitted to the State Government to decide the pending application for release of the land within three months - parties directed to maintain status quo regarding possession until such decision - no order as to costs. [Paras 8.20-8.22, 9-10] (E-5)

Case Law Cited

Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844;
Pune Municipal Corporation v. Harakchand Misrimal Solanki, (2014) 3 SCC 183;
Union of India v. Shiv Raj, (2014) 6 SCC 564;
Indore Development Authority v. Manoharlal, (2020) 8 SCC 129.

List of Acts

Land Acquisition Act, 1894;
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

List of Keywords

Land acquisition; Lapse of acquisition; Section 11; Section 24(1)(a); Section 24(2); Section 48; No award; Physical possession; Payment of compensation; Quasi-judicial order; Power of review; State Government; District Magistrate; Government Order; Colourable exercise of power; Indore Development Authority; Release from acquisition; Status quo.

Case Arising From

Challenge to the Government Order dated 30.01.2015 and consequential order dated 31.03.2015 passed by the State Government staying the order dated 16.01.2015 passed by the District Magistrate, Moradabad in respect of the petitioners' land

Appearances for Parties

Advs. for the Petitioner (s) : Ashish Agrawal, Kshitij Shailendra, Shiv Pratap Singh Chauhan, Sumit Suri
Advs. for the Respondent(s): C.S.C., Krishna Mohan Asthana, P.K. Singh, Satish Chaturvedi, Upendra Singh

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.
&
Hon'ble Kunal Ravi Singh, J.)

A. Appearance of Counsel:-

1. Heard Shri Nipun Singh, learned Senior Counsel, assisted by Shri S.P.S. Chauhan, learned counsel for the petitioners, Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents, and Shri K.M. Asthana, learned counsel for the respondent - Moradabad Development Authority.1

B. Relief: -

2. The present writ petition has been preferred praying for the following relief:

"(i) issue a writ or direction or pass an order in the nature of Certiorari quashing the impugned order dated 30.01.2015 and 31.03.2015 both passed by State Government committing gross abuse of the powers contained under THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 ;

(ii) issue an appropriate writ or direction or pass an appropriate order maintaining the order dated 16.01.2015 passed by the District Magistrate, Moradabad in relation to the petitioners' land covered by three gatas bearing old gata nos. 19, 20 and 21 (new numbers being 38, 39 and 40) having approximate area of 4000 Sq. Metres, situated at Village Manoharpur, Delhi Road, Moradabad;

(iii) issue a writ or direction or pass an order in the nature of Mandamus commanding the respondents not to cause any interference in the petitioners' right, title, interest and possession over the land overed by three gatas bearing old gata nos. 19, 20 and 21 (new numbers being 38, 39 and 40) having approximate area of 4000 Sq. Metres, situated at Village Manoharpur, Delhi Road, Moradabad;

(iv) issue any other suitable writ or direction or pass an order as this Hon'ble Court may deem fit or proper in the facts and circumstances of the case; and

(v) award costs of the writ petition to the petitioners."

C. Facts of the Case:-

3.1. The dispute in the present writ petition relates to a small piece of land measuring about 0.410 hectares (around 4,000 square metres), comprising old Gata Nos. 19, 20 and 21, now renumbered as Gata Nos. 38, 39 and 40, situated in Village Manoharpur, Delhi Road, Moradabad.

3.2. This land formed part of a larger acquisition of 9.270 hectares covering 28 gatas in Village Manoharpur. The acquisition began with a notification dated 06.04.2000 issued under Section 4(1) of the Land Acquisition Act, 18942, read with Section 17(4). Since the urgency provisions under Section 17(1) were invoked, no inquiry under Section 5-A was held. The notification stated that the land was required by the MDA for developing a planned residential colony at Village Manoharpur.

3.3. The petitioners filed objections against this notification on 15.04.2000. The then Vice Chairman of the MDA forwarded these objections to the State Government under cover of a letter dated 19.04.2000. Despite this, a further notification dated 16.05.2001 was issued under Section 6(1) read with Section 17(1). This notification also covered the petitioners' three gatas, along with the rest of the acquired land.

3.4. It is not disputed that no award under Section 11-A of the Act, 1894 was ever made for the petitioners' land. Two awards were later passed for other parts of the larger acquisition, i.e. one dated 20.02.2006, for 4.269 hectares, and another dated 06.11.2009, for 1.169 hectares. Neither of the awards covers the petitioners' three gatas.

3.5. A possession memo dated 02.04.2003 states that possession of the entire 9.270 hectares, including the disputed land, was taken on that date after Rs. 1.07 crore, said to be 80% of the estimated compensation for the acquired land, was deposited in the Government Treasury.

3.6. The MDA's Vice Chairman submitted a report dated 27.07.2001, stating that the acquired land could be adjusted for zonal roads and public facilities. The Vice Chairman also wrote a letter dated 18.09.2001 to the State Government, stating that exempting the petitioners' land from acquisition would not adversely affect the MDA's scheme.

3.7. The petitioners asked the State Government to exempt their land from acquisition. By order dated 22.02.2002, the State Government directed the Vice Chairman of the MDA to adjust the petitioners' land after recovering development charges from them.

3.8. This proposal was placed before the MDA's Board in its 80th meeting, held on 10.02.2005, where it was rejected. The Vice Chairman's letter dated 01.03.2005, informing the

State Government of this rejection, stated that possession of the land had already been handed over to the MDA.

3.9. The petitioners, along with their co-sharers Sooraj Bajaj and Sanjay Sahgal, filed Civil Misc. Writ Petition No. 28752 of 2007. They challenged the Board's resolution and the letter issued pursuant to it. They also sought a direction restraining the authorities from interfering with their possession and prayed for a declaration that the land acquisition had lapsed under Section 11-A of the Act, 1894. However, no interim relief was granted in the said proceedings. During the pendency of the writ petition, the State Government recalled its earlier order dated 22.02.2002 by passing another order dated 12.05.2006. The petitioners did not challenge this recall order.

3.10. Writ Petition No. 28752 of 2007 was decided on 28.11.2008 by a Division Bench of this Court. The Court did not go into the possession dispute. It gave only the following limited direction, which reads as follows:

"In the facts and circumstances of the case we only provide that in case the petitioner had made an application prior to 02.04.2003 under Section 48 before the State Government, it shall be considered and decided within a period of six weeks from the date a certified copy of this order is filed before the authority concerned.

Status quo for a period of six weeks shall be maintained with regards to possession over the disputed plot and shall thereafter abide by the orders to be passed by the State Government."

3.11. The petitioners did not act on this for about three years. When they filed a representation on 08.11.2011, the State Government rejected it by order dated 04.01.2012 stating, therein, that possession of the land, including the petitioners' gatas, had already been handed over to the MDA on 02.04.2003, and that there was no reason to exempt or adjust the land. A similar order was passed on 05.12.2011 for the co-sharer Sooraj Bajaj's land, Gata No. 24, in the connected Writ Petition No. 55310 of 2008.

3.12. The petitioners then filed a review application dated 22.06.2012. The application stated that no award had been made within the required time, that actual possession had never been taken, and that they had not been heard before the order dated 04.01.2012 was passed. This review application is still pending. No order has yet been passed on it.

3.13. In the meantime, the land belonging to one Arvind Vadera was completely exempted from acquisition. By a notification dated 11.08.2009 issued under Section 48(1) of the Act, 1894, the State Government withdrew Gata Nos. 25, 26, 27, 29, 30 and 31 from the acquisition proceedings. The notification refers to Civil Misc. Writ Petition No. 57446 of 2005 filed by Arvind Vadera, which was decided by this Court on 28.11.2008. The order was passed on the same date and in substantially the same terms as the order passed in the petitioners' Civil Misc. Writ Petition No. 28752 of 2007, referred to in paragraph 3.10 above.

3.14. The law changed on 01.01.2014, when the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force. This Act repealed the Act, 1894, subject to the saving provisions in Section 24. Relying on this, and pointing to the exemption already given to Arvind Vadera, the petitioners moved an application dated 03.02.2014 before the Collector, Moradabad. The application was pressed on two grounds that neither an award had been made nor possession of the land was taken.

3.15. By Government Order dated 24.03.2014, the State Government directed the Housing Commissioner, the Vice Chairmen of Development Authorities, the Commissioners and the District Magistrates to decide such claims of lapsing under Section 24 on a priority basis, by passing speaking orders. This Government Order also referred to the law then laid down in **Pune Municipal Corporation v. Harakchand Misrimal Solanki**, on what counts as 'payment' of compensation.

3.16. Acting on the petitioners' application, the District Magistrate called for a report from the Tehsil authorities. A joint inspection was carried out on 20.03.2014 by the Amin and the Lekhpal. Their report, dated 22.03.2014 and forwarded on 25.03.2014, found that the three gatas in question lie together at the spot, enclosed on three sides by a boundary wall about six feet high. It found four poplar trees at the edge of the land, and a small pucca structure at the north-eastern corner. It found the land under cultivation and in the possession of the landowners.

3.17. Acting on this report, the District Magistrate, Moradabad, by order dated 26.06.2014, declared that the acquisition of the petitioners' land had lapsed under Section 24(2) of the Act, 2013. This order was passed without any notice to the MDA.

3.18. The MDA challenged this order in Writ-C No. 47069 of 2014 (Moradabad Development Authority Thru Vice Chairman vs. State of U.P. and 3 others). A Division Bench of this Court allowed that petition by order dated 07.10.2014, holding as follows:

"Consequently, this petition stands allowed in the manner indicated above. The impugned order dated 26.6.2014 is set aside and the matter stands remitted to the Collector concerned for decision afresh in accordance with law, keeping in view the observations made above. The Collector shall proceed with the matter after due notice of date of hearing to the parties concerned."

3.19. This Court also allowed the MDA to argue that the Section 24 of the Act, 2013 proceedings were not maintainable at all, apart from the merits. Following this order, the District Magistrate issued notice to both sides. The objections filed by the MDA on 13.11.2014 stated that possession was handed over on 02.04.2003, that since no award had been made under Section 11, only Section 24(1)(a) applied and not Section 24(2), and that the earlier order dated 04.01.2012 had become final since it was never challenged. The petitioners filed their reply on 25.11.2014. Both sides were heard on 15.12.2014.

3.20. The District Magistrate, Moradabad passed a fresh, detailed order on 16.01.2015. He again held that the acquisition had lapsed under Section 24(2) of the Act, 2013. Relying on **Pune Municipal Corporation** (supra), he held that deposit of 80% compensation in the Treasury was not to be treated as payment to the tenure-holders. Relying on the Tehsil report, he held that physical possession remained with the petitioners. He rejected the MDA's objections, and declared the acquisition proceedings for these three disputed gatas to have lapsed under Section 24(2) of the Act, 2013.

3.21. Thereafter, the MDA wrote a letter dated 20.02.2015 to the State Government, seeking permission to file a writ petition against it. The State Government held a meeting on 18.03.2015, attended by the District Magistrate, the Special Land Acquisition Officer and the Vice Chairman of the MDA. It then passed the impugned order dated 31.03.2015, staying the District Magistrate's order dated 16.01.2015 with immediate effect, and directing that further action be taken under the Government Order dated 30.01.2015.

3.22. This impugned order dated 31.03.2015 also stated that the final decision would be taken after consulting the Administrative, Revenue and Legal Departments, and with the approval of the Minister concerned. The Government Order dated 30.01.2015 was issued only after the District Magistrate had already passed his order dated 16.01.2015. It set out the second proviso to Section 24(2), added by the 2014 Ordinance, which reads as follows:

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

3.23. On the procedure to be followed in deciding such claims, the same Government Order dated 30.01.2015 directed that applications under Section 24(2) first be verified by the concerned District Magistrate and examined by the Administrative Departments, who would then obtain the views of the Revenue Department and the Law Department. The final notification declaring an acquisition lapsed would be issued only with the approval of the concerned Minister.

3.24. Aggrieved by the Government Order dated 30.01.2015 and the consequential order dated 31.03.2015, the petitioners filed the present writ petition seeking their quashing. On 23.04.2015, this Court granted an interim order, which is reproduced as under:

"Heard Sri Kshitij Shailendra, counsel for petitioner, learned standing counsel appearing for respondent no. 1,4 and 5 and Sri Upendra Singh appearing for respondent no. 2 and 3.

The moot question that arises for consideration in this petition is regarding applicability of section 24(1) and 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013). It

appears from record in the instant case that there is dispute of possession of the land having been taken by the State Government and admittedly award has not been made, hence in this backdrop, applicability of section 24(2) of the aforesaid Act no. 30 of 2013 is to be seen.

It further appears that Moradabad Development Authority has sought permission from the State Govt. vide letter dated 20.2.2015 for challenging the order of Collector dated 16.1.2015. Instead of passing an order either granting or rejecting the permission, the State Govt. by its order dated 31.3.2015 has issued the impugned order relying upon Government Order dated 30.1.2015, relevant extract of which reads thus:

''3. उपरोक्त से स्पष्ट है कि द्वितीय परन्तुक में उल्लिखित अवधि यदि कोई हो को अवधि की गणना में से निकालने पर यदि अवशेष अवधि 05 वर्ष या अधिक है तथा एवार्ड की घोषणा 01–01–2014 से 05 वर्ष अथवा उसके पूर्व हुई है तो धारा 2492 के प्राविधान लागू होंगे। भूमि पर भौतिक कब्जा लिया जाना या प्रतिकर का संदाय मा0 न्यायालय न किया जाना अथवा इस विशिष्ट प्रयोजन के लिये खोले गये खाते में न किये जाने में से कोई एक शर्त पूरी होने पर धारा 24 (2) के प्राविधान लागू होंगे। धारा 24 (2) का प्रथम परन्तुक धारा 24 (2) का अपवाद है। अतः जो प्रकरण धारा 24 (2) के प्रथम परन्तुक से आच्छादित होंगे उनमें धारा 24 (2) के प्राविधान लागू नहीं होंगे।

4. उपरोक्त धारा 24 (2) के अंतर्गत प्राप्त प्रार्थना पत्रों / संदर्भों / प्रकरणों के निस्तारण की निम्नलिखित प्रकिया निर्धारित किये जाने का शासन द्वारा सम्यक विचारोपरान्त निर्णय लिया गया है:–

(क) धारा 24 (2) के अंतर्गत प्राप्त आवेदन पत्रों / संदर्भों / प्रकरणों पर संबंधित जिलाधिकारी से तथ्यात्मक पुष्टि कराकर प्रशासनिक विभागों द्वारा परीक्षणोपरांत मत स्थिर किया जायेगा।

(ख) तदोपरान्त प्रशासनिक विभागों द्वारा राजस्व एवं न्याय विभाग का परामर्श प्राप्त कर मा0 विभागीय मंत्री जी के अनुमोदन से यथावश्यक संबंधित अर्जन प्रकिया के व्यपगत करने की अधिसूचना विधायी विभाग से विधीक्षत कराकर जारी की जायेगी।

5. अनुरोध है कि कृपया उपरोक्तानुसार सभी संबंधित को अवगत कराते हुऐ तदनुसार कार्यवाही करने हेतु निर्देशित करने का कष्ट करें।''

Contention of the counsel for petitioner is that after decision of Writ Petition No. 47069 of 2014, decided on 7.10.2014, the State Government or its authorities has no right to sit in appeal over the order passed by the High Court.

Per contra Sri Upendra Singh appearing for M.D.A. has submitted that by the aforesaid judgment dated 7.10.2014, the High Court had only remanded the matter to the District Magistrate for reconsideration of the matter and according to him, section 24(2) of U.P. Act No. 30 of 2013, is not attracted at all in the present matter.

Learned Standing Counsel prays for time to seek instructions and file counter affidavit.

The matter requires consideration.

As prayed, three weeks' time is granted to the respondents for filing counter affidavit. Rejoinder affidavit may be filed within two weeks thereafter.

List after expiry of the aforesaid period.

Parties are directed to maintain status quo till next date of listing."

3.25. Thereafter, the parties exchanged counter and rejoinder affidavits. The petitioners also filed a supplementary rejoinder affidavit bringing later developments on record, which contained that they applied on 21.09.2019 for approval of a building map over their land. On 16.12.2019, the Deputy Secretary of the State Government sought a report. By a letter dated 22.11.2020, the Secretary of the MDA stated that the building map would be considered on payment of development charges. An official note-sheet obtained under the Right to Information Act stated that the petitioners' case can be decided in their favour without affecting

the MDA's scheme, subject to compliance with the Building Bye-laws, 2008. Another letter dated 15/16.11.2011, along with a coloured map, shows that the petitioners' land is surrounded on almost all sides by land already exempted from acquisition, where substantial construction has since taken place.

D. Submissions on Behalf of the Petitioners:-

4.1. Shri Nipun Singh, learned Senior Counsel for the petitioners, makes several submissions, which may be summarised as follows.

4.2. He submits that the acquisition that begun in the year 2000, has lapsed. No award under Section 11 of the Act, 1894 was ever made, and the petitioners have remained in actual physical possession throughout. He submits that these facts were rightly found by the District Magistrate in his order dated 16.01.2015.

4.3. He submits that the order dated 16.01.2015 was passed in compliance with this Court's own direction dated 07.10.2014, notices were issued, both sides were heard, and a reasoned order followed. The MDA never challenged this order before this Court. Instead, it wrote to the State Government, which then stayed the order through the impugned order dated 31.03.2015. In doing so, the State Government exercised an appellate power that the statute does not give it.

4.4. He submits that the Government Order dated 30.01.2015 was issued after the order dated 16.01.2015, which had finally decided the matter. Since the Government Order does not have retrospective effect, it could not reopen or nullify a decision that had already been taken by District Magistrate in response to the order of the Division Bench order.

4.5. He further submits that the effect of Section 24 of the Act, 2013 cannot be taken away by an executive order. Under Section 24(2), where an award under Section 11 of the Act, 1894 was made five years or more before the commencement of the Act, 2013, but either physical possession of the land had not been taken or compensation had not been paid, the acquisition automatically lapses. If the Government still wishes to acquire the land, it must start fresh acquisition proceedings under the Act, 2013.

4.6. Learned Senior Counsel further submits that once the competent authority has already declared the acquisition proceedings lapsed, the State Government's only option is to begin fresh acquisition proceedings under the Act, 2013, exactly as this provision allows, and not to revive lapsed proceedings by an executive order. He submits that if the State Government had no power to reopen the lapsed proceedings, it also had no power to stay the order that declared them lapsed, since a power to grant interim relief cannot be larger than the power to grant final relief.

4.7. On facts, he emphatically places reliance upon the Tehsil report and on the District Magistrate's own findings to show that physical possession were never taken from the petitioners. Relying on **Pune Municipal Corporation** (supra) and **Union of India v. Shiv Raj,**

he submits that deposit of 80% compensation in the Treasury is not payment to the tenure-holders.

4.8. He finally submits that the impugned orders nullify the order dated 16.01.2015 and defeat this Court's order dated 07.10.2014. The State Government has exercised a power which the law does not confer. He, therefore, prays that the impugned orders be quashed and the petitioners' possession be protected.

E. <u>Submissions on Behalf of the Respondent - MDA:-</u>

5.1. Shri K.M. Asthana, learned counsel for the MDA, opposes the petition on several grounds.

5.2. He explains that the disputed land, 0.410 hectares, is part of a larger 9.270 hectare acquisition made under the notifications dated 06.04.2000 and 16.05.2001. He submits that possession of the entire acquired land, including the petitioners' plots, was taken by the Special Land Acquisition Officer on 02.04.2003, after deposit of Rs. 1.07 crore towards 80% of the estimated compensation.

5.3. He points to the two awards passed later, i.e. dated 20.02.2006 and 06.11.2009, for other parts of the acquisition. He explains that the award for the remaining land, including the petitioners' gatas, was kept pending only because other writ petitions about that land were pending before this Court.

5.4. He submits that the MDA Board, in its meeting held on 10.02.2005, rejected the proposal for adjustment of the land. He further submits that the State Government, by its order dated 04.01.2012, rejected the petitioners' claim for exemption. Since this order was never challenged, it has become final. He argues that both decisions are based on the same finding that possession of the land had already been handed over to the MDA.

5.5. He submits that the order dated 26.06.2014 was rightly set aside, since it was passed without any notice to the MDA.

5.6. He further submits that the order dated 16.01.2015 is contrary to law. Section 24(2) of the Act, 2013 does not apply because no award under Section 11 of the Act, 1894 was ever made. He submits that Section 24(1) clearly distinguishes between cases where an award has been made and those where no award has been made. Where no award has been made, as in the present case, only the provisions of the Act, 2013 relating to determination of compensation apply.

5.7. He submits that Section 24(2) applies only when an award under Section 11 had been made five years or more before the Act, 2013 came into force and either possession had not been taken or compensation had not been paid. Since no award was ever made in the present case, the petitioners cannot seek the benefit of Section 24(2). He submits that the case of the

petitioners, if at all, is governed by Section 24(1)(a), under which only the compensation is to be determined in accordance with the Act, 2013, and the acquisition does not lapse.

5.8. He submits that the District Magistrate had no jurisdiction to decide a claim of lapsing under Section 24. This power belongs to the State Government, the acquiring authority, or to a court. The District Magistrate is only an instrument of the State Government, subject to correction by it.

5.9. He finally submits that, since 02.04.2003, the disputed land has become part of the MDA's residential scheme, 'Naya Moradabad'. The petitioners' claim that they are still in possession is contrary to the possession memo and the revenue records. He further submits that the impugned order dated 31.03.2015 is only an interim order and that the final decision is yet to be taken by the State Government. Therefore, the writ petition is premature and deserves to be dismissed, and the interim order should also be vacated.

F. Submissions on Behalf of the State-Respondents:-

6.1. Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents, adopts the submissions made on behalf of the MDA, without reservation.

6.2. In addition, he submits that the petitioners have not shown any ground to call the impugned orders contemptuous or against the Act, 2013. He submits that, on the official record, possession of the land was handed over to the MDA as far back as 02.04.2003.

6.3. He submits that the proposal made under the order dated 22.02.2002 was placed before the MDA's Board, considered, and rejected.

6.4. He submits that the order dated 16.01.2015, though passed in compliance with this Court's order dated 07.10.2014, came before the Government Order dated 30.01.2015. That Government Order was not passed against any direction of this Court.

6.5. He lastly submits that the petitioners have shown no ground for this Court to interfere under Article 226 of the Constitution of India, and that the writ petition should be dismissed.

G. Submissions of the Petitioners in Rejoinder:-

7.1. In rejoinder arguments, Shri Nipun Singh, learned Senior Counsel for the petitioners, relies on subsequent developments, brought on record through the supplementary rejoinder affidavit, which, according to him, support the relief sought by the petitioners.

7.2. He submits that, during the pendency of the writ petition, the petitioners applied on 21.09.2019 for approval of a building map over the disputed land. Thereafter, on 16.12.2019, the Deputy Secretary of the State Government sought a report from the District Magistrate and the Vice Chairman of the MDA on the petitioners' application.

7.3. He further submits that, by letter dated 22.11.2020, the Secretary of the MDA stated that the petitioners' building map would be considered after payment of the prescribed development charges. The said letter shows that the MDA no longer requires the land for its development scheme and is only insisting on payment of development charges.

7.4. He also relies on an official note-sheet obtained under the Right to Information Act. The note-sheet records that the petitioners' case can be decided in their favour without affecting the MDA's scheme, provided they comply with the Building Bye-laws, 2008. According to him, this itself shows that the land is no longer required for the MDA's purposes.

7.5. He further relies on a letter dated 15/16.11.2011 issued by the then Vice Chairman of the MDA, along with a coloured map. He submits that the map shows that the petitioners' land is surrounded on almost all sides by land already exempted from acquisition, where substantial construction, including a residential colony and the export unit of one Arvind Vadera, has already come up and the MDA has no practical use for the petitioners' land.

7.6. On these facts, learned Senior Counsel submits that, apart from the legal issues under Section 24 of the Act, 2013, the subsequent conduct of the respondents also supports the petitioners' case. He, therefore, prays that the writ petition be allowed and the MDA be directed to approve the petitioners' building map on payment of the prescribed development charges without further delay.

H. <u>Discussion and Findings:-</u>

8.1. This Court has heard learned counsel for all the parties at length and has examined the record carefully. The following two questions arise for consideration:

(i) Did the State Government have power to stay the District Magistrate's order dated 16.01.2015, through the Government Order dated 30.01.2015 and the order dated 31.03.2015?

(ii) Can the finding of lapse under Section 24(2) of the Act, 2013 be upheld on the facts of this case?

8.2. On the first question, a coordinate bench of this Court by means of the order dated 07.10.2014 sent the matter back to the Collector, as set out at paragraph 3.18 above. The District Magistrate did exactly what this Court asked. He gave notice, heard both sides, and passed a reasoned order on 16.01.2015. If the MDA was unhappy with this order, its remedy was to file a writ petition before this court. It chose, instead, to write to the State Government, which then stayed the District Magistrate's order through the impugned order dated 31.03.2015.

8.3. This Court cannot accept the action taken by the State Government. The District Magistrate's order dated 16.01.2015 was not a simple administrative order. It was a quasi-judicial order, passed after deciding a legal dispute between the parties.

8.4. The order has all the features of a quasi-judicial decision. First, it decided a dispute between the petitioners, who claimed that the land acquisition had lapsed, and the MDA, which claimed that it had not. Second, it was passed only after giving both sides an opportunity of

hearing. By its order dated 07.10.2014, this Court had directed the Collector to decide the matter after issuing notice to all concerned parties. Accordingly, notices were issued, the MDA filed its objections on 13.11.2014, the petitioners filed their reply on 25.11.2014, and both sides were heard on 15.12.2014. Third, the District Magistrate decided the matter by applying the requirements of Section 24(2) of the Act, 2013 to the facts on record, such as the award, the period of five years, possession of the land, payment of compensation, the Tehsil report, and the possession memo. Finally, the order determined the legal rights of the parties by deciding whether the acquisition had lapsed and whether the petitioners retained ownership of the land or the MDA continued to hold the acquisition.

8.5. Once such a quasi-judicial order is passed, it can be changed only in the manner provided by law, such as through an appeal, revision, or judicial review by a competent court, if the statute permits. Section 24 of the Act, 2013 does not give the State Government any power to review or set aside an order passed under that provision. Therefore, the State Government could not nullify the District Magistrate's order by issuing the Government Order dated 30.01.2015 or the order dated 31.03.2015.

8.6. This principle finds support in the law laid down by the Supreme Court in **Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji.** The Supreme Court held that the power to alter, review, or set aside a decision already rendered is not an inherent power. Such power must be conferred by law, either expressly or by necessary implication. In the absence of such a statutory provision, any exercise of that power is without jurisdiction. Although that case concerned an authority seeking to review its own earlier order, the principle is of wider application. It applies with equal force where, as in the present case, a superior executive authority seeks to stay, modify, or override a quasi-judicial order passed by a subordinate authority. Unless the statute expressly confers appellate or revisional jurisdiction, no such power exists, and any order purporting to exercise it is legally unsustainable. The Supreme Court succinctly stated this principle in paragraph 4 of the judgment, which is reproduced below:

"4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. ***It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication****. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was Liable to be set aside."*

(Emphasis supplied)

8.7. Learned counsel for the MDA submits that the District Magistrate had no jurisdiction at all to decide the petitioners' claim under Section 24, and that this power belongs only to the State Government or to a court. This Court cannot accept this submission, for two reasons.

8.8. First, it was the State Government's own Government Order dated 24.03.2014 that told District Magistrates across the State to decide such claims, by passing speaking orders on a priority basis. It was under this very direction that the District Magistrate decided the petitioners' application. The State Government cannot now say that the District Magistrate had no jurisdiction, when it was the State Government's own order that gave him this task.

8.9. Second, this Court's own order dated 07.10.2014 sent the matter back to 'the Collector concerned', not to the State Government, and proceeded on the footing that the Collector had the power to decide it. The MDA did not challenge that order. It cannot now argue, indirectly, that the very authority to whom the matter was sent lacked jurisdiction to decide it.

8.10. There is a further, and decisive, difficulty. The Government Order dated 30.01.2015 came into existence only after the District Magistrate had already passed his order dated 16.01.2015. By then, the decision had already been made. No provision has been shown to this Court giving the Government Order dated 30.01.2015 any retrospective effect. It could not, therefore, be used to reopen a decision already taken. For these reasons, the Government Order dated 30.01.2015 and the order dated 31.03.2015 are without jurisdiction and cannot stand. It amounts to colourable exercise of power and is arbitrary and perverse in law.

8.11. This brings the Court to the second question, i.e. whether the finding of lapse under Section 24(2) can be upheld? It is useful to set out the provision in full. Section 24 reads as follows:

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. *(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,--*

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-Section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid ***the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:***

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land

Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

(Emphasis supplied)

8.12. Section 24 deals with land acquisition proceedings started under the Act, 1894 but not completed before the Act, 2013 came into force. It creates two situations. First, where no award under Section 11 has been made. In such cases, the acquisition does not lapse. Only the provisions of the Act, 2013 relating to determination of compensation apply. Second, where an award under Section 11 has already been made. In such cases, the acquisition continues under the old Act. However, if such an award was made five years or more before the Act, 2013 came into force and either possession has not been taken or compensation has not been paid, then the acquisition is treated as having lapsed under Section 24(2).

8.13. Applying these provisions to the present case, it is clear that no award under Section 11 was ever made in respect of the petitioners' three gatas. The two awards dated 20.02.2006 and 06.11.2009, relied upon by the MDA, relate to other land covered by the same acquisition and not to the petitioners' land. Therefore, the petitioners' case appears to fall under Section 24(1)(a) and not Section 24(2). Section 24(1)(a) only provides that compensation shall be determined under the new Act. It does not say that the acquisition comes to an end. This is the first difficulty with the finding recorded by the District Magistrate that the acquisition had lapsed under Section 24(2).

8.14. There is another difficulty. While passing the order dated 16.01.2015, the District Magistrate held that deposit of 80% of the compensation in the Government Treasury did not amount to payment to the landowners. This conclusion was based on the decision in **Pune Municipal Corporation** (supra). However, in **Indore Development Authority v. Manoharlal**, the Constitution Bench of the Supreme Court overruled that decision. In the said case, Hon'ble Supreme Court specifically observed that the decision in **Pune Municipal Corporation** (supra) is hereby overruled and all other decisions in which **Pune Municipal Corporation** (supra) has been followed, are also overruled.

8.15. In **Indore Development Authority** (supra), the Constitution Bench clarified two important points. First, deposit of compensation in the Government Treasury is a valid payment for the purposes of Section 24(2). It is not necessary that the amount should be deposited only in court. Secondly, an acquisition lapses under Section 24(2) only when the conditions required by that provision are satisfied. Therefore, the reasoning adopted by the District Magistrate, based on the overruled decision in **Pune Municipal Corporation** (supra), no longer reflects the correct legal position.

8.16. Thus, the finding that the acquisition had lapsed under Section 24(2) suffers from two serious legal difficulties. First, it is doubtful whether Section 24(2) applies at all in a case where no award under Section 11 was ever made. Secondly, the District Magistrate's conclusion regarding payment of compensation is based on a legal position which has since been overruled by the Constitution Bench. This Court does not consider it necessary to finally decide the first question about the applicability of provisions of Section 24(2) in the present

case and leaves it open for an appropriate case. However, these issues make it clear that the finding of lapse under Section 24(2) is not free from legal doubt and, therefore, cannot by itself be made the sole basis for granting relief to the petitioners.

8.17. At the same time, the factual record cannot be ignored. The Tehsil report dated 22/25.03.2014, prepared after a joint spot inspection, records that the petitioners' land had a boundary wall, trees, a small structure, cultivated land and was in their possession. These findings do not support the MDA's claim that it had taken possession in 2003. On the other hand, the possession memo dated 02.04.2003 is only a general document relating to the entire acquisition of 9.270 hectares and does not specifically mention the petitioners' land.

8.18. The conduct of the MDA also supports the petitioners' case. While rejecting the proposal for adjustment in 2005, the MDA did not say that the land was required for its housing scheme. It rejected the proposal only because it claimed to have already taken possession. This is consistent with the earlier view of the Vice Chairman that release of the petitioners' land would not affect the scheme. Further, the neighbouring land was exempted from acquisition in 2009, and later correspondence of 2019 2020 shows that the State Government and the MDA were willing to consider the petitioners' building map on payment of development charges. This indicates that the land is no longer required for the MDA's scheme.

8.19. In these circumstances, this Court does not consider it necessary to finally decide the issue of lapse under Section 24(2). Since the legal position has changed after ***Indore Development Authority*** (supra) and no award under Section 11 was ever made, it would be more appropriate to decide the petitioners' claim on another legal basis.

8.20. From the very beginning, the petitioners have sought release of their land under Section 48 of the Act, 1894. Section 48 gives the Government the power to withdraw from acquiring any land as long as physical possession of the land has not been taken (except in the case covered by Section 36). The Section 48 reads as follows:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

(Emphasis supplied)

8.21. This was also the relief contemplated by this Court while disposing of Writ Petition No. 28752 of 2007 on 28.11.2008. The petitioners again sought the same relief in their review application dated 22.06.2012, which is still pending. However, this claim has never been finally decided on its own merits.

8.22. Therefore, this Court finds it appropriate to direct the State Government to decide the petitioners' long-pending application for release of the land under Section 48 of the Act, 1894, within a fixed time. This direction is issued because the power to release land from acquisition under Section 48 lies with the State Government and not with the MDA. While deciding the application, the State Government shall consider all relevant records, including the Tehsil report, possession memo, Board's resolution, and the letters of the Vice Chairman.

I. Conclusion: -

9. For the reasons given above, this Court holds as follows:

(i) Under the facts and circumstances of the case enumerated above, the State Government had no authority to stay the aforesaid order dated 16.01.2015 passed by the District Magistrate, Moradabad. The Government Order dated 30.01.2015 and the consequential order dated 31.03.2015 are, therefore, without authority and cannot be sustained.

(ii) The correctness of the finding of lapse recorded under Section 24(2) of the Act, 2013 is left open, for the reasons discussed above.

(iii) The petitioners' grievance can be properly resolved by directing the State Government to finally decide their long-pending application for release of the land under Section 48 of the Act, 1894.

J. Final Orders: -

10. In view of the above findings, the following directions are issued:

(i) The writ petition is partly **allowed**.

(ii) The Government Orders dated 30.01.2015 and 31.03.2015 passed by the State Government are hereby quashed.

(iii) The matter is remitted to the State Government to decide the petitioners' pending application for release of the land, comprising old Gata Nos. 19, 20 and 21 (new Gata Nos. 38, 39 and 40), under Section 48 of the Land Acquisition Act, 1894.

(iv) The State Government shall pass its decision within three months from the date a certified copy of this order is produced before it.

(v) Until the State Government takes its decision, both parties shall maintain status quo regarding possession of the land.

(vi) There shall be no order as to costs.

(2026) 7 ILRA 2036
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 457 of 2024

Pradeep Kumar **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether the conviction of the appellant under Sections 3/4(2) of the POCSO Act, 376(3) and 506 IPC is sustainable when the prosecution failed to prove that the prosecutrix was a minor, and when her testimony contains serious contradictions and is not supported by independent evidence.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Sections 164, 294, 313, 374(2), 437-A, - Indian Penal Code, 1860 – Sections 376(3), 503, 506, - Indian Evidence Act, 1872 – Section 114 Illustration (g), - Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 94, - Juvenile Justice (Care and Protection of Children) Rules, 2007 – Rule 12 - Protection of Children from Sexual Offences Act, 2012 – Sections 3/4(2): - Criminal Appeal – against conviction and sentence, under Sections 3/4(2) POCSO Act, 376(3) and 506 IPC – FIR - alleging repeated rape of complainant's minor daughter by the appellant (claimed to be her teacher) over one year under threats – investigation - charge-sheet - medico-legal examination showing no injuries - statement of prosecutrix, under section 164 Cr.P.C. claiming 15-20 incidents in a jungle – trial – conviction and sentenced – Appeal - Appellant pleaded false implication due to money dispute, that he was never a teacher/tuition teacher, prosecutrix was major as per medical evidence, and her testimony was contradictory – Court finds educational documents relied upon do not satisfy Section 94 JJ Act hierarchy, medical evidence of age above 19 years must prevail, foundational allegation of being teacher stood disproved, and prosecutrix's testimony suffers from material contradictions (first rape claimed on 27.02.2021 yet 15-20 incidents alleged within days, place shown as field instead of jungle) and is unreliable – held that, (i) accused is not required to prove defence beyond reasonable doubt and conviction cannot rest on unreliable sole testimony – (ii) prosecution failed to prove any of the charges – hence the judgment of conviction and sentence is set aside - and the appellant is acquitted of all charges – directions issued accordingly – appeal allowed.

(Para – 37, 49, 50, 51, 55, 57, 58, 59)

Appeal Allowed (E-11)

CASE LAW CITED

Jarnail Singh v. State of Haryana, (2013) 7 SCC 263
Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750
Yuvaprakash v. State of T.N., (2024) 17 SCC 684
Jaya Mala v. Govt. of J & K, (1982) 2 SCC 538
Jyoti Prakash Rai v. State of Bihar, (2008) 15 SCC 223
Rajak Mohammad v. State of H.P., (2018) 9 SCC 248
Gobardhan Gadaba v. State of Odisha, 2022 SCC OnLine Ori 4270 (distinguished)
Anand Ramchandra Chougule v. Sidarai Laxman Chougala, (2019) 8 SCC 50
Vaibhav v. State of Maharashtra, (2025) 8 SCC 315

Raju v. State of M.P., (2008) 15 SCC 133
State of H.P. v. Asha Ram, (2005) 13 SCC 766
Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21
Ritesh Chakarvarti v. State of M.P., (2006) 12 SCC 321
Davinder Singh v. State of Punjab, (2023) 19 SCC 229
Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145

LIST OF ACTS

Protection of Children from Sexual Offences Act, 2012 – Sections 3/4(2)
Indian Penal Code, 1860 – Sections 376(3), 503, 506
Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 94
Juvenile Justice (Care and Protection of Children) Rules, 2007 – Rule 12
Code of Criminal Procedure, 1973 – Sections 164, 294, 313, 374(2), 437-A
Indian Evidence Act, 1872 – Section 114 Illustration (g)

LIST OF KEYWORDS

Criminal Appeal - Age determination of prosecutrix - Section 94 JJ Act - hierarchy of documents - Medical evidence vs. school records - Margin of error in ossification test - Sterling witness test - Material contradictions in prosecutrix's testimony - Non-production of DNA report - Adverse inference for non-examination of material witness - False implication due to money dispute – set aside – Acquitted – appeal allowed.

CASE ARISING FROM

Judgment and order dated 18.01.2024 passed by the Special Judge, POCSO Act / Additional Sessions Judge, Court No. 11, Unnao in Special Session Trial No. 668 of 2021, arising out of Case Crime No. 40 of 2021, Police Station Asiwan, District Unnao.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Ms. Soniya Mishra, Shri Udai Pratap Singh, Ms. Anjali Dubey, Soni Pathak, Sumedha Sen.
Counsel for Respondent(s): Sri Jayant Singh Tomar, A.G.A.-I, Sri Neeraj Singh, Shri Rajat Pratap Singh.

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

1. Heard Ms. Soniya Mishra, the learned counsel for the appellant, Sri Jayant Singh Tomar, the learned A.G.A.-I appearing on behalf of the State, Sri Neeraj Singh, the learned counsel for the complainant/prosecutrix (the opposite parties no.2 and 5) and perused the records.

2. By means of the instant appeal filed under Section 374(2) Cr.P.C. the appellant has challenged the validity of a judgment and order dated 18.01.2024, passed by Sri. Vivekanand Vishwakarma, the learned Special Judge, POCSO Act/ Additional Sessions Judge, Court No. 11, Unnao in Special Session Trial No. 668 of 2021, arising out of Case Crime No. 40 of 2021, under Sections 506, 376 IPC and 3/4 POCSO Act, Police Station Asiwan, District Unnao, whereby the appellant has been convicted for the offences under Sections 3/4 (2) of the POCSO Act and 376(3), 506 IPC and he has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 50,000/- for the offence under Section 3/4(2) POCSO Act. No punishment has been imposed for the offence under Section 376(3) IPC as the aforesaid offence is covered in the definition of Section 3/4(2) POCSO Act. For the offence under Section 506 IPC the appellant was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 5,000/-.

3. The aforesaid case was instituted on the basis of an FIR lodged on 10.03.2023, stating that the complainant′s daughter was studying in Class X in Adarsh Narvadeshwar Shiksha Sansthan Inter College, Mitthu Kheda, Police Station Asiwan, District Unnao. The appellant was a Science teacher in the said college and he also used to give tuition at the complainant′s home to his daughter, whose date of birth is 19.07.2006. The complainant alleged that the appellant had repetitively raped the complainant′s daughter during the past one year by threatening to fail her in the examination and to kill her entire family. The prosecutrix did not disclose this fact earlier due to fear and she told about the incident on 02.03.2021.

4. The medico-legal examination of the prosecutrix was conducted on 11.03.2021, in which no mark of injury was found on any part of her body, including her private parts.

5. In the statement of the prosecutrix recorded under Section 164 Cr.P.C., she stated that she was studying in High School. She lived with her parents, grand-parents and younger brother. The appellant used to teach Science in her school and he also used to give tuition at her residence for Science, Hindi and English. She stated that the appellant also used to teach her younger brother aged 10 years. In the absence of her younger brother, the appellant used to touch her or hold her hand. One day after school, the appellant took her to a jungle under the pretext of going to a coaching and he raped her in the jungle. When the prosecutrix said that she would tell it to her family members, the appellant had threatened to eliminate her father and brother. Thereafter, by using the same threat, the appellant used to repetitively take her to the jungle and commit the misdeed against her. The prosecutrix did not disclose it to any person out of fear. She stated that the appellant lastly committed the misdeed on 27th February and thereafter she told her father about the incident. She stated that the appellant had committed the misdeed on about 15-20 occasions and every time he did it in the jungle. She also stated that the appellant is a married person having three children.

6. The investigating officer had prepared a site plan, which showed the place of the incident to be an empty agricultural field of Dwarka, son of Lekhai adjacent to a paved road and not any jungle. The Investigating Officer submitted a charge-sheet dated 23.05.2021 against the appellant for the offences under Sections 376/506 I.P.C. and Section 3/4 of POCSO Act.

7. The complainant was examined as PW-1 and the prosecutrix was examined as PW-2 and both of them reiterated the FIR version. The prosecutrix proved her statement recorded under Section 164 Cr.P.C.

8. The Vice Principal, Adarsh Narvadeshwar Shiksha Sansthan Inter College was examined as PW-3. He stated that the prosecutrix got admitted to the college in Class VI on 07.04.2016 and she studied there till 31.07.2021. In the scholars′ register of the college as also in her transfer certificate, the date of birth of the prosecutrix was recorded as 19.07.2006.

9. The doctor who had conducted the medico-legal examination of the prosecutrix, was examined as PW-4. She stated that there was no mark of injury on the prosecutrix′s body. Her hymen was old torn with irregular edges. There was no mark of injury on her private parts. She had

prepared slides for DNA examination and had referred the prosecutrix to the CMO for age determination.

10. In the statement recorded under Section 313 Cr.P.C. the accused-appellant denied all the charges.

11. Pramod Kumar Verma, an Assistant Teacher of Adarsh Narvadeshwar Shiksha Sansthan Inter College, was examined as DW-1. He stated that he had been authorized by the Principal of the college to give evidence. He was a teacher in the college in the year 2021. The other teachers working in the college were Sri. Rakesh Kumar Verma, Sri. Ram Krishna Mishra, DW-1 himself, Sri. Kamal Kishore, Sri. Vikas Kumar Pal, Ms. Kanti Devi, Sri. Habib Ahmed, Ms. Rachna Devi, Sri. Mohammad Izhar, Sri. Akash Singh, Sri. Sapna Devi, Sri. Sushil Kumar and Sri. Vishwa Mohan. There was no other teacher in the college. He categorically stated that the appellant Pradeep Kumar has not been a teacher in his college either during the session 2020-2021 or before it or afterwards. He produced the original attendance register of teachers of the college for the session 2020-2021 and filed its certified copy on record of the trial court.

12. A neighbor of the complainant was examined as DW-2. He stated that there is only one house between his house and the house of the complainant. He knew the complainant, his family members (including the prosecutrix) as well as the appellant. He stated that the complainant's children did not used to take tuition from the appellant. They did not take tuition anywhere. The appellant was not a teacher. He stated that the complainant has falsely implicated the appellant. The complainant had borrowed Rs.50,000/- for a surgical operation of his wife. The appellant demanded return of the amount due to which some altercation took place between them and thereafter the complainant falsely implicated the appellant. DW-2 categorically stated that the appellant had not committed any misdeed against the prosecutrix.

13. The trial court held that the date of birth of the prosecutrix mentioned in the educational records, i.e. 19.07.2006, establishes that the prosecutrix was minor on the date of the incident. The trial court also held that in the certificate issued by the Chief Medical Officer, age of the prosecutrix has been opined to be more than 19 years, but the same has not been proved whereas the educational documents of the prosecutrix have been proved. As per the trial court, where educational records are available, the same will be the primary source for ascertaining the age of the prosecutrix and other sources will be relied upon only in absence of the educational records. In this regard the trial court relied upon the judgments in the cases of **Jarnail Singh Vs. State of Haryana**: (2013) 7 SCC 263 and **Ashwani Kumar Saxena Vs. State of MP**: (2012) 9 SCC 750.

14. In **Jarnail Singh vs. State of Haryana** (supra), the trial Court held the accused guilty under Sections 366, 376(2)(g) and 120-B IPC. The Punjab and Haryana High Court dismissed the appeal preferred by the accused, holding that the prosecutrix was a minor. It was pointed out that the sexual organs of the prosecutrix were found to be fully developed. Her hymen was found to be ruptured. The vagina admitted two/three fingers easily. The Doctor admitted having mentioned the age of the prosecutrix as 15 years on the basis of the statement made by the prosecutrix to her and that she had not got the ossification test conducted on the prosecutrix to scientifically determine her age. The Hon'ble Supreme Court took note of the provision contained in Rule 12 of the Juvenile

Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as 'the Rules of 2007'), which had been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, sub-rules (1), (2) and (3) whereof read as under: -

*"**12.Procedure to be followed in determination of age**.-(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

*(a)(i) **the matriculation or equivalent certificates**, if available; and in the absence whereof;*

*(ii) **the date of birth certificate from the school (other than a play school) first attended**; and in the absence whereof;*

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

*(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. **In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year**,*

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

* * *

The Hon'ble Supreme Court held that: -

"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a prosecutrix of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a prosecutrix of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix..."

15. Rule 12 of the Rules of 2007, has been replaced by Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides as follows: -

*"**94. Presumption and determination of age.***

"(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

16. In **Ashwani Kumar Saxena v. State of M.P.**: (2012) 9 SCC 750, it was held that: -

"32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year."

17. In **Yuvaprakash v. State of T.N.**: (2024) 17 SCC 684, the relevant facts are mentioned in the following paragraph: -

"21. Reverting to the facts of this case, the headmaster of M's school, CW 1, was summoned by the court and produced a Transfer Certificate (Ext. C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year i.e. 2009-2010 and that the date of birth was based on the basis of the record sheet

given by the school where she studied in the 7th standard. DW 2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that 'M' had joined her school with effect from 3-4-2002 and that her date of birth was recorded as 11-7-1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue i.e. the date of birth, Thiru Prakasam, DW 3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

18. In the aforesaid factual background, the Hon'ble Supreme Court held in **Yuvaprakash v. State of T.N.** (supra) that: -

"22. It is clear from the above narrative that ***none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the examination board concerned or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the prosecutrix's age was below 18 years as per Section 94(2)(iii) of the JJ Act. ...***

23. As held earlier, the documents produced i.e. ***a transfer certificate and extracts of the admission register, are not what Section 94(2)(i)*** *mandates; nor are they in accord with Section 94(2)(ii) because DW 1 clearly deposed that there were no records relating to the birth of the prosecutrix, 'M'. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several x-rays of the prosecutrix, and on the basis of which PW 9 made her statement..."*

(emphasis added)

19. The trial court has placed reliance upon the scholars' register and the transfer certificate issued by the school in which the prosecutrix had got admitted in Class VI on 07.04.2016 and where she had studied till 31.07.2021. The trial Court held that in presence of these educational certificates, medical evidence will not be seen. The scholars' register of school where the prosecutrix had got admitted in Class VI and the transfer certificate are neither the matriculation or equivalent certificates, mentioned in Rule 12 (3) (a) (i) nor the date of birth certificate from the school first attended as mentioned in Rule 12 (3) (a) (ii) and these documents are not mentioned in any of the clauses of Rule 12 (3) (a) of the Rules of 2007 or in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. In absence of any document mentioned in Rule 12 (3) (a) (i), (ii) and (iii) or Section 94 of the Act of 2015, the Court has to rely upon the medical opinion, as per Rule 12 (3) (b) of the Rules of 2000 or Section 94 of the Act of 2015.

20. The medical evidence mentioned in Rule 12 (3) (b) of the Rules of 2000 established that the prosecutrix was aged more than 19 years on the date of the incident. However, the trial Court has discarded the medical evidence mentioned in Rule 12 (3) (b) and has relied upon the educational documents which do not fall within rule 12 (3) (a), which renders its finding regarding age of the prosecutrix unsustainable in law.

21. The trial Court has given one more reason to discard the medical opinion favouring the accused - appellant, that it had not been proved by examining any witness. The trial Court has failed to understand that the medical opinion was produced by the prosecution, the accused was not required to prove this medical evidence and he did not deny it. In this regard the relevant provision is contained in Section 294 Cr.P.C., which reads as follows: -

*"**294. No formal proof of certain documents**. -(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

22. As the medical opinion regarding age of the prosecutrix was filed by the prosecution and the accused did not dispute it, the evidence had to be read in evidence in trial without any further formal proof. Moreover, it is elementary that when a prosecution evidence favours the accused, the accused is not required to prove the same by examining any witness. The trial Court has discarded the medical evidence adduced by the prosecution for the reason that the accused did not prove it, which reason is patently erroneous and is unsustainable in law.

23. The trial Court has placed reliance on a judgment rendered by a single Judge of Orissa High Court in **Gobardhan Gadaba v. State of Odisha**: 2022 SCC OnLine Ori 4270, in which it was held that there is no law which mandates that in each and every case two years have to be added to the outer age limit determined by the ossification test. Firstly, this observation was made keeping in view the peculiar facts and circumstances of that case, and secondly, the Orissa High Court failed to take into consideration the law laid down by the Hon'ble Supreme Court in the cases of **Jaya Mala v. Govt. of J & K**: (1982) 2 SCC 538, **Jyoti Prakash Rai v. State of Bihar:** (2008) 15 SCC 223 and **Rajak Mohammad v. State of H.P.:** (2018) 9 SCC 248.

24. In **Jaya Mala v. Govt. of J & K**: (1982) 2 SCC 538, the Hon'ble Supreme Court held that "*one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side*".

25. In **Jyoti Prakash Rai v. State of Bihar**: (2008) 15 SCC 223, it was reiterated that the Hon'ble Supreme Court in a number of judgments has held that the age determined by the doctors should be given flexibility of two years on either side.

26. In **Rajak Mohammad v. State of H.P.**: (2018) 9 SCC 248, the Hon'ble Supreme Court has held that: -

"9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. ***The benefit of the aforesaid doubt, naturally, must go in favour of the accused."***

(emphasis added)

27. The learned trial Court has committed a patent error of law in relying upon a non-binding precedent of Orissa High Court while ignoring the law laid down by the Hon'ble Supreme Court in the cases of Jaya Mala v. Govt. of J & K: (1982) 2 SCC 538, Jyoti Prakash Rai v. State of Bihar: (2008) 15 SCC 223 and Rajak Mohammad v. State of H.P.: (2018) 9 SCC 248.

28. Applying the principles mentioned in the aforesaid cases to the facts of the present case, the prosecution has failed to establish that the prosecutrix was minor on the date of the alleged incident. Therefore, the trial Court has erred in convicting the appellant for the offence under Sections 3/4 (2) of the POCSO Act. or Section 376 (3) of the IPC.

29. Now I proceed to examine whether the appellant could be convicted for the offence under Section 376 IPC.

30. The father of the prosecutrix had lodged the FIR alleging that his daughter was studying in Class X in Adarsh Narvadeshwar Shiksha Sansthan Inter College and the appellant was a Science teacher in the said college and he also used to give tuition to the prosecutrix at her residence. In the statement of the prosecutrix recorded under Section 164 Cr.P.C., she stated that the appellant used to teach Science in her school and he also used to give tuition for Science, Hindi and English at her residence. She stated that the appellant also used to teach her younger brother aged 10 years.

31. The Vice Principal, Adarsh Narvadeshwar Shiksha Sansthan Inter College was examined as PW-3. He stated that the prosecutrix studied in the college since 07.04.2016 till 31.07.2021, but he did not state that the appellant used to teach in the college.

32. The Investigating Officer Sub-Inspector Rambali was examined as PW-6. During cross-examination he stated that he had gone to Adarsh Narvedeshwar Shiksha Sansthan Inter College, Miyanganj to verify as to the period during which the appellant had worked as a teacher and he came to know that the appellant has not worked as a teacher in the said college.

33. Pramod Kumar Verma, an Assistant Teacher of Adarsh Narvadeshwar Shiksha Sansthan Inter College was examined as DW-1. He had produced the original attendance register of teachers of the college for the session 2020-2021 and had filed its certified copy on record of the trial court, which showed that the appellant was not a teacher in the college during the relevant period. DW-1 categorically stated that the appellant Pradeep Kumar has not been a teacher in his college either during the session 2020-2021 or before it or afterwards.

34. A neighbor of the complainant was examined as DW-2. He stated that there is only one house between his house and the house of the complainant. He knew the complainant, his family members (including the prosecutrix) as well as the appellant. He stated that the complainant's children did not use to take tuition from the appellant. They did not take tuition anywhere. The appellant was not a teacher. He stated that the complainant had borrowed Rs.50,000/- for a surgical operation of his wife. The appellant demanded return of the amount due to which some altercation took place between them and thereafter the complainant lodged the FIR falsely implicating the appellant. DW-2 categorically stated that the appellant had not committed any misdeed against the prosecutrix.

35. A bare perusal of the aforesaid evidence available on record clearly proves that although the complainant and the prosecutrix alleged that the appellant was a teacher in the college in which the prosecutrix studied and that the appellant used to give tuition to her, the prosecution failed to prove this allegation. On the contrary, the defense witnesses proved that the appellant was not a teacher in the college in which the prosecutrix studied and that they also proved that the appellant did not give tuition to her.

36. The trial Court has disbelieved the testimony of the defence witnesses on the ground that the attendance register produced by DW-1 did not bear the signatures of any authorities of the college. The trial Court has not mentioned as to whether the genuineness of the register had been denied by the prosecution as per the provisions of Section 294 Cr.P.C. In absence of any denial by the prosecution, the register produced by DW-1 could not be disbelieved.

37. Secondly, while holding that the prosecution has proved that the appellant was a teacher in the college in which the victim used to study, the trial Court has ignored the testimony of the investigating officer Sub-Inspector Ram Bali (PW-6) who stated that he had gone to Adarsh Narvedeshwar Shiksha Sansthan Inter College, Miyanganj to verify as to the period during which the appellant had worked as a teacher and he came to know that the appellant has not worked as a teacher in the said college. This evidence clearly disproved the case setup by the prosecution, but it has been ignored by the trial court, which renders its finding regarding the appellant having been a teacher in the aforesaid college as perverse.

38. The trial Court has also relied upon the statement of the earlier Investigating Officer Sub-Inspector Rajbahadur, who was examined as PW-5 and who stated that during investigation, he had recorded the statement of Sri. Rakesh Kumar Verma, the Head-master of the college, who had stated that the appellant used to teach in the college. The trial Court omitted to notice that Sri. Rakesh Kumar Verma, the Head-master of the college was not examined as a prosecution witness to prove that the appellant was a teacher in his college.

39. The trial Court also held that no question was put to the PW-3 in his cross-examination as to whether the appellant was a teacher in the college or not. The trial Court has acted under a basic misapprehension of the legal position that it is the prosecution which is required to prove its case beyond reasonable doubt and the accused is not required to prove its defence beyond reasonable doubt, he is merely required to create a doubt in the prosecution case. It was for the prosecution to prove that the appellant was a teacher in the college and if PW-3 did not say so, it goes against the

prosecution and no adverse inference can be drawn against the accused if he did not put a question on this point during cross-examination of PW-3.

40. In **Anand Ramchandra Chougule v. Sidarai Laxman Chougala**: (2019) 8 SCC 50, the Hon′ble Supreme Court held that: -

"10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.″

41. In **Vaibhav v. State of Maharashtra**: (2025) 8 SCC 315, the Hon′ble Supreme Court held that: -

"29. In criminal jurisprudence, it is a time-tested proposition that the primary burden falls upon the shoulders of the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence. In the present case, the version of the prosecution suffers from inherent inconsistencies and doubts, as discussed above, and in such a scenario, the inability of the appellant to explain certain circumstances could not be made the basis to relieve the prosecution from discharging its primary burden.

* * *

31. In law, there is a significant difference in the evidentiary burden to be discharged by the prosecution and the accused. Whereas, the former is expected to discharge its burden beyond reasonable doubt, the latter is only required to prove a defence on the anvil of preponderance of probabilities. If the accused leads defence evidence in the course of a criminal trial, the same ought to be tested as probable or improbable in the facts and circumstances of the case."

42. In **Raju v. State of M.P.:** (2008) 15 SCC 133, the Hon′ble Supreme Court cautioned that: -

"11. ***It cannot be lost sight of that rape causes the greatest distress and humiliation to the prosecutrix but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication****, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but* ***there is no presumption or any basis for assuming that the statement of such a witness is always correct*** *or without any embellishment or exaggeration.*

12. Reference has been made in Gurmit Singh case [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. ***This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth.*** *Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.″*

(emphasis supplied)

43. It is true that a conviction can be based on a solitary testimony of a victim, but it can only be done if her testimony inspires confidence and there are no major contradictions in it. In **State of H.P. v. Asha Ram**: (2005) 13 SCC 766, while upholding conviction of a father accused of raping his own daughter, the Hon′ble Supreme Court held that: -

"5.... It is now a well-settled principle of law that ***conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration.*** *The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement,* ***the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.*** *It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.″*

(emphasis added)

44. After taking into consideration the aforesaid principles laid down in **State of H.P. v. Asha Ram** (supra), in **Rai Sandeep v. State (NCT of Delhi)**: (2012) 8 SCC 21, the Hon′ble Supreme Court held that: -

"22. In our considered opinion, the "sterling witness″ should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the

quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. ***What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it.*** *Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion.* ***The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished.*** *To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.*

(emphasis added)

45. When we examine the prosecution material in light of the above quoted principles laid down by the Hon'ble Supreme Court, it appears that the FIR was lodged on 10.03.2021, stating that the prosecutrix disclosed on 02.03.2021 that the appellant had been raping her during the past one year. There was no explanation for the delay of 8 days in lodging the FIR. In the statement of the prosecutrix recorded under Section 164 Cr.P.C., she stated that the appellant had taken her to a jungle on an undisclosed day under the pretext of going to a coaching and he raped her in the jungle. Thereafter the appellant repetitively took her to the jungle and committed the misdeed against her. She stated that the appellant had committed the misdeed on about 15-20 occasions and every time he did it in the jungle. However, during her cross examination, she stated that the appellant had raped her for the first time on 27.02.2021. If the appellant raped the victim for the first time on 27.02.2021, it is impossible that by the time she told it to her father on 02.03.2021, the appellant had raped her 15-20 times by taking her to a jungle.

46. In the site plan prepared by the investigating officer, the place of the incident has been shown to be an empty agricultural field of Dwarka, son of Lekhai, which was adjacent to a paved road and the victim did not show any jungle to the investigating officer. There is no evidence of the existence of any jungle near the village of the prosecutrix where the misdeed was committed. This also disproves the prosecution case.

47. The material discrepancies in the statement of the prosecutrix highlighted in the preceding paragraphs clearly establish that the testimony of the prosecutrix is not reliable and it cannot form the basis of conviction of the accused-appellant.

48. The trial Court has held that the statement of the prosecutrix is corroborated by the findings of forensic report that the male specific allele was found in her vaginal smear. The medico-legal examination of the prosecutrix was conducted on 11.03.2021. PW-4 (the doctor who had conducted the medico legal examination of the prosecutrix) stated that there was no mark of injury on her body, including her private parts. Her hymen was old torn with irregular edges. During cross-examination, PW-4 stated that there was no mark of sexual assault on any part of the body of the prosecutrix and the hymen could be torn even during sports activities.

49. PW-4 had prepared slides for DNA examination and had referred the prosecutrix to the CMO for age determination. Although report of forensic science laboratory mentions presence of the male specific allele in the prosecutrix's vaginal swab, yet even when samples were drawn for DNA examination, the prosecution has not produced the DNA profiling report to establish that the male specific allele found in the vaginal swab of the prosecutrix related to the appellant. The investigating officer (PW-5) stated in his cross-examination that he had not collected the DNA examination report of the prosecutrix and the appellant.

50. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, public and private business in relation to the facts of the peculiar case. Illustration (g) appended to Section 114 provides that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Non-production of DNA profiling report, gives rise to a presumption that had the aforesaid report been produced, the report would have been detrimental to the prosecution case.

51. The prosecutrix stated that her younger brother also studied in the same college, both of them used to go the college together and they used to take tuition together. In these circumstances, the younger brother of the prosecutrix was the best and the sole eye-witness of the conduct of the appellant while teaching the prosecutrix and he would also have witnessed the appellant taking away the prosecutrix with him from the college or home. However, the prosecution did not examine the brother of the prosecutrix as a witness.

52. In **Ritesh Chakarvarti v. State of M.P.**, (2006) 12 SCC 321, the Supreme Court held that an adverse inference can be drawn for non-examination of material witnesses.

53. In **Davinder Singh v. State of Punjab**, (2023) 19 SCC 229, the Supreme Court referred to an earlier precedent on this point in the following passage: -

"*9. On the issue of non-examination of material witness, we wish to place reliance on the decision of this Court in* ***Takhaji Hiraji v. Thakore Kubersing Chamansing*** *[(2001) 6 SCC 145]:*

"19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. ***It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.*** *On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself. whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.*"

(emphasis added)

54. As has been noted above, the testimony of the prosecutrix suffers from serious contradictions and discrepancies. Her allegations are not supported by the statement of the doctor (PW-4) and the investigating officer (PW-6) and she is not a witness of sterling quality. In these circumstances, non-examination of the brother of the prosecutrix would also give rise to a presumption under Section 114, illustration (g) of the Evidence Act that had the brother been produced as a prosecution witness and put to cross-examination by the defence, his testimony would be unfavorable to the prosecution.

55. In view of the foregoing discussion, I am of the considered view that the prosecution has miserably failed to prove the charge that the appellant had raped the prosecutrix and that too, repetitively. The finding of commission of rape recorded by the trial court ignoring the aforesaid material discrepancies in the prosecution evidence stands vitiated.

56. Regarding the conviction and sentence for criminal intimidation under Section 506 IPC, it is to be noted that the offence of criminal intimidation is defined in Section 503 IPC as follows: -

*"**503. Criminal intimidation** - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.*
Explanation.-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

57. Besides the testimony of the prosecutrix that the appellant used to repetitively rape her by threatening to kill her father and brother, there is no evidence to prove this charge. The nature of this charge is such that it is a derivative of the main charge of rape, which has been disproved. Therefore, the appellant cannot be convicted and sentenced for the offence of criminal intimidation relying upon the prosecutrix's sole testimony, which suffers from serious discrepancies and which has been disbelieved while examining the validity of the charge of commission of rape.

58. In view of the foregoing discussion, I am of the considered view that the prosecution has failed to prove all the charges against the appellant. The appellant-accused had led ample evidence to disprove the charges, but the trial Court has discarded the testimony of the defense witnesses without any justified reason and has convicted and sentenced the appellant without considering the aforesaid aspects of the matter.

59. Accordingly, the criminal appeal is ***allowed***. The impugned judgment and order dated 18.01.2024, passed by the learned Special Judge, POCSO Act/ Additional Sessions Judge, Court No. 11, Unnao in Special Session Trial No. 668 of 2021, arising out of Case Crime No. 40 of 2021, under Sections 506, 376 IPC and 3/4 POCSO Act, Police Station Asiwan, District Unnao, whereby the appellant has been convicted for the offences under Sections 3/4 (2) of the POCSO Act and 376(3), 506 IPC and sentenced as aforesaid is hereby set aside and the appellant is acquitted of the charges levelled against him.

60. The appellant is in jail. He shall be set free upon furnishing a personal bond as required by Section 437-A Cr.P.C., undertaking to appear before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal to the appellant. The bond shall remain in force for a period of six months from today.

61. I put on record my appreciation for the able assistance provided by my Research Associate Ms. Divyanshi Srivastava in providing the precedents referred to in this judgment.

(2026) 7 ILRA 2052
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 462 of 2012

Ram Gopal Misra **...Appellant**
Versus
State of U.P. **...Respondent**

ISSUE FOR CONSIDERATION

Whether the rejection of the complainant's application under Section 319 CrPC seeking to summon the opposite party no. 3 as an additional accused is liable to be interfered with in appeal, and whether the High Court can decide the appeal even when none of the three-counsel engaged by the appellant appears to assist the Court.

HEADNOTES

Criminal Law - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(1)(xi) - Indian Penal Code, 1860 – Section 354 - Probation of Offenders Act, 1958 – Section 4: - Criminal Appeal – against conviction under Section 354 IPC and Section 3(1)(xi) SC/ST Act – FIR - alleging that the appellant caught hold of the complainant's minor daughter with evil intention when she came to his eatery alone – investigation - charge-sheet – Tail - statements of complainant and victim recorded - neighbouring shop owners (PW-4 & PW-5) turned hostile – Appellant pleaded that the offence under SC/ST Act is not made out as there is no evidence that the act was committed because the victim belonged to a Scheduled Caste – Court finds that the victim's caste was irrelevant to the incident, no material shows intention to humiliate on caste grounds, and the prosecution evidence fails to establish the essential ingredient of Section 3(1)(xi) SC/ST Act – mere membership of SC/ST is not sufficient and the act must be caste-motivated – held that, offence under Section 3(1)(xi) SC/ST Act is not made out while conviction under Section 354 IPC suffers from no illegality – hence, conviction under SC/ST Act is set aside however, the conviction under Section 354 IPC is maintained – matter listed on 22.07.2026 to enable the appellant to file an application under Section 4 of the Probation of Offenders Act.

(Para – 13, 14, 15, 16, 17, 19, 20)

Appeal Dismissed. (E-11)

CASE LAW CITED

Khuman Singh v. State of Madhya Pradesh, (2020) 18 SCC 763
Dinesh v. State of Rajasthan, (2006) 3 SCC 771
Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710
Ramesh Chandra Vaishya v. State of U.P., (2023) 17 SCC 615
Keshaw Mahto alias Keshav Kumar Mahto v. State of Bihar, (2026) SCC On-line SC 799
Madan v. State of U.P., Neutral Citation 2023: AHC-LKO:43512

LIST OF ACTS

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,
Indian Penal Code, 1860,
Probation of Offenders Act, 1958

LIST OF KEYWORDS

Criminal Appeal - SC/ST Act - Caste-based intention - Outrage of modesty - Absence of caste motivation - hostile witnesses - Improvement in testimony - Probation of Offenders Act - Amicus Curiae – victim – testimony – corroborated – insult or harass – grant of benefit.

CASE ARISING FROM

Lower court case details are not given.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Sri Rakesh Kumar Maurya, assisted by Amicus Curiae Sri Rishad Murtaza.
Counsel for Respondent(s): G.A.

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

1. This criminal appeal was adjourned on the request of Sri Rakesh Kumar Maurya, the learned counsel for the appellant on 25.3.2026, 21.05.2026 and 17.07.2026. On 15.07.2026 the court had passed the following order:

"Although the hearing has been adjourned on two previous occasions on the request of learned counsel for the appellant, today again he prays for adjournment of the case stating that he has not been able to prepare submissions to be advanced in support of the appeal.

In the interest of justice, hearing is adjourned and one day's time is granted to the learned counsel for the appellant to advance submissions.

List/put up this matter tomorrow i.e. 16.07.2026.

July 15, 2026

Ram.

After this order was passed, Sri Rakesh Kumar Maurya, the learned counsel for the appellant has stated that he will not be able to come to this court because he has to attend the proceedings before the Railway Claims Tribunal.

In the interest of justice the request of learned counsel for the appellant is accepted and the next date is fixed for 17.07.2026 peremptorily. "

2. On 17.07.2026 also Shri Rakesh Kumar Maurya, the learned counsel for the appellant could not advance any submission to assail the validity of the impugned order. Upon this, the court had requested Shri Rishad Murtaza, Advocate to assist the court as an Amicus Curiae.

3. Today, Shri Rishad Murtaza has advanced submissions in the case. He has submitted that the allegations and the evidence led by the prosecution do not make out the offense under Section 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (as it existed on the date of the alleged offence) which provides that *"whoever, not being a member of a scheduled caste or a scheduled tribe, assaults or uses force to a woman belonging to a scheduled caste or a scheduled tribe with intent to dishonor or outrage her modesty, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine".*

4. He has submitted that for attracting the stringent provisions of the SC/ST Act, it is essential that the offence had been committed to victimize a person for the reason that he/she belongs to a

scheduled caste. He has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Khuman Singh Vs. State of Madhya Pradesh***, (2020) 18 SCC 763, wherein the Hon'ble Supreme Court referred to a precedent in the case of ***Dinesh Vs. State of Rajasthan***, (2006) 3 SCC 771 in the following passage:

13. In Dinesh v. State of Rajasthan (2006) 3 SCC 771, the Supreme Court held as under: (SCC p. 777, para 15)

"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

5. Sri Murtaza next relied upon a decision of the Hon'ble Supreme Court in the case of ***Hitesh Verma Vs. State of Uttarakhand***: AIR 2020 SC 5584: (2020) 10 SCC 710 in which the Hon'ble Supreme Court held as under:

"9. The long title of the Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

10. The Act was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act. The Act is thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community.

11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26.1.2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

"3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view".

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to

indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste."

6. In ***Hitesh Verma*** (supra), the Hon'ble Supreme Court relied on the ratio laid down in Khuman Singh (supra) referred to above and concluded that:

"18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

7. Shri Murtaza has also placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Ramesh Chandra Vaishya Vs. State of U.P.: (2023) 17 SCC 615*** wherein it has been held that:

"17. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of Section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge- sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under Section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract Section 3(1)(x) unless such words are laced with casteist remarks.

18. Since Section 18 of the SC/ST Act bars invocation of the court's jurisdiction under Section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under Section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopaedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence.

19. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21-01-2016 does not make out any case of an offence having been committed by the appellant under Section 3(1)(x) warranting him to stand a trial."

8. He next placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Keshaw Mahto alias Keshav Kumar Mahto Vs. State of Bihar and Another****: (2026) SCC OnLine SC 799*, wherein it was held that:

"12. Section 3(1)(r) is attracted where the reason for the intentional insult or intimidation by the accused is that the person who is subjected to is a member of a Scheduled Caste or a Scheduled Tribe. In other words, the offence under Section 3(1)(r) cannot stand merely on the fact that the informant/complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless the insult or intimidation is with the intention to humiliate such a member of the community.

13. To put it briefly - first, the fact that the complainant belonged to a Scheduled Caste or a Scheduled Tribe would not be enough. Secondly, any insult or intimidation towards the complainant must be on the account of such person being a member of a Scheduled Caste or a Scheduled Tribe.

14. With a view to dispel any doubt and lend clarity, we deem it appropriate to mention that even mere knowledge of the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe is not sufficient to attract Section 3(1)(r).

15. Further, for an offence to be made out under Section 3(1)(s), merely abusing a member of a Scheduled Caste or a Scheduled Tribe would not be enough. At the same time, saying caste name would also not constitute an offence.

16. In other words, to constitute an offence under Section 3(1)(s) it would be necessary that the accused abuses a member of a Scheduled Caste or a Scheduled Tribe "by the caste name" in any place within public view. Thus, the allegations must reveal that abuses were laced with caste name, or the caste name had been hurled as an abuse.

17. What appears from the aforesaid is the element of humiliation is present in Section 3(1)(s) as well. It has to be gathered from the intentional insult towards the caste, and the content. The content under Section 3(1)(s) are the abuses hurled at a person belonging to a Scheduled Caste or a Scheduled Tribe. However, the intent with which the abuses were hurled must be found to be denigrating towards the caste, resulting into a feeling of caste-based humiliation."

9. Lastly, Shri Murtaza has placed reliance on a decision rendered by a coordinate bench of this court in the case of ***Madan Vs. State of UP***, Neutral Citation 2023: AHC-LKO:43512 wherein after deciding the controversy involved in the matter and before parting with the case, the coordinate bench noted that *"learned trial court has convicted the appellant under Section 3(1)(2) SC/ST Act. However, the victim or PW2 nowhere stated that the victim was raped for the reason of her being a member of scheduled caste community. Not a single word was uttered to the effect that she was harassed as she belonged to scheduled caste community. There was no evidence to show that she was addressed by caste to humiliate her." Therefore, this court set aside the conviction under the SC/ST Act.*

10. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the aforementioned cases, it transpires that the FIR alleged that while the complainant's minor daughter had gone to the eatery of the appellant to get a samosa, finding her alone, the appellant caught hold of her hand with an evil intention and he wanted to grab her breast. The victim cried. Owners of some shops in the neighborhood gathered there and the appellant ran away from the shop.

11. The complainant stated in his examination in chief that the appellant had caught hold of the victim and thereafter he grabbed her breast, which was in deviation from his earlier statement and was an improvement in the allegations leveled originally.

12. During cross-examination, the complainant admitted that he was not an eyewitness of the incident. He further admitted that the appellant only wanted to grab the breast of the victim, but he had actually not done so. He admitted that he had given a wrong statement to this effect during the examination in chief.

13. The victim alleged during her testimony that finding her alone in his shop the appellant had caught hold of her hand and while addressing her by her caste, the appellant said that he would commit the misdeed against her. She told about the incident to her father after coming back home. Interestingly, the victim stated during her cross-examination that her father had to spend a lot of money for getting the FIR lodged. The other witnesses namely PW4 and PW5, who were the owners of shops situated in the neighborhood of the place of the incident and who are said to have reached the spot after hearing the cries of the victim, were declared to be hostile.

14. Therefore, besides the statement of the victim, there is no material to corroborate her evidence. The victim had alleged commission of offence under Section 354 IPC against her, but there is nothing in the FIR or in the testimony of the victim, which may indicate that the offence was committed for the reason that the victim belonged to a scheduled caste. The caste of the victim was not at all relevant in the entire incident.

15. When the testimony of the victim and the complainant (which are not corroborated by the testimony of the other witnesses of fact namely PW3 and PW4) are examined in light of the law laid down by the Hon'ble Supreme Court in the abovementioned cases, it appears that the prosecution evidence fails to establish that the alleged offence under Section 354 IPC was committed because the appellant intended to humiliate, insult or harass the victim because of her caste.

16. In these circumstances, this court is of the considered view that the offence under Section 3(1)(xi) SC/ST Act is not made out in the present case.

17. Shri Murtaza fairly conceded that there is no illegality in conviction of the appellant for the offence under Section 354 IPC and Sri Rakesh Kumar Maurya, the learned counsel for the appellant also could not advance any submission so as to convince the court about any error or illegality in the findings of the trial court regarding guilt of the appellant for offence under Section 354 IPC.

18. Accordingly, this court finds no good ground to interfere in the order of conviction and sentencing of the appellant for the offence under Section 354 IPC.

19. At this stage, Shri Rakesh Kumar Maurya, the learned counsel for the appellant prays for grant of benefit of the provisions of Section 4 of the Probation of Offenders Act to the appellant. For this purpose, he is required to file an application. He prays for and is granted two days' time for filing the application under Section 4 of Probation of Offenders Act.

20. Accordingly, list this case on 22.07.2026 to enable him to file an application under Section 4 of the aforesaid Act.

(2026) 7 ILRA 2058
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 23.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 975 of 2026

Bharat Upadhyay **...Appellant**
Versus
State of U.P. **...Respondent**

ISSUE FOR CONSIDERATION

Whether conviction of the appellant under Section 304 IPC was sustainable in absence of evidence proving that the death of the deceased was caused by any act committed by the appellant.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Sections 374(2), 437-A, - Indian Penal Code, 1860 - Sections 299, 304: - Criminal Appeal – against conviction and sentence, under Section 304 IPC – FIR - alleging that the appellant took the complainant's son with him stating he would return in half an hour, after which the son did not return and his dead body was found the next day in a grove with injury marks – investigation - recovery of slippers, injection needle, burnt Avil vial, Vicks, Glucone-D, Vigora tablet from the spot and deceased's mobile phone from the appellant's house – statements recorded - post-mortem, showing one abraded contusion on the back of the head with ecchymosis, cause of death not ascertained, viscera negative for poison – Trial initiated - conviction based on circumstantial evidence of last-seen and recovery – Appellant pleaded that there was no evidence that he caused the death, - he was falsely implicated, - and death occurred due to overdose of intoxication – Court finds that, there is absolutely no evidence that the death was caused by any act of the appellant (or any person), the solitary head injury could have resulted from a fall in an inebriated condition, the doctor admitted possibility of death due to overdose of intoxication, the testimony of PW-2 contains inherent contradictions regarding the number of persons seen and accepts self-intoxication as the cause, and recovery of mobile phone does not prove culpable homicide – held that, (i) for an offence under Section 299/304 IPC it must first be established that death was caused by an act of the accused with the requisite intention or knowledge, (ii) the conviction is without evidence and without any finding that the deceased died due to any act of the appellant – hence, the judgment of conviction and sentence is set aside - appellant is acquitted – appeal allowed - directions issued accordingly.

(Para – 23, 24, 25, 26, 27, 28, 29)

Appeal Allowed (E-11)

CASE LAW CITED

No any case is cited.

LIST OF ACTS

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

LIST OF KEYWORDS

Criminal Appeal - Culpable homicide not amounting to murder - Circumstantial evidence - Last-seen theory - Recovery of mobile phone - post-mortem and viscera report - Death due to overdose of intoxication - Absence of evidence of causative act – Acquitted – appeal allowed - Section 437-A bond.

CASE ARISING FROM

Judgment and order dated 23.03.2026 passed by the Additional Sessions Judge, Barabanki in Session Trial No. 351 of 2016 (State v. Bharat Upadhyay), arising out of Case Crime No. 315 of 2015, Police Station Kotwali Nagar, District Barabanki.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Farooq Ayoob, Harish Chandra,
Counsel for Respondent(s): Sri Mayank Sinha, learned A.G.A. Ms. Nisha Srivastava.

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

1. Heard Sri Farooq Ayoob, the learned counsel for the appellant, Sri Mayank Sinha, the learned A.G.A. appearing on behalf of the State, Ms. Nisha Srivastava, the learned counsel for the complainant and perused the records.

2. By means of the instant appeal filed under Section 374(2) Cr.P.C. the appellant has challenged the validity of the judgment and order dated 23.03.2026, passed by Sri. Vinay Kumar Singh II, the learned Additional Sessions Judge, Court No.1, Barabanki in Session Trial No.351 of 2016: State v. Bharat Upadhyay, arising out of Case Crime No.315 of 2015, under Section 304 I.P.C. Police Station Kotwali Nagar, District Barabanki, whereby the appellant has been convicted for the aforesaid offence and has been sentenced to undergo rigorous imprisonment for ten years and pay Rs.10,000/- as fine and in case of failure to pay fine, the appellant would have to undergo additional imprisonment for one year.

3. The aforesaid case was instituted on the basis of a written complaint stating that the appellant went to the complainant's house at about 4.00 p.m. on 30.04.2015 and took the complainant's son, Satendra Kumar with him saying that he was going to Badel and would return in half an hour. The complainant's son did not return home during the entire night. The complainant started looking for his son in the morning and he got information at about 1.00 p.m. that his son's dead body was lying in a grove. The complainant expressed suspicion that the appellant had killed his son.

4. The Investigating Officer recovered a pair of slippers, an injection needle with cover, a burnt vial of Avil, a pack of Vicks Veporub, a 100 gms. packet of Glucone-D and a tablet of Vigora 100 mg from the spot of the incident.

5. It is alleged that a mobile phone of the deceased was recovered from the appellant's house on 05.05.2015.

6. The complainant was examined as PW-1. He reiterated the F.I.R. version and stated that the appellant used to visit his home since before and therefore he knew him. The appellant was a friend of his deceased son and took him with him stating that they would go to Badel Village and would return in half an hour. When he did not return, the complainant repetitively made phone calls but the calls were was not received. He made calls on the mobile phone of the appellant also, but it was out of reach. He stated that the dead body of his son was recovered the following day in the grove

of Mahadev Prasad at about 1.00 p.m. and there were several injury marks on his head and other body parts.

7. During cross-examination, PW-1 stated that the appellant was his son's friend and he knew this fact for about six months prior to his son's death. He stated that although his son did not return home, he did not go to the appellant's house during the night and he went there in the morning.

8. One Parideen was examined as PW-2. He stated that he was going to attend nature's call at about 4:00 a.m., carrying water in a lota. Two persons met him near the grove of Mahadev. Both of them were staggering and it appeared that they were in a state of intoxication. They asked him to give water to the person who was lying down but he denied. He stated that the person who had asked for water was the appellant Bharat Upadhyay. In the morning, he saw a dead body lying there and it appeared that the dead body was of one of the two persons whom he had met in the night.

9. During cross-examination, PW-2 stated that the persons whom he had seen during the night were not quarreling. He had heard no noise. He had told the investigating officer that earlier also he had seen both the persons taking intoxicating substances in the grove and they used to do so frequently. He stated that it appeared that both the persons whom he had seen were under heavy intoxication. He further stated that the deceased died due to overdose of intoxication. He had not seen any person assaulting the deceased. PW-2 accepted the suggestion that the deceased died due to overdose of intoxication by himself.

10. One Deshraj was examined as PW-3 and he stated that while he was sitting at his home at about 04:00 p.m. on 30.04.2025, he had seen the appellant taking the deceased with him and when the complainant had asked, he had told that he was going to Badail crossing and would come back within half an hour.

11. PW-5 Mulchand is a brother of the complainant and he gave a statement similar to that of PW-3, however, he stated that his deceased nephew was not used to having intoxicating substances. PW-6 was a cousin of the deceased and he also stated that he had seen the appellant taking away the deceased.

12. The Investigating Officer was examined as PW-8 and he stated that he had arrested the appellant from his house on 05.05.2015 and the complainant had given the mobile phone of the deceased from inside his house.

13. The recovered articles were produced before the court. Those were packed in a cloth and the Investigating Officer stated that the seal put on the recovered articles had been damaged by rats.

14. The trial court held that although there was no eyewitness of the incident, all the links of the circumstantial evidence were complete so as to prove the appellant's guilt beyond reasonable doubt. The trial court held that the complainant had seen the appellant

taking away the deceased with him in the evening of 30.04.2015 and PW-3, PW-5 and PW-6 had seen the deceased going away with the appellant. The second link was established by the statement of PW-2, Parideen, who had seen two persons in an intoxicated condition near the grove where the dead body was found. The third link of the circumstance was established by recovery of the deceased's mobile phone from the house of the appellant.

15. It was contended on behalf of the accused-appellant that the police had taken him away on 01.05.2015 and he was kept at the police station for five days and thereafter his arrest was falsely shown to have been made on 05.05.2015. The trial court rejected this submission merely on the ground that in the General Diary of the police station the appellant's arrest was recorded on 05.05.2015.

16. The trial court held that the prosecution has established the guilt of the appellant beyond reasonable doubt and accordingly convicted the appellant for the offence under Section 304 I.P.C.

17. Section 304 IPC provides punishment for culpable homicide not amounting to murder, which offence is defined under Section 299 IPC as follows: -

*"**299. Culpable homicide**. - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.-A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.-Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

Explanation 3.-The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if

any part of that child has been brought forth, though the child may not have breathed or been completely born."

18. For convicting any person for the offence of culpable homicide, it has to be established that the accused had caused death of the deceased by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely to cause death by such act. The question as to who caused death of the deceased would assume significance only when it has been established that death of the deceased was caused by any act committed by any person.

19. Dr. Shashi Bhushan Singh, the doctor who had conducted the post-mortem examination of the deceased was examined as PW-4 and he stated that he had conducted the post-mortem examination on 01.05.2015. There was an abraded contusion of size 5 cm X 3 cm over the back of head. On cutting, ecchymosis was present underneath the injury. However, the cause of death could not be ascertained, hence, viscera was preserved for chemical analysis. The viscera examination report also did not reveal presence of any poison in the given samples. During cross-examination, PW-4 stated that the injury could have been caused because of a fall in an inebriated condition. The deceased could have died due to an overdose of intoxication.

20. PW-4 did not state that the solitary injury suffered by the deceased caused his death. Further, there is no evidence that the injury had been caused by the appellant.

21. There is absolutely no evidence to establish that the death of the deceased had been caused by any act of committed by any person. In absence of any evidence to prove that the death of the deceased was caused by any act committed by any person, commission of the offence under Section 299 of the Penal Code is not established in the present case. The trial Court has convicted the appellant without recording a satisfaction that the deceased died due to any act committed by the appellant.

22. Although, it is not necessary to go into any further question for deciding the appeal yet it is significant to note that merely this much was established by the statement of the complainant and PW-3, 5 and 6 that the appellant had taken away the deceased with him in the evening of 30.04.2015. PW-2 Parideen, is said have last seen the appellant with the deceased. PW-2 stated that he was going to attend the call of nature, carrying water in a lota. He had seen two persons staggering. Those persons had asked for water and had asked him to give the water to the person lying down. Parideen declined the request. In the morning he saw one of those persons lying dead. He stated that the dead person was one of the two persons who whom he had seen staggering in the early morning.

23. It is important to notice that on the one hand, Parideen said that he had seen only two persons and not three persons. Both the persons were staggering and yet he said that one person was lying down, who appeared to be in an intoxicated condition. On the other hand, PW-2 said that the person lying down had died and he was one of the two persons who were staggering. There is an inherent contradiction in this statement regarding the

total number of persons seen by him, whether the total number of persons was two or three. It appears that Parideen has been set up as a witness by the prosecution and this inherent discrepancy in his statement has not been highlighted by the defence, either during trial or even during submissions before this court in this appeal. The trial court also omitted to notice this discrepancy and relied on the testimony of Parideen.

24. Even PW-2 Parideen stated that the persons whom he had seen during the night were not quarreling. He had heard no noise. Earlier also he had seen both the persons taking intoxicating substances in the grove and they used to do so frequently. He stated that the deceased died due to overdose of intoxication. He had not seen any person assaulting the deceased. PW-2 accepted the suggestion that the deceased died due to overdose of intoxication by himself. Therefore, the testimony of PW-2 Parideen does not prove that the deceased died because of any act committed by the appellant.

25. So far as recovery of mobile phone is concerned, it does not establish that the deceased died because of any act committed by the appellant and this recovery is not sufficient to convict the appellant for the offence of culpable homicide.

26. In view of the foregoing discussion, I am of the view that the appellant has been convicted and sentenced without there being any evidence and without recording any finding that the deceased died because of any act committed by the appellant. The trial Court has convicted and sentenced the appellant without considering the aforesaid aspects of the matter and, therefore, the trial Court's order of conviction and sentence is vitiated.

27. Accordingly, the criminal appeal is ***allowed***. The impugned judgment and order dated 23.03.2026, passed by the learned Additional Sessions Judge, Court No.1, Barabanki in Session Trial No.351 of 2016: State Vs. Bharat Upadhyay, arising out of Case Crime No.315 of 2015, under Section 304 I.P.C. Police Station Kotwali Nagar, District Barabanki, whereby the appellant has been convicted and sentenced under Section 304 IPC, is hereby set aside and the appellant is ***acquitted*** of the charge levelled against him.

28. The appellant is in jail. He shall be set free upon furnishing a personal bond and two sureties, as per the provision contained in Section 437-A Cr.P.C., undertaking to appear before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal to the appellant. Such bond shall remain in force for a period of six months from today.

Order on IA-08 of 2026:

29. This is an application seeking release of the appellant on short term bail on the ground of his illness. As the appeal has been allowed and the appellant has been acquitted, the short term bail application has become infructuous and it is dismissed as such.

(2026) 7 ILRA 2064
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1666 of 2026

X Complainant of Complaint Case No. 65/2026 ...Appellant
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether the applicant is entitled to relief under Section 482 CrPC in respect of the criminal proceedings initiated against him.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Section 482, - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section - 173(4), 223, 528, - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 14-A(1): - Criminal Appeal – against summoning order – seeking relief under Section 482 CrPC – FIR/complaint - investigation conducted – statements recorded – recovery effected – chargesheet submitted – trial initiated – applicant pleaded that allegations are false, proceedings are abuse of process, and continuation of trial would cause miscarriage of justice – Court finds that the allegation of voluntary sexual exploitation by a 35-year-old married working woman solely for recovery of her husband's undisclosed money (without force or deceit) is wholly improbable and constitutes no offence, the monetary dispute stood already settled, no offence under the SC/ST Act is disclosed, and the complaint appears designed to blackmail for recovery of money – criminal proceedings cannot be used for realisation of disputed dues and that the High Court, as a superior court of record, can exercise inherent powers *suo motu* under Section 528 BNSS even in appellate jurisdiction to prevent abuse of process – held that continuance of such frivolous and vexatious complaint would result in persecution and defeat the ends of justice – hence the impugned order is set aside and the entire proceedings of the complaint are quashed.

(Para – 25, 26, 27, 28, 29, 30)

Appeal Allowed (E-11)

CASE LAW CITED

Dilip Singh v. State of M.P., (2021) 2 SCC 779
State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699
State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335
Som Mittal (2) v. State of Karnataka, (2008) 3 SCC 574
Popular Muthiah v. State, (2006) 7 SCC 296
Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1
M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd., 1993 Supp (2) SCC 433
Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299
Baldev Raj Arora v. CBI, 2026 SCC OnLine All 20629
Ishwar Chand Sharma v. State of U.P., 2026 SCC OnLine SC 1004

LIST OF ACTS

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
Bharatiya Nagarik Suraksha Sanhita, 2023 - Code of Criminal Procedure, 1973

LIST OF KEYWORDS

Criminal Appeal - Quashing of proceedings - Summoning order - FIR/complaint – defeat the end of justice – frivolous and vexatious complaint –- Inherent powers of High Court; Suo motu exercise - abuse of process of court - Inherently improbable allegations - Sexual exploitation without force or deceit - Monetary dispute settled by final report - Section 173(4) BNSS application treated as complaint - Quashing of criminal proceedings - Superior court of record - to quash the entire proceedings – set- aside.

CASE ARISING FROM

Order dated 17.04.2026 passed by the Special Judge, SC/ST Act / Additional Sessions Judge, Lakhimpur Kheri in Criminal Miscellaneous Case No. 65/2026.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sri Adarsh Shukla.
Counsel for Respondent(s): Sri Mayank Sinha, learned A.G.A.

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

1. Heard Sri. Adarsh Shukla, the learned counsel for the appellant, Sri. Mayank Sinha, the learned A.G.A. for the State of U.P. and Sri. Gaurav Verma, the learned counsel for the opposite parties no. 3 and 4 and perused the record.

2. By means of the instant appeal filed under Section 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (which will hereinafter be referred to as 'the SC/ST Act'), the appellant has challenged the validity of an order dated 17.04.2026 passed by the learned Special Judge, SC/ST Act/Additional Sessions Judge, Lakhimpur Kheri, in Criminal Miscellaneous Case No. 65/2026, whereby instead of ordering registration of a First Information Report, the appellant's application under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita (which will hereinafter be referred to as 'BNSS') was treated as a complaint.

3. The appellant stated in the application under Section 173 (4) BNSS that she is a woman belonging to a Scheduled Caste and was working as an Instructor in an Upper Primary School. In the year 2024 she was residing as a tenant in the house of the opposite party No. 2 in District Kheri, in connection with her employment and her husband used to commute from Lucknow. The opposite party No. 2 sold a plot belonging to his younger brother (the opposite party No. 3), to the complainant's husband. Later, it was discovered that the opposite party no. 3 was not the owner of the plot. Upon making a complaint, the opposite parties no. 2 to 4 stated that they would get the plot sold and get the money recovered. They got a sale deed executed in favour of one Ravi Shankar. Even thereafter, some of the complainant's money remained with the opposite parties. As the complainant's husband used to stay outside, taking undue advantage of her being alone and under pretext of helping her recover her husband's money, the opposite party no. 2 started exploiting the appellant sexually. Thereafter, the complainant's husband shifted her to another accommodation, but some of her belongings remained in the house of the opposite parties, including a cheque book signed by her husband. The complainant has expressed an apprehension that the accused persons might cause harm to her husband and child.

4. It is mentioned in the impugned order dated 17.04.2026 that the Court had called for a report from the Police. The police report revealed that the actual owner of the land was Shiv

Shankar Mishra. The purchaser Ravi Shankar had lodged Case Crime No. 381/2025 against the complainant's husband and the opposite parties in which a final report was submitted on the basis of an amicable resolution of dispute, under which the amount in question had been refunded.

5. The trial court found that the complainant has alleged that in furtherance of a conspiracy the opposite parties represented themselves to be the owners of the plot and they got its sale deed executed in favour of the complainant's husband. The final report submitted in Case Crime No. 381/2025 discloses that the complainant, her husband and the opposite parties had been arrayed as accused persons in the said case. As the consideration amount of the plot had been refunded and no other evidence was found, a final report was submitted. The trial court further found that all the facts of the case are within the knowledge of the complainant, which she can prove herself by leading evidence. Accordingly, the Special Judge registered the application under Section 173(4) BNSS as a complaint and fixed the next date for recording the statement under Section 223 BNSS.

6. According to the averments made in the complaint, the complainant was not involved in the purchase and sale of the plot and her husband was a party to the transactions. The husband is not suffering from any legal disability which may incapacitate him to institute the legal proceedings for enforcement of his legal rights. The complainant is not the legal guardian of her husband so as to initiate legal proceedings on his behalf. The dispute pertains to a monetary transaction, regarding which a First Information Report was lodged against the complainant, her husband and the opposite parties no. 3 and 4 and after the matter was settled, a final report has already been submitted.

7. In the application under Section 173(4) BNSS, the complainant has stated that some amount of her husband's money still remains unpaid. Neither the sale consideration amount has been disclosed in the application, nor has the alleged unpaid amount been disclosed. The complainant's husband, whose money is alleged to have remained unpaid, has not instituted any proceedings - civil or criminal.

8. The complainant has stated, in paragraph 4 of the application that as her husband used to reside away, the opposite party no. 2 started sexually exploiting her under allurement of returning her husband's money. A 35 years old married woman herself stating that she permitted a man to sexually exploit her in order to recover her husband's money, although there is no allegation of use of force or deception by the opposite party no. 2, is an extremely unnatural and strange allegation, which no person of ordinary prudence and reasonable understanding can believe. Even if the allegation is taken to be correct, it does not constitute any offence.

9. The assertion made in the application that although the complainant had vacated the accommodation of the opposite party no. 2 which she had taken on rent, a cheque book signed by her husband was left there, is also a strange statement, which no person of ordinary prudence would believe.

10. It appears that the petitioner is abusing the criminal justice system to blackmail the opposite Parties Nos. 2 to 4 for recovering an undisclosed amount of unpaid money. In **Dilip Singh v. State of M.P.**, (2021) 2 SCC 779, the Hon'ble Supreme Court held that criminal proceedings are not for realization of disputed dues.

11. Section 528 of BNSS, which corresponds to Section 482 Cr.P.C., recognizes the inherent powers of this Court in the following words: -

*"**528. Saving of inherent powers of High Court.** - Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

12. In **State of Karnataka v. L. Muniswamy**, (1977) 2 SCC 699, it was held that: -

*"In the exercise of this wholesome power, **the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.** In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. **The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."***

(emphasis added)

13. In **State of Haryana v. Bhajan Lal:** 1992 Supp (1) SCC 335, the Hon'ble Supreme Court held that: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police

officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis added)

14. However, the Hon'ble Supreme Court added a word of caution in the judgment in the case of **Bhajan Lal** (supra) by stating that: -

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

15. The purport of the expression "rarest of rare cases" has been explained in **Som Mittal (2) v. State of Karnataka**: (2008) 3 SCC 574, in the following words: -

'9. When the words "rarest of rare cases" are used after the words "sparingly and with circumspection" while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words "sparingly and with circumspection". They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection.'"

16. The law regarding scope of exercise of the inherent powers of the High Courts acknowledged by Section 482 Cr.P.C. / 528 BNSS stands settled by the aforesaid judgments and the power can be exercised to quash any criminal proceedings before a trial Court if it would result in an abuse of the process of any Court.

17. The question which now arises is whether this Court can exercise its inherent powers suo motu so as to quash the proceedings of a criminal complaint, when the abuse of the process of Court has been noticed by this Court while hearing an appeal filed by the complainant herself and the accused persons have not come forward to challenge its validity (due to the obvious reason that they are yet to be summoned by the trial Court).

18. In this regard, it is relevant to note the following principles laid down by the Hon'ble Supreme Court in **Popular Muthiah v. State represented by Inspector of Police**: (2006) 7 SCC 296: -

"27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that ***the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter****. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being "a case before the court" in contradistinction from "a person who is arrayed as an accused before it" when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.*

* * *

29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(i) ***Power can be exercised suo motu in the interest of justice.*** *If such a power is not conceded, it may even lead to injustice to an accused.*

(ii) ***Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.***

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code

is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists."

(emphasis added)

19. When examining the scope of inherent powers of this Court, it would be appropriate to keep into consideration the provision contained in Article 215 of the Constitution of India, which provides that: -

"215. High Courts to be courts of record. *- Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."*

20. In **Naresh Shridhar Mirajkar v. State of Maharashtra**, AIR 1967 SC 1, a Constitution Bench consisting of nine Hon'ble Judges of the Hon'ble Supreme Court held that: -

"59. ... The High Court is a superior court of record and under Article 215, shall have all powers of such a court of record including the power to punish contempt of itself. ***One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them.*** *This question fell to be considered by this Court in Special Reference No. I of 1964 [(1965) 1 SCR 413 at p 499]. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that* ***in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.*** *That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that* ***"prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court*** *[Halsbury's Laws of England, Vol 9, p. 349] ". If the decision of a superior court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."*

(emphasis added)

21. The aforesaid decision was followed in **M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.**: 1993 Supp (2) SCC 433, wherein the Supreme Court reiterated that: -

"66. The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers..."

22. In **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**: (2018) 16 SCC 299, the Hon'ble Supreme Court held that: -

"52. ... First and foremost, it must be appreciated that the High Courts are established by the Constitution and are courts of record which will have all powers of such courts, including the power to punish contempt of themselves (see Article 215). ***The High Court, being a superior court of record, is entitled to consider questions regarding its own jurisdiction when raised before it.*** *In an instructive passage by a Constitution Bench of this Court in Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964 [AIR 1965 SC 745], Gajendragadkar, C.J. held:*

"138. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court' [Halsbury's Laws of England, Vol. 9, p. 349]."

* * *

54. It is thus clear that the inherent power of a court set up by the Constitution is a power that inheres in such court because it is a superior court of record, and not because it is conferred by the Code of Criminal Procedure. This is a power vested by the Constitution itself, inter alia, under Article 215 as aforestated. Also, as such High Courts have the power, nay, the duty to protect the fundamental rights of citizens under Article 226 of the Constitution, the inherent power to do justice in cases involving the liberty of the citizen would also sound in Article 21 of the Constitution….."

(emphasis added)

23. In **Baldev Raj Arora v. CBI**: 2026 SCC OnLine All 20629, this Court has held that: -

"46. The inherent powers of this Court to secure the ends of justice and prevent the abuse of the process of law do not stem from Section 482 CrPC or for that matter from any other statutory provision. Such a power is an unfettered power which inheres in this Court, because this Court is a Constitutional Court and a court of record. ***Section 482 CrPC does not confer the inherent powers on the High Courts, it merely provides that nothing contained in CrPC will affect the inherent powers of the High Court, which powers are inherent in the High Court by virtue of it being a court of record as laid down under Article 215 of the Constitution. The inherent powers are powers of a wide amplitude with only self imposed restrictions, to be exercised in a suitable case to secure the ends of justice. Therefore, the jurisdiction under Section 482 CrPC is a statutory manifestation of the wider inherent powers constitutionally recognized under Article 215, to be exercised for securing the ends of justice.***

47. In order to fully comprehend and effectively exercise the inherent powers of the High Court, it is pertinent to note the legislative intent and the purpose that was intended to achieved by Section 482 CrPC and Article 215 of the Constitution of India. The object behind Article 215 is to give power to the High Courts to decide their own jurisdiction, apparently to confer discretionary powers on the High Courts, to be exercised in appropriate cases in which it deems fit to invoke its powers. Without giving the power to decide its own jurisdiction the inherent powers to secure the ends of justice might become meaningless. Similarly, ***the words "to make such orders as may be necessary to secure the ends of justice" used in Section 482 conclude the aforesaid section in an open ended manner, the underlying object being to save the discretionary inherent powers of the High Courts to decide for itself what would be the appropriate cases in which the inherent power should be invoked. Therefore, the object behind both the provisions appears to be one i.e. to further the cause of substantial justice and undertake all such measures that may be required in this direction."***

(emphasis added)

24. In **Ishwar Chand Sharma v. State of U.P**.: 2026 SCC OnLine SC 1004, the Hon'ble Supreme Court has expressed its concern and anguish over the rising trend in vexatious litigation, in the following words: -

"9. ... we wish to underline a worrying trend that has come to our attention. Parties involved in matrimonial or commercial relationships with one another are resorting to filing of frivolous and vexatious claims and allegations of a criminal nature to settle personal scores and grudges against each other and therefore turn to nefarious/oblique means to attain the said objective...

9.1 ...The onus is on courts to be careful and cautious so as to separate the wheat from the chaff and separate the genuine cases of matrimonial oppression, rape and offences against women from the cases wherein the legal process and procedure is being used as a tool to file false and frivolous cases out of vengeance. *While doing so, care should be taken to ensure that the rights and freedoms of innocent parties are not trampled or arbitrarily taken away by unscrupulous and baseless litigation.*

9.2 ...The litigating parties and their advocates should also be cognizant of the fact that such vexatious filing of false and frivolous claims and cases cast unnecessary burden on the already overburdened machinery and apparatus of the State and Judiciary. This factor also diverts the attention of courts and its resources whereas genuine cases of the parties with actual verifiable grievances are not being able to be adjudicated in time owing to the time spent in adjudicating upon phantom claims of mischievous litigators seeking to create litigation out of thin air or in the absence of a cause to do so.

* * *

9.6 While we are conscious of the fact that there are instances and a plethora of cases that are true and deserve the utmost attention and deft handling on the side of authorities and Courts and which should be pursued vigorously to reach a logical conclusion, on the other side of the spectrum, are cases invoking such serious and heinous allegations which are prima facie vague, omnibus and general in nature and thereby lacking any material backing or evidence which should be shunned at the very threshold. ***We say so for the reason that if a person is made an accused and forced to face a criminal trial on general and sweeping allegations without bringing on record any specific instances of criminal conduct, it would tantamount to an abuse of the process of law and court. Hence, legal practitioners who tender advice in such cases must restrain parties from filing such false/frivolous complaints when requested to do so. Further, lawyers/advocates must also not advise filing of criminal complaints which are false/concocted so as to keep the opposite parties under a tight leash so that they could come forward for a settlement on the terms dictated by their parties or else, to face a criminal prosecution which can prolong for years...***

9.7 Courts then owe a duty to subject the allegations levelled in the complaint to a thorough scrutiny to ascertain if a prima facie case is made out or not, and whether there is any kernel of truth in the allegations or whether the said allegations have been made only with the sole intent of spite so as to harass the opposite party with a prolonged process of criminal litigation, arrest and sometimes a conviction which later on may result in an acquittal by a higher Court or in a worse case, no relief at all being given to an innocent party. ..."

(emphasis added)

25. Thus, the law is well settled that being a superior Court of record, this Court has the power to determine the questions relating to its own jurisdiction and nothing is beyond the jurisdiction of this Court, unless there is a specific statutory bar against the jurisdiction of this Court. Section 428 Cr.P.C. /Section 528 BNSS recognize the inherent powers of this Court to pass appropriate orders to secure the ends of justice and to prevent the abuse of the process of any Court. In appropriate cases, this Court can exercise its inherent powers even suo motu, even while exercising its appellate jurisdiction and filing of a petition under Section 482 Cr.P.C. / 528 BNSS is not a condition precedent for exercising the inherent powers to secure the ends of justice or to prevent the abuse of the process of any Court. Where even while

exercising its appellate powers, it appears to this Court that continuance of any criminal proceedings would defeat the ends of justice and would result in abuse of the process of any Court, this Court not only has the power to interfere in exercise of its inherent powers, but it has the duty to exercise that power in deserving cases, so as to secure the ends of justice or to prevent the abuse of the process of any Court or law.

26. When the allegations levelled in the application under Section 173(4) BNSS are examined in light of the law laid down in the above mentioned cases, it appears that a 35-year-old married woman who is working as an instructor in an upper primary school (although in the affidavit filed before this Court she has stated on oath that she is merely literate), she has alleged that she allowed herself to be sexually exploited under allurement of recovering her husband's undisclosed amount of money, although her husband did not take any action for recovering his money. This allegation is wholly improbable. Moreover, she has not alleged use of force or deceit by the opposite parties. Assuming this allegation levelled in the application is true, it does not make out commission of any offence by the opposite party no. 2.

27. The alleged accidental leaving of a signed cheque-book in the house of the opposite party, without alleging that any signed cheque has been misused by any of the opposite parties, also does not make out commission of any offence.

28. Although the complainant has mentioned in her application under Section 173 (4) BNSS filed before the Special Judge, SC/ST Act that she belongs to a Scheduled Caste, there is no allegation in the entire complaint which may make out commission of any offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

29. When the allegations levelled in the complaint do not make out commission of any offence, continuance of the proceedings of the complaint would result in an unwarranted persecution of the opposite parties, besides resulting in wastage of precious judicial time of the Courts. Continuance of the proceedings of the complaint in such circumstances would defeat the ends of justice and would be an abuse of the process of the Courts and the law. The frivolous and vexatious complaint having come to the knowledge of this Court through the appeal filed by the complainant herself, warrants suo motu exercise of the inherent powers of this Court so as to quash the entire proceedings of the complaint.

30. Accordingly, while exercising the inherent powers of this Court in the appeal presented by the appellant herself challenging the order dated 17.04.2026 passed by the learned Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act)/Additional Sessions Judge, Lakhimpur Kheri in Miscellaneous Criminal Case No. 65/2026, whereby the application under Section 173(4) BNSS was treated as a complaint whereas the appellant wants a first information report to be registered in furtherance of her application, the order dated 17.04.2026 passed by the Special Judge treating the application under Section 173(4) BNSS filed by the appellant as a complaint, is **set aside**. The entire proceedings instituted on the basis of the application under Section 173(4) BNSS filed by the appellant against the opposite parties no. 2 to 4 are hereby **quashed**.

(2026) 7 ILRA 2075
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.07.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1895 of 2026

Smt. Chhotka **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether the rejection of the complainant's application under Section 319 CrPC seeking to summon the opposite party no. 3 as an additional accused is liable to be interfered with in appeal.

whether the High Court can decide the appeal even when none of the three-counsel engaged by the appellant appears to assist the Court.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Sections 161, 319, - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 14-A(1), 3(1)(r), 3(1)(s) - Indian Penal Code, 1860 – Sections 323, 504, 506: - Criminal Appeal – against rejection of application under Section 319 CrPC - seeking to summon opposite party no. 3 as additional accused – FIR – offence of assault and abuse and causing injuries – investigation - charge-sheet, only against opposite party no. 2 - involvement of opposite party no. 3 not established – Trial commenced against opposite party no. 2 - after examination of three witnesses, application under Section 319 CrPC filed – Rejected – Appeal - Appellant pleaded that both accused were named in FIR, Section 161 statement and examination-in-chief, and Investigating Officer wrongly omitted opposite party no. 3 – Court finds that, complainant assigned no specific role to opposite party no. 3, injured eyewitness (PW-3) denied presence of any person other than opposite party no. 2, and PW-2 was not an eyewitness – held that, (i) Power under Section 319 CrPC is extraordinary and to be exercised sparingly only on strong and cogent evidence that if unrebutted would lead to conviction – (ii) High Court can decide the matter even without assistance of counsel when advocates abstain without just cause – (iii) Trial court's order suffers from no illegality – Appeal, being lack its merit, is dismissed at the admission stage.

(Para – 16, 17, 19, 20)

Appeal Dismissed. (E-11)

CASE LAW CITED

Krishnappa v. State of Karnataka, (2004) 7 SCC 792
Michael Machado v. Central Bureau of Investigation, (2000) 3 SCC 262
Ramakant Tripathi v. State of U.P., 2009 Cr.L.J. 459
Municipal Corpn. of Delhi v. Ram Kishan Rohtagi, (1983) 1 SCC 1
Jamin v. State of U.P., 2025 SCC OnLine SC 506
Hardeep Singh v. State of Punjab, (2014) 3 SCC 92

LIST OF ACTS

Indian Penal Code, 1860,
Code of Criminal Procedure, 1973
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

LIST OF KEYWORDS

Criminal Appeal - Section 319 CrPC - Summoning of additional accused - Extraordinary and discretionary power - Strong and cogent evidence - Absence of counsel - Adjournment on frivolous grounds - Appeal under SC/ST Act - Dismissal at admission stage.

CASE ARISING FROM

Order dated 08.05.2026 passed by the Special Judge, SC/ST Act, Shravasti in Session Case No. 10 of 2023 - arising out of Case Crime No. 77 of 2022, Police Station Naveen Modern, District Shravasti.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Suresh Kumar Mishra, Shri Dharmendra Kumar Bhatt, Shri Manjul Kumar
Counsel for Respondent(s): Sri Rudra Pratap Pal, learned G.A.

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

1. The appellant has engaged three learned counsel, namely Shri Suresh Kumar Mishra, Shri Dharmendra Kumar Bhatt and Shri Manjul Kumar Pathak, but none of whom is present to assist the court. Shri Rudra Pratap Pal, Advocate made a request for adjournment of the case on the ground that Shri Suresh Kumar Mishra and Shri Dharmendra Kumar Bhatt Advocates are busy in some District Court and therefore they could not come to the High Court. He does not know the whereabouts of Shri Manjul Kumar Pathak, the third learned Counsel for the appellant.

2. The matter was previously listed on 15.07.2026 and on that date also, nobody had appeared on behalf of the appellant and the matter was passed over.

3. The conduct of Shri Suresh Kumar Mishra and Shri Dharmendra Kumar Bhatt, Advocates, in abstaining to appear for advancing submissions in a fresh case for the reason that they are busy in the trial court, is strongly deprecated as it shows lack of respect towards their professional duties as also towards the High Court. The conduct of Shri Manjul Kumar Pathak in abstaining to appear before this Court without assigning any reason and even without giving any intimation, is also deprecated.

4. It is the Court's duty to render justice and the Advocates are entitled to provide assistance to the Court in dispensation of justice. Assistance of Advocates is not a condition precedent for adjudication of a dispute by this Court or by any Court. If the Advocates choose to refrain from providing assistance to the Court without any just and reasonable cause, the Court has to perform its duty of adjudication of cases and dispensation of justice even without any assistance from the Advocates. When the appellant has engaged as many as three learned counsel and all of them have refrained from appearing to provide assistance to this Court, the Court proceeds to decide the matter after perusal of the record.

5. The instant appeal has been filed under Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the validity of an order dated 08.05.2026, passed by the learned Special Judge, SC/ST Act, Shravasti in Session Case No. 10 of 2023, arising out of Case Crime No. 77 of 2022, under Sections 323, 504, 506 IPC and 3(1) (r), (s) SC/ST Act, Police Station Naveen Modern, District Shravasti, whereby an application under Section 319 CrPC filed by the appellant / complainant has been rejected.

6. The case was instituted on the basis of an FIR lodged by the appellant on 22.08.2022 against Ram Suresh Yadav and Ankit Yadav (opposite parties no.2 and 3, who are father and son) alleging that both of them had assaulted and abused the complainant and her son, causing injuries to both of them.

7. After investigation, the Investigating Officer submitted a charge-sheet dated 16.09.2022 against the opposite party no. 2 Ram Suresh for the offences under Section 323, 504, 506 IPC and 3(1) (r), (s) SC/ST Act and the Investigating Officer stated that on the basis of the evidence collected during investigation, involvement of Ram Suresh's son Ankit Yadav (the opposite party no. 3) in commission of the offences could not be established.

8. The trial commenced against Ram Suresh only and after examination of three prosecution witnesses, the appellant filed an application under Section 319 Cr.P.C. When the impugned order has been passed on the application under Section 319 Cr.P.C., it was necessary to bring its copy on record so as to enable this Court to know its contents, but a copy of the said application has not been brought on record.

9. It is recorded in the impugned order that the complainant had stated in the application under Section 319 Cr.P.C. that she had clearly stated about involvement of both the accused persons in commission of the offence in the FIR, in her statement recorded under Section 161 Cr.P.C. and in her examination-in-chief, but the investigating officer had wrongly submitted the charge-sheet only against Ram Suresh (the opposite party no. 2) and not against his son Ankit Yadav (the opposite party no. 3).

10. The trial court examined the statements. The complainant - appellant had stated that the Ram Suresh and his son Ankit Yadav (the opposite parties no. 2 and 3) both were involved in the incident. PW-2 Taravati stated that she reached the spot half an hour after the incident. Thus, PW-2 is not an eyewitness of the incident and she did not support the allegation of involvement of the opposite party no. 3 in the incident. PW-3, the injured son of the complainant, stated that he and Ram Suresh (the opposite party no.2) both were taken to a hospital by different ambulances. Medical examination of both of them was conducted in Ikauna Shravasti. No person other than PW-3 and Suresh (the opposite party no.2) was present on the spot.

11. The trial court referred to the judgment of the Hon'ble Supreme Court in the case of **Krishnappa v. State of Karnataka**: (2004) 7 SCC 792 = AIR 2004 SC 4298, wherein it has been held that: -

"6. It has been repeatedly held that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

* * *

9. In Michael Machado v. Central Bureau of Investigation *[(2000) 3 SCC 262] construing the words ?the court may proceed against such person" in Section 319 CrPC, this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court, while examining an application under Section 319 CrPC, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319 CrPC, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused."*

12. The trial court relied on the judgment of this court in the case of **Ramakant Tripathi Vs. State of U.P**: 2009 Cr.L.J. 459 wherein a coordinate Bench of this Court referred to the precedents in the cases of **Michael Machado and Anr.**: (2000) 3 SCC 609, **Anil Singh and Anr. v. State of Bihar**: (2008) 1 SCC 708, **Rajendra Singh v. State of U.P. and Anr.:** (2007) 7 SCC 378, **Rakesh and Anr. v. State of Haryana**: 2001 Cr.L.J. 3511 and **Lok Ram v. Nihal Singh**: (2006) 10 SCC 192 and concluded that: -

"16. In view of the aforesaid discussion it is clear that the basic requirement of Section 319 Cr.P.C. is that the court must have reasonable satisfaction from the evidence collected during inquiry or trial to the fact that some other persons against whom no charge sheet have been submitted, had committed an offence and for such offence he should be tried along with those accused who have been charge sheeted. The aforesaid power, by the trial court, no doubt should be exercised sparingly and that should be exercised only to achieve criminal justice. If there is even no remote possibility or likelihood of conviction, the court will refuse to exercise the power.

17. There is no compelling duty of the court to proceed against the other persons. Merely on the basis of the suspicious of the involvement in the offence, might not be enough, to exercise the power, for summoning the other person under Section 319 Cr.P.C. unless there is prospect of the conviction. If from the evidence collected during inquiry or trial prima facie commission of offence is disclosed against other person then after

satisfaction the trial court in exercise of judicial discretion can summon the other person, under Section 319 Cr.P.C., to face the trial along with other accused.

13. In **Municipal Corpn. of Delhi v. Ram Kishan Rohtagi**: (1983) 1 SCC 1, the Hon?ble Supreme Court held that: -

"19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. ***But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken..."***

(emphasis added)

14. The aforesaid principles laid down in **Municipal Corpn. of Delhi v. Ram Kishan Rohtagi** (supra) have been followed and reaffirmed in **Jamin v. State of U.P.**: 2025 SCC OnLine SC 506.

15. In **Hardeep Singh v. State of Punjab**: (2014) 3 SCC 92, a Constitution Bench consisting of five Hon'ble Judges held that: -

*"**105**. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence.* ***Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.***

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. ***The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC.*** *In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence? is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."*

(emphasis added)

16. The trial court observed that the complainant Smt. Chhotka has not assigned any specific role to the opposite party no. 3 and the injured witness PW-3 has clearly denied the presence of any person other than the opposite party no. 2, at the time of the incident. In these circumstances, the trial court found no good ground to summon the opposite party no. 3 as an additional accused to be tried.

17. The aforesaid reasoning assigned by the trial court after due consideration of the facts and circumstances of the case and the relevant law, does not suffer from any error or illegality warranting interference by this court in exercise of its appellate power.

18. The appeal lacks merit and the same is ***dismissed*** at the admission stage.

19. Before parting with the case, the Court is constrained to put it on record that this Court has come across several requests for adjournment of cases on the ground of the learned Counsel being engaged before the District Courts or Tribunals. There has been a practice to give precedence to attending to professional duties to provide assistance to the High Court as compared to the subordinate Courts and Tribunals. The Advocates generally themselves give priority to attending fresh matters before the High Courts. However, at times they deliberately avoid attending the hearing of fresh cases in order to get the matter passed over without any hearing and without any order being passed, so as to merely keep the matter pending, even though it does not deserve admission. This gives rise to an artificial and unwarranted increase in pendency of matters before the High Court. Further, the proceedings of trial pending before the trial Court are adjourned repetitively on the pretext of pendency of the matter before the High Court, though no interim order has been passed by the High Court and this causes unwarranted delay in conclusion of the trial.

20. Repetitive adjournments on the ground of the Advocates being engaged in the subordinate Courts or Tribunals and their non-appearance without assigning any reason, shows lack of respect towards the professional duties of Advocates, besides showing lack of respect towards the High Court. It also highlights the falling standards in the profession of Advocacy. Therefore, the Court requests the learned members of the bar to realize the importance of their role as responsible officers of the Court, improve the standards of assistance being provided by them and refrain from seeking adjournments on unreasonable and frivolous grounds, which results in decreased productivity of the Court and creates hurdles in speedy dispensation of justice.

(2026) 7 ILRA 2081
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.07.2026

BEFORE

THE HON'BLE AJAY BHANOT, J.
THE HON'BLE DIVESH CHANDRA SAMANT, J.

Criminal Appeal No. 4918 of 2022

Gulabi Devi & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

ISSUE FOR CONSIDERATION

Whether the prosecution has established a complete chain of incriminating circumstances proving the guilt of the appellants beyond reasonable doubt for offences under Sections 302 and 201 IPC.

Whether the evidence of last-seen, motive, recoveries and site plan is reliable and admissible.

Whether delay in lodging FIR, delay in recording statement of material witness, non-compliance of Section 27 of the Evidence Act and defective recording of statement under Section 313 Cr.P.C. vitiate the prosecution case and the conviction recorded by the trial court.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 374, 313 – Indian Penal Code, 1860 – Sections 302, 201 – Indian Evidence Act, 1872 – Section 27:- Criminal Appeal - against conviction u/s 302, 201 IPC and sentence of life imprisonment with fine – written Report - FIR - discovery of body of deceased near river bank – allegation are that appellants (including a woman with whom deceased had illicit relations) murdered him and disposed of the body – investigation conducted – post-mortem - recoveries - site plans - charge-sheet filed – charges framed – prosecution examined - appellants pleaded inordinate delay in FIR, incomplete chain of circumstances, unreliable last-seen evidence, absence of motive, illegal recoveries, defective site plan and non-compliance of Section 313 Cr.P.C. - appreciation of evidence – Court finds that, delay in lodging FIR is unexplained and fatal, - post-mortem shows death occurred about four days after alleged last-seen, breaking the proximity of last-seen link, - witness of last-seen (brother of deceased) is unreliable due to his suspicious conduct and delayed recording of statement - motive of illicit relationship not established and appears contrary to evidence of cordial relations - recoveries of personal effects from open accessible place without prior disclosure statement under Section 27 Evidence Act are inadmissible - site plan of place of occurrence without discovery statement is also inadmissible - statement under Section 313 Cr.P.C. was recorded in a mechanical manner without putting specific incriminating circumstances, violating principles of natural justice – held, prosecution failed to prove complete chain of incriminating circumstances beyond reasonable doubt - hypothesis consistent with innocence remains strong – hence appeal allowed – conviction and sentence set aside – directions issued accordingly.

(Paras 32, 34, 36, 40, 42, 48, 49, 55, 56, 57, 58, 60)

Appeal Allowed. (E-11)

CASE LAW CITED

Shahid Khan v. State of Rajasthan, (2016) 4 SCC 96
Rajesh and Anr. v. The State of Madhya Pradesh, (2023) 15 SCC 521
Ramanand v. State of U.P., (2023) 16 SCC 510

Nar Singh v. State of Haryana, (2015) 1 SCC 496
Sujit Biswas v. State of Assam, (2013) 12 SCC 406
State of U.P. v. Mohd Iqram & Anr., (2011) 8 SCC 80

LIST OF ACTS

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

LIST OF KEYWORDS

Criminal Appeal – Sections 302 & 201 IPC – Circumstantial evidence – Last-seen theory – Delay in FIR – Motive not proved – Section 27 Evidence Act – Illegal recovery – Defective Section 313 Cr.P.C. – Incomplete chain – Benefit of doubt – Acquittal – Appeal allowed.

CASE ARISING FROM

Judgment dated 20.05.2022 rendered by the learned Sessions Court in Sessions Trial No. 201 of 2013 (State vs. Gulabi Devi and others) arising out of Case Crime No. 345 of 2012, P.S. Campierganj, District Gorakhpur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Kamal Krishna, Senior Counsel, Amicus Curiae, assisted by Shri Neelabh Srivastava.
Counsel for Respondent(s): Shri Paritosh Kumar Malviya, learned A.G.A.-I and Shri Suchit Tandon, learned A.G.A.

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

1. The instant appeal arises out of the judgement dated 20.05.2022 rendered by the learned Sessions Court in Sessions Trial No. 201 of 2013 State vs. Gulabi Devi and others. The FIR which culminated in the judgement was registered as Case Crime No. 345 of 2012 under Section 302, 201 IPC at P.S. Campierganj, District Gorakhpur.

2. The learned trial court by the impugned judgement has found the appellants guilty of the offence under Section 302 I.P.C. and has imposed a punishment of life imprisonment along with a fine of Rs. 50,000/-. Upon default of payment of fine two years additional simple imprisonment has been ordered. The learned trial court also found the appellants guilty of offence under Section 201 IPC and accordingly punished them with five years rigorous imprisonment and imposed a fine of Rs. 10,000/-. Upon default of payment of fine the accused are liable to undergo simple imprisonment for six months.

3. The following appellants are before this Court in the instant appeal:

I. Gulabi Devi.

II. Rajendra Chaudhari.

III. Shivprasad Chaudhari.

F.I.R.-Prosecution Case

4. Briefly put the prosecution case set out in the FIR is that Ramkishore (father of the first informant) had illicit relations with Gulabi Devi. On 16.12.2012, Ramkishore left on motorcycle No. UP 53 Y 1299 for Chakdaha to give Gulabi Devi the ornaments that he had purchased for her. After reaching Chakdaha, he informed his family that he would return home the next day. Jagdish, uncle of first informant, while returning home had seen Ramkishore with Gulabi Devi, Rajendra and Shiv Prasad on the road from Campierganj to Nautanwa near Dhanidala at about 05:30 PM on 16.12.2012. Rajendra and Shiv Prasad also had illicit relations with the said Gulabi Devi. Ram Kishore failed to return home the next day, and his mobile phones were switched off.

5. The family went on a look out for him and arrived at Chakdaha village on 23.12.2012. A number of people at Chakdaha informed them that Gulabi Devi, Rajendra and Shiv Prasad had done Ramkishore to death and threw his body in Mirhiriya Village near Rapti River. The body of the deceased was found near the river by the first informants.

Police investigations

6. After lodgement of FIR, police investigations were set on foot. A chargesheet was filed against the appellants under Section 302/201 I.P.C. on 26.01.2013. Cognizance of the offence was taken by the learned trial court on 16.05.2013.

Charge:

7. The learned trial court framed the following charges against the appellants on 02.07.2014

"आरोप

मै, शमसुल हक, अपर सत्र न्यायाधीश, कोर्ट नं० 07 कक्ष स0-12. गोरखपुर आप श्रीमती गुलाबी देवी, राजेन्द्र चौधरी व शिव प्रसाद चौधरी को निम्न आरोप से आरोपित करता हूँ-

प्रथमः यह कि दिनांकः 16.12.2014 को समय भिन्न-भिन्न बहद ग्राम सिरहिया, थाना कैम्पियरगंत, जिला गोरखपुर में आप ने वादी के पिता राम किशोर की हत्या कारित किया। इस प्रकार आपने धारा 302 भा०द०सं० के अधीन दण्डनीय अपराध किया जो इस न्यायालय के प्रसंज्ञान में है।

द्वितीयः यह कि उपरोक्त दिनाक, समय व स्थान पर आप ने वादी के पिता राम किशोर की हत्या कर साक्ष्य मिटाने के उद्देश्य से तथा वैध दण्ड से बचने के लिए मृतक की लाश को मिरहिया गांव के पास राप्ती नदी में फेंक दिया। इस प्रकार आपने धारा 201 भा०द०सं० के अधीन दण्डनीय अपराध किया जो इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा आपको निर्देशित किया जाता है कि उक्त आरोपों में आपका परीक्षण इस न्यायालय द्वारा किया जायेगा।"

8. The charges were framed and explained to the accused. After the accused pleaded not guilty the case went to trial.

Evidences:

9. Prosecution evidences adduced during trial are depicted in tabular charts below:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

Sr. No.	Witness No.	Name of Witness	Nature of Witness
1.	PW-1	Ravindra Chauhan	First Informant
2.	PW-2	Masendra	Son of Deceased/Witnessto Inquest
3.	PW-3	Jagdish	Brother of Deceased/Witness to Recovery and Inquest
4.	PW-4	Pappu Chauhan	Son of deceased
5.	PW-5	Dr. S.K. Yadav	Doctor who conducted the post mortem
6.	PW-6	Lalji Chaudhary	Head Constable & author of the chik
7.	PW-7	Lakshman Rai	Investigating Officer

Documentary Evidences:

Sr. No.	Documents	Proved by	Date	Exhibit
1.	Written Report	PW-1 Ravindra Chauhan	23.12.2012	Exh. Ka-1
2.	Panchayatnama	PW-2 Masendra	23.12.2012	Exh. Ka-2
3.	Recovery memo of Motor Cycle	PW-3 Jagdish	05.01.2013	Exh. Ka-3
4.	Recovery Memo of Rope, Muffler and One cap	PW-4 Pappu Chauhan	18.01.2013	Exh. Ka-4
5.	Post Mortem Report	PW-5 Dr. S.K. Yadav	24.12.2012	Exh. Ka-5
6.	F.I.R	PW-6 Lal Ji Chaudhary (H.C.P)	23.12.2012	Exh. Ka-6
7.	G.D. Nakal Rapat No.34	PW-6 Lal Ji Chaudhary (H.C.P)	23.12.2012	Exh. Ka-7
8.	Inspection Place of Occurrence on 23.12.2012	PW-7 Laxman Ray (S.H.O)	23.12.2012	Exh. Ka-8
9.	Site Plan of Place of occurrence	PW-7 Laxman Ray (S.H.O)	25.12.2012	Exh. Ka-9
10.	Inspection of recovery place of site plan.	PW-7 Laxman Ray (S.H.O)	18.01.2013	Exh. Ka-10
11.	Charge Sheet	PW-7 Laxman Ray (S.H.O)	26.01.2013	Exh. Ka-11

Material Exhibits:

Sr No.	Material	Exhibit
1.	Cap of deceased	Material Exhibit -1
2.	Muffler of deceased	Material Exhibit -2
3.	Rope	Material Exhibit -3

I. Written report/Tehrir

10. P.W.-1/Ravindra Chauhan who is the son of the deceased stated that he along with persons residing in the nearby village had found the body of his father lying on the banks of the river. The P.W.1-Ravindra Chauhan dictated the tehrir to one Durgesh who belongs to their village. Durgesh reduced the tehrir to writing and thereafter read out its contents to P.W.1. P.W.1 put his signatures to the tehrir. The tehrir was submitted in the police station on 23.12.2012. P.W.1 identified his signatures on the tehrir and also proved the document which was thereafter marked as Exh. Ka-1. The F.I.R. was thereafter registered pursuant to the said tehrir.

II. F.I.R.

11. The chik F.I.R. was transcribed by P.W.6 Lal Ji Chaudhari (H.C.P.). P.W.6 has stated that he had taken down the chik F.I.R. in long hand on the basis of tehrir on 23.12.2012 at about 19:30 hours. The F.I.R. was thereafter lodged as Case Crime No.349 of 2012 under Section 302 and 201 IPC at P.S. Campierganj, Gorakhpur. P.W.6 identified his handwriting and signatures on the chik F.I.R and proved the document. The F.I.R. was thereafter marked as Exh. Ka-6.

12. The G.D. entry no.34 referencing the F.I.R. was made at 19:30 hours on 23.12.2012 by P.W.6 in his handwriting. The P.W.6 identified his handwriting and signatures and proved the G.D. entry. The G.D. entry no.34 was marked as Exh. Ka-7.

Inquest proceedings

13. On the basis of tehrir a police team reached the site near the river bank where the body of the deceased was lying. The inquest proceedings started on 23.12.2012 at 09:15 P.M. and concluded at 10:40 P.M. Inquest proceedings were conducted by P.W.7 Lakshman Rai who was working as Incharge Investigating Officer.

14. Sons of the deceased namely, Masendra-P.W.2; Pappu Chauhan-P.W.4 and Jagdish-P.W.3, brother of the deceased were witnesses to the inquest proceedings. The inquest report was proved by P.W.2-Masendra.

15. The cause of death in the opinion of Panchas as stated in the inquest report was injuries inflicted to person of the deceased.

16. The inquest report also states that various documentations pertaining to the body of the deceased including Photo Nash and Letter to the C.M.O. were completed. The report also records that the body was stitch wrapped at the site and sealed and made over to Constable-Ghanshyam Choubey and Constable Harish Chandra Pandey for taking it to the hospital for postmortem.

Recoveries

16. Motorcycle of the deceased was recovered from Solora crossing at the pointing of Ravindra Singh/P.W.1/son of the deceased. The recovery memo was drawn up on 05.01.2013 by Constable 590 Surendra Yadav, Constable 2719 Ajay Kumar, Constable 1833 Shiv Vachan Singh and Constable 57 Jagannath Yadav. P.W. 3 is a witness to the recovery memo who proved the said document. The recovery memo dated 05.01.2013 was marked as Exh. Ka-3.

17. A muffler and cap belonging to the deceased and a rope which was used in the offence was recovered at the pointing out of the accused-Rajendra Chaudhary. The muffler and cap were identified by the son of the deceased-Ravindra. Jagdish-P.W.3 stated that the recovered articles belonged to the deceased.

18. Pappu Chauhan-P.W-4 and Jagdish Chauhan-P.W.3 the son and brother of the deceased respectively were witnesses to the recovery proceedings. The recovery memo dated 18.01.2013 depicting the recovery of the muffler, cap and rope were proved by P.W.4 and marked as Exh. Ka-4.

Site Plans

A. Site Plan of place where the body was found

19. P.W.7/I.O. testified that after the lodgment of the F.I.R. he drew up the site plan of the place of discovery of the deceased′s body on 23.12.2012. P.W. 7 identified his handwriting and signatures on the site plan and proved the document which was then marked as Exh. Ka-8. The testimony of P.W. 7 does not disclose the person at whose pointing out the body was recovered and the site plan was drawn up.

B. Site plan of place where personal effects of deceased were recovered.

20. Site plan depicting the place from where the belongings of the deceased were recovered was drawn up by P.W.7 on 18.01.2013, at the pointing out of the accused Rajendra. The site plan was proved by P.W. 7 before the trial court and marked as Exh. Ka-10.

C. Site plan of place where incident occurred:

21. P.W.7/I.O. deposed that he visited the site of the incident with Gulabi Devi after she was arrested on 25.12.2012. P.W. 7 states that the site plan was drawn up at her pointing out. The site plan of the incident was drawn up by the I.O. in his handwriting on 25.12.2012 and the same bears his signatures. P.W.7/I.O. proved the Site Plan dated 25.12.2012 depicting the place of incident which was then marked as Exh. Ka-9.

Postmortem Report:-

22. Postmortem was conducted on 24.12.2012 at 03:00 PM by Dr. S.K. Yadav-P.W.5. The relevant findings of the postmortem report are as under:-

(a) Ante mortem injuries

"Contuse swelling present on left side of parietal region of size 8 cm x 6 cm. On cutting skin underneath brain and membranes blackening

Brain material liquified."

(b) Time since death: About 4 days

(c) Cause of death: Coma as a result of ante mortem injury

23. P.W.5/Dr. S.K. Yadav proved the post mortem report and its contents before the trial court which was marked as Exh. Ka-5.

PW 1-Ravindra Chauhan

24. Ravindra Chauhan, PW-1 is the first informant and the deceased's son. PW-1 is not an eye-witness. PW-1 while deposing before learned trial court primarily reiterated the contents of the FIR and stated that his father had illicit relations with Gulabi Devi. On 06.12.2012 his father left for village Chakdaha on his motorcycle UP 53 Y 1299 with some ornaments for Gulabi Devi. After reaching village Chakdaha his father told him that he would return on the next day. His uncle Jagdish Chauhan had seen his father with the three accused persons at about 05:30 P.M. on 16.12.2012 on the road from Campierganj to Nautanwa. His father did not return home on the next date and the mobile phone of the latter was also switched off. They went on a look out for his father. On reaching Chakdaha village they came to know that 23.12.2012, his father was done to death by Gulabi Devi, Rajendra and Shiv Prasad. The accused thereafter threw the body of the deceased near the Rapti river flowing through village Mathia. After receiving the aforesaid information from the villagers at Chakdaha PW-1 reached village Mathia and found his father's body lying on the banks of the river Rapti. According to PW-1 the body of the deceased was pulled out of the river and laid at another place with the help of the villagers. PW-1 thereafter submitted a tehrir at police station Campierganj.

PW-2-Masendra

25. Masendra, PW-2 is the second son of the deceased who is not an eyewitness. The testimony of PW-2 largely repeated the version of PW-1 namely, illicit relations of the deceased with Gulabi Devi, the deceased leaving the house to present ornaments to Gulabi Devi and his disappearance thereafter. According to him his father was last seen on 16.12.2012 at 03:30 P.M. by his uncle-Jagdish on the road from Campierganj to Nautanwa. On the information provided by the villagers they reached the site where his father's body was lying on the bank of Rapti river.

P.W.-3-Jagdish

26. Jagdish who is the brother of the deceased was introduced as PW-3. PW-3 claims to be witness of last seen. PW-3 while testifying before the learned trial court stated that on 16.12.2012 his brother Ramkishore left his village to meet Gulabi Devi at her house. On the same day while returning to his village from Campierganj he saw his brother with Gulabi Devi, Rajendra and Shiv Prasad Chaudhary at 3:30 pm on the road from Campierganj to Nautanwa. PW-3 thereafter deposed that on that day his brother was done to death by the accused persons at about 09:30 P.M. The information about the murder was given to him by the crowd which had gathered near the Peepal tree. However, no one dared to come forward out of fear of the accused persons. They found his brother′s body near the Rapti river and pulled out the same. The body was wrapped up in the ″saree″ of Gulabi Devi. Gulabi Devi wore the saree when she had visited their house. PW-3 categorically testified that he had not seen the incident. He came to know about the incident after two days. The body of the deceased was found 7 to 8 days thereafter.

P.W.4-Pappu Chauhan

27. Pappu Chauhan the son of the deceased deposed as PW-4. The articles which were recovered were produced before the court in front of P.W.4. The P.W.4 identified the cap, muffler and the rope which was produced in the court which was then marked as Material Exhs. 1, 2 and 3 respectively. Under cross examination the P.W.4 stated that the sealed packet was opened in front of him. The packet containing the material exhibits did not bear the seal or signatures of the court.

P.W.7-Lakshman Rai/Investigating Officer

28. The Investigating Officer-Lakshman Rai was introduced by the prosecution as P.W.7. The P.W.7 who had effected the recoveries from the accused person testified that the police remand of accused-Rajendra was granted on 18.01.2013. The police took the said accused into custody from the jail and brought him to recover the rope which was used in the commission of murder. The said rope as well as the muffler and cap of the deceased was recovered in the presence of P.W.3-Jagdish and P.W.4-Pappu.

29. The P.W.7 also testified that the statement of P.W.3-Jagdish was recorded on 26.01.2013. The Investigating Officer also proved the charge-sheet which was marked as Exh.Ka-11.

Submissions from the Bar:

Arguments on behalf of the appellants

30. Shri Kamal Krishna, learned Senior Counsel and Amicus Curiae, assisted by Shri Neelabh Srivastava, learned counsel have canvassed the following submissions in favour of the appellants as under:

I. There was inordinate delay in lodgement of the FIR. The FIR is an afterthought.

II. The case is based entirely on circumstantial evidence. However, the prosecution has not been able to establish the complete chain of incriminating evidences.

III. The P.W.1 and P.W.2 were not witnesses of last seen.

IV. The evidence of P.W.3 who claims to be a witness of last seen is unreliable.

V. There is a delay in recording the statement of P.W.3 which vitiates the same.

VI. Motive of the accused to commit the offence has not been established.

VI. Medical evidence contradicts the prosecution case.

VII. Recovery of the articles is contrary to the provisions of Section 27 of the Indian Evidence Act and cannot be pressed into service to implicate the accused persons.

VIII. The site plan of the incident is unreliable.

IX. The material incriminating circumstances were not put to the accused under Section 313 Cr.P.C.

X. The prosecution has failed to prove its case beyond reasonable doubt. In fact it is a case of no evidence.

XI. The learned trial court erred in law by finding the appellants guilty and convicting them against the weight of evidence.

Arguments on behalf of the State:

31. Shri Paritosh Kumar Malviya, learned A.G.A.-I and Shri Suchit Tandon, learned A.G.A. have vehemently opposed the submissions of learned Senior Counsel and have made the following submissions made the following submissions:

I. The delay in lodging the FIR is not inordinate so as to impact the credibility of the prosecution case.

II. The chain of incriminating circumstances against the accused has been fully established.

III. The prosecution has proved all the incriminating links in the chain of circumstances against the accused appellants.

IV. The motive to commit the offence against the accused persons has been established.

V. The evidence of last seen is reliable.

VI. The incriminating articles were recovered at the pointing out of the accused persons.

VII. The prosecution has established the case against the accused-appellants beyond reasonable doubt.

VIII. The judgement of the trial court has correctly appraised the evidences and is liable to be upheld.

Appraisal of Evidence:

I. F.I.R.: Delay

32. The deceased disappeared on 16.12.2012. The family members of the deceased including PW 1, 2, 3 & 4 did not lodge any missing report in regard to the aforesaid disappearance. The testimonies of the said family members before the learned trial court also do not depict any urgent efforts to look out and search for the deceased. PW 1, PW 2, PW 3 and PW 4 also failed to inform the police immediately after the disappearance of the latter. The F.I.R. was lodged on 23.12.2012 after the body of the deceased was discovered near the banks of the Rapti river. The PW-3 as well as the family members testified that they were aware that he was last seen with the accused persons on 16.12.2012. However, F.I.R. was not lodged on a timely basis despite the fact that nothing was heard from the deceased for almost a week.

33. The delay in the lodgement of the F.I.R. could not be explained by the prosecution before the learned trial court. The F.I.R. was got registered as an afterthought and the said delay in lodging the same is fatal to the prosecution case.

II Chain of incriminating circumstances:

(i) Last Seen.

34. This is a case of circumstantial evidence. The first incriminating circumstance brought out by the prosecution is that the deceased was last seen in the presence of the accused persons at about 3:30 PM on 16.12.2012 by P.W.3. The PW-3 has also testified to that effect before the learned trial court. The post mortem report which was drawn up on 24.12.2012 opines that the death had occurred 4 days prior in time. On the basis of the post mortem report, it is evident that the deceased was alive till 20.12.2012. There is real possibility of deceased meeting other people in the intervening period from 16.12.2012 to 20.12.2012. Even if the prosecution case is taken on its face value the accused persons were not seen with the deceased at a time proximate to the death of the latter.

35. Furthermore, the doctor PW-5 under cross-examination has stated that there is possibility that the deceased sustained the fatal injury in a fall. PW-3 therefore cannot be called a witness of last seen. The first link in the chain of incriminating circumstances is not established.

II Chain of incriminating circumstances:

(ii) Credibility of P.W.3

36. The credibility of statement of P.W.3 insofar as he claims to be a witness of last seen itself is highly doubtful. The P.W.3 has stated that he saw the deceased on 16.12.2020 at about 3:30 P.M. The deceased did not return home on the night of 16.12.2012, and in fact had disappeared thereafter. P.W.3 did not alert the police authorities or inform his family members about the event of last seen for a period of almost one week. Absence of pressing efforts by PW 3 to search for his missing brother or lodge a missing report or tender a complaint to the police authorities is evident from evidence in the record. The aforesaid conduct of P.W.3 is highly suspicious and dents his credibility. The possibility of P.W.3 of incriminating the accused persons as an afterthought cannot be ruled out. P.W. 3 is an unreliable witness. The second link in the chain of incriminating circumstances is thus broken irreparably.

II. Chain of incriminating circumstances:

(iii) Delay in recording statement of P.W.3

37. There is another aspect which impeaches the credibility of the prosecution case. PW-3 is the star witness of the prosecution. He was also a witness to the recovery and inquest proceedings. The inquest as well as recovery proceedings were drawn up on 23.12.2012. However, the statement of PW-3 was recorded by PW-7 on 26.01.2013. 38. The aforesaid delay in recording of the statement was not satisfactorily explained by PW-7 in his testimony. In fact, there was no cause for delay in recording the said statement of PW-7. The said delay renders the prosecution case suspect upon cumulative consideration of the facts, circumstances and evidences of this case.

39. The conclusions made above are supported with good authority in point. The Supreme Court in **Shahid Khan Vs. State of Rajasthan ((2016) 4 SCC 96)** while considering the effect of unexplained delay in recording the statement of a material witness by the Investigating Officer has held as under:

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."

II. Chain of incriminating circumstances:

(iv) Motive

40. The PW 1, PW 2 and PW 3 in their testimonies ascribe the illicit relationship of the appellant Gulabi Devi and the deceased as the motive for the offence. An illicit relationship of this nature is bound to create strains in any family equations. However, in the instant case it appears that the family was accepting the illicit relationship with open arms. Furthermore, no animosity between Gulabi Devi and the deceased has been brought out in the evidence. In fact it appears from the said evidence that Gulabi Devi and the deceased were having a warm and cordial relationship. There was no cause for Gulabi Devi to murder the deceased. The motive of illicit relationship between Gulabi Devi and the deceased ascribed by prosecution witnesses is not liable to believed.

41. It is equally noteworthy that there is no evidence pertaining to the illicit relationship of Gulabi Devi with the other co-accused persons or for that matter any animosity between the deceased and the other two accused persons namely Shiv Prasad Chaudhary and Rajendra Chaudhary. Save the bald statements by PW 1, PW 2 and PW 3 which appear to be completely unreliable, there is no evidence to establish illicit relations of Gulabi Devi with other accused. The prosecution has failed to prove the motive for the accused appellants to commit the offence.

II Chain of incriminating circumstances:

(v.) Recoveries

42. The other link in the chain of incriminating circumstances as claimed by the prosecution is the recovery of muffler and cap which were the personal effects of the deceased. The recovery of the rope is of no avail since the death was not caused by strangulation.

43. The recovery was made from bushes in an open place. The place of recovery was accessible to one and all. Moreover, the recovery was made on 18.01.2013, which is almost one month after the deceased had disappeared. In these circumstances, lack of independent witnesses in the recovery memo makes it unsafe to rely on the said documents.

44. As seen earlier the said recoveries were made at the pointing out of accused Rajendra. The disclosure statement of the said Rajendra Chaudhary was not recorded prior to effecting the said recoveries. Absence of the disclosure statements of Rajendra and failure to observe the imperative procedural prerequisites of Section 27 vitiates the recoveries. The aforesaid conclusion will be fortified by authorities holding the field.

45. The imperative mandate of recording discovery statement of an accused prior to the recovery was emphasized by the Supreme Court in **Rajesh and Anr. Vs. The State of Madhya Pradesh**:

"22. Section 26 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27, thereafter, is in the nature of an exception to Section 26 of the Evidence Act. It states that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Therefore, it is essential under Section 27 of the Evidence Act that the

person concerned must be 'accused of an offence' and being in the 'custody of a police officer', he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him. In effect, both aspects, viz, being in 'the custody of a police officer' and being 'accused of an offence', are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act.

23. In this regard, reference may be made to Bodhraj alias Bodha and others vs. State of Jammu & Kashmir, (2002) 8 SCC 45 , wherein this Court had observed that the requirement of 'police custody' is productive of extremely anomalous results and may lead to the exclusion of valuable evidence in cases where a person, after committing a crime meets a police officer and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him, and he is subsequently taken into custody and becomes an 'accused'. This Court pointed out that this information, which would otherwise be admissible, becomes inadmissible under Section 26 of the Evidence Act as it did not come from a person in the 'custody of a police officer' or rather, came from a person not in the 'custody of a police officer'. In other words, the exact information given by the accused 'while in custody', which led to recovery of the articles can be proved. It was noted that this doctrine is founded on the principle that if any fact is discovered as a search was made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

24. Thereafter, in State of Karnataka vs. David Rozario and another, (2002) 7 SCC 728 , this Court held that information which is otherwise admissible under Section 27 of the Evidence Act would become inadmissible, if it did not come from a person in the 'custody of a police officer' or came from a person 'not in the custody of a police officer'. It was further held that what is admissible is the information and not the opinion formed on it by the police officer and, in other words, the exact information given by the accused while in 'custody' which led to recovery of the articles has to be proved. The two essential requirements, per this Court, are that: (i) the person giving the information must be 'accused of an offence'; and (ii) he must be in 'police custody'.

25. Again, in Ashish Jain vs. Makrand Singh and others, (2019) 3 SCC 770 , this Court held that once a confessional statement of the accused is found, on facts, to be involuntary, it would be hit by Article 20(3) of the Constitution of India, rendering such a confession inadmissible. It was further noted that there is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. This Court further cautioned that if such a statement is made under undue pressure and compulsion from the Investigating Officer, the evidentiary value of such a statement leading to the recovery is nullified.

26. More recently, in Boby vs. State of Kerala, Criminal Appeal No. 1439 of 2009, decided on 12.01.2023, this Court referred to the decision of the Privy Council in Pulukuri Kotayya vs. King Emperor, AIR 1947 Privy Council 67, wherein Section 27 of the Evidence Act had been considered at length and it was noted that Section 27 provides an exception to the prohibition imposed by the preceding provisions and enables certain statements made by an 'accused' in 'police custody' to be proved. It was observed that the condition necessary to bring Section 27 into operation is that the discovery of a fact in consequence of information received from a person 'accused of any offence' in the 'custody of a police officer' must be deposed to, and thereupon so much of the information, as relates distinctly to the fact thereby discovered, may be proved. It was observed that normally, Section 27 is brought into operation when a person in 'police custody' produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime, of which the informant is accused. However, the Privy Council concluded that the exception to Section 26 added by Section 27 should not be held to nullify the substance of the provision and it would be fallacious to treat the 'fact discovered' as equivalent to the object produced; the 'fact discovered' embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. By way of example, it was elucidated that information supplied by a person in custody that "I will produce a knife concealed in the roof

of my house" does not lead to the discovery of a knife; as knives were discovered many years ago, but if it leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. Noting this principle, this Court observed that Section 27 of the Evidence Act requires that the 'fact discovered' embraces the place from which the object is produced and the knowledge of the 'accused' as to this and the information given must relate distinctly to the said fact."

46. The mandatory requirement of the discovery statement under Section 27 of the Evidence Act was reiterated in **Ramanand v. State of U.P.** held as follows:

"56. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2 Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness, namely, Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth."

47. The recoveries made in the teeth of law laid down in **Rajesh(supra)** and **Ramanand(supra)** and do not incriminate the appellants nor link them with the offence.

V. Site Plan:

48. While drawing up the site plan of the place of incident the discovery statement of the accused Gulabi Devi pertaining to the place of occurrence at the site was not recorded. In absence of the discovery statement the site plan will not come to the aid of the prosecution. The failure of the prosecution to record the discovery statement of Gulabi Devi while drawing up the site plan of the place of incident renders the same inadmissible in law being in the teeth of the law laid by the Supreme Court in **Rajesh (supra)** and **Ramanand(supra)**. In this wake the place of incident cannot be established by the prosecution.

Section 313 Cr.P.C.

49. In the proceedings under Section 313 Cr.P.C., vague and general references were made to the prosecution evidence. Attention of the accused persons were called to incriminating circumstances by simply referencing the fact that P.W.1 to P.W.7 had given their testimonies and they had heard the same.

50. Admittedly, in proceedings under Section 313 Cr.P.C. attention of the accused persons was not drawn to specific incriminating evidences with material particulars. The failure of the prosecution to faithfully comply with the procedure of Section 313 Cr.P.C. led to violation of principles of natural justice which disabled the accused from effectively tendering their defence. The proceedings under Section 313 Cr.P.C. are vitiated.

51. The scope of Section 313 Cr.P.C. and adverse impact of non-compliance thereof have been stated in authorities of long standing.

52. The Supreme Court in **Nar Singh Vs. State of Haryana** examined significance and propounded the scope of Section 313 Cr.P.C. by holding:-

"10. There are two kinds of examination under Section 313 Cr.P.C. The first under Section 313 (1) (a) Cr.P.C. relates to any stage of the inquiry or trial; while the second under Section 313 (1) (b) Cr.P.C. takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. In Usha K. Pillai v. Raj K. Srinivas & Ors., (1993) 3 SCC 208 , this Court held that the Court is empowered by Section 313 (1) clause (a) to question the accused at any stage of the inquiry or trial; while Section 313(1) clause (b) obligates the Court to question the accused before he enters his defence on any circumstance appearing in prosecution evidence against him.

11. The object of Section 313 (1)(b) Cr.P.C. is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of accused under Section 313 (1)(b) Cr.P.C. is not a mere formality. Section 313 Cr.P.C. prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and

circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Section 313 Cr.P.C. lies in that, it imposes a duty on the Court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point.

16. Undoubtedly, the importance of a statement under Section 313 Cr.P.C., insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 Cr.P.C. statement is taken at the earliest stage, the Court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 Cr.P.C. statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 Cr.P.C., failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as noncompliance of mandatory provisions of Section 313 Cr.P.C., it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the Court, the same has to be corrected or rectified in the appeal.

20. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of Section 313 Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 Cr.P.C., it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused."

53. A similar view was taken in **Sujit Biswas Vs. State of Assam**:-

"12. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.

14. Whether the abscondance of an accused can be taken as a circumstance against him has been considered by this Court in Bipin Kumar Mondal v. State of West Bengal, AIR 2010 SC 3638 , wherein the Court observed: "27. In Matru alias Girish Chandra v. State of U.P., AIR 1971 SC 1050 , this Court repelled the submissions made by the State that as after commission of the offence the

accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under: "19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.' 28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience." While deciding the said case, a large number of earlier judgments were also taken into consideration by the Court, including Matru (supra); and State of M.P. thr. CBI & Ors. v. Paltan Mallah & Ors., AIR 2005 SC 733."

54. The Supreme Court in **State of U.P. Vs. Mohd Iqram & Anr.** has held as under:-

"12. So far as the issue of rape of the deceased prior to her murder by Suresh Kumar, accused, her ex-husband, is concerned, the trial court has recorded findings of fact on this aspect in the negative. Undoubtedly, post-mortem report contains such observations, but Dr. G.R. Sharma (PW.1) has not made any such reference either in his examination-in-chief or cross-examination. Nor this aspect had ever been put to either of the three accused in their statements recorded under Section 313 of Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.'). We fail to understand as under what circumstances it was permissible for the High Court to make such observations about the post-mortem report. Accused Suresh Kumar has been acquitted by the trial court. The State, for reasons best known to it, did not prefer any appeal against the said order of acquittal. We are of the considered opinion that it was not permissible for the High Court to castigate the accused Suresh Kumar with such observations holding him guilty of committing rape and subsequently murder of his ex-wife Rashmi. Undoubtedly, the post-mortem report had been proved but that does not mean that each and every content thereof is stood proved or can be held to be admissible. Such observations cannot be termed to be a substantive piece of evidence. Dr. G.R. Sharma (PW.1) did not even whisper about the same in his statement made in the court which is the only substantive piece of evidence in law. The court cannot place reliance on incriminating material against the accused, unless it is put to him during his examination under Section 313 Cr.P.C. Thus, the High Court committed an error by taking into consideration the inadmissible evidence for the purpose of deciding the criminal appeals and holding the person guilty who had already been acquitted by the trial court. The post-mortem report had been examined at the time of framing of the charges. The trial court did not frame any charge under Section 376 IPC or Section 376 read with Section 511 IPC. More so, no witness had ever mentioned anything in this respect. Thus, it is beyond any stretch of imagination of any person, how such observations could be made by the High Court."

55. The mechanical conduct of proceedings under Section 313 Cr.P.C. in the instant case is in the teeth of the law laid down in preceding case laws. In the facts and circumstances of this case the non compliance of Section 313 Cr.P.C. in the spirit of the precedents discussed

earlier vitiates the impugned judgement. Considering the long period which has elapsed since the commission of the offence and in view of other infirmities in the prosecution, it will not be in the interest of justice to remand the matter for fresh initiation of proceedings under Section 313 Cr.P.C.

Judgment of trial court

56. Learned trial court erred in law by placing reliance on the testimony of PW 3 and treating him as a witness of last seen. The recoveries of personal effects of the deceased were in the teeth of Section 27 of the Evidence Act. However, the learned trial court placed reliance on the same to return home a finding of guilt against the appellants. The learned trial court erred in law by upholding the proceedings under Section 313 CrPC which was conducted in a mechanical manner and were vitiated.

57. The learned trial court neglected to consider the delay in lodgment of the FIR and also failure of the prosecution to prove the motive of the appellants to commit the offence.

58. The learned Court fell into error by returning home finding of guilt even though the links in the chain of incriminating circumstances could not be established and the hypothesis consistent with the innocence of accused is very strong.

59. The judgment rendered by the learned trial court is perverse and contrary to the evidences in the record. The impugned order dated 18.05.2022 and 20.05.2022 in Sessions Trial No.201 of 2013 (**State Vs. Gulabi Devi and others**) is liable to be set aside and is set aside.

Conclusions:

60. In the wake of the preceding discussion this Court finds that the prosecution could not establish the chain of incriminating circumstances against the accused appellants. The prosecution has failed to prove the charges under Sections 302 and 201 IPC against the appellants beyond reasonable doubt. The accused appellants are acquitted of the charges which were laid against them by the trial court and which are the subject matter of this appeal.

61. The Criminal Appeal is **allowed.**

62. The appellants-Gulabi Devi, Rajendra Chaudhari and Shivprasad Chaudhari shall be forthwith released from prison and set forth at liberty unless required in any other criminal case.

63. The Court would also like to express its gratitude to Shri Kamal Krishna, learned Senior Counsel for assisting the Court as Amicus Curiae.

64. A copy of this judgment translated in Hindi to be served upon the appellants by the Secretary, District Legal Services Authority.

(2026) 7 ILRA 2099
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.07.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 7090 of 2023

Gudia Goswami & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(i) Matter pertains to the validity of the notification dated 19.04.2023 whereby the remaining area of Gram Panchayat Karua was merged with Gram Panchayat Kumhraura after a part thereof had been included within the extended territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda pursuant to the notification dated 21.10.2022;
(ii) Whether the term "population" for the purposes of s.11-F of the Act, 1947 was to be determined on the basis of the actual population existing on the date of notification or the population reflected in the last preceding census, as defined under s.2(l) of the Act, 1947; and
(iii) Whether the remaining area of Gram Panchayat Karua fulfilled the requirement necessary for retaining its identity as a Gram Panchayat.

Headnotes

U.P. Panchayat Raj Act, 1947 – ss.2(l), 8, 11-F, 12 – U.P. Panchayati Raj Rules, 1947 – Rule 3-AAA(2) – U.P. Municipalities Act, 1916 – s.3 – Gram Panchayat Karua constituted under s.12 of the U.P. Panchayat Raj Act, 1947 – State Government issued notification dated 21.10.2022 under s.3 of the U.P. Municipalities Act, 1916, whereby a part of Gram Panchayat Karua was included within the territorial jurisdiction of Nagar Palika Parishad, Colonelganj, resulting in reduction of its area and population – Thereafter, notification dated 19.04.2023 issued under ss.3 and 11-F of the Act, 1947, whereby remaining area of Gram Panchayat Karua was merged with Gram Panchayat Kumhraura on the ground that Gram Panchayat Karua ceased to fulfil the statutory requirements for its continued existence as a Gram Panchayat – Petitioner submitted representation contending that remaining population of Gram Panchayat Karua was 1,719, out of which 1,104 were voters, satisfying minimum population requirement of 1,000 prescribed under s.11-F – Petitioners challenged notification dated 19.04.2023 de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhraura on the ground that the remaining population did not fall below 1,000 – In affidavit filed by the Sub-Divisional Magistrate before the High Court, it was stated that de-notification exercise was undertaken on the basis of population figures reflected in Census 2011, according to which population of remaining area of Gram Panchayat Karua was 785, below 1,000

Held:

A. The term "Population" referred to in Section 11-F of the Act, 1947 has to be interpreted in the light of its definition contained in Section 2(l) of the Act, 1947, wherein it is defined to mean the population as ascertained in the last preceding census, the relevant figures whereof have been published – It is not in dispute that the last census was held in the year 2011 – Accordingly, the term "Population", wherever it finds mention in the Act of 1947, has to be understood in terms of its statutory definition, meaning thereby that the population as ascertained in the last census i.e. Census 2011 has to be taken into consideration for any purpose required under the Act of 1947 – According to the said census, the population of the remaining area

of Gram Panchayat Karua is 785, which is far below the required population of 1,000, a precondition for maintaining its identity as a Gram Panchayat under Section 11-F of the Act, 1947 – High Court, in the exercise of its powers under Article 226 of the Constitution, cannot interfere so as to interpret a statutory provision otherwise than what has been expressly provided in the statute itself

B. A bare perusal of Section 8 of the Act, 1947 would reveal that upon the inclusion of an area of a Gram Panchayat within a city, municipality, cantonment, notified area or Nagar Panchayat, the jurisdiction of the Gram Panchayat stands reduced by that part – However, it does not follow that the reduced area of the Gram Panchayat would necessarily retain its separate identity as a Gram Panchayat if it otherwise does not fulfil the statutory requirements prescribed for a Gram Panchayat – Section 8 of the Act, 1947 has to be read in consonance and harmony with the other provisions of the Act, 1947.

C. The function of the State Government in issuing a notification under Section 3 of the Act, 1947 establishing a Gram Sabha and in issuing a notification under Section 11-F of the Act, 1947 declaring any area comprising a village or group of villages having, so far as practicable, a population of 1,000 to be a Panchayat under the Act is neither executive nor administrative; rather, it is legislative in nature – No adjudicatory duty is cast upon the Government in the discharge of these statutory functions of issuance of notification – The only question to be examined by the Government while issuing such a notification is whether the conditions prescribed under the statutory provisions have been fulfilled – Issuance of notifications under Sections 3 and 11-F of the Act, 1947 is an exercise undertaken by the State Government in terms of the statutory provisions contained in the Act, 1947 and the issuance of such notifications is an act of conditional legislation.

D. A notification issued as an act of conditional legislation can be challenged only if it exceeds the statutory mandate, lacks the requisite precedent conditions or violates constitutional rights – Petitioners failed to point out any violation of the aforesaid mandates so as to render the notification dated 19.04.2023 illegal or bad in law . [Paras 23-30, 42-48]

Writ petition dismissed. (E-5)

Case Law Cited

Baldev Singh and others v. State of Himachal Pradesh and others, (1987) 2 SCC 510;
Sujit and others v. State of U.P. and others, Writ-C No. 26793 of 2022, decided on 27.09.2022;
State of U.P. v. Pradhan Sangh Kshetra Samiti, 1995 Supp (2) SCC 305;
Kishorchandra Chhanganal Rathod v. Union of India and others, (2024) 13 SCC 237;
Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur, (1980) 2 SCC 295;
State of Punjab v. Tehal Singh and Others, (2002) 2 SCC 7

List of Acts

U.P. Panchayat Raj Act, 1947;
U.P. Panchayati Raj Rules, 1947;
U.P. Municipalities Act, 1916

List of Keywords

Gram Panchayat; De-notification of Gram Panchayat; Panchayat Area; Population; Census 2011; Section 2(l); Section 8; Section 11-F; U.P. Panchayat Raj Act, 1947; Inclusion of Gram Panchayat area in Municipality; Merger of remaining area; Minimum population of 1,000; Gram Panchayat identity; Conditional legislation; Legislative power; Notification under Sections 3 and 11-F.

Case Arising From

Challenge to the notification dated 19.04.2023 issued under Section 3 read with Section 11-F of the U.P. Panchayat Raj Act, 1947, whereby Gram Panchayat Karua was de-notified and its remaining area was merged and included in Gram Panchayat Kumhraura.

Appearances for Parties

Advs. for the Petitioner (s) : Sharad Pathak, Piyush Pathak
Advs. for the Respondent(s): C.S.C., Pankaj Gupta

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

1. Heard Shri Sharad Pathak, learned Senior Counsel assisted by Shri Piyush Pathak, learned counsel for the petitioners and Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State-respondent and Shri Pankaj Gupta, learned counsel for the respondent nos.10 and 11.

2. The instant writ petition has been filed by the petitioners seeking the following reliefs :

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned notification dated 19.04.2023 so far as it relates to the de-notification of Village Panchayat Karua as mentioned at Item No.268 of the Notification dated 19.04.2023, which is annexed as Annexure No.1 to the writ petition.

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the report dated 11.04.2023 submitted by opposite party nos.7 to 9 recommending for de-notification of Village Panchayat Karua, Tehsil Colonelganj, District Gonda which is annexed as Annexure No.2 to this writ petition.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to restore the status of Village Panchayat Karua as was existing prior to issuance of notification dated 19.04.2023 and further the time falling in between may be excluded from the existing term of 5 years of petitioner no.1 as well as other related members of Gram Sabha Karua."

3. Brief facts of the present case as canvassed by the learned counsel for the petitioners are that erstwhile Gram Panchayat Karua Development Block Colonelganj, District Gonda was a Gram Panchayat constituted under Section 12 of the Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as "the Act, 1947"). In the last election of the Gram Panchayat held in the year 2021-22, petitioner No.1 was elected as Pradhan. The tenure of the Gram Panchayat was five years, which has come to an end on 01.05.2026.

4. In the meantime, the State Government issued a notification dated 21.10.2022 under Section 3 of the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as the Act, 1916), whereby a certain area of Gram Panchayat Karua was included within the territorial jurisdiction of Nagar Palika Parishad, Colonelganj, District Gonda. As a result of the notification dated 21.10.2022, the area of Gram Panchayat Karua was reduced, which consequently led to a reduction in its population. Thereafter, by another notification dated 19.04.2023 issued under Section 3 along with Section 11-F of the Act, 1947, the remaining area of Gram Panchayat Karua was merged and included in Gram Panchayat Kumhraura falling within Development Block Colonelganj, District Gonda.

5. A perusal of the reasons recorded against Entry No.268 of the notification dated 19.04.2023 indicates that a part of the population and area of Gram Panchayat Karua had been merged into Nagar Palika Parishad, Colonelganj, District Gonda pursuant to Notification No.1825/नौ-6-2022-12सीवी/2022 dated 27.09.2022. As a consequence, Gram Panchayat Karua ceased to fulfil the statutory requirements for its continued existence as a Gram Panchayat. Accordingly, the remaining area of Gram Panchayat Karua was merged with Gram Panchayat Kumhraura.

6. Assailing the notification dated 19.04.2023, learned counsel for the petitioners submits that the remaining area of Gram Panchayat Karua, which has been included/merged with Village Panchayat Kumhraura is the result of an illegal and arbitrary exercise of power. It is submitted that the population of Gram Panchayat Karua even after the exclusion of the area included in Nagar Palika Parishad, Colonelganj, District Gonda pursuant to the notification dated 27.09.2022 is 1,719 out of which 1,104 are voters. This satisfies the minimum population requirement of 1,000 prescribed under Section 11-F of the Act, 1947.

7. Learned counsel for the petitioners has submitted that an incorrect report dated 13.02.2023 was forwarded by respondent no.5, District Panchayat Raj Officer, Gonda to respondent no.4, Chief Development Officer, Gonda on the basis of which the notification dated 19.04.2023 was issued. It has further been submitted that relying upon the said incorrect report dated 13.02.2023, respondent no.4, Chief Development Officer, Gonda addressed a letter dated 25.02.2023 to the Assistant Development Officer (Panchayat), Development Block, Colonelganj directing him to take appropriate steps for including the remaining area of Gram Panchayat Karua in an adjoining Gram Panchayat.

8. It has been alleged that upon learning of the aforesaid development, petitioner no.1, being Gram Pradhan of Gram Panchayat Karua, submitted a representation dated 01.03.2023 to respondent no. 4, Chief Development Officer, Gonda. Acting upon the said representation, respondent no.4 issued a letter dated 03.03.2023 directing respondent no.6, Sub-Divisional Magistrate, Tehsil Colonelganj, District Gonda to inquire into the matter and submit the correct factual report. Thereafter, another letter dated 06.03.2023 was sent by Chief Development Officer, Gonda to Sub-Divisional Magistrate, Tehsil Colonelganj, District Gonda. However, no response was received. Consequently, District Magistrate, Gonda again addressed a letter dated 28.03.2023 to Sub-Divisional Magistrate, Tehsil Colonelganj, District Gonda directing him to submit the correct report. In the meantime, Block Development Officer, Colonelganj, District Gonda, vide his letter dated 29.03.2023 forwarded a report regarding the Gram Panchayats affected by the extension of the territorial limits of Nagar Palika Parishad, Colonelganj, Gonda, wherein the remaining population of Gram Panchayat Karua was shown as 785 as per 2011 Census.

9. Feeling aggrieved, petitioner no.1 submitted a detail representation dated 31.03.2023 to Chief Development Officer, Gonda, wherein it was stated that even after the extension of the territorial limits of Nagar Palika Parishad, Colonelganj, Gonda, 1,104 voters continued to reside in the remaining area of Gram Panchayat Karua. It was further asserted that the report indicating the existing population of the remaining area of Gram Panchayat Karua as 785 was factually incorrect.

10. Upon the objections raised by the petitioners, respondent no.4, Chief Development Officer, Gonda issued a letter dated 31.03.2023 constituting a three-member Committee headed by District Development Officer to conduct spot and documentary verification and submit its report so that the objection raised by petitioner no.1 seeking cancellation of the earlier proposal for the merger of Gram Panchayat Karua could be decided finally.

11. It has been submitted that despite of the constitution of the three-member Committee vide letter dated 31.03.2023, no further steps were taken to decide the objections filed by petitioner no.1.

Consequently, petitioner no.1 submitted another representation dated 12.04.2023. Thereafter, Writ-C No.3297 of 2023 was filed before this Court seeking, inter alia, quashing of the report, if any, submitted by the district authorities for the de-notification of Gram Panchayat Karua and a direction to complete the inquiry by the three-member Committee as directed by Chief Development Officer, Gonda vide letter dated 31.03.2023. The said writ petition was disposed of by order dated 25.04.2023 directing that the inquiry be completed unless there existed any legal impediment. For the said purpose, liberty was also granted to petitioner no.1 to approach Chief Development Officer, Gonda.

12. It has been submitted that petitioner no.1 served a copy of the order dated 25.04.2023 upon the Chief Development Officer, Gonda. However, nothing was communicated to the petitioner no.1. Subsequently, petitioner no.1 came to know that the notification dated 19.04.2023 had already been issued de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhraura. Thereafter, the petitioners submitted a detail representation dated 25.05.2023 to respondent no.2, Director, Panchayati Raj, Lucknow under Rule 3-AAA(2) of U.P. Panchayati Raj Rules, 1947 (hereinafter referred to as the Rules, 1947) read with Section 8 of the Act, 1947 through registered post raising all objections.

13. The challenge raised by the petitioners in the present writ petition to the notification dated 19.04.2023, whereby Gram Panchayat Karua was de-notified and merged with Gram Panchayat Kumhraura is based on the contention that the remaining population of Gram Panchayat Karua even after a part of its area was merged into Nagar Palika Parishad, Colonelganj, District Gonda pursuant to the notification dated 21.10.2022 issued under Section 3 of the Act, 1916 did not fall below the minimum population of 1,000. According to the petitioners, this factual assertion has remained unrebutted. It is, therefore, contended that the entire exercise culminating in the issuance of notification dated 19.04.2023 de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhraura is illegal, arbitrary and founded on incorrect facts.

14. This Court while entertaining the present writ petition passed an order dated 18.02.2025, which reads as under :

"1. Heard Shri Sharad Pathak, learned Counsel for the petitioners, Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State.

2. The contention of petitioners' counsel inter alia is that there are 293 petitioners in the writ petition and the details of their family members are mentioned in a chart annexed as Annexure No.3 to the writ petition and the total of the said members comes to 1719, therefore, to say that because in the Census of 2011, the population of the village at least the area which remains after merger of the other part with Nagar Palika Colonelganj was less than 1000, therefore, by the notification dated 19.04.2023, the said remaining part has been merged with another Gaon Sabha, appears to be apparently unreasonable.

3. We grant one opportunity to the Collector, District-Gonda to ascertain the aforesaid facts as to whether all the petitioners are residents of Gaon Sabha Karua, Tehsil Colonelganj or not, if so, whether the details of the family members mentioned in Annexure No.3 to the writ petition i.e. their number is correct or not. As if it is found to be correct then even if the case of the opposite parties is that these are the only residents of the said remaining part of the Gaon Sabha

then also it will qualify to be recognized as a separate Gaon Sabha. Although, it is the case of the petitioner that there are other residents also. It is also asserted that the total voters for this remaining part are about 1104 from the document of the opposite parties annexed as Annexure No.13 (page No.205). In this regard, learned Counsel for the petitioners has placed reliance upon Section 8 of the U.P. Panchayati Raj Act, 1947 and Rule 3AAA(2) of the U.P. Panchayat Raj Rules, further, to submit even if the factual position is not found to be as mentioned above, even then the remaining part of the Gaon Sabha was entitled to continue as Gaon Sabha Karua as according to him, remaining part of the Gaon Sabha cannot be merged in another Gaon Sabha.

4. List/put up this case on 20.03.2025 amongst top ten cases.

5. Shri Rajesh Tiwari, learned Additional Chief Standing Counsel shall communicate our order to all the opposite parties and ensure its compliance. Affidavit of compliance to be filed by the next date of listing.″

`15. In terms of the order dated 18.02.2025, an affidavit of compliance was filed and sworn by Sub-Divisional Magistrate, Colonelganj, Gonda, wherein it has been stated that out of 1,719 persons including the petitioners only 1,193 members submitted their Aadhaar cards and Pariwar Registers. The inquiry report dated 14.04.2025 on the basis of which the said affidavit has been filed and which has also been annexed thereto indicates that the claim of the petitioners is based on the actual population existing as on the date when the de-notification order dated 19.04.2023 was passed. However, the de-notification exercise was undertaken on the basis of the population figures reflected in the 2011 Census, which indicate that the population of the remaining area of Gram Panchayat Karua was 785 below 1,000. Accordingly, Gram Panchayat Karua was de-notified.

16. The aforesaid facts as narrated by the petitioners hereinabove in their pleadings available on the record of the writ petition suggest that the actual population of Gram Panchayat Karua at the time of the de-notification dated 19.04.2023 was more than 1,000. This factual aspect could not be controverted by the respondents in their counter affidavit or the subsequent affidavits filed by them. Rather, the stand taken by the respondents is that the exercise of de-notification was undertaken on the basis of the population figures reflected in the 2011 Census, according to which the population of the remaining area of Gram Panchayat Karua had fallen below 1,000 after the issuance of the notification dated 21.10.2022 under Section 3 of the Act, 1916, whereby the territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda were extended resulting in the inclusion of a part of Gram Panchayat Karua within the said Nagar Palika Parishad.

17. The issue that falls for consideration before this Court is whether the notification dated 19.04.2023, whereby Gram Panchayat Karua was de-notified based on the population figures reflected in 2011 Census is valid, particularly when no exercise was undertaken to determine the current population of Gram Panchayat Karua while exercising powers under Sections 3 and 11-F of the Act, 1947 for de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhraura.

18. The statutory scheme under the Act, 1947 provides for the establishment of a Gram Sabha by issuing a notification under Section 3 of the Act, 1947 in the Official Gazette in respect of a village or a group of villages.

19. Section 11-F of the Act, 1947 provides that the State Government may, by notification, declare any area comprising a village or a group of villages to be a Panchayat area, having, so far as practicable, a population of 1,000.

20. Section 3 of the Act of 1947 reads as under :

*"3. **Gram Sabha** - The State Government shall, by notification in the official Gazette, establish a Gram Sabha for a village or group of villages by such name as may be specified; Provided that where a Gram Sabha is established for a group of villages, the name of the village having the largest population shall be specified as the name of the Gram Sabha."*

21. Section 11-F of the Act of 1947 reads as under :

*"**11-F-Declaration of Panchayat Area-** The State Government may, by notification, declare any area comprising a village or group of villages, having, so far as practicable, a population of one thousand, to be a Panchayat area for the purposes of this Act by such name as may be specified:*

Provided that for the purposes of declaration of a Panchayat area no revenue village or any hamlet thereof shall be divided:

[Provided further that in the hill districts of Nainital, Almora, Pithoragarh, Tehri, Pauri, Dehradun, Chamoli or Uttarkashi, the State Government may declare the area of a Gaon Sabha established under Section 3 of this Act as it stood before the commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994, to be a Panchayat area though such area may have a population of less than one thousand.]

(2) The State Government may, on the request of the Gram Panchayat concerned or otherwise and after previous publication of the proposal, by notification at any time-

(a) modify the area of any Panchayat area by including therein or excluding therefrom any area of a village or group of villages;

(b) alter the name of the Panchayat area; or

(c) declare that any area shall cease to be a Panchayat area."

22. Section 5 of the Act, 1916 provides that if any area is included within a municipality, such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders and directions issued or made under the Act of 1916. The affairs of such area shall thereafter be governed by the provisions of the Act, 1916 and the identity of such Gram Panchayat or the part of the Gram Panchayat included within the municipality shall cease to exist. Thus, after the issuance of the notification dated 21.10.2022 under Section 3 of the Act, 1916, the part of Gram Panchayat Karua included within the extended territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda lost its identity as part of Gram Panchayat Karua as the said area acquired the status of a municipality. The question that falls for consideration is whether remaining area of Gram Panchayat Karua fulfills the requirement necessary for retaining its identity as a Gram Panchayat.

23. The term 'Population' as defined in Section 2(l) of the Act, 1947 means the population as ascertained in the last preceding census, the relevant figures whereof have been published.

24. It is not in dispute that the last census was held in the year 2011. Accordingly, the term 'Population', wherever it finds mention in the Act of 1947, has to be understood in terms of its statutory definition, meaning thereby that the population as ascertained in the last census i.e. Census 2011 has to be taken into consideration for any purpose required under the Act of 1947. Section 11-F of the Act, 1947, in clear terms, provides that a Panchayat area shall, so far as practicable, have a population of 1,000.

25. It is not in dispute that the population of the remaining area of Gram Panchayat Karua after the merger of a part thereof with Nagar Palika Parishad, Colonelganj, District Gonda as per the last Census of 2011 is 785 and this fact remains uncontroverted.

26. The petitioners have asserted that the current population of the remaining area of Gram Panchayat Karua is 1,719 out of which 1,104 are voters. Therefore, it is contended that Gram Panchayat Karua ought to have been permitted to retain its status as a Gram Panchayat having a population of more than 1,000 as required under Section 11-F of the Act, 1947.

27. We are not inclined to accept the argument so advanced by learned counsel for the petitioners in the face of the statutory provisions contained in the Act of 1947 as discussed hereinabove. The term "Population" referred to in Section 11-F of the Act, 1947 has to be interpreted in the light of its definition contained in Section 2(l) of the Act, 1947, wherein it is defined to mean the population as per the last census, the figures of which have been published. It is not in dispute that the 2011 Census is the last census, the figures of which have been published. According to the said census, the population of the remaining area of Gram Panchayat Karua is 785, which is far below the required population of 1,000, a precondition for maintaining its identity as a Gram Panchayat under Section 11-F of the Act, 1947. This Court, in the exercise of its powers under Article 226 of the Constitution, cannot interfere so as to interpret a statutory provision otherwise than what it has been expressly provided in the statute itself.

28. The petitioners have also placed reliance on Section 8 of the Act, 1947, to contend that after the inclusion of a part of Gram Panchayat Karua into Nagar Palika Parishad, Colonelganj, District Gonda, the jurisdiction of Gram Panchayat Karua should have been reduced to such an extent so as to retain its independent identity as a Gram Panchayat. The argument so advanced cannot be accepted, for the reason that the precondition for retaining an independent identity as a Gram Panchayat is, so far as practicable, a population of 1,000, as prescribed under Section 11-F of the Act, 1947. If such an interpretation of Section 8 of the Act, 1947, is accepted, then even the reduced area of a Gram Panchayat having a population as low as 100, 50, or 10 would claim to retain its separate identity as a Gram Panchayat. Such an interpretation would render Section 11-F of the Act, 1947 nugatory.

29. Section 8 of the Act of 1947 reads as under :

*"**8. Effect of change in population or inclusion of the area of a Gram Panchayat in Municipalities, etc.** - If the whole of the area of Gram Panchayat is included in a city, municipality, cantonment, notified area, or 2 [Nagar Panchayat] the [Gram Panchayat] shall cease, and its*

assets and liabilities shall be disposed of in the manner prescribed. If a party of such area is so included, its jurisdiction shall be reduced by that part.″

30. A bare perusal of Section 8 of the Act, 1947 would reveal that upon the inclusion of an area of a Gram Panchayat within a city, municipality, cantonment, notified area or Nagar Panchayat, the jurisdiction of the Gram Panchayat stands reduced to the extent of such area. However, it does not follow that the reduced area of the Gram Panchayat would necessarily retain its separate identity as a Gram Panchayat if it otherwise does not fulfil the statutory requirements prescribed for a Gram Panchayat. Section 8 of the Act, 1947 has to be read in consonance and harmony with the other provisions of the Act, 1947.

31. The reference to Rule 3-AAA of the U.P. Panchayati Raj Rules, 1947 by the petitioners is also misconceived as the same has no relevance to the controversy involved in the present writ petition. Rule 3-AAA provides that upon inclusion of the area of a Gram Sabha within a municipality, cantonment, notified area or town area, the Gram Sabha shall cease to exist and its assets and liabilities shall be transferred to the local body in which such area is included. The said provision mandates the transfer of the assets and liabilities of the Gram Sabha pertaining to the area that has been included within a municipality prior to such inclusion.

32. The objection filed by the petitioners as argued by learned counsel for the petitioners could only be appreciated if a claim regarding the division of assets and liabilities under Rule 3-AAA of the Rules, 1947 was raised. However, such an issue could only be raised by Gram Panchayat Kumhraura in which the remaining area of the erstwhile Gram Panchayat Karua was merged vide notification dated 19.04.2023 and such issue is not subject matter of the present writ petition.

33. The petitioners, in their pleadings, have not alleged any violation of procedural requirements in the issuance of the notification dated 19.04.2023. They have challenged the said notification solely on the ground that the current population of Gram Panchayat Karua even after the inclusion of a part thereof in Nagar Palika Parishad, Colonelganj, District Gonda is more than 1,000. This ground is not tenable in the eyes of law in view of the admitted fact that as per Census 2011, the population of the village was only 785, much below the figure of 1000.

34. Learned counsel for the petitioners has placed reliance upon the judgment rendered by Hon′ble Supreme Court in the case of **Baldev Singh and others vs. State of Himachal Pradesh and others** reported in **(1987) 2 SCC 510**, particularly paragraph 4 thereof, to contend that no opportunity of hearing was afforded to the petitioners before the issuance of the notification dated 19.04.2023. Paragraph 4 of the said judgment is reproduced herein below :

"4. Appellants' counsel has raised a more serious issue, namely, denial of an opportunity of being heard before the notified area has been constituted. Since Section 256 of the Act requires certain aspects to be satisfied before a notified area can be constituted, factual determination had to be made as to whether those statutory conditions were satisfied. Ours is a democratic polity. At every level, from the villages up to the national level, democratic institutions have been introduced. The villages are under Gram Panchayats, urban areas under municipalities and corporations, districts are under parishads; for the State there is a legislature and for the entire country, we have

the Parliament. People residing within Gram Panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. Citizens of India have a right to decide what should be the nature of their society in which they live - agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like."

35. We find from the pleadings of the writ petition that no such ground has been taken by the petitioners regarding the denial of an opportunity of hearing before the issuance of the notification dated 19.04.2023. The petitioners have only raised an issue through their representations/objections submitted before the authorities regarding the population of the remaining area of Gram Panchayat Karua after the inclusion of a part thereof in Nagar Palika Parishad, Colonelganj, District Gonda. Thus, it cannot be said that the petitioners have raised any issue pertaining to procedural aspects in the issuance of the notification dated 19.04.2023. In fact, the State Government has issued Government Orders dated 16.08.2014, 27.10.2020 and 23.12.2020, whereby guidelines have been prescribed for exercising powers under Section 11-F of the Act, 1947. However, the petitioners have not alleged any violation of the provisions contained in the aforesaid Government Orders.

36. Further reliance has been placed by the petitioners upon paragraph 12 of the judgment and order dated 27.09.2022 passed in **Writ-C No. 26793 of 2022 "Sujit and others v. State of U.P. and others"** Paragraph 12 of the said judgment is reproduced herein below :

"12. It is implicit in the statutory provision that while issuing a final notification, the area as originally proposed to be included in the transitional area, cannot be increased in such a manner, so as to change the entire complexion and character of the preliminary notification. The object of Section 4 is to provide opportunity to the general public which would include the petitioners herein, to file objections against the proposal. The Governor exercises power under Article 243Q having regard to the factors laid down under clause (2), i.e., population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factor as he may deem fit. The objection could be on any of the above aspects, apart from inclusion/exclusion. This is an invaluable right conferred in the general public with avowed object of strengthening their hands in all facets of local self governance. In the absence of these villages being part of the proposal notified under Section 4, the right to file objection has been rendered illusory making Section 4 of the Act redundant. It amounts to notifying seven villages in the transitional area without there being any previous publication, as required by Section 4.What cannot be done directly cannot be done indirectly. It is nothing but colourable exercise of power."

37. A perusal of paragraph 12 of the said judgment and order, relied upon by the petitioners indicates that it relates to the preliminary notification issued under Section 4 of the Act, 1916, which provides for the procedure for issuance of a notification referred to under Section 3 of the Act, 1916 declaring a transitional area and an urban area. The reliance so placed is misconceived as the petitioners have not challenged the notification dated 21.10.2022 issued under Section 3 of the

Act, 1916 so as to contend in the present writ petition that the inclusion of a part of Gram Panchayat Karua within Nagar Palika Parishad, Colonelganj, District Gonda by the said notification was bad in law.

38. In the absence of any such challenge to the notification issued earlier under Section 3 of the Act, 1916 in the present writ petition, we cannot delve into such an issue in the present writ petition.

39. The petitioners have further placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **State of U.P. vs. Pradhan Sangh Kshetra Samiti**, reported in **1995 Supp (2) SCC 305**, particularly paragraph 44 of the judgment, which is quoted hereinbelow:

"44. It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. We may, in this connection, refer to a decision of this Court in Hingir-Rampur Coal Co. Ltd. v. State of Orissa [(1961) 2 SCR 537 : AIR 1961 SC 459] . In this case, the petitioner-mineowners, had among others, challenged the method prescribed by the legislature for recovering the cess under the Orissa Mining Areas Development Fund Act, 1952 on the ground that it was unconstitutional. The majority of the Bench held that the method is a matter of convenience and, though relevant, has to be tested in the light of other relevant circumstances. It is not permissible to challenge the vires of a statute solely on the ground that the method adopted for the recovery of the impost can and generally is adopted in levying a duty of excise."

40. We are afraid to accept that the aforesaid proposition of law laid down in paragraph 44 of the judgment passed in **Pradhan Sangh Kshetra Samiti (supra)**, in any manner, supports the case of the petitioners. On contrary, it supports the case of the respondents, inasmuch as it has not been questioned that the notification dated 19.04.2023 was issued in violation of the statutory provisions contained in Sections 3 and 11-F of the Act, 1947. Section 5 of the Act, 1916 provides that if any area is included within a municipality, such area shall thereafter become subject to all notifications, rules, regulations, bye-laws, orders and directions issued or made under the Act of 1916. The affairs of such area shall be governed by the provisions of the Act of 1916 and the identity of such Gram Panchayat or the part of the Gram Panchayat included within the municipality shall cease to exist. Thus, after the issuance of the notification dated 21.10.2022 under Section 3 of the Act, 1916, the part of Gram Panchayat Karua included within the extended territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda lost its identity as part of Gram Panchayat Karua, as such area acquired the status of a municipality. The stand taken by the respondents referring to the term "Population" as defined under Section 2(l) of the Act, 1947 goes to the root of the matter as the case of the petitioners is that the term "Population" should be construed to mean the actual population existing on the date on which the notification was issued and not the population reflected in the last census. In fact, paragraph 44 of the judgment relied upon by the petitioners does not support the case set up by them in the present writ petition.

41. The petitioners have also relied upon the judgment rendered in the case of **Kishorchandra Chhanganal Rathod vs. Union of India and others** reported in **(2024) 13 SCC 237**. The said judgment relates to the exercise of power by Hon'ble Supreme Court concerning judicial interference in the process of delimitation, which is barred under Article 329 of the Constitution of India. The said issue is not involved in the present writ petition. Accordingly, the reliance placed by the petitioners upon the aforesaid judgment is misconceived.

42. Further, when we analyze the notification dated 19.04.2023 issued under Sections 3 and 11-F of the Act, 1947, we find that the aforesaid exercise of issuing the notification is in furtherance of the power conferred under the statutory provisions contained in Sections 3 and 11-F of the Act, 1947, which, in essence, constitutes conditional legislation. The power to include a particular area within the prescribed jurisdiction conferred under Section 11-F of the Act,1947 is not merely an administrative power. The Hon'ble Supreme Court, in **Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur** reported in **(1980) 2 SCC 295** while dealing with Section 3 of the U.P. Town Areas Act, 1914 held after considering the nature of the power exercised by the State Government under Section 3 that the said power is legislative in character. Paragraphs 7, 8, and 17 of the said judgment are reproduced herein below:

"7. We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area under Section 3 of the Act which does not require the State Government to make such declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S.A. De Smith in Judicial Review of Administrative Action (3rd Edn.) observes at p. 163:

"However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides."

8. In Bates v. Lord Hailsham of St. Marylebone [(1972) 1 WLR 1373 : (1972) 3 All ER 1019, 1023-1024] the facts were these: In 1964, the British Legal Association was formed. Out of about 26,000 practising solicitors some 2,900 were members of the association. The Lord Chancellor announced on May 1, 1972, that the scale of fees under Schedule I to the Solicitor's Remuneration Order, 1883 were proposed to be abolished and that for all conveyancing transactions the system of quantum meruit was to be applied. On June 6, pursuant to Section 56(3) of the Solicitors Act, 1957, the Law Society was sent by the committee set up under Section 56(1) a draft of the order proposed to be made under Section 56(2). The draft order was published in The Law Society's Gazette on June 21. The association sent out two circulars about the proposed order, the first at the end of May, to all solicitors, and the second on July 17, making a series of accusations against the Lord Chancellor and the Law Society. On July 11, the association sent printed submissions to the statutory committee, requesting that the order should not be approved at this juncture and that the Lord Chancellor should seek further consultations with the profession and professional organisations. On July 14, the association wrote to each member of the committee asking for further time and a deferment of the decision for two months. The Lord Chancellor's reply dated July 18, was that he saw no reason for postponing the meeting or for refraining from making the order in such terms as the committee

approved. On July 18, the plaintiff as a member of the national executive committee of the association, took out a writ against all members of the statutory committee, seeking a declaration and an injunction, and on July 19, at 2 p.m. having previously notified the Treasury Solicitor of the intention, he moved the court ex parte, seeking to restrain the committee from holding the meeting which was to be held at 4.30 p.m. on that day. The motion was dismissed by Megarry, J., and we feel rightly with the following observations:

"In the present case, the committee in question has an entirely different function: it is legislative rather than administrative or executive. The function of the committee is to make or refuse to make a legislative instrument under delegated powers. The order, when made, will lay down the remuneration for solicitors generally; and the terms of the order will have to be considered and construed and applied in numberless cases in the future. Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy. Of course, the informal consultation of representative bodies by the legislative authority is a common place; but although a few statutes have specifically provided for a general process of publishing draft delegated legislation and considering objections (see, for example, the Factories Act, 1961, Schedule 4), I do not know of any implied right to be consulted or make objections, or any principle on which the courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not per se make it immune from attack, whether by injunction or otherwise; but what is important is not its form but its nature, which is plainly legislative."

……..17. We are, therefore, of the view that a notification issued under Section 3 of the Act which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and that it cannot be characterised as a piece of subordinate legislation. In view of the foregoing, we hold that the contention of the plaintiff that the declaration made by the State Government under Section 3 of the Act declaring the area in which the sugar factory of the plaintiff is situated as a part of the Tulsipur town area is invalid is not tenable."

(Emphasis supplied)

43. When we go through the provisions of Sections 3 and 11-F of the Act, 1947, which have already been quoted in the earlier part of the judgment, we find that specific conditions have been prescribed for the declaration of a panchayat area. This exercise is required to be undertaken by the State Government through the issuance of a notification under Section 11-F of the Act, 1947 on the satisfaction of conditioned enumerated in Section 11-F. The power to include a particular area within the prescribed jurisdiction conferred under the statute is not merely an administrative power but a legislative power and is legislative in character. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of **State of Punjab v. Tehal Singh and Others** reported in **(2002) 2 SCC 7**, wherein the Hon'ble Supreme Court, while examining Sections 3 and 4 of the Punjab Panchayati Raj Act, 1994 held as follows in paragraphs 4 to 8 of the said judgment:

"4. Coming to the first question, it is necessary to set out the relevant provisions of Sections 3 and 4 of the Act, which are as under:

:3. Establishment of Gram Sabha areas.-(1) The State Government may, by notification, declare any village or group of contiguous villages with a population of not less than two hundred to constitute a Gram Sabha area:

Provided that a new Gram Sabha area may be constituted for any village or group of contiguous villages in respect of a separate distinct abadi or group of abadis having a population of not less than two hundred taking into consideration its physical distance from the main village or villages, as the case may be and other relevant facts:

Provided further that neither the whole nor any part of –

(a) a Notified Area under Section 241 of the Punjab Municipal Act, 1911, or any other Act for the time being in force; or

(b) a Cantonment; or

(c) a Municipality of any class; or

(d) a Municipal Corporation;

shall be included in a Gram Sabha area unless the majority of voters in any Notified Area or Municipality of the Third Class desire the establishment of a Gram Sabha in which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Panchayat of that Gram Sabha and the Notified Area Committee or the Municipal Committee shall cease to exist.

(2) That State Government may, by notification, include any area in or exclude any area from the Gram Sabha area.

***

4. Constitution of Gram Sabha.-(1) The State Government may, by notification establish a Gram Sabha by name for every area declared as Gram Sabha area under Section 3.

(2) Every person who is entered as voter on the electoral roll prepared by the State Election Commission and for the time being in force pertaining to the area of a Gram Sabha, shall be member of the Gram Sabha."

5. Before we consider the main question, it is necessary to trace out the nature of power, that the State Government exercises under provisions of Sections 3 and 4 of the Act. The said power could either be legislative, administrative or quasi-judicial.

6. In Rameshchandra Kachardas Porwal v. State of Maharashtra [(1981) 2 SCC 722] it was held that making of a declaration by notification that certain place shall be the principal market yard for a market area under the relevant Agricultural Produce Market Act was an act legislative in character. In Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720] this Court while making distinction between legislative, administrative and quasi-judicial held thus: (SCC pp. 735-36, para 7)

"'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy.' 'Legislation in the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said: 'Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class' while, 'an adjudication, on the other hand, applies to specific individuals or situations'. But, this is only a broad distinction, not necessarily always true. Administration and administrative

adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts."

7. The principles of law that emerge from the aforesaid decisions are: (1) where provisions of a statute provide for the legislative activity i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation; and (3) lay down future course of actions, the same is generally held to be legislative in character.

8. Viewed in the light of the statement of law stated hereinbefore, we find that the provisions of Sections 3 and 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area do not concern with the interest of an individual citizen or a particular resident of that area. Declaration contemplated under Section 3 of the Act relates to an area inhabited by the residents which is sought to be excluded or included in a Gram Sabha. The declaration under Section 3 of the Act by the Government is general in character and not directed to a particular resident of that area. Further, the declarations so made under Sections 3 and 4 of the Act do not operate for the past transactions but for future situations. Under the aforesaid situation, when declarations by issue of notifications by the Government are made under Sections 3 and 4 of the Act respectively, determining the territorial area of a Gram Sabha and establishing a Gram Sabha for that area, such declarations become operative at once. Once declarations are made under Sections 3 and 4 of the Act respectively and thereafter a Gram Panchayat is constituted under Section 10 of the Act, the entire remaining provisions of the Act become operative. On such declarations by a notification in the Gazette, the Gram Sabha, a body corporate comes into being with a number of powers and functions conferred upon it under the Act. As soon as a Gram Sabha is established and Gram Panchayat is constituted, they are entrusted with many general functions viz. construction, repair, and maintenance of community assets, agriculture including agriculture extension, animal husbandry, dairy and poultry, fisheries, social and farm forestry, minor forest produce, fuel and fodder, khadi, village and cottage industries, rural housing, rural electrification including distribution of electricity, non-conventional energy source, poverty alleviation programme, education including primary and secondary schools, adult and non-formal education, promotion of adult literacy, cultural activities, fairs and festivals, public health and family welfare, women and child development, social welfare etc. Further, Gram Sabhas and Gram Panchayats have been conferred numerous other powers and duties enumerated in Section 35 of the Act. Besides that, the Gram Panchayat is entrusted with the judicial functions which are civil and criminal in nature. The power exercisable under Sections 3 and 4 of the Act respectively by the Government was, therefore, not an exercise of a judicial or quasi-judicial function where the very nature of function involves the principles of natural justice or in any case of an administrative function affecting the rights of an individual. ***We are, therefore, of the view that on making of declaration under Section 3 of the Act determining the territorial area of a Gram Sabha and thereafter establishing a Gram Sabha for that area is an act legislative in character in the context of the provisions of the Act.****"*

(Emphasis supplied)

44. The function of the State Government in issuing a notification under Section 3 of the Act, 1947 establishing a Gram Sabha and in issuing a notification under Section 11-F of the Act, 1947 declaring any area comprising a village or group of villages having, so far as practicable, a population of 1,000 to be a Panchayat under the Act is neither executive nor administrative; rather, it is legislative in nature. No adjudicatory duty is cast upon the Government in the discharge of these statutory functions of issuance of notification. The only question to be examined by the Government while issuing such a notification is whether the conditions prescribed under the statutory provisions have been fulfilled. In the case of conditional legislation, the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the determination of the time and manner of bringing its legislation into effect as well as the determination of the subject matter(s), area(s) etc. to which it is to extend depending on the terms of the statutory provisions conferring such discretion. In conditional legislation, the enforcement of the law depends upon the fulfilment of the prescribed condition(s) and what is required of the authority is the exercise of its power to determine whether such condition(s) have been fulfilled so as to bring into force the legislative intent.

45. Section 11-F of the Act, 1947 lays down the conditions for the declaration of a Panchayat Area, namely, that the area comprising a village or a group of villages should, so far as practicable, have a population of 1,000. A further condition is that for the purpose of declaring a Panchayat Area, no revenue village or any hamlet thereof shall be divided. Sub-section (2) of Section 11-F empowers the State Government to modify the area of any Panchayat Area by including therein or excluding therefrom any area of a village or group of villages, after previous publication of the proposal for such purpose. The exercise of power under sub-section (2) is always subject to the fulfilment of the conditions enumerated in sub-section (1) of Section 11-F. In our view, the issuance of notifications under Sections 3 and 11-F of the Act of 1947 is an exercise undertaken by the State Government in terms of the statutory provisions contained in the Act, 1947 and the issuance of such notifications is an act of conditional legislation.

46. In the present case as discussed in the earlier part of the judgment, the area and population of Gram Panchayat Karua were reduced after merger of a part of its area with Nagar Palika Parishad, Colonelganj, District Gonda. This necessitated the issuance of a notification to include its remaining area within Gram Panchayat Kumhraura as the population, according to the Census 2011, had been reduced to 785, which was far below the minimum requirement of 1,000. This minimum population is an essential condition for the independent identity of a Panchayat Area.

47. A notification issued as an act of conditional legislation can be challenged only if it exceeds the statutory mandate, lacks the requisite precedent conditions or violates constitutional rights. The petitioners have miserably failed to point out any violation of the aforesaid mandates so as to render the notification dated 19.04.2023 illegal or bad in law. Accordingly, we do not find any infirmity or illegality in the issuance of the notification dated 19.04.2023 to the extent it has been challenged in the present writ petition.

48. In view of the aforesaid reasons, we are not inclined to interfere in the present writ petition. Accordingly, the writ petition is **dismissed**.

49. No order as to costs.

(2026) 7 ILRA 2115
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.07.2026

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Application U/S 528 BNSS. No. 25489 of 2026

Rohit @ Pushpendra Rana ...Applicant
Versus
State of U.P. ...Opposite Party

ISSUE FOR CONSIDERATION

Whether the applicant, already granted bail in multiple pending criminal cases, can be allowed to furnish a single personal bond and two sureties (common for all cases) instead of separate bonds and sureties in each case, in view of his inability to arrange multiple sets of sureties?

HEADNOTES

Criminal Law - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 483, 484, 485, 486, 487, 488, 489, 490, 528 - Indian Penal Code, 1860 - Sections 307, 392, 394, 411, 506, - Arms Act, - Sections 3, 5, 25, 27 : - Application u/s 528 BNSS – applicant sought direction that one common personal bond and common surety bonds of like amount be accepted in all pending criminal cases – five cases pending under Sections 392, 506, 411, 307, 394 IPC and 3/25, 5/27 Arms Act – bail granted in four cases but applicant unable to furnish separate sureties – contention raised that BNSS does not mandate separate bonds for different case crime numbers – applicant pleaded inability to arrange ten sureties and relied on Supreme Court and High Court precedents – learned AGA unable to dispute cited orders – Court finds that, the contention meritorious and the learned AGA could not dispute the cited orders – under the scheme of BNSS there is no mandatory requirement of separate personal and surety bonds – held, one personal bond and two sureties to the satisfaction of the concerned court shall hold good for all pending cases – application allowed, accordingly.

(Para – 8, 9, 11)

Application Allowed. (E-11)

CASE LAW CITED

Supreme Court order dated 29.10.2018 in Hani Nishad @ Mohammad Imran @ Vikky v. State of U.P.
Supreme Court order dated 09.08.2021 in Ramwati Awasthi & Others v. State of U.P. and Others
Allahabad High Court order dated 15.03.2019 in Criminal Misc. Bail Application No. 11380 of 2019 (Rizwan alias Atta v. State of U.P.), reported in 2019 (107) ACC 894
Allahabad High Court order dated 21.11.2019 in Criminal Misc. Application (under Section 482 Cr.P.C.) No. 40957 of 2019 (Mobin v. State of U.P.)

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 – Indian Penal Code, 1860 - Arms Act.

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LIST OF KEYWORDS

Bail conditions, Common personal bond, Common sureties, Multiple criminal cases, inability to arrange sureties, Enlargement on bail, Case Crime Numbers, direction for Trial Court.

CASE ARISING FROM

Five criminal cases pending before the Trial Court in District Shamli –
(1) Case Crime No. 278 of 2022 Under Section - 392, 506, 411 IPC, P.S. - Kandhla, District Shamli,
(2) Case Crime No. 309 of 2022 Under Section - 307 IPC, P.S. - Kandhla, District Shamli,
(3) Case Crime No. 310 of 2022 Under Section - 3/25, 5/27 Arms Act, P.S. - Kandhla, District Shamli,
(4) Case Crime No. 123 of 2023 Under Section - 411, 394 IPC, P.S. - Babri, District Shamli and
(5) Case Crime No. 143 of 2023 Under Section 307 I.P.C. and 3/25/27 Arms Act, P.S. - Babri, District Shamli.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Mohd. Naushad,
Counsel for Respondent(s): - A.G.A.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application has been filed to direct the Trial Court/Court concerned to consider and accept the personal bond and two sureties in one criminal case treating the same for all the four criminal cases mentioned in the paragraph no.5 of the affidavit filed in support of of the instant application.

3. Learned counsel for applicant contends that applicant is unable to arrange 10 sureties. Consequently, in spite of the fact that applicant has already been released on bail in all four criminal cases pending against him, the applicant has yet not been released from jail, as applicant has failed to furnish separate surety bonds in all the cases. In the facts and circumstances of the case, it is thus urged that applicant be directed to furnish a common personal bond and common surety bonds of like amount in all the cases. He therefore contends that appropriate direction be issued to the concerned trial Court.

4. Record shows that applicant has been enlarged on bail in different case crime number by the concerned Court vide following orders:-

(1) Case Crime No.278 of 2022, Under Sections 392, 506, 411 I.P.C., Police Station Kandhla, District Shamli.

(2) Case Crime No.309 of 2022, Under Section 307 I.P.C., Police Station Kandhla, District Shamli;

(3) Case Crime No.310 of 2022, Under Sections 3/25, 5/27 Arms Act, Police Station Kandhla, District Shamli;

(4) Case Crime No. 123 of 2023, Under Sections 411, 394 I.P.C., Police Station Babri, District Shamli;

(5) Case Crime No.143 of 2023, Under Section 307 I.P.C. and Sections 3/25/27 Arms Act, Police Station Babri, District Shamli.

5. He has then referred to Sections- 483, 484, 485, 486, 487, 488, 489, 490 of B.N.S.S. (hereinafter to be referred as BNSS) and on basis thereof contents that under the scheme of BNSS (hereinafter referred to as "the BNSS") there is no mandatory requirement of furnishing separate personal bonds as well as surety bonds for seeking enlargement on bail in different case crime numbers.

6. On the aforesaid factual and legal premise, learned counsel for applicant contends that such conditions which commensurate with the facts and circumstances of present case, are liable to be imposed, so that applicant who has been granted bail in all cases pending against him is ultimately bailed out.

7. Reference has also been made to the orders passed by Supreme Court dated 29.10.2018 in Hani Nishad @ Mohammad Imran @ Vikky Vs. State of U.P. and 09.08.2021 in Ramwati Awasthi & Others Vs. State of U.P. and Others. He has also referred to orders passed by this Court dated 15.03.2019 in Criminal Misc. Bail Application No.11380 of 2019, (Rizwan alias Atta Vs. State of U.P.), reported in 2019 (107) ACC 894 and 21.11.2019 in Criminal Misc. Application (under Section 482 Cr.P.C.) No.40957 of 2019, (Mobin Vs. State of U.P.), wherein Court has been modified the conditions of bail by providing that the personal bond and two sureties furnished by applicant, be accepted in all the cases pending against applicant. Photocopies of above orders have been supplied by learned counsel for applicant which are taken on record.

8. On the aforesaid factual and legal premise, it is urged that present application be allowed and two sureties furnished by applicant in one case crime number be accepted as sureties in all the cases.

9. Per contra, learned A.G.A. has opposed this application, but could not dispute the orders relied upon by learned counsel for applicant.

10. In view of above, present application succeeds and is liable to be allowed.

11. It is accordingly, provided that application shall be allowed to execute one personal bond and two sureties to the satisfaction of court concerned which shall hold in all four cases pending against present applicant

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(2026) 7 ILRA 2118
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

THE HON'BLE ACHAL SACHDEV, J.

Criminal Revision No. 3622 of 2024

Smt. Sushila **...Revisionist**
Versus
Rajiv Kumar Chaudhary **...Opposite Party**

Issues for Consideration

(i) Whether the trial court was justified in denying maintenance under Section 125 Cr.P.C. to the revisionist on the ground that she is not the legally wedded wife of opposite party no. 2, without adverting to his admissions regarding the application for court marriage, cohabitation of the parties and the birth of a child from their relationship?

(ii) Whether a determination of maintenance made without calling for affidavits of disclosure of income, assets and liabilities in terms of the guidelines laid down in Rajnesh v. Neha is sustainable?

Headnotes

Code of Criminal Procedure, 1973 --- S. 125 --- Maintenance to wife --- Strict proof of marriage --- Admitted application for court marriage, cohabitation and birth of child --- Purposive and socially contextual approach --- Finding recorded in mechanical manner --- Non-application of judicial mind.

HELD: While dealing with claims under Section 125 Cr.P.C., a purposive and socially contextual approach is to be adopted rather than a purely adversarial or technical interpretation; where a man and a woman have lived together as husband and wife and the relationship is otherwise established, strict proof of a valid marriage should not be insisted upon so as to defeat the beneficial object of the provision. The trial court decided Issue Nos. 1 and 2 in a mechanical manner, holding the revisionist not to be the wife of opposite party no. 2 while in the same breath declaring the child to be the illegitimate child of the parties, without adverting to the admissions of opposite party no. 2 regarding the application for court marriage before the competent Magistrate, the birth of the child and the cohabitation of the parties in his government accommodation; such findings are devoid of proper application of judicial mind and are vitiated by non-consideration of material admissions and relevant circumstances. [Paras 9-12, 15, 18]

Code of Criminal Procedure, 1973 --- Revisional jurisdiction --- Scope --- Interference with findings of fact.

HELD: The High Court, while exercising revisional jurisdiction, cannot reassess or re-analyse evidence to arrive at a different conclusion merely because another view is possible, and cannot sit as a court of appeal; interference with findings of fact is permissible only when such findings are perverse, based on no evidence,

suffer from misreading of evidence or result in a miscarriage of justice, or where material evidence has been ignored or settled principles misapplied. [Paras 13, 14]

Code of Criminal Procedure, 1973 --- S. 125 --- Quantum of maintenance --- Affidavits of disclosure of income, assets and liabilities --- Guidelines in Rajnesh v. Neha --- Binding --- Remand.

HELD: Where the applicant has merely made oral assertions without producing evidence of the net income of the opposite party, the affidavits of disclosure of income, assets and liabilities assume decisive importance; the trial court is duty-bound to direct both parties to file their respective affidavits in the prescribed format, any failure to comply must be taken adversely against the defaulting party, and the quantum must be determined upon the statements contained therein. A decision rendered without consideration of such affidavits amounts to a departure from binding guidelines, and the revisional court is justified in setting aside the finding on quantum and remanding the matter for fresh determination. [Paras 11, 17, 18]

Code of Criminal Procedure, 1973 --- S. 125 --- Maintenance to minor child --- Legitimate or illegitimate child --- Obligation of father.

HELD: Section 125 Cr.P.C. makes it obligatory for a father to maintain his child, whether legitimate or illegitimate, who is unable to maintain himself; the order of the trial court granting maintenance of Rs. 5,000/- per month to the minor child, which was not challenged, is affirmed. [Paras 16, 19, 22]

Criminal revision partly allowed. Impugned judgment, insofar as it rejects the claim for maintenance of the revisionist, set aside and matter remanded for fresh adjudication of Issue Nos. 1 and 2; both parties directed to file affidavits of disclosure in the format prescribed in Rajnesh (supra), and the matter to be disposed of preferably within three months. Maintenance of Rs. 5,000/- per month to the minor child affirmed. (E-14)

Case Law Cited

Rajnesh v. Neha, (2021) 2 SCC 324 --- relied on; *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188 --- relied on; *Sri M.V. Ramachandrasa (Deceased) through LRs v. Mahendra Watch Company & Ors.*, 2026 INSC 348 --- relied on; *Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval*, (1975) 2 SCC 246 --- referred to; *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*, (2014) 9 SCC 78 --- referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973.

List of Keywords

Maintenance; Proof of marriage; Court marriage; Cohabitation; Admissions; Illegitimate child; Affidavit of disclosure; Rajnesh vs Neha guidelines; Revisional jurisdiction; Remand.

Case Arising From

Judgment and order dated 05.03.2024 passed by the Principal Judge, Family Court, Maharajganj, in Maintenance Application No. 298 of 2019, Sushila and Another v. Rajiv Kumar, under Section 125 Cr.P.C.

Appearance for Parties

For the Revisionist(s): Ashish Pandey, Randhir Jain.

For the Opposite Party(s): G.A., Sanjay Kumar Mishra.

(Delivered by Hon'ble Achal Sachdev, J.)

1. Heard Sri Ashish Pandey, learned counsel for the revisionist, learned A.G.A. for the State and Sri Arun Kumar Maurya, Advocate, holding brief of Sri Sanjay Kumar Mishra, learned counsel for the opposite party no. 2.

2. The present revision has been preferred by the revisionist being aggrieved by the judgement and order dated 05.03.2024 passed by Principal Judge, Family Court, Maharajganj in Maintenance Application No. 298 of 2019 (Sushila and Another Vs. Rajiv Kumar) u/s 125 Cr.P.C.

3. The trial court has denied maintenance to the revisionist on the ground that she is not legally wedded wife of opposite party no. 2, Rajiv Kumar Chaudhary and the matter is revisable. Hence, the present revision is admitted.

4. Perused the record.

5. Briefly stated the facts of the case are that the petitioner (revisionist herein) has stated that her marriage with Rajiv Kumar was solemnized through a court marriage on 21.09.2017, and despite her family providing substantial dowry according to their status, her husband and in-laws soon began harassing her for additional dowry, particularly demanding a four-wheeler. She alleged that on 23.10.2017, she was beaten and expelled from her matrimonial home, after which village elders intervened and she was later taken to Gorakhpur by her husband and out of marital relation, she gave birth to a son, but her husband, father-in-law Achhevar, mother-in-law Koila Devi, brother-in-law Gautam, and sister-in-law allegedly continued to mentally and physically torture her. She further alleged that on 19.03.2019, all the accused confined her in a room, assaulted her brutally, attempted to strangulate her at the instigation of her mother-in-law, and ultimately drove her out after taking away her stridhan. Since then, she has been residing at her parental home with her child without any financial support from the opposite party. Claiming that she has no independent source of income while her husband earns well as a lab technician at Digvijay Nath Degree College and also has agricultural income.

6. Learned counsel for the revisionist submits that the revisionist has sought maintenance of Rs.25,000/- per month for herself and Rs.15,000/- per month for her minor child through her application u/s 125 Cr.P.C. He next submits that the revisionist is the wife of opposite party no. 2 and that she was beaten and driven away from her matrimonial house on 19.03.2019 and since then, she has been living at her parents' home and is unable to support herself. He further submits that the revisionist□s family had provided substantial dowry to the opposite party no. 2 but her husband (opposite party no. 2) and in-laws harassed her for demand of additional dowry.

7. Learned counsel for the opposite party no. 2 submits that an application for court marriage of the revisionist and opposite party no. 2 was given in the court of District Magistrate on 21.09.2017 but the marriage was not legally formalized and under pressure from the revisionist and her family, the opposite party no. 2 brought her to live with him in his Gorakhpur quarters on 21.09.2017. He next submits that after learning of relationship of revisionist and opposite party no. 2, the family of opposite party no. 2 severed ties with him and disowned him, yet he chose to live

with the revisionist for her happiness. He further submits that the revisionist never visited or lived with the family of opposite party no. 2 in the village, had no interaction with his parents or relatives, and was never subjected to dowry demands, harassment, or assault by him or his family. He also submits that the revisionist and her family manipulated and pressured opposite party no. 2 into marriage by threatening him into false criminal cases and suicide. He further submits that the relationship of revisionist and opposite party no. 2 was initially cordial but after a few months, the revisionist became quarrelsome, demanded money for expensive items, neglected household responsibilities, and failed to care properly for their son after his birth. He further submits that motivated by his job and property, the revisionist repeatedly threatened him, maintained illicit relationships, and conspired to harm him, prompting him to report the matter to senior police officials. He, therefore, submits that the opposite party no. 2 due to the revisionist□s conduct, threats, and the physical and mental harassment he allegedly suffered, he can no longer live with the revisionist and has, therefore, filed a divorce petition to protect his life and well-being.

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

9. The trial court has framed issue no.1 as to whether the revisionist is legally wedded wife of opposite party no. 2, Rajiv Kumar Chaudhary, and has decided the same against the applicant no.1/revisionist by holding that the burden of proof of proving the fact that the issue is on the applicant no.1 and in support of her case, she has filed the photocopy of notice before Marriage Officer, Gorakhpur but there is no document on record from which it can be ascertained that the applicant no.1/revisionist is legally wedded wife of opposite party no. 2 without recording any tangible reasons for reaching the conclusion. On perusal of decision while disposing of issue no.1 that after filing of the aforementioned document, the applicant no.1 resided with opposite party and out of their relationship, applicant no.2 was born and has concluded that applicant no.2 is an illegitimate child of opposite party. The manner in which the issue no.1 has been dealt with, without taking into consideration the fact that even though the applicant no.1 had not succeeded in proving the fact of her marriage to opposite party no. 2 but they were in a relationship as husband and wife for a considerable period of time and out of the relationship, a son was born, while assessing the point of entitlement of maintenance from opposite party no. 2 to the applicant no. 1, goes on to show clear non-application of mind in a cursory manner and mechanical manner and the trial court has not duly applied its mind to the facts, to the evidence that has been filed by the applicant no.1 before the trial court while holding that the applicant no.1 is not a legally wedded wife of opposite party in total ignorance of documentary evidence of birth certificate of applicant no.2 that has been filed by applicant no.1 in support of the fact that applicant no.2 is the son of opposite party.

10. In the present revision, opposite party no. 2 has candidly admitted that he and the applicant/revisionist had applied for a court marriage before the competent Magistrate, though the formal procedure could not be completed. He has further acknowledged the birth of a child from his relationship with the applicant, and that after the applicant was turned out of her matrimonial home by his father, he took her to his government accommodation where they resided together.

11. A perusal of the impugned judgment reveals that these material admissions and surrounding circumstances were not adverted to by the trial court while adjudicating Issue Nos. 1

and 2. The judgment does not reflect any discussion of the admitted facts regarding the parties cohabitation, their intention to solemnize marriage, or the birth of the child from their relationship. Moreover, the judgment nowhere reflects that the trial court made any effort to seek affidavits of applicant no. 1 and opposite party no. 2 in regard to their income, assets, and liabilities in compliance with the guidelines issued by the Honble Supreme Court in **Rajnesh v. Neha [(2021) 2 SCC 324].**

12. The Honble Supreme Court in Badshah v. Urmila Badshah Godse [(2014) 1 SCC 188] has emphasised the necessity of adopting a purposive and socially contextual approach while dealing with claims under Section 125 Cr.P.C., rather than adhering to a purely adversarial or technical interpretation of the law. It has been held that where a man and a woman have lived together as husband and wife and the relationship is otherwise established, strict proof of a valid marriage should not be insisted upon so as to defeat the beneficial object of the provision.

13. Interference is warranted only where:

(i) the Magistrate acted without jurisdiction or failed to exercise jurisdiction vested in him;

(ii) the order is contrary to law or violates statutory provisions;

(iii) there is serious procedural irregularity affecting fairness;

(iv) findings are perverse, i.e., based on no evidence;

(v) material evidence has been ignored or settled principles misapplied, resulting in grave injustice or hardship.

14. The Supreme Court in Sri M.V. Ramachandrasa (Deceased) through LRs v. Mahendra Watch Company & Ors. [2026 INSC 348], while reiterating the principles laid down in **Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval [(1975) 2 SCC 246] and Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh [(2014) 9 SCC 78],** has held that the High Court, while exercising revisional jurisdiction, cannot reassess or re-analyse evidence to arrive at a different conclusion merely because another view is possible. Interference with findings of fact is permissible only when such findings are perverse, based on no evidence, suffer from misreading of evidence, or result in a miscarriage of justice. A revisional court cannot sit as a court of appeal.

15. In the present case, however, the trial court appears to have decided Issue Nos. 1 and 2 in a mechanical manner, holding that applicant no. 1 is not the wife of opposite party no. 2, but in the same breath declared applicant no. 2 to be the illegitimate child of applicant no. 1 and opposite party no. 2. This finding was recorded without adverting to the admissions of opposite party no. 2 regarding the application for court marriage, the birth of the child, and the parties cohabitation in his government accommodation. The findings are, therefore, devoid of proper application of judicial mind and fail to consider material circumstances having a direct bearing on the determination of applicant no. 1s entitlement to maintenance.

16. By the order impugned, the trial court awarded a sum of Rs. 5,000/- as maintenance to applicant no. 2 on the ground that he is the illegitimate child of opposite party no. 2. Section 125 Cr.P.C. makes it obligatory for a father to maintain his child, whether legitimate or illegitimate, who is unable to maintain himself. Keeping in view the legal mandate contained in Section 125 Cr.P.C., the order of the trial court, insofar as it grants maintenance to applicant no. 2, is affirmed. Moreover, the same has not been challenged by applicant no. 2.

17. Further, where the applicant has merely made oral assertions without producing evidence of the net income of the opposite party, the trial court cannot arrive at a just and reasonable determination of maintenance. In such circumstances, the affidavits of disclosure of income, assets, and liabilities, as mandated in **Rajnesh (supra),** assume decisive importance. The trial court is duty-bound to direct both parties to file their respective affidavits in the prescribed format, and any failure to comply must be taken adversely against the defaulting party. Once affidavits are filed, the court must base its determination of quantum upon the statements contained therein. A decision rendered without consideration of the affidavits amounts to a departure from binding guidelines and reflects undue haste. If the trial court ignores admitted income or reaches conclusions unsupported by the record, the revisional court is justified in interfering, setting aside the finding on quantum, and remanding the matter for fresh determination.

18. In view of the foregoing discussion, the impugned judgment dated 05.03.2024 passed by the learned Principal Judge, Family Court, Maharajganj, in Maintenance Case No. 298 of 2019 (Sushila & Another v. Rajiv Kumar), insofar as rejection of claim for maintenance of applicant/revisionist is concerned, cannot be sustained. The findings recorded on Issue Nos. 1 and 2 are vitiated by non-consideration of material admissions and relevant circumstances, and the determination of claim for maintenance of applicant no. 1 is contrary to the binding guidelines laid down in **Rajnesh (supra)** as well as general principles of law relating to admissions of parties and their relevance in court proceedings.

19. This Court finds no perversity or illegality in the impugned order dated 05.03.2024 passed by the trial court in regard to the entitlement of applicant no. 2 (minor child) to maintenance.

20. The criminal revision is **partly allowed**. The impugned judgment dated 05.03.2024 passed by the learned Principal Judge, Family Court, Maharajganj, in Maintenance Case No. 298 of 2019 (Sushila & Another v. Rajiv Kumar), insofar as rejection of claim for maintenance of applicant no. 1/revisionist is concerned, is set aside.

21. The matter is remanded to the trial court for fresh adjudication of Issue Nos. 1 and 2 in light of the admissions of opposite party no. 2 and the purposive interpretation mandated in **Badshah v. Urmila Badshah Godse [(2014) 1 SCC 188].**

22. The entitlement of applicant no. 2 (minor child) to maintenance at the rate of Rs. 5,000/- per month, as directed by the trial court, is affirmed.

23. Both parties shall file detailed affidavits of disclosure of income, assets, and liabilities in the format prescribed in **Rajnesh (supra).** The trial court shall determine the quantum of maintenance strictly on the basis of such affidavits and evidence, and dispose of the matter expeditiously, preferably within three months.

(2026) 7 ILRA 2124
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 31.07.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 4062 of 2025

Rohit Yadav **...Revisionist**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issues for Consideration

(i) Whether the Magistrate, in proceedings under the Protection of Women from Domestic Violence Act, 2005, is empowered under Section 21 thereof to grant custody of a minor child, notwithstanding the jurisdiction conferred on the Family Court under Section 7 of the Family Courts Act, 1984?

(ii) Whether the order of the trial court directing the revisionist to hand over custody of the minor son to opposite party no. 2 exceeded the jurisdiction conferred under Section 21 of the Act of 2005?

Headnotes

Protection of Women from Domestic Violence Act, 2005 --- S. 21 --- Family Courts Act, 1984 --- S. 7 --- Custody of minor child --- Non obstante clause --- Later enactment --- Overriding effect.

HELD: Section 7 of the Family Courts Act, 1984 starts with the words "Subject to the other provisions of this Act" and keeps overriding effect only upon other provisions of the said Act and not over the provisions of any other Act, whereas Section 21 of the Act of 2005 opens with the words "Notwithstanding anything contained in any other law for the time being in force"; when two enactments are enforceable in the same kind having contrary provisions, the later enactment would prevail over the earlier enactment. Section 21 of the Act of 2005 thus keeps overriding effect upon the provisions of Section 7 of the Family Courts Act to the extent of applicability of Section 21. The decision of the Rajasthan High Court in Smt. Payal Agarwal (supra), being not binding on this Court having concurrent jurisdiction, does not lay down the correct legal position to the extent it holds that Section 21 of the Act of 2005 cannot operate notwithstanding the provisions of the Family Courts Act, and cannot be followed. [Paras 19-21]

Precedent --- Poonam Wadhwa v. Ajay Wadhwa --- Section 21 of the Act of 2005 not referred to before the Supreme Court --- Inapplicable.

HELD: The law laid down by the Supreme Court in Poonam Wadhwa (supra) does not discuss the provisions contained in Section 21 of the Protection of Women from Domestic Violence Act, as reference of Section 21 of the Act of 2005 was not made before the Supreme Court. [Para 18]

Protection of Women from Domestic Violence Act, 2005 --- Ss. 21, 23 --- Temporary custody --- Order interim in nature --- No excess of jurisdiction.

HELD: Learned counsel for the revisionist having fairly conceded that the Magistrate is competent to pass an interim custody order under Section 21, and the operative portion of the order of the trial court recording that the interim application under Sections 23 and 21 of the Act was allowed, the order is purely interim in nature and has not finally determined the issue of permanent custody; consequently, the contention that the Magistrate exceeded the jurisdiction conferred under Section 21 is devoid of substance. [Paras 16, 22, 23]

Criminal revision dismissed. (E-14)

Case Law Cited

Smt. Payal Agarwal v. Kunal Agarwal, 2014 SCC OnLine Raj 1227 --- not followed; *Poonam Wadhwa v. Ajay Wadhwa & Others*, 2025 SCC OnLine SC 2700 --- distinguished.

List of Acts / Statutes

Protection of Women from Domestic Violence Act, 2005; Family Courts Act, 1984.

List of Keywords

Domestic violence; Section 21; Custody of minor child; Temporary custody; Interim custody; Permanent custody; Family Court; Section 7 Family Courts Act; Non obstante clause; Overriding effect; Later enactment.

Case Arising From

Judgment and order dated 16.07.2025 passed by the Additional Sessions Judge, Court No. 1, Saharanpur, in Criminal Appeal No. 23 of 2025, Rohit Yadav v. State of U.P. and another, dismissing the appeal against the order dated 06.03.2025 passed by the Civil Judge (Junior Division)/FTC-I (Crime Against Women), Saharanpur, directing the revisionist to hand over custody of his son to opposite party no. 2.

Appearance for Parties

For the Revisionist(s): Madhu Ranjan Pandey.

For the Opposite Party(s): Rishika Raj Singhal, Shivendra Raj Singhal, G.A.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Supplementary affidavit has been filed today, is taken on record.

2. Heard Sri Madhu Ranjan Pandey, learned counsel for the revisionist, Sri Ramesh Kumar Singh, learned AGA for the State and Sri Shivendra Raj Singhal, learned counsel for the opposite party no.2.

3. I have perused the material available on record.

4. The revisionist-Rohit Yadav has approached this Court by means of the present criminal revision challenging the impugned judgment and order dated 16.07.2025 passed by Additional Sessions Judge, Court No.1, Saharanpur (hereinafter referred to as the "appellant court") in Criminal Appeal No.23 of 2025 (Rohit Yadav vs. State of U.P. and another) wherein the appellate court has dismissed the said criminal appeal filed by the revisionist against the judgment vide order dated 06.03.2025 passed by learned Civil Judge

(Junior Division)/FTC-I (Crime Against Women) Saharanpur (hereinafter referred to as the "trial court") by which the trial court ordered the revisionist to handover the custody of his son, namely, Master Krishna to the opposite party no.2-wife.

5. Feeling aggrieved by the aforesaid judgment and order passed by the appellate court, the present criminal revision has been filed, inter alia, on the grounds that the trial court has passed the impugned order beyond its jurisdiction upholding the finding of the trial court, therefore, the impugned order is illegal, arbitrary, contrary to law. Accordingly, a prayer has been made to set aside the impugned judgment and order and allow the present criminal revision.

6. Learned counsel for the revisionist submitted that there is no provision under the periphery of the Protection of Women from Domestic Violence Act empowering the Magistrate to decide the custody of the child.

7. In support of his submission, learned counsel for the revisionist has placed reliance on the judgment of Rajasthan High Court in the case of ***Smt. Payal Agarwal vs. Kunal Agarwal, 2014 SCC OnLine Raj 1227,*** wherein in the Court has observed as under (paragraph 7):

"Under section 21 of the Act 2005 independent remedy has not been provided to seek custody of the minor child and jurisdiction has been conferred on the Magistrate to grant temporary custody of such a child to the aggrieved person during the course of hearing of an application for grant of protection order or for any other relief under the provisions of Act whereas under the provisions of the Act of 1984 any person can file an independent suit or proceeding in relation to the guardianship of the person or custody of or access to any minor. Thus, the scope of Act of 1984 is much wider in comparison to section 21 of the Act of 2005. As the non obstante clause used in section 21 of the Act of 2005 does not refer to any particular statute or provision or provisions of a particular statute and rather it is general in nature, the Court has to determine the scope of its use very strictly. The law is that when a non obstante clause is used in the aforesaid fashion, the extent of its impact has to be found out on the basis of consideration of the intent and purpose of insertion of such a clause. When a non obstante clause is used in such a blanket fashion the Court has to determine the scope of its use very strictly. Section 8 of the Act of 1984 confers exclusive jurisdiction upon the Family Court in relation to the suits and proceedings of the nature mentioned in explanation to Section 7 of the Act. Although, Section 21 of the Act of 2005 also contains the non-obstante clause, but the same has limited application and despite being subsequent legislation it cannot have overriding effect on the Act of 1984. When both the enactments have the non obstante clause then in that case the proper perspective would be that one has to see the subject and dominant purpose for which the special enactment was made and in case the dominant purpose is covered by the contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. The Act of 1984 was specially meant for establishment of special Courts so that matters referred in explanation to Section 7 of the Act can be dealt by the special Courts

established for that purpose whereas the object of enactment of the Act of 2005 was to protect the woman from being victim of the domestic violence and to prevent the occurrence of domestic violence in the society."

8. The Rajasthan High Court thus held that Section 21 of the Act of 2005 does not create an independent forum for adjudicating questions relating to permanent custody of a minor. According to the said decision, the jurisdiction of the Magistrate under Section 21 is confined to granting temporary or interim custody during the pendency of proceedings under the Act of 2005, whereas substantive questions relating to guardianship and permanent custody fall within the exclusive domain of the Family Court under Section 7 of the Family Courts Act.

9. Learned counsel for the revisionist has further placed reliance of the judgment of the Apex Court in the case of ***Poonam Wadhwa v. Ajay Wadhwa & Others, 2025 SCC OnLine SC 2700***, wherein the Apex Court has held as under (paragraph 15):

"However, though we may find that the aforesaid aspects ought not to have weighed with the High Court while determining the custody issue, we should not be oblivious of the fact that Arjun is a male child and is aged above 5 years by now. Moreover, the education of Arjun continues to be as a student at Heritage School and therefore, his education is not disturbed whether he remains in the custody of his father or mother. What is important is that from our interactions with Arjun we noticed that he was not willing to part company of his father. We also took notice of the fact that his father has few elder members at home including Arjun's grandfather who are giving company to the child. In such circumstances, having regard to the fact that the male child is now above five years old and he continues to be in the same school where he was studying earlier and he has no issues with his own father and is not willing to part company of his father, an interference with the order passed by the High Court is not required, particularly in view of the fact that the appellant has visitation rights as directed earlier by this Court vide order dated 3rd May, 2024 passed in SLP (Criminal) No.836 of 2024. Further, the High Court has not closed the custody issue rather it gave appellant right to seek custody and pursue remedies under relevant statutes. Consequently, we do not find a good reason to disturb the operative portion of the impugned order. Subject to above, the appeal is dismissed. The application of the respondent seeking discharge of the visitation rights granted vide order dated 3rd May 2024 by this Court in SLP (Criminal) No.836 of 2024 is rejected."

10. It is submitted that the Supreme Court, while declining to interfere with the custody arrangement made by the High Court, recognised that the paramount consideration is the welfare of the child. The Court also noticed that the child was above five years of age, was continuing in the same school, had expressed his preference to remain with his father, and that the mother continued to enjoy visitation rights. Importantly, the Supreme Court observed that the custody issue had not been finally concluded and that the parties were at liberty to pursue appropriate remedies before the competent Family Court under the relevant statutory provisions.

11. Reference has also been made to Explanation (g) to Section 7(1)(b) of the Family Courts Act, 1984, which confers jurisdiction upon the Family Court in relation to proceedings concerning the guardianship of a minor, custody of a minor or access to a minor.

12. Placing reliance upon the aforesaid decisions as well as the provisions of the Family Courts Act, learned counsel for the revisionist contends that the impugned orders suffer from lack of jurisdiction and are therefore liable to be set aside.

13. Per contra, learned A.G.A. for the State as well as learned counsel appearing for opposite party no.2 have vehemently opposed the revision. It is submitted that Section 21 of the Protection of Women from Domestic Violence Act, 2005 expressly empowers the Magistrate to grant custody of a minor child and, therefore, the impugned orders do not suffer from any jurisdictional error.

14. For ready reference, Section 21 of the Act, 2005, is reproduced below:

***"21. Custody orders**. - Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit."*

15. Perusal of the Section 21 of the Act, 2005, clearly transpires that the Magistrate has fully empowered to decide the custody of a minor. It is, thus, contended that the submissions urged by learned counsel for the revisionist is wholly misconceived, hence, the present revision is liable to be dismissed by this Court.

16. In view of provisions contained in Section 21 of the Act, 2005, when confronted, learned counsel for the revisionist submitted that the Magistrate can decide the custody of a minor in a proceeding pending before it under certain provisions of the Protection of Women from Domestic Violence Act, 2005, but it is conclusive that the Magistrate can pass an interim order in this regard. The Magistrate is not empowered to pass final order for custody of a minor child. It is, thus, contended that the submissions urged by learned counsel for the opposite party no.2 is not sustainable.

17. I have heard the rival submissions advanced by the learned counsel for the parties, perused the record and given due consideration to the decisions referred to above.

18. Firstly, the law laid down by the Supreme Court in ***Poonam Bajwa (supra)*** doesn't not discuss the provisions contained in Section 21 of the Protection of Women from

Domestic Violence Act meaning thereby the Supreme Court while deciding the matter, reference of Section 21 of the act 2005 was not made before the Supreme Court.

19. So far as the finding recorded by Rajasthan High Court is concerned, such finding is not binding on this Court having concurrent jurisdiction. Section 7 of the Family Courts Act, 1984 starts with words "Subject to the other provisions of this Act" while the words contained in Section 21 of the Act, 2005 "Notwithstanding anything contained in any other law for the time being in force" when two enactments are enforceable in same kind having contrary provisions later enactment would prevail over earlier enactment.

20. Secondly, the provisions contained in Section 7 of the Family Courts Act keeps overriding effect only upon other provisions of the said Act but not over the provisions of any other Act. Apart from that, the words used in Section 21 of the Act, 2005 clearly indicates that these provisions have overriding effect upon any other law for the time being in force meaning thereby Section 21 of the Act, 2005 keeps overriding effect upon the provisions of Section 7 of the Family Courts Act to the extent of applicability of Section 21 of the Act, 2005.

21. In the aforesaid view of the matter, this Court is unable to subscribe to the proposition laid down in ***Smt. Payal Agarwal (supra)*** to the extent it holds that Section 21 of the Act of 2005 cannot operate notwithstanding the provisions of the Family Courts Act. With utmost respect, this Court is of the considered opinion that the said decision does not lay down the correct legal position and, therefore, cannot be followed.

22. The next submission of the learned counsel for the revisionist relates to the nature of the order passed under Section 21 of the Act of 2005. On this aspect, learned counsel himself has fairly conceded that the Magistrate is competent to pass an interim custody order under Section 21. Significantly, the operative portion of the order dated 06.03.2025 passed by the trial court records:

"प्रा िथया का प्र ा थर्ना पत्र अंतगर्त धारा-23 तथा धारा-21 घरेलू िहसाअिधिनयम का अंतिरम प्र ा थर्ना पत्र स् वी कार िकया जाता है

23. The language employed by the trial court leaves no room for doubt that the order is purely interim in nature and has not finally determined the issue of permanent custody. Consequently, the contention that the Magistrate has exceeded the jurisdiction conferred under Section 21 is devoid of substance.

24. For all the reasons recorded hereinabove, I find no illegality, perversity or jurisdictional error in the impugned judgment and order warranting interference in exercise of revisional jurisdiction. The criminal revision, being devoid of merit, is accordingly **dismissed.**

(2026) 7 ILRA 2130
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

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

Criminal Revision No. 6851 of 2025

State of U.P. ...Revisionist
Versus
Nawab Singh Yadav & Ors. ...Opposite Parties

Issues for Consideration

(i) Whether, at the stage of taking cognizance on a police report, the Magistrate can sift and appreciate the evidence collected during investigation, as if holding a mini trial, and on that basis refuse to take cognizance?

(ii) Whether the Magistrate, before refusing to take cognizance on a police report and dropping the proceedings, is required to issue notice to and hear the informant?

Headnotes

Criminal Procedure --- Cognizance on police report --- Scope of inquiry --- Magistrate to apply judicial mind only to find whether prima facie case is made out --- Sifting and appreciation of evidence impermissible --- Refusal of cognizance after holding mini trial --- Manifest error of law.

HELD: Following *Kamal Shivaji Pokarnekar* and *Rashmi Kumar*, at the stage of taking cognizance and summoning, the Magistrate is required to apply judicial mind only with a view to finding out whether a prima facie case has been made out; the Magistrate is not required to evaluate the merits of the material or evidence, and must not undertake the exercise of finding out whether the materials would lead to a conviction. It is not the province of the Court at that stage to embark upon and sift the evidence to come to the conclusion whether an offence has been made out or not. Where the Magistrate scripted a thirty-one page order going into details of collection of evidence and analysing its worth, commented upon irregularities in remand, upon the addition of Sections by the police in the charge-sheet and upon the forensic knowledge of the investigating officers, and refused cognizance, the order suffers from a manifest error of law in embarking upon a mini trial to find out the truth of the allegations; such remarks were not required at the stage of taking cognizance. A case, prima facie, worth proceeding was clearly made out, and that is all that is required at the stage of taking cognizance. [Paras 17-23, 27]

Criminal Procedure --- Refusal to take cognizance on police report and dropping of proceedings --- Notice and opportunity of hearing to informant mandatory --- Hearing of accused at stage of cognizance impermissible.

HELD: Where the Magistrate, on consideration of the police report, is not inclined to take cognizance of the offence and decides to drop the proceedings, the informant is prejudiced, as the First Information Report lodged by the informant would have failed of its purpose; in view of *Bhagwant Singh*, the Magistrate must,

therefore, give notice to the informant and provide an opportunity of being heard at the time of consideration of the report. Where the accused were heard at the stage of taking cognizance, a procedure wholly impermissible in law, and the Magistrate refused cognizance and terminated the proceedings without issuing notice to or hearing the informant, the order prejudiced the informant's interest and is not sustainable. The order impugned being itself unsustainable, no useful purpose would be served by examining the wisdom of the Magistrate's remarks against the police officers. [Paras 24-26]

Criminal revision allowed. Order dated 20.09.2025 set aside and matter restored to the file of the Chief Judicial Magistrate, Kannauj, for making fresh orders on the police report, bearing in mind the remarks in the judgment.

Criminal revision allowed. (E-14)

Case Law Cited

Kamal Shivaji Pokarnekar v. State of Maharashtra and others, (2019) 14 SCC 350 --- relied on; *Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 --- relied on; *Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada*, (1997) 2 SCC 397 --- relied on; *State of Bihar v. Rajendra Agrawalla* --- referred to; *Bhagwant Singh v. Commissioner of Police and another*, (1985) 2 SCC 537 --- relied on.

List of Acts / Statutes

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Protection of Children from Sexual Offences Act, 2012; Code of Criminal Procedure, 1973.

List of Keywords

Cognizance; Police report; Charge-sheet; Prima facie case; Mini trial; Appreciation of evidence; Refusal of cognizance; Notice to informant; Right of hearing; Hearing of accused at pre-cognizance stage.

Case Arising From

Order dated 20.09.2025 passed by the then Chief Judicial Magistrate, Kannauj, in Miscellaneous Case No. 1058 of 2025, declining to take cognizance on the charge-sheet submitted in Case Crime No. 361 of 2025, under Sections 351(3), 224, 132, 49, 232, 61(2), 308(7) and 111 of the Bharatiya Nyaya Sanhita, 2023, Police Station Kotwali, District Kannauj.

Appearance for Parties

For the Revisionist(s): Patanjali Mishra.

For the Opposite Party(s): Akshay Pratap, Amit Kumar Pandey, Vijit Saxena.

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

1. This criminal revision has been preferred by the State assailing an order of Ms. Shraddha Bhartiya, the then Chief Judicial Magistrate, Kannauj, dated 20.09.2025, declining to take cognizance of the offence on the basis of a charge-sheet submitted by the Police in Case Crime No. 361 of 2025, under Sections 351(3), 224, 132, 49, 232, 61(2), 308 (7) and 111 of the Bharatiya Nyaya Sanhita, 2023 (for short, BNS), Police Station Kotwali, District Kannauj, registered as Miscellaneous Case No. 1058 of 2025, besides issuing other directions.

2. A First Information Report giving rise to Case Crime No. 681 of 2025 under Section 76 BNS and Sections 7/8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, for short) was lodged formally in the name of Arvind, the father of the minor victim, but actually by the victim herself, a girl, who shall be called A.

3. It is said in her FIR by A that she is fifteen years old, a resident of Binaura Rampur, Police Station Tirwa, District Kannauj. On 11.08.2024, she had accompanied her aunt (bua) Pooja Tomar to Lucknow and they returned to Tirwa from Lucknow at 11 O'clock in the night. They then boarded an auto-rickshaw and went to Chandan Mahavidyalaya, where they met Nawab Singh Yadav. Nawab Singh Yadav promised a job to the victim in the medical college and it is for the said purpose they were called to the Chandan Mahavidyalaya. During this time, when her aunt (Bua) went to the bathroom, Nawab Singh Yadav took off the victim's clothes, a fact she reported to her aunt immediately. Her aunt called the Police at Dial 112 Facility. It is also reported that Nawab Singh Yadav touched the victim's breast. Necessary action in the matter, after registration of the crime, was requested.

4. The Investigating Officer, during the course of investigation, had the statement of the victim recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (‘BNSS’ for short) before the learned Judicial Magistrate and, in that statement, the allegation of rape surfaced against the accused Nawab Singh Yadav. Further on, during investigation, the victim was medically examined by Dr. Swastika Shalini on 13.08.2024, who prepared a medico-legal examination report. A DNA sample of the victim of rape for the purpose of verification was sent to the Forensic Science Laboratory, UP, Agra.

5. The Forensic Science Laboratory submitted their report dated 31.08.2024, where exhibits nos. 1 to 10 belonged to the victim, whereas those numbered as exhibits nos. 11 to 17 were from the accused, Nawab Singh Yadav. It was reported that the biological material, found on exhibits nos. 6 and 7 belonging to the victim, was of male origin and was similar to exhibit no. 17, that is to say, Nawab Singh Yadav□s blood. Likewise, there were similarities found which established, prima facie, through the material carrying the DNA, a case of rape.

6. The Investigating Officer, according to the State's case, carried out an extensive and fair investigation and after collecting cogent material, including the statement of the victim recorded under Sections 180 and 183 BNSS, call detail records, video footage, bank statements, DNA reports and other relevant material, submitted a charge-sheet against opposite party no. 1 and co-accused Pooja Tomar for offences punishable under Sections 65(1), 115(2), 351(3), 61(1) and 238(b) BNS and Sections 3/4(2), 17 and 18 POCSO Act, whereas that against opposite party no. 2 under Section 238(b) BNS. The charge-sheet is one dated 19.09.2024. The trial commenced as Sessions Trial No. 1006 of 2024, before the learned Special Judge (POCSO Act), Kannauj.

7. In the said case, Dr. Swastika Shalini, who medically examined the victim, was summoned by the Trial Judge to testify before him. The witness, who is a government employee, was to appear before the Trial Judge in discharge of her official duties, but was harassed by the accused in the present case in order to suborn her and make her testify in his favor. The aforesaid witness, Dr. Swastika Shalini, entered the witness box in Sessions Trial No. 1006 of 2024 arising

out of Case Crime No. 681 of 2024, on 19.03.2025, as PW-11. She was threatened by the accused and was told that after release of opposite party no. 1 from jail, three persons would be done to death. With regard to crime committed against her on that day, an FIR was registered on 20.05.2025 as Case Crime No. 361 of 2025 under Sections 224, 132, 49, 232, 61(2), 351(3) BNS and four named accused, including opposite party nos. 1 and 2.

8. What the revisionist further says is that on 19.03.2025, the first informant had earlier made a complaint before the Superintendent of Police on 23.03.2025. On the said complaint, a preliminary inquiry was conducted by the then Circle Officer, City, Kannauj, who submitted his report dated 12.04.2025. The legal opinion on the aforesaid report was sought from the In-charge, Joint Director (Prosecution), who submitted a report that from the perusal of material, offences punishable under Sections 351(3)/224/132/49/232 BNS are prima facie made out.

9. In his report, the Circle Officer, City, had recommended registration of an FIR in the present case. On the basis of the inquiry report, the Superintendent of Police, Kannauj, vide order dated 20.05.2025, directed the Station House Officer, Police Station Kotwali, District Kannauj, to register an FIR in the present case. It is, in this manner, that the FIR, giving rise to the present crime, was registered on 20.05.2025. After a thorough investigation into the crime, a charge-sheet against opposite party no. 1 was submitted on 11.07.2025 for offences punishable under Sections 351(3), 224, 132, 49, 234, 61(2), 308(7) and 111 BNS. The investigation, as regards the other co-accused, remained pending. The aforesaid charge-sheet was forwarded to the Circle Officer, City, who put up objections and directed the Investigating Officer to conduct investigation on the points raised.

10. The Investigating Officer then proceeded with the investigation again and found that there was no CCTV camera installed in the official accommodation of the first informant. He was told by the first informant and her husband that at the time of the incident, nobody else was present in the house and, as such, there was no other witness of the incident. The Investigating Officer attempted to interrogate some persons in the hospital premises, but no one cooperated.

11. On 31.08.2025, the Investigating Officer again attempted to interrogate some independent witnesses from the hospital premises such as Manjesh Kumar, Cleaner Supervisor of the District Hospital. Manjesh Kumar stated that he had heard that the first informant of the present case was threatened in order to compel her to testify in favor of opposite party nos. 1 and 2 and, thereafter, an SCD 18 dated 31.08.2025 was recorded, substantiating the earlier charge-sheet. The investigation regarding the other two co-accused, Kishore Dohre and Pooja Tomar, was pending. The charge-sheet dated 11.07.2025 and, subsequent leafs of the case diary, were submitted before the Presiding Officer, that is to say, the learned Chief Judicial Magistrate, Kannauj, on 02.09.2025. Later on, this case was numbered as Miscellaneous Case No. 1058 of 2025 in the Court of the Chief Judicial Magistrate, Kannauj. The learned Chief Judicial Magistrate, vide order dated 20.09.2025, declined to take cognizance of the offences mentioned in the charge-sheet and dismissed Miscellaneous Case No. 1058 of 2025. Aggrieved by the said order, the present revision has been preferred by the State.

12. We have heard Mr. Manish Goyal, learned Additional Advocate General assisted by Mr. Rupak Chaubey, learned Counsel for the revisionist, Mr. Vijit Saxena, learned counsel on behalf of opposite party nos. 1 and 2 and Mr. Amit Kumar Pandey, learned Counsel on behalf of opposite party no. 3 and perused the record, including the order impugned.

13. The thrust of Mr. Goyal's submission, in support of this revision, is that the learned Magistrate, while passing the impugned order, has scripted thirty one pages going into the details of collection of evidence and analyzing its worth as if holding a mini trial. He submits that at the stage of cognizance, the learned Magistrate is only required to apply his judicial mind to the material on record and, if a prima facie case is made out, the Magistrate is obliged to take cognizance and issue process. The learned Magistrate cannot sift through evidence, appreciating various aspects thereof at the stage of taking cognizance.

14. Learned Counsel, Mr. Vijit Saxena, appearing for opposite party no. 1 and Mr. Amit Kumar Pandey, learned Counsel appearing for opposite party no. 3, have supported the order and said that the material collected being all fabricated and the investigation done in an unfair manner, the learned Magistrate has rightly refused to take cognizance.

15. Elucidating on the submissions, learned Counsel for the opposite party have drawn the attention of the Court to the fact that the learned Magistrate has refused to take cognizance on ground that remand of opposite party nos. 1 and 2 was never secured by the Police in the present crime and without securing a remand in the crime, a charge-sheet has been submitted.

16. Learned Counsel for the opposite party have also drawn the Court's attention to the remarks of the learned Magistrate that the first and second opposite parties remand was sought in another case from the learned Special Judge (Gangsters Act), without bringing to notice of the learned Judge the fact that the present crime was pending before the learned Chief Judicial Magistrate and after that remand, from the learned Special Judge (Gangsters Act), statements under Section 180 BNSS, relating to the present crime, have been recorded. There are other remarks of the Magistrate to reach her conclusions that have been highlighted during the hearing by the learned Counsel appearing for the opposite party.

17. A perusal of the impugned FIR indeed shows many remarks in the first part relating to the irregularities in remand which have little to do with the principle issue if, from the material collected, a prima facie case, worth taking cognizance, is made out.

18. In the next lap of the order impugned, we find that the addition of Sections by the Police in the charge-sheet have been commented upon by the learned Magistrate as ones not supported by the FIR, the statements and those additionally recorded during investigation. There is a remark that this is indicative of poor forensic knowledge on the part of the police officers requiring training. It may be so, but, at the stage of taking cognizance, we are of opinion that these remarks were not required.

19. It is also remarked that the concerned Investigating Officer, the Station House Officer and the Circle Officer, City, have included an offence in the FIR under Section 232 BNS but violating, as they have done, the mandatory provisions of Section 215 BNSS, which reveals non-application of mind, negligence in performance of duties and violation of the mandatory provisions of the law. It is then said in the order impugned that during investigation Section 308(7) BNS and extortion have been noted to be continuously

committed by the accused and, on its basis, they have added Section 111 BNS to the offences charged, whereas the offence under Section 308(7) BNS falls under Chapter XVII of the BNS, which relates to crimes against property.

20. It is also remarked in that connection that there is nothing to show that any attack or any criminal force was used vis-a-vis the informant by the accused or a criminal conspiracy amongst the accused proven from the evidence. It is also said that there is no such allegation in the FIR as well. It is, therefore, submitted that the basis on which the charge-sheet has been filed, while ignoring the contents of the FIR and the statements recorded during the investigation, is unclear. This reflects a lack of proper forensic and understanding on the part of the investigating police officers. There is also a finding to the effect that it is to be noted that the FIR was lodged on 20.05.2025. The statements of the informant and Dr. Ravindra Kumar recorded in CD-1 on 20.05.2025 at pages nos. 16 and 17, whereas additional statements were recorded one and a half months later in CD-8 dated 06.07.2025, and, therefore, the fact about the accused extending threats surfaced one and a half months later through the additional statements. There are similar remarks touching upon the merits of the material collected in support of the prosecution case, as though the learned Magistrate had undertaken an appreciation of the evidence at the pre-trial stage, apart from making adverse observations regarding the forensic knowledge of the investigating officers.

21. What is required to be done at the stage of taking cognizance is, by far well-settled in the law and it is certainly not that what the learned Magistrate has done while passing the order impugned. In this connection, reference may be made to **Kamal Shivaji Pokarnekar v. State of Maharashtra and others (2019) 14 SCC 350**, In **Kamal Shivaji Pokarnekar** *(supra),* it has been observed:

"3. The trial court recorded the statement of the husband of the appellant and directed issuance of process to the respondents. The respondents filed a revision challenging the issuance of process against them which was dismissed. The High Court allowed the writ petition filed by the respondents, holding that the dispute is of a civil nature, and criminal proceedings against the respondents would be an abuse of the process of law. The High Court recorded a finding that the disputed document cannot be stated to be a sham document, as Shamrao during his lifetime stated on oath that he had handed over the possession of the land to the respondents. The submission made on behalf of the respondents that the matter is entirely of a civil nature was accepted by the High Court.

4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not."

(Emphasis by Court)

22. The principle was earlier laid down by a three Judge Bench of the Supreme Court in **Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424.**

23. A reference, in this connection, may also be made to **Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada, (1997) 2 SCC 397,** where it was observed:

"14...It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in State of Bihar v. Rajendra Agrawalla that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters. If it is a charge-sheet filed under Section 173 of the Code, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court to proceed further in the matter. Thus it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether offence has been made out or not. The learned Judge, therefore, was clearly in error in attempting to sift the evidence with reference to the averments made by the respondent in the counter-affidavit to find out whether or not offence punishable under Section 406 IPC had been made out."

24. The other point that was argued by Mr. Goyal is also well settled in law. He has objected to the fact that whereas the accused were heard at the stage of taking cognizance, a procedure, wholly impermissible in law, the impugned order has been passed by the learned Magistrate without issuing notice to the informant or hearing her which is mandatory because, by the refusal of cognizance, proceedings of the case launched by her would terminate and it is she who is the person aggrieved by this course of action.

25. We agree with the aforesaid submission of Mr. Goyal as well. In this connection, reference may be made to a three Judge Bench decision of the Supreme Court in **Bhagwant Singh v. Commissioner of Police and another, (1985) 2 SCC 537**, where it has been held:

"4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case. the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides

that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly of in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

26. In this case, it is true that no notice was issued to the informant and the Magistrate proceeded to refuse cognizance and terminated the proceedings, thus prejudicing the informant's interest without hearing her. So far as the remarks against the police officers are concerned, we are of opinion that since the order impugned is itself not sustainable, no useful purpose would be served by examining the wisdom of the learned Magistrate's remarks.

27. Upon a perusal of the police report, together with the case diary and the material collected during investigation, it is a clear case where the order refusing cognizance has been made by the learned Magistrate committing a manifest error of law in embarking upon a mini trial as if it were, to find out the truth of the allegations. The stage of trial is well recognized in criminal procedure and that certainly had not arrived to require the Magistrate to venture into an analysis of all the material that she has done. A case, *prima facie*, worth proceeding is clearly made out and this is all that is required at the stage of taking cognizance.

28. In the result, this petition **succeed**s and is **allowed**. The impugned order dated 20.09.2025, passed by the learned Chief Judicial Magistrate, Kannauj in Miscellaneous Case No. 1058 of 2025 is hereby **set aside** and the matter stands restored to the files of the Chief Judicial Magistrate, Kannauj for making fresh orders on the police report, bearing in mind the remarks in this judgment.

(2026) 7 ILRA 2138
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Misc. Writ Petition No. 11610 of 2026

Amit Kumar Jaiswal & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issues for Consideration

(i) Whether an FIR alleging misappropriation of cash meant for replenishment of an ATM by the franchisee is liable to be quashed on the ground that the dispute is purely civil and contractual and the agreement between the parties contains an arbitration clause?

(ii) Whether two FIRs lodged against the petitioners in respect of two different ATMs amount to multiple FIRs on the same cause of action?

Headnotes

Bharatiya Nyaya Sanhita, 2023 --- Ss. 316(5), 318(4) --- Criminal breach of trust by agent --- ATM franchisee as custodian of ATM and trustee of cash --- Cash withdrawn for replenishment not loaded into ATM --- Prima facie offence disclosed --- Civil and criminal remedies co-extensive.

HELD: Under the Master Franchisee Service Agreement, the petitioner was the custodian of the ATM/CRM and trustee of the physical cash lying in its vault, and was bound to replenish the cash withdrawn from the designated account into the ATM and not to use it for personal purposes. The allegation that an amount of Rs. 3,08,400/- was not loaded into the ATM, causing wrongful loss to the Company and wrongful gain to the petitioners, prima facie constitutes an offence under Section 316(5) BNS, and there seems to be the necessary mens rea. The same set of facts can give rise both to civil liability and to criminal prosecution; pendency of civil proceedings or availability of civil remedies on the same subject matter is no justification to quash criminal proceedings where a prima facie case exists. [Paras 14-19]

Arbitration clause in agreement --- Not a bar to criminal prosecution.

HELD: An arbitration clause enables parties to seek adjudication of the civil consequences of the violation of a contract and does not envisage adjudication of its criminal consequences; the Arbitrator would have no jurisdiction to investigate or launch prosecution in respect of an offence. The mere existence of an arbitration clause, or even the pendency of arbitration proceedings or availability of civil remedies, does not oust the jurisdiction of criminal courts to consider whether, on the facts narrated in the FIR, a criminal offence has been committed. [Paras 20-23]

Multiple FIRs --- Same cause of action --- Two FIRs relating to two different ATMs at different locations, involving different amounts and registered at different police stations --- Not on same cause of action.

HELD: Where the two FIRs were lodged for two different ATM machines installed at two different places, the amounts involved were totally different and the FIRs were registered at two different police stations having jurisdiction to investigate the offences alleged therein, the FIRs were not lodged on the same cause of action. [Para 24]

Writ petition dismissed; prayer for quashing of FIR refused. (E-14)

Case Law Cited

T.T. Antony v. State of Kerala & Others, 2001 (6) SCC 181 --- referred to; *Babubhai v. State of Gujarat & Others*, 2010 (12) SCC 254 --- referred to; *State of Telangana v. Habib Abdullah Jellani*, (2017) 2 SCC 779 --- referred to; *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, (2021) SCC Online SC 315 --- referred to; *Directorate of Enforcement v. Niraj Tyagi and others*, (2024) 5 SCC 419 --- referred to; *Kathyayini v. Sidharth P.S. Reddy & Ors.*, 2025 INSC 818 --- relied on; *K. Jagadish v. Udaya Kumar G.S. and another*, (2020) 14 SCC 552 --- referred to; *Punit Beriwala v. The State of NCT of Delhi and Ors.*, 2025 SCC OnLine SC 983 --- relied on; *Trisuns Chemical Industry v. Rajesh Aggarwal*, 1994(4) RCR (Crl.) 223 (SC) --- relied on; *Digambar Pathak v. State of UP*, SLP (Cr.) No. 7341 of 2025 --- relied on.

List of Acts / Statutes

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Quashing of FIR; Criminal breach of trust; ATM franchisee; Agent; Misappropriation; Civil dispute; Arbitration clause; Mens rea; Multiple FIRs; Same cause of action.

Case Arising From

First Information Report dated 20.04.2026, registered as Case Crime No. 46 of 2026, under Sections 316(5), 318(4) of the Bharatiya Nyaya Sanhita, 2023, Police Station Reotipur, District Ghazipur.

Appearance for Parties

For the Petitioner(s): Anwar Hussain, Mohammad Alam.

For the Respondent(s): G.A., Deepak Upadhyay, Paras Dubey, Rajesh Kumar Singh.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. The instant writ petition filed on behalf of the petitioners seeks quashing of the first information report dated 20.04.2026, registered as Case Crime No.46 of 2026, under Sections 316(5), 318(4) of Bhartiya Nyaya Sanhita (B.N.S.), 2023, Police Station Reotipur, District Ghazipur.

2. As per the allegations made in the impugned first information report, which was lodged by the respondent no.4, presently working as Assistant Manager in Hitachi Payment Services Pvt. Ltd.

(hereinafter referred to as 'the Company') and has been appointed by the Company to pursue the present matter, it is averred that the said Company is a duly registered Organization, which has been authorized by the Reserved Bank of India to run / operate the ATM (Automated Teller Machine). The Company operates ATM / CRM (Cash Recycling Machines) machines across the Country for various Banks under the name and style of 'Hitachi Money Spot', through which banking facilities like cash deposit and cash withdrawal are provided to the general public and ATM cardholders. To fulfill this purpose, an agreement namely, 'Polaris Model Master Franchisee Service Agreement' was executed on 12.08.2024 between the Company and M/s. Asha Enterprises having its Proprietor Amit Kumar Jaiswal (petitioner no.1), son of Shri Awadhesh Kumar Jaiswal, resident of 9, Ward Number 6, Holika Mahal, Dildarnagar, District Ghazipur, Uttar Pradesh - 232326 (Office: 36, Ward Number 6, DL Road, Dildarnagar, Ghazipur). Under the said agreement, ATM ID - MPZ 14364 was established at Ward Number 12 Patti, Gelha Rai, Tehsil Zamania, Police Station Reotipur, District Ghazipur, Uttar Pradesh - 232328. It was proposed by Amit Kumar Jaiswal to the Company that his subordinate employee Vishwajeet Raj son of Shri Santosh Kumar (Aadhar Number: 7729-7279-9793), be authorized by the Company to perform 'Axis Indent' withdrawals. Therefore, at the request of Amit Kumar Jaiswal, the Company authorized Vishwajeet Raj to withdraw funds via Axis Indent. The Company issued Indent to Amit Kumar Jaiswal and his son Master Franchisee Harsh Raj (petitioner no.2) and Vishwajeet Raj to operate the said ATM through Hitachi's Account number 919020069430599 via Axis Bank, Ghazipur Branch. In addition to this, a total amount of Rs.7,25,70,200/- (Rupees Seven Crores Twenty Five Lakh Seventy Thousand Two Hundred) was provided through Union Bank of India Account number 441501010250763, IFSC: UBIN0544159, held by account holder Asha Enterprises. Against this, a total amount of Rs.7,22,61,800/- (Rupees Seven Crore Twenty Two Lakh Sixty One Thousand Eight Hundred) was withdrawn by ATM cardholders. After reviewing the ATM switch data, it has come out that an amount of Rs. 3,08,400/- (Rupees Three Lakhs Eight Thousand Four Hundred) was less loaded into the ATM. Despite this, Amit Kumar Jaiswal and his son Master Franchisee Harsh Raj and Vishwajeet Raj kept providing wrong information and misleading the Company regarding the cash loading and they tried to show/convince that the entire amount was loaded into the ATM. This act has not only caused financial loss to the Company but has also caused inconvenience to the general public due to the disruption of ATM services. In the relevant terms and conditions of the aforementioned agreement, especially in Clause 1, Sub-clause (m) of the agreement, responsibilities regarding cash management and security were clearly defined for Amit Kumar Jaiswal and his son Master Franchisee Harsh Raj. Under the present agreement, amongst other things agreed by and between the Parties hereto, the Master Franchise Agent shall (i) act as the custodian of the ATM/CRM and other related assets installed in the said Premises; (ii) be the trustee of the physical cash amount lying at the ATM/CRM vault and will provide necessary security to the cash to prevent any kind of incidents like robbery or theft; (iii) keep and maintain the said Premises at all time in clean, hygienic and good condition (iv) withdraw the cash amount as per the requirement, which shall be determined by the Company from time to time, from the designated bank A/c (a Designated Bank A/c is an A/c opened up by the Master Franchise Agent in his individual name at a local branch exclusively used for the purpose of withdrawing cash to replenish into the ATM/CRM and this designated Bank A/c shall not be utilized for his/her other personal use including but not limited to deposit, transfer or withdrawn of amount for his personal use) (v) the amount withdrawn from the Designated bank A/c shall be replenished into the ATM/CRM machine installed in the said Premises to enable the cardholders to withdraw the cash; (vi) at no point of time remove the cash amount from the ATM/CRM and misappropriate the same for his/her personal use; (vii) ensure that the camera installed in the said Premises is functioning properly and if the camera is found to be defective, then the Master Franchise Agent should immediately inform the Company; (viii) to assist the

Company's representative to carry out required First Level Maintenance (FLM) or Second Level Maintenance (SLM) services in the said Premises; and (ix) such other activities as may be informed by the Company from time to time. According to Clause 1, Sub-clause (o) of the agreement, The Master Franchise Agent shall, under no circumstances, use any cash amount or intermingle funds, from his / her own source or from any third-party source without approval of the Company in writing for the purpose of replenishment. The Master Franchise Agent will use the currency notes withdrawn from the Designated Bank A/c only for replenishing it into the ATM/CRM. The Master Franchise Agent hereby agrees and aware that if he / she utilizes the currency notes from sources other than the one withdrawn from the Designated Bank A/c, then it will be considered as a material breach of this Agreement and the Master Franchise Agent shall be solely liable and responsible for the consequences arising therefrom. In such case, the Company shall be entitled to forthwith terminate this Agreement and forfeit the security deposit amount maintained with the Company without any intimation to the Master Franchise Agent. Clear instructions of the Company were that if for any reason the cash amount could not be loaded into the ATM, then it would be mandatory to return it to the Company. However, Amit Kumar Jaiswal and his son Master Franchisee Harsh Raj and Vishwajeet Raj, deliberately did not return the remaining amount to the Company and misled the Company by giving false information. After the ATM switch data was updated, fraud was detected, and despite several requests for the return of the amount being made in writing and verbally, neither was the money returned, nor was any satisfactory clarification provided by them to the Company. Thus, Amit Kumar Jaiswal and his son Master Franchisee Harsh Raj and Vishwajeet Raj, while acting in the capacity of a banking agent, have embezzled the Company's funds under a pre-planned conspiracy, which falls under the category of a punishable offence. The complainant (respondent no.4) had submitted an application regarding the above to the Police Station Reotipur on 24.01.2026, but the Reotipur Police have neither taken any action till date nor have they registered the complainant's case, due to which this application is being moved. Request has been made to register the case against Amit Kumar Jaiswal and his son Master Franchisee Harsh Raj and Vishwajeet Raj and initiate legal proceedings.

3. Heard learned counsel for the petitioners, learned AGA for the State, Shri Deepak Upadhyay alongwith Shri Rajesh Kumar Singh, learned counsel for the respondent no.4 and perused the record.

4. Learned counsel for the petitioners submitted that the present first information report was lodged on 20.04.2026, by the respondent no.4 giving rise to Case Crime No.46 of 2026, under Sections 316(5), 318(4) of B.N.S., 2023 for alleged misappropriation of Rs.3,08,400/-. A bare reading of the present first information report clearly demonstrates that the dispute / entire allegation arises out of ATM cash loading, withdrawal and reconciliation under commercial agreements dated 12.08.2024 and 21.04.2025 executed between the parties.

5. Learned counsel for the petitioners further submitted that the aforesaid agreements specifically contain a clause regarding arbitration. The said arbitration clause clearly establishes that any dispute that arises under the aforesaid agreements shall be attempted to settle through negotiation and mutual agreement and if it could not be settled through such negotiation and mutual agreement, then it shall be finally settled by sole Arbitrator, which shall be appointed by the informant Company. The award of the Arbitrator shall be final and binding between the parties. A bare perusal of the first information report reveals that the dispute is based upon internal reconciliation of ATM cash and alleged outstanding amount, which squarely falls within the scope of dispute contemplated under the aforesaid arbitration clause. Therefore, the dispute between the parties is purely contractual and arbitral in nature. However, the

respondent no.4 has deliberately bypassed the agreed arbitral mechanism and had resorted to criminal proceedings in order to exert pressure upon the petitioners for recovery of alleged due amount, which is impermissible in law. Earlier, the petitioner no.1 had already moved an application under Section 173(4) B.N.S.S. against the respondent no.4 and other persons, which is still pending.

6. Learned counsel for the petitioners next submitted that on receipt of show cause notice cum demand notice dated 06.01.2026, the petitioner no.2 had given a legal notice on 13.01.2026 and had also replied on 21.01.2026 to the show cause notice cum demand notice specifically denying any breach of trust as alleged in the show cause notice cum demand notice dated 06.01.2026, but on 09.02.2026, the informant Company had terminated the aforesaid agreements executed between the parties and had also forfeited the security deposit.

7. Learned counsel for the petitioners next submitted that the entire allegations, even if taken at its face value, do not disclose the essential ingredients of offence under Sections 316(5), 318(4) of B.N.S., as the dispute is purely civil in nature arising out of contractual obligations and thus no criminal proceedings could have been instituted as a substitute for civil remedies. Even otherwise the responding no.4 has lodged multiple F.I.R.s on the same cause of action, which is impermissible in view of the law laid down by the Hon'ble Supreme Court in T.T. Antony Vs. State of Kerala & Others, 2001 (6) SCC 181 and Babubhai Vs. State of Gujarat & Others, 2010 (12) SCC 254.

8. Learned counsel for the petitioners further submitted that the impugned first information report has been lodged with malafide intention and ulterior motive and it is a classic example of abuse of criminal machinery for settling civil dispute and continuation of the impugned criminal proceedings would result in miscarriage of justice and irreparable injury to the petitioners.

9. It was lastly argued that the present proceedings are liable to be quashed in view of the settled law that where a dispute is predominantly civil in nature with no element of criminality, the same cannot be allowed to continue as criminal case.

10. Per contra, learned A.G.A. as well as learned counsel for the respondent no.4 vehemently opposed the prayer for quashing of the F.I.R. as well as the submissions made by learned counsel for the petitioners and submitted that in the present case, the act of the petitioners has not only caused financial loss to the Company but has also caused inconvenience to the general public owing to the disruption of ATM services. They have embezzled the Company's funds by hatching conspiracy. Neither the embezzled money was returned nor any plausible explanation for the same was given by the petitioners. In this way, the petitioners have siphoned off the money meant for ATM cash replenishment by keeping the Company in dark. The petitioners were entrusted with collecting cash from the Bank and depositing it into ATM. However, instead of loading the cash, they pocketed the money.

11. Learned A.G.A. as well as learned counsel for the respondent no.4 next submitted that from the allegations made in the impugned first information report, involvement of the petitioners is writ large on the face of it and prima facie, offence is clearly disclosed against the petitioners and the matter requires deep probe and thorough investigation.

12. Lastly, they submitted that from the allegations made in the first information report, prima facie offence, complained of, is clearly disclosed against the petitioner and, as such, the first information report cannot be quashed in view of the law laid down by the Supreme Court in the case of State of Telangana vs. Habib Abdullah Jellani reported in (2017) 2 SCC 779, Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others reported in (2021) SCC Online SC 315 and in a recent decision of the Hon'ble Apex Court reported in (2024) 5 SCC 419, Directorate of Enforcement Vs. Niraj Tyagi and others.

13. Having considered the rival submissions made by the learned counsel for the parties, we have carefully perused the allegations made in impugned first information report as well as the documents annexed with the petition in regard to the aforesaid agreements.

14. A bare perusal of the first information report clearly reveals that the petitioner no.1 executed an agreement namely, 'Polaris Model Master Franchisee Service Agreement' with the Company. Thus, it is crystal clear that petitioner no.1 was working as an Agent of Hitachi Payment Services Pvt. Ltd. As per Clause 1 (n) of the agreement, petitioner no.1 was the custodian of the ATM/CRM and was also trustee of the physical cash amount lying at the ATM/CRM vault. There is a clear stipulation in the agreement that the cash amount withdrawn from the local Branch was to be replenished into the ATM/CRM. It was also clearly stipulated that the cash amount so withdrawn for this purpose shall not be utilized for his other personal use. It was also clearly stipulated that at no point of time, the petitioner shall remove the cash amount from the ATM/CRM and misappropriate the same for his personal use. Thus, the petitioner no.1 was duty bound to act strictly in accordance with the terms and conditions of the agreement. At no point of time, he was authorized to withdraw the cash amount from the concerned Branch for his own personal utilization instead of replenishing the whole such withdrawn cash into the designated ATM/CRM.

15. The role of petitioner no.2 is also clearly specified in the first information report that it was on the instructions of petitioner no.1, his son petitioner no.2 and one Vishwajeet Raj were authorized to receive cash amount from the authorized Bank by issuing an indent. There is a clear averment that a total of Rs.7,25,70,200/- was withdrawn and against this amount, an amount of Rs.7,22,61,800/- was withdrawn by the ATM cardholders. However, an amount of Rs.3,08,400/- was not loaded in the designated ATM/CRM, causing a loss to the Company, and resultantly an unlawful gain to the petitioners. The aforesaid misappropriation of money amounting to Rs.3,08,400/- was done by the petitioners while working as an Agent of Hitachi Payment Services Pvt. Ltd., violating the terms and conditions of the agreement. The aforesaid act is prima facie an offence, covered under Sections 316(5) of B.N.S., 2023.

16. From the facts stated in the first information report, it is apparent that the Company and ATM cardholders were deprived of an amount of Rs.3,08,400/-, which resulted into causing wrongful loss to the Company and was a wrongful gain to the petitioners. By committing wrongful fraudulent act and violating the terms and conditions of the agreement, the petitioners embezzled and misappropriated an amount of Rs.3,08,400/- of the Company. Thus, there seems to be necessary mens rea in the present case as far as petitioners are concerned. Law is well settled that the same set of facts can give rise both to civil liability and a criminal prosecution if the facts constitute a mens rea. If there is no mens rea or if

the other essential ingredients of an offence are lacking in such facts, only then the same facts may not sustain a criminal prosecution, though a civil action may lie.

17. The Hon'ble Apex Court in Kathyayini Vs. Sidharth P.S. Reddy & Ors., 2025 INSC 818, has clearly held that there is no bar against prosecution during the pendency of a civil suit if the offences punishable under criminal law are made out against the parties. The Hon□ble Apex Court has clearly observed by relying on its previous judgment in K. Jagadish Vs. Udaya Kumar G.S. and another, (2020) 14 SCC 552 that it is well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. The other relevant paragraphs 20 and 21 of the Kathyayini (supra) case are reproduced here-in-below.

20. In Pratibha Rani v. Suraj Kumar and another, (1985) 2 SCC 370, this Court summed up the distinction between the two remedies as under :

"21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.

21. The aforesaid view was reiterated in Kamaladevi Agarwal v. State of W.B. and others, (2002) 1 SCC 555,

"17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.

18. The Apex Court in Punit Beriwala V. The State of NCT of Delhi and Ors. 2025 SCC OnLine SC 983 reiterating the same in para 28 has held thus:

"28. It is trite law that mere institution of civil proceedings is not a ground for quashing the FIR or to hold that the dispute is merely a civil dispute. This Court in various judgments, has held that simply because there is a remedy provided for breach of contract, that does not by itself clothe the Court to

conclude that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court. This Court is of the view that because the offence was committed during a commercial transaction, it would not be sufficient to hold that the complaint did not warrant a further investigation and if necessary, a trial."

19. Thus, law has been well settled that pendency of civil proceedings or availability of civil remedies on the same subject matter involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons.

20. It is no doubt true that an arbitration clause [clause 20 (e)] exists in the present case and binds parties to seek adjudication of their disputes, before an Arbitrator. The mere existence of an arbitration clause cannot prevent criminal prosecution against the petitioners, if an act constituting a criminal offence is made out even prima facie. As already held hereinbefore, a given set of facts may give rise to both civil and/or criminal consequences. The existence of one would not necessarily rule out the other. An arbitration clause enables parties to seek adjudication of the civil consequences of the violation of a contract. An arbitration clause does not envisages adjudication of criminal consequences of an alleged breach of contract. The Arbitrator, would obviously adjudicate the civil consequences of the violation of the the contract and if this violation leads to the commission of a criminal offence, the Arbitrator would have no jurisdiction to investigate or launch prosecution, in respect thereof. The criminal prosecution and remedy by way of arbitration are two separate and distinct courses available to an aggrieved party. The mere existence of an arbitration clause or even the pendency of arbitration proceedings or availability of civil remedies would, in our considered opinion, not oust the jurisdiction of criminal Courts, to consider whether on the facts narrated in the FIR, a criminal offence has been committed.

21. The conclusion that the existence of an arbitration clause is not a bar to the initiation of criminal proceedings is fortified by a judgment of the Hon'ble Supreme Court in Trisuns Chemical Industry v. Rajesh Aggarwal, 1994(4) RCR (Crl.) 223 (SC)(supra)." In Trisuns Chemical 's case (supra), it was held as under:-

"We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in Bhajan Lal v. State of Haryana."

22. The Apex Court in Digambar Pathak V. State of UP SLP (Cr.) No. 7341 of 2025 in para 8 has again observed as under:

"8. In such circumstances, before taking a decision to quash the proceedings arising from FIR, it was incumbent upon the High Court, exercising powers under Section 482 of the Code of Criminal Procedure, 1973, to advert to the allegations and the materials collected during the course of investigation so as to find out whether a prima facie case is made out or not to proceed against the accused. The High Court quashed the proceedings on the singular ground that there is an arbitration agreement between the parties where they can resolve their differences amicably. It is well-settled that mere existence of an arbitration clause in the contract between the parties is not a sufficient ground for quashing the criminal proceedings if the necessary ingredients of a criminal offence are made out from the allegations and the materials collected during the course of investigation or inquiry.[Trisuns Chemical Industry V. Rajesh Agarwal & Others (1999) 8 SCC 686]"

23. While reverting back to the facts of present case, it is clear that it is a case where the Company has suffered a wrongful loss of Rs.3,08,400/-, therefore, in this situation, the aforesaid Company has a right to institute civil proceedings for the recovery of aforesaid amount. However, the Company is also at liberty to invoke arbitration clause for recovering the aforesaid amount. The arbitration clause of the agreement cannot be read as a bar to institution of criminal proceedings, if an offence is prima facie made out against the petitioners. By invoking the arbitration clause, either the Company can initiate proceedings for recovery of its wrongful loss or even the petitioners can invoke the aforesaid arbitration clause to challenge the termination of their agreement, but by no stretch of imagination, the aforesaid arbitration clause can be read as a bar to initiation of criminal proceedings against the petitioners for their such acts, which prima facie constitute the commission of a cognizable offence.

24. We have also carefully gone through the F.I.R. No.46 dated 20.04.2026 and F.I.R. No.253 dated 17.04.2026. It was argued that for same cause of action, two different F.I.R.s have been registered, which is impermissible in law. However, perusal of both the F.I.R.s clearly reveals that these two F.I.R.s have been lodged for two different ATM machines installed at two different places. Even the amount involved in these two F.I.R.s is totally different. In F.I.R. No.46, there is an embezzlement of an amount of Rs.3,08,400/-, whereas in F.I.R. No.253, there is an embezzlement of Rs.30,95,700/- after a deposit of Rs.8,09,700/- on 18.11.2025 and a deposit of Rs.4,32,200/- on 19.11.2025 by the petitioners. Therefore, both these F.I.R.s have been registered for different set of facts for two different locations and even the F.I.R.s have been lodged in two different police stations, meaning thereby that the jurisdiction to lodge and investigate the offences alleged in those F.I.R.s vests in two different police stations. Therefore, in the totality of the circumstances, these two F.I.R.s are not lodged on the same cause of action. Thus, we find no force in the arguments so raised by the learned counsel for the petitioners.

25. In the light of aforesaid discussions and keeping in view the principles of law laid down by Hon'ble Apex Court in the decisions cited above, we are of the opinion that the impugned first information report cannot be quashed qua the petitioners at this nascent stage.

26. The prayer for quashing of the first information report is therefore, refused.

27. The instant writ petition lacks merit and is accordingly **dismissed**.

(2026) 7 ILRA 2147
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 07.07.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 340 of 2026

Mohd. Shafeeq @ Raja ...Revisionist
Versus
U.O.I. ...Opposite Parties

Issues for Consideration

(i) Whether the revisionist was entitled to discharge under Section 227 Cr.P.C. from the charges under Sections 498-A, 323, 504, 506 and 316 IPC on the ground that the allegation of kicking the pregnant complainant on her abdomen, resulting in miscarriage, surfaced only in her supplementary statement and was not supported by medical evidence?

(ii) What is the scope of examination of the material collected during investigation at the stage of considering an application for discharge or framing of charge?

Headnotes

Code of Criminal Procedure, 1973 --- Ss. 227, 228 --- Discharge --- Framing of charge --- Scope --- Meticulous examination of evidence and mini trial impermissible --- Strong suspicion sufficient for framing charge.

HELD: Discharge is a pre-trial termination of proceedings due to lack of foundational material or insufficient evidence even for framing of charge, whereas acquittal is a post-trial outcome rendered after evaluating evidence in a full trial. As held in *Prafulla Kumar Samal*, at the stage of framing of charge, the court may sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out, and if the court comes to the conclusion of a strong prima facie case or strong suspicion, charges will be framed; the court is not supposed to delve deeply into the materials or look into the evidence in detail. As re-affirmed in *Ashok Kumar Kashyap*, discharge cannot involve scrutiny of contradictions or inconsistencies, and meticulous examination of the evidence collected during investigation is not permissible at the stage of considering a discharge application or framing of charge under Sections 227/228 Cr.P.C.; no mini trial is permitted at that stage. [Paras 19-23]

Indian Penal Code, 1860 --- S. 316 --- Allegation of kicking pregnant wife on abdomen resulting in miscarriage --- Allegation first made in supplementary statement under Section 161 Cr.P.C. --- Medical evidence --- Charge not groundless --- Discharge rightly refused.

HELD: Upon considering the supplementary statement of the victim under Section 161 Cr.P.C., the FIR version and the statements of the doctors recorded during investigation, the charge against the revisionist cannot be said to be groundless so as to entitle him to discharge under Section 227 Cr.P.C.; the revisionist shall have the opportunity to assail the prosecution case through cross-examination of prosecution witnesses as well as by

defence evidence. There is no illegality, irregularity or perversity in the order rejecting the discharge application. The observations made are only for the purpose of disposal of the revision and the trial court shall have liberty to form an independent opinion on the merits at the conclusion of trial. [Paras 23-25]

Criminal revision dismissed with observations. (E-14)

Case Law Cited

Julius Masih v. State of U.P. and another, 2024 SCC Online All 7683 --- referred to; *Union of India v. Prafulla Kumar Samal and Another*, (1979) 3 SCC 4; 1979 AIR 366 --- relied on; *State of Rajasthan v. Ashok Kumar Kashyap*, (2021) LiveLaw 2021 SC 2010 --- relied on; *Melvin Saldanha and Anr. v. State of U.P. and Another*, Criminal Revision No. 604 of 2019, decided on 06.01.2023 --- relied on; *State of Bihar v. Ramesh Singh*, 1977 AIR 2018 --- referred to; *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia and anr.*, 1989 SCC (1) 715 --- referred to; *Mahendra Prasad Tiwari v. Amit Kumar Tiwari and another*, Criminal Appeal No. 1216 of 2022 --- referred to; *State of Delhi v. Gyan Devi*, (2000) 8 SCC 239 --- referred to; *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 --- referred to; *Chitresh Kumar Chopra v. State (Government of NCT of Delhi)*, (2009) 16 SCC 605 --- referred to; *Niranjan Singh Karam Singh Punjabi and Ors. v. Jitendra Bhimraj Bijja and Ors.*, (1990) 4 SCC 76 --- referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Protection of Women from Domestic Violence Act, 2005; Dowry Prohibition Act, 1961.

List of Keywords

Discharge; Framing of charge; Strong suspicion; Prima facie case; Mini trial; Section 316 IPC; Miscarriage; Supplementary statement; Revisional jurisdiction.

Case Arising From

Order dated 25.02.2026 passed by the Additional Sessions Judge, FTC (New), Sitapur, rejecting the discharge application of the revisionist in S.T. No. 64 of 2025, arising out of Case Crime No. 394 of 2023, under Sections 498-A, 323, 504, 506 and 316 IPC, Police Station Laharpur, District Sitapur.

Appearance for Parties

For the Revisionist(s): Desh Ratan Mishra.

For the Opposite Party(s): G.A., Mohd. Shahid Akhtar.

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

1. Heard learned counsel for the revisionist, learned AGA for the State respondent no.1 and learned counsel appearing for the respondent no.2, the complainant and pursue the record.

2. By means of instant criminal revision, the accused revisionist has prayed for setting aside the impugned order dated 25/02/2026 passed by learned Additional Sessions Judge, FTC (New) Sitapur whereby learned Additional Sessions Judge, FTC (New) Sitapur rejected the discharge application of the revisionist in ST No.64 of 2025, arising out of case crime no.394 of 2023, under

Sections 498-A, 323, 504, 506 and 316 IPC, Police Station Laharpur, District Sitapur whereby application for discharge of revisionist has been rejected.

3. In brief, is that Smt. Nargma Pravin, who is the wife of the revisionist, lodged an FIR at police station concerned on 01/09/2023 at 16:30 hours on the basis of order passed by the learned Judicial Magistrate-I, Sitapur on her application under Section 156(3) Cr.P.C filed before the Court bearing date 18/08/2023 with allegation that she was married with the revisionist on 27.11.2022. However, her husband and in-laws were not happy with the dowry and gifts obtained in the marriage. They were demanding Rs. 2 lakh as additional dowry and due to non-fulfillment of demand of dowry, her husband surreptitiously married a woman, namely Najrin Bano and took her at his home; the complainant raised objection to this, whereupon on 11/06/2023, opposite party, Mohd. Sadab, the elder brother of her husband and his family members badly gave beating to her by kicks, fists and kept her as hostage in the house. She anyhow informed her parents and her family members reached there and got her rescued from the clutches of accused persons. On 02/07/2023 at 4:00 PM, accused persons visited at her parental place when she was alone in the house and stated that they had come for compromise. She stated that she declined to enter into any compromise in absence of her family members. The accused persons got infuriated to this and on exhortation of accused Mohd. Sadab and Dilshad, the accused persons committed rape on her by pointing weapon on her and creating apprehension of her life. The complainant narrated this incident to her family members when they came back to the house, she made every effort to get her FIR lodged, but police did not take any action and ultimately she moved an application before the court for lodging an FIR against the accused persons.

4. The factual matrix of the case, in brief, is that the FIR in respect of the present case was lodged by the respondent no.2 by moving written report before the Station House Officer concerned on 12/06/2023 at 12:30 hours in respect of present case in which she stated that on 11/06/2023 at 9 PM, the accused persons who include her husband, brothers, his sisters and family members badly assaulted her by kicks, fits and clubs and sticks, due to which she suffered many injuries on her person.

5. Thus, according to the version of informant, the incident dated 11/06/2023 occurred at her matrimonial home and the second incident dated 02/07/2023 in respect of second FIR was lodged regarding which FIR in Case Crime No.284 of 2023 was lodged by her, which took place at her parental place on 02/07/2023. In the FIR dated 01/09/2023 her husband is not named. The complainant in her statement under Section 161 CrPC dated 12/06/2023 supported her FIR version and stated that she will get her x-ray done at District Hospital, Sitapur.

6. However, in her supplementary statement dated 02/07/2023, she stated that in occurrence dated 11/06/2023, her husband kicked her several times on her abdomen, knowing that she was pregnant, due to which she was suffering from pain all over her body and abdomen. She got her FIR lodged on 12/06/2023 and police got her medico legal examination done on 12/06/2023 and thereafter she was referred to District Hospital, Sitapur. In the intervening night of 13/14/06.2023, she suffered excessive pain in her abdomen and she got miscarriage and her fetus got miscarried. Her family members took her to Women's Hospital on 14/06/2023 where her ultrasound and treatment was carried out.

7. In her medical legal examination dated 12/06/2023 at 1:10 PM, one contused swelling over right shoulder, one contused swelling over left hand thumb and one abrasion on base of left hand index finger were detected and she made complaint of pain in whole body. In x-ray report, no bone injury was seen. She was again examined on 02/07/2023 at PHC, Manva, Sitapur, in which doctor has stated that "LMP 5/2/23 Pa+2, CA - 14/623 missed abortion, D&C not done, No live tissue, Bleeding P/V present since 14/6/23. Advice USG of uterus and Adenexa. Supplementary report awaited.

8. In supplementary report dated 02/07/2023, urine pregnancy report was negative. There was normal ultrasonography of abdomen with free fluid in POD, Pelvic inflammatory disease.

9. The police submitted charge sheet against the revisionist after investigation under Sections 498A, 323, 504, 506 and 316 IPC, Police Station Laharpur, District Sitapur against the revisionist.

10. The revisionist moved discharge application before the Court of Session, Sitapur under Section 227 CrPC on 07/04/2025 on the ground that in FIR the complainant has made allegations of demand of dowry against accused applicants. However, after investigation, the police submitted charge sheet against four persons, namely, applicant, his father Mukhtar, mother Mehsher Jahan and one Nazreen Bano, as complicity of other accused persons was not found in the offense. These three co-accused persons have already filed a petition under Section 482 CrPC before the High Court in which proceedings of trial court were stayed and the matter is pending for final adjudication.

11. The complainant, in her earlier statement under Section 161 CrPC, did not raise any allegation that her husband had kicked in her abdomen due to which she sustained injury, but later on, 02/07/2023, in her supplementary statement, after significant delay, stated that husband kicked her in the abdomen, when she was pregnant in the night of 13/14/06.2023, which resulted in miscarriage. As per X-ray report of the complainant, no boney injury was found. Furthermore, in the doctor's statement recorded during investigation, it is stated that while some swelling and fluid were detected outside of uterus, there was no conclusive evidence of miscarriage. The ultrasound examination was conducted after 15 to 16 days of the alleged incident, making it difficult to draw any firm medical conclusion. The allegation of miscarriage is not supported by any medico evidence. She later claimed that her husband contracted second marriage, although this is nowhere mentioned in the FIR dated 12/06/2023, and this allegation is after thought. The complainant had made a false FIR under Sections 498-A, 376-D, 323, 504, 506 IPC and 3/4 DP Act against her husband and his brothers and four others, in which the police submitted final report and exonerated all the five named accused persons. This shows that the complainant is in the habit of lodging false FIRs. The alleged offenses are not made out against applicant-accused.

12. The trial court has heard both sides on discharge application, 9Kha, and dismissed the same by impugned order dated 25/02/2023 and fixed the case for framing of charge.

13. Learned counsel for the revisionist submitted that charge under Section 316 IPC is not substantiated by medico legal evidence and learned trial court has given a wrong finding in respect of said charge under Section 316 IPC.

14. Inasmuch as in FIR as well as in her first statement under Section 161 CrPC, the complainant has not made any allegation in respect of said charge. She has not even stated in the FIR in specific manner that she was kicked in her abdomen by the revisionist. The learned trial court has dismissed the discharge application in a mechanical manner without addressing the grounds taken therein in the right perspective. The doctor has stated in supplementary report of the complainant that on the basis of clinical examination and investigation report, urine pregnancy test is negative and USG normal seen. The informant has filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act against revisionist and his family members on 07/07/2023, only to harass them on the basis of concocted version and there is no allegation in the FIR or in the first statement under Section 161 Cr.P.C. of the informant against the revisionist regarding causing blow on her abdomen by kicks which latter resulted in miscarriage. Even ingredients of charge under Section 316 Cr.P.C. are not attracted in the case.

15. This Hon'ble Court has enlarged the revisionist on anticipatory bail by order dated 05/09/2023 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 1929 of 2023 with observation that "Having considered the aforesaid facts and circumstances of the case prima facie it appears from the material available before the Court that there is serious matrimonial dispute between the applicant and the informant regarding which several litigation have been initiated from both the sides. As per version of the informant herself the applicant has married co-accused Nazreen, although this fact has not been disclosed in the FIR. Although the informant has stated in her additional statement that the applicant had hit on her abdomen knowing fully well that she is pregnant, this fact has not been mentioned by her in FIR or in her statement recorded under Section 161 CrPC from which prima facie it appears that informant herself was not aware about the pregnancy till the time of the the incident. In these circumstances, it appears that the applicant also would not be in a position to know about her pregnancy. Allegation of causing miscarriage is not supported by medico legal examination report".

16. Learned AGA and learned counsel for the respondent submitted that there is no illegality, irregularity or propriety in the impugned order passed by the learned trial court while dismissing the discharge application filed by the revisionist. The impugned order is speaking and well-reasoned order in which all the aspects of the case are duly considered and no interference is called for in the impugned order.

17. They also submitted that at the stage of consideration of prayer for discharge or framing of charge and meticulous examination of evidence collected during investigation is not permitted. The victim has stated in her supplementary statement that the revisionist gave blows on her abdomen due to which she sustained internal injury and later on got miscarried of her pregnancy. He was aware of her pregnancy at the time of incident dated 11/06/2023. Her first medico legal examination was conducted on 12/06/2023 at 1 PM and at that time, she might not have been aware of internal injury to her fetus. Later on 13/14/06.2023 she suffered miscarriage due to acute abdominal pain. Her family members produced her before female doctor who treated her and her ultrasound was done. Dr. Dipali Jaiswal of PHC, Manva, Sitapur has treated her on 02/07/2023 and has observed that per virginal bleeding was present since 14/06/2023 which corroborates supplementary statements of the victim / complainant. She was referred for ultrasound of uterus and adenesea. Her ultrasound was done on 03/07/2023 and on the basis of ultrasound report, the

doctor in her supplementary report dated 12/07/2023 has observed that normal USG of abdomen with free fluid seen in POD, Pelvic Inflammatory Disease. This symptom suggests that she suffered miscarriage prior to her ultrasound. Inasmuch as Dr. Indra Singh, Radiologist, who conducted USG ultrasonography of the victim/complainant has stated in his statement under Section 161 CrPC that outside the uterus, fluid and swelling was seen in POD area. The situation of miscarriage was not clear. He has stated that presence of these fluid and swelling could have been present due to assault. Dr. Dipali Jaiswal, the lady doctor, has also stated in her statement under Section 161 CrPC that LMP of the victim occurred on 05/02/2023 as per her statement and 14/06/2023 she suffered miscarriage and on that day she was bleeding. This might have occurred due to abortion / miscarriage. The presence of free fluid and swelling in POD area of uterus may also occur due to miscarriage.

18. With above submissions, learned counsel for the respondent submitted that on the basis of medical evidence and statements of the doctors before Investigating Officer, it cannot be said that the medical evidence is not supportive of the case of miscarriage of her fetus due to kicks and blows given to her by her husband, is not supportive of her case with regard to Section 316 IPC.

19. Learned counsel for the revisionist has placed reliance on a judgment of this Court in **Julius Masih versus State of U.P. and another, 2024 SCC Online All 7683**, wherein it has observed in para 18 of the order, which is reproduced here under.

"18. The law is very settled that for the discharge of an accused, it is esential that upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and prosecution in this behalf, the judge considers that there is no sufficient grounds for proceeding against the accused. The law is well settled in Union of India vs. Prafulla Kumar Samal and Another (1979) 3 SCC 4 that if the court comes to the conclusion of strong prima facie case or strong suspicion, the charges will be framed. At the stage of framing of charge the court has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused. However, the court is not supposed to delve deeply into the materials of the matter. Thus, at the time of framing of charge, the court is not supposed to look into the evidence of the case in detail and is only to consider whether there is strong suspicion against the accused."

20. So far as law of discharge is concerned, discharge is a pre-trial termination of proceedings due to a lack of foundational material or insufficient evidence even for framing of charge. Conversely, an acquittal is post trial outcome rendered after evaluating evidence in a full trial. A person after discharge is saved from being subjected to rigors and harassment of a criminal trial in the first place. A discharge signifies an absolute lack of evidence at the threshold in respect of the alleged charge.

21. In **State of Rajasthan versus Ashok Kumar Kashyap (2021) LiveLaw 2021 SC 2010**, Hon'ble Supreme Court re-affirmed that discharge cannot involve scrutiny of contradiction or inconsistency; the judge must only examine whether the rebutted material discloses ingredients of the alleged offense. In this decision Hon'ble Court reiterated and strengthened the principle laid down in leading case Union of India vs. Prafull Kumar Samanl (1979) 3 SCC 4. Hon'ble Court

disapproved the approach of the High Court which had discharged an accused under the Prevention of Corruption Act by scrutinizing the conversation transcripts in detail and concluding that the prosecution case was weak.

22. This Court in a reported judgement in Criminal Revision No.604 of 2019, delivered on 06/01/2023 in **Melvin Saldanha And Anr. vs State Of U.P. And Another** cited judicial authority of Hon'ble Supreme Court in paragraphs 72 to 76 which are quoted as under:

"72. That Hon'ble Supreme Court in the case of State of Bihar Vs. Ramesh Singh (1977 AIR 2018) which explaining the scope of the sections 227 and 228 CrPC observed: "Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to 'see whether there is sufficient ground for conviction of the accused orwhether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

73. That the essential principles of Section 227 CrPC were duly summarized by the Hon'ble Supreme Court in the case of Union of India Vs. Prafulla Kumar Samal & another, 1979 AIR 366,:

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

74. That the Hon'ble Supreme Court has elaborated the scope of enquiry under Section 227 CrPC in the case of Stree Atyachar Virodhi Parishad.Vs. Dilip Nathumal Chordia & anr., 1989 SCC (1) 715, which says:

"Sec. 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor it is necessary to delve deep into various aspects. All that the Court has to consider is whether the evidenciary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

75. That the Hon'ble Supreme Court in the aforementioned case further says:

"We wish to add a word regarding interference by the High court against a charge framed by theSessions Court. Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Be- sides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self restraint on the part of the High Court should be the rule unless there is a glaring injustice stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed."

76. On the other hand, Sri Sarvajeet Dubey, learned counsel for respondent No.2 has relied on the judgment of Supreme Court in the case of Mahendra Prasad Tiwari. Vs. Amit Kumar Tiwari and another, Criminal Appeal No.1216 of 2022. According to his submission in application under Section 482 CrPC or revision under Section 397 CrPC while passing the order on the application for discharge, the correctness and sufficiency of evidence cannot be gone into by this Court and this Court should apply the principle if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. Relevant paragraph-21, 22, 24, 25 and 26 of the said judgment are reproduced hereinbelow:

"21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section

482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [see State of Delhi Vs. Gyan Devi, (2000) 8 SCC 239].

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

24. It is useful to refer to judgment of this Court in Amit Kapoor and Ramesh Chander, (2012) 9 SCC 460, where the scope of Section 397 CrPC has been succinctly considered and explained. Para 12 and 13 resply are as follows:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

"13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere

in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

25. The Court in para 27 has recorded its conclusion and laid down the principles to be considered for the exercise of jurisdiction under Section 397 particularly in the context of quashing of charge framed under Section 228 CrPC. Paras 27, 27(1), (2), (3), (9), (13) resply are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

X X X

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

X X X

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie...."

26. This Court in the case of Chitresh Kumar Chopra v. State (Government of NCT of Delhi), reported in (2009) 16 SCC 605, observed in para 25 as under:

"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See: Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors, (1990) 4 SCC 76)."

23. After considering the rival submissions of learned counsel for the parties, supplementary statement of the victim under Section 161 Cr.P.C., the FIR version and the statements of the doctors as stated above and on perusal of impugned order and grounds of discharge taken in discharge application, I am of the considered opinion that this is not a case in which the charge against the revisionist is found to be groundless and the revisionist is liable to be discharged under Section 227 Cr.P.C. from the charges leveled against him with regard to which cognizance has been taken by learned trial court. This is trite law that meticulous examination of evidence collected during investigation is not permissible at the stage of considering discharge application or framing of charge as provided under Section 227/228 Cr.P.C. No mini trial is permitted to be held at the stage of framing of charge. The accused revisionist shall have opportunity to assail the prosecution case through cross-examination of prosecution witnesses as well as by defence evidence if he seeks to adduce.

24. I find no illegality, irregularity or perversity in the impugned order passed by learned trial court whereby the discharge application filed by the revisionist has been dismissed. Revision is without force and deserves to be dismissed.

25. However, it is clarified that the observations made here in above are only for the purpose of disposal of present revision and will have no bearing on merits of the case and trial court will have liberty to form independent opinion about the merits of the prosecution case vis-a-vis defence version at the stage of conclusion of trial.

26. The criminal revision is **dismissed** with above observations.

(2026) 7 ILRA 2158
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 24.07.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 504 of 2026

Suman Devi **...Revisionist**
Versus
U.O.I. **...Opposite Parties**

Issues for Consideration

(i) Whether the jurisdiction conferred on the Drug Disposal Committee to order disposal of seized material, including conveyances, by the notification dated 23.12.2022 issued under Section 76 read with Section 52-A of the NDPS Act, bars the Special Court from releasing a seized vehicle to interim custody during the pendency of trial?

(ii) Whether the registered owner of a vehicle, not arrayed as an accused, is entitled to its interim release on supurdagi where the vehicle was allegedly used by her husband and son in transportation of commercial quantity of cannabis (ganja)?

Headnotes

Narcotic Drugs and Psychotropic Substances Act, 1985 --- Ss. 51, 52-A, 60, 76 --- Code of Criminal Procedure, 1973 --- Ss. 451, 457 --- Seized vehicle --- Interim release pending trial --- Power of Special Court --- Jurisdiction of Drug Disposal Committee no bar.

HELD: As laid down in *Bishwajit Dey*, a seized vehicle can be confiscated by the trial court only on conclusion of the trial, and there is no specific bar under the NDPS Act for return of a seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case; in view of Section 51 of the NDPS Act, the Court can invoke the general power under Sections 451 and 457 Cr.P.C. for its return, which discretion is to be exercised in accordance with law in the facts and circumstances of each case. The jurisdiction conferred on the Drug Disposal Committee to order disposal of seized material, including conveyances, by the notification dated 23.12.2022 issued under Section 76 read with Section 52-A of the Act does not create a bar or exclude the jurisdiction of the Special Court to release the vehicle during trial to the interim custody of the person entitled to its possession. [Paras 18, 21]

Narcotic Drugs and Psychotropic Substances Act, 1985 --- Interim custody of seized vehicle --- Registered owner, not an accused, being wife and mother of the accused --- Vehicle lying in open in police custody --- Release on supurdagi on conditions.

HELD: As observed in *Bishwajit Dey*, if a seized vehicle is kept in police custody till the trial is over, it will serve no purpose, as vehicles in police custody are stored in the open and their value diminishes; the requirement of the vehicle as material evidence can be met by stipulating conditions while releasing it on superdari. The peculiar factual matrix of the case, where the revisionist, a woman and registered owner, sought release of the vehicle allegedly used by her husband and son in transportation of contraband, warrants

a more pragmatic approach, and the trial court committed legal and jurisdictional error in dismissing the release application. Vehicle directed to be released on supurdagi to the revisionist upon her executing a personal bond of Rs. 3 lac with one surety of like amount, subject to conditions of producing the vehicle whenever required, not transferring or changing the colour or mark of identification until disposal of the case, and not using it in contravention of the NDPS Act, with liberty to the trial court to seize the vehicle again on violation of any condition. [Paras 18, 21-23]

Criminal revision allowed. Order dated 06.04.2026 set aside. (E-14)

Case Law Cited

Union of India v. Mohan Lal, (2016) 3 SCC 379 --- referred to; *Sainaba v. State of Kerala and another*, Criminal Appeal No. 2005 of 2022, decided on 12.11.2022; 2022 SCC OnLine SC 1784 --- relied on; *Bishwajit Dey v. State of Assam*, Criminal Appeal No. 87 of 2025 (arising out of Special Leave Petition (Crl.) No. 13370 of 2024), decided on 07.01.2025 --- relied on; *Sunderbhai Ambalal Desai v. State of Gujarat*, (2002) 10 SCC 283 --- referred to; *Noor Aga v. State of Punjab & Another*, (2008) 16 SCC 417 --- referred to; *Mukesh Singh v. State (Narcotic Branch of Delhi)*, (2020) 10 SCC 120 --- referred to; *Directorate of Revenue Intelligence v. Amit Kumar*, 2016 SCC OnLine Del 6083 --- referred to; *Smt. Narender Kaur v. Arun Sheoran, Intelligence Officer, Narcotics Control Bureau*, 2000 SCC OnLine Del 502 --- referred to; *Ganga Hire Purchase Pvt. Ltd. v. State of Punjab and Others*, (1999) 5 SCC 670 --- referred to; *Union of India v. Dinesh Kumar Verma*, (2005) 9 SCC 330 --- referred to; *Shajahan v. Inspector of Excise and Others*, 2019 SCC OnLine Ker 3685 --- referred to; *In Re: Moumita Saha*, 2023 SCC OnLine Cal 1094 --- referred to; *General Insurance Council & Ors. v. State of Andhra Pradesh*, (2010) 6 SCC 768 --- referred to; *Gurbinder Singh @ Shinder v. State of Punjab*, 2016 SCC OnLine P&H 16026 --- referred to; *Tej Singh v. State of Haryana*, 2020 SCC OnLine P&H 4679 --- referred to; *Shams Tavrej v. Union of India*, 2023 SCC OnLine All 1154 --- referred to; *Manakram v. State of Madhya Pradesh*, Crl. Rev. 2421/2021 --- referred to; *Nirmal Singh v. State of Punjab*, CRR-1208-2018 (O&M) --- referred to; *Kawal Jeet Kaur v. State of Karnataka*, 2024:KHC-K:5691 --- referred to; *Bhagirath v. State of Rajasthan*, 2024:RJ-JD:36868 --- referred to; *Denash v. State of Tamil Nadu*, SLP (Criminal) No. 8698 of 2025, decided on 27.10.2025 --- referred to.

List of Acts / Statutes

Narcotic Drugs and Psychotropic Substances Act, 1985; Code of Criminal Procedure, 1973; NDPS Rules notified vide G.S.R. 899(E) dated 23.12.2022.

List of Keywords

NDPS Act; Seized vehicle; Interim custody; Supurdagi; Release of vehicle; Drug Disposal Committee; Registered owner; Confiscation; Special Court.

Case Arising From

Order dated 06.04.2026 passed by the Special Judge, NDPS Act/Additional Sessions Judge, Court No. 6, Ayodhya, in Criminal Miscellaneous Application No. 544 of 2026, State v. Rajesh Kumar Agrahari and Others, arising out of NCB Crime No. 3 of 2025, under Sections 8/20/25/29/60(3) NDPS Act, Police Station NCB Gorakhpur, District Ayodhya.

Appearance for Parties

For the Revisionist(s): Anil Kumar Pandey.

For the Opposite Party(s): Akhilesh Kumar Awasthi.

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

1. Heard learned counsel for the revisionist and Shri Akhilesh Kumar Awasthi, learned special counsel appearing for Narcotics Control Bureau and perused the record.

2. Suman Devi, who is the owner of the vehicle Swift Desire car bearing registration number UP-32-DA-4445 involved in the case registered under of NCB Crime No. 3 of 2025 under Section 8/20/25/29/60 (3) NDPS Act, Police Station NCB Gorakhpur, District Ayodhya has filed this criminal revision with prayer to release the vehicle against impugned order dated 06.04.2026 passed by learned Special Judge NDPS Act/Additional Sessions Judge, Court No. 6, Ayodhya in Criminal Miscellaneous Application No. 544 of 2026 State versus Rajesh Kumar Agrahari and Others, whereby her application for release of the Swift Desire Car has been dismissed.

3. According to the complaint filed by the NCB, the NCB team acting on special information from STF, Ayodhya, intercepted the said vehicle on 02/09/2025 under joint operation of NCB Gorakhpur and STF Ayodhya and from search of the dicky of the vehicle 34 kg cannabis (ganja) was recovered. Accused Rajesh Kumar Agrahari and his son Ashish Kumar, who were found to be involved in transportation of cannabis (ganja) by the said vehicle were arrested on 02/09/2025 at 10:35 PM. Arrest and recovery memo was prepared on the spot. In recovery memo, the said Swift Desire car 34kg cannabis (ganja) kept in three empty plastic bags; one memory card showing photograph, the videography of recovery process is shown to have been taken into possession.

4. During course of investigation, this fact emerged that the revisionist is registered owner of the car and she is wife of accused Rajesh Kumar Agrahari and mother of accused Ashish Kumar Agrahari. The recovery was effected on entry gate of Kaushalpuri Colony, Lucknow Ayodhya bypass, Ayodhya.

5. Learned counsel for the revisionist submitted that learned Special Judge, NDPS Act, Ayodhya has rejected the application for release of the vehicle on the ground that from the said vehicle 34 kg contraband cannabis (ganja) was recovered in presence of accused persons who are husband and son of the revisionist. The said vehicle has been used in transportation of illegal cannabis (ganja) which has been seized under Section 60(3) of the NDPS Act and entry of its seizure was made in G.D. Report No 055 of Police Station-Ayodhya. The quantity of contraband ganja exceeds minimum commercial quantity and is dangerous to public health. According to judgment of Hon'ble Supreme Court in **Union of India versus Mohan Lal (2016) 3 SCC 379**, the contrabands or vehicles seized under NDPS Act are to be disposed of under directions of Drugs Disposal Committee. There is possibility that in case of release of the vehicle, it may be again used in transportation of illegal narcotic drugs.

6. He next submitted that specific plea was made by revisionist that she was not aware of fact that in said vehicle any contraband was being transported, but learned court below has wrongly dismissed the said plea. The approach taken by learned court below is erroneous and contrary to law settled in various judgments of Hon?ble Supreme Court.

7. He next submitted that revisionist is not an accused in the case and co-accused who are husband and son are already released on bail by orders of this Hon?ble Court. The revisionist is not concerned with the offense allegedly committed by the accused. In fact, no contraband was recovered from the said vehicle and said contraband is wrongly planted by the complainant. The vehicle is standing in the open in the campus of the police station due to which its utility and serviceability is deteriorating day by day as vehicle was seized way back on 02.09.2025. In case the vehicle is allowed to be detained unnecessarily in the open and under sky, there is every possibility that it will become junk and rusted out and no useful purpose of law would be served.

8. Per contra, learned Special Counsel appearing for NCB submitted that the impugned order is well within bounds of law. The said vehicle of which the revisionist is registered owner was used in transportation of commercial quantity of cannabis (ganja) of quantity of 34 kg and the persons from whose possession the said vehicle and contraband was recovered are none other than the husband and the son of the revisionist. Therefore, it cannot be assumed that the revisionist was unaware of the fact that the said vehicle was misused by her family members in transportation of contraband.

9. Learned Special Counsel cited NDPS Rules framed by Central Govt. vide notification dated 23.12.2022 published in Gazette of India extraordinarily Ministry of Finance (Department of Revenue) through G.S.R. 899 (E) - in exercise of the powers conferred by Section 76; read with Section 52-A; of the Narcotic Drugs and Psychotropic Substances Act, 1985. It provides under Rule 8 that after the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 of the Act, or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of Section 52A of the Act in Form-5.

Rule 9 provides that samples to be drawn in the presence of Magistrate.

Rule 10 provides for Drawing the samples.- (1) One sample, in duplicate, shall be drawn from each package and container seized.

Chapter IV provides for disposal of seized material including conveyance used in transportation of contraband goods under the Act.

10. The action for disposal of said contraband or conveyance will be initiated by any officer in charge of a police station or any officer empowered under Section 53 of the NDPS Act. The empowered officer shall submit details of the seized material to the Chairman of the Drug Disposal Committee for a decision by the Committee for the disposal. The Head of the Department of each Central Drug Law Enforcement Agency and State Drug Law Enforcement Agency shall constitute on or more Drug Disposal Committee comprising of three members each which shall be headed by an officer not below the rank of Superintendent of Police or Joint Commissioner of Customs and Central Goods and Services Tax, Joint Director of Directorate of Revenue Intelligence or officers of equivalent rank. The Committee is empowered to order of disposal of seized items. In case of conveyance, the Committee shall verify the engine number, chassis number and other details mentioned in panchnama and certify the inventory thereof. The Drug Disposal Committee can

order disposal of seized materials up to the quantity or value indicated in Rule 22 and for conveyances it can order disposal of a vehicle up to value of Rs.50 lakh. Seized conveyance shall be sold by way of tender or auction as may be determined by the Drugs Disposal Committee.

11. Learned counsel for the revisionist placed reliance on a judgment of Hon'ble Apex Court in Sainaba versus State of Kerala and another Criminal Appeal No.2005 of 2022, wherein the Maruti Suzuki Car which belongs to the appellant lady was seized as it was found to be involved in a case under Section 20(B) and 29 NDPS Act. The incident occurred on 30.01.2022. The police effected a search of the vehicle in presence of appellant's son (accused no.1) and 4.20 of Ganja was recovered from the bag of the accused no.1 who was travelling in the said car. The Special Judge dismissed the application for release of the car and endeavour of the appellant before the High Court also did not succeed as criminal misc. petition was dismissed on 19.05.2022.

12. Hon'ble Apex Court in Criminal Appeal 2005 of 2022, order dated 12.11.2022, **Sainaba versus The State of Kerala and another** directed release of the vehicle in favour of the with following observations.

"The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

Learned counsel seeks to rely on the judgment of this Court in Sunderbhai Ambalal Desai v. State of Gujarat - (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.

On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.

The appeal is accordingly allowed leaving parties to bear their own costs."

13. Learned counsel also placed reliance on a recent judgment of **Bishwajit Dey versus The State of Assam, Criminal Appeal No.87 of 2025 (arising out of Special Leave Petition (Crl.) No.13370 of 2024)** directed release of the vehicle with certain conditions in favour of the appellant in judgment dated 07.01.2025.

14. In aforesaid case the truck of the appellant which purchased for commercial purpose was seized on 10.04.2023 at a checking point by police and on search of the vehicle some identical soap boxes containing suspected heroin, concealed inside the Tarpaulin and kept at the hood of the vehicle was recovered. The weight of the recovered heroin was found to be 24.8 grams. The main

accused Md. Dimpul was arrested by the police officer, who according to the appellant boarded the vehicle from Manipur as is stated by the driver of the vehicle and he was in possession of the said substance and was carrying the same. The driver and the helper of the vehicle were cited as witnesses in the case.

15. Learned counsel for the appellant has placed reliance on said case and the statutory provisions of Sections 451 and 457 of the Cr.P.C. in which interim disposal of the property seized by the police involved in an offence is laid down.

16. Reliance was placed in judgement of Hon'ble Supreme Court in **Sunderbhai Ambala Desai versus State of Gujarat, (2002) 10 SCC 283** wherein it is held, In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles of the proper Panchanama before handing over possession of article is prepared that can be used in evidence instead of its production before the court during trial of necessary evidence could also be recorded describing the nature of the property in detail.

17. Per contra, learned State Counsel placed reliance on statutory provisions of Sections 52-A 60, 63 of the NDPS Act and judgments of Hon'ble Apex Court **Noor Aga vs. State of Punjab & Another, (2008) 16 SCC 417; Mukesh Singh vs. State (Narcotic Branch of Delhi), (2020) 10 SCC 120 and Directorate of Revenue Intelligence vs. Amit Kumar, 2016 SCC OnLine Del 6083] as well as Smt. Narender Kaur vs. Arun Sheoran, Intelligence Officer, Narcotics Control Bureau, 2000 SCC OnLine Del 502, Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab and Others, (1999) 5 SCC 670, Union of India vs. Dinesh Kumar Verma, (2005) 9 SCC 330, Shajahan vs. Inspector of Excise and Others, 2019 SCC OnLine Ker 3685 and In Re: Moumita Saha, 2023, SCC OnLIne Cal 1094.**

18. Hon'ble Apex Court in **Bishwajit Dey versus The State of Assam, Criminal Appeal No.87 of 2025 (arising out of Special Leave Petition (Crl.) No.13370 of 2024)** considered the submissions of both the parties and aforesaid case laws cited at bar observed in paragraphs 19, 20, 21, 22, 23, 28, 29, 33, 34, 35 and 36 which are reproduced as under:

"19. Having heard learned counsel for the parties and having examined the issue at hand, this Court finds that different Courts have taken divergent views with regard to interim release of conveyances during the pendency of the trial in NDPS cases. While the courts in cases referred to by learned counsel for the Respondent-State of Assam have not released the vehicles in the interim during NDPS trial, yet in General Insurance Council & Ors. vs. State of Andhra Pradesh, (2010) 6 SCC 768; Gurbinder Singh @ Shinder vs. State of Punjab, 2016 SCC OnLine P&H 16026; Tej Singh vs. State of Haryana, 2020 SCC OnLine P&H 4679; Shams Tavrej vs. Union of India, 2023 SCC OnLine All 1154; Manakram vs. State of Madhya Pradesh, Crl. Rev. 2421/2021; Nirmal Singh vs. State of Punjab, CRR- 1208-2018 (O&M); Kawal Jeet Kaur vs. State of Karnataka, 2024:KHC- K:5691 and Bhagirath vs. State of Rajasthan, 2024: RJ-JD:36868, the Courts have directed release of the vehicles in the interim in NDPS cases.

20. The judgements of this Court are confined to their facts or in the context of the expression ?owner? and do not lay down any general proposition of law. Consequently, the issue would have to be examined on first principles.

21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.

22. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case.

23. In the absence of any specific bar under the NDPS Act and in view of Section 51 of NDPS Act, the Court can invoke the general power under Sections 451 and 457 of the Cr.P.C. for return of the seized vehicle pending final decision of the criminal case. Consequently, the trial Court has the discretion to release the vehicle in the interim. However, this power would have to be exercised in accordance with law in the facts and circumstances of each case.

28. Undoubtedly, the Vehicle is a critical piece of material evidence that may be required for inspection to substantiate the prosecution's case, yet the said requirement can be met by stipulating conditions while releasing the Vehicle in interim on superdari like videography and still photographs to be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the said inventory as well as restriction on sale/transfer of the Vehicle.

29. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized / recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

33. In fact, the Supreme Court in similar facts in **Sainaba vs. State of Kerala and Another, 2022 SCC OnLine SC 1784** has held as under:-

"6. The appellant has urged inter alia that as per Section 36- C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

7. Learned counsel seeks to rely on the judgment of this Court in Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.

9. The appeal is accordingly allowed leaving parties to bear their own costs."

IF THE VEHICLE IN THE PRESENT CASE IS KEPT IN THE CUSTODY OF POLICE TILL THE TRIAL IS OVER, IT WILL SERVE NO PURPOSE

34. This Court is also of the view that if the Vehicle in the present case is allowed to be kept in the custody of police till the trial is over, it will serve no purpose. This Court takes judicial notice that vehicles in police custody are stored in the open. Consequently, if the Vehicle is not released during the trial, it will be wasted and suffering the vagaries of the weather, its value will only reduce.

35. On the contrary, if the Vehicle in question is released, it would be beneficial to the owner (who would be able to earn his livelihood), to the bank/financier (who would be repaid the loan disbursed by it) and to the society at large (as an additional vehicle would be available for transportation of goods).

CONCLUSION

36. Consequently, the present Criminal Appeal is allowed with directions to the trial Court to release the Vehicle in question in the interim on superdari after preparing a video and still photographs of the vehicle and after obtaining all information/documents necessary for identification of the vehicle, which shall be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the same. Further, the appellant shall not sell or part with the ownership of the Vehicle till conclusion of the trial and shall furnish an undertaking to the trial court that he shall surrender the Vehicle within one week of being so directed and/or pay the value of the Vehicle (determined according to Income Tax law on the date of its release), if so ultimately directed by the Court."

19. Aforesaid judgment of Hon'ble Apex Court was cited with approval by the Hon'ble Court in a latter judgment **Denash versus the State of Tamil Nadu, SLP Criminal No.8698 of 2025**. This judgment was delivered on 27.10.2025.

20. In view of above, the present case technically corresponds to the second scenario as enumerated in para 29 in 3rd or 4th scenario as enumerated in para 29 of **Bishwajit Dey's case (Supra)**

21. The peculiar factual matrix of the case warrants more pragmatic approach regarding prayer of release of the vehicle by the appellant, who is a woman and registered owner of the vehicle which was allegedly used by the her husband and son in transportation of contraband (cannabis). The jurisdiction conferred to Drug Disposal Committee to order disposal of seized material, including the conveyance involved in transportation of contraband by Notification dated 23/12/2022 issued under Section 76 read with Section 52-A of the Act does not create a bar or exclude jurisdiction of Special Court which has been conferred power to try such type of cases, to release the vehicle during trial, to the interim custody of the person entitled to its possession.

22. Considering the principle of law laid down by the Hon'ble Apex Court, I hold that the learned trial court has committed legal and jurisdictional error while dismissing the application for release of the vehicle filed by the revisionist on aforesaid grounds.

23. In view of foregoing discussion, the revision deserves to be succeed the impugned judgment and order dated 06.04.2026 passed by learned Special Judge is hereby **set aside**. The vehicle i.e. Swift Dzire car bearing Registration Number UP-32-DA-4445 seized in aforesaid offence is directed to be released on supurdagi (interim custody) of the revisionist subject to following conditions:-

1. The trial court shall release the car in favour of the revisionist being the registered owner upon her executing a personal bond of Rs.3 lac each, with one surety of like amount.

2. The owner shall produce the vehicle as per terms and conditions of the bond before the Court whenever it is required.

3. She shall not transfer or change the colour or mark of identification of the vehicle during and until disposal of the criminal case concerned.

4. The owner shall also undertake that the vehicle shall not be used in contravention of the Narcotic Drugs and Psychotropic Substances Act.

In violation of any of these conditions, the trial Court shall be competent to seize the vehicle again and to direct its safe custody.

Subject to the conditions laid above, the revisionist's request for interim custody of the vehicle is granted.

24. The revision is **allowed**.

(2026) 7 ILRA 2167
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.07.2026

BEFORE

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Revision No. 1552 of 2026

Mala Kumari **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issues for Consideration

(i) Whether the Family Court, on an execution application under Section 128 Cr.P.C./Section 147 BNSS seeking arrears and continuous payment of maintenance under a subsisting order, could reject the application and consign the record by invoking the first proviso to Section 125(3) Cr.P.C./Section 144(3) BNSS?

(ii) Whether a wife holding a subsisting order of maintenance is required to file successive execution applications for receiving monthly maintenance?

Headnotes

Code of Criminal Procedure, 1973 --- Ss. 125(3), first proviso, 128 --- Bharatiya Nagarik Suraksha Sanhita, 2023 --- Ss. 144(3), first proviso, 147 --- Maintenance --- Continuing liability --- Successive execution applications not required --- Proviso does not bar entitlement to arrears.

HELD: Section 125 Cr.P.C. is a measure of social legislation to be construed liberally for the welfare of the wife and children; the liability to pay maintenance under an order passed under Section 125(1) being a continuing liability, it is unreasonable to insist on the filing of successive applications. The first proviso to Section 125(3) Cr.P.C./Section 144(3) BNSS only limits the procedure for recovery by issuance of warrant and detention of the defaulter; it does not create any bar or affect the entitlement of a claimant to recover arrears of maintenance beyond a period of one year. Since the maintenance order dated 04.03.2023 continued to remain in force, the opposite party-husband remained under an obligation to pay maintenance. [Paras 16-18, 21]

Maintenance --- Execution --- Directions to Family Courts and Gram Nyayalayas of the State of U.P. --- Deposit in verified bank account --- Deduction from salary --- Attachment of property and imprisonment on default.

HELD: Presiding Officers of Family Courts and Gram Nyayalayas directed: (i) to follow *Shantha alias Ushadevi* that successive execution applications are not required for receiving monthly maintenance; (ii) to follow *Poongodi* that the first proviso to Section 125(3) Cr.P.C./Section 144(3) BNSS does not bar recovery of arrears beyond one year; (iii) to direct deposit of the monthly maintenance directly into the verified bank account of the claimant, in terms of *Aarti Rai*; (iv) where the opposite party is in salaried employment, to direct the

employer to deduct the maintenance or arrears from salary and transfer it directly into the verified bank account of the claimant, in terms of *Dimpal*; and (v) on refusal or non-payment, to recover the amount by attachment of property and, if insufficient, to direct simple imprisonment for a term which may extend to one month for each month's default or until payment, as per Section 125(3) Cr.P.C./Section 144(3) BNSS and *Rajnesh v. Neha*. Non-compliance is liable to attract disciplinary as well as contempt proceedings; the District Administration and Police directed to cooperate, and the issue to be discussed in Monitoring Cell meetings. [Paras 22-25]

Revision disposed of with directions; opposite party No. 2 directed to clear arrears, if any, and continue paying monthly maintenance in compliance with order dated 04.03.2023, preferably into the verified bank account of the revisionist. (E-14)

Case Law Cited

Mohammad Usman Alias Bhai Lal v. State of U.P. and 6 Others, 2021 SCC OnLine All 640 --- relied on; *Shantha Alias Ushadevi and another v. B.G. Shivananjappa*, (2005) 4 SCC 468 --- relied on; *Poongodi And Another v. Thangavel*, (2013) 10 SCC 618 --- relied on; *Aarti Rai v. Satish Rai and others*, Criminal Appeal No. 1074 of 2025, order dated 04.03.2025 --- relied on; *Dimpal v. Nishant Pravinbhai Soni*, Transfer Petition (Civil) No. 3147 of 2024, order dated 27.02.2026 --- relied on; *Rajnesh v. Neha*, (2021) 2 SCC 324 --- relied on.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Maintenance; Continuing liability; Execution of maintenance order; Successive execution applications; Recovery warrant; Limitation of one year; Arrears of maintenance; Bank account; Salary deduction; Family Court; Gram Nyayalaya.

Case Arising From

Orders dated 06.12.2025 and 27.01.2026 passed by the Additional Principal Judge-I, Family Court, Jaunpur, in Misc. Case No. 641 of 2025 (Mala Kumari v. Anand Kunwar), under Section 147 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Appearance for Parties

For the Revisionist(s): Kalpna Upadhyay, P.K. Upadhyay.

For the Opposite Party(s): G.A., Mayank Awasthi, State Counsel; None for opposite party No. 2.

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard Shri P.K. Upadhyay, learned counsel for the revisionist and Shri Mayank Awasthi, learned State Counsel.

2. None appears on behalf of opposite party No.2. However, notice has been served upon opposite party No.2 as per the report of the Chief Judicial Magistrate, Ghazipur

dated 01.05.2026 as well as the report of the Chief Judicial Magistrate, Jaunpur dated 06.05.2026.

3. This Court, vide order dated 13.04.2026, issued notice to the opposite party No.2 (husband) to appear in person or through counsel to file counter affidavit and also sought explanation from the Presiding Officer of the concerned court and directed that the same be furnished by the next date, i.e., on 28.04.2026 on the facts as mentioned in the order. The relevant portion of order dated 13.04.2026 passed by this Court is delineated below:-

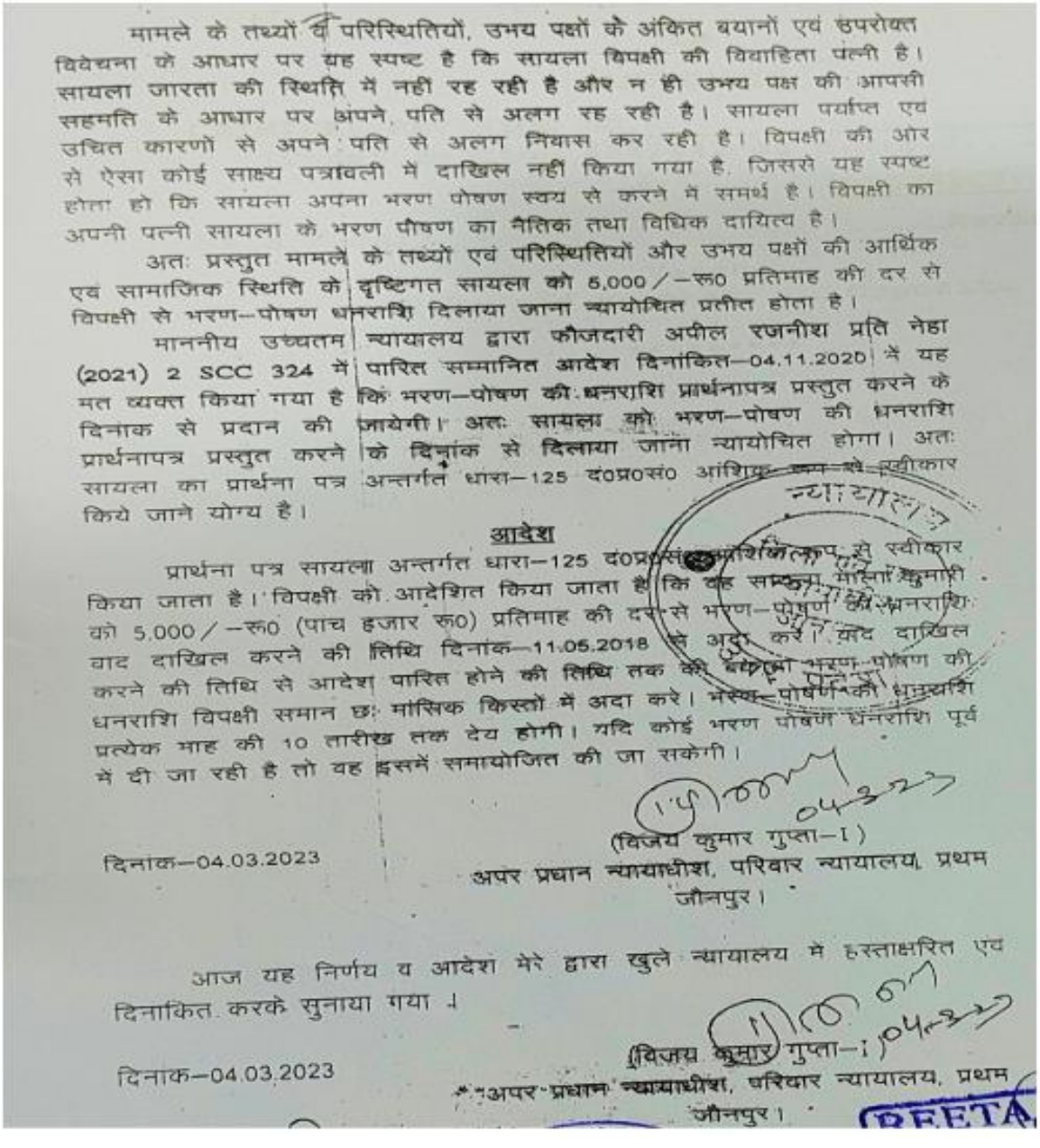
"1. Heard Sri P.K. Upadhyay, learned counsel for the revisionist and Sri Shashidhar Pandey, learned A.G.A. for the State. Supplementary affidavit filed on behalf of the revisionist is taken on record.

2. Learned counsel for the revisionist submits that the instant criminal revision has been preferred with the relief which has been mentioned in the prayer clause. The relief mentioned in the prayer clause of the revision is delineated below:-

"It is therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to allow the present criminal revision and set aside the impugned judgment and order dated 06.12.2025 and 27.01.2026 Passed by Additional Principal Judge-I, Family Court, Jaunpur, in Misc. Case no. 641 of 2025 (MalaKumari Vs. Anand Kunwar) filed under section 147 B.N.S.S., whereby learned Additional Principal Judge Family Court-I, Jaunpur has dismissed the case,

It is further prayed that this Hon'ble Court may graciously be pleased to direct the opposite party no. 2 to pay the maintenance of Rs. 5,000/- w.e.f. April 2025 an onwards month to month to the revisionist pursuant to the order dated 04.03.2023 passed by Ld. Additional Principal Judge Family Court-I, Jaunpur in case no. 416 of 2018 (Mala Kumari Vs. Anand Kunwar) under section 125 Cr.P.C., during the pendency of the present criminal revision."

3. Learned counsel for the revisionist submits that wife/revisionist filed an application under Section 125 Cr.P.C. on 11.05.2018 seeking grant of maintenance amount from her husband/O.P. No.2. He further submits that the application under section 125 Cr.P.C. has been decided on merits providing opportunity of hearing to both the parties vide order dated 04.03.2023 whereby O.P. No.2/husband has been directed to pay ₹5000/- per month to his wife/revisionist from the date of application i.e. 11.05.2018. The operative part of the order dated 04.03.2023 is being pasted below :-



मामले के तथ्यों व परिस्थितियों, उभय पक्षों के अंकित बयानों एवं उपरोक्त विवेचना के आधार पर यह स्पष्ट है कि सायला विपक्षी की विवाहिता पत्नी है। सायला जारता की स्थिति में नहीं रह रही है और न ही उभय पक्ष की आपसी सहमति के आधार पर अपने पति से अलग रह रही है। सायला पर्याप्त एवं उचित कारणों से अपने पति से अलग निवास कर रही है। विपक्षी की ओर से ऐसा कोई साक्ष्य पत्रावली में दाखिल नहीं किया गया है, जिससे यह स्पष्ट होता हो कि सायला अपना भरण पोषण स्वयं से करने में समर्थ है। विपक्षी का अपनी पत्नी सायला के भरण पोषण का नैतिक तथा विधिक दायित्व है।

अतः प्रस्तुत मामले के तथ्यों एवं परिस्थितियों और उभय पक्षों की आर्थिक एवं सामाजिक स्थिति के दृष्टिगत सायला को 5,000/—रू0 प्रतिमाह की दर से विपक्षी से भरण—पोषण धनराशि दिलाया जाना न्यायोचित प्रतीत होता है।

माननीय उच्चतम न्यायालय द्वारा फौजदारी अपील रजनीश प्रति नेहा (2021) 2 SCC 324 में पारित सम्मानित आदेश दिनांकित—04.11.2020 में यह मत व्यक्त किया गया है कि भरण—पोषण की धनराशि प्रार्थनापत्र प्रस्तुत करने के दिनांक से प्रदान की जायेगी। अतः सायला को भरण—पोषण की धनराशि प्रार्थनापत्र प्रस्तुत करने के दिनांक से दिलाया जाना न्यायोचित होगा। अतः सायला का प्रार्थना पत्र अन्तर्गत धारा—125 द0प्र0सं0 आंशिक रूप से स्वीकार किये जाने योग्य है।

आदेश

प्रार्थना पत्र सायला अन्तर्गत धारा—125 द0प्र0सं0 आंशिक रूप से स्वीकार किया जाता है। विपक्षी को आदेशित किया जाता है कि वह सायला को 5,000/—रू0 (पाच हजार रू0) प्रतिमाह की दर से भरण—पोषण की धनराशि वाद दाखिल करने की तिथि दिनांक—11.05.2018 से अदा करे। यदि दाखिल करने की तिथि से आदेश पारित होने की तिथि तक की बकाया भरण—पोषण की धनराशि विपक्षी समान छः मासिक किस्तों में अदा करे। भरण—पोषण की धनराशि प्रत्येक माह की 10 तारीख तक देय होगी। यदि कोई भरण पोषण धनराशि पूर्व में दी जा रही है तो वह इसमें समायोजित की जा सकेगी।

(विजय कुमार गुप्ता—I)
अपर प्रधान न्यायाधीश, परिवार न्यायालय, प्रथम
जौनपुर।

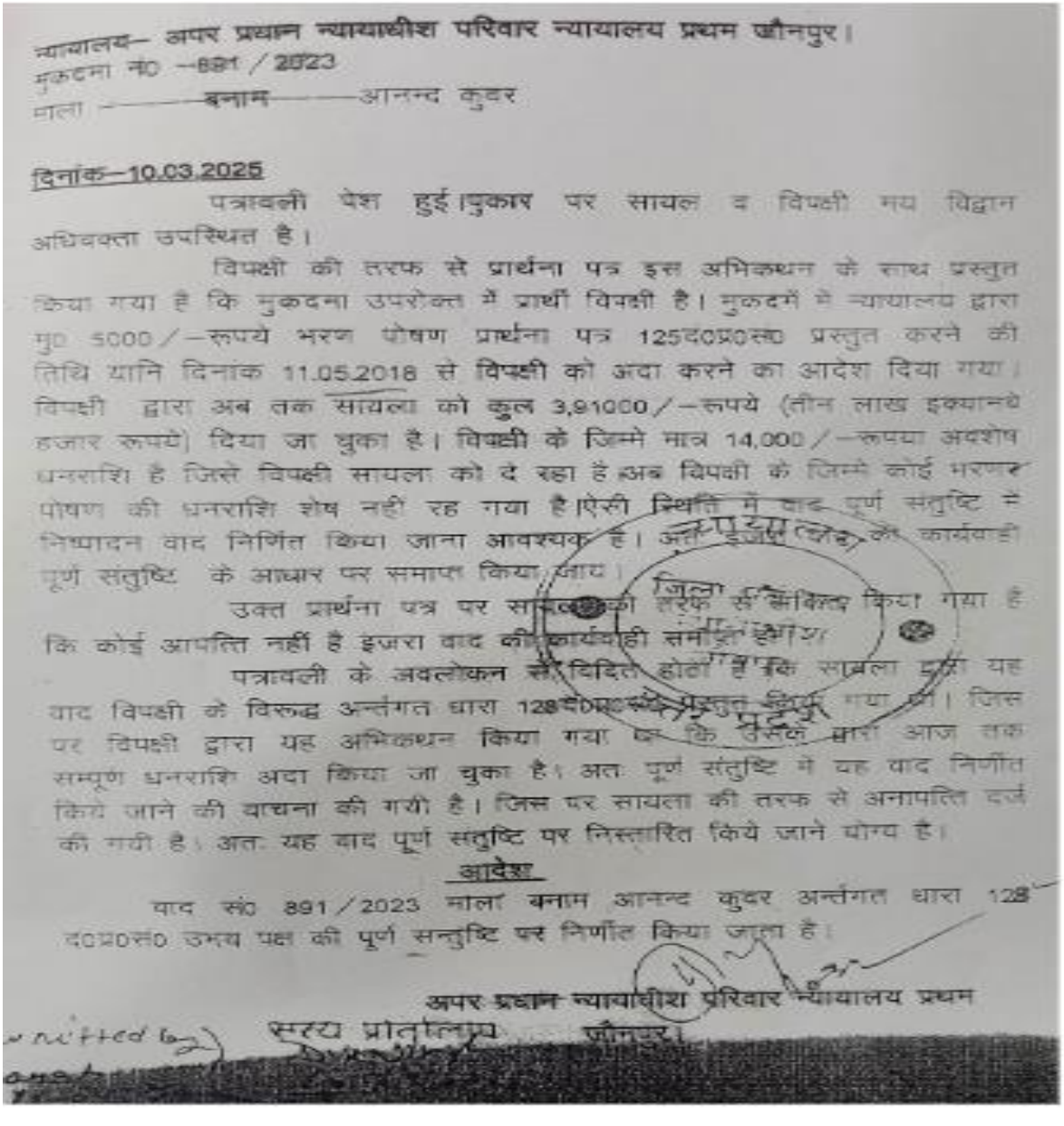
दिनांक—04.03.2023

आज यह निर्णय व आदेश मेरे द्वारा खुले न्यायालय में हस्ताक्षरित एवं दिनांकित करके सुनाया गया।

(विजय कुमार गुप्ता—I)
अपर प्रधान न्यायाधीश, परिवार न्यायालय, प्रथम
जौनपुर।

दिनांक—04.03.2023

4. Learned counsel for the revisionist further submits that for execution of order dated 04.03.2023, the revisionist filed an application under Section 128 Cr.P.C. on 13.04.2023, which was numbered as Case no.891 of 2023 (Mala vs. Anand Kunwar) and same was finally adjudicated vide order dated 10.03.2025, as husband of the revisionist has deposited the amount of maintenance and in the order dated 10.03.2025, it was mentioned that the entire arrears of the maintenance amount upto February, 2025 has been paid by O.P. No.2/husband. The order dated 10.03.2025 passed by Additional Principal Judge Ist, Family Court, Jaunpur is being pasted below :-



न्यायालय– अपर प्रधान न्यायाधीश परिवार न्यायालय प्रथम जौनपुर।
मुकदमा नं0 –891 / 2023
माला ———बनाम———आनन्द कुवर

दिनांक–10.03.2025

पत्रावली पेश हुई।पुकार पर सायल व विपक्षी मय विद्वान अधिवक्ता उपस्थित है।

विपक्षी की तरफ से प्रार्थना पत्र इस अभिकथन के साथ प्रस्तुत किया गया है कि मुकदमा उपरोक्त में प्रार्थी विपक्षी है। मुकदमें से न्यायालय द्वारा मु0 5000/–रूपये भरण पोषण प्रार्थना पत्र 125द0प्र0सं0 प्रस्तुत करने की तिथि यानि दिनांक 11.05.2018 से विपक्षी को अदा करने का आदेश दिया गया। विपक्षी द्वारा अब तक सायला को कुल 3,91000/–रूपये (तीन लाख इक्यानवे हजार रूपये) दिया जा चुका है। विपक्षी के जिम्मे मात्र 14,000/–रूपया अवशेष धनराशि है जिसे विपक्षी सायला को दे रहा है।अब विपक्षी के जिम्मे कोई भरण पोषण की धनराशि शेष नही रह गया है।ऐसी स्थिति में वाद पूर्ण संतुष्टि से निष्पादन वाद निर्गत किया जाना आवश्यक है। अतः इजरा नोटिस की कार्यवाही पूर्ण संतुष्टि के आधार पर समाप्त किया जाय।

उक्त प्रार्थना पत्र पर सायला की तरफ से अभिलेख किया गया है कि कोई आपत्ति नहीं है इजरा वाद की कार्यवाही समाप्त होगी।

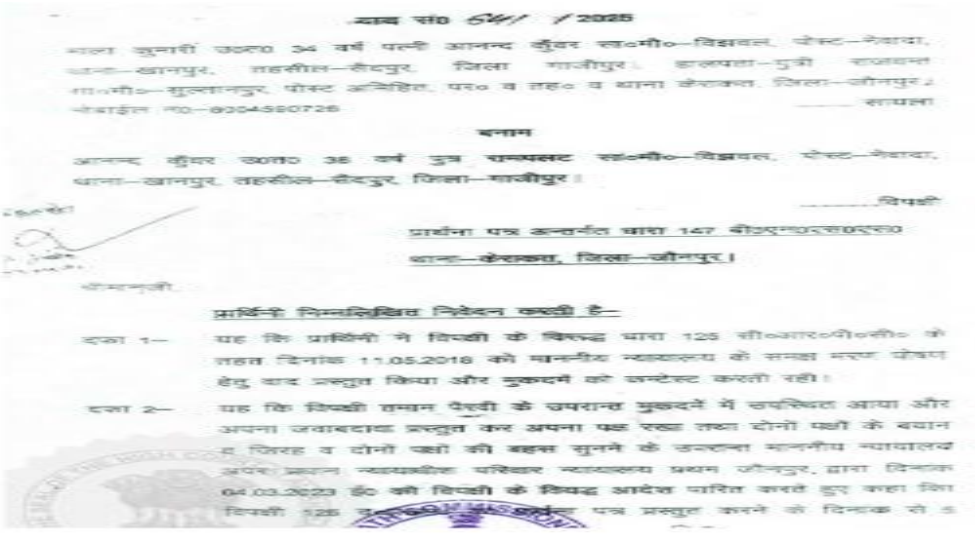
पत्रावली के अवलोकन से विदित होता है कि सायला द्वारा यह वाद विपक्षी के विरूद्ध अन्तर्गत धारा 128द0प्र0सं0 प्रस्तुत किया गया था। जिस पर विपक्षी द्वारा यह अभिकथन किया गया था कि उसके द्वारा आज तक सम्पूर्ण धनराशि अदा किया जा चुका है। अतः पूर्ण संतुष्टि में यह वाद निर्णीत किये जाने की याचना की गयी है। जिस पर सायला की तरफ से अनापत्ति दर्ज की गयी है। अतः यह वाद पूर्ण संतुष्टि पर निस्तारित किये जाने योग्य है।

आदेश

वाद सं0 891/2023 माला बनाम आनन्द कुवर अन्तर्गत धारा 128 द0प्र0सं0 उभय पक्ष की पूर्ण सन्तुष्टि पर निर्णीत किया जाता है।

अपर प्रधान न्यायाधीश परिवार न्यायालय प्रथम
सत्य प्रतिलिपि जौनपुर।

5. Learned counsel for the revisionist further submits that the entire amount of arrears of maintenance upto February, 2025 was paid by O.P. No.2/husband and thereafter the Additional Principal Judge Ist, Family Court, Jaunpur vide order dated 10.03.2025, has disposed of the application filed under Section 128 Cr.P.C. but for continuous payment of maintenance amount i.e. ₹5000/- per month as well as for arrears for the month of March, 2025, the revisionist has filed another application under Section 128 Cr.P.C./147 BNSS on 09.04.2025, which was numbered as Case no.641 of 2025. The application dated 09.04.2025 is delineated below :-



वाद सं0 5[illegible] / 2025

माला कुमारी उम्र0 34 वर्ष पत्नी आनन्द कुँवर स0मी0—विश्वपत, पोस्ट—गेवारा, थाना—खानपुर, तहसील—बेदपुर, जिला गाजीपुर। हालपता—पुत्री सायलम स0मी0—सुलतानपुर, पोस्ट अजीहित, पर0 व तह0 व थाना केराकत, जिला—जौनपुर। मोबाईल नं0—9304560726 ..... सायला

बनाम

आनन्द कुँवर उम्र0 36 वर्ष पुत्र रामबसट स0मी0—विश्वपत, पोस्ट—गेवारा, थाना—खानपुर, तहसील—बेदपुर, जिला—गाजीपुर।

.....विपक्षी

प्रार्थना पत्र अन्तर्गत धारा 147 बी0एन0एस0एस0

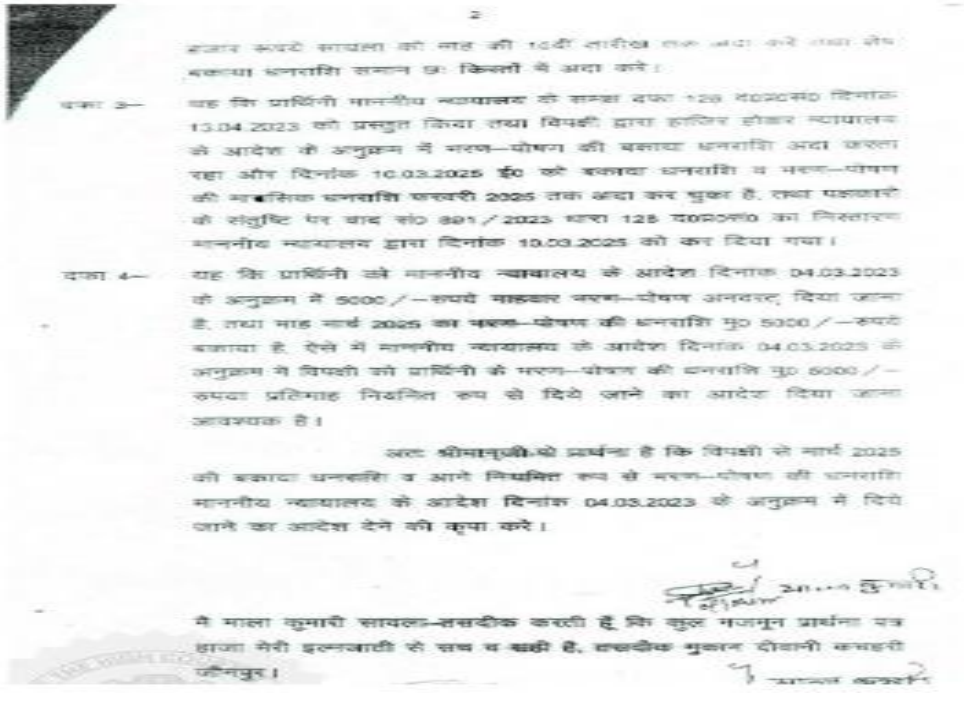
थाना—केराकत, जिला—जौनपुर।

श्रीमानजी,

प्रार्थिनी निम्नलिखित निवेदन करती है—

दफा 1— यह कि प्रार्थिनी ने विपक्षी के विरुद्ध धारा 125 सी0आर0पी0सी0 के तहत दिनांक 11.05.2018 को माननीय न्यायालय के समक्ष भरण पोषण हेतु वाद प्रस्तुत किया और मुकदमें को कन्टेस्ट करती रही।

दफा 2— यह कि विपक्षी रामबन पैदी के उपरान्त मुकदमें में उपस्थित आया और अपना जवाबदावा प्रस्तुत कर अपना पक्ष रखा तथा दोनों पक्षों के बयान हलफ व दोनों पक्षों की बहस सुनने के उपरान्त माननीय न्यायालय अपर प्रधान न्यायाधीश परिवार न्यायालय प्रथम जौनपुर, द्वारा दिनांक 04.03.2023 ई0 को विपक्षी के विरुद्ध आदेश पारित करते हुए कहा कि विपक्षी 125 [illegible] पत्र प्रस्तुत करने की दिनांक से 5



2

हजार रुपये मासिक की माह की 10वीं तारीख तक अदा करे तथा शेष बकाया धनराशि समान छः किस्तों में अदा करे।

दफा 3— यह कि प्रार्थिनी माननीय न्यायालय के समक्ष दफा 125 दं0प्र0सं0 दिनांक 13.04.2023 को प्रस्तुत किया तथा विपक्षी द्वारा हाजिर होकर न्यायालय के आदेश के अनुक्रम में भरण—पोषण की बकाया धनराशि अदा करता रहा और दिनांक 10.03.2025 ई0 को बकाया धनराशि व भरण—पोषण की मासिक धनराशि फरवरी 2025 तक अदा कर चुका है, तथा पक्षकारों की संतुष्टि पर वाद सं0 891/2023 धारा 125 द0प्र0सं0 का निस्तारण माननीय न्यायालय द्वारा दिनांक 10.03.2025 को कर दिया गया।

दफा 4— यह कि प्रार्थिनी ने माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में 5000/—रुपये माहवार भरण—पोषण अनवरत् दिया जाना है, तथा माह मार्च 2025 का भरण—पोषण की धनराशि मु0 5000/—रुपये बकाया है, ऐसे में माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में विपक्षी को प्रार्थिनी के भरण—पोषण की धनराशि मु0 5000/— रुपया प्रतिमाह निर्धारित रूप से दिये जाने का आदेश दिया जाना आवश्यक है।

अतः श्रीमानजी से प्रार्थना है कि विपक्षी से मार्च 2025 की बकाया धनराशि व आगे नियमित रूप से भरण—पोषण की धनराशि माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में दिये जाने का आदेश देने की कृपा करें।

[illegible] कुमारी

मैं माला कुमारी सायला—सत्यापित करती हूँ कि कुल मजमून प्रार्थना पत्र हाजा मेरी इत्तलाती से सच व सही है, सत्यापित मुकाम दीवानी कचहरी जौनपुर।

सायला कुमारी

6. Learned counsel for the revisionist further submits that on the application dated 09.04.2025, which has been filed just in the next month of the order dated 10.03.2025, the Additional Principal Judge Ist, Family Court, Jaunpur has passed order of recovery warrant on 29.10.2025 against O.P. No.2/husband, for eleven months to comply with the order dated 04.03.2023 by which the concerned Family court has directed O.P. No.2 to pay amount of ₹5000/- per month to his

wife/revisionist as maintenance. For ready reference order dated 29.10.2025 is being pasted hereinbelow :-



न्यायालय अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय जौनपुर।

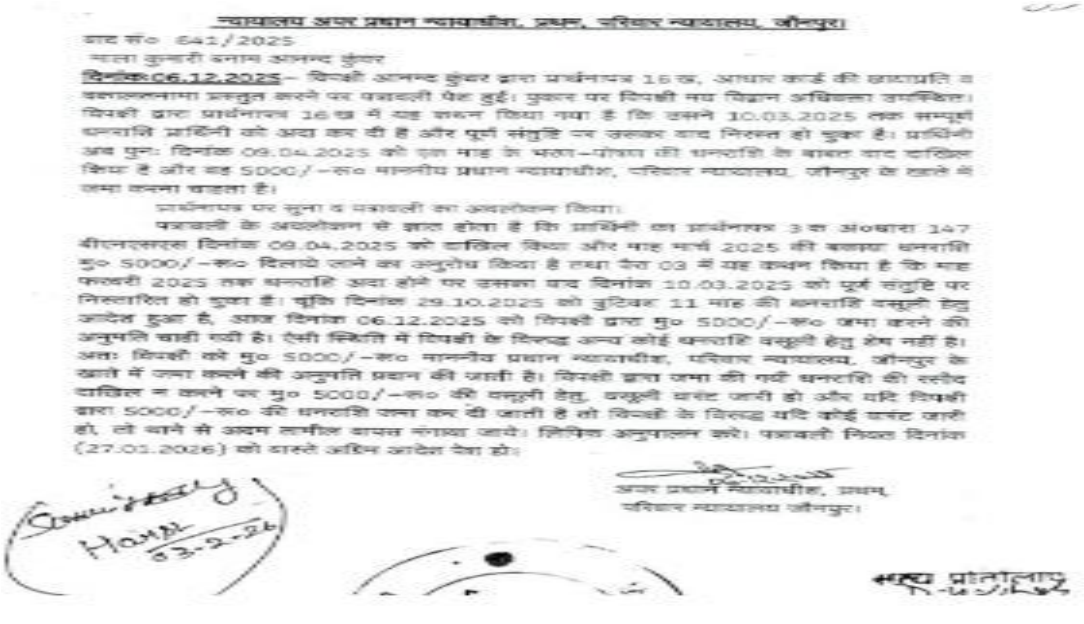
वाद सं० 641/2025

माला कुमारी बनाम आनन्द कुमार

दिनांक:- 29. 10. 2025- पुकार पर प्रतिनिधि मण्डल विद्वान अधिवक्ता उपस्थित। प्रार्थनापत्र 11 क विपक्षी के विरुद्ध वसूली वारंट जारी करने पर सुना व पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से प्रगट होता है कि विपक्षी के विरुद्ध धारा सं० 13 क / 1 लगायत 13 क/ 2 के तहत गठित फैमिली कोर्ट से डिक्री दिनांक 21. 08. 2025 को तामील हो चुकी है। अतः विपक्षी पर तामीली पर्वाना करते हुए विपक्षी के विरुद्ध दिनांक 09. 04. 2025 से 11 माह पूर्व की अवधि की धनराशि की वसूली हेतु वसूली वारंट जारी हो। प्रतिनिधि डिक्री अभिलेख करे। पत्रावली दिनांक 28. 11. 2025 को [illegible] रिपोर्ट हेतु पेश हो।

अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय जौनपुर।

7. Learned counsel for the revisionist further submits that thereafter vide order dated 06.12.2025, the Additional Principal Judge Ist, Family Court, Jaunpur has modified the order dated 29.10.2025 as O.P. No.2 has deposited ₹5000/-, which was arrear of maintenance amount for the month of March, 2025 and the recovery warrant issued vide order dated 29.10.2025 for rest of the months was withdrawn by the Additional Principal Judge Ist, Family Court, Jaunpur, without giving any reason, while arrears of the maintenance amount upto 29.10.2025 i.e. ₹55000/- was already due. For ready reference order dated 06.12.2025 is being pasted below :-



न्यायालय अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय, जौनपुर।

वाद सं० 641/2025

माला कुमारी बनाम आनन्द कुमार

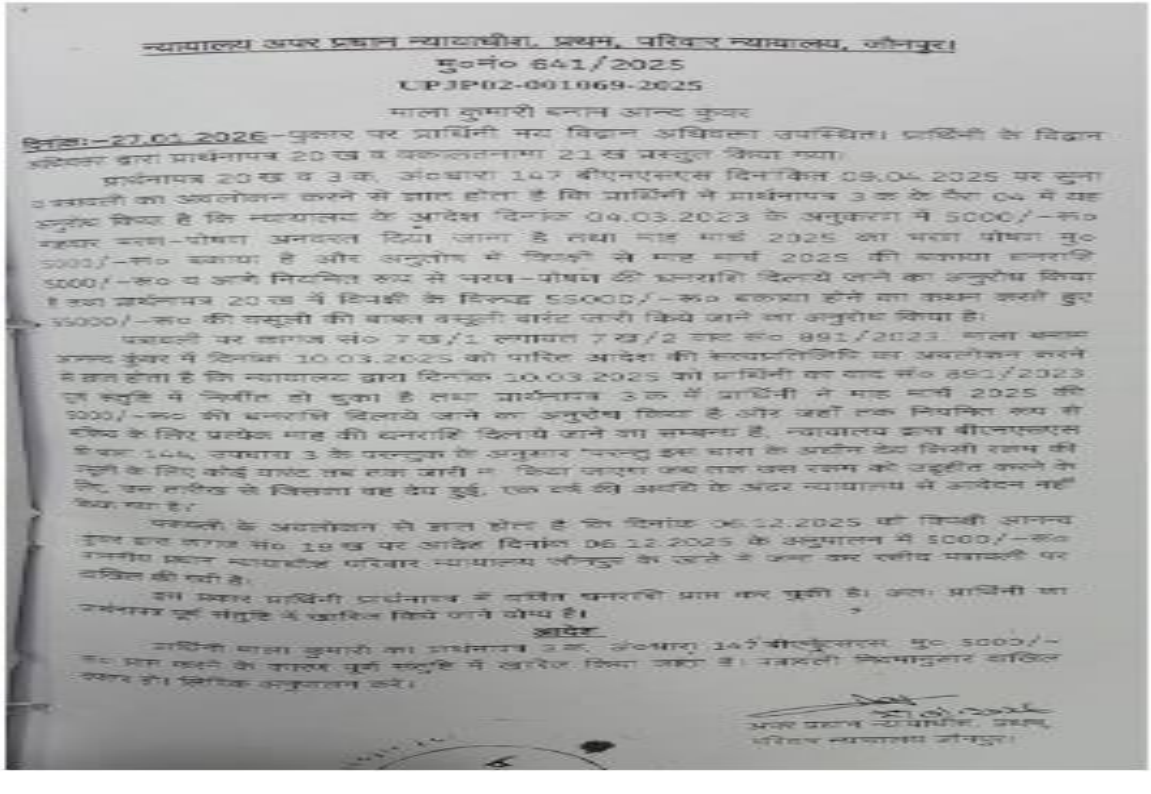
दिनांक:06.12.2025– विपक्षी आनन्द कुमार द्वारा प्रार्थनापत्र 16 क, आधार कार्ड की छायाप्रति व वकालतनामा प्रस्तुत करने पर पत्रावली पेश हुई। पुकार पर विपक्षी मय विद्वान अधिवक्ता उपस्थित। विपक्षी द्वारा प्रार्थनापत्र 16 क में यह कथन किया गया है कि उसने 10.03.2025 तक सम्पूर्ण धनराशि प्रार्थिनी को अदा कर दी है और पूर्ण संतुष्टि पर उसका वाद निरस्त हो चुका है। प्रार्थिनी अब पुनः दिनांक 09.04.2025 को एक माह के भरण–पोषण की धनराशि के बकाया वाद दाखिल किया है और यह 5000/–रू० माननीय प्रधान न्यायाधीश, परिवार न्यायालय, जौनपुर के खाते में जमा कराना चाहता है।

प्रार्थनापत्र पर सुना व पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से प्रगट होता है कि प्रार्थिनी का प्रार्थनापत्र 3 क अं०धारा 147 बीएनएसएस दिनांक 09.04.2025 को दाखिल किया और माह मार्च 2025 की बकाया धनराशि रु० 5000/–रू० दिलाये जाने का अनुरोध किया है तथा पैरा 03 में यह कथन किया है कि माह फरवरी 2025 तक धनराशि अदा होने पर उसका वाद दिनांक 10.03.2025 को पूर्ण संतुष्टि पर निस्तारित हो चुका है। चूंकि दिनांक 29.10.2025 को लुटिया 11 माह की धनराशि वसूली हेतु आदेश हुआ है, आज दिनांक 06.12.2025 को विपक्षी द्वारा रु० 5000/–रू० जमा कराने की अनुमति चाही गयी है। ऐसी स्थिति में विपक्षी के विरुद्ध अन्य कोई धनराशि वसूली हेतु शेष नहीं है। अतः विपक्षी को रु० 5000/–रू० माननीय प्रधान न्यायाधीश, परिवार न्यायालय, जौनपुर के खाते में जमा कराने की अनुज्ञप्ति प्रदान की जाती है। विपक्षी द्वारा जमा की गयी धनराशि की रसीद दाखिल न करने पर रु० 5000/–रू० की वसूली हेतु, वसूली वारंट जारी हो और यदि विपक्षी द्वारा 5000/–रू० की धनराशि जमा कर दी जाती है तो विपक्षी के विरुद्ध यदि कोई वारंट जारी हो, तो चाने से अग्रिम तामील वापस लाया जाये। लिखित अनुपालन करे। पत्रावली नियत दिनांक (27.01.2026) को वास्ते अग्रिम आदेश पेश हो।

अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय जौनपुर।

8. Learned counsel for the revisionist further submits that by application dated 09.04.2025 filed under Section 128 Cr.P.C./147 BNSS, the revisionist made prayer for continuance of the maintenance from April, 2025 and onwards as well as for arrears of maintenance for the month of March, 2025, but the Additional Principal Judge Ist, Family Court, Jaunpur vide order dated 27.01.2026 taking plea of Section 144(3) Proviso of BNSS (corresponding Section 125(3) Cr.P.C.) has rejected the application dated 09.04.2025 mentioning that O.P. No.2 has deposited ₹5000/- (i.e. arrear of March, 2025) in the account of the Principal Judge, Family Court, Jaunpur and its receipt has been provided to the court of Additional Principal Judge Ist, Family Court, Jaunpur, therefore, the entire amount has been received by the revisionist and the record of the maintenance case of the revisionist has been consigned to record and by doing the same against the provisions of law, the Additional Principal Judge Ist, Family Court, Jaunpur has also recalled the order dated 04.03.2023 by which O.P. No.2/husband was directed to pay ₹5000/- per month to his wife/revisionist towards maintenance, therefore, the order dated 27.01.2026 is against the provisions of law. For ready reference, the order dated 27.01.2026 is being pasted below :-



न्यायालय अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय, जौनपुर।

मु०नं० 641/2025

UP3P02-001069-2025

माला कुमारी बनाम आन्द कुमार

दिनांक:-27.01.2026-पुकार पर प्राथिनी मय विद्वान अधिवक्ता उपस्थित। प्राथिनी के विद्वान अधिवक्ता द्वारा प्रार्थनापत्र 20 ख व वकालतनामा 21 ख प्रस्तुत किया गया।

प्रार्थनापत्र 20 ख व 3 क, अं०धारा 147 बीएनएसएस दिनांकित 09.04.2025 पर सुना व नकदी का अवलोकन करने से ज्ञात होता है कि प्राथिनी ने प्रार्थनापत्र 3 क के तहत 04 में यह अनुतोष लिया है कि न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में 5000/-रू० प्रतिमाह भरण-पोषण अनवरत दिया जाना है तथा माह मार्च 2025 का भरण पोषण मु० 5000/-रू० बकाया है और अनुतोष में किश्तों में माह मार्च 2025 की बकाया धनराशि 5000/-रू० व आगे नियमित रूप से भरण-पोषण की धनराशि दिलाये जाने का अनुरोध किया है तथा प्रार्थनापत्र 20 ख में विपक्षी के विरुद्ध 55000/-रू० बकाया होने का कथन करते हुए 55000/-रू० की वसूली की बाबत वसूली वारंट जारी किये जाने का अनुरोध किया है।

पत्रावली पर लगाम सं० 7 ख/1 लगायत 7 ख/2 एवं मु० 891/2023 माला बनाम आनन्द कुमार में दिनांक 10.03.2025 को पारित आदेश की कंप्यूटीकृत कापी का अवलोकन करने से ज्ञात होता है कि न्यायालय द्वारा दिनांक 10.03.2025 को प्राथिनी का वाद सं० 891/2023 इस सहमति से निर्णीत हो चुका है तथा प्रार्थनापत्र 3 क में प्राथिनी ने माह मार्च 2025 की 5000/-रू० की धनराशि दिलाये जाने का अनुरोध किया है और जहाँ तक नियमित रूप से भविष्य के लिए प्रत्येक माह की धनराशि दिलाये जाने का सम्बन्ध है, न्यायालय द्वारा बीएनएसएस के धारा 144, उपधारा 3 के परन्तुक के अनुसार परन्तु इस धारा के अधीन देय किसी रकम की वसूली के लिए कोई वारंट तब तक जारी न किया जायगा जब तक उस रकम को उद्धृत करने के लिए उस तारीख से जिसको वह देय हुई, एक वर्ष की अवधि के अंदर न्यायालय में आवेदन नहीं किया गया है।

पत्रावली के अवलोकन से ज्ञात होता है कि दिनांक 06.12.2025 को विपक्षी द्वारा इस न्यायालय के खाता सं० 19 ख पर आदेश दिनांक 06.12.2025 के अनुपालन में 5000/-रू० राजकीय प्रधान न्यायाधीश परिवार न्यायालय जौनपुर के खाते में जमा कर रसीद पत्रावली पर दाखिल की गयी है।

इस प्रकार प्राथिनी प्रार्थनापत्र में वर्णित धनराशि प्राप्त कर चुकी है। अतः प्राथिनी का प्रार्थनापत्र पूर्ण संतुष्टि में खारिज किये जाने योग्य है।

आदेश

प्राथिनी माला कुमारी का प्रार्थनापत्र 3 क, अं०धारा 147 बीएनएसएस मु० 5000/-रू० प्राप्त करने के कारण पूर्ण संतुष्टि में खारिज किया जाता है। पत्रावली नियमानुसार दाखिल रेकार्ड हो। रिकार्ड अनुपालन करे।

27.01.2026

अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय जौनपुर।

9. Learned counsel for the revisionist further submits that in Section 144(3) Proviso of BNSS/125(3) Proviso of Cr.P.C., it has only been provided that, "no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due". He further submits that the application was moved which was after one month on 09.04.2025 and the amount of maintenance has been cleared till February, 2025 and the same has been observed in the order dated

10.03.2025 passed by the Principal Judge, Family Court, Jaunpur. For ready reference the first proviso of Section 144(3) as well as Section 125(3) are being delineated below :-

First Proviso of Section 144 (3) BNSS

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

First Proviso of Section 125(3) Cr.P.C.

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

10. The matter requires consideration.

11. Issue notice to O.P. No.2 returnable at early date through concerned Chief Judicial Magistrate. Steps be taken within three days.

12. Two weeks' time is granted to the opposite parties for filing counter affidavit."

4. On 28.04.2026, no one appeared on behalf of opposite party No.2 (husband), nor any report with regard to the service of notice was submitted by the learned Chief Judicial Magistrate. The explanation furnished by the Presiding Officer was also found to be unsatisfactory, therefore, the Presiding Officer was again directed to furnish his explanation by 08.05.2026. The relevant portion of the order dated 28.04.2026 passed by this Court is delineated below:-:

"1. This Court, vide order dated 13.04.2026, issued notice to Opposite Party No. 2 through the Chief Judicial Magistrate, Jaunpur. However, no report has been submitted by the Chief Judicial Magistrate, Jaunpur till date.

2. Further, the explanation furnished by the Presiding Officer, namely Sri Vimal Prakash Arya, Additional Principal Judge, 1st Family Court, Jaunpur, is found to be unsatisfactory, inasmuch as this Court, in its order dated 13.04.2026 (paragraph no. 19), had specifically directed him to submit his explanation as to whether the amount of maintenance granted vide order dated 04.03.2023 has been closed finally and whether wife has to claim maintenance amount again and again in future by moving an application and for every time she has to move an application for execution of the order dated 04.03.2023.

3. It is further noted that the application dated 09.04.2025 filed by the revisionist, whereby payment of continuous maintenance from the month of April, 2025 onwards was sought to be ensured from Opposite Party No. 2, has also not been properly addressed.

4. Upon perusal of the explanation submitted by the Presiding Officer, this Court finds that no clear-cut reply has been given, and the Presiding Officer has taken an erroneous plea of the proviso to Section 144(3) of the BNSS (corresponding to the proviso to Section 125(3) Cr.P.C.), though the law laid down by Hon'ble the Supreme Court and this Court is otherwise.

5. This Court in Mohammad Usman Alias Bhai Lal Vs. State of U.P. and 6 Others, 2021 SCC OnLine All 640, relying upon the decision of Hon'ble the Supreme Court in Shanta Alias Ushadevi and another vs. B.G. Shivananjapp, (2005) 4 SCC 468 has observed that it is unreasonable to insist on filing successive applications. The relevant observation made in the judgment is quoted herein below for ready reference :-

"15. In Shantha Alias Ushadevi And Another v. B. G. Shivananjappa, (2005) 4 SCC 468, it was stated that Section 125 of the Code is a measure of social legislation and accordingly, is to be construed liberally for the welfare and benefit of the wife and the children. In the context of the provisions contained under Section 125(3), first proviso, prescribing limitation of one year to seek recovery of arrears of maintenance, it was observed that the liability to pay the maintenance as per the orders passed under Section 125(1) being a continuing liability, it was unreasonable to insist on filing successive applications. The relevant observations made in the judgement are as follows:-

"8. ... Section 125 Cr.P.C. is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability."

16. The provisions contained under Section 125(3) of the Code and the first proviso thereto again came up for consideration in Poongodi And Another v. Thangavel, (2013) 10 SCC 618, and it was held that the first proviso to Section 125(3) does not create any bar or fetter on claiming arrears of maintenance and it neither extinguishes nor limits entitlement to arrears of maintenance. It was stated thus:-

"4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section 125(3) CrPC has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section 125(3) CrPC. Having considered the said provision of the Code we do not find that the same creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) CrPC, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the Court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available."

32. Taking a similar view it was held in Mackinnon Mackenzie & Co. Ltd vs Audrey D'Costa & Anr., (1987) 2 SCC 469, that the proviso does not travel beyond the provision to which it is a proviso and its ambit cannot be stretched beyond the main provision.

8. The ambit and scope of the powers to be exercised under Section 125(3) of the Code and the question as to whether the limitation prescribed under proviso to Section 125(3) would be applicable in respect of proceedings under Section 128 of the Code, fall for consideration in the present case.

38. Applying the aforesaid principles of statutory construction, the proviso to sub-section (3) of Section 125 would have to be held to be confined to the section which precedes it. The limitation of one year provided in terms thereof would have to be read in relation to issuance of a warrant for recovery of an amount due in terms of an order of maintenance passed under sub-section (1) of Section 125. The aforesaid limitation of one year under the proviso to Section 125 (3) cannot be held to travel beyond or stretch to an extent so as to being within its ambit the powers relating to enforcement of an order of maintenance under Section 128 of the Code.

39. It may, therefore, be deduced that the scope of Section 125(3) and 128 of the Code being different and the first proviso to Section 125(3) creating an interdict only on issuance of warrant for recovery under Section 125(3), the said period of limitation of one year cannot be held to create a fetter on the right to claim enforcement under Section 128.

40. The proceeding for enforcement of the order under Section 128, therefore, cannot be assailed on the ground that the same would be barred by limitation as provided under the proviso to Section 125(3) of the Code.

emphasis supplied

6. In view of the aforesaid legal position, Sri Vimal Prakash Arya, Additional Principal Judge, 1st Family Court, Jaunpur, is directed to submit a clear and specific explanation addressing the issues raised by this Court in respect of successive applications to execute the order of maintenance as continuous liability.

7. The Chief Judicial Magistrate, Jaunpur, is also directed to submit a report as to whether the order dated 13.04.2026 as well as notice has been communicated to the Opposite Party No. 2 or not.

5. Upon receiving explanation from the Presiding Officer, to the effect that the maintenance order dated 04.03.2023 is still operative, this Court passed the order dated 11.05.2026. The order dated 11.05.2026 is delineated below:-

"1. In compliance of this Court's order dated 28.04.2026, the concerned Presiding Officer has submitted an explanation mentioning therein that the order of maintenance dated 04.03.2023 and the order dated 10.03.2025 passed in application under Section 128 Cr.P.C. are still effective. Paragraph 1 and 2 of the explanation are being quoted below :-

"01. यह कि, जहाँ तक वाद सं० 416/2018, माला कुमारी बनाम आनन्द कुंवर, अं०धारा 125 दं०प्र०सं० में पारित आदेश दिनांक 04.03.2023 का सम्बन्ध है, इस सम्बन्ध में अधोहस्ताक्षरी का निवेदन निम्नवत् है-

(i). यह कि उपरोक्त आदेश वर्तमान में प्रभावी है और जब तक सक्षम अधिकारिता वाले न्यायालय द्वारा निरस्त नहीं कर दिया जाता तब तक उक्त आदेश सदैव प्रभावी रहेगा।

(ii). यह कि भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 146 में वर्णित उपबंधों के साबित होने पर भरण-पोषण का आदेश रद्द या परिवर्तित हो सकता है।

02. यह कि, वाद सं० 416/2018, माला कुमारी बनाम आनन्द कुंवर, अं०धारा 125 दं०प्र०सं० में पारित आदेश दिनांक 04.03.2023, अधोहस्ताक्षरी के न्यायालय द्वारा वाद सं० 891/2023, माला कुमारी बनाम आनन्द कुंवर, अन्तर्गत धारा 128 दंण्ड प्रक्रिया संहिता में पारित आदेश दिनांक 10.03.2025 के अनुसार निरस्त नहीं हुआ है और आदेश दिनांकित 04.03.2023 वर्तमान में भी प्रभावी है।"

2. Further, this Court vide order dated 13.04.2026 issued notice to O.P. No.2 through the Chief Judicial Magistrate, Ghazipur for filing counter affidavit as well as vide order dated 28.04.2026, the concerned C.J.M. was directed to submit report whether notice has been communicated to O.P. No.2 or not. As per office report dated 07.05.2026, "Notice served upon O.P. No.2 as per C.J.M. Ghazipur".

3. As a last opportunity, one week's further time is granted to O.P. No.2 for filing counter affidavit, otherwise on the next date this case shall be heard on merits as per the available record.

4. List this case on 18.05.2026 as fresh."

6. As per the office report dated 07.05.2026, the notice has been served upon the opposite party No.2 (husband) even then, after effective service of notice, no one appeared on behalf of opposite party No.2 to press this case, therefore, this Court granted another opportunity vide order dated 18.05.2026. The order dated 18.05.2026 is delineated below:-

"As per the Office Report dated 07.05.2026, based on the report of the Chief Judicial Magistrate, Ghazipur, notice had already been served upon opposite party no.2. Accordingly, this Court, vide order dated 11.05.2026, granted last opportunity to opposite party no.2 to file counter affidavit. However, till date, no counter affidavit has been filed.

Put up this case as fresh on 27.05.2026, peremptorily. "

7. Despite the aforesaid orders of the Court, no one appeared to file counter affidavit in the matter, therefore, this Court, on the basis of the available record, submissions advanced by learned counsel for the revisionist as well as in view of the law laid down by the Hon□ble Courts, proceeds to pass the final order in the present matter.

8. Learned counsel for the revisionist submitted that, on 11.05.2018, the revisionist (wife) filed an application under Section 125 Cr.P.C., seeking the grant of maintenance from opposite party No.2 (husband). After providing an opportunity of hearing to both the parties, the concerned

Family Court vide order dated 04.03.2023, directed opposite party No.2 to pay Rs. 5,000/- as maintenance to the revisionist from the date of application i.e. 11.05.2018.

9. Learned counsel for the revisionist further submitted that, for execution of the aforesaid maintenance order dated 04.03.2023, the revisionist filed an application under Section 128 Cr.P.C. on 13.04.2023, which was registered as Execution Case No.891 of 2023 and the same was finally adjudicated vide order dated 10.03.2025, observing that the entire arrears of maintenance up to February, 2025 had been paid by opposite party No.2, thereafter, the proceedings under Section 128 Cr.P.C. was disposed of.

For ready reference, the relevant operative portion of the order dated 10.03.2025 passed by the Family Court on the first execution application as well as provisions of Section 128 Cr.P.C. (corresponding Section 147 B.N.S.S.) are delineated below respectively:-

"पत्रावली के अवलोकन से विदित होती है कि सायला द्वारा यह वाद विपक्षी के विरुद्ध अन्तगत धारा 128 दं०प्र०सं० प्रस्तुत किया गया था। जिस पर विपक्षी द्वारा यह अभिकथन किया गया था कि उसके द्वारा आज तक सम्पूर्ण धनराशि अदा किया जा चुका है। अतः पूर्ण संतुष्टि में यह वाद निर्णीत किये जाने की याचना की गयी है। जिस पर सायला की तरफ से अनापत्ति दर्ज की गयी है। अतः यह वाद पूर्ण संतुष्टि पर निस्तारित किये जाने योग्य है।

आदेश

वाद सं० 891/2023 माला बनाम आनन्द कुवर अन्तर्गत धारा 128 दं०प्र०सं० उभय पक्ष की पूर्ण सन्तुष्टि पर निर्णीत किया जाता है।"

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“Section128 Cr.P.C/147 BNSS. Enforcement of order of maintenance: A copy of the order of [maintenance or interim maintenance and expenses of proceeding, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to [whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the [allowance or as the case may be, expenses, due.]”

10. Learned counsel for the revisionist further submitted that, after disposal of the earlier execution proceedings, the revisionist filed another execution application in the next month on 09.04.2025, under Section 128 Cr.P.C./147 B.N.S.S. seeking regular payment of maintenance from April, 2025 onwards, as well as arrears of maintenance for the month of March, 2025. The said application was registered as Execution Case No.641 of 2025. He also submitted that the said application was filed immediately after the disposal of the earlier execution case in the same maintenance proceedings and there was no delay on the part of the revisionist in approaching the concerned Family Court for enforcement of the maintenance order dated 04.03.2023. The relevant portion of second execution application dated 09.04.2025 is delineated below:

"यह कि प्रार्थिनी को माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में 5000/- रुपये माहवार भरण-पोषण अनवरत् दिया जाना है, तथा माह मार्च 2025 का भरण-पोषण की धनराशि मु० 5000/- रुपये बकाया है, ऐसे में माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में विपक्षी को प्रार्थिनी के भरण-पोषण की धनराशि मु० 5000/-रुपया प्रतिमाह नियमित रुप से दिये जाने का आदेश दिया जाना आवश्यक है।

अतः श्रीमान्जी से प्रार्थना है कि विपक्षी से मार्च 2025 की बकाया धनराशि व आगे नियमित रूप से भरण-पोषण की धनराशि माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में दिये जाने का आदेश देने की कृपा करे।"

11. Learned counsel for the revisionist further submitted that, on the aforesaid execution application dated 09.04.2025, the Additional Principal Judge-Ist, Family Court, Jaunpur vide order dated 29.10.2025 issued recovery warrant for eleven months arrears of maintenance against opposite party No.2 in compliance with the maintenance order dated 04.03.2023. He further submitted that thereafter, vide the order dated 06.12.2025, the concerned Family Court withdrew the recovery warrant merely on the ground that opposite party No.2 had deposited Rs. 5,000/- towards the arrears for the month of March 2025, but wrong notion was mentioned in the said order about the arrears amounting to Rs. 55,000/-, which were still due against him till the date of passing of the recovery order, and thus, the cause of action is still continuing and the maintenance order is still in operation. The relevant portion of second execution order dated 06.12.2025 is being delineated below:

"पत्रावली के अवलोकन से ज्ञात होता है कि प्रार्थिनी का प्रार्थनापत्र 3 क अं०धारा 147 बीएनएसएस दिनांक 09.04.2025 को दाखिल किया और माह मार्च 2025 की बकाया धनराशि मु० 5000/-रू० दिलाये जाने का अनुरोध किया है तथा पैरा 03 में यह कथन किया है कि माह फरवरी 2025 तक धनराशि अदा होने पर उसका वाद दिनांक 10.03.2025 को पूर्ण संतुष्टि पर निस्तारित हो चुका है। चूंकि दिनांक 29.10.2025 को त्रुटिवश 11 माह की धनराशि वसूली हेतु आदेश हुआ है, आज दिनांक 06.12.2025 को विपक्षी द्वारा मु० 5000/- रू० जमा करने की अनुमति चाही गयी है। ऐसी स्थिति में विपक्षी के विरूद्ध अन्य कोई धनराशि वसूली हेतु शेष नहीं है। अतः विपक्षी को मु० 5000/-रू० माननीय प्रधान न्यायाधीश, परिवार न्यायालय, जौनपुर के खाते में जमा करने की अनुमति प्रदान की जाती है। विपक्षी द्वारा जमा की गयी धनराशि की रसीद दाखिल न करने पर मु० 5000/-रू० की वसूली हेतु, वसूली वारंट जारी हो और यदि विपक्षी द्वारा 5000/- रू० की धनराशि जमा कर दी जाती है तो विपक्षी के विरूद्ध यदि कोई वारंट जारी हो, तो थाने से अदम तामील वापस मंगाया जाये। लिपिक अनुपालन करे। पत्रावली नियत दिनांक (27.01.2026) को वास्ते अग्रिम आदेश पेश हो।"

12. Learned counsel for the revisionist further submitted that, thereafter, vide the impugned order dated 27.01.2026, the Additional Principal Judge-Ist, Family Court, Jaunpur rejected the application dated 09.04.2025 taking recourse to the proviso to Section 144(3) B.N.S.S./ Section 125(3) Cr.P.C., mentioning therein that opposite party No.2 had deposited Rs. 5,000/- in the account of the Principal Judge, Family Court, Jaunpur and accordingly, the second application of execution was rejected and the case filed was also consigned to the record room. He further submitted that, by passing the aforesaid order, the concerned Family Court practically nullified the effect of maintenance order dated 04.03.2023, despite the fact that the said order was still in existence and had never been recalled or set aside by any competent court and having continuous effect under Section 144(3) BNSS/Section 125(3) Cr.P.C. He further submitted that the impugned order is contrary to the provision of Section 144(3) BNSS/125(3) Cr.P.C.

For ready reference, the relevant portion of the order dated 27.01.2026 as well as provisions of Section 144(3) B.N.S.S. (corresponding Section 125(3) Cr.P.C.) are delineated below respectively:-

" पत्रावली के अवलोकन से ज्ञात होता है कि दिनांक 06.12.2025 को विपक्षी आनन्द कुंवर द्वारा कागज सं० 19 ख पर आदेश दिनांक 06.12.2025 के अनुपालन में 5000/-रू० माननीय प्रधान न्यायाधीश परिवार न्यायालय जौनपुर के खाते में जमा कर रसीद पत्रावली पर दाखिल की गयी है।

इस प्रकार प्रार्थिनी प्रार्थनापत्र में वर्णित धनराशि प्राप्त कर चुकी है। अतः प्रार्थिनी का प्रार्थनापत्र पूर्ण संतुष्टि में खारिज किये जाने योग्य है।

आदेश

प्रार्थिनी माला कुमारी का प्रार्थनापत्र 3 क, अं०धारा 147 बीएनएसएस, मु० 5000/-रू० प्राप्त करने के कारण पूर्ण संतुष्टि में खारिज किया जाता है। पत्रावली नियमानुसार दाखिल दफ्तर हो। लिपिक अनुपालन करे।"

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"Section 144(3) BNSS/125(3) Cr.P.C- If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

13. Learned counsel for the revisionist further submitted that proviso to Section 144(3) B.N.S.S./ Section 125(3) Cr.P.C. only restricts the issuance of a warrant for recovery after the prescribed limitation period has elapsed; it does not extinguish the right of the wife to claim due maintenance, nor does it bar the enforcement mechanism available under Section 128 Cr.P.C./ Section 147 B.N.S.S. He further submitted that the revisionist approached the court promptly, and the provisions of law had been wrongly interpreted while rejecting the application filed by the revisionist. In support of his submissions, he relied upon paragraph No. 4 of the judgment in **Poongodi And Another v. Thangavel, (2013) 10 SCC 618** passed by the Hon□ble Supreme Court. The relevant paragraph of the judgment is delineated below:-

"4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section 125(3) CrPC has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the

application under Section 125(3) CrPC. Having considered the said provision of the Code we do not find that the same creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) CrPC, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the Court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available."

(emphasis added)

14. Shri Mayank Awasthi, learned State Counsel assisted the Court and submitted that the maintenance order dated 04.03.2023, passed in favour of the revisionist, is still operative and so long as it stands, opposite party No.2 is under a continuous legal obligation to pay the monthly maintenance amount to the revisionist.

15. This Court has considered the submissions advanced by learned counsel for the revisionist, as well as learned State Counsel and, has also perused the record.

16. From a perusal of the record, it transpires that the maintenance order dated 04.03.2023, passed under Section 125 Cr.P.C. remains operative, for the enforcement of which, the revisionist had earlier instituted proceedings under Section 128 Cr.P.C. that were finally decided vide the order dated 10.03.2025 upon payment of the maintenance arrears. Subsequently, the revisionist moved another execution application dated 09.04.2025 under Section 128 Cr.P.C./ Section 147 B.N.S.S. seeking payment of maintenance for the month of March 2025, as well as future maintenance.

17. Vide the impugned order dated 27.01.2026, the learned Additional Principal Judge-I, Family Court, Jaunpur, recorded a finding that since the maintenance amount for March, 2025 had already been deposited by opposite party No.2 (husband), no outstanding amount remained due in respect thereof. Furthermore, regarding the prayer for future maintenance, the Family Court, while passing the impugned order, observed that a recovery warrant cannot be issued for future monthly maintenance amounts that have not yet become due on the date of filing of the application and has taken note of the provisions contained in Section 144(3) B.N.S.S./Section 125(3) Cr.P.C. but the Hon□ble Supreme Court and High Court have observed in several judgments that successive execution applications are not required to be filed. This issue has also been considered by the coordinate Bench of this Court in **Mohammad Usman Alias Bhai Lal Vs. State of U.P. and 6 Others, 2021 SCC OnLine All 640**. The Hon'ble Supreme Court in the case of **Shantha Alias Ushadevi and another Vs. B.G. Shivananjappa; (2005) 4 SCC 468**, has also observed that it would be unreasonable to insist upon the filing of successive applications. The relevant observations made in **Shantha Alias Ushadevi (supra)** are delineated below for ready reference:-

"8. We are, therefore, of the view that in the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of Sessions Judge. It must be borne in mind that Section 125 Criminal Procedure Code is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability."

(emphasis added)

18. The provisions of Section 125(3) Cr.P.C. and its first proviso have also been considered by the Hon'ble Supreme Court in the case of **Poongodi And Another v. Thangavel, (2013) 10 SCC 618**, wherein the Hon'ble Supreme Court observed that the first proviso to Section 125(3) Cr.P.C. does not prevent a person entitled to maintenance from claiming arrears of maintenance for a period beyond one year. The period of one year provided in the first proviso only limits the procedure for the recovery of maintenance under Section 125(3) Cr.P.C. by the issuance of a warrant for the recovery of the amount, and the detention of the defaulter in custody does not extinguish the right of the claimant to recover the arrears of maintenance.

19. The Hon'ble Supreme Court in the case of **Aarti Rai vs. Satish Rai and others arising out of Criminal Appeal No.1074 of 2025** vide order dated 04.03.2025 has directed the counsel for the appellant to supply the account details of the appellant-wife to the respondent so that the amount of maintenance can be directly deposited in the bank account of the appellant. The relevant paragraph of the said judgment is delineated below:-

"The learned counsel appearing for the appellant shall supply account details of the appellant to the learned counsel appearing for the first respondnet so that the amount of maintenance can be directly deposited in the bank accound of the appellant."

20. The Hon'ble Supreme Court in the case of **Dimpal Vs. Nishant Pravinbhai Soni arising out of Transfer Petition (Civil) No. 3147 of 2024**, vide order dated 27.02.2026, has also directed the employer of respondent-husband to deduct the amount of maintenance from the salary of the respondent-husband and the same shall be transferred in the bank account of the applicant-wife. The relevant observations made in paragraph No.7 of **Dimpal (supra)** are quoted hereinbelow for ready reference:-

"7. In such circumstances, we are left with no other option but to direct the employer of the respondent-husband, namely, Rishad Shipping and Clearing Agency Pvt. Ltd., referred to above, that an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) shall be deducted per month from the salary of Nishant Praveenbhai Soni and the said amount shall be transferred by RTGS to the account of his wife, namely, Dimpal Soni.

(emphasis added)

21. In the present case, it cannot be ignored that the maintenance order dated 04.03.2023 continues to remain in force and the opposite party No.2 (husband) remains under an obligation to pay maintenance to the revisionist.

22. Accordingly, opposite party No.2-husband is directed to clear the arrears of maintenance, if any, till today and shall continue to pay the monthly maintenance amount to the revisionist-wife in compliance with the order dated 04.03.2023 passed by learned Additional Principal Judge Family Court-I, Jaunpur in case no. 416 of 2018 (Mala Kumari Vs. Anand Kunwar) under section 125 Cr.P.C., preferably into her verified bank account, if provided by the Revisionist-Wife of opposite party No.2(Husband).

23. All the Presiding Officers of the Family Courts and Gram Nyayalayas of the State of U.P. are directed to ensure strict compliance with the following directions:

(i) The trial court shall follow the law laid down by the Hon'ble Supreme Court in **Shanta Alias Ushadevi (supra)** to the effect that successive execution applications are not required to be filed for receiving monthly maintenance.

(ii) The trial court shall also follow the law laid down by the Hon'ble Supreme Court in **Poongodi (supra**) to the effect, that the first proviso to Section 125(3) Cr.P.C./Section 144(3) B.N.S.S. does not create any bar or affect upon the entitlement of a claimants to recover arrears of maintenance beyond a period of one year.

(iii) While passing or executing maintenance orders, the trial court shall direct the opposite party/person, liable to pay maintenance, to deposit the monthly maintenance amount directly into the verified bank account of the applicant-claimant, in terms of the law laid down by the Hon'ble Supreme Court in **Aarti Rai (supra**).

(iv) Wherever the opposite party is in salaried employment, the trial court shall also direct the concerned department/employer to deduct the maintenance or arrears from the salary/remuneration/honorarium of the opposite party-employee and transfer the same directly into the verified bank account of the applicant-claimant, in accordance with the law laid down by the Hon'ble Supreme Court in **Dimple (supra**).

(v) In the event of refusal of payment of maintenance or non-payment of maintenance due to insufficiency of funds, the trial court shall recover the amount by attaching the property of the opposite party/person, liable to pay maintenance, in accordance with law and if the attached property is insufficient to clear the unpaid arrears of maintenance, an order of simple imprisonment may be directed to be executed for a term which may extend to one month for each month's default or until payment, if sooner made, as per Section 125(3) Cr.P.C./Section 144(3) B.N.S.S.; and the law laid down by the Hon'ble Supreme Court in **Rajnesh vs. Neha; (2021) 2 SCC 324**.

24. The above directions, as given by the Hon'ble Apex Court as well as this Court, if not complied with in letter and spirit by the Presiding Officers of the Family Courts, as well as the Gram Nyayalayas of the State of U.P., the same is liable to attract disciplinary, as well as contempt proceedings as per law.

25. For execution of the maintenance order, the District Administration as well as the Police Authorities are directed to cooperate in the matter and this issue shall also be discussed in the Monitoring Cell meetings conducted by all the District and Sessions Judges of the State of U.P.

26. With the aforesaid directions, the revision stands **disposed of**.

27. The Registrar (Compliance) is directed to communicate this order to the District and Session Judge, Jaunpur and the Principal Judge, Family Court, Jaunpur for its compliance as well as to transmit a copy of this order to the Judicial Training and Research Institute, U.P. Lucknow (JTRI), for the academic purposes of the judicial officers.

(2026) 7 ILRA 2185
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.07.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 6458 of 2025

Roji Bano & Anr. **...Revisionists**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issues for Consideration

(i) Whether the wife, who had obtained custody of the minor daughter on the specific assertion that she was financially capable of maintaining herself and the child, was entitled to interim maintenance in her individual capacity under Section 125 Cr.P.C.?

(ii) Whether the interim maintenance of Rs. 3,000/- per month awarded to the minor daughter warranted enhancement?

Headnotes

Code of Criminal Procedure, 1973 --- S. 125 --- Interim maintenance --- Claim of wife --- Salary slip showing monthly salary --- Column of occupation and income left blank in affidavit filed in compliance of Rajnesh --- No documentary evidence of resignation --- Claim rightly rejected.

HELD: Where the salary slip of the wife showed a monthly salary of Rs. 14,125/-, the column of occupation and income in the affidavit filed in compliance with the directions in *Rajnesh* was left blank, there was no documentary evidence of her having resigned from her job, and the wife had herself obtained custody of the minor child on the specific assertion that she was financially capable of maintaining and taking proper care of the child, the finding of the court below that she is capable of maintaining herself, and the consequent refusal of interim maintenance to her, calls for no interference. [Paras 7, 10-12]

Code of Criminal Procedure, 1973 --- S. 125 --- Maintenance of minor child --- Expenses to be shared proportionately where mother is also working and earning sufficiently --- Mother asserting financial capacity to obtain custody cannot fasten entire burden on father --- Enhancement declined.

HELD: In view of the principles laid down in paragraphs 91 and 92 of *Rajnesh*, although the reasonable expenses of the minor child, including food, clothing, residence, medical care and education, are required to be adequately provided for and the educational expenses are ordinarily to be borne by the father, where the mother is also working and earning sufficiently, such expenses may be shared proportionately between both parents. The mother, having asserted her financial capacity and obtained custody of the child on that basis, cannot seek to fasten the entire financial burden of the minor exclusively upon the father. In the absence of any cogent material showing a substantial increase in the actual and reasonable expenses of the minor, any material enhancement in the income of the father, or any subsequent deterioration in the financial condition of the mother, no sufficient ground is made out either to grant interim maintenance to the mother or to enhance the maintenance awarded to the minor daughter. [Paras 11-12]

Criminal revision dismissed. (E-14)

Case Law Cited

Rajnesh v. Neha and another, (2021) 2 SCC 324 --- relied on.

List of Acts / Statutes

Code of Criminal Procedure, 1973.

List of Keywords

Interim maintenance; Minor child; Custody; Financial capacity of mother; Proportionate sharing of expenses; Enhancement of maintenance; Rajnesh affidavit.

Case Arising From

Order dated 26.08.2025 passed by the Additional Principal Judge, Family Court-05, Prayagraj, in Maintenance Case No. 815 of 2023, Roji Bano v. Akib alias Prince, under Section 125 Cr.P.C., District Prayagraj.

Appearance for Parties

For the Revisionist(s): Akhilesh Kumar Vishwakarma, Anil Kumar Singh, Ranjeet Singh.
For the Opposite Party(s): Ehtesham Khan, G.A.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Vaibhav Mishra, Advocate holding brief of Mr. Anil Kumar Singh, learned counsel for the revisionist, Mr. Kanhaiya Mishra, Advocate holding brief of Mr. Ehtesham Khan, learned counsel for opposite party no. 2, learned A.G.A. representing the State and perused the material available on record.

2. Revisionist Smt. Raji Bano and another have approached this Court by means of present Criminal Revision challenging the impugned order dated 26.08.2025 passed by the Additional Principal Judge, Family Court-05, Prayagraj (hereinafter referred to as "the Trial Court") in Maintenance Case No. 815 of 2023, Roji Bano v. Akib alias Prince, under Section 125 Cr.P.C., District Prayagraj, whereby the Trial Court granted interim maintenance of Rs. 3000/- per month to the minor daughter of the parties (revisionist no. 2) and rejected the claim of revisionist no. 1.

3. Feeling aggrieved from the aforesaid order, the present revision has been filed on the ground that the impugned order is arbitrary, illegal and suffers from material irregularity. It is further submitted by the learned counsel for the revisionists that the Trial Court has erred in law while passing the impugned order by fixing a meager amount of maintenance of Rs. 3000/- per month to the minor daughter of the parties and by rejecting the claim of interim maintenance to revisionist no. 1. It is submitted that the maintenance granted by the Trial Court is very meager and grossly insufficient looking to the expenses of revisionist no. 2. Revisionist no. 1 has also no means of income to maintain herself but the Trial Court wrongly considered that she is able to maintain herself. It is further submitted that though in the year 2022 the revisionist no. 1 was working in B.S.N. Infrastructure on contract basis but she worked there only for three months. Thereafter, due to pressure made by opposite party no. 2 to quit the job, she resigned from her job. However, the Trial Court did not consider this fact and passed an illegal order. It is, thus, contended that the impugned order, so far as it relates to rejection of the claim for maintenance qua the revisionist no. 1, is not sustainable in the eye of law and is liable to be set aside by this Court.

7. Per contra, learned A.G.A. as well as learned counsel appearing on behalf of opposite party no. 2 vehemently opposed the revision and submitted that the Trial Court has rightly passed the impugned order after considering all the relevant material available on record. It is submitted that the salary slip of revisionist no.1 shows that she gets monthly salary of Rs. 14,125/-. It is also submitted that in the affidavit filed by the revisionist, in compliance with the direction of the

Supreme Court in Rajnesh v. **Neha and another, (2021) 2 SCC 324** she did not fill the column of occupation and income and left it blank. There is no documentary evidence on record to show that revisionist no. 1 has resigned from her job. In view of aforesaid, it is thus contended that the Trial Court has rightly rejected the claim for interim maintenance of revisionist no. 1.

8. So far as enhancement of the amount of maintenance qua revisionist no. 2 is concerned, it is submitted by learned counsel for opposite parties that revisionist no. 2 was living with opposite party no. 2 and he was maintaining her. But the revisionist no. 1 filed a habeas corpus petition claiming the custody of revisionist no. 2 asserting that she is capable to maintain herself as well as her minor daughter, revisionist no. 2. Considering this fact, the Court directed the opposite party no. 2 to handover the custody of revisionist no. 2 to revisionist no. 1. It is submitted on this count that it is the admission of revisionist no. 1 herself that she is capable to maintain herself and her minor daughter. It is thus contended that the Trial Court considered all these facts and rightly fixed the amount of interim maintenance as Rs. 3000/- per month to revisionist no. 2. It is, therefore, submitted that the impugned order does not warrant interference of this Court and the Criminal Revision is liable to be dismissed.

9. When confronted with above, learned counsel for the revisionists could not overcome the submissions advanced by the learned counsel for opposite party no. 2 and the learned A.G.A.

10. In the present case, the revisionist no. 1 (mother of revisionist no. 2) had herself obtained custody of the minor son on the specific assertion that she was financially capable of maintaining and taking proper care of her minor daughter. The court below has also recorded a finding that she is capable of maintaining herself and, accordingly, declined to award any interim maintenance to her, while awarding Rs.3,000/- per month to the minor daughter.

11. In view of the principles laid down by the Supreme Court in paragraphs 91 and 92 of **Rajnesh (supra)** although the reasonable expenses of the minor child, including those relating to food, clothing, residence, medical care and education, are required to be adequately provided for and the educational expenses are ordinarily to be borne by the father, where the mother is also working and earning sufficiently, such expenses may be shared proportionately between both parents. Thus, the revisionist no. 1, having asserted her financial capacity and obtained custody of the child on that basis, cannot seek to fasten the entire financial burden of the minor exclusively upon the father (opposite party no. 2). In the absence of any cogent material showing a substantial increase in the actual and reasonable expenses of the minor daughter, any material enhancement in the income of the father, or any subsequent deterioration in the financial condition of the revisionist, no sufficient ground is made out either to grant interim maintenance to the revisionist no. 1 in her individual capacity or to enhance the maintenance already awarded to the revisionist no. 2, parties' minor daughter.

12. In view of the discussions made hereinabove, we are of the opinion that the submissions urged by the learned A.G.A. as well as the learned counsel appearing on behalf of opposite party no. 2 are clearly borne out from the record. The Trial Court after considering all the relevant materials, passed a reasoned order. There is no good ground to interfere with the impugned order. The present Criminal Revision is devoid of merit and is liable to be dismissed.

13. It is, accordingly, **dismissed**.

(2026) 7 ILRA 2188
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.07.2026

BEFORE

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

Arbitration Appeal No. 35 of 2025

U.P. Public Works Deptt. ...Appellant(s)
Versus
M/s Vriddhi Infratech India Pvt. Ltd. ...Respondent(s)

Issues for Consideration

(i) Whether a dispute as to the manner of calculation of GST payable under a works contract entered into under the VAT regime and completed under the GST regime is arbitrable, and whether the plea of non-arbitrability could be raised for the first time in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996?

(ii) Whether, by incorporation of the MoRTH technical specifications in the contract, the SOP dated 19.11.2018 issued by the Ministry of Road Transport and Highways relating to GST impact on EPC contracts became binding on the appellant-department, to the exclusion of the State Government Orders dated 09.11.2017 and 10.12.2019?

(iii) Whether the Sole Arbitrator could award GST along with penalty and interest, making the award subject to final assessment by the GST Authorities?

(iv) Whether the valid portion of the award could be severed and saved while setting aside the offending portion, in light of Gayatri Balasamy v. ISG Novasoft Technologies Ltd.?

Headnotes

Arbitration and Conciliation Act, 1996 --- Arbitrability --- Tax disputes --- Disputes resolvable within the contract (Head A) and disputes requiring statutory determination under tax laws (Head B) --- Distinction.

HELD: Disputes relating to tax which arise from the agreement and can be resolved within the contract — such as inter se liability as to which party is contractually obligated to pay or deposit the tax, reimbursement of tax paid, tax-sharing or indemnity clauses, and interpretation of contractual phrases such as "inclusive of all taxes" — are arbitrable. However, disputes which encroach upon the exclusive domain of the taxing authority, such as whether a transaction is legally taxable, challenge to a statutory tax arrangement, classification or entry under a taxing statute, rate of taxation, eligibility for statutory exemption or concession, and disputes between a contracting party and the State Authority relating to tax, are not arbitrable. The Arbitrator is a creature of contract, and where the adjudication requires determination of tax rates, classification, quantum of tax liability or reference to Executive Tax Notifications and Statutory Tax Rate Schedules, the dispute

ceases to be contractual and metamorphoses into a fiscal regulatory issue governed by the taxing statute, which is a complete code in itself. [Paras 40, 41-41.4]

Arbitration and Conciliation Act, 1996 --- Ss. 16, 37 --- Dispute confined to whether GST to be calculated as per MoRTH SOP or State Government Orders --- Falls under Head A --- Arbitrable --- Plea of non-arbitrability raised for the first time in appeal --- Rejected.

HELD: Where there was no dispute as to whether GST is payable, and the dispute was confined to whether the payable tax is to be calculated as per the MoRTH SOP dated 19.11.2018 or the Government Orders dated 09.11.2017 and 10.12.2019, not involving any classification, entry, rate of tax, challenge to statutory tax arrangement or dispute with the State as a sovereign, the dispute falls under Head A and is arbitrable. Moreover, no objection of non-arbitrability was raised by the department before the Arbitral Tribunal under Section 16, nor any such pleading was made, and the plea was taken for the first time before this Court. [Paras 42-50]

Contract --- Incorporation of MoRTH technical specifications --- Does not import tax guidelines --- Government Orders being executive instructions binding on Government Department --- Finding of Arbitrator that MoRTH SOP applicable --- Unsustainable.

HELD: Borrowing the MoRTH technical specifications results in MoRTH dictating the engineering standards, usage of raw material, quantity, quality, quality tests and measurement of work done; such guidelines cannot dictate statutory laws, GST rates or compliances. Technical, financial and commercial requirements are treated separately and borrowing one does not implicitly subsume the other unless specifically provided for. Government Orders issued by the State Government for easing its day-to-day work are executive instructions which, though they may not have statutory enforceability against the citizen, are binding on the Government Department. In the absence of any contractual clause or material on record, including the MoRTH document itself, establishing that tax provisions were borrowed or that MoRTH would prevail in case of ambiguity — the burden of which lay on the respondent — the finding of the Sole Arbitrator that the MoRTH SOP relating to calculation of GST applied merely because technical specifications were borrowed cannot be sustained. [Paras 65-77, 87]

Contract --- MoRTH SOP dated 19.11.2018 --- Applicable to EPC contracts --- Use of word "may" and reference to mutual agreement --- Directory in nature --- Application to item rate contract without evidence or consensus --- Based on conjectures.

HELD: Clause 6 of the SOP and the illustration therein relate to EPC contracts, and there is no material to indicate that the SOP would apply to item rate based contracts; the use of the word "may" and the reference to mutual agreement in the SOP indicate that it is merely a directory guideline. Without clinching evidence that the parties agreed to have their tax liability governed by the SOP, it could not be made binding on the appellant; the Sole Arbitrator, by applying it to an item rate contract on the premise that both types of contract are similar, read into the contract something which is not present, rendering the award based on conjectures and susceptible to interference. [Paras 80-84, 99]

Goods and Services Tax Act, 2017 --- Ss. 50, 73, 74, 142(2), (10), (11) --- Liability of assessee --- Interest and penalty --- Award subject to final assessment by GST Authorities --- Arbitrator acting as Assessing Officer --- Ambiguity and lack of finality.

HELD: Under the GST Act, the liability to pay tax is on the assessee, and it was open to the respondent to deposit the tax in time to avoid penalty or interest and then recover the same from the appellant, if permissible. Before awarding interest and penalty, the Sole Arbitrator ought to have recorded a clear finding as to the quantum and periods of the shortfall and that such shortfall, penalty or interest was paid by the

respondent on account of the sole negligence or want of due diligence of the appellant; there was no material showing issuance of any notice under Section 73 or Section 74 for the contract period. Making the awarded amount subject to final assessment by the GST Authorities leads to ambiguity and does not attach finality to the award, such an arrangement being permissible only as an interim measure. Further, the transitional provisions under Sections 142(2), 142(10) and 142(11) of the GST Act, 2017, which may have some bearing on the controversy, were not noticed. The Sole Arbitrator thus erred by acting as an Assessing Officer. [Paras 89-102]

Arbitration and Conciliation Act, 1996 --- Ss. 34, 37 --- Patent illegality --- Arbitrator cannot re-write the contract or fill in lacunae --- Findings based on conjectures and not backed by cogent evidence --- Liable to be set aside.

HELD: The Sole Arbitrator, being a creature of the contract, is bound by its terms and cannot re-write the contract or fill in the lacunae for any party. An award can be set aside if it is in violation of the fundamental policy of Indian law, or ignores judicial discipline regarding compliance with principles of natural justice, or the reasoning is based on perversity which goes to the root of the matter without there being any possibility of an alternate view. The findings on Issue Nos. 2 to 4 and 8 to 9, having proceeded on conjectures and assumptions and being against the material evidence on record, cannot be sustained. [Paras 103-106]

Arbitration and Conciliation Act, 1996 --- Ss. 34, 37 --- Modification of award --- Doctrine of severability --- Guardrails laid down in Gayatri Balasamy --- Severable portion saved --- Remaining issues remitted.

HELD: Only severable awards are amenable to modification; the error sought to be corrected must be patent and apparent on the face of the record; modification is permissible for correcting or adjusting post-award interest; and where modification is impermissible, the matter must be remanded. Applying these principles, the findings on Issue Nos. 2 to 4 and 8 to 9 were set aside, while the finding on Issue No. 1 (based on consensus of the parties) and the award of Rs. 66,500/- with interest at 9% per annum under Issue No. 10 were severed and protected, and the remaining issues were remitted for fresh adjudication. [Paras 107-111]

Appeal partly allowed. Judgment dated 18.07.2025 of the Commercial Court-I, Lucknow set aside; award dated 27.01.2024 partly modified — findings on Issue Nos. 2 to 4 and 8 to 9 set aside and remitted to the Arbitral Tribunal, to be constituted as per law, for fresh decision; findings on Issue Nos. 1 and 10 saved. Parties to bear their own costs. (E-14)

Case Law Cited

Vidya Droliya v. Durga Trading Corporation, (2021) 2 SCC 1 --- referred to; *Usha Martin Ltd. v. Eastern Gases Ltd.*, (2022) SCC OnLine Cal 3342 --- referred to; *AC Choksi Share Broker (P) Ltd. v. Jatin Pratap Desai*, (2025) 5 SCC 321 --- referred to; *UCM Coal Co. Ltd. v. Adani Enterprises Ltd.*, 2025 SCC OnLine All 7608 --- relied on; *Sanjay Gandhi Post Graduate Institute of Medical Science v. Trishul Enterprises*, (2026) SCC OnLine All 367 --- referred to; *Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust*, (2026) 3 SCC 186 --- relied on; *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1 --- relied on.

List of Acts / Statutes

Arbitration and Conciliation Act, 1996; Goods and Services Tax Act, 2017; U.P. Goods and Services Tax Act, 2017.

List of Keywords

Arbitration appeal; Arbitrability; Tax disputes; GST; VAT; MoRTH SOP; Technical specifications; Government Orders; Executive instructions; Item rate contract; EPC contract; Interest and penalty; Patent illegality; Severability; Modification of award; Remand.

Case Arising From

Judgment and order dated 18.07.2025 passed by the Commercial Court, Court No. I, Lucknow, in Arbitration Case No. 25 of 2024, dismissing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 and affirming the award dated 27.01.2024 passed by the Sole Arbitrator.

Appearance for Parties

For the Appellant(s): Pritish Kumar (AAG), Tushar Verma (ACSC).

For the Respondent(s): Manish Singh.

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

1. The Uttar Pradesh Public Works Department (in short 'the appellant/department') has instituted the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') against the judgment and order dated 18.07.2025 passed by the Commercial Court, Court No. I, Lucknow in Arbitration Case No. 25 of 2024 whereby the petition preferred by the appellant/department under Section 34 of the Act of 1996 was dismissed, as a consequence, the award passed by the Sole Arbitrator dated 27.01.2024, has been affirmed.

FACTUAL BACKGROUND:-

2. The appellant/department had invited tenders for the work of widening and strengthening of Bilraya-Panwari Road (SH-21) from CH. 75.00 to 98.00 and Nepalpur-Bijwar Road (ODR) from 0.00 to 3.00 Km in District Sitapur from two (2) Lane to Four (4) (length 44.70 kms). The bid submitted by the respondent-contractor was accepted by the department and the parties then entered in a contract on 27.04.2016 for a total contract price of Rs. 155,89,46,798.65/-.

3. As per the contract, the date of commencement of work was 27.04.2016 and it was intended to be completed by 26.04.2018. However, the contractor sought time extension, which was granted and the contractor completed the work within the extended period and the department issued a completion certificate to the respondent on 10.04.2019.

4. The work under the aforesaid contract started in the year 2016 which was under the old tax regime, which comprised of Value Added Tax, State Excise etc. Significantly, from the 01st of July, 2017, a new tax regime was introduced known as the Goods and Service Tax, 2017 (in short 'GST') which repealed the Value Added Tax.

5. This change in the tax regime impacted the price of different items which were scheduled in the contract in question. At the time of entering in the contract, the respondent-contractor quoted the price of items, inclusive of all taxes applicable under the old tax regime.

6. However, with the advent of the new GST regime, constructions work (such as the contract in question) attracted 12% GST and was payable to the Contractor and the same was required to be deposited by the contractor, directly with the GST Department.

7. The dispute arose post 01.07.2017 when the respondent-contractor demanded GST on the running account bills for the scheduled items as mentioned in the bills of quantities (BOQ) relating to the work done after 30.06.2017 based on calculation as per the Standard Operating Procedure (in short 'the SOP') issued by the Ministry of Road Transport and Highways (MoRTH) relating to GST impact on EPC contract, dated 19.11.2018.

8. The appellant-department disputed the calculation and payment of the GST to the contractor on the premise that it was bound by the Notification/Government Orders issued by the State-Government dated 09.11.2017 and 10.12.2019.

9. The respondent invoked Clause 24 of the conditions of contract relating to disputes resolution and at the first instance sought adjudication by the Dispute Review Expert (hereinafter referred to as DRE).

10. Sri N.K. Kanodia who was the DRE submitted his finding on 21.12.2020 and held that the Government Orders dated 09.11.2017 and 12.10.2019 confirmed the procedure to be adopted and followed by the appellant-department relating to GST impact and its calculation in context of construction agreement. It also gave a finding that the respondent-contractor was entitled to payment of GST on the claim of price adjustment made by the contractor. Since the contractor was not satisfied with the conclusions of the DRE relating to the mode of calculation as per the Government Order dated 10.12.2019, hence, it invoked the arbitration clause to escalate the matter.

11. The contractor then filed a petition under Section 11(6) of the Act of 1996 bearing C.M. Arbitration Application No. 7 of 2022 which was allowed by this Court on 31.03.2022 and it appointed a Sole Arbitrator.

12. The claimant-respondent filed its statement of claim before the Sole Arbitrator on 11.07.2022 wherein it claimed a sum of Rs. 3,36,25,034/- towards the GST on the work done plus 15% penalty and 18% per annum interest from the March, 2019 till July, 2023 amounting to Rs. 8,26,61,388/-. It also claimed GST on the price adjustment relating to the work executed amounting to Rs. 94,77,038/-plus 15% penalty and 18% interest per annum from March, 2019 till July, 2023 amounting to Rs. 2,32,97,675/-. It also claimed a sum of Rs. 66,500/- which was payable by the appellant-department as their share of remuneration to the DRE. Thus, a total claim of Rs. 11,35,80,273/- was laid before the Sole Arbitrator.

13. The appellant-department contested the claim petition by filing its statement of defence. The primary defence was that the GST became applicable from 01.07.2017 and as the contract was funded by the State, hence, the department was bound by the Government Orders issued by the State Government dated 09.11.2017 and 10.12.2019 relating to the imposition of GST on running contracts i.e. to say which had commenced prior to the enforcement of GST and were being completed after the cut-off date i.e. 01.07.2017.

14. It was also pleaded that under the GST regime, the Contractor is to furnish the monthly returns with the GST Department and the contractor was called upon to furnish detailed statement relating to the deductions made under the GST but the statement was not provided by the claimant-respondent.

15. The department also stated that even the DRE had held that the Government Orders dated 09.11.2017 and 10.12.2019 were applicable and applying the procedure contained in the said Government Orders for calculating the GST, it revealed that the appellant had paid some amount in excess, hence, a sum of Rs. 75,90,431/- was recoverable from the respondents.

16. The department though relied on the findings of the DRE but it did not agree to the payment of GST on the price adjustments. It also stated that since the claimant-respondent has filed the claims on incorrect calculations and premise and it did not discharge its obligations of depositing the GST with the GST Department, hence, the appellant cannot be made liable for any tax, penalty or interest which was the liability of the respondent, arising on account of the failure of the respondent to comply with its tax obligations.

17. On the basis of the pleadings exchanged between the parties, the Sole Arbitrator framed 11 issues which are being reproduced hereafter for ease of reference:-

"1. Whether the contract dated 27.04.2016, entered between the parties was Item rate contract or was percentage based contract?

2. Whether the Government of India, Ministry of Road Transport and Highways (MoRTH) circular No. RD/G-20017/26/2018-W&A dated 19th November 2018 is applicable to the instant case for the purpose of calculation of G.S.T. amount?

3. Whether MoRTH circular dated 19.11.2018 is not applicable in the instant case, because, the project in question was of U.P. Government and was also funded by it?

4. Whether the U.P. Govt. G.O. No. 1956/23.10.2019-12 (Samanya)/2017TC-2, dated 10.12.2019 has not been complied with by respondent in calculating and paying G.S.T. Amount?

5. Whether there has been inordinate delay in registration of respondent under the provisions of U.P.G.S.T. Act 2017? If so, its effect?

6. Whether there was no need of fresh registration under the provisions of U.P.G.S.T. Act, 2017, because, the respondent was registered earlier on 19.10.2006 under the Commercial Tax Department?

7. Whether the respondent is liable to pay G.S.T. to claimant on price escalation/ adjustment?

8. Whether the claimant is entitled to receive G.S.T. amount from respondent as claimed in the claim petition?

9. Whether the claimant is entitled to get reimbursement of interest and penalty on alleged G.S.T. amount, due to alleged non-payment of G.S.T. amount by respondent in time?

10. Whether the claimant is entitled to get reimbursement of respondent's share of fee paid to Disputes Review Expert?

11. To what relief, if any, is the claimant entitled?"

18. The Sole Arbitrator after allowing the parties to lead evidence and granting detailed hearing made his award dated 27.01.2024.

18.1. In the award, the Sole Arbitrator while dealing with issue no. 1, held that the contract in between the parties was an item rate contract.

18.2. While considering issue nos. 2 and 3 which were taken up together, the Sole Arbitrator held that since the contract contained a specific stipulation that all work would be carried out as per the MoRTH specifications and all chapters of Ministry of Road Transport and Highways and specifications for road and bridge was made part of the agreement and even the State Government by its notification had made the standard building document procurement of civil works as issued by the MoRTH, applicable to all Government Contracts of over Rs. 5 crores, hence, the notification of MoRTH dated 19.11.2008 would be applicable and the SOP mentioned therein for considering the impact and calculation of the GST would apply and not the Government Orders issued by the State Government dated 09.11.2017 and 10.12.2019.

18.3. In respect of issue no. 4, the Sole Arbitrator held that the claimant did not dispute the mode of calculation on GST but stated that those calculations were as per the Government Orders of the State dated 09.11.2017 and 10.12.2019 and while dealing with issue nos. 2 and 3, it was already held that the same were not applicable, hence, issue no. 4 came to be decided accordingly.

18.4. Issues nos. 5 and 6 were taken up together by the Sole Arbitrator and it was held that post the GST regime, there was no need for fresh registration under the GST Act for the appellant-department.

18.5. Considering issue no. 7, the Sole Arbitrator held that the appellant had paid the price adjustment to the respondent as it was part of the work done and there could be no justification for not paying the GST towards the said price escalation. It further held that this had also been noticed by the DRE while giving his findings but the amount was not paid by the appellant. Hence, the respondent was held entitled to the GST on the price escalation/adjustment.

18.6. Considering issue no. 8, the Sole Arbitrator found the respondent to be entitled to receive (a) a sum of Rs. 3,36.25.034/- as GST on the value of work done (b) Rs. 94,77,038/- on the price adjustments (c) Rs. 75,90,431/- which was unlawfully deducted by the appellant from the final bill payable to the respondent.

18.7. While considering issue no. 9, the Sole Arbitrator held that since the GST amount was not paid by the appellant, hence, the respondent was entitled to 15% penalty and 18% interest from March, 2019 till July, 2023 by referring to Sections 50 and 74 of the U.P. GST Act, 2017. It also held that the amount of Rs. 75,90,431/- which was wrongfully deducted from the final payment would also carry penalty and interest @ 15% and 18% per annum respectively from the date the deduction was made till the date of its actual payment.

18.8. Issue no. 10 was decided in favour of the respondent and it was held that the appellant was required to pay its share of the fee payable to the DRE, which was paid by the respondent, hence, a sum of Rs. 66,500/- was allowed on the aforesaid count.

18.9. With the aforesaid findings, the claim petition was allowed vide award dated 27.01.2024, awarding a total sum of Rs. 11,35,80,273/- with penalty @ 15% and interest @ 18% per annum was also granted. The award provided that the aforesaid payments, except the sum of Rs. 66,500/- (which related to the payment of appellant's share to the DRE), would be subject to the final assessment made by the GST Department. However, as far as the amount of Rs. 66,500/- is concerned, the same would carry interest at the rate of 9% per annum from the date of the award till the date of its actual payment. It further provided that after the final assessment by the GST Department, if any amount payable towards GST or interest or penalty, remains unpaid or is not required to be paid to the GST Department then after adjustment of the amount already deposited by the claimant, the same shall be refunded by the respondent to the appellant within a period of two weeks from the date of final assessment by the GST Department and the information in this regard would be given by the claimant-respondent to the appellant. In case if the contractor failed to refund the said amount then the appellant would be entitled to recover the same from the respondent in accordance with law.

19. The appellant being aggrieved from the said award dated 27.01.2024, filed a petition for setting aside of the award under Section 34 of the Act of 1996 before the Commercial Court-I, Lucknow which was registered as Arbitration Case No. 25 of 2024. The Commercial Court-I, Lucknow after hearing the parties dismissed the petition under Section 34 of the Act of 1996 vide its judgment dated 18.07.2025 holding that the view taken by the Sole Arbitrator was based on material evidence before it and the view so taken regarding applicability of the Government Orders and the payment of GST did not suffer from any patent illegality nor it was hit by any fundamental principles of law. Consequently it affirmed the award dated 27.01.2024.

20. In the aforesaid backdrop, the award dated 27.01.2024 and the judgment of the Commercial Court-I, Lucknow dated 18.07.2025 were challenged before this Court, in this appeal under Section 37 of the Act of 1996.

SUBMISSIONS ON BEHALF OF THE APPELLANT:-

21. Sri Pritish Kumar, learned Senior Counsel and Additional Advocate General for the State of U.P. along with Sri Tushar Verma, learned Additional Chief Standing Counsel for the appellant has structured his submissions in three parts.

22. A. The dispute relating to GST was not arbitrable between the parties:-

22.1 Elaborating the aforesaid submission, it was urged that a dispute relating to taxation is not contractual, hence, it would not fall within the purview of disputes covered by the arbitration clause in the agreement.

It was submitted that within the contractual framework, if it was to be determined as to who was liable to pay the tax then such a dispute could fall within the contractual dispute and could

have been referred for arbitration. However, the dispute in the instant case relates to the quantum and the manner in which the tax is to be calculated. This type of a dispute is within the exclusive domain of the Taxing Authority. Hence, the contracting parties nor the Sole Arbitrator could not have settled such a dispute or determine the quantum of tax payable.

22.2. It was further urged that the GST Act of 2017 is a complete code in itself. It is the Taxing Authority who determines the quantum of tax and finalizes the assessment. Any finding given by the Sole Arbitrator relating to the quantum of tax is not binding on the Taxing Authority. Thus, the dispute sought to be raised by the respondent relating to quantum of tax, being non-arbitrable, could not have been made the subject matter of arbitration. Accordingly, the award passed by the Sole Arbitrator determining the tax liability and fastening it on the appellant is a patent error which vitiates the award and the Commercial Court too failed to delve into this aspect of the matter and as such the award and the judgment of the Commercial Court is liable to be set aside.

23. (B) The learned Senior Counsel for the appellant next submitted that the circular and the guidelines including the SOP issued by the MoRTH relating to the issue of taxation was not binding on the appellant-department.

23.1. It was urged that the contract between the parties clearly provided that the MoRTH guidelines were applicable only for the purposes of technical specifications. Borrowing technical specifications for the project in question would not mean that any guidelines issued by MoRTH would be applicable even if it related to any tax matter. The contract was floated and funded by the State of U.P. and the appellant being a State instrumentality was bound by the Government Orders addressed to the appellant relating to imposition and calculation of tax.

23.2. Taking his submissions forward, the learned Senior Counsel further urged that even if at all the SOP issued by the MoRTH was applicable then at best it could only be for EPC contract and in the instant case, admittedly the contract between the parties was an item rate contract. The SOP of the MoRTH was not a document which could be mandatorily applied in the contract such as the present one. It was merely a directory document and could not be legally and compulsorily enforced against the appellant especially in respect of the contentious issues of tax.

23.3. Furthermore, there is no dispute between the parties regarding the technical specifications. There is no dispute relating to the measurement of the work done and other ancillary and related issues as provided in the contract. It is for these sort of issues that the technical specifications of MoRTH were borrowed in the instant contract and thus the reasoning of Sole Arbitrator that since technical specifications were borrowed from the MoRTH, hence, the issue of taxation which arises from the instant contract, would also be governed by the MoRTH guidelines, is patently erroneous. This aspect of the matter was not appropriately considered by the Commercial Court which renders the impugned judgment and award susceptible to judicial scrutiny.

24. (C). The learned Senior Counsel next submitted that the Arbitral Tribunal while passing the award relating to a tax dispute has given his findings and made the tax payable by the appellant

subject to the final assessment made by the GST Authority which makes the award inconclusive and it does not vest finality with the award.

24.1. In this regard, it was submitted that it is one thing to determine as to which of the contracting party is liable to pay tax relating to transactions covered by the contract. However, it is a completely different thing to determine and calculate the tax and determine which one of the contracting party would pay the tax to the other contracting party and the outcome thereof would be subject to final determination to be made by the Taxing Authorities.

24.2. It was urged that the Sole Arbitrator has not only quantified the tax liability but it has also held the amount to be payable along with interest and penalty irrespective of the fact whether such liability of penalty and interest had actually been demanded by the Taxing Authorities from the respondent i.e. the assessee who is liable to pay such tax.

24.3. Thus, for all the aforesaid reasons, it was urged that the award and the judgment passed by the Arbitral Tribunal and the Commercial Court respectively being patently erroneous deserve to be set aside and the appeal be allowed.

25. In support of his aforesaid submissions, the learned Senior Counsel for the appellant has relied upon the decision of the Apex Court in **Vidya Droliya v. Durga Trading Corporation : (2021) 2 SCC 1** for indicating that tax disputes do not partake the nature of the contractual dispute and are not arbitrable.

26. He has also relied upon a decision of the Calcutta High Court in **Usha Martin Ltd. v. Eastern Gases Ltd. : (2022) SCC OnLine Cal. 3342** to buttress his submissions that the Arbitral Tribunal cannot delegate its duty to adjudicate to any third party, as in the instant case, the Sole Arbitrator has made its award subject to final assessment made by the GST Authority.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:-

27. Sri Manish Singh, learned counsel appearing for the respondent submitted that the appellant had never disputed, at any stage, that the dispute between the parties was not arbitrable. The appellant did not raise the objection relating to non- arbitrability of the dispute before the High Court in proceedings under Section 11(6) of the Act of 1996. The aforesaid objection was also not raised before the Sole Arbitrator under Section 16 of the Act of 1996. Even before the Commercial Court, the appellant did not raise the ground of non- arbitrability of disputes and it is for the first time this issue has been raised before this Court in an appeal under Section 37 of the Act of 1996.

28. It was further submitted that actually there is no dispute between the parties as to who has to pay the tax. The dispute arose only on account of the fact that at the time the contract was entered between the parties prior to 31st July, 2017, the parties were governed by VAT. In the instant contract, all the items which were quoted by the respondent were all inclusive of 4% of VAT charges. The appellant under the VAT regime deducted 4% VAT from the running bills and deposited the same with the Commercial Tax Department. It is after the implementation of the GST regime that the GST charge on the work done, fell in 12% category and with the changed tax

regime, the appellant paid the running bills without deducting VAT, however, it was required to pay the shortfall (12% GST - 4% VAT=8% (approx) GST). In this context, the appellant was required to pay 8% (approx) difference for the work done post 01.07.2017.

29. It was further submitted that primarily, there is no dispute as far as the liability to pay GST is concerned. It is also admitted by the appellant that post 01.07.2017, as per the GST regime, the bills submitted by the respondent indicated payment of GST at 12% which was to be paid by the appellant, however, what came under dispute was the manner in which the GST was to be calculated, in respect of contracts which had been entered between the parties under the VAT regime and continued and finished post 01.07.2017, under the GST regime.

30. It is in this context that the MoRTH had issued a SOP dated 19.11.2018 which explained the manner in which the tax was to be paid by factoring the change in the tax rates as well as the impact of the GST on such contracts.

31. It was further submitted that the two Government Orders relied upon by the appellant dated 09.11.2017 and 10.12.2019 both indicate that for contracts above Rs. 5 crores, the MoRTH document should be adhered. Once the parties had clearly agreed to incorporate the MoRTH specifications and guidelines then the issue of taxation as explained by the MoRTH in its SOP dated 19.11.2018 also became applicable. It is in this context that the Sole Arbitrator noticed the MoRTH specifications and SOP and applied the same to the dispute as to how the tax was to be determined while making payments in respect of contracts which were entered under the VAT regime and were continued and finished under the GST regime.

32. In the aforesaid backdrop, the learned counsel for the respondent submitted that the award made by the Arbitral Tribunal was bifurcated into three parts:-

32.1. The first part relate to the actual work done. The value of the work done was taken as the base for ascertaining the GST liability amounting to Rs. 3,36,25,034/-. It was submitted that ample evidence was before the Arbitral Tribunal indicating that the appellant in similar circumstances relating to another contractor, had paid the difference of the GST (12%-4% i.e. 8% (approx) additionally).

32.2. The respondent apart from the aforesaid exemplar had also filed evidence indicating the impact of GST on the contract and the manner in which the difference is to be determined by bringing on record the report of a Chartered Accountant. A separate report by a Chartered Engineer was also placed on record to explain the impact of GST on the contracts. Another separate report from a third party Chartered Accounting and Auditing Firm was also placed on record. This expert evidence, indicating the impact of GST on the current project and the liability of GST, was not controverted by the appellant nor any expert evidence was led by the appellant to indicate that the evidence of the respondent was either unreliable or suffered from any error.

32.3. In such a situation, it was not open for the appellant to challenge the award, especially when the award had been passed after taking into account the material evidence available on record. The said award has been affirmed by the Commercial Court and needless to say that the

scope of an appeal under Section 37 is narrow and it will not encourage this Appellate Court to enter into the realm of re-appraisal of evidence.

33. The second part of the award related to the unpaid GST on the price adjustment/escalation. It was submitted on behalf of the respondent that the contract in question was completed successfully after receiving time extension. Many items which were not taxable under VAT regime were made subject matter of tax under the GST regime attracting 12% tax. There was no dispute relating to the extra work done and the price escalation/adjustment. Once, this issue in itself was not disputed, in such circumstances, the GST attracted on the escalated/price adjustment as per the GST regime was liable to be paid by the appellant/department. This aspect of the matter was also ruled in favour of the respondent by the DRE while giving its findings.

33.1. Once, it was found that the respondent was entitled to the escalated/price adjustment then as a fortiorari, the respondent was entitled to the GST which was to be paid by the appellant on the aforesaid enhanced/price adjustment. Thus, the second part of the award related to this unpaid GST on the amount of price adjustment/escalation.

34. The learned counsel for the respondent further submitted that the third part of the award was nothing but a refund of a sum of Rs. 75,90,431/- which was illegally recovered by the Department towards GST, on the premise that an excess amount had been paid to the respondent.

34.1. The appellant applying its own formula initially recovered a sum of Rs. 75,90,431/- on the premise that excess amount had been paid by the Department to the respondent. This deduction was found to be illegal and therefore the same was directed to be refunded.

35. It was also urged that three components, as mentioned above, constitute the major part of the awarded amount. Since the said amount had been illegally recovered and the Department did not pay the GST on the work done as well as on the price escalation/price adjustment, hence, considering Section 50 of the GST Act, 2017, the Sole Arbitrator directed the appellant to pay the interest and penalty, which the respondent would have paid to the GST Department. A minuscule portion of the awarded sum relates to the appellant's share of fee, which they were obligated to pay to the DRE, but was not paid, hence, that amount has been awarded in favour of the respondent.

36. It is thus urged that there is no patent illegality nor the findings returned by the Sole Arbitrator suffer from any violation of law or being against the public policy or law of the Country. The view taken by the Sole Arbitrator is based on the material evidence on record which cannot be said to be erroneous.

37. The learned counsel for the respondent in support of his submissions has relied upon following decisions which have been primarily relied upon for the purposes of emphasizing the scope of an appeal under Section 37 of the Act of 1996.

(i) AC Choksi Share Broker (P) Ltd. v. Jatin Pratap Desai : (2025) 5 SCC 321.

(ii) UCM Coal Co. Ltd. v. Adani Enterprises Ltd. : (2025) SCC OnLine All 7608; and

(iii) Sanjay Gandhi Post Graduate Institute of Medical Science v. Trishul Enterprises : (2026) SCC OnLine All 367.

38. The Court had heard the learned counsel for the parties at length and also perused the material on record.

39. The first issue that requires consideration is whether a dispute relating to taxation can be made the subject matter of arbitration.

40. In this regard, a court while formally considering as to whether a dispute is arbitrable or non-arbitrable must follow the following postulates which have been culled out from judicial pronouncements of the Apex Court and has gained universal acceptance.

(i) Whether the action giving rise to the disputes lies in the realm of acts in rem. Any act which leads to a dispute which requires adjudication and the effect of such judgment or adjudication is that it determines a status of the party or things, which is distinct from a particular interest in it of a party to a litigation and such adjudication/judgment is conclusive evidence for and against all persons whether parties or strangers to the matter actually decided, such judgments operate in rem and such kind of disputes are generally not arbitrable. [**see Vidya Darolia (supra)];**

(ii) Legal action against sovereign function of the State is also non arbitrable as it is the State which has the exclusive domain, right and duty to perform such functions. Any decision and adjudication of and by the State which has a public interest element involved including such rights relating to legitimacy of marriage, citizenship, winding up of the companies, are considered to be non arbitrable. The only exception is where a statute in relation to a regulatory or adjudicatory mechanism either expressly or by clear implication permits arbitration;

(iii) All such matters wherein the cause of action and subject matter of dispute affects third party rights which may have an all pervading effect and requires centralized adjudication in contradistinction to cases where mutual adjudication would not be proper and enforceable, are also non-arbitrable;

(iv) Where the subject matter of the dispute is expressly or by implication made non arbitrable as per statute.

41. Now to answer specifically, the issue, whether a dispute relating to taxation is arbitrable or not, can be considered under two distinct heads:-

(A) Disputes relating to tax which can be resolved within the contract can be resolved through arbitration and

(B) Disputes which requires statutory determination through tax laws and such disputes cannot be resolved through arbitration.

41.1 **Head-A:** Such disputes are covered under Head A, which arise from an agreement over which the Arbitrator has the jurisdiction to interpret the terms of the contract to settle private obligations such as:

(i) Any such matter arising out of the contract which requires, deciding inter se tax liability that is to say which party is contractually liable and obligated to pay or deposit the tax;

(ii) Any such disputes which require adjudication within the contract relating to which party is obligated to receive reimbursement of tax paid;

(iii) Contractual issues relating to tax sharing or indemnity clause or determination of the fact as to which party to the contract is obligated to indemnify the other in respect of statutory taxes and penalties;

(iv) Any interpretation of any clause contained in the contract including or to give meaning to any phrase in the contract including words and phrases such as inclusive of all taxes and whether the use of such words would include a newly introduced tax or any other change or statutory modification of any taxing regime or if such tax may impact and constitute an extra cost , under the contract.

41.2. **Head B:-** All such matters would fall under Head B, which relates to tax and which cannot bind a third party, are generally not arbitrable such as:

(i) In matters relating to tax between the contracting parties, if any such issue or adjudication is made by an Arbitrator which may have the impact of encroaching upon the exclusive domain of a taxing authority then it cannot be decided by an Arbitrator;

(ii) Similarly, any issue arising between the contracting parties relating to the determination as to whether any particular transaction is legally taxable or has the impact of challenging a statutory tax arrangement issued by a taxing authority, cannot be made the subject matter of arbitration;

(iii) Issue which may involve determination of any classification or entry as specified by a taxing statute, which may be applicable in between the contracting parties;

(iv) Issue relating to determination of rate of taxation, which may be in dispute between the contracting parties including as to whether any of the contracting parties is eligible for any statutory exemption from tax or any tax concession;

(v) Disputes between any contracting party and the State Authority relating to tax also cannot be decided by the Arbitrator.

41.3. In other words, what is required to be truly seen is not what the parties agreed but what the law mandates. A question of statutory interpretation and fiscal categorization which may lie in the exclusive domain of the taxing authority including in its appellate hierarchy, including Tribunal constituted under the taxing statute, such disputes would necessarily require the Arbitrator to render a finding on the applicable tax rate, classification of goods or entries in the taxing statute, these are all issues which are in the hands of the taxing authorities and not the Arbitrator.

41.4. The Arbitrator is a creature of contract and its jurisdiction to decide the dispute may be co-extensive with the contract but if it requires any determination relating to tax rates or classification of goods under any particular entry of the taxing statute or the quantum of any tax liability or the adjudication requires referencing to any Executive Tax Notification and Statutory Tax Rates Schedules, then such disputes even though arising out of a contract ceases to be contractual in nature and it metamorphosis into a fiscal regulatory issue. Such issues are governed

by the taxing statute which are a complete code in themselves and cannot be subjected to determination by a private forum such as an Arbitral Tribunal.

42. Now, the facts of the instant case would reveal that admittedly, there is no dispute between the parties as to whether the tax (GST in the instant case) is payable or not. Rather the dispute is confined only to the extent as to whether the payable tax is to be calculated as per the MoRTH guidelines and SOP dated 19.11.2018 or as per the Government Orders issued by the State of U.P. dated 09.11.2017 and 10.12.2019.

43. It is also not disputed that as per the contract which was entered between the parties in April 2016, the contractor had quoted the rates of the items to be supplied inclusive of 4% VAT (the then applicable tax). It is also not disputed that VAT regime of taxation was repealed and a new tax regime came into effect from 01.07.2017 (GST regime).

44. It is also not disputed that as per the new tax regime, the GST would be paid by the appellant department on the goods supplied to it by the respondent. It is also not disputed that post 01.07.2017 the department had paid certain running bills to the respondent by factoring the GST.

45. Thus, the dispute is not as which of the contracting party has to pay the GST rather the entire essence of adjudication before the Arbitral Tribunal was in respect to whether the GST is liable to be calculated as per the SOP of MoRTH dated 19.11.2018 or as per Govt. Orders issued by the State of U.P. dated 09.11.2017 and 10.12.019.

46. This dispute was first taken up by the DRE in terms of the dispute resolution mechanism envisaged in the contract itself and the DRE gave his finding that the department was liable to pay the GST to the respondent on the price adjustment/price escalation. It also gave a finding that in order to determine the quantum of GST, the Government Order issued by the State would be binding on the department.

47. It is from this point onward that the respondent escalated the matter before the Arbitral Tribunal urging that they were entitled to the GST, which is to be calculated in terms of the SOP of the MoRTH and not the Government Order issued by the State. Hence, it can be clearly deciphered that the dispute related as to the applicability of Government Orders issued by the State of U.P. or the SOP of the MoRTH dated 19.11.2018 for the purposes of GST calculation in the post GST era. It did not involves adjudication of any transaction, under the contact, attracting GST or not. It also did not involve challenge to any statutory tax arrangement nor did it involve determination of any classification or entry or rate of taxation specified by a taxing statute and certainly it did not involve any dispute between the contracting party and the State as a sovereign.

48. Thus, in light of the aforesaid factual background and applying the axiomatic principles as noticed hereinbefore, it would be seen that the issue raised in the instant proceedings are not which falls under the aforesaid considered **Head-B** rather it falls within the **Head-A** and thus it cannot be said that the dispute raised by the respondent was not arbitrable.

49. Furthermore, it will also be relevant to notice that the issue of non arbitrability, as sought to be raised in this appeal, by attempting to bring the disputes within the aforesaid discussed Head B, then it ought to have been raised by the department before Arbitral Tribunal in terms of Section 16 of the Act of 1996 which was not done. Even during the entire arbitral proceedings, no such objection was raised nor any such pleadings were delivered by the department raising any such plea. Hence, even the Arbitral Tribunal though framed 11 issues yet none related to jurisdictional and non-arbitribility of the dispute in context with Head-B mentioned hereinabove rather the tenor of the objections were to be effect that the Arbitrator had incorrectly relied upon the SOP of the MoRTH dated 19.11.2018 and erred in ignoring the State Government Notifications dated 09.11.2017 and 10.12.2019 and it is only for the first time during the course of submission before this Court that the appellant had taken the plea of jurisdictional non-arbitrability of disputes.

50. This Court has already held that the actual dispute between the parties falls under the **Head-A** as explained above and not under the **Head-B**, hence for all the aforesaid reasons, the first contention raised by the appellant regarding jurisdictional non-arbitrability of disputes does not find favour with this Court and hence it is turned down.

51. The next submission advanced on behalf of the appellant was that the SOP dated 19.11.2018 issued by the MoRTH was not applicable and it was the Govt. Orders dated 09.11.2017 and 10.12.2019 which were applicable and the Sole Arbitrator by holding that the SOP dated 19.11.2018 was applicable has erred and it has rendered the award patently illegal and liable to be set aside.

52. In order to examine the strength of the aforesaid submission, it will be appropriate to consider the nature of the contract, its relevant clauses and the reasoning given by the Arbitrator.

53. The contract in question, dated 07.04.2016, related to widening and strengthening of Bilraya and Panwari Road SH 21 from CH 75 to CH98 and Nepalapur Bijwar Road from CH 0 to CH 3 in Sitapur District from two lane to four lane. The copy of the contract has been made a part of the supplementary-affidavit dated 27.10.2025, filed by the appellant before this Court.

54. In the said contract, under the special condition of the contract, clause-3 specifically stated that All the works shall be carried out as per MoRTH specification i.e. all chapters of Ministry of Road Transport & Highway and Specification for Road & Bridge Works (V revision published by IRC New Delhi 2013) and it is part of the agreement.

In the contract, under the Head of Technical Specification, it states as under:

"TECHNICAL SPECIFICATION"

"Work will be executed as per MoRTH Specification Vth edition-2013/PWD detailed Specifications/IRC codes/latest circulars/ Govt. Orders issued from time to time and also as per directions Engineer-in-Charge."

55. The contract also contained stipulation of price adjustment in Clause 47. Clause 25.3 related to arbitration. It will also be relevant to take note of the Govt. Order dated 24.07.2017 issued by the Special Secretary, Govt. of Uttar Pradesh and addressed to Chief Engineer

(Development and all departmental heads of the PWD stating that all contracts of the PWD over five crore would follow the standard bidding documents procurement of civil works as published by the Ministry of Road Transport and Highways.

56. The contract further envisaged that the expenditure on the said project was to be met from the budget of the Govt. of Uttar Pradesh. In the bill of quantities (BOQ) in clause 8, it was mentioned that the method of measurement of completed work for payment shall be in accordance with Specification for Road and Bridge Work published by the Ministry of Surface Transport. Moreover, the contract also mentioned matters about the general methodology for construction of major items. Under the said heading, road work which required earth work, GSB, WNN, Cemented Sub Base, Prime Quote, TACK Quote, EC, (open graded), Seal Quote, DDM, BC, PCC, RCC, reinforcement of Steel of works and was to be done as per directions of the Engineer.

57. The aforesaid clauses have been noticed by this Court only for the purpose of clarity to ascertain as to what extent and purpose, the MoRTH Technical guidelines have been borrowed in the contract.

58. Now, Clause 45 of the contract which relates to tax, reads as under:-

"45. Tax

45/1 the rates quoted by the contractor shall be deemed to be inclusive of the sales and other taxes that the contractor will have to pay for the performance of this contract. The employer will perform such duty in regard to the deduction of such taxes at source as per applicable law."

59. The Arbitral Award dated 27.01.2024 would reveal that the Sole Arbitrator had framed 11 issues but the bone of contention between the parties was encapsulated in issue nos.2, 3 and 4. Issue no.2 was whether the circular of MoRTH dated 19.11.2018 is applicable for the purposes of GST calculation. Issue no.3 was, whether MoRTH circular dated 09.11.2018 is not applicable because the project in question was funded by the U.P. Govt.. Issue No. 4 related to the fact whether the U.P. Government Order dated 10.12.2019 had not been complied with by the respondent while calculating and paying GST. As a corollary to the aforesaid three issues, the issue nos. 8 and 9 also gains significance. Issue no. 8 related to whether the claimant was entitled to receive GST amount from the appellant as claimed in the Claim Petition. Issue no.9 related to whether the claimant is entitled to receive reimbursement of interest and penalty on alleged GST amount, due to alleged non-payment of GST amount in time.

60. Before proceeding further, it will be appropriate to consider the two Government Orders dated 19.11.2017 and 10.12.2019 issued by the State-Government vis- -vis with the SOP guidelines dated 19.11.2018 issued by MoRTH.

61. There are two Government Orders of the same date i.e. 09.11.2017 which have been brought on record at a running page 216 of the Supplementary Affidavit filed by the appellant dated 27.10.2025. The first Government Order bearing No. 1535/23.10.2017-12 (General)/2017 is a direction for the Public Works Department relating to chargibility of GST on contracts entered up to 30.06.2017. In the said Government Order, it was clearly stated that all service receivers who

have entered into contracts uptill 30.06.2017, whereupon service tax etc. was being charged, now shall be governed by the GST and the difference in the tax rates would be deducted by the service receivers and all notifications relating to GST and its imposition and implementation including issued by the GST Council from time to time, would be compulsorily followed.

62. The other Government Order of the same date bearing No. 1614/23.10.2017-12 (General)/2017 related to the manner in which the GST was to be calculated. A complete formula was provided in terms whereof the Departments were required to make provisions for the GST as mentioned in the said Government order.

63. On the other hand, the SOP dated 19.11.2018, issued by MoRTH refers to implementation of CGST/Standard Operating Procedure. The said SOP in Clause 5 mentioned, the incidence of application of service tax/GST. It further refers to payments for EPC contracts which is mentioned in Clause 6 (i) to (v). The said SOP also gives an illustration regarding the manner in which the GST is to be worked out relating to EPC contracts.

64. For the ease of reference, Clause 5 and 6 of the MoRTH SOP dated 19.11.2018 is being reproduced hereinafter:-

"5. Incidence of application of Service Tax/GST incidence of the applicability of taxes shall be as follows:-

Sr. No.	Completion of Service	Invoice Date	Payment Date	Applicability of Taxes			Applicable TDS
				Service Tax	Works Contract Tax (WCT)	GST	
1	Before June 30, 2017	Before June 30, 2017	Before June 30, 2017	Yes	Yes	No	WCT TDS
2	Before June 30, 2017	Before June 30, 2017	After June 30, 2017	Yes	Yes	No	WCT TDS
3	Before June 30, 2017	After June 30, 2017	After June 30, 2017	No	No	Yes	GST TDS
4	After June 30, 2017	After June 30, 2017	After June 30, 2017	No	No	Yes	GST TDS

6. Payments for EPC Contracts

6.1. The contract price is quoted lump-sum and inclusive of all taxes in most of EPC contracts; these taxes have now been subsumed under GST. In order to arrive at the incidence of application of Service Tax/GST as mentioned at Para 5 above, the total work shall be categorized as follows:-

(1) Works completed up to 30.06.2017 and Billing completed by 30.06.2017.

(ii) Works completed up to 30.06.2017 and Billing not completed by 30.06.2017.

(iii) Works yet to be completed as on 01.07.2017.

6.2. GST Act, 2017 shall be applicable for all the works mentioned above at (ii) & (iii) Following procedure may be adopted by the Ministry/ ROs/ PIUs/ various Executing Agencies while making payments as per the provisions in the contracts:

(I) The project components under different major heads (like Earth, Sand, Aggregates. Steel, Cement, Bitumen etc.) are to be intimated by the contractor and checked/confirmed by the respective IE/ AE in consultation with the concerned RO/PD for each of the Project.

(ii) In order to compile the above information, an indicative Excel format is suggested for guidance and attached (at Annexure-I). It indicates various project components which attract various types of taxes including Excise Duty, CST, VAT/WCT and other taxes, which were already included in the contract price as per the original contract. The same format can be used to compile the information for each ongoing project, taking into consideration the GST Input Tax Credit available for the project. The project components and rates shown are only indicative and should be modified as per the project actuals and shall be certified by the statutory auditors of the Contractor/Developer/Company. In case, appointment of Statutory Auditor is not mandatory, then it can be certified by a Practicing Chartered Accountant.

(iii) After completion of the said exercise, the costs against the subsumed taxes (Excise duty, CST, VAT/ WCT etc.) in the particular contract are to be finalized and to be mutually agreed by IE/AE/ Ministry/concerned Executive Agency/ Contractor. The cost of subsumed taxes factored in the contract value is required to be reduced from the original contract price to arrive at the actual balance cost of the project.

(iv) Based on such certification and mutual agreement, the concerned RO/ PD shall either pay or recover the net impact of the GST after accounting for subsumed tax component and input tax (GST) credit. The contractor shall be responsible for correct declaration of GST liability and shall provide the supporting documents, if required.

(v) This will be an interim arrangement till the completion of the project and the final impact of GST (positive or negative) shall be worked out at the time of Final bill."

65. At this stage, it will also be extremely important to consider the significance of the two documents i.e. (a) the SOP/Guidelines issued by MoRTH and (b) the two Government Orders issued by the State of U.P., is.

(i) Apparently, from the contractual clauses, it reveals that by borrowing the MoRTH technical specifications, it would result in MoRTH dictating the engineering standards, usage of raw material, quantity, quality, quality tests, details regarding recording of work done, measurement of the work done and other like related matters. Such guidelines or standards set by MoRTH cannot dictate statutory laws Central or State, even GST rates or compliances or local Tax Laws.

(ii) Taxes are governed by statutory laws and contractual clauses cannot override these laws. Moreover, the technical measures borrowed for the purposes of engineering standards cannot impose or create tax jurisdictions or obligations.

(iii) Contractual implementation and its administration generally treats the Technical, Financial and Commercial Requirements separately and borrowing one does not implicitly subsume the other, unless specifically provided for. Furthermore, financial aspect is different from the issues of taxation which is a specialized jurisdiction and unless there is a clear import made in respect thereto, it cannot be assumed.

(iv) It must be kept in mind that the Government Orders are issued by the State Government and can be of various types, depending upon its source. If a Government Order has its source from a Statute or a Legislation then it is treated as a subordinate and delegated legislation.

However, certain Government Orders, which are issued for easing out its day to day work, then they are executive instructions which nevertheless is binding on the Government Department, though, may not have statutory enforceability against the citizen.

(v) It is in this context that the Government Orders dated 09.11.2017 and 10.12.2019 issued by the State Government were binding on the appellant-department.

(vi) Apparently, from the bare perusal of the MoRTH SOP, it would reveal that it is a guiding and a directory document which takes into consideration the issues relating to managing financial variations, escalations and change of scope of work. An illustration appended to the SOP reflects as to how the introduction of GST would impact EPC contracts which were entered prior to the appointed date i.e. 01.07.2017 but went on and were concluded in the GST regime.

(viii) In this backdrop, it is reiterated that in absence of any clear material or stipulation on record, it cannot be said that merely by borrowing technical specifications from the MoRTH, the taxing guidelines would also be applicable and would be binding on the contracting parties.

66. Now, the stage is set to examine the records and ascertain as to whether by merely borrowing the MoRTH technical specifications in the contract, the SOP issued by the MoRTH dated 19.11.2018 would also become binding on the appellant-department so as to subsume all rights within relating to tax matters including the GST and whether the Govt. Order would have an overriding impact over the MoRTH SOP, will also have to be seen in context with the discussions which shall take place hereinafter.

67. The instant contract relates to widening of road and road building. The contract states that technical specifications of MoRTH have been borrowed. The contract placed before this Court does not specify that any tax regime or provision relating to taxation mentioned in the MoRTH guidelines would also be applicable to the instant contract.

68. There is no material evidence on record which could establish that what were those specifications which were borrowed from the MoRTH document. It does not indicate as to whether the MoRTH document had any provision regarding the tax regime applicable to the parties entering into a contract as per the MoRTH guidelines. The MoRTH document was not placed on record of this Court which could indicate that apart from technical specifications, the taxing clauses in MoRTH document was also borrowed, nor it could be shown that what actual clauses relating to tax were incorporated in the MoRTH document.

69. Significantly, the special conditions of contract in Clause 3 states that the work shall be carried out as per the MoRTH specifications and it is for that limited purpose the MoRTH guidelines become applicable and binding. The said contract also has a specific clause relating to tax as contained in Clause 45 which only notes that the rates quoted by the contractor would be deemed to be inclusive of all the sales and other tax which the contractor has to pay for the performance of the contract. The employer i.e. the Department herein is also obligated to perform such duties in regard to the deduction of such tax at source as per applicable law.

70. The aforesaid two clauses 3 and 45 as mentioned herein have already been reproduced in the earlier paragraphs for the purposes of reference and to bring out with clarity a fact that the manner in which the reference to the MoRTH specifications have been borrowed in the contract is

only in respect of technical specifications for building and widening of roads which includes and related to the nature, the quality and quantity of the material used and it did not include or relate to any tax including GST.

71. As already noticed above, there is a distinction between a tax liability which is squarely governed by the tax laws and a contractual liability even though related to tax would be only determinative of the fact that which of the two contracting parties is obligated to pay the tax. Any dispute in this regard may be binding between the parties but it can have no impact on the Taxing Authority.

72. In light of the above, before the Sole Arbitrator could have returned a categorical finding regarding applicability of MoRTH guideline, it ought to have first noticed as to what was the extent of the MoRTH guidelines which were made applicable and whether there was any clause in the MoRTH guidelines relating to tax which would have an overriding impact on the contract entered between the parties.

73. There is no clause in the entire contract which says that in case of any ambiguity between the contract and the MoRTH guidelines, it would be the MoRTH document which would prevail and that too relating to tax. In absence of any categorical contractual clause or agreement, any finding in this regard holding that the MoRTH Circular/SOP is applicable merely because the contract between the parties states that the technical specifications of the MoRTH would be applicable is not per-se not emerging or flowing from the contract or the material on record.

75. The contract entered between the parties is to be read as it is and in its entirety. In light of the clauses as mentioned above which borrows the MoRTH specifications read with Government Order dated 24th July, 2017 (which is at running page 215 of the Supplementary Affidavit filed before this Court by the appellant dated 27.10.2025) it only states that all such contracts over 5 crores would be done as per the standard bidding document, procurement of civil works as issued by the MoRTH.

76. In case if the respondent seeks to impute a specific tax compliance provision in the instant contract, then it was its burden to have brought the MoRTH document on record and ought to have referred to specific provisions therein to establish that it would override the clauses of the contract entered between the parties or even in case of any ambiguity in the contract or any part which is silent in the instant contract, the grey area would be filled or covered by the specifications/clauses/ arrangements as provided in MoRTH guidelines including relating to taxation or what would be the order of precedence to be followed in case of ambiguity.

77. In absence of this clear material, the finding given by the Sole Arbitrator holding that the contract provided for borrowing the technical specifications from MoRTH, hence, the illustrative SOP issued by MoRTH relating to calculation of GST for EPC contracts would become applicable, cannot be sustained.

78. The record would also indicate that this issue was also raised before the DRE. He too in his findings concluded that the MoRTH guidelines were only applicable for the purposes of

technical specifications and Government Orders relating to compliance of GST provisions were specific and binding on the appellant and it would prevail over the MoRTH SOP.

79. The record would also indicate that initially there was a difference of opinion between the parties regarding the nature of the contract itself, however, before the Sole Arbitrator, there was a consensus and the contracting parties agreed that the contract in question was an item based rate contract.

80. The appellant had raised a dispute before the Sole Arbitrator that the MoRTH SOP dated 19.11.2018 was applicable to EPC contract (Clause 6 and the illustration as incorporated in the SOP, as quoted above). This Clause 6 indicates that the illustration given therein was in context with the EPC contracts. There is no material to indicate that the said SOP would be applicable to item rate based contract. It also does not indicate that the said SOP though applicable for EPC contracts could be borrowed or be made applicable to item rate based contracts.

81. Before a finding could have been recorded by the Sole Arbitrator applying the illustration as given in the SOP relating to EPC contracts to item rate based contract, then at least it should have considered some material evidence or reference to any clause in the contract between the parties which could throw some light or permit borrowing the illustration relating to EPC contract to item rate based contracts, especially when the MoRTH SOP did not extend its applicability to item rate based contracts nor it stated that the illustration was applicable to all types of contract.

82. There is no averment or evidence to suggest that there is no other separate document relating to item rate based contract. There is no positive statement that apart from this SOP relating to EPC contracts, there is no other separate guidelines for item rate based contract nor there is any evidence to indicate that the said illustration applicable for EPC contracts can ipso-facto be followed for item rate based contracts, nor the Sole Arbitrator has given any reason or finding in this regard.

83. The Sole Arbitrator, however, concluded that even though the SOP refers to an EPC contract, the same can be made applicable for an item based rate contract on the premise that both the contracts are similar. However, in the trade industry relating to road construction contracts, there is a difference in EPC and item rate based contract. This distinction assumes significance for the reasons that it was a specific case of the appellant that the illustration and the methodology mentioned in the SOP dated 19.11.2018 is applicable only for EPC contracts and since the contract in between the parties in the instant case was an item based rate contract, hence, the same could not be made binding without consensus between the parties.

84. Furthermore, the usage of the word may in Clause 6 in the SOP and clause 6.2 (iv) which speaks of mutual agreement is indicative that the said SOP is merely a guideline which may be directory in nature and not mandatory as already noticed hereinabove, hence, without any clinching evidence to the effect that the parties to the contract agreed to get their tax liability governed by the SOP dated 19.11.2018 or the parties mutually agreed to do so, till then it cannot be made binding upon the appellant.

84. If the Sole Arbitrator was of the view that the SOP relating to EPC contract could be made binding to an item rate based contract then it ought to have referred to some evidence, clauses of the contract entered between the parties. In absence of any such reference merely concluding that the SOP would bind item rate based contract also would amount to giving a finding based on conjectures and assumptions which has no role to play in an award. By doing so, the Sole Arbitrator has read into the contract something which is not present, which is reflected in his award which then would be based on conjectures and it would make the award susceptible for interference.

87. As far as the two Government Orders dated 09.11.2017 and 10.12.2019 are concerned, they have been issued by the State, in course of its business and partakes the nature of executive instructions which necessarily makes it binding on the appellant.

88. In the given situation, before this Court, the issue is not as much as who has to pay the GST but it has got to do with the manner in which the GST is to be calculated relating to the contract in question and the right of the contractor to recover the said GST paid to the Tax Authority, from the appellant.

89. It will be apposite to take a pinhole view of the GST Act. The GST regime introduced from 01st July, 2017 is primarily based on self-assessment under the GST laws. There are primarily two types of transactions. One where the transaction crosses two different State borders and in such a situation the transactions would attract the IGST i.e. Integrated Goods and Services Tax. This IGST is a composite and binding tax levied and collected by the Central Government which is later apportioned to the State where the goods are consumed. It is for this purpose that there can never be a CGST, SGST and IGST charged on the same invoice. However, where seller and the buyer are located within the same State then two components of CGST and SGST are charged simultaneously and one tax invoice clearly indicates the separate chargabiity of CGST and the SGST.

90. A party who is liable to pay the GST as per the scheme of the GST Act of 2017 is to furnish his returns periodically as mentioned in the Act on the basis of best self assessment. Once such returns are submitted before the GST Authorities, they have the discretion of either accepting the said returns, the way they are and conclude the assessment and in case if they are not satisfied then they have a right to enquire into the same in terms of the Section 73 and Section 74 of the GST Act, 2017.

91. However, in order to invoke the powers both under Section 73 and 74 of the GST Act, 2017, the tax Authorities are required to issue notice to the assessee calling upon him to explain the self-assessment and in case if the authorities are satisfied, they may conclude the same or they may call upon the assessee to furnish an explanation for any shortfall in tax paid. Any such order passed by the GST Authorities under Section 73 or Section 74 is susceptible to scrutiny before the Appellate Authority or the GST Tribunal as envisaged in the GST Act itself.

92. Illustratively, the respondent being the contractor was required to furnish his statements/periodical assessments and it would necessarily have been made under the provisions of

the GST Act and also indicating the payment of GST. The contractor could have furnished his GST returns as per the MoRTH SOP. In case if the same was accepted by the GST Authorities then the assessment would have been completed and it would have been clearly shown how much tax was paid referrable to the contract in question.

93. Since the work in the instant case stood completed in the Financial year 2018-19 and a completion certificate was issued on 10.04.2019 then any GST liability outstanding would have been made known to the respondent by the GST Authorities by issuing a notice, however, there is no document on record or brought to the notice of this Court nor any consideration regarding it has been made by the Sole Arbitrator indicating that for the period under the contract, any notice under Section 73 or Section 74 had been issued to the contractor by the GST Authorities.

94. The respondent along with his short counter affidavit dated 14th January, 2026 has annexed the copies of the rejoinder affidavit to the second supplementary affidavit filed by the respondent during the arbitration proceedings as Annexure SA-1. From the perusal of the said Annexure SA-1, it would indicate that the GST receipts have been placed on record including a statement regarding the input tax credit which was available to the respondent, however, that does not per se indicate that some amount, which in some of the receipts have been, shown as voluntarily payment by the respondents towards interest or penalty is actually referrable for this particular contract for the period in question nor there is any discussion in this regard by the Sole Arbitrator to arrive at its conclusion in the award on this aspect of the matter.

95. As per the GST Act, the liability to pay tax is on the assessee i.e. the respondent and it was always open for him to deposit the tax in time in case if the same was not done then it is the respondent who is to bear the interest and penalty, if any. The respondent was required to mitigate his losses, inasmuch as, it was always open for the respondent to have paid the taxes in time to avoid imposition of penalty or interest and then could have recovered the same from the appellant (if permissible) and could have also claimed interest/penalty on the said outstanding amount, if it was solely attributable to the negligence or want of due diligence of the appellant.

96. This aspect has not been considered by the Sole Arbitrator who has merely on the premise that the GST has not been paid by the appellant to the respondent, hence, invoking the provisions of Section 50 of the GST Act, the amount determined by the Arbitrator has been made payable as per interest and penalty provided under the GST Act.

97. Even if the Sole Arbitrator had to do so then the Sole Arbitrator ought to have recorded a clear finding that the tax of a particular amount was due and payable by the respondent within time to be specified which could not be paid on account of negligence or non-payment by the department which led the respondent to suffer interest and penalty and had to be paid to the GST Department and this interest plus penalty was recoverable from the appellant under the contract.

98. The learned counsel for the respondents had referred to the report by the Chartered Accountant, another report of the Chartered Engineer and yet another report of an Independent Chartered Accounting Firm, they too indicate the impact of the GST on the contract and it is reflective of the fact, that with the change in the tax regime i.e. from VAT to GST, certain items

which earlier were not taxable have been made taxable in the new regime, how this would impact the rights and the incidence of taxation and on which basis the tax will have to be calculated has not been amplified.

99. The Sole Arbitrator has merely proceeded in a compartmentalized way i.e. to say, it held that the technical specifications were borrowed in the contract, therefore, the MoRTH guidelines even for tax purposes would become applicable, consequently, the formula given for the EPC contracts would be applicable to the instant contract despite the said contract being an item rate based contract and as a fortiorari, the Government Orders have been held to be not applicable. There is no consideration or reasons given in the award as to how a regulatory/directory document, would have an overbearing impact on a State-Government order, which was binding on the particular department to which it related to and it also prescribed, a particular methodology as to how the GST was to be calculated related to contracts entered in old tax regime and concluded in post GST regime.

100. Furthermore, the Sole Arbitrator while making his award has left the issue open to the extent that the amount as awarded by him is required to be paid by the appellant which would then be subject to the final assessment by the GST Authorities and in case if excess amount had been paid, the same would be returned by the respondent to the appellant and in case of any shortfall then the appellant would still be liable to pay the said shortfall. This finding given by the Sole Arbitrator in its award leads to ambiguity and it also does not attach finality to the award.

101. What is significant to notice that this arrangement could have been made only as an interim measure during the pendency of the proceedings especially in terms of the GST Act when the contract itself had concluded in the financial year 2018-19 and the maximum period for concluding an assessment under the GST Act is 3 years. Thus, at the time of making of the award in the year 2024, the assessments would have become final and that would have been the best evidence which could have been placed before the Arbitrator to establish that the respondent was entitled to claim any shortfall of the GST and consequential interest or penalty from the appellant.

102. In light of the aforesaid discussions, following position emerges:-

(i) The basic premise of the Sole Arbitrator in his award, is the applicability of the MoRTH SOP dated 19.11.2018. In this regard, as already noticed above, there was no material on record to indicate that the MoRTH specifications as made applicable in the contract included any tax arrangements.

(ii) The Sole Arbitrator did not discuss under what circumstances, the Government Orders dated 09.11.2017 and 10.12.2019 would not be binding and applicable which relates to GST and a particular formula having been indicated therein, when they being executive instructions were binding on the Department.

(iii) There was no consideration of any material on record by the Sole Arbitrator as to how the said SOP could be made binding when that in itself appeared to be directory and applicable to to the parties only with mutual consent and its applicability was limited only on EPC contracts and in absence of any clause or material evidence by which it could be made applicable to item rate

based contracts, hence, it could not have been ipso-facto made applicable and that too without cogent reasoning.

(iv) In absence of any challenge to the Government Order dated 10.12.2019 and without recording any cogent reason to discard its applicability and then to hold that the said Government Order was not applicable merely because the MoRTH had issued a SOP and it did not prima facie establish that such tax arrangement of MoRTH was binding despite there being no such clause in the contract nor any material on record established this fact.

(v) The Sole Arbitrator in absence of any cogent evidence or material could not have given a finding regarding deficiency/shortfall in payment of GST which could attract penalty and interest and make it payable without recording clear finding as to its quantum, periods and that such shortfall or deficiency in tax, or penalty/interest was paid by the respondent but on account of sole negligence or want of due diligence of the appellant it was recoverable from the appellant. Thus, the Sole Arbitrator erred by acting as an Assessing Officer.

(vi) The reference made by the Sole Arbitrator to certain exemplars to draw parallel that in cases of some other contractors, the State had paid the GST at same rate which is now being denied to the respondent, could only be considered with supporting assessment orders or other like evidence to show the similarity between the contract entered by the parties to the instant dispute and the one as mentioned in the exemplar and then it could be made applicable and binding on the appellant.

(vii) Importantly, the Sole Arbitrator and both the contracting parties have not noticed the import of Chapter XX of the GST Act, 2017 which contains the transitional provisions. In this regard inter alia Section 142 (2) which relates to contracts entered prior to the appointed date i.e. 01.07.2017 and wherein post the appointed date there is either upward or downward revision and how will it be catered to has been provided for. Thus, Section 142 (2), 142 (10) and 142 (11) may have some bearing on the controversy, which at least should have been noticed, considered and a finding should have been given whether the said sections were applicable or not. However, there is a stoic silence on this aspect as there is no reference to this aspect in the award.

(Viii) The expert evidence said to have been filed by the respondent also does not consider the impact of Sections 142(2), (10) and (11) of the GST Act, 2017 and in absence thereof, a definite finding returned by the Sole Arbitrator that the MoRTH guidelines and SOP would apply is rendered vulnerable as it looses its core integrity of reasoning.

103. The Sole Arbitrator being a creature of the contract is bound by its terms and it cannot re-write the contract or fill in the lacunae for any party. The position noticed hereinabove would indicate that the Sole Arbitrator has proceeded on conjectures and assumptions and the findings recorded are not backed by cogent evidence before it. Hence, the finding on issues nos. 2 to 4 and 8 to 9 being against the material evidence on record, cannot be sustained.

104. Additionally, an award can be set aside if it is found to be in violation of fundamental policy of Indian Law or suffers from the vice of ignoring judicial discipline regarding compliance with principles of natural justice or the reasoning in the award is based on perversity which goes to the root of the matter without there being any possibility of an alternate view.

105. This Court had the occasion to consider the scope of an appeal under Section 37 of the Act of 1996 in **UCM Coal Co. Ltd. v. Adani Enterprises Ltd. : 2025 SCC OnLine All 7608** and

by taking aid of the previous decisions of the Apex Court on the aforesaid point, this Court in paras 63 to 67 noticed the perimeter within which the Appellate Court would exercise its jurisdiction. The relevant paragraphs read as under :-

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

64. The Apex Court in MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293 has held as under:

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

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2) (b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445]; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

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

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

an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

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

16. It is equally important to observe at this juncture that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is within the arbitrator's jurisdiction to consider the same. [See McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181]; Pure Helium India (P) Ltd. v. ONGC [Pure Helium India (P) Ltd. v. ONGC, (2003) 8 SCC 593] and D.D. Sharma v. Union of India [D.D. Sharma v. Union of India, (2004) 5 SCC 325 : (2005) 123 Comp Cas 135].]"

65. Similarly, the Apex Court in UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401 has observed as under:

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

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

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

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is

obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

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

19. In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552], adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306 : (2012) 50 VST 443 : (2012) 14 GSTR 291], wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (Parsa Kente Collieries case [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552], SCC pp. 244-45, para 9)

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

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

and SAIL v. Gupta Brother Steel Tubes Ltd. [SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16], SCC para 29.

(emphasis supplied)

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

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

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

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

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

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

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

66. Again, the Apex Court in Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375 : (2024) 1 SCC (Civ) 182, has held as under:

"32. Post award interference and the extent of the second look by the courts under Section 34 of the A&C Act has been a subject-matter of perennial parley. The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an Arbitral Tribunal, whose decision is binding on the parties. [See Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549, which examines

arbitrability and nonarbitrability of subject-matters and claims, which aspect will not be examined in this case.] It is argued that the purpose of arbitration is fast and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is un-warranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party to have its claim or dispute adjudicated by the judiciary. The process is informal, and need not be legalistic [The expression judicially , does not equate arbitration with formal/court proceedings, and would include a just and fair decision.]. Per contra, it is argued that party autonomy should not be treated as an absolute defence, as a party despite agreeing to refer the disputes/claims to a private tribunal consensually, does not barter away the constitutional and basic human right to have a fair and just resolution of the disputes. The court must exercise its powers when the award is unfair, arbitrary, perverse, or otherwise infirm in law. While arbitration is a private form of dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a judicially sound and objective outcome. If these requirements, which are equally fundamental to all forms of adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.

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

* * *

37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is in conflict with the public policy of India , if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while fraud and corruption are two specific grounds under public policy , these are not the sole and only grounds on which an award can be set aside on the ground of public policy ."

38. Act 3 of 2016 with retrospective effect from 23-10-2015 has substituted the Explanation referred to above, by two new Explanations that are differently worded. [Explanations 1 and 2 to sub-clause (ii) to clause (b) of Section 34(2) of the A&C Act suIn cases where the error cannot be corrected within the aforesaid guardrails and if it would require a review on merits or re-adjudication, the court must refrain from modifying the award and where permissible in law, remand the matter to the Arbitral Tribunal instituted vide Act 3 of 2016 read as under: Explanation 1. For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or(ii) it is in contravention with the fundamental policy of Indian law; or(iii) it is in conflict with the most basic notions of morality or justice. Explanation 2. For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute. Sub-section (2-A) of

Section 34 of the A&C Act inserted vide Act 3 of 2016 reads as under: 34. (2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award : Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.] Sub-section (2-A) to Section 34 of the A&C Act, which was instituted by Act 3 of 2016 with retrospective effect from 23-10-2015, states that the arbitral award arising out of arbitrations other than international commercial arbitrations can be set aside by the court, if it is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence. The aforesaid sub-section need not be examined in the facts of the present case, as we are not required to interpret and apply the substituted Explanations to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act in the present case.

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

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

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

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

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

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

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

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

R.S. Sharma & Co., (2008) 13 SCC 80], J.G. Engineers (P) Ltd. v. Union of India [J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758 : (2011) 3 SCC (Civ) 128], and Union of India v. L.S.N. Murthy [Union of India v. L.S.N. Murthy, (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368].

41. In 2006, this Court in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] despite following the ratio of Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], made succinct observations regarding the restrictive role of courts in the post-award interference. In addition to the three grounds introduced in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644 : (1994) 81 Comp Cas 171], as noticed above, an additional ground of patent illegality was introduced in Saw Pipes Limited, for exercise of the court's jurisdiction in setting aside an arbitral award. This Court, in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181], held that patent illegality, must be such which goes to the root of the matter. The public policy violation should be so unfair and unreasonable as to shock the conscience of the court. Arbitrator where s/he acts contrary to or beyond the express law of contract or grants relief, such awards fall within the purview of Section 34 of the A&C Act. Further, what would constitute public policy is a matter dependent upon the nature of transaction and the statute. Pleadings of the party and material brought before the Court would be relevant to enable the Court to judge what is in public good or public interest, or what would otherwise be injurious to public good and interest at a relevant point. So, this must be distinguished from public policy of a particular government.

42. A similar view was expressed in Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306 : (2012) 50 VST 443 : (2012) 14 GSTR 291] with the clarification that where a term of the contract is capable of two interpretations and the view taken by the arbitrator is a plausible one, it cannot be said that the arbitrator travelled outside the jurisdiction or the view taken the arbitrator is against the terms of the contract. The Court cannot interfere with the award and substitute its view with the award and interpretation accepted by the arbitrator, the reason being the Court does not sit in appeal over the findings and decision of the arbitrator, while deciding an application under Section 34 of the A&C Act. The arbitrator is legitimately entitled to take a view after considering the material before him/her and interpret the agreement. The judgment should be accepted as final and binding.

43. Subsequently, in ONGC Ltd. v. Western Geco International Ltd. [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] (for short Western Geco), a three-Judge Bench of this Court observed that the Court, in Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], did not examine what would constitute fundamental policy of Indian law . The expression fundamental policy of Indian law in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of fundamental policy of Indian law . The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the Arbitral Tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the

A&C Act [31. Form and contents of arbitral award. (1)-(2) * * *(3) The arbitral award shall state the reasons upon which it is based, unless (a) the parties have agreed that no reasons are to be given, or(b) the award is an arbitral award on agreed terms under Section 30] states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness [As expounded in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA).]. At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute fundamental policy of Indian law , as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

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

45. Referring to the third principle in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in State of Haryana v. Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312 : (1990) 77 STC 1] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and relied upon, as good working tests of perversity. In Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312 : (1990) 77 STC 1] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would

necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, patent illegality refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

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

"29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293, para 14; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, (2023) 9 SCC 85, para 25] The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293, para 14 : ; Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.]

* * *

31. The term public policy in Section 34(2)(b)(ii) has been interpreted by this Court as meaning (a) the fundamental policy of Indian law, or (b) the interest of India, or (c) justice or morality. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644 : (1994) 81 Comp Cas 171, para 66] In ONGC v. Saw Pipes Ltd. [ONGC v. Saw Pipes, (2003) 5 SCC 705], this Court further held that an arbitral award can be set aside as being contrary to public policy if it is patently illegal. The illegality must go to the root of the matter and must be so unfair and unreasonable that it shocks the court's conscience; it cannot be of a trivial nature. [Id, para 31; McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 59.] Such patent illegality includes a situation where the award is in contravention with substantive law. [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705, para 54; Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204, para 42.1]

32. Further, an award can be set aside as being opposed to the fundamental policy of India if it is perverse, [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12, para 39] i.e. the finding is not based on evidence, or the Arbitral Tribunal takes something irrelevant into account, or ignores vital evidence. [Associate Builders v. DDA, (2015) 3 SCC 49, paras 32-33 : (2015) 2 SCC (Civ) 204, para 31] However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence. [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429, para 10 : as cited in Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204.]"

106. Recently, the Apex Court in **Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust : (2026) 3 SCC 186** noticed the scope of the appeal under Section 37 of the Act of 1996 and in paragraphs 35 to 37 held as under:-

"35. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.

36. In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.

37. Undoubtedly, in the case at hand, the award of the Arbitral Tribunal is not contrary to any substantive provision of law or any provision of the Act. Yet, it has been disturbed by the appellate court, apparently by giving a different interpretation of the clauses of the licence agreement which jurisdiction was not vested in it. Ordinarily, the interpretation given by the Arbitral Tribunal, as affirmed by the court in exercise of powers under Section 34 of the Act ought to have been accepted."

107. In light of the detailed discussions held hereinabove where the findings of the Sole Arbitrator on issues nos. 2 to 4 and 8 to 9 have been found to be vulnerable then the next delicate question that arises before the Court is, as to whether the entire award should be set aside or certain part of the award can be severed and saved by dissecting it from the offending portion. This specific question was referred to a Constitution Bench of the Supreme Court and in G**ayatri Balasamy v. ISG Novasoft Technologies Ltd. : (2025) 7 SCC 1,** the Apex Court after considering the provisions of the Act and the law held that the Courts do possess limited powers under the Act of 1996 to modify the award by applying the doctrine of severability in limited circumstances.

108. What would be the limited scope and circumstances was explained in the majority judgment in **Gayatri Balasamy** (supra). The propositions and guidelines laid down by the Apex Court can be summarized as under:-

(i) Only severable awards are amenable to modification;

A composite or indivisible arbitral award cannot be modified. Modification is permissible only where the claims, or parts of the award, are legally and pragmatically severable from the valid portion. In such cases, the court may sever the invalid part while preserving the remainder of the

award. This constitutes one of the essential guardrails laid down by the Supreme Court for the exercise of the limited power to modify an arbitral award;

(ii) The error sought to be corrected must be patent and apparent on the face of the record;

The Supreme Court has clarified that modification is confined to the correction of obvious and self-evident errors, such as clerical, computational, or typographical mistakes. Modification is permissible only where the court has no uncertainty or doubt as to the correction; if the alleged error is debatable or not apparent on the face of the record, the court lacks jurisdiction to modify the award;

(iii) Modification is permissible for correcting or adjusting post-award interest;

Courts may modify an arbitral award where such modification is confined to the correction or adjustment of post-award interest, without disturbing the substantive findings of the Arbitral Tribunal;

(iv) Where modification is impermissible, the matter must be remanded;

In cases where the error cannot be corrected within the aforesaid guardrails and if it would require a review on merits or re-adjudication, the court must refrain from modifying the award and where permissible in law, remand the matter to the Arbitral Tribunal.

109. Testing the award dated 27.01.2024 on the anvil of the postulates, as noticed above, which have been culled out from the decision of the Apex Court in **Gayatri Balasamy** (Supra), it would reveal that the Sole Arbitrator has dominantly granted a sum of Rs. 11,35,80,273/- relating to different facets of payments relating to the GST and also included 15% penalty and 18% interest which is part covered by issues nos. 2 to 4 and 8 to 9 whereas the minuscule amount of Rs. 66,500/- has been awarded in favour of the respondent which was the appellant s share of fee payable to the DRE and is part of issue no. 10,

110. Hence, applying the principles as noticed above, this Court is of the clear view that the findings recorded on issues nos. 2 to 4 and 8 to 9 cannot be sustained. The award made in respect of a sum of Rs. 66,500/- along with interest at the rate of 9% per annum from the date of the award till the date of its actual payment emerging from issue no. 10 and the finding given on issue no. 1 which is based on the consensus of the parties, can be clearly severed and protected; hence, it is so done.

111. Thus, in view of the above detailed discussions, the instant appeal deserves to be partly allowed. The judgment of the Commercial Court-I, Lucknow dated 18.07.2025 passed in Arbitration Case No. 25 of 2024 is set aside. The award of the Sole Arbitrator dated 27.01.2024 shall stand partly modified to the extent that the findings on issue nos. 2 to 4 and 8 to 9 shall stand set aside and would be severed from the award and the remaining portion relating to issues no. 1 and 10 shall remain intact and protected. The claim relating to grant of Rs. 66,500/- under issue no. 10 is saved as also the finding on issue no. 1, which is based on consensus. The remaining portion of the award relating to the issues nos. 2 to 4 and 8 to 9 shall be re-adjudicated and for that purpose, the matter is remitted to the Arbitral Tribunal, to be constituted as per law, who would decide the issues nos. 2 to 4 and 8 to 9 afresh in light of the observations made by this Court hereinabove. Resultantly, the appeal is partly **allowed** in the aforesaid terms. The parties will bear their own costs.

(2026) 7 ILRA 2225
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.07.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE LAKSHMI KANT SHUKLA, J.

Crl. Misc. Writ Petition No. 1443 of 2026

Haji Iqbal @ Bala **...Petitioner(s)**
Versus
State of U.P. & Ors. **...Respondent(s)**

Issues for Consideration

(i) Whether a First Information Report registered under the Indian Penal Code against the petitioner is liable to be quashed on the ground that it amounts to a second investigation into facts already investigated by the Serious Fraud Investigation Office, culminating in a complaint pending before the Special Court?

(ii) Whether, where the transaction of the complainant does not form part of the SFIO complaint but is part of the same scheme of fraud already under SFIO examination, the High Court, while declining to quash the FIR, can transfer the investigation qua the petitioner to the SFIO though such relief was not prayed for?

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 --- S. 528 --- Code of Criminal Procedure, 1973 --- S. 482 --- Inherent power of High Court --- Quashing of FIR --- Scope and parameters.

HELD: Section 528 of the BNSS is not the source of the inherent power of the High Court but merely a statutory recognition of it; the three purposes mentioned therein are illustrative of the breadth of the power and not a straitjacket. The power to quash an FIR, though wide in amplitude, is to be exercised with restraint; quashing is the exception and not the rule. The court does not assess the reliability or genuineness of the allegations, weigh the evidence or conduct a mini-trial, its inquiry being confined to whether, on a plain reading of the FIR, the allegations disclose a cognizable offence. Where the allegations are specific, the offences cognizable and the accusations not inherently improbable, the criminal process must ordinarily be permitted to run its course. [Paras 19-25]

Companies Act, 2013 --- S. 212(2), (15), (17) --- Serious Fraud Investigation Office --- Assignment of investigation --- Effect on other investigating agencies.

HELD: Where the Central Government assigns investigation to the SFIO, no other investigating agency shall proceed further and all relevant documents stand transferred; upon such assignment the original agencies are completely divested of jurisdiction and the transfer is irrevocable. The SFIO's jurisdiction is not confined to violations under the Companies Act and extends to all offences arising from the transaction, including those under the IPC. Under Section 212(15), the SFIO's investigation report is deemed to be a police report under

Section 173 CrPC, and the SFIO stands in the shoes of a police officer for all purposes of trial. Section 212(17) provides for inter-agency sharing of information and does not preserve any concurrent right of investigation by other agencies. [Paras 41-45]

Indian Penal Code, 1860 --- Ss. 406, 420, 120-B --- Quashing of FIR --- Overlap with pending SFIO complaint --- Same companies, same modus operandi and substantially same penal provisions --- Complainant's transaction not examined in SFIO complaint --- Quashing declined.

HELD: The FIR names the petitioner in connection with the same companies and the same alleged modus operandi that form the subject matter of the SFIO complaint, in which the petitioner is arrayed as Accused No. 1 and each company in the chain identified in the FIR is already an accused entity; the offences invoked are, to a substantial extent, those already charged in the SFIO complaint. However, the SFIO complaint does not specifically examine the transaction of the complainant in respect of Plot GH-02-D, and the FIR is the only proceeding that seeks to bring that transaction within the ambit of criminal inquiry. The allegations in the FIR, taken at face value, disclose cognizable offences under Sections 406, 420 and 120-B IPC; the transaction is specific, the amount ascertainable and the complainant identifiable, and quashing the FIR would leave the complainant remediless. *Ashish Bhalla v. State* distinguished, as there the complainant before the SFIO and the EOW was the same person and the two complaints were verbatim copies. [Paras 26-39, 46-53]

Constitution of India --- Art. 226 --- Bharatiya Nagarik Suraksha Sanhita, 2023 --- S. 193(9) --- Transfer of investigation to SFIO qua petitioner --- Relief not prayed for --- Further investigation --- No fresh sanction required.

HELD: Though the power to transfer investigation is extraordinary and to be exercised sparingly, where the same scheme of fraud is already under investigation by a specialised agency, entrusting one strand of it to a general law enforcement agency does not serve the interests of either party; transfer to the SFIO reconciles the complainant's right to an effective remedy with the prevention of multiplicity of proceedings, preserves the integrity of the broader inquiry and avoids the risk of conflicting outcomes. Completion of investigation by the SFIO and cognizance by the Special Judge does not exhaust the agency's investigative mandate, as Section 193(9) BNSS permits further investigation. The jurisdiction under Article 226 is not limited to the prayer as framed. Since the SFIO's investigation against the petitioner was already sanctioned pursuant to orders of the Supreme Court, the order of transfer does not constitute a fresh assignment under Section 212(1) of the Companies Act but merely extends the scope of an ongoing inquiry, and no fresh sanction is required. [Paras 54-62]

Writ petition disposed of; prayer for quashing of FIR rejected; investigation qua petitioner transferred to SFIO, with liberty to file supplementary complaint under Section 212(15) of the Companies Act, 2013. Interim orders vacated. (E-14)

Case Law Cited

Ashok Kumar Jain v. State of Gujarat, 2025 SCC OnLine SC 998 --- relied on; *Anukul Singh v. State of Uttar Pradesh*, 2025 SCC OnLine SC 2060 --- relied on; *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 --- relied on; *SFIO v. Rahul Modi*, (2019) 5 SCC 266 --- relied on; *Ashish Bhalla v. State*, 2023 SCC OnLine Del 5818 --- distinguished; *Kabir Shankar Bose v. State of West Bengal*, (2024) INSC 930 --- referred to.

List of Acts / Statutes

Indian Penal Code, 1860; Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973; Companies Act, 2013; Constitution of India; U.P. Gangsters Act, 1986.

List of Keywords

Quashing of FIR; Inherent power; Serious Fraud Investigation Office; Second investigation; Parallel investigation; Transfer of investigation; Further investigation; Shell companies; Multiplicity of proceedings.

Case Arising From

First Information Report bearing Case Crime No. 421/2024, under Sections 406, 420, 467, 468, 471, 120-B, 506 IPC, Police Station Ecotech-IIIrd, District Gautam Buddh Nagar.

Appearance for Parties

For the Petitioner(s): Indra Bhan Yadav, G.S. Chaturvedi, Sr. Advocate, Somya Chaturvedi.

For the Respondent(s): G.A., Manish Goyal, Additional Advocate General.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. The instant petition has been filed inter alia seeking quashing of a First Information Report bearing Case Crime No. 421/2024 lodged under Section 406, 420, 467, 468, 471, 120-B, 506 of the Indian Penal Code (IPC hereinafter) at Police Station Ecotech-IIIrd, District Gautam Buddh Nagar **('Impugned FIR'** hereinafter).

Brief Facts

2. The brief factual matrix relevant for adjudication of the instant petition is as follows:

2.1 The petitioner is a former Member of the Legislative Council ('**MLC'** hereinafter) from the State of Uttar Pradesh and is stated to be presently residing abroad. He is also the Chancellor of Glocal University, Saharanpur. The dispute giving rise to the Impugned FIR has its origins in a series of financial transactions involving real estate development in Greater Noida.

2.2 In the year 2014, one Naved Ahmad (**Complainant** hereinafter) entered into negotiations with representatives of M/s Enchant Infrastructure Pvt. Ltd. regarding the development of Plot No. GH-02-D, Sector-12, Greater Noida, measuring 12,500 sq. metres, which had been allotted by the Greater Noida Industrial Development Authority.

2.3 As per material on record, between 01.12.2013 and 04.03.2014, the Complainant transferred a total sum of INR 6,33,00,000/- to M/s Enchant Infrastructure Pvt. Ltd. A development agreement was subsequently executed on 01.10.2014 between the Complainant and Vinod Kumar, the Authorised Signatory of M/s Enchant Infrastructure Pvt. Ltd.

2.4 Notably, no construction activity was undertaken on the plot thereafter. The company also failed to keep up with installment payments due to the Greater Noida Authority. Consequently, vide letter dated 23.08.2022, the Greater Noida Authority cancelled the allotment of the said plot, citing outstanding dues of INR 29,30,05,883/- against which only INR 4,49,42,881/- had been paid.

2.5 In the interregnum, an NGO named Save India had filed W.P.(C) No. 818/2015 before the Hon ble Supreme Court, thereby raising concerns about alleged financial irregularities and shell company operations linked to the petitioner. The Hon ble Supreme Court, thereafter, directed the Ministry of Corporate Affairs to grant sanction for directing the Serious Fraud Investigation Office (**SFIO** hereinafter) to investigate the affairs related to the petitioner herein.

2.6 SFIO, upon conclusion of its investigation, filed Complaint No. 720/2017 under the Companies Act, 2013 (Act hereinafter), before the Special Judge, Dwarka Court, New Delhi. The complaint examined, inter alia, the roles of M/s Enchant Infrastructure Pvt. Ltd. and Mastiff India Pvt. Ltd. A summoning order was passed against the petitioner and other co-accused.

2.7 The said summoning order was challenged before this Court in Applications U/s 482 Nos. 18806 and 20317 of 2019. Vide orders dated 10.05.2019 and 29.05.2019, the Co-ordinate Bench of this Court afforded the applicants an opportunity to seek discharge before the learned Trial Court. The discharge applications so filed remain pending as of the date of institution of the present petition.

2.8 In May 2022, the Ministry of Home Affairs issued a Lookout Circular (**LoC** hereinafter) against the petitioner. He was also named in Case Crime No. 83/2022 under Sections 2/3 of the U.P. Gangsters Act, 1986 (**Gangster Act** hereinafter), at Police Station Mirzapur, Saharanpur. Since the petitioner was abroad, proceedings under Section 82 of the Code of Criminal Procedure, 1973 (**CrPC** hereinafter) were also initiated against him in the above-mentioned case.

2.9 Pursuant thereto, the petitioner s passport was impounded by the Passport Office, Ghaziabad, on 30.01.2023, and his challenge to the same remains pending before the Delhi High Court. During this period, the Hon ble Supreme Court, in connected proceedings, directed that no coercive steps be taken against the petitioner and permitted him to participate in investigations through Video Conferencing. The order dated 09.02.2024 passed by the Hon ble Supreme Court in SLP(Crl.) No.5535/2023 read as under:

"1. Mr. Sidhartha Dave, learned senior counsel appearing for the applicant submits that in pursuant to order passed by this Court dated 30th January, 2024, the applicant will not be in a position to attend Investigating Officer physically, inasmuch as he does not have a valid passport.

2. It is further submitted that the order challenging cancellation of passport is under challenge.

3. We, therefore, grant liberty to the applicant to join the investigation through video-conferencing.

4.The application is, accordingly, disposed of"

2.10 On 04.09.2023, the Complainant filed a formal complaint with the police authorities. A preliminary inquiry was conducted by the STF Gautam Buddh Nagar, following which the Impugned FIR was registered.

2.11 Aggrieved thereby, the petitioner has approached this Court seeking quashing of the Impugned FIR and all proceedings arising therefrom.

SUBMISSIONS
(*On behalf of the Petitioner*)

3. Mr. G.S. Chaturvedi, learned senior counsel, Ms. Somya Chaturvedi, learned Advocate appearing on behalf of the petitioner, submitted that the Impugned FIR is nothing but a reiteration of the very allegations which have already been investigated by the SFIO, a specialised statutory agency, acting under the express directions of the Supreme Court of India, culminating in a complaint already pending before the appropriate Court.

4. It is submitted that the SFIO complaint specifically examines the role of the petitioner and the companies associated with him, including M/s Enchant Infrastructure Pvt. Ltd. and M/s Mastiff India Pvt. Ltd., in paragraphs 24 and 100 to 122 thereof. The Impugned FIR is, therefore, a second investigation into the same set of facts, which is impermissible in law.

5. It is submitted that the petitioner held no post or shareholding in M/s Enchant Infrastructure Pvt. Ltd. The transactions in the Impugned FIR were entered into solely between the Complainant and the company s authorised signatory, Vinod Kumar. No specific overt act, independent of the company s actions, has been attributed to the petitioner anywhere in the FIR.

6. It is submitted that the substratum of the complaint is, at best, non-performance of a development agreement, which is a dispute of a civil nature. There is no material on record to suggest any fraudulent or dishonest intent on the part of the petitioner at the inception of the transaction.

7. The learned senior counsel also urged that pursuant to liberty granted by a co-ordinate Bench of this Court in another petition, the petitioner has filed the discharge application before the learned Trial Court in the SFIO complaint, which remains pending to date. Therefore, the registration of a fresh FIR on overlapping facts amounts to a clear abuse of the process of law.

8. It is further submitted that the FIR makes sweeping and omnibus references to several shell companies, benami properties, and money laundering, without directly attributing any specific transaction, date, or document to the petitioner. Such general and vague allegations, bereft of material particulars, are wholly insufficient to sustain criminal proceedings.

9. The learned counsel also apprised this Court about the liberty granted to the petitioner by the Hon ble Supreme Court to cooperate with investigations through Video Conferencing, recognising his inability to be physically present in India.

10. Lastly, it is submitted that any coercive action against the petitioner in these circumstances is wholly disproportionate and runs contrary to the spirit of those directions and therefore, the Impugned FIR deserves to be quashed in its entirety qua the petitioner.

(***On behalf of the Respondent)***

11. Per Contra, Mr. Manish Goyal, learned Additional Advocate General (AAG), appearing on behalf of the State, submitted that the petitioner is not an ordinary accused but a former legislator who has been absconding abroad for a considerable period of time, and is actively monitoring and operating a syndicate of white-collar crimes from abroad.

12. The learned AAG submitted that the SFIO investigation and the Impugned FIR are distinct in nature and cannot be treated as investigations into the same subject matter. The SFIO, as a specialised agency under the Act, investigates corporate fraud and violations of company law, whereas the Impugned FIR has been registered under the IPC for criminal offences committed against private individuals who were defrauded of their hard-earned money.

13. It is submitted that the Impugned FIR is founded on the complaint of Naved Ahmad, who transferred INR 6,33,00,000/- to M/s Enchant Infrastructure Pvt. Ltd. on the basis of representations made by the petitioner s associates. The investigation reveals that neither was any construction ever intended nor were the instalment dues paid to the Greater Noida Authority, establishing dishonest intent at the very inception of the transaction.

14. It is further submitted that the offence in question is in the nature of a continuing offence, having commenced with the collection of funds from the Complainant in 2013-14 and having continued across different time periods with various investors, the last known transaction being as recent as 2022. The investigation is therefore at a nascent stage, and no interference is warranted at this juncture.

15. It is submitted that an absconding accused who has wilfully chosen not to return to India and has not cooperated with the investigating agency despite repeated opportunities, is not entitled to the discretionary relief of stay of arrest from this Court. Granting such relief would seriously prejudice the ongoing investigation and the victims interests.

16. It is, therefore, submitted that the petition is devoid of merit and deserves to be dismissed with costs.

Analysis and conclusion

17. Heard the learned senior counsel for the parties and perused the material placed on record.

18. The crux of the arguments vehemently contended by the learned senior counsel appearing on behalf of the petitioner is that the Impugned FIR constitutes nothing more than a second investigation into facts already comprehensively examined by the SFIO under the directions of the

Supreme Court, and that no specific overt act has been attributed to the petitioner in the FIR to sustain criminal proceedings against him.

19. Before delving into the question at hand, this Court deems it imperative to reiterate the powers granted to the High Courts under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (**BNSS** hereinafter). The said provision reads as follows:

Section 528: *Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

20. A bare perusal of the provision reveals that it is not the source of the High Court s inherent power but merely a statutory recognition of it. The words *" nothing in this Sanhita shall be deemed to limit or affect"* are instructive in this regard. By employing such a formulation, the legislature has ensured that the codification of criminal procedure does not, even inadvertently, displace a power that is inseparable from the constitutional position of the High Court as a Court of record.

21. It is equally noteworthy that the provision does not prescribe any exhaustive enumeration of circumstances in which the inherent power may be exercised. The three purposes, namely giving effect to orders under the BNSS, preventing abuse of process, and securing the ends of justice, are illustrative of the breadth of the power and not a strait-jacket that confines its exercise. The ends of justice and abuse of process, in particular, are expressions of wide amplitude, and their content must necessarily be determined by the facts of each case.

22. The parameters governing the exercise of this power to quash an FIR, which was formerly codified under Section 482 of the Code of Criminal Procedure, 1973 (**CrPC** hereinafter)and now finds statutory recognition in Section 528 of the BNSS, have been settled through a catena of decisions. In ***Ashok Kumar Jain v. State of Gujarat***, the Hon ble Supreme Court consolidated the legal position as follows:

"8 .

8.1. State of Odisha v. Pratima Mohanty

As per the settled proposition of law, while examining an FIR/complaint, quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing a complaint/FIR should be an exception rather than any ordinary rule. Normally, the criminal proceedings should not be quashed in exercise of powers under section 482 of the Code when, after a thorough investigation, the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 of the Code, the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting a mini-trial. As held by this Court, the powers under this section are very wide, but the conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.

8.2. Kaptan Singh v. State of Uttar Pradesh

The inherent jurisdiction under section 482 of the Code, though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. Further, the appreciation of evidence is not permissible at this stage.

8.3. Pratibha v. Rameshwari Devi

It is not open to the High Court to rely on the report of the investigating agency, nor can it direct the report to be submitted before it as the law is very clear that the report of the investigating agency may be accepted by the Magistrate, or the Magistrate may reject the same on consideration of the material on record. Such being the position, the report of the investigating agency cannot be relied on by the High Court while exercising powers under section 482 of the Code."

23. In ***Anukul Singh v. State of Uttar Pradesh***, the Hon ble Supreme Court restated the illustrative categories laid down in State of Haryana v. Bhajan Lal3 in which the exercise of the power to quash is justified, and distilled the cumulative principles governing the exercise of the jurisdiction in the following terms:

"11.1. This Court in State of Haryana v. Bhajan Lal, at paragraph 102, laid down illustrative categories where quashing of proceedings is justified. These are:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. The categories in Bhajan Lal are illustrative and not exhaustive, but they provide guiding principles to balance two competing considerations - (a) preventing abuse of process of law, and (b) ensuring that criminal proceedings are not stifled at the threshold on disputed questions of fact.

11.2. Equally, this Court has consistently cautioned that the High Court, while exercising jurisdiction under Section 482 Cr.P.C., cannot embark upon a mini-trial or weigh the sufficiency of evidence, which falls within the domain of the trial Court. The scope of enquiry is confined to whether, on a plain reading of the FIR/complaint and accompanying material, the ingredients of the alleged offence are disclosed. [See: Rajiv Thapar v. Madal Lal Kapoor, HMT Watches v. Abida, and Rathish Babu Unnikrishnan v. the State (Govt. of NCT of Delhi)].

11.3. In Md. Allauddin Khan v. State of Bihar, it was reiterated that appreciation of contradictions or inconsistencies in witness statements lies within the exclusive domain of the trial Court and not in proceedings under Section 482 Cr.P.C. Similarly, in CBI v. Aryan Singh, it was emphasized that the High Court had exceeded its jurisdiction by examining the merits of the prosecution's case and holding that charges were not proved, which is a matter strictly for trial.

11.4. Nevertheless, an exception has been recognized where the defence relies upon unimpeachable, incontrovertible evidence of sterling quality - such as documents of undisputed authenticity which ex facie demonstrate that continuation of criminal proceedings would be unjust and oppressive. This principle was recognized in Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd, and followed in subsequent decisions. 11.5. Thus, the cumulative principles that emerge are: while the jurisdiction under Section 482 Cr.P.C. is extraordinary and must be exercised sparingly, it is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and criminal colour has been artificially given to it. Conversely, where disputed questions of fact arise requiring adjudication, the matter must ordinarily proceed to trial."

24. What emerges from the decisions referred to above is that the inherent power to quash an FIR, though wide in amplitude, is a power to be exercised with restraint and only within judicially recognised limits. Quashing is the exception and not the rule. The court does not, at this stage, assess the reliability or genuineness of the allegations, weigh the evidence, or conduct what amounts to a mini-trial. Its inquiry is confined to whether, on a plain reading of the FIR, the allegations disclose a cognizable offence.

25. Nonetheless, the categories set out in the ***Bhajan Lal*** case serve as signposts for identifying cases in which the extraordinary jurisdiction may lawfully be invoked. Where the allegations are specific, the offences are cognisable, and the accusations are not inherently improbable on their face, the criminal process must ordinarily be permitted to run its course. The power to quash is not to be used to stifle a legitimate prosecution at the threshold, and the court must be careful to distinguish between cases that disclose no offence whatsoever and those where the complaint of the accused is, in substance, one going to the merits of the prosecution, a matter that belongs exclusively to the trial.

26. The fulcrum of the dispute in the Impugned FIR is that the petitioner is named as the principal accused in a scheme of financial fraud perpetrated through M/s Enchant Infrastructure Pvt. Ltd. and a chain of associated companies. To determine whether the contentions raised by the learned senior counsel on behalf of the petitioner are sustainable, it becomes necessary to examine the SFIO complaint and the Impugned FIR in juxtaposition.

27. To that end, an examination of the complaint filed by the SFIO before the Special Court, pursuant to its investigation, reveals that it was not limited to technical violations under the Act. The SFIO examined the entire architecture of the alleged fraud, i.e. the network of shell companies, the individual roles of the accused, and the criminal conspiracy that bound them together.

28. The SFIO complaint reveals that a sum of INR 610.30 crore is alleged to have been systematically routed through 84 accused entities under investigation, each a shell company with no genuine operational activity, for the purpose of acquiring land, real estate, and sugar mills, and channelling funds to the Abdul Waheed Educational and Charitable Trust.

29. It is noteworthy that M/s Enchant Infrastructure Private Limited, the vehicle through which the Complainant was allegedly defrauded, is named as an accused entity in the SFIO complaint. Further, the complaint is not confined to the Act alone; it invokes several provisions of the IPC in respect of the same accused persons and transactions of a similar nature.

30. Turning to the Impugned FIR, the excerpt of the relevant contents of the same is as under:

12.First Information contents (प्रथम सूचना तथ्य):

सेवा मे, श्रीमान अपर पुलिस अधीक्षक, एस0टी0एफ0 युनिट गौतमबुद्धनगर। महोदय, अवगत कराना है कि श्री नवेद अहमद पुत्र स्व शकील खान निवासी T-70, DDA फ्लैट, जसोला विहार, नई दिल्ली के प्रार्थना पत्र दिनांकित 04.09.2023 की जांच मुझ निरीक्षक सचिन कुमार द्वारा की गयी। जिसमे आवेदक नवेद द्वारा बताया गया कि वर्ष 2014 में उसकी जान पहचान मौ जावेद, विनोद कुमार, एवं सौरभ मुकुन्द नानक व्यक्ति से हुई थी। यह लोग M/S Enchant Infrastructure Pvt. Ltd के मालिक होना बताए थे। तथा यह भी बताया कि इनकी कम्पनी ने ग्रेटर नोएडा अथोरिटी एक प्लाट संख्या GH02D, सैक्टर 12, ग्रे0नो0 में कुल क्षेत्रफल 12500 वर्ग मीटर खरीदा हुआ है। उस प्लाट को विकसित करने के लिये बातचीत की बेस पर दोनो पक्ष सहमत हुए थे। इसके लिये एक एग्रीमैन्ट उसकी कम्पनी तथा इन लोगो की कम्पनी के बीच मे दिनांक 01.10.2014 को हुआ था। इस एग्रीमेन्ट पर अपनी कम्पनी की तरफ से उसने हस्ताक्षर किये थे तथा M/S Enchant Infrastructure Pvt. Ltd पर उनके Authorised व्यक्ति विनोद कुमार पुत्र श्री हेमचन्द निवासी भैसानी इस्लामपुर तहसील व जिला शामली द्वारा हस्ताक्षर किये गये थे। तथा गवाह के रुप में रविन्द्र कुमार पुत्र कर्तेराम निवासी ग्राम कोसीपुर, पोस्ट कम्बाह नगर जिला सहारनपुर व राहुल शर्मा निवासी 41/11, डबल स्टोरी मोदीनगर ने हस्ताक्षर किये थे। इस एग्रीमेन्ट के पूर्व उसकी कम्पनी द्वारा कम्पनी के खाते से M/S Enchant Infrastructure Pvt. Ltd के खाते में दिनांक 01.12.2013 से 04.03.2014 के मध्य 6,33,00000/- रुपये ट्रान्सफर किये थे। M/S Enchant Infrastructure Pvt. Ltd कम्पनी के लोग ग्रेनो एथोरिटी मे उक्त प्लाट की किश्त जमा नही कर रहे थे जिसके सम्बन्ध मे नवेद अहमद बार बार इस कम्पनी के उपरोक्त लोगो से बात कर रहा था। यह लोग झूठे बहाने व आश्वासन देते रहे। M/S Enchant Infrastructure Pvt. Ltd कम्पनी के पते बी-129, द्वितिय तल, निर्माण विहार दिल्ली पर भी इनका कोई आफिस नही था। इस पते पर जितेन्द्र कुमार शर्मा पुत्र MK शर्मा निवासी C-209, निर्माण विहार दिल्ली जो इस कम्पनी के सीए है का आफिस है। जितेन्द्र शर्मा के अलावा विकास शर्मा पुत्र मोहनलाल अग्रवाल निवासी पीपी निकुज, निकट माली गेट पुलिस चौकी, बेहट रोड सहारनपुर तथा दीपक गोयल पुत्र विश्वनाथ गोयल निवासी मन 8/4945/बी, लेन नम्बर 4ए, सम्राट विक्रम कालोनी चिलकाना रोड सहारनपुर मिलकर हाजी इकबाल के लिये फर्जी दस्तावेजों पर तथा डमी डायरेक्टर बनाकर शैल कम्पनियां रजिस्टर्ड कराते हैं तथा फर्जी बैलेन्स शीट बनाते हैं तथा ऐसी कम्पनियों के बैंक खाते खोलकर लोगों के साथ धोखाधडी करते हैं। यह सभी

लोग हाजी इकबाल के गैंग के लोग है, जो हाजी इकबाल के कहने पर धोखाधड़ी करते है तथा अपराध से अर्जित धन को आपस में बांटते हैं। यह भी बताया कि सौरभ मुकुन्द, मौ जफर, लईक अहमद, मौ जावेद, नसीम व दिलशाद ने उसको धमकाते हुए हाजी-इकबाल से बात कराई उसने धमकी भरे लहजे से कुछ समय और इन्तजार करने को कहा। परन्तु पिछले कुछ दिनों से इनके मोबाईल स्वीच आफ हो गये। ग्रेनो एथोरिटी से प्लाट की स्थिती के बारे में जानकारी की तो पता चला कि ग्रेनो एथोरिटी द्वारा अपने पत्रांकः-
ग्रेनो/बिल्डर्स/2022/7666 दिनांकित 23.08.2022 के माध्यम से उपरोक्त प्लाट का एलोटमैन्ट निरस्त कर दिया है। आवंटन रद्द करने का कारण शेष रुपया 29,30,05883/- को अदा न करना बताया गया है। जो अब बढकर काफी अधिक हो गया है उपरोक्त तथ्यों की मुझ निरीक्षक द्वारा जांच की गयी तो पाया कि M/S Enchant Infrastructure Pvt. Ltd कम्पनी में सौरभ मुकुन्द व सन्जुल भारद्वार वर्तमान में डायरेक्टर हैं इस कम्पनी मे पहले मौ जावेद पुत्र हाजी इकबाल भी डायरेक्टर था। जाच के दौरान दस्तावेज प्रस्तुत करने हेतु दिये गये नोटिस के विरुद्ध सौरभ मुकुन्द द्वारा माननीय उच्च न्यायालय इलाहाबाद मे क्रि मि रिट पिटीशन संख्या 53/2024 सौरभ मुकुन्द बनाम उप्र राज्य टायर की थी। जिसमे माननीय उच्च न्यायालय द्वारा नोटिस मे अपेक्षित सूचना उपलब्ध कराने एवं जांच मे सहयोग करने का आदेश पारित करते हुये निक्षेपित कर दिया गया। तत्पश्चात मुझ निरीक्षक द्वारा M/S Enchant Infrastructure Pvt. Ltd एवं अन्य कम्पनियों के सम्बन्ध मे जांच की गयी तो M/S Enchant Infrastructure Pvt. Ltd कम्पनी की शेयर होल्डिंग देखने पर सौरभ मुकुन्द के पास 5% तथा शेष 95% Mastiff Industries Pvt. Ltd के पास है। जब Mastiff Industries Pvt. Ltd की शेयर होल्डिंग देखते हैं तो इसमे मौ जफर एवं अवधेश कुमार डायरेक्टर हैं इस कम्पनी में 26.81% शेयर Net Agro Foods Pvt. Ltd कम्पनी पर तथा 73.19% शेयर VK HEALTH SOLUTIONS PRIVATE LIMITED के पास है। Net Agro Foods Pvt. Ltd कम्पनी मे डायरेक्टर सौरभ मुकुन्द, आनन्द कुमार राय एवं दिलशाद हैं। दिलशाद हाजी इकबाल का बहनोई है। VK HEALTH SOLUTIONS PRIVATE LIMITED कम्पनी में डायरेक्टर सौरभ मुकुन्द व इरशाद अहमद हैं। सौरभ मुकुन्द हाजी इकबाल का मेन कर्ता धर्ता है। हाजी इकबाल ने उसके नाम से 18 शैल कम्पनियां बना रखी हैं, जो जितेन्द्र कुमार (सीए) द्वारा बनाई गयी हैं। यह सभी कम्पनियां कूटरचित दस्तावेज एवं फर्जी पतो पर बनाई गयी हैं। इन कम्पनियों मे लोगो से धोखाधड़ी करके धन एकत्र किया गया है। तथा उस धन को घुमाकर हाजी इकबाल के ग्लोफल युनिवर्सिटी के खाते मे भेजा गया है। हाजी इकबाल उर्फ बाला पुत्र अब्दुल वहीद निवासी ग्राम मिर्जापुर पोल थाना मिर्जापुर जनपद सहारनपुर का हिस्ट्रीशीटर है, जिसने एक गैंग बनाकर फर्जी व कूटरचित दस्तावेज तथा पतों के आधार पर कम्पनियां पंजीकृत कराई हैं। तथा इन कम्पनियों मे डमी डायरेक्टर तथा कूटरचित दस्तावेज लगाकर विभिन्न व्यापारिक कार्य दिखाए हैं। तथा कम्पनी का प्रोफाईल बनाकर

लोगो को छल करने के लिये कूटरचित एग्रीमेन्ट आदि तैयार कराए हैं। तथा काफी लोगो से छल करने के उद्देश्य से धन प्राप्त किया है। तथा इन कम्पनियों के माध्यम से मनी लाड़िंग का कार्य किया गया है। जांच के दौरान यह भी जानकारी प्राप्त हुई कि हाजी इकबाल के विरुद्ध कई दर्जन मुकदमे विभिन्न थानों में दर्ज है, तथा वह वर्तमान में पुलिस से बचने के लिये विदेश भाग गया है। हाजी इकबाल ने अपने साथियों के साथ मिलकर सैकड़ों कम्पनियां इसी कार्य के लिये बनाई हुई हैं। हाजी इकबाल द्वारा अपने राजनैतिक रसूख एवं संगठित रूप से माफिया गठजोड़ का प्रयोग करके ग्रेटर नोएडा अथोरिटी एवं अन्य कई सरकारी विभागों से इन कम्पनियों के नाम जमीने आलाट कराई हैं। अपने प्रभाव का प्रयोग करके इन कम्पनियों में बेनाम सम्पत्ती खरीदी हुई है। ग्रेटर नोएडा अथोरिटी में भी ऐसी कम्पनियों के नाम कई प्लाट होने की जानकारी प्राप्त हुई है। इन प्लाटों को आलाट कराकर प्रारम्भिक अलाटमेन्ट राशी. जमा करके अथोरिटी के प्लाट होल्ड कर लिये जाते हैं। अथोरिटी को समय से उनकी किस्तों का भुगतान नही किया जाता है जिससे सरकार एवं अथोरिटी को भारी आर्थिक नुकसान होता है। अथोरिटी द्वारा ऐसे प्लाट का आवंटन निरस्त करने पर कम्पनियों एवं अन्य तथ्यों को छिपाते हुए गलत तथ्यों के आधार पर न्यायालय से स्थगन आदेश आदि प्राप्त किये जाते है। इस प्रकार इन लोगों द्वारा न केवल आम नागरिकों के साथ धोखाधड़ी की जा रही है बल्कि ग्रेनो अथोरिटी के साथ भी धोखाधड़ी की जा रही है। जिससे उसे भारी आर्थिक नुकसान हो रहा है एवं आम जन मे अथोरिटी एवं सरकार की छवि खराब हो रही है। इन लोगों द्वारा सैंकड़ो की संख्या में इस प्रकार कम्पनियां पंजीकृत कराकर रखी हुई है। ये कम्पनियों कूटरचित दस्तावेज जैसे- पते के लिये प्रमाण पत्र आदि का प्रयोग करके रजिस्टर्ड की गयी हैं। जिनमे फर्जी रूप से बैलेन्स शीट आदि तैयार करके इनके माध्यम से अपराध कारित किया जा रहा है हाजी इकबाल के पुत्र वाजिद अली, जावेद, अकबाल, एवं अलीशान उसके सहयोगी बहनोई दिलशाद, हाजी इकबाल का भांजा मो अली खान, हाजी इकबाल का भाई मो इनाम व महबूब अली तथा अन्य रिश्तेदार इन सभी कम्पनियो मे या तो सीधे लाभार्थी अथवा परोक्ष रूप से जुडकर लाभ प्राप्त कर रहे है। यह सभी इन कम्पनियों को अपने गैंग के सदस्यों के साथ मिलकर कूटरचित दस्तावेजों के आधार पर पंजीकृत कराते है। जिसमे प्रमुख रूप से सौरभ मुकुन्द, सन्जुल भारद्वाज, आनन्द कुमार राय, हाजी इकबाल का के पार्टनर लईक अहमद व इरशाद, तथा इनकी कम्पनियों में हिसाब किताब रखने वाले सीए विकास शर्मा पुत्र मोहनलाल अग्रवाल निवासी पीपी निकुंज, निकट माली गेट पुलिस चौकी, बेहट रोड सहारनपुर, दीपक गोयल पुत्र विश्वनाथ गोयल निवासी मन 8/4945/बी, लेन नम्बर 4ए, सम्राट विक्रम कालोनी चिलकाना रोड सहारनपुर तथा अन्य सहयोगी है। प्रकरण में प्रसंगत कम्पनी M/S Enchant Infrastructure Pvt. Ltd के नाम से उपरोक्त व्यक्तियों द्वारा ग्रेटर नोएडा अथोरिटी से भूखण्ड संख्या GH02, सैक्टर 12 मे 12500 वर्ग मीटर आना क्षेत्र इकोटेक-3 प्लॉट आवंटित कराया गया था। जबकि उपरोक्त कम्पनी एक शैल कम्पनी मात्र थी जिसके

I.I.F.-I (एकीकृत जाँच फा

नाम से आवासीय उद्देश्य से फ्लैट बनाने के लिये आवंटन किया जाना उचित नही था। किसी कम्पनी को प्लाट आवंटित किये जाने से पूर्व ग्रेटर नोएडा अथोरिटी को युक्त युक्त जानकारी एकत्र करनी चाहिये थी। जिसमे ग्रेनो अथोरिटी की संलिप्तता की जांच भी आवश्यक है। इसके अलावा हाजी इकबाल के प्रभाव से और कितने प्लाट अथोरिटी द्वारा शैल कम्पनियों के नाम आवंटित किये गये हैं। ऐसे बेनामी प्लाटों के सम्बन्ध में भी जांच किया जाना आवश्यक है। उक्त प्लाट के आवंटन को निरस्त किये जाने के विरुद्ध माननीय उच्च न्यायालय मे स्टे दिखाकर अन्य कई लोगों से धोखाधड़ी करने के वर्तमान में भी प्रयास किये जाने के साक्ष्य प्राप्त हुए हैं। आवेदक श्री नवेद अहमद उपरोक्त प्रकरण मे प्रभावित एवं पीडित मे से मात्र एक व्यक्ति है, जबकि इस प्रकार के अपराध से कई अन्य व्यक्ति एवं संस्थाएं प्रभावित एवं पीडित हुई हैं। जिसके सम्बन्ध मे अपराध पंजीकृत कर विस्तृत विवेचना किया जाना आवश्यक है। अतः महोदय से निवेदन है कि प्रकरण से सम्बन्धित अपराध को थाना इकोटेक-3 में पंजीकृत कर विस्तृत विवेचना किये जाने हेतु आवश्यक पत्राचार करने की कृपा करें। सुलभ संदर्भ हेतु हाजी इकबाल का अपराधिक इतिहास एवं क्रिमिनल मिस रिट पिटीशन नं0 53/2024 की प्रति संलग्न है। ह0 अंग्रेजी अपठित 17/10/24 (सचिन कुमार) निरीक्षक एसटीएफ यूनिट गौतमबुद्धनगर ..... नोट- मै म0का0 1817 भारती प्रमाणित करती हूँ कि तहरीर कि नकल मेरे द्वारा बोलबोलकर शब्द व शब्द कम्प्यूटर पर म0का0 2497 प्रियंका से अलावा तकनीकी त्रुटि के टंकण करायी गयी है।

31. The perusal of the Impugned FIR discloses that the petitioner does not appear in the records of M/s Enchant as a director or shareholder. His alleged role, as the FIR narrates, is of a person who conceived and drove the fraudulent scheme through associates and front companies while remaining distanced from them on paper.

32. The petitioner s connection to M/s Enchant is alleged through Saurabh Mukund, who holds 5% shareholding in M/s Enchant and is described in the FIR as the petitioner s principal associate in the scheme. Dilshad, who is stated to be the petitioner s brother-in-law and a co-accused, is similarly linked to the network of companies through which investor funds were collected and diverted. The FIR proceeds on the basis that these persons acted as the visible face of the scheme while the petitioner remained its driving force.

33. The FIR further discloses the upstream ownership of M/s Enchant. The remaining 95% of its shares, beyond Saurabh Mukund s 5%, vests in Mastiff Industries Pvt. Ltd., whose shareholding is in turn divided between Net AgroFoods Pvt. Ltd. at 26.81% and VK Health Solutions Pvt. Ltd. at 73.19%. Dilshad is a director of Net AgroFoods Pvt. Ltd., and Saurabh Mukund holds a directorial position in VK Health Solutions Pvt. Ltd. The corporate chain thus leads from M/s Enchant upward through Mastiff to companies alleged to be controlled by the petitioner s own associates.

34. The Complainant invested INR 6,33,00,000/- in M/s Enchant under an agreement for the development of a plot, which was cancelled, and this is but one instance of the fraud alleged against the petitioner. The FIR, more broadly, alleges that the petitioner incorporated multiple companies using fabricated documents and fictitious directors to collect investor funds. The investigation has further revealed that these funds were channelled to the same Trust of which the petitioner is the Chairman, as disclosed in the SFIO complaint.

35. The SFIO complaint and the Impugned FIR, when read together, disclose a degree of congruence that is material to the adjudication of the present petition. The petitioner is arrayed as Accused No. 1 in the SFIO complaint and is specifically identified as the directing will and mind of the entire group s operations. The said excerpt of the SFIO complaint reads as under:

"Para 24:

Accused No. 1, his family members, associates, professionals jointly and severally through their various illegal acts have been able to create an empire, which consists of a core group of high net worth companies controlling smaller companies having land as an asset and a Trust controlling Glocal University. It is submitted that the Trust was primarily created as a vehicle for channelizing their own unaccounted money and for creating a fa ade of respectability by running educational institutions and promoting social cause. Accused No. 1 comes out as the directing will and mind of the entire operations and piercing of the corporate veil would reveal his active participation in the large scale laundering indulged by the group and creation of agriculture land bank and real estate.

Para 25:

The key outcome of the investigation carried out by the Complainant is that the unaccounted money amassed through the mining operations were through a devious pre planned strategy converted into a set of assets consisting of:

i. Large tract of agriculture land held through accused entities

ii. Closed sugar mills acquired from UPCGVNL at a throw away price, which came with a land bank of 234.76 hectare.

iii. Majority shareholding in a set of companies which are in the business of real estate and construction.

iv. Abdul Waheed Educational and Charitable Trust under whose aegis Glocal University has been set up under a State legislation. In a short period of three financial years, the balance sheet of the Trust grew from Rs. 60.39 Crore to Rs. 171.46 Crore as on 31.03.2015."

36. M/s Enchant Infrastructure Private Limited is the very company at the centre of the Impugned FIR, and it is also named as an accused entity in the SFIO complaint. The SFIO complaint records that the petitioner s group operated through an extensive network of accused entities, spanning seven identified clusters, to accumulate and launder funds across activities ranging from fictitious share allotments to the acquisition of land, real estate, and sugar mills.

37. The convergence is not confined to M/s Enchant alone. The Impugned FIR traces the corporate ownership of M/s Enchant through Mastiff Industries Pvt. Ltd., Net AgroFoods Pvt. Ltd. and VK Health Solutions Pvt. Ltd. All three entities are already named in the SFIO complaint, with Mastiff Industries appearing as Opposite Party No. 95, Net AgroFoods as Opposite Party No. 97

and VK Health Solutions as Opposite Party No. 98. Each company in the chain identified in the Impugned FIR as a conduit for the alleged fraud is therefore already an accused entity in the proceedings before the Special Court.

38. The legal provisions invoked in both proceedings also point in the same direction. The SFIO complaint, in its prayer, invokes IPC Sections 406, 420, 468, 471 and 477-A, inter alia, read with Section 120-B IPC, in addition to provisions of the Act. The core provisions under which the Impugned FIR stands registered are, to a substantial extent, the same. In pursuing the present investigation, the STF does not venture into any legal territory that the SFIO has not already covered.

39. In this context, it is crystal clear that the Impugned FIR names the petitioner in connection with the same companies, and the same alleged modus operandi that form the subject matter of the SFIO complaint pending before the Special Court. The offences invoked are, to a substantial extent, those already charged in the SFIO complaint in connection with the accused entities and the transactions under inquiry.

40. Since the basis for filing the instant petition is the pendency of the SFIO complaint of a similar nature before the appropriate authority, we deem it appropriate to discuss aspects of the statutory framework governing the SFIO s investigative mandate, as they have a direct impact on the adjudication of the instant case.

41. The Companies Act, 2013 established the SFIO as a body of specialists with expertise in banking, forensic audit, capital markets, taxation and law. Section 447 of the Act, which defines fraud in wide terms, covers the very conduct alleged in the Impugned FIR. The investigation of such fraud demands expertise that ordinary police investigation cannot be expected to bring.

42. Section 212(2) of the Act addresses this directly. Where the Central Government assigns investigation to the SFIO, no other investigating agency shall proceed further, and all relevant documents shall stand transferred. As held in **SFIO v. Rahul Modi**, upon such assignment, the original agencies are completely divested of jurisdiction, and the transfer is irrevocable. The relevant part reads as under:

"33. The very expression 'assign' in Section 212(3) of the 2013 Act contemplates transfer of investigation for all purposes whereafter the original investigating agencies of the Central Government or any State Government are completely denuded of any power to conduct and complete the investigation in respect of the offences contemplated therein. The idea under sub-section (2) is complete transfer of investigation. The transfer under sub-section (2) of Section 213 would not stand revoked or recalled in any contingency. If a time-limit is construed and contemplated within which the investigation must be completed then logically, the provisions would have dealt with as to what must happen if the time-limit is not adhered to. The statute must also have contemplated a situation that a valid investigation undertaken by any investigating agency of the Central Government or the State Government which was transferred to SFIO, must then be retransferred to the said investigating agencies. But the statute does not contemplate that. The transfer is irrevocable and cannot be recalled in any manner. Once assigned, SFIO continues to

have the power to conduct and complete investigation. If that be so, can such power stand curtailed or diminished if the investigation is not completed within a particular period. The statute has not prescribed any period for completion of investigation."

43. It is also pertinent to note that the SFIO's jurisdiction is not confined to violations under the Companies Act alone. Once a transaction is assigned to the SFIO for investigation, its authority extends to all offences arising from that transaction, including those under the IPC.

44. Section 212(15) of the Act further reinforces the position. The SFIO s investigation report filed before the Special Court shall be deemed a police report under Section 173 CrPC. The SFIO therefore stands in the shoes of a police officer for all purposes of trial, including for IPC offences.

45. Section 212(17) of the Act does not, in our view, preserve any concurrent right of investigation by other agencies. The subsection provides for inter-agency sharing of information and documents. It does not reopen what Section 212(2) has closed.

46. Notwithstanding the foregoing, there is one material distinction between the SFIO complaint and the Impugned FIR. The SFIO complaint, as filed before the Special Court, does not specifically examine the transaction attributed to the complainant in respect of Plot.

47. The FIR, by contrast, is centrally concerned with this transaction. The Complainant invested INR 6,33,00,000/- in M/s Enchant for the development of Plot GH-02-D; the allotment was subsequently cancelled, and the funds were never returned. The Impugned FIR is therefore the only proceeding that seeks to bring this transaction within the ambit of criminal inquiry, and the Complainant has no recourse outside of it.

48. Applying the settled position of law to the facts of the instant case, we are of the considered view that the present case does not warrant quashing of the FIR in its entirety. We say so because the allegations in the Impugned FIR are specific, the complainant s loss has been quantified and the transaction is identifiable. More importantly, the Complainant s grievance finds no place in the SFIO Complaint. To quash the Impugned FIR would leave him without any remedy for a loss of his hard-earned money.

49. We have also considered whether the judgment rendered by the learned Single Bench of the Delhi High Court in the case of ***Ashish Bhalla v. State*** can come to the petitioner s rescue. However, the facts in the said case were materially different as the complainant before the SFIO and the EOW were one and the same person, and the two complaints were verbatim copies of each other.

50. Notably, in the abovementioned case, the complainant himself acknowledged in his complaint to the EOW that the nature of the offences warranted investigation only by a specialised expert agency. The Delhi High Court found the FIR to be a deliberate act of forum shopping, filed with an ulterior motive against the accused. On the contrary, in the instant case, the Complainant is not the person who triggered the SFIO proceedings, and the transaction forming the subject matter of the Impugned FIR does not find a place in the SFIO complaint.

51. Crucially, in ***Ashish Bhalla***, the learned Single Judge not only transferred the proceedings to the SFIO but also quashed the FIR. That twin relief was granted because the same complainant had approached two agencies with verbatim complaints on identical facts. The present case stands on an altogether different footing.

52. Be that as it may, the power to quash an FIR is one that courts exercise with circumspection. The allegations in the Impugned FIR, taken at face value, disclose the commission of cognizable offences under Sections 406, 420 and 120-B of the IPC. The transaction forming the basis of the Impugned FIR is specific, the amount involved is ascertainable, and the complainant is identifiable. There is no ground on which the investigation can be foreclosed at the threshold.

53. Reverting to the question of relief, the prayer sought by the petitioner is the outright quashing of the Impugned FIR. As this Court has noted, the Complainant has no avenue of redress outside of this proceeding in respect of the transaction already referred to above. Acceding to the prayer for quashing would leave the Complainant remediless.

54. However, the refusal to quash does not, in this Court s view, fully address the situation at hand. While it is true that the Complainant has suffered a specific loss as part of the alleged fraud, it is also true that the said fraud is a part of a series of activities spanning multiple entities and is already under the SFIO s examination. Therefore, transferring the Complainant s grievance to the SFIO is the viable course that reconciles his right to an effective remedy while preventing the multiplicity of proceedings.

55. In this regard, admittedly, the SFIO has already completed its investigation, thereafter submitted the complaint, and the Special Judge has taken cognisance; however, the said factum does not exhaust the agency s investigative mandate. Section 193(9) of the BNSS expressly provides that nothing therein shall be deemed to preclude further investigation after a report has been forwarded to the Magistrate, and that further evidence, whether oral or documentary, may be collected and placed before him.

56. We are conscious that the power to transfer investigation to another agency is an extraordinary power, to be exercised sparingly and only in exceptional circumstances. However, where the same scheme of fraud is already under investigation by a specialised agency, entrusting one strand of it to a general law enforcement agency does not serve the interests of either party. The Complainant requires a thorough, expert inquiry into his specific grievance. The petitioner requires an investigation that does not fragment or contradict the findings already placed before the Special Court.

57. In the facts and circumstances of this case, therefore, transfer of investigation in the Impugned FIR qua the petitioner herein to the SFIO is the course that best serves the ends of justice for both parties. It preserves the integrity of the broader inquiry, avoids the risk of conflicting outcomes, and ensures that the Complainant s grievance is addressed within the framework of an investigation that already encompasses the scheme of which it forms a part.

58. The preceding discussion has produced two findings that together determine the appropriate relief. This Court has declined to quash the Impugned FIR, for the Complainant s grievance regarding the Plot GH-02-D transaction finds no other forum. At the same time, permitting the STF to continue a parallel investigation into the same corporate network already before the Special Court would fragment what is, in substance, a single and indivisible scheme of fraud.

59. The transfer of the investigation to the SFIO, however, is a relief the petitioner has not prayed for. The petition seeks only quashing and nothing beyond. This Court is nonetheless empowered to grant such relief as the facts of the case demand, and the jurisdiction under Article 226 is not limited to the prayer as framed.

60. In exercise of that jurisdiction, this Court directs the transfer of the investigation in the Impugned FIR qua the petitioner to the SFIO, which is the agency already seized of the broader fraud of which it forms a part.

61. In view of the foregoing discussion, the writ petition is **disposed** of in the following terms.

i) The prayer for quashing the Impugned FIR in entirety is rejected. The investigation under the Impugned FIR qua petitioner shall, however, stand transferred to the Serious Fraud Investigation Office with immediate effect;

ii) The STF shall forthwith transmit the case diary, all statements recorded, documents seized or collected, electronic records and any other investigative material gathered in connection with the Impugned FIR qua petitioner to the SFIO;

iii) The SFIO shall treat the material so transmitted as forming part of its ongoing investigation and shall investigate the allegations arising from the Plot GH-02-D transaction of the Complainant as further investigation within the meaning of Section 193(9) of the BNSS. Upon completion, the SFIO shall be at liberty to file a supplementary complaint before the Special Court, if the investigation so warrants, in accordance with Section 212(15) of the Companies Act, 2013; and

iv) The Special Court, New Delhi, before which the original SFIO complaint is pending, shall be informed of this order.

62. At last, we may hasten to add that ordinarily, investigation by the SFIO is initiated pursuant to an assignment order of the Central Government under Section 212(1) of the Act. In the present case, however, the SFIO's investigation against the petitioner was already sanctioned by the Central Government pursuant to the orders passed by the Supreme Court. This order does not constitute a fresh assignment but merely extends the scope of an ongoing inquiry. No fresh sanction is therefore required.

63. Ordered Accordingly.

64. All interim orders passed during the pendency of this writ petition shall stand vacated.

65. The pending applications, if any, stand disposed of.

(2026) 7 ILRA 2243
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.07.2026

BEFORE

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

Crl. Misc. Writ Petition No. 2821 of 2026

Devendra Pratap Singh @ Rahul Farzi...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issues for Consideration

(i) Whether, in a Commissionerate, approval of a gang chart by the Commissioner of Police on independent endorsements of the sponsoring officers, without discussion in a joint meeting between the Commissioner of Police and the Deputy Commissioner of Police, satisfies the mandatory requirement of Rule 5(3)(a) of the U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021?

(ii) Whether approval of a gang chart showing the petitioners to be in jail, when they had already been admitted to bail, vitiates the satisfaction of the approving authority for non-application of mind?

Headnotes

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 --- S. 2/3(1) --- U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 --- R. 5(3)(a) --- Commissionerate system --- Approval of gang chart --- Joint meeting between Commissioner of Police and Deputy Commissioner of Police mandatory.

HELD: In cities governed by the Commissionerate system, the Commissioner of Police exercises the powers of approval otherwise vested in the District Magistrate, and the Deputy Commissioner of Police heading a police district is in the position of the Senior Superintendent of Police/Superintendent of Police; the consultation under Rule 5(3)(a) has to be held in a joint meeting between the Commissioner of Police and the Deputy Commissioner of Police representing the police district concerned. Where the Deputy Commissioner of Police recommended and the Commissioner of Police approved the gang chart by independent endorsements on the same date, and there is no mention of any of the sponsoring and approving officers sitting together in a joint meeting, the approval falls foul of the mandatory requirement of Rule 5(3)(a); this infirmity runs across all the writ petitions arising from the common gang chart. [Paras 3-6, 9, 18]

U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 --- Rr. 8, 16(1), (2), (3), 11(2) --- Gang chart showing accused in jail though already on bail --- False information --- Non-application of mind --- Solitary base case --- S. 2(b) of the Act.

HELD: Where Column 8 of the gang chart showed the petitioners to be in jail, though bail orders passed by the High Court and the Sessions Judge prior to the date of the gang chart were on record, the information was incorrect and false, vitiating the satisfaction of the approving authority; a man on bail being regarded as one in jail betrays utter lack of application of mind by the sponsoring authorities and the Commissioner of Police, in violation of Rules 8 and 16(1), (2) and (3). A solitary base case in which the petitioner is on bail may not, by itself, show him to be a member of a gang within the meaning of Section 2(b) of the Act. There was no violation of Rule 11(2), as the gang chart showed the status of all the accused in the eighth column. [Paras 7-9, 11-18]

Writ petitions allowed; FIR dated 19.11.2025, Case Crime No. 186 of 2025, quashed. Chief Judicial Magistrate, Prayagraj directed to cause an entry in red ink in the General Diary of Police Station Shivkuti. (E-14)

Case Law Cited

Sanni Mishra alias Sanjayan Kumar Mishra v. State of U.P. and others, 2023 SCC OnLine All 2975 : 2024 (1) ADJ 231 (DB) --- relied on; *Vinod Bihari Lal v. State of Uttar Pradesh and another*, 2025 SCC OnLine SC 1216 --- relied on.

List of Acts / Statutes

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986; U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021; Bharatiya Nyaya Sanhita, 2023; Indian Penal Code, 1860.

List of Keywords

Gang chart; Joint meeting; Rule 5(3)(a); Commissionerate system; Commissioner of Police; Deputy Commissioner of Police; Non-application of mind; False information; Bail; Solitary base case; Quashing of FIR.

Case Arising From

First Information Report dated 19.11.2025, registered on the basis of gang chart dated 18.11.2025, giving rise to Case Crime No. 186 of 2025, under Section 2/3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station Shivkuti, District Prayagraj.

Appearance for Parties

For the Petitioner(s): Umar Zamin, Manoj Kumar Singh (in the leading case and Criminal Misc. Writ Petition Nos. 29559 of 2025 and 677 of 2026); Sanjay Pathak (in Criminal Misc. Writ Petition No. 28311 of 2025).

For the Respondent(s): Shashi Shekhar Tiwari, Additional Government Advocate; Kamlesh Kumar Nishad, State Law Officer; Deepakh Kapoor, Additional Government Advocate; Virendra Kumar Shukla, State Law Officer.

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

This writ petition and the connected writ petitions shall be decided by this common judgment. All the writ petitions are directed against the same First Information Report registered on the basis of the same gang chart drawn up under the provisions of the Uttar Pradesh Gangsters and Anti-

Social Activities (Prevention) Act, 1986. The FIR, that is under challenge here and in the connected matters, has given rise to Crime No. 186 of 2025 under Section 2/3(1) of the UP Gangsters Act, Police Station Shivkuti, District Prayagraj. This writ petition shall be treated as the leading case.

2. Heard Mr. Umar Zamin along with Mr. Manoj Kumar Singh, learned Counsel for the petitioners in the leading case and connected Criminal Misc. Writ Petitions Nos. 29559 of 2025 and 677 of 2026; and Mr. Sanjay Pathak, learned Counsel for the petitioner in connected Criminal Misc. Writ Petition No. 28311 of 2025. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, has been heard on behalf of the State in the leading case, Mr. Kamlesh Kumar Nishad, learned State Law Officer, in Criminal Misc. Writ Petition No. 29559 of 2025, Mr. Deepakh Kapoor, learned Additional Government Advocate, in Criminal Misc. Writ Petition No. 677 of 2026, and Mr. Virendra Kumar Shukla, learned State Law Officer, in Criminal Misc. Writ Petition No. 28311 of 2025, all on behalf of the State.

3. The short point, that has been argued by learned Counsel for the petitioner, is that the gang chart dated 18.11.2025, on the foot of which the impugned FIR has been registered, ex facie shows that there was no joint meeting between the Commissioner of Police and the Deputy Commissioner of Police, which is mandatory under Rule 5(3)(a) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021. Rule 5 of the UP Gangsters Rules reads :

Rule - 5. General Rules.

(1) To initiate proceedings under this Act, the concerned Incharge of Police Station/Station House Officer/Inspector shall prepare a gang-chart mentioning the details of criminal activities of the gang.

(2) The gang-chart will be presented to the district head of police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the said gang.

(3) The following provisions shall be complied with in respect of gang-charts

(a) The gang-chart will not be approved summarily but after due discussion in a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police.

(b) There may be no gang of one person but there may be a gang of known and other unknown persons and in that form the gang-chart may be approved as per these rules.

(c) The gang-chart shall not mention those cases in which acquittal has been granted by the Special Court or in which the final report has been filed after the investigation. However, the gang-chart shall not be approved without the completion of investigation of the base case.

(d) Those cases shall not be mentioned in the gang-chart, on the basis of which action has already been taken once under this Act.

(e) A separate list of criminal history, as given in Form No.4, shall be attached with the gang-chart detailing all the criminal activities of that gang and mentioning all the criminal cases, even if acquittal has been granted in those cases or even where final report has been submitted in the absence of evidence.

Along with the above, a certified copy of the gang register kept at the police station shall also be attached with the gang-chart. In addition to the above, the information of crime and gang

members mentioned in the gang-chart will also be updated on Interoperable Criminal Justice System (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

4. Now, in a case of a separation district, where the police powers are vested in the Senior Superintendent of Police or the Superintendent of Police, and powers of the Executive Magistrate of the district in the District Magistrate, a joint meeting has to be held between the District Magistrate and the Senior Superintendent of Police or the Superintendent of Police, as the case may be. In cities governed by the Commissionerate system, the Commissioner of Police exercises the powers of approval, otherwise vested in the District Magistrate, and the proposal has to come from the Deputy Commissioner of Police, who is in the position of the Superintendent of Police. This is so because in each Commissionerate, there are one or more police districts. Every police district is headed by a police officer of the rank of the Deputy Commissioner of Police, who would, for all purposes of the law, in relation to his police district, be the head thereof. He would, therefore, be in the position of a Senior Superintendent of Police or a Superintendent of Police, as the case may be. The final powers of approval being vested in the Commissioner of Police, the consultation has to be held in a joint meeting by virtue of Rule 5(3)(a) of the UP Gangsters Rules, between the Commissioner of Police and the Deputy Commissioner of Police representing the police district concerned.

5. Upon a perusal of the gang chart here, what we find is that both the officers, that is to say, the Commissioner of Police, Prayagraj, and the Deputy Commissioner of Police, Nagar, Commissionerate Prayagraj have made independent endorsements, the latter recommending proceedings and the former approving them, both on 18.11.2025, but not in a joint meeting. Apparently, there was no discussion in a joint meeting between the Commissioner of Police and the Deputy Commissioner of Police, which makes the approval of the gang chart fall foul of the mandatory requirements of Rule 5(3)(a) of the UP Gangsters Rules.

6. We may note that there is, between the Deputy Commissioner of Police's proposal and the Commissioner of Police's acceptance, also a recommendation made by the Additional Commissioner of Police, Commissionerate Prayagraj. Apparently, the Additional Commissioner of Police is not the head of a district. Even if he is, a perusal of the endorsement on the gang chart shows that right from the Assistant Commissioner of Police, who is the first officer of the police sponsoring the registration of a case under the UP Gangsters Act, the Deputy Commissioner of Police, the Additional Commissioner of Police and the acceptance of the proposal by the Commissioner of Police, there is no mention of any of the officers, sponsoring and accepting, sitting together in a joint meeting, to take a decision, which is the spirit of Rule 5(3)(a) of the UP Gangsters Rules.

7. There is no violation of Rule 11(2) of the UP Gangsters Rules, inasmuch as the gang chart clearly shows in the eight column, status of all the accused, including the petitioners, indicating them to be in jail. However, so far as Rule 8(2) of the Rules aforesaid is concerned, which requires that no unconfirmed or false information shall be entered in the gang chart, it must be mentioned that the status of Devendra Pratap Singh, the petitioner in the present writ petition, shown in the eight column as one in jail, is incorrect. The gang chart is dated 18.11.2025, whereas, in Case Crime No. 182 of 2024, under Sections 103(1), 190, 191(2), 351(3) of the Bharatiya Nyaya

Sanhita, 2023, Police Station Shivkuti, District Nagar (Commissionerate Prayagraj), the petitioner has been admitted to bail by an order of this Court dated 25.09.2025. A copy of the order dated 25.09.2025 passed by this Court in Case Crime No. 182 of 2024 (supra), is on record, which we have perused. We are, therefore, of opinion that the information in the gang chart about the petitioner being in jail in connection with the said crime is incorrect and false, vitiating the satisfaction of the authority who has approved the gang chart.

8. Even otherwise, so far as petitioner Devendra Pratap Singh is concerned, he is challaned under the UP Gangsters Act on the basis of a solitary base case, where he is on bail, which may not, by itself, show him to be a member of a gang within the meaning of Section 2(b) of the UP Gangsters Act. Though the date of the charge sheet in Case Crime No. 182 of 2024 (supra) is mentioned in the relevant column, the fact that the sponsoring authority of the Police, particularly the Deputy Commissioner of Police, is in-charge of the district and also the Additional Commissioner of Police, who agreed with the proposal to institute proceedings under the UP Gangsters Act, have not considered the fact that the petitioner was on bail on the date they recommended institution of proceedings or approved the gang chart, shows that it has been done without application of mind to the documents and records annexed. Non application of mind would clearly render the gang chart fall foul of Rule 16(3) of the UP Gangsters Rules.

9. A man on bail, granted by this Court, has been regarded as one in jail, while approving the gang chart, betrays utter lack of application of mind. There is thus a clear violation of Rules 5(3)(a), 8(2), and 16(1), (2), and (3) of the UP Gangsters Rules, rendering the detention bad, in the case of the leading writ petition. A violation of Rule 5(3)(a) across all the connected matters in noticeable. Reliance in this connection may be placed upon the Bench decision of this Court in **Sanni Mishra alias Sanjayan Kumar Mishra v. State of U.P. and others**, where it was held :

19. This court is also of the view that while forwarding and approving the gang-chart, it is the duty of the competent authorities to see whether gang-chart has been prepared as per the Gangster Rules, 2021 and all the formalities as required by the Gangster Rules, 2021 have been fulfilled. If from the record, it appears that competent authorities forwarded or approved the gang-chart without looking into the facts that the gang-chart was itself not prepared as per the Gangster Rules, 2021, then this fact will itself amount to non-application of independent mind on the part of competent authority.

21. Above facts also show that District Magistrate Gorakhpur while approving the gang-chart did not hold any discussion in a joint meeting with SSP Gorakhpur as required by Rule 5(3)(a) of the Gangster Rules, 2021, though the same is mandatory before approving the gang-chart. Therefore there is a clear violation of Rule 5(3) of the Gangster Rules, 2021.

22. In view of the above, this court lays down following directions for preparation of gang-chart before lodging FIR under the Gangster Act, 1986:

(i) Date of filing of chargesheet under base case must be mentioned in Column-6 of the gang-chart except in cases under Rule 22(2) of the Gangster Rules, 2021.

(ii) While forwarding or approving the gang-chart, competent authorities must record their required satisfaction by writing in clear words, not by signing the printed/typed satisfaction.

(iii) There must be material available for the perusal of the court which shows that the District Magistrate before approving the gang-chart had conducted a joint meeting with the District Police Chief and held a due discussion for invocation of the Gangster Act, 1986.

10. Likewise, in **Vinod Bihari Lal v. State of Uttar Pradesh and another**, it has been held by the Supreme Court :

44. Rule 5(3)(a) stipulates that a gang chart shall be approved only after due discussion in a joint meeting comprising the District Magistrate, Commissioner of Police, Senior Superintendent of Police, Superintendent of Police, and not through a summary process.

45. In the present case, there is nothing on record, even upon a microscopic examination, to indicate that a joint meeting was held prior to approval of the gang-chart. It is apparent that the gang-chart was approved summarily, without any discussion. It was forwarded and approved swiftly, without regard for compliance with the relevant rules. The compliance with Rule 5(3)(a) ought to be evident through the record of minutes of the joint meeting maintained in a register by the District Magistrate.

46. Further, Rule 16 mandates that the Additional Superintendent of Police shall forward the letter, alongwith a recommendation on the gang-chart, to the Superintendent of Police/Senior Superintendent of Police only upon being satisfied that there exists a just and satisfactory grounds to pursue the case. The Additional Superintendent of Police is required to record his recommendation in clear words. It is further incumbent upon the Superintendent of Police/Senior Superintendent of Police to thoroughly analyze all the facts, and only upon being satisfied that all the requirements under the Act are fulfilled and that grounds for taking action exists, he should forward the gang-chart to the Commissioner of Police/District Magistrate. The Superintendent of Police/Senior Superintendent of Police must also record his satisfaction not only qua the particulars of the case but also the grounds to proceed under the Act of 1986.

47. Furthermore, upon receipt of the gang chart along with all the requisite forms, the Commissioner of Police/District Magistrate is required to thoroughly examine all the facts afresh and, only upon being satisfied that sufficient grounds exist to proceed, may approve the gang chart. The recorded satisfaction must clearly reflect that the Commissioner of Police/District Magistrate has scrutinized the gang-chart and the accompanying forms in light of the evidence annexed thereto.

48. Once again we are anguished that not only there is no material on record to indicate communication of the satisfaction of the Additional Superintendent of Police, Senior Superintendent of Police and the District Magistrate, but also there is no mention as to on which particular date the gang-chart was forwarded by the Additional Superintendent of Police to the Senior Superintendent of Police, and thereafter, to the District Magistrate for approval.

49. Rule 17 mandates that the competent authority must exercise its independent mind while forwarding the gang-chart. It unequivocally prohibits the use of pre-printed gang-charts, thereby making it impermissible for the authority to mechanically affix its signature. The underlying objective of this prohibition is to ensure that the competent authority undertakes a conscious and reasoned application of mind, rather than merely endorsing a pre-prepared document. Such a safeguard is integral to preserving the procedural sanctity of the law and preventing arbitrary or perfunctory approvals that may adversely affect the rights and liberties of individuals.

.....

54. An independent application of mind cannot be presumed unless it is demonstrable from the record that the approving authority has, in letter and spirit, independently considered all the materials that culminated in the preparation and placement of the gang chart before him. While the correctness of such application of mind may lie beyond the scope of judicial scrutiny, the absence thereof certainly does not. A mechanical or routine exercise of power by the recommending, forwarding, and approving authorities respectively is impermissible, as it directly impinges upon the liberty of citizens.

11. In connected Criminal Misc. Writ Petition No. 29559 of 2025, the two petitioners, Atul Pratap Singh and Durgesh Kumar Singh, are shown to be in jail in the two crimes, to wit, Case Crime No. 182 of 2024 (supra) and Case Crime No. 11 of 2022, under Sections 147, 148, 149, 308 and 506 of the Indian Penal Code, 1860, Police Station Sukhpura, District Ballia. In the first mentioned crime, the petitioner was granted bail on 13.10.2025, but in the gang chart dated 18.11.2025, he has been shown to be in jail.

12. Likewise, in Case Crime No. 11 of 2022 (supra), the petitioner, Atul Pratap Singh, was enlarged on bail on 03.02.2022, but in the gang chart, the petitioner, who has been shown to be the gang leader, is indicated in Column 8 to be in jail. Both these information are incorrect and approval of the gang chart, on the basis of this incorrect information, without looking into the record, shows utter non application of application of mind of law, violating Rules 8(3) and 16(1), (2), and (3) of the UP Gangsters Rules.

13. We may add here that both the bail orders dated 13.10.2025 and 03.02.2022 are on record which we have perused. The order dated 13.10.2025 has been passed by this Court, whereas the order dated 03.02.2022 has been passed by the learned Session Judge, Ballia. Unfortunately, these records were not perused either by the sponsoring authorities of the Police or the approving authority i.e. the Commissioner of Police, and they went, by an incorrect information entered in the gang chart that the first petitioner was in jail.

14. So far as the second petitioner in Criminal Misc. Writ Petition No. 29559 of 2025 is concerned, that is to say, Durgesh Kumar Singh, we notice that there is a solitary base case against him, that is to say, Case Crime No. 182 of 2024 (supra). He is shown to be in jail in Column 8 of the gang chart, in connection with the crime. He has been admitted to bail by this Court on 29.10.2025. We have perused the copy of the bail order which is on record. This shows that the gang chart has been approved without looking into the accompanying documents and without application of mind. Therefore, all that is said about violation of Rules 8(3) and 16(1), (2), and (3) in the leading case applies to this case as well.

15. This takes us to the next case i.e. Criminal Misc. Writ Petition No. 677 of 2026, and the two petitioners here are Ajay Yadav and Pushpendra Singh. A perusal of the gang chart shows that Ajay Yadav, who is at Serial No. 3 of the chart, has been shown to be in jail in Column 8 in connection with Case Crime No. 182 of 2024 (supra) as well as Case Crime No. 11 of 2022 (supra). We find that so far as petitioner no. 1 is concerned, he has been admitted to bail in Case Crime No. 11 of 2022 vide order dated 17.04.2025 passed by the learned Sessions Judge, Ballia and in Case

Crime No. 182 of 2024 by this Court vide order dated 10.10.2025. We have perused the relative bail orders, which are on record of the writ petition.

16. Likewise, in case of the second petitioner, Pushpendra Singh, who is also shown to be in jail in gang chart in Column 8 in connection with both crimes last mentioned, has been admitted to bail in Case Crime No. 182 of 2024 (supra) by this Court vide order dated 25.09.2025 and in Case Crime No. 11 of 2022 (supra) vide order dated 03.02.2022 by the learned Sessions Judge, Ballia. We have, again, perused the relative bail orders.

17. The conclusion, therefore, is that the gang chart has been approved by the Commissioner of Police and registration of the crime proposed by the Deputy Commissioner of Police and the other sponsoring authorities, without application of mind to the papers accompanying the proposal. Registration of the crime, apart from being violative of Rule 5(3)(a) of the UP Gangsters Rules, is also violative of Rules 8(3) and 16(1), (2), (3) of the Rules aforesaid.

18. The petitioner, in the last petition of this batch of petitions i.e. Criminal Misc. Writ Petition No. 28311 of 2025 is Ranvijay Singh alias Prince. His name figures in the common gang chart at Serial No. 6. He is shown involved in a solitary base case, that is to say, Case Crime No. 182 of 2024 (supra). In Column 8 of the gang chart, he is indicated to be in jail. A perusal of the record shows that this petitioner has been admitted to bail by this Court vide order dated 29.10.2025 in Case Crime No. 182 of 2024. The gang chart, on the other hand, shows the petitioner to be in jail. This is, again, a case of gross non application of mind, because it is the duty of the police officers sponsoring the registration of a case, under the UP Gangsters Act to carefully scrutinise the record, as also that of the approving authority, the Commissioner of Police. None of them have looked into the papers, which, if carefully seen, would have revealed that the petitioner was already on bail on 18.11.2025, when the gang chart was approved in the solitary base case. This is, therefore, a clear case of violation of Rules 8(3) and 16(1), (2), (3) of the UP Gangsters Rules. In addition, it again goes without saying that there is gross violation of Rule 5(3)(a) of the Rules aforesaid, which is an infirmity that runs across all the writ petitions, where the same FIR is impugned on the basis of a common gang chart.

19. In the result, all the writ petitions **succeed** and are **allowed**. The FIR dated 19.11.2025, giving rise to Case Crime No. 186 of 2025, under Section 2/3(1) of the U.P. Gangsters Act, Police Station Shivkuti, District Prayagraj, impugned in each of the writ petitions, is hereby **quashed**.

20. An entry shall be caused to be made in the General Diary of Police Station, Shivkuti, District Prayagraj by the learned Chief Judicial Magistrate, Prayagraj in red ink that proceedings of Case Crime No. 0186 of 2025, under Section 2/3(1) of the U.P. Gangsters Act, Police Station Shivkuti, District Prayagraj, as against the petitioners, stand quashed under orders of this Court.

21. The Registrar (Compliance) is directed to communicate this order to the learned Chief Judicial Magistrate, Prayagraj and through her, to the Commissioner of Police, Prayagraj and the Station House Officer, Police Station Shivkuti, District Prayagraj.

(2026) 7 ILRA 2251
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.07.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Crl. Misc. Writ Petition No. 6606 of 2026

Faishal Beg **...Petitioner(s)**
Versus
State of U.P. & Ors. **...Respondent(s)**

Issues for Consideration

(i) Whether a show cause notice under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, issued on information sent by the Station House Officer through the Superintendent of Police, satisfies Rule 3(1) of the Uttar Pradesh Control of Goondas Rules, 1970?

(ii) Whether the impugned show cause notice was issued in disregard of the Full Bench decision in *Ramji Pandey v. State of Uttar Pradesh*?

(iii) Whether a writ petition assailing a show cause notice, filed after about 100 days without indicating the date of its service and without filing any reply to it, is maintainable?

Headnotes

Uttar Pradesh Control of Goondas Act, 1970 --- S. 3 --- Uttar Pradesh Control of Goondas Rules, 1970 --- R. 3(1) --- Show cause notice --- Information regarding criminal antecedents sent by SHO through Superintendent of Police --- Compliance with Rule 3(1).

HELD: The Superintendent of Police may submit a report to the District Magistrate under Rule 3(1); even where two respectable persons of the locality complain, the District Magistrate would have to seek a report from the police station concerned through the Superintendent of Police to verify the criminal antecedents. Hence, the letter giving information of the criminal antecedents of the petitioner, sent by the SHO through the Superintendent of Police to the District Magistrate, is in letter and spirit of Rule 3(1). [Paras 10-11]

Show cause notice containing specific allegations of criminal acts and general bad reputation, along with details of cases --- Full Bench decision in Ramji Pandey distinguished.

HELD: The impugned notice, in paragraphs 'Ka' and 'Kha', reveals the criminal acts of the petitioner and his general bad reputation, and in paragraph 'Ga' the details of four cases are indicated. The Full Bench in *Ramji Pandey* set aside a notice which did not contain specific allegations but only a list of First Information Reports; the facts of the present case being different, that decision is not applicable. [Para 12]

Constitution of India --- Art. 226 --- Challenge to show cause notice --- Petition filed after about 100 days --- Date of service not indicated --- No reply to notice filed --- Petitioner not actually aggrieved.

HELD: Where the writ petition was filed after a lapse of about 100 days from the issuance of the show cause notice, the date of service was not indicated anywhere in the petition and no explanation to the show cause notice was filed, it shows lack of alertness and seriousness of the petitioner, and prima facie the petitioner was not actually aggrieved by the notice; the petition is misconceived and liable to be dismissed in limine. [Paras 5, 9, 13]

Writ petition dismissed as misconceived. No order as to costs. (E-14)

Case Law Cited

In Re: Ramji Pandey v. State of Uttar Pradesh and Others, 1981 SCC Online All 305 (FB) --- distinguished.

List of Acts / Statutes

Uttar Pradesh Control of Goondas Act, 1970; Uttar Pradesh Control of Goondas Rules, 1970.

List of Keywords

Goondas Act; Show cause notice; Superintendent of Police; Criminal antecedents; Specific allegations; Delay; Date of service; Not aggrieved.

Case Arising From

Show cause notice dated 20.03.2026 issued by the District Magistrate (Judicial), Unnao, under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970.

Appearance for Parties

For the Petitioner(s): Sajjad Husain, Badar Iftikhar, Kulsoom Firoz.

For the Respondent(s): G.A., S.P. Singh, Additional Government Advocate.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.
&
Hon'ble Ram Manohar Narayan Mishra, J.)

1. Sri Sajjad Husain, learned counsel for the petitioner and Sri S.P. Singh, learned AGA for the State respondents

2. Sri Sajjad Husain has filed supplementary affidavit, same is taken record.

3. On the request of learned counsel for the parties, the case is decided at the admission stage.

4. By means of this petition, the petitioner has assailed the show cause notice dated 20.03.2026 passed by District Magistrate (Judicial), Unnao, under Section 3 of The Uttar Pradesh Control of Goondas Act, 1970.

5. On being asked from the learned counsel for the petitioner as to where he has indicated the date of service of the show cause notice dated 20.03.2026, learned counsel for the petitioner has stated that he has not indicated this fact anywhere in the writ petition. On being further asked to the effect that as to whether he has filed explanation to the show cause notice, learned counsel for the petitioner has stated that no explanation to the show cause notice has been filed by the petitioner for the reason that the show cause notice is without jurisdictional notice and has been issued in contravention of Rule 3 of The Uttar Pradesh Control of Goondas Rule, 1970 as well as in utter disregard of the order of Full Bench of this Court **In Re : Ramji Pandey versus State of Uttar Pradesh and Others, reported in 1981 SCC Online All 305.**

6. So as to buttres his contention, Sri Sajjad Husain, learned counsel, has referred para 22 of the aforesaid order of Full Bench by submitting that if the impugned notice does not contain any allegation and only the reference of FIR has been given, such notice would be a nullity in the eyes of law. Regarding Rule 3 of the Rules, 1970 attention has been drawn towards supplementary affidavit, showing Annexure No. S.A.-1, which is information letter, under Report Chalani, under Section 3/4 of Act, the same has been sent to District Magistrate, Unnao by the S.H.O., P.S.-Safipur, Unnao through Superintendent of Police, Unnao, apprising the criminal antecedent and activities of the petitioner.

7. Learned counsel for the petitioner has stated that as per Rule 3(1), it has been mandated that action under under sub-section (1) of Section 3 will not ordinarily be taken by the District Magistrate except on information in writing, received from the Superintendent of Police or the Magistrate-in-charge of the sub-division or on information in writing received from two respectable citizens of the locality. In the present case, such information has been given by SHO, Police Station, Safipur, Unnao to the District Magistrate, Unnao, (Annexure No. SA-1 of the second supplementary affidavit)

8. Learned AGA has opposed the aforesaid contention of the learned counsel for the petitioner and has stated that impugned notice has been given strictly in accordance with law and the dictum of Full Bench **In re : Ramji Pandey** (supra) has been followed in its letter and spirit.

9. Having heard learned counsel for the parties, perused the material available on record and considering the fact that the petitioner has filed the present writ petition after lapse of about 100 days from the date of issuance of the impugned show cause notice and date of service of notice has not been indicated in the writ petition so this is one of the reasons showing the lack of alertness and seriousness of the petitioner to challenge the impugned show cause notice. If the impugned show cause notice has not been challenged before this Court or before any other competent authority for more than 100 days, then, prima facie, it appears that the petitioner was not actually aggrieved to challenge this notice.

10. So far as Rule 3(1) of the Rules, 1970 is concerned, the information regarding criminal antecedents of the petitioner has been given by the SHO, Kotwali, Safipur, Unnao through Superintendent of Police, Unnao which has been indicated on such letter dated 19/10/2025 (Annexure No. S.A.-1 of the second Supplementary Affidavit).

11. Undisputedly, the Superintendent of Police concerned may submit a report to the District Magistrate as per Rule 3(1) of the Rules, 1970. Besides, if two respectable persons of the locality may send application to the District Magistrate regarding criminal activity of any person, the District Magistrate concerned shall definitely seek report from the concerning police station through Superintendent of Police, otherwise, he could have not known and verified the criminal antecedents of a person against whom two respectable persons of the locality have lodged the complaint. Therefore, the letter so given by the SHO concerned through Superintendent of Police, Unnao addressing to the District Magistrate Unnao is in letter and spirit of Rule 3(1) of the Rules, 1970.

12. So far as the another argument of Sri Sajjad Husain is concerned that the impugned notice has been issued in disobedience of the direction being issued by the Full Bench **In Re: Ramji Pandey** (supra), the perusal of the impugned notice dated 20/03/2026 clearly reveals in paragraphs 'Ka' and 'Kha' about the criminal act of the petitioner and his general bad reputation which is detrimental to the public at large and in Para 'Ga', the details of four cases have been indicated. The Full Bench **In re, Ramji Pandey**, has categorically observed that the case before the Full Bench was that the impugned notice was not containing the specific allegations rather the list of First Information Report was given, therefore, such impugned notice was set aside. However, the facts and circumstances of the present case are different from the case of Ramji Pandey (supra) and this is trite law that if the facts and circumstances of the case in hand are different from the judgment cited, then it would not be applicable thereon.

13. Therefore, in view of what has been considered above, the present writ petition by means of which the impugned show cause notice dated 20/03/2026 has been assailed by filing writ petition on 30/06/2026 without explaining the date of service of the notice upon the petitioner is misconceived and liable to be dismissed in limine. Besides the mandate of Rule 3(1) of Rule, 1970 has been followed in its letter and spirit by issuing the impugned show cause notice and the direction being issued by the Full Bench of this Court In Re : Ramji Pandey has also been obeyed in its letter and spirit.

14. Accordingly, the writ petition is **dismissed being misconceived**.

15. No order as to costs.

(2026) 7 ILRA 2255
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.07.2026

BEFORE

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

Crl. Misc. Writ Petition No. 25626 of 2025

Rakesh **...Petitioner(s)**
Versus
State of U.P. & Ors. **...Respondent(s)**

Issues for Consideration

(i) Whether the arrest and remand of the petitioner stand vitiated for non-communication of the grounds of arrest under Article 22(1) of the Constitution, where the arrest memo records only the formal reasons for arrest and the General Diary entry merely records the sections of the offence?

(ii) Whether the rejection of the petitioner's bail application by the Sessions Judge precludes him from challenging the legality of his arrest and remand, in view of *State of Madhya Pradesh v. Kusum Sahu*?

(iii) Whether a remand order passed on a printed proforma, without ascertaining compliance with Article 22(1), is sustainable?

Headnotes

Constitution of India --- Arts. 21, 22(1) --- Bharatiya Nagarik Suraksha Sanhita, 2023 --- S. 47 --- Grounds of arrest --- Distinction between "reasons for arrest" and "grounds of arrest" --- Arrest memo and General Diary entry not containing grounds --- Burden on police not discharged --- Arrest illegal.

HELD: Column 10 of the arrest memo, answering "yes" against each of the printed sub-columns, carries only the reasons for arrest, which are formal and general in nature, and not the grounds of arrest, which are personal to the accused. The General Diary entry, though contemporaneous with the arrest, merely records that the accused was informed of his crime under the specified sections of the BNS; there is no contemporaneous record of the grounds of arrest, much less of their communication to the petitioner at the time of or soon after his arrest. The mandate of Article 22(1) necessitates furnishing the grounds of arrest in writing in a language understood by the accused; the burden to prove compliance lies on the police, which has not been discharged, and the petitioner was thereby disabled from exercising his rights at the stage of remand. [Paras 14, 31-33]

Constitution of India --- Art. 22(1) --- Remand --- Duty of Magistrate to ascertain compliance with Article 22(1) --- Remand order on printed proforma --- Mechanical exercise --- Remand illegal.

HELD: When an arrested person is produced for remand, it is the duty of the Magistrate to ascertain whether Article 22(1) has been complied with; if there is non-compliance, the arrest is rendered illegal and the accused cannot be remanded. A remand order written on a printed proforma with blanks filled in, without any inquiry into the communication of the grounds of arrest, is the most mechanical kind of remand and is illegal, as is the ensuing custody. [Paras 34-35]

Writ petition challenging legality of arrest --- Distinct from bail --- Prior rejection of bail by Sessions Judge --- Kusum Sahu distinguished.

HELD: A petition questioning the legality of the arrest is distinct from a bail plea; the right to seek bail and the right to question the legality of arrest are independent of each other. *Kusum Sahu* was rendered in a context where four successive bail applications had been rejected by the High Court itself and the High Court, in habeas corpus, examined the merits as if hearing an appeal against rejection of bail. Where the High Court was never moved for bail and the court examines only the legality of the arrest and remand, dehors the merits of the prosecution, the principle in *Kusum Sahu* is not attracted. [Paras 3-4, 13, 29-30]

Grounds of arrest --- Mihir Rajesh Shah v. State of Maharashtra --- Prospective application --- Arrest prior to that decision governed by Pankaj Bansal, Prabir Purkayastha and Vihaan Kumar.

HELD: *Mihir Rajesh Shah* holds that where grounds cannot be furnished at the time of arrest, they must be furnished within a reasonable time and, in any case, at least two hours prior to production before the Magistrate for remand; the decision, on its own terms, applies prospectively to arrests made thereafter. The petitioner, having been arrested on 20.04.2025, cannot fall back upon *Mihir Rajesh Shah*, but the principles in *Pankaj Bansal*, *Prabir Purkayastha* and *Vihaan Kumar* are squarely applicable to his case. [Paras 26-28]

Writ petition allowed; remand order quashed; petitioner directed to be released on furnishing a bond under Section 91 BNSS, without affecting the ongoing trial or the merits of the charges. Sessions Judge, Sambhal directed to ensure that Magistrates do not grant police or judicial remand casually on a printed proforma or without ascertaining whether grounds of arrest were communicated in writing. (E-14)

Case Law Cited

Arvind Kejriwal v. CBI, 2024 SCC OnLine SC 2550 --- referred to; *Kasireddy Upender Reddy v. State of A.P.*, 2025 SCC OnLine SC 1228 --- referred to; *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576 --- relied on; *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254 --- relied on; *Vihaan Kumar v. State of Haryana*, (2025) 5 SCC 799 --- relied on; *State of Madhya Pradesh and others v. Kusum Sahu*, Criminal Appeal No. 4710 of 2025, decided on 03.11.2025 --- distinguished; *Mihir Rajesh Shah v. State of Maharashtra*, (2026) 1 SCC 500 --- referred to.

List of Acts / Statutes

Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Code of Criminal Procedure, 1973; Prevention of Money Laundering Act, 2002; Unlawful Activities (Prevention) Act, 1967.

List of Keywords

Grounds of arrest; Reasons for arrest; Arrest memo; General Diary entry; Remand; Printed proforma; Duty of Magistrate; Illegal arrest; Personal liberty; Prospective application.

Case Arising From

Order of remand dated 20.04.2025 passed by the Remand Magistrate, District Sambhal, in Case Crime No. 0132 of 2025, under Sections 87, 127(4), 64(1) and 143(2) of the Bharatiya Nyaya Sanhita, 2023, Police Station Gunnour, District Sambhal.

Appearance for Parties

For the Petitioner(s): Dileep Kumar Shukla, Shikhar Neelkanth.

For the Respondent(s): G.A., Manju Thakur, Additional Government Advocate-I.

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

1. This writ petition has been instituted by Rakesh with a prayer that the order of remand dated 20.04.2025 passed by the Remand Magistrate in Case Crime No. 0132 of 2025, under Sections 87, 127(4), 64(1) and 143(2) of the Bharatiya Nyaya Sanhita, 2023 (for short, BNS), Police Station Gunnour, District Sambhal, be quashed. He seeks a direction in the nature of mandamus ordering the respondents to release the petitioner from custody, after quashing of the remand order authorizing his detention pending investigation and/ or trial in the said crime.

2. A First Information Report (FIR for short) was lodged by one Umar Ahmad son of Sharafat Khan on 18.04.2025 at Police Station Gunnour, District Sambhal with a case that the informant/ respondent no.4 was a resident of Village Patti Kurki, P.S. Anwala, District Bareilly. On 03.04.2025, his wife X , aged about 36 years, was taken away by blandishment by the petitioner Rakesh. The petitioner later kept the victim in confinement. On 14.04.2025, the fourth respondent s wife was found in a disoriented condition in Village Bairpur, P.S. Junavai. The fourth respondent requested necessary legal action in the matter.

3. We must remark at the outset before proceeding further with the petitioner s case that this petition has nothing to do with the exercise of the right of bail by the petitioner and, a fortiori, if the allegations of the prosecution carried in the FIR, or those that have surfaced during investigation, are true or unreliable and false. The office of this petition is limited to the question, if the petitioner has been validly arrested in accordance with the mandate of Article 22(1) of the Constitution read with the statutory safeguards engrafted in the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, BNSS).

4. The point which the petitioner moots here is, if the petitioner s arrest is illegal at the inception in the sense that it has been effected in violation of his fundamental right guaranteed under Article 22(1) of the Constitution, no matter what the charge is or the gravity thereof, he is entitled to regain his liberty by an order quashing his remand in connection with the crime and his arrest as well. It hardly need be said that in the event, the petitioner s stand is vindicated and his arrest and remand declared illegal, he would be entitled to the restoration of his liberty. This is the

essence of this petition and the scope of the challenge that the petitioner mounts in this case to his detention in the crime under reference.

5. The case of the petitioner is that the incident is said to have taken place on 03.04.2025, regarding which the FIR was lodged on 18.04.2025 with Police Station Gunnour, District Sambhal. After registration of the crime, the petitioner was shown to have been arrested on 20.04.2025 at 08.50 hours. The attention of this Court has been drawn to the arrest memo, that is on record and to which we would allude later in this judgment. The petitioner was taken into custody by the Police and produced before the Remand Magistrate on 20.04.2025. The Remand Magistrate, in a routine and mechanical manner, passed a remand order on a printed proforma carrying blanks that were filled up without application of mind and remanded him to judicial custody in the crime. This order too is on record and is one made on 20.04.2025. Our attention again has been drawn to this order and we would allude to this too later in this judgment.

6. It is the petitioner s case that while remanding the petitioner to judicial custody, the learned Remand Magistrate failed to record any satisfaction regarding due compliance of the Police s obligation of communicating the petitioner with the grounds of his arrest, a fundamental right that flows from Article 22(1) of the Constitution. It is specifically averred by the petitioner in paragraph no. 17 of the writ petition that he was not informed of the grounds of arrest, either orally or in writing, a fact apparent from the arrest memo, that is on record. He also says that there is no other document corresponding to an arrest memo. Emphasis is laid upon the fact that in the arrest memo, there is no column pertaining to grounds of arrest, rendering the arrest memo itself illegal and foul of requirements of Article 22(1) of the Constitution. It is also emphasized in paragraph no. 18 that there is nothing in the arrest memo to show that the petitioner was informed of the grounds of his arrest. It is asserted that the petitioner was not apprised of the specific grounds of his arrest and was produced before the Remand Magistrate without sufficient knowledge of the allegations against him, thereby causing grave prejudice as he was unable to effectively present his defence while moving his bail application before the Court below.

7. The petitioner asserts in paragraph no. 21 of the writ petition that at the time of arrest, the Police are duty bound to inform the accused of the grounds and they must maintain a contemporaneous record, reflecting the same. However, in the petitioner s case, this obligation has not been fulfilled as the arrest memo contains no mention of the grounds of arrest, rendering the petitioner s arrest illegal. It is for this reason that the remand order passed on a printed proforma by the Magistrate, without ascertaining if the petitioner knew the grounds of his arrest, is unconstitutional and the petitioner s arrest illegal. It is emphasized that though the petitioner applied for bail to the Sessions Judge, Sambhal at Chandausi, it was rejected on 05.08.2025. The scope of this petition is entirely different from that of a bail plea, where a success to earn indulgence of bail ensures enlargement in constructive custody of the Court through sureties during trial. The scope of this petition is to question the legality of the arrest itself, which if granted, would place the petitioner in the same position as he was, before he was arrested. Both the rights to move for bail and question the legality of arrest are independent of each other, according to the petitioner, and availing one does not detract from the right to assert the other.

8. The learned Counsel for the petitioner has placed reliance upon **Arvind Kejriwal v. CBI, 2024 SCC OnLine SC 2550.** Reliance in this connection has also been placed upon the authority of the Supreme Court in **Kasireddy Upender Reddy v. State of A.P., 2025 SCC OnLine SC 1228.**

9. A counter affidavit has been filed on behalf of the State and what is said there in good part is about the merits of the case. It is emphasized that the allegations are very serious and so also the material collected during investigation. There are allegations of rape against the petitioner and human trafficking, where he cannot be permitted to question his arrest on the ground of its illegality, based on something academic, like the violation of the fundamental right under Article 22(1) of the Constitution.

10. The petitioner in rejoinder has submitted that so long as there is non-compliance with the mandatory requirement of Article 22(1), that is to say, communication of the grounds of his arrest to the petitioner, at the time he was taken into custody, or soon thereafter, the validity of the arrest cannot be justified on the basis of seriousness of allegations. It is also asserted that the G.D. Entry, relied upon by the respondents to say that the grounds of arrest were orally communicated, too is silent as to the specific grounds that led to the petitioner s arrest. It carries vague details, which do not sufficiently make the charge or allegations known to the petitioner at the time of his arrest, or as soon as may be, on the foot of which he was taken into custody, thus, violating the petitioner s right under Article 22(1) of the Constitution.

11. Heard Mr. Shikhar Neelkhanth, learned Counsel for the petitioner and Ms. Manju Thakur, learned Additional Government Advocate-I on behalf of the State.

12. We have considered the rival submissions advanced by the learned Counsel for the parties.

13. We have already delineated the scope of challenge in this writ petition, which we find to be clearly distinct and different from that of a bail plea. All that we have to examine is the legality of the arrest and its consequences upon the petitioner s liberty.

14. We notice that there are no separate grounds of arrest in writing supplied to the petitioner. The learned A.G.A. wanted us to accept either the memo of arrest as a document carrying the grounds in writing or the G.D. Entry annexed as Annexure No. CA-10 of the counter affidavit for those grounds. It was mooted that the grounds of arrest were communicated to the petitioner orally at the time he was arrested and the G.D. Entry dated 20.04.2025 made at 09.38 hours vide G.D. Entry No. 27 is material enough to infer the oral communication of the broad grounds and the case, on the foot of which the petitioner has been arrested. The memo of arrest is annexed as Annexure No. 2 to the writ petition, and in all fairness, must be reproduced for every word of it. It reads as follows:

मु०अ०सं०/रो०आम० संख्या-132/25 दि० .. अन्तर्गत धारा 87/ 127(4)/ 64(1)/143 (2) बीएनएस

गुन्नौर जनपद सम्भल

गिरफ्तारी मीमो

(भारतीय नागरिक सुरक्षा संहिता-2023 की धारा 35 के अन्तर्गत)

(भा० माननीय सर्वोच्च न्यायालय के निर्देशानुसार)

1- गिरफ्तार व्यक्ति का नाम, उपनाम और उसके माता पिता नाम-	राकेश पुत्र लल्लू नि० ग्राम नाधा थाना जरीफनगर जनपद बदायूं
2- मोबाइल नम्बर/वाट्स अप नम्बर ईमेल आईडी-	
3- गिरफ्तार व्यक्ति का वर्तमान पता-	ग्राम नाधा थाना जरीफनगर जनपद बदायूं
4- गिरफ्तार व्यक्ति का स्थायी पता-	उपरोक्त
5- प्र०सू०रि/रो०आम संख्या एवं धारा/विधि-	मु०अ०सं० 132/25 धारा 87/127(4)/ 64(1)/बीएनएस 143(2)
6- गिरफ्तारी का स्थान-	
7- गिरफ्तारी की तारीख और समय-	20.04.2025 समय 08.50 बजे
8- गिरफ्तारी के बरे में जिसे भी सूचित किया है उसका नाम पता ईमेल आईडी और मोबाईल नम्बर-	अशोक पुत्र लल्लू सिंह नि० ग्राम नाधा थाना जरीफनगर, बदायूं मो०- 7505839178
9-गिरफ्तारी करने वाले अधिकारी का नाम, पद और संख्या-	उ०नि० विशाल शर्मा
10- गिरफ्तारी का कारण-	
क- एसे व्यक्ति को कोई अग्रेतर हां अपराध करने से निवारित करने के लिए-	हां
ख- अपराध के उचित अन्वेषण करने हां के लिए-	हां
ग- ऐसे व्यक्ति को अपराध के किसी साक्ष्य को मिटाने या ऐसे साक्ष्य में किसी प्रकार से छेडछाड करने से निवारित करने के लिए-	हां
घ- ऐसे व्यक्ति को मामले के तथ्यों से परिचित किसी व्यक्ति को उत्प्रेरित करने धमकी देने या वचन देने निवारण करने के लिए ताकि उसे न्यायालय या पुलिस अधिकारी के समक्ष ऐसे तथ्य को प्रकट करने से रोका जा सके।	हां
ङ- क्योंकि जब ऐसा व्यक्ति गिरफ्तार नहीं किया जाता है उसकी न्यायालय में उपस्थिति जब कभी अपेक्षित हो	हां

सुनिश्चित नहीं की जा सकती है।	
अभियुक्त का पता जो सत्यापित होना शेष है (आवश्यक होने पर)	

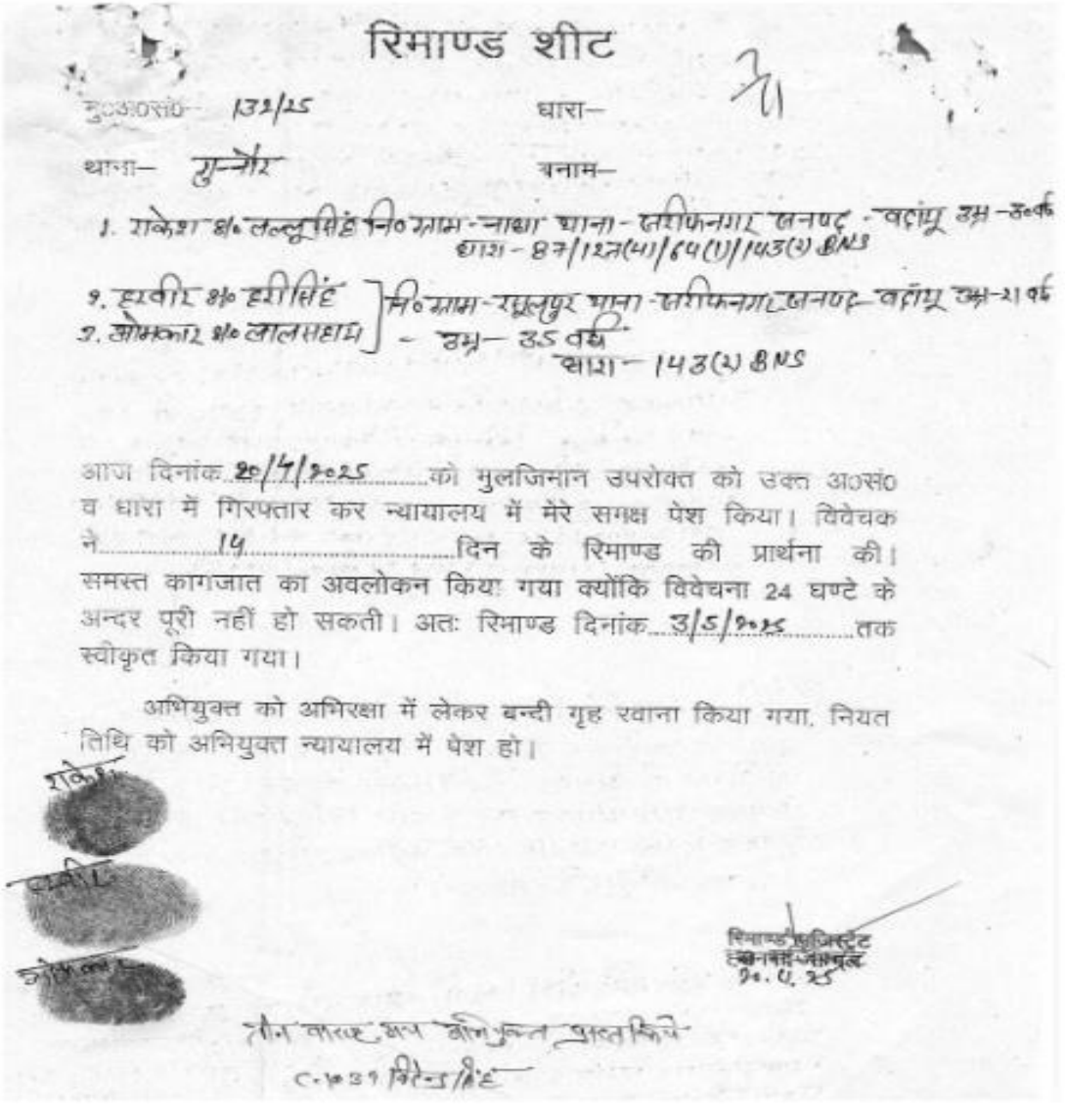
ह० राकेश
गिरफ्तारी व्यक्ति के हस्ताक्षर

गवाह-
1- ह० बलवन्त सिंह
2- ह० विनित पवांर
3- ह० विरेन्द्र सिंह

ह० अपठित
अन्वेषण अधिकारी के हस्ताक्षर
थाना-गुन्नौर
दिनांक-20/04/2025

Seen
ह० अपठित
रिमाण्ड मजिस्ट्रेट
जनपद-सम्भल
20.4.25"

15. We cannot gloss over the fact that what is impugned here on the basis of the arrest memo dated 20.04.2025 is the order of remand passed by the Magistrate. A certified copy of the order of remand is on record at page no. 39 of the writ petition paper-book. It is described at the top of it as a Remand Sheet and is a printed proforma with blanks only to be filled up by the learned Remand Magistrate, or may be an office hand. We would be failing in our duty, if we do not reproduce, not just a true copy of this remand order impugned, but a photostat copy thereof, in order to give an idea in what fashion the learned Remand Magistrate has passed the order impugned. A photostat copy of the impugned remand order is reproduced hereinbelow:



रिमाण्ड शीट

मु0अ0सं0 132/25 धारा—

थाना— गुन्नौर बनाम—

1. राकेश पु० लल्लू सिंह नि० ग्राम-चाखा थाना-सरीफनगर जनपद-बदायूं उम्र-उ०क० धारा-87/126(4)/64(1)/143(2) BNS

2. हरवीर पु० हरी सिंह
3. सोमकार पु० लालसहाय
नि० ग्राम-रसूलपुर थाना-सरीफनगर जनपद-बदायूं उम्र-21 व 35 वर्ष
धारा-143(2) BNS

आज दिनांक 20/4/2025 को मुलजिमान उपरोक्त को उक्त अ0सं0 व धारा में गिरफ्तार कर न्यायालय में मेरे समक्ष पेश किया। विवेचक ने 14 दिन के रिमाण्ड की प्रार्थना की। समस्त कागजात का अवलोकन किया गया क्योंकि विवेचना 24 घण्टे के अन्दर पूरी नहीं हो सकती। अतः रिमाण्ड दिनांक 3/5/2025 तक स्वीकृत किया गया।

अभियुक्त को अभिरक्षा में लेकर बन्दी गृह रवाना किया गया, नियत तिथि को अभियुक्त न्यायालय में पेश हो।

राकेश

हरवीर

सोमकार

रिमाण्ड मजिस्ट्रेट
जनपद-बदायूं
20.4.25

तीन कारण पर अभियुक्त प्रस्तुत किये
C-1031 वीरेन्द्र सिंह

16. G.D. Entry No.27, on which much reliance has been placed by the learned A.G.A. as one furnishing the grounds of detention to the petitioner at the time of his arrest, together with whatever was communicated orally constituting the grounds, must also be reproduced. G.D. Entry No.27 dated 20.04.2025 reads:

"General Diary Details
सामान्य दैनिकी विवरण

State (राज्य): उत्तर प्रदेश

P.S. (थाना): गुन्नौर

District/Unit (जिला/इकाई): सम्भल

1. G.D. No. (रोजनामचा सं.): 027

2. G.D. Date (रोजनामचा दिनांक): 20/04/2025 09:38 बजे

3. G.D. Type (रोजनामचा प्रकार): गिरफ्तारी/पुनः गिरफ्तारी /आत्मसमर्पण

4. Entry for (officer) (प्रविष्टि (अधिकारी के लिए)): POLICE STATION GUNNOUR

5. Case Type (प्रकरण के प्रकार) : प्रौढ

6. Subject (विषय) :

दाखिला 03 नफर अभियुक्त गण सम्बंधित मु0अ0सं0 132/25 धारा 87/127(4)/ 64(1)/ 143(2) बीएनएस

7. G.D. Brief

वापसी उ0नि0 व मय हमराह कर्मगण व दाखिला 03 नफर अभियुक्त गण सम्बंधित मु0अ0सं0 132/25 धारा 87/127(4)/64(1)/143(2) बीएनएस - इस समय उ0नि0 श्री विशाल शर्मा मय हे0कां0 156 बलवन्त सिंह मय कॉ0 1039 वीरेन्द्र मय कां0 488 विनीत कुमार के रवाना शुदा रफता रपट रो0 आम तरीख इमरोजा से बाद देखरेख शांति व्यवस्था व चैकिंग संदिग्ध व्यक्ति वाहन व तलाश वांछित अभियुक्त में अंदर इलाका थाना हाजा क्षेत्र से मय गिरफ्तारशुदा 03 नफर अभियुक्तगण 1. राकेश पुत्र लल्लू सिंह नि0 नाधा थाना जरीफनगर जपनद बदायूं उम्र 30 वर्ष 2. हरवीर पुत्र हरीसिंह उम्र 21 वर्ष 3.ओमकार पुत्र लालसहाय नि०गण रसूलपुर थाना जरीफनगर जनपद बदायूं उम्र 35 वर्ष सम्बंधित मु0अ0सं0 132/25 धारा 87/127 (4) /64(1)/143(2) बीएनएस के उपस्थित थाना हाजा आये। अभियुक्तगण की बाद लिवाने जामा तलाशी संतरी पहरा से लिवायी गयी तो जिस्म जरवात ताजा से पाक साफ है पुलिस बदसलूकी का साकी नही है खाना खाने व डाक्टरी कराने से मुनकिर है हस्वख्वाहिश खाना पानी दिया जायेगा । अभियुक्तगण को देकर हवालाती कम्बल व पीने योग्य पानी देकर अंदर हवालात मर्दाना किया गया। तालाबंद ठीक संतरी पहरा को दिखाया गया चाबी पूर्वत रही । । वाक्यात गिरफ्तारी अंकित कराया कि जब मैं उ0नि0 मय हमराह कर्म0गण के दौराने देखरेख शांति व्यवस्था व चैकिंग संदिग्ध व्यक्ति वाहन व तलाश वांछित अभियुक्त मे अन्दर इलाका थाना हाजा क्षेत्र में मामूर था तो जरिये मुखबिर खास सूचना मिली की आपके मुकदमे से संबधित अभियुक्तगण 1.राकेश पुत्र लल्लू सिंह नि0 नाधा थाना जरीफनगर जनपद बदायूं उम्र 30 वर्ष 2. हरवीर पुत्र हरीसिंह उम्र 21 वर्ष 3. ओमकार पुत्र लालसहाय नि0गण रसूलपुर थाना जरीफनगर जनपद बदायूं उम्र 35 वर्ष अस्थाई योग पार्क राजघाट रोड पर कही जाने की फिराक में खड़े है यदि जल्दी की जाये तो पकडे जा सकते है। मुखबिर की बात पर विश्वास करके मय मुखबिर के बताये स्थान की तरफ अस्थाई योग पार्क राजघाट रोड पर पहुचे तो

मुखबिर खास ने दूर से इशारा कर बताया गया जो सामने जो लडका सफेद व ग्रे कलर की लाइनदार टी-शर्ट व मटमैली रंग की पैन्ट पहने खड़ा है वह राकेश है तथा जो लडका काली कलर की लाइनदार शर्ट व हल्की काली रंग की जीन्स पहने खड़ा है वह हरवीर है तथा जो व्यक्ति लाल रंग की चैकदार शर्ट व हल्की काले रंग की जीन्श पहने खड़ा है वह ओमकार है। ये ही आपके मुकदमे से संबधित अभियुक्तगण है और इतना कहकर मुखबिर वहां से चला गया। मुखबिर द्वारा बताये लडको के पास पहुंचकर नाम पता पूछा तो खड़े लडको में से पहले ने अपना नाम राकेश पुत्र लल्लू सिंह नि0 नाधा थाना जरीफनगर जयनद बदायूं उम्र 30 वर्ष तथा दूसरे ने अपना नाम हरवीर पुत्र हरीसिंह उम्र 21 वर्ष नि0 रसूलपुर थाना जरीफनगर जनपद बदायूं व तीसरे ने अपना नाम ओमकार पुत्र लालसहाय नि0गण रसूलपुर थाना जरीफनगर जनपद बदायूं उम्र 35 वर्ष बताया। अभियुक्त राकेश उपरोक्त को उसके जुर्म धारा 87/127(4)/64(1)/143(2)) बीएनएस व अभियुक्तगण हरवीर व ओमकार उपरोक्त को उनके जुर्म धारा 143 (2) बीएनएस से अवगत करा समय करीब 08.50 बजे हिरासत पुलिस में लिया गया। दौराने गिरफ्तारी मा0 सर्वोच्च न्यायालय व रा०मानवाधिकार आयोग के दिशा निर्देशों का पूर्णतः पालन किया गया। अभियुक्तगण की गिरफ्तारी की सूचना अभियुक्तगण के परिजनों को दी जायेगी।

8. Acts & Sections (अधिनियम और धारा(एँ)):

S.No. (क्र.सं.)| Acts (अधिनियम) Sections (धारा(एँ))

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Rank (पद): I (Inspector)

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(emphasis by Court)

17. There has been considerable debate about the right guaranteed under Article 22(1) of the Constitution for reason that while the right under Article 22(1) of the Constitution is indeed a fundamental right of the foremost importance, as it safeguards the liberty of an individual from deprivation by State Authority, the Police and police like forces empowered to arrest persons in connection with crimes, they are suspected or accused to have committed, have traditionally paid scant regard to the requirements of Article 22(1). The man in uniform, by his training, duties and sometimes compulsion, thinks small of rights, including the fundamental rights. He looks sometimes with his scorn at judgments enforcing these rights and enumerating principles that seeks

to realize the fundamental right to liberty. In the nature of things, the policeman, who sees every suspect and accused as guilty, is almost inclined to think that he understands the truth of the matter better than anyone, and, most certainly than a Judge sitting in a Court far away from the scene or the transaction of crime. The policemen never understands that there are always two sides to a fact, a thing or an allegation regarding an offence and he is per compulsion partisan looking at one side alone. The training, bereft of the knowledge of the law, deprives the policeman of the forensic eye to understand legal implications. The result is that the effort by Courts to crystallize the rights of an individual, who is suspect or accused of an offence, both under the statute and the Constitution, remain at the centre-stage of a tug of war between the holdings of the Court and dogged breaches by the Police. Since Courts, depending on facts, at times have to yield ground and carve a niche to make place for an exception to the rule they have developed, the Police think that they were right and they must go ahead the way they have done for centuries in this country, irrespective of pronouncements of Superior Courts declaring the effect of fundamental rights and statutory safeguards regarding an individual s liberty.

18. The law regarding the necessity to furnish grounds of arrest came to be recently emphasized in view of Article 22(1) of the Constitution, not to say that it was earlier not emphasized, by the Supreme Court in **Pankaj Bansal v. Union of India, (2024) 7 SCC 576.** Apparently, as the facts of the case in **Pankaj Bansal** (supra) would show the importance of the right to be informed of the grounds of arrest were highlighted because of onerous conditions for seeking bail involved there, as the arrest was in connection with a case under the Prevention of Money Laundering Act, 2002 (for short, the PMLA). Also Section 19 of the PMLA obliges the authorized officer to record reasons for his belief that a person is guilty and needs to be arrested. Nevertheless, what was expounded was the requirement of communicating the grounds of arrest to the accused at the time of his/ her arrest or as soon as may be, as required by Article 22(1) of the Constitution. In **Pankaj Bansal,** it was observed by the Supreme Court:

"38. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's reason to believe that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the

Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

42. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] . Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer."

19. The next authority, that has bearing on the point, is **Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254.**This was a case under the Unlawful Activities (Prevention) Act, 1967 (for short, the UAPA). The challenge was to the arrest and remand without furnishing the grounds of arrest, as required by Article 22(1) of the Constitution. In **Prabir Purkayastha** (supra), it was held by the Supreme Court:

"18. We may note that the modified application of Section 167CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] on the aspect of informing the arrested person the grounds of arrest in writing has to be applied pari passu to a person arrested in a case registered under the provisions of the UAPA.

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

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

"7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and

applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

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

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

26. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in Harikisan [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117] , wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

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

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

30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

37. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the reasons for arrest which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the grounds of arrest would be personal in nature and specific to the person arrested.

"9. Reason for arrest

(a) Prevent the accused person from committing any further offence.

(b) For proper investigation of the offence.

(c) To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.

(d) To prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer.

(e) As unless such person is arrested, his presence in the court whenever required cannot be ensured."

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase reasons for arrest and grounds of arrest . The reasons for arrest as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the grounds of arrest would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the grounds of arrest would invariably be personal to the accused and cannot be equated with the reasons of arrest which are general in nature."

20. The next authority of significance is **Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799**. The facts in Vihaan Kumar (supra), which was a case of arrest in connection with offences under the Penal Code, unlike the special statutes, with onerous conditions of bail involved in **Pankaj Bansal** and **Prabir Purkayastha**, can best be recapitulated in the words of their Lordships as these appear from the report in V**ihaan Kumar**. These read:

"Factual aspect

2. A reference to a few factual aspects would be necessary. The challenge in this appeal is to the judgment and order dated 30-8-2024 [Vihaan Kumar v. State of Haryana, 2024 SCC OnLine P&H 15495] passed by the learned Single Judge of the Punjab and Haryana High Court. The appellant was arrested in connection with First Information Report No. 121 of 2023 dated 25-3-2023 registered for the offences under Sections 409, 420, 467, 468 and 471 read with Section 120-B of the Penal Code, 1860 (for short IPC). According to the appellant's case, he was arrested on 10-6-2024 at about 10.30 a.m. at his office premises on the 3rd-5th floor of HUDA City Centre, Gurugram, Haryana. He was taken to DLF Police Station, Sector 29, Gurugram. He was allegedly produced before the learned Judicial Magistrate (in charge) at Gurgaon on 11-6-2024 at 3.30 p.m. Therefore, there was a violation of Article 22(2) of the Constitution and Section 57 of the Code of Criminal Procedure Code, 1973 (for short CrPC). The allegation is that neither in the remand report nor in the order dated 11-6-2024 passed by the learned Magistrate was the time of arrest mentioned. The FIR was registered at the instance of the second respondent. We may note here that, according to the case of the first respondent, the appellant was arrested on 10-6-2024 at 6.00 p.m. Therefore, compliance with the requirement of Article 22(2) was made.

3. There is another very serious factual aspect. The order dated 4-10-2024 [Vihaan Kumar v. State of Haryana, 2024 SCC OnLine SC 4701] passed by this Court records that after the appellant was arrested, he was hospitalised in Pgims, Rohtak. The learned counsel appearing for the appellant produced photographs which showed that while he was admitted to the hospital, he was handcuffed and chained to the hospital bed. Therefore, a notice was issued on 4-10-2024 [Vihaan Kumar v. State of Haryana, 2024 SCC OnLine SC 4701] to the Medical Superintendent of Pgims, calling upon him to file an affidavit stating whether the appellant was handcuffed and chained to the hospital bed. The order dated 21-10-2024 [Vihaan Kumar v. State of Haryana, 2024 SCC OnLine SC 4702] records the admission of the Medical Superintendent of Pgims that when the appellant was admitted to the hospital, he was handcuffed and chained to the bed. On this aspect, we may note that an affidavit was filed on 24-10-2024 by Shri Abhimanyu, HPS, Assistant Commissioner of Police, EOW I and II, Gurugram, Haryana. The affidavit states that the officials who were deployed to escort the appellant to Pgims have been suspended, and a departmental enquiry was ordered against them by the Deputy Commissioner of Police on 23-10-2024."

21. In **Vihaan Kumar**, stipulating the consequences of non-furnishing of grounds of arrest and its effect on the validity thereof, it was held:

"18. Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] , this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

19. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as

soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

20. We have already referred to what is held in paras 42 and 43 of the decision in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] . This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paras 42 and 43 of the decision in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] are suggestions that merit consideration. We are aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

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

23. In the present case, the first respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10-6-2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the first respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the Constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

24. An argument was sought to be canvassed that in view of sub-section (1) of Section 50CrPC, there is an option to communicate to the person arrested full particulars of the offence for which he is arrested or the other grounds for the arrest. Section 50 cannot have the effect of

diluting the requirement of Article 22(1). If held so, Section 50 will attract the vice of unconstitutionality. Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The other grounds for such arrest referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is the corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS.

25. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the courts to uphold the fundamental rights.

Conclusions

26. Therefore, we conclude:

26.1. The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

26.2. The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

26.3. When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the investigating officer/agency to prove compliance with the requirements of Article 22(1);

26.4. Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge-sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1);

26.5. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

26.6. When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."

22. At this stage, we must notice an unreported decision of the Supreme Court in State of **Madhya Pradesh and others v. Kusum Sahu in Criminal Appeal No. 4710 of 2025,** decided on 03.11.2025, to which our attention was drawn by the learned A.G.A. The facts in **Kusum Sahu** (supra) would show that the accused there, one Jibrakhan Lal Sahu, was arrested in connection with Crime No.157 of 2021, under Sections 409, 420 IPC on 12.12.2023. A charge sheet was filed on 09.02.2024. He made a bail application before the High Court, which was dismissed as withdrawn

on 23.01.2024. He then filed a second bail application, which was dismissed by the High Court on 05.03.2024. A third bail application filed by the accused was rejected on 14.03.2024. A fourth bail application was also filed, which was dismissed by the High Court on 29.05.2024. The Supreme Court has remarked that the facts show that within a period of four months, the accused preferred four bail applications before the High Court and all failed. The accused's daughter then filed a writ petition before the High Court, seeking grant of a writ of habeas corpus to seek the accused s release from custody, which was termed as unlawful detention by the State. This writ petition was allowed by the High Court, which brought the State of Madhya Pradesh in appeal to the Supreme Court by special leave. It was in this context of these facts that it was held by the Supreme Court in **Kusum Sahu**:

"16. The facts of the case, as noticed above, in brief, indicate that the manner in which the case has been dealt with really shocks the conscience of this Court. It is a case where accused was arrested and filed four bail applications before the High Court, which were rejected. Despite this, in a habeas corpus petition filed by his daughter, his custody has been held to be unlawful and he was directed to be released while examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application. The process followed is totally unknown to law. Lest the High Court starts following the impugned order as a precedent to scuttle the due process of law, to nip the evil in the bud, we hold that custody of an accused in a criminal case registered against him cannot be held to be unlawful especially when his bail applications have been dismissed. In the case at hand, it is not disputed that Jibrakhan Lal Sahu, father of the respondent herein, is an accused in a criminal case registered against him in which chargesheet has also been filed."

23. The last authority in point is Mihir Rajesh Shah v. State of Maharashtra, (2026) 1 SCC 500. The facts, giving rise to the issues involved in Mihir Rajesh Shah (supra), can best be noticed from the words of their Lordships as these appear in the report. These read:

"2. The main issue as raised by the appellants in these appeals is the violation of the appellants' right under Article 22(1) of the Constitution of India and Section 50 of the Criminal Procedure Code, 1973 (CrPC), now Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS 2023) as the appellants assert that they were not informed of grounds of their arrest in writing.

3. For convenience, Criminal Appeal No. 2195 of 2025 is taken as the lead case. The facts in a nutshell are that on 7-7-2024, a white BMW car, driven at a high speed, collided violently with the complainant's scooter from behind. The force of the impact propelled both the complainant and his wife onto the car's bonnet, whereby the complainant was thrown to the side, and tragically, his wife became ensnared between the vehicle's front left wheel and bumper. Notwithstanding this grievous state, the driver, alleged to be Mihir Rajesh Shah, the appellant herein, persisted in his reckless flight, dragging the victim, thereafter absconding without rendering assistance or reporting the incident to authorities. The victim succumbed to the severe injuries sustained in this collision, as medically confirmed, while the complainant sustained minor injuries.

4. FIR No. 378/2024 was registered at Worli Police Station under the relevant provisions of Bharatiya Nyaya Sanhita, 2023 (BNS 2023), and the Motor Vehicles Act, 1988. Initial investigative steps included the identification of the offending vehicle through CCTV footage, and

the discovery near Kalanagar Junction Flyover of the damaged BMW alongside Rajrishi Rajendra Singh Bindawat and Rajesh Shah, father of Mihir Rajesh Shah (hereinafter the appellant). Arrests soon followed, with co-accused Rajrishi Rajendra Singh Bindawat being taken into custody on the same day and Mihir Rajesh Shah being apprehended on 9-7-2024. The evidence collected firmly established the appellant as the driver at the material time, including CCTV footage capturing his presence at the wheel, consumption of alcohol shortly before the incident, an attempt to alter his appearance, and use of a Fastag registered in his name, amongst other incriminating particulars.

5. The remand proceedings saw the appellant being produced before the Judicial Magistrate First Class with initial police custody extending subsequently into judicial custody; a course contested on the grounds that the grounds of arrest were not furnished in writing as mandated by Article 22(1) of the Constitution of India and Section 47 of BNSS 2023 equivalent to Section 50CrPC."

24. Two questions were formulated by their Lordships of the Supreme Court for consideration, that read:

"7. This Court, while considering the special leave petition recorded that the Court is not inclined to entertain the petition on its merits and issued notice only to the extent of considering the question of law/legal position. In connected cases, being Criminal Appeal No. 2189 of 2025 and Criminal Appeal No. 2190 of 2025, this Court vide order dated 22-4-2025 [Mihir Rajesh Shah v. State of Maharashtra, 2025 SCC OnLine SC 2531], has granted ad interim relief and directed the appellants to be released on bail during pendency of these appeals. In Special Leave Petition (Criminal) No. 8704 of 2025 vide order dated 2-6-2025 [Ajit Atmaram Apraj v. State of Maharashtra, 2025 SCC OnLine SC 2532] , ad interim relief was also granted to the petitioner therein directing his release on bail. On 13-12-2024 [Mihir Rajesh Shah v. State of Maharashtra, 2024 SCC OnLine SC 5780] , Mr Shri Singh, learned counsel, who was present in the Court was appointed as Amicus Curiae to assist this Court in this matter."

25. It was held in **Mihir Rajesh Shah**:

"44. These above discussed principles embody the manifestation of the constitutional safeguard sought to be achieved in Article 22 of the Constitution of India which is that the arrested person must be well equipped with the information not only about his arrest but the reasons and grounds thereof prior to his production before the Magistrate so as to enable him to effectively defend himself and oppose the police and judicial custody and even press for bail. The obligation to inform the grounds of arrest to the arrestee is thus, not just a mere procedural formality, instead it flows from the fundamental right of personal liberty which sets the further course for protection from the oppressive restrictions imposed upon the free movement in the society of an arrestee during remand.

45. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the Constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest . , it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of

his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the Penal Code, 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

47. Another aspect, which flows from the above discussion and merits consideration is the mode of informing grounds of arrest to the arrested person to effectively serve the intended purpose of Article 22(1) of the Constitution of India. This Court, as observed above, had held that it would not be ideal to read out the grounds of arrest to a person who is arrested, as he may not be in the frame of mind to remember the contents of grounds that are read out to him. The Court underscored that if the authorities are permitted to read out the grounds and claim compliance with the constitutional and statutory mandate, the very purpose of the constitutional protection would be nugatory.

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

49. The relevant portion thereof reads thus: (Harikisan case [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117] , SCC OnLine SC paras 7-8)

"7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that he has studied up to 7th Hindi standard, which is equivalent to 3rd English standard . The High Court negatived the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the order of detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detenue, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the order of detention and the grounds

would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in State of Bombay v. Atma Ram Sridhar Vaidya [State of Bombay v. Atma Ram Sridhar Vaidya, 1951 SCC 43 : 1951 SCR 167] clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenue as soon as may be, and that the earliest opportunity of making a representation against the order should also be afforded to him. In order that the detenue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenue should be in a position effectively to make his representation against the order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenue sufficient knowledge of all the grounds on which the order of detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenue would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the order of detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenue must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.

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

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

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

53. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1).

54. There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

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

56. It would not be out of context now to refer to an obligation which has been imposed on a person making arrest, as provided under Section 50-A read in relation to Section 50CrPC (now Sections 48 and 47 of BNSS 2023 respectively), to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to his arrest. Simultaneously, a duty has also been cast on the person making arrest to forthwith thereafter inform of such arrest with reasons and the place where the arrested person is being held to the such indicated person. The police officer/person making any arrest shall make an entry of the fact as to who has been informed of such an arrest in a book to be kept in the police station. Further protection in this regard is reflected when a duty has been cast on the Magistrate to satisfy himself, when the arrestee is produced before him, that the above requirement stands complied with. This requirement is in addition to the rights of an arrestee to be made aware of the grounds of arrest.

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

26. We must remark here that there are some features regarding safeguards attending the arrest of the accused, which have been given a more definitive shape in **Mihir Rajesh Shah.** It has been beyond cavil for sometime now that there is an obligation upon the Police or the other enforcement agencies arresting an accused in a crime or a suspect, to furnish the grounds of detention at the time of arrest, or as soon as may be. It has also been settled that if the grounds of arrest in the language understood by the accused are not furnished, the arrest would be rendered illegal, notwithstanding the filing of a charge sheet or a prosecution going ahead. The grounds of arrest, as distinguished from reasons of arrest, have already been the subject matter of pronouncement in **Prabir Purkayastha**. The principle that grounds of detention should be in writing has also been clearly propounded in **Prabir Purkayastha** and that the breach of this obligation on the part of the investigating agency would render the custody illegal. The principle that the mere fact that a charge sheet has been filed, would not validate the illegality emanating from non-communications of the grounds of arrest, is well crystallized in **Prabir Purkayastha**. These principles have been developed on the edifice of the earlier decisions governing the issue.

27. **Mihir Rajesh Shah** further crystallized the obligations of the Police or other investigating agency by saying that if the grounds are not furnished at the time of arrest, these have to be done as soon as may be, is a matter, which has to be confined to a precise time. Earlier what meant 'as soon as may be' was not defined with reference to a particular event or a calendar. Now, in **Mihir Rajesh Shah**, it has been held that if the grounds cannot be furnished at the time of arrest for any reason, this must be done within a reasonable time, and, in any case, at least two hours prior to production of the accused before the Magistrate for remand. The pegging down of time to two hours before remand proceedings is a principle laid down in **Mihir Rajesh Shah**. We notice that **Mihir Rajesh Shah**, on its own terms, makes the law there, applicable prospectively, that is to say, the future arrests. All arrests made after **Mihir Rajesh Shah** would have to abide by the further principles developed there. It has no retrospective application.

28. So far as the petitioner s case is concerned, he need not fall back upon **Mihir Rajesh Shah,** which would not be attracted to his case because the petitioner was arrested on 20.04.2025 and **Mihir Rajesh Shah** as decided on 06.11.2025. The concluding remarks of their Lordships in paragraph no. 58 of the report would make **Mihir Rajesh Shah** unavailable to the petitioner. Nevertheless, the principle evolved in **Pankaj Bansal, Prabir Purkayastha** and **Vihaan Kumar** are squarely applicable to the petitioner s case.

29. We must, at this stage, answer what the learned A.G.A. argued that the principle in **Kusum Sahu** would take this case out of the teeth of **Pankaj Bansal, Prabir Purkayastha** and **Vihaan Kumar**, as this is a matter, where the petitioner had already applied for bail before the learned Sessions Judge and suffered a rejection of his plea. He cannot now turn around and say that the arrest was illegal and, thus, secure bail indirectly, what he could not do on merits. It is true that the principle in Kusum Sahu appears to be that way, but the illegality in **Kusum Sahu**, that was the subject matter of frown by their Lordships of the Supreme Court, was in an entirely different context. The first was that four successive bail applications were made to the High Court itself within a span of four months and all these were rejected. It was then that a habeas corpus petition was moved before the High Court, and invoking the principles of illegality of arrest, a writ of habeas corpus was granted, restoring the accused to his liberty. While doing so, their Lordships of the High Court appear to have examined the merits of the accused s case, which led the Supreme Court to remark that the High Court, while considering the habeas corpus plea, directed release of the accused examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application . This is not the

case here at all. For one, the High Court was never moved by way of a bail plea, much less the plea being turned down.

30. What is more important is that in this petition, it is not the merits of the case that we have examined or were invited to examine by the petitioner. What we have examined is the legality of the arrest and the remand order, pursuant to which the petitioner is in judicial custody. If the arrest and the remand order are illegal applying the principles in **Pankaj Bansal, Prabir Purkayastha** and **Vihaan Kumar** dehors a reference to the merits of the prosecution or the defence, the principle in **Kusum Sahu**, to our understanding, would not be attracted. The contention of the learned A.G.A. on this score cannot, therefore, be accepted.

31. Now, we may turn to the steps taken in fulfillment of their obligations by the Police to arrest the petitioner. The only obligation is to inform the petitioner of the grounds of arrest at the time he is arrested, or as soon as may be. The petitioner says that he was never informed of the ground of his arrest, either at the time or within a reasonable period of time after the arrest. In fact, he was never informed of the grounds until remand. The only record of the grounds of arrest, which the State have produced, is the memorandum of arrest and G.D. Entry No.27 dated 20.04.2025. Both of these are said to carry the grounds of arrest. We have quoted both these documents in extenso earlier.

32. So far as the memo of arrest dated 20.04.2025 is concerned, column no. 10, which says, giraftari kaa karan, has been left blank for an answer by the respondent. It is utterly blank with nothing said for a reason. About this, we were told that sub-columns ka, kha, ga, gha, anga carry the relevant reasons, which constitute the grounds of arrest. Column no. 10-ka says to prevent such a person from further committing an offence . The answer is haan (yes) . Column no. 10-kha mentions for the purpose of appropriate investigation into the offence . The answer is again haan (yes) . Likewise, column no. 10-ga says 'to prevent such a person from destroying evidence or tampering with it'. The answer is again haan (yes) . Likewise, are the succeeding two columns and in answer to each, the answer is the same, which is haan (yes) . This arrest memo does not carry grounds of arrest, but reasons of arrest. The reasons have already been distinguished from grounds by the Supreme Court in **Prabir Purkayastha** (see paragraphs 37 and 48 of report). There is absolutely no ground mentioned in the memo of arrest.

33. We may next turn our attention to the case diary, in particular, G.D. No.27 dated 20.04.2025. No doubt, this part of the case diary is contemporaneous with the petitioner's arrest, but all that it says for a reason, rendered into English, says: *"the accused Rakesh aforesaid was informed of his crime under Sections 87, 127(4), 64(1), 143(2) BNS and the accused Harveer and Onkar of their crime under Section 143(2) BNS, and taken into police custody at about 08.50 hours. During arrest, guidelines of the Supreme Court and the Human Rights Commission were fully complied with. Information of the accused's arrest will be given to their relatives."* The other facts mentioned in the case diary relate to the manner of arrest, the receipt of information from a secret informer and confinement of the accused to the Police Lockup. There is nothing to show in G.D. No.27 that there is any contemporaneous mention of the grounds of arrest, much less something that was brought to the petitioner's notice at the time or soon after his arrest. There was nothing recorded contemporaneously, which could have been brought to the petitioner's notice at the time of arrest or as soon as may be. The mandate of Article 22(1) of the Constitution, necessitates furnishing the accused grounds of detention in writing in a language understood by him, the requirement of the grounds being furnished in writing being clearly culled out by the Supreme Court in **Prabir**

Purkayastha. The purpose of furnishing these grounds is to enable the accused to exercise his right to win his liberty back at the time of proceedings for remand. The course of action here shows that everything happened from arrest to production before the Remand Magistrate on 20.04.2025 and all during this time, the petitioner was not informed of the grounds of his arrest. The petitioner was, therefore, disabled from exercising his right under Article 22(1) of the Constitution, either personally or through the assistance of Counsel, because he never knew in what connection and on what precise grounds and facts, he has been taken into custody. He might not have known the facts even thereafter until he moved his application for bail before the learned Sessions Judge. The petitioner has consistently denied that no grounds were ever supplied to him and it is the burden of the Police to establish that the grounds were indeed supplied. They have not been able to discharge it.

34. The petitioner was produced before the Remand Magistrate on the same day i.e. 20.04.2025 and this takes us to the remand order passed by the Magistrate, which too we have not only extracted, but caused a photostat copy thereof to be shown in the earlier part of this judgment. A perusal of the remand order shows not only non-compliance with the provisions of Article 22(1) with the Magistrate inquiring into the grounds of arrest before granting a judicial remand, but shows that it is the most mechanical kind of remand granted by the learned Magistrate. The entire remand order is written on a printed proforma with blanks filled up. These have been filled up in either by a clerk or the reader attached to the learned Magistrate or by the learned Magistrate himself and signed by him. Everything else is already printed.

35. This is a classical case of a remand order made by the Judicial Magistrate, being rendered illegal due to the failure to ensure compliance with the requirements of Article 22(1) of the Constitution. In paragraph no. 25 of the report in **Vihaan Kumar,** the principle delineated is clear that when the arrested person is produced before a Magistrate, it is his duty to ascertain whether compliance with Article 22(1) has been made. If there is non-compliance, the arrest is rendered illegal and the accused cannot be remanded. A remand made without following the aforesaid procedure and ascertaining adherence to the mandate of Article 22(1) would be illegal and so also the ensuing custody.

36. In the result, this writ petition succeeds and is **allowed**. The impugned order of remand is hereby **quashed**. The petitioner shall be produced before the learned Magistrate or the Trial Court, where the case is pending, and upon his production, the Court shall release him from custody, subject to the petitioner furnishing a bond in accordance with Section 91 BNSS to the satisfaction of the learned Magistrate or the Trial Court concerned. The petitioner shall by his bond undertake to regularly attend the trial on each date fixed and not seek adjournment on any ground. It is made clear that this order of ours will neither affect the ongoing trial at whatever stage it is, nor the merit or the worth of the charges that the prosecution have brought against the petitioner. The learned Sessions Judge, Sambhal is directed to ensure that all Magistrate functioning under his subordination do not grant a police or a judicial remand casually in a printed proforma and most certainly not without ascertaining the fact if the grounds of arrest have been communicated to the accused in writing by the Police or the other agency involved.

37. Let this judgment be communicated by the Registrar (Compliance) to the learned Sessions Judge, Sambhal, the Chief Judicial Magistrate, Sambhal and through the Chief Judicial Magistrate, Sambhal to the Jail Superintendent of the Jail where the petitioner is in custody.

(2026) 7 ILRA 2280
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.07.2026

BEFORE

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

Writ C No. 4998 of 2026

Satish Chandra Gupta **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(i) Did the State Government have power to stay the District Magistrate's order dated 16.01.2015, through the Government Order dated 30.01.2015 and the order dated 31.03.2015?
(ii) Can the finding of lapse under Section 24(2) of the Act, 2013 be upheld on the facts of this case?

Headnotes

Land Acquisition Act, 1894, Sections 11, 48 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24 - Disputed land formed part of a larger acquisition of 9.270 hectares comprising 28 gatas in Village Manoharpur - Acquisition commenced with notification dated 06.04.2000 issued under Section 4(1) read with Section 17(4) of the Land Acquisition Act, 1894, invoking the urgency provisions under Section 17(1) - land was required by the Moradabad Development Authority (MDA) for developing a planned residential colony - No award under Section 11 of the Land Acquisition Act, 1894 was ever made in respect of the petitioners' land - A possession memo dated 02.04.2003 recorded that possession of the entire 9.270 hectares, including the disputed land had been taken after Rs.1.07 crore, stated to be 80% of the estimated compensation, was deposited in the Government Treasury - petitioners asked the State Government to exempt their land from acquisition - Vice Chairman of the MDA informed the State Government that exemption of the petitioners' land from acquisition would not adversely affect the MDA's scheme - State Government directed the Vice Chairman of the MDA to adjust the petitioners' land - proposal was placed before the MDA Board in its meeting and was rejected - petitioners and their co-sharers filed Writ Petition seeking, inter alia, a declaration that the acquisition had lapsed under Section 11-A of the Act, 1894 - Writ Petition was decided and it was directed that, if the petitioners had made an application under Section 48 before 02.04.2003, the same be considered and decided within six weeks, with status quo regarding possession for six weeks - petitioners submitted a representation - State Government rejected it stating that possession had already been handed over to the MDA and there was no reason to exempt or adjust the land - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force on 01.01.2014 and repealed the Act, 1894 subject to the saving provisions contained in Section 24 - petitioners thereafter moved an application dated 03.02.2014 before the Collector, Moradabad, contending that neither an award had been made nor possession had been taken - By a detailed order dated 16.01.2015, the District Magistrate held that the acquisition had lapsed under Section 24(2) of the Act, 2013, relying upon the Tehsil report to hold that physical possession remained with the petitioners and upon Pune Municipal Corporation to hold that deposit of 80% compensation in the Government Treasury did not amount to payment to the tenure-holders - State Government passed the impugned order dated 31.03.2015 staying the District Magistrate's order with immediate effect and directing further action under the Government Order dated 30.01.2015 - Aggrieved by the Government Order dated 30.01.2015 and the consequential order dated 31.03.2015, the petitioners filed the present writ petition.

Held:

A. District Magistrate had acted pursuant to the Division Bench order dated 07.10.2014, had issued notice to the parties, heard both sides and passed a reasoned order dated 16.01.2015 - District Magistrate's order dated 16.01.2015 was not a simple administrative order but a quasi-judicial order passed after deciding a legal dispute between the parties - once such a quasi-judicial order is passed, it can be changed only in the manner provided by law, such as through an appeal, revision, or judicial review by a competent court, if the statute permits - Section 24 of the Act, 2013 does not give the State Government any power to review or set aside an order passed under that provision - power to alter, review or set aside a decision already rendered is not an inherent power and must be conferred by law, either expressly or by necessary implication - Government Order dated 30.01.2015 came into existence only after the District Magistrate had passed his order dated 16.01.2015 - no provision was shown giving the Government Order dated 30.01.2015 any retrospective effect - it could not, therefore, be used to reopen a decision already taken - Government Order dated 30.01.2015 and the order dated 31.03.2015 were without jurisdiction and could not stand - action amounted to colourable exercise of power and was arbitrary and perverse in law. [Paras 8.2-8.10]

B. MDA's submission that the District Magistrate had no jurisdiction to decide the petitioners' claim under Section 24 rejected - State Government's own Government Order dated 24.03.2014 directed District Magistrates across the State to decide such claims by passing speaking orders - Division Bench order dated 07.10.2014 sent the matter back to the Collector concerned for decision afresh after due notice to the parties - MDA did not challenge that order and could not subsequently contend that the very authority to whom the matter was sent lacked jurisdiction to decide it. [Paras 8.7-8.9]

C. Where no award under Section 11 of the Act, 1894 had been made, Section 24(1)(a) applied and only the provisions relating to determination of compensation under the Act, 2013 applied - No award under Section 11 had ever been made in respect of the petitioners' three gatas and, therefore, their case appeared to fall under Section 24(1)(a) and not Section 24(2) - District Magistrate had relied upon Pune Municipal Corporation v. Harakchand Misrimal Solanki, which stood overruled by the Constitution Bench in Indore Development Authority v. Manoharlal - Finding of lapse under Section 24(2) suffered from two serious legal difficulties, namely, applicability of Section 24(2) where no award under Section 11 was ever made and the District Magistrate's conclusion regarding payment of compensation being based on a legal position which had since been overruled by the Constitution Bench - Court did not consider it necessary to finally decide the issue of applicability of Section 24(2) in the present case and left it open for an appropriate case - Finding of lapse under Section 24(2) was not free from legal doubt and could not by itself be made the sole basis for granting relief to the petitioners. [Paras 8.11-8.16]

D. Petitioners had from the very beginning sought release of their land under Section 48 of the Act, 1894 - Section 48 gives the Government the power to withdraw from acquiring any land as long as physical possession of the land has not been taken - power to release land from acquisition under Section 48 lies with the State Government and not with the MDA - State Government directed to decide the petitioners' long-pending application for release of the land under Section 48 of the Act, 1894, after considering all relevant records including the Tehsil report, possession memo, Board's resolution and letters of the Vice Chairman - writ petition partly allowed - Government Orders dated 30.01.2015 and 31.03.2015 quashed - matter remitted to the State Government to decide the pending application for release of the land within three months - parties directed to maintain status quo regarding possession until such decision - no order as to costs. [Paras 8.20-8.22, 9-10] (E-5)

Case Law Cited

Sudesh Chhikara v. Ramti Devi, Civil Appeal No. 174 of 2021, decided on 6 December 2022;
Onkar Nath Gaur and another v. District Magistrate/President Appellate Tribunal, Lucknow and others, 2025 (5) ADJ 788 (FB) (LB);
Shivani Verma v. State of U.P. and others, 2023 (6) ADJ 496;
Dinesh Ahuja @ Chinu v. District Magistrate and two others, 2024: AHC 182781-DB.

List of Acts

Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
Maintenance and Welfare of Parents and Senior Citizens Rules, 2014.

List of Keywords

Senior citizens; Protection of life and property; Maintenance Tribunal; Appellate Tribunal; Transfer of property; Void transfer; Basic amenities; Basic physical needs; Disputed title; Sale-deed; Will; Property dispute; Eviction; Restitution; Civil Court; Special adjudicatory jurisdiction; Preventive and facilitative scheme; Intricate questions of title and possession; Jurisdiction of Tribunal; Summary proceedings; Full-fledged civil trial.

Case Arising From

Grievance of the petitioner regarding non-action on his representation by District Level Committee constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, resulting in execution of two sale-deeds, which the petitioner claimed to be forged and the Will forming the foundation of the said sale-deeds itself alleged to be a forged document.

Appearances for Parties

Advs. for the Petitioner (s) : Dharmendra Kumar
Advs. for the Respondent(s): Abhishek Srivastava, C.S.C., Indra Pal Singh Rajpoot, Rajesh Mishra

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Alok Kumar Dwivedi, learned counsel appearing for the petitioner, Mr. Akhilesh Kumar Tripathi, learned Standing Counsel appearing for respondents no.1 to 6, Mr. Indra Pal Singh Rajpoot, learned counsel appearing for respondents no.7 to 10 and Mr. Rajesh Mishra, learned counsel appearing for respondents no.11 and 12.

2. The petitioner, who claims himself to be senior citizen has approached this Court with following main reliefs:-

"1. Issue a writ of Mandamus commanding Respondent Nos. 2 to 4 (District Magistrate, Superintendent of Police and Sub-Divisional Magistrate) to forthwith provide round-the-clock police protection to the petitioner and his property House No. 373, Kasba Rath, District Hamirpur.

2. Issue a writ of Prohibition restraining Respondent Nos. 6 to 12 from interfering in any manner whatsoever with the petitioner's peaceful possession.

3. Declare that the forged Will and registration of sale deed dated 17.11.2025 are prima facie void, and direct the competent authority to take time-bound legal action in accordance with law.

4. Direct a time-bound inquiry (within 15 days) into the failure of the District Magistrate, Superintendent of Police, Sub-Divisional Magistrate, Circle Officer and Station House Officer in discharging statutory duties under Section 22 of the Act, 2007.

5. Issue a writ of Mandamus directing the State Level Committee constituted under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to take immediate cognizance of the petitioner's grievance; Exercise supervisory powers over the District Level Committee and district authorities; Issue binding protective directions for safeguarding the petitioner's life and property; and File a personal compliance affidavit before this Hon'ble Court

within a fixed time frame non-action on representations dated 13.10.2025 and 14.11.2025, and 01.02.2026 failure to prevent creation of forged documents.

3. Shorn to unnecessary details the facts leading to instant writ petition can be summarized as under:-

The petitioner happens to be son of one Bhagwandas, who was owner of property described as house recorded in his name in the assessment register of Nagar Palika Parishad, Rath. A Will is said to have been executed by testator Bhagwandas alias Garibdas on 18.08.2004 in favour of private respondents and thereafter the beneficiaries of the Will executed two different sale-deeds on 17.11.2025, which have been brought on record by means of Annexures No.3 & 4 to this writ petition.

The petitioner pleads that he is the lawful owner and is in peaceful settled possession of house in question as such, he filed a representation addressed to the District Magistrate, Hamirpur seeking protection of his property under the mandate of Section 22 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (here-in-after shall be referred to as the ' the Act, 2007').

4. The grievance as voiced by the petitioner in his representation is, that despite receipt of said representation, no action at the end of District Administration and Police Authorities including District Level Committee constituted under the Act was taken, resultantly execution of two sale-deeds on the same day, even the reminder representation filed on 14.11.2025 could not activate the State machinery. The petitioner claims these sale-deeds to be forged by raising a plea that the sale-deeds so executed are without authority of law, as the Will, which is the foundation of these two sale-deeds for the purpose of flow of title, itself is forged document. Further submission is the executant of sale-deed had no title to convey, there exist no lawful chain of title and in this factual backdrop the property of petitioner ought to have been protected and the private respondents being third party ought to have been restrained from any sort of interference in property in question. The private respondents are alleged to be land grabbers and anti-social elements, though no material indicating any instances could be set-forth.

5. Learned counsel for the petitioner in order to buttress his submissions relied upon Section 22 of the Act, which reads as under:-

"22. Authorities who may be specified for implementing the provisions of this Act. (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens."

6. From bare perusal of Section 22 of the Act it comes out, that law mandates the State Government to prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

7. The much stress has been laid on Section 22(2) of the Act that the property of senior citizens are to be protected by the State machinery, which they palpably failed as the inaction of State machinery had led to registration of aforesaid sale-deeds.

8. Submissions as advanced by counsel for the petitioner are that the State administration collectively failed to extend protection of property of petitioner, who is admittedly a senior citizen, thus, they defied the statutory mandate cast upon them under Section 22 (2) of the Act.

9. It has strenuously been urged that the State Government having issued relevant Government Orders in the shape of comprehensive action plan by constituting District Level and State Level Committees, allowed such committees to remain ineffective. Thus, the Constitutional rights guaranteed under Article 300 A in Part XII of the Constitution of India remained flouted.

10. The constitution of State Level and District Level Committees as per comprehensive action plan remained ineffective particularly for the petitioner as his representations have not been paid any heed at all.

11. The counsel for the private respondents submitted that civil suit interse the parties is pending adjudication and the transferor is not alien to the property under dispute as they are heirs of late Bhagwandas (the admitted owner) of property in question and they have transferred their share only by means of conveyance/title deed as such the Act, 2007 has no field to play in the instant matter.

12. The statutory scheme of the Act provides transfer of property to be void in certain circumstances. Section 23 of the Act reads as under :-

"23. Transfer of property to be void in certain circumstances.-(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without 1.0tice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub- sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."

13. Barring Section 23 of the Act, 2007 there is absolute absence of power and procedure vested in tribunal/authorities to declare any title deed non est, which is collective decision and wisdom of legislature.

14. The Hon'ble Supreme Court in the case of **Sudesh Chhikara vs. Ramti Devi & another (Civil Appeal No.174 of 2021 decided on 6 December, 2022)** dealt with scope of Section 23 of the Act 2007 and dealing with all kind of transfer and has held as under:-

"25. Though it was initially sought to be suggested during the course of submissions that the condition of provision of basic amenities and basic physical needs must be stipulated in the form of a covenant in the Gift Deed, Mr. Khandeparkar, in his usual fairness, has later conceded that he does not want to press an extreme argument that in every case such a condition must be included in the Gift Deed. He however submits that even if such condition need not be included in the Gift Deed, there must be pleading and proof on the part of senior citizen that the Gift or transfer was executed subject to a condition that the transferee would provide basic amenities and basic physical needs to the transferor. In this connection he has placed reliance on the judgment of the Supreme Court in the Case of Sudesh Chhikara (supra) in Paragraph Nos.12 and 15 the Supreme Court held as follows:

"12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression 'by way of gift or otherwise'.

10 April 2024'Neeta Sawant WP-590-2023-JR-FC For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

a. The ransfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

15. Careful perusal of the petition under Section 23'filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1 would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments.

Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition."

26. In the case before the Apex Court, there was no pleading to the effect that the Gift Deed was executed subject to condition that a transferee would provide basic amenities and basic physical needs to Respondent No.1 therein. In the present case Respondent No.1 - Mother has pleaded in Paragraphs 4-O & 4-P of her application as under:

"40. Applicant was alone and with no choice but to take help from her Younger Son/the Respondent No.1. As the Applicant was dependent on Respondent No.1 and the exerted undue influence, relying upon the aforesaid assurances, she was coerced to execute Gift Deed in the favour of Respondent No.1 and the same was executed in May, 2017, with false promises that the Respondent Nos.1 & 2 will take her care of her for the entire life. 4P. In furtherance of the assurances given by the Respondents to safeguard her future, the Applicant was persuaded into gifting her 2 (two) Properties/Shares or Joint-Ownership in the 2 (Two) Properties, in favour of the Respondent No.1 herein, when she was alone and was not in the right frame of mind and was ailing."

27. Thus, there are specific pleadings made by the first Respondent- Mother in her application that two Gift Deeds were executed in furtherance of assurance given by Petitioners that they would take care of her during her entire life. Mr. Khandeparkar has fairly not contested the issue of absence of pleading. He however submits that it was incumbent upon the Mother to prove by leading oral evidence that the Gift Deed was executed subject to a condition of Petitioners'10 April 2024'Neeta Sawant WP-590-2023-JR-FC providing basic amenities and basic physical needs to Mother. The requirement of the aspect of leading oral evidence by senior citizen in support of application is being discussed in latter portion of the Judgment. However, so far as applicability of the Judgment in Sudesh Chhikara (supra) in the present case is concerned, I am of the view that the Apex Court was persuaded to set aside the order of Maintenance Tribunal essentially on account of lack of pleadings by Respondent No.1 therein that the Release Deed was executed subject to a Condition for providing maintenance. Since the condition is pleaded by Mother in her application, the judgment in Sudesh Chhikara would not support Mr. Khandeparkar's submission that there was no material before the Maintenance Tribunal to arrive at a finding that the Gift Deeds were executed subject to such a condition.

28. In fact Mr. Purohit has rightly drawn my attention to the following finding recorded by the Apex Court in Sudesh Chhikara (supra) in Paragraph 14 of the Judgment which reads thus:

"14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in subsection (1) off Section 23'are attached to a transfer, existence of such conditions must be established before the Tribunal."

29. The Apex Court has thus held that the existence of condition can even be established before the Tribunal. This would in fact indicate that the existence of such condition need not be reflected in the Deed itself in the form of a covenant or a recital and the same can be established before the Tribunal.

(emphasis supplied)

15. Thus, it comes out from plain reading of Section 23 of the Act, 2007 that for invoking the powers treating conveyance/document of transfer of title to be non est and void. Certain pre-requisites are to be satisfied viz:-

(i) a transfer is made by a senior citizen by way of a gift or otherwise after the commencement of this Act of this property;

(ii) such a transfer is subject to the condition that the transferee would provide the basic amenities and for basic physical needs to the transferror;

(iii) despite the said stipulation, the transferee refuses or fails to provide such amenities and physical needs, so promised;

16. If the aforesaid three conditions co-exist then such transfer made at the option of the transferor shall be deemed to have been made by fraud or coercion or undue influence and at the option of the transferor be declared void by the Tribunal.

17. In the absence of any requisite pleading either in the representation or in this writ petition attracting the elements/ingredients for invoking the jurisdiction conferred under Section 23 of the Act, no mandates/direction can be issued .

18. We have had privilege to go through the Full Bench decision of this Court rendered in the case of **Omkar Nath Gaur and another Vs. District Magistrate/President Appellate Tribunal Lucknow and others** reported in 2025 (5) ADJ 788 (FB) (LB). The Hon'ble Full Bench was posed with the four questions of law viz:-

(i) What is the true scope and powers of the maintenance Tribunal constituted under Section 7 of the Act of 2007 which is contained in Chapter-II of the Act of 2007 and whether the Tribunal in exercise of its power in context with Sections 7, 8 and 9 of the Act of 2007would be empowered to pass an order of eviction while deciding an application preferred before it in terms of Section 5 of the Act of 2007?

(ii) What would be the true scope and power of the District Magistrate who exercises power as an Appellate Tribunal in terms of Sections 15 and 16 of the Act of 2016 [sic] and whether in exercise of such powers the Appellate Tribunal can pass an order of eviction?

(iii) What is the true scope of Section 21 of the Act of 2007which deals with protection of life and property of senior citizen which is contained in Chapter-V of the Act of 2007 and to what extent the Authority can pass an order for adjudging certain transfers as void in terms of Section 23 of the Act of 2007 vis-a-vis the duties and powers of the District Magistrate conferred under Rules 21 and 22 of Rules of 2014 and in this context whether the orders for eviction can be passed?

(iv) Whether the Division Bench in Ms. Swarj Verma (Supra) (sic) and Bipraji Singh (Supra) lays down correct law or whether the law laid down by the Division Bench in Shivani Verma (Supra) lays down the correct law?

19. Question nos. (iii) and (iv) are of seminal importance for decision of present controversy, as such the relevant portion of aforesaid Full Bench judgment where question no. (iii) has been dealt with are extracted as under :-

"100. Now, its time to consider question no. (iii) which is being reproduced for the purpose of recaptitulation:

(iii) What is the true scope of Section 21 of the Act of 2007 which deals with protection of life and property of senior citizen which is contained in Chapter-V of the Act of 2007 and to what extent the Authority can pass an order for adjudging certain transfers as void in terms of Section 23 of the Act of 2007 vis-a-vis the duties and powers of the District Magistrate conferred under Rules 21 and 22 of Rules of 2014 and in this context whether the orders for eviction can be passed ?

101. Chapter V of the Act of 2007 is titled protection of life and property of senior citizens and it takes within its fold Sections 21 to Section 23. It will be relevant to reproduce Section 21 of the Act which reads as under:-

21. Measures for publicity, awareness, etc., for welfare of senior citizens.-The State Government shall, take all measures to ensure that-

(i) the provisions of this Act are given wide publicity through public media a including the television, radio and the print, at regular intervals;

(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;

(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.

102. What is significant to note is that Section 21 directs the State Government to take all measures to ensure that :-

(i) the provisions of the Act of 2007 are given wide publicity through public media including television, radio and print at regular intervals;

(ii) the Central and the State Government Officers including the Police Officers and the members of the judicial service are given periodic sensitization and awareness training on the issue relating to this Act and ;

(iii) effective coordination between services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare to address the issue relating to the welfare of the senior citizens and periodical review of the same be conducted.

……

105. Section 22 of the Act of 2007 is apparently an enabling section which directs the State Government to confer the powers to implement the provisions of the Act and to ensure its smooth adherence by an officer not below the rank of a District Magistrate. The District Magistrate, under the Act can further delegate the duties to such officer who would carry out and perform all or any of the duties so conferred under the Act within local limits as may be prescribed. Sub Section (2) of Section 22 obligates the State Government to provide a comprehensive action plan for the protection of life and property of senior citizens.

106. In furtherance of Section 21 and to have a clear picture of what the State has understood regarding the duties and powers which were proposed to be conferred upon the District Magistrate finds reflection in Rule 21 framed under the Rules of 2014 which reads as under:-

21. Duties and Power of the District Magistrate- (1) The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to:

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;

(ii) oversee and monitor the work of Maintenance Tribunals and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, and execution of Tribunals' orders;

(iii) oversee and monitor the working of old age homes in the district so as to ensure that they conform to the standards laid down in these rules and any other guidelines and orders of the Government;

(iv) ensure regular and wide publicity of the provisions of the Act, and Central and State Governments, programmes for the welfare of senior citizens;

(v) encourage and co-ordinate with panchayats, municipalities, Nehru Yuva Kendras, educational institutions and especially their National Service Scheme Units, Organisations, specialists, experts, activists, etc. working in the district so that their resources and efforts are effectively pooled for the welfare of senior citizens of the district;

(vi) ensure provision of timely assistance and relief to senior citizens in the event of natural calamities and other emergencies;

(vii) ensure periodic sensitisation of officers of various Departments and Local Bodies concerned with welfare of senior citizens, towards the needs of such citizens, and the duty of the officers towards the

(viii) review the progress of investigation and trial of cases relating to senior citizens in the district, except in cities having a Divisional Inspector General of Police. Latter;

(ix) ensure that adequate number of prescribed application forms for maintenance are available in officers of common contact for citizens like Panchayats, Block Development Offices, Tahsildar Offices, District Social Welfare Offices, Collectorate, Police Station etc.;

(x) promote establishment of dedicated helplines for senior citizens at district headquarters, to begin with; and

(xi) perform such other functions as the Government, may by order, assign to the District Magistrate in this behalf, from time to time.

(3) With a view to performing the duties mentioned in sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with the Act; these rules, and general guidelines of the Government, as may be necessary, to any concerned Government or statutory agency or body working in the district, and especially to the following:

(a) Officers of the State Government in the Police, Health and Publicity Departments, and the Department dealing with welfare of senior citizens;

(b) Maintenance Tribunals and Conciliation Officers;

(c) Panchayats and Municipalities; and

(d) Educational Institution.

107. Rule 21 (2) (i) of the Rules of 2014 as quoted above reveals that a duty is cast on the District Magistrate to ensure that life and property of senior citizens are protected and they are able to live with security and dignity. If Rule 21 (2) as extracted above is seen in context with the other obligations which are mentioned in Rule 21 (2) (ii) to (xi), it shows that the District Magistrate can even review the progress of the investigation and trial of cases relating to senior citizens in the district except in cities which have a Director Inspector General of Police. The duties so conferred and envisioned in Rule 21 are relating to all such obligations, which are relatable to the various challenges faced by the senior citizens, while interacting with different Government interface, in their day to day lives. The endevour is to make the interaction experience of a senior citizen with the Government Organizations less stressful and more friendly and convenient and the District Magistrate being the Nodal Officer is required to synchronise and oversee what is required to be achieved in terms of Section 21 of the Act of 2007.

……..

110. A reading Sections 21 and 22 with Rules 21 and 22 reveals that the Legislature has put Rule 22 in Chapter VI of the Rules with the nomenclature'Protection of Life & Property of Senior Citizens whereas the phrase protection of life and property of senior citizens is the nomenclature of Chapter V of the Act and it also finds place in Rule 21 (2) (i) which relates to duties of the District Magistrate. Rule 22 reads action plan for the protection of life and property of senior citizens. This word action plan as used in Rule 22 is referrable to Section 22 (2) of the Act of 2007 obligating the Government to prescribe a comprehensive action plan.

111. It will be gainful to take a glance at Rule 22 of 2014 and the same reads as under:-

22. Action plan for the protection of life and property of Senior Citizens

(1) The District Superintendent of Police and in the case of cities having Divisional Inspector General of Police, such Divisional Inspector General of Police shall take all necessary steps, subject to such guidelines as the Government may issue from time to time for the protection of life any property of senior citizens.

(2) Without prejudice to the generality of sub-rule (1)

(i) each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (le without there being any member in their household who is not a senior citizen);

(ii) a representative of the police station together as far as possible, with a social worker or volunteer, shall visit such senior citizens at regular intervals of at least once a month, and shall, in addition, visit them as quickly as possible on receipt of a request of assistance from them,

(iii) complaints/ problems of senior citizens shall be promptly attended to, by the local police;

(iv) one or more Volunteer Committee (s) shall be formed for each Police Station which shall ensure regular contact between the senior citizens, especially those living by themselves, on the one hand, and the police and the district administration on the other,

(v) the District Superintendent of police or, the Divisional Inspector General of Police as the case may be, shall cause to be publicized widely in the media and through the Police Station, at regular intervals, the steps being taken for the protection of life and property of senior citizens;

(vi) each Police Station shall maintain a separte register containing all important particulars relating to offences committed against Senior Citizens as in Annexure IV

(vii) The Register referred to in clause (vi) shall be kept available for public inspection, and every officer inspecting a Police Station shall invariably review the status as entered in the register;

(viii) The Police Station shall send a monthly report of such crimes to the, District Superintendent of police by the 10th of every month;

(ix) list of Do's and Don'ts to be follwed by senior citizens, in the interest of their safety, will be widely publicized;

(x) antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens;

(xi) community policing for the security of senior citizens will be undertaken in conjunction with citizens living in the neighbourhood, Residents' Welfare Association, Youth Volunteers, Non-Government Organizations, etc,

(xii) the District Superintendent of police shall submit to the Director General of Police and to the District Magistrate, a monthly report by the 20th of every month, about the status of crimes agarnist senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month, as in Annexure Vi

(xiii) the District Mangistrate shall cause the report to be placed before the District-level Committee constituted under rule 24;

(xiv) The Director General of police shall cause the reports submitted under caluse

(xii) to be compiled, once a quarter, and shall submit them to the Government every quarter as well as every year for, inter-alia, being placed before the State Council of Senior Citizens constituted under rule 23.

113. Having said that, this Court does not find that there is any indication in any provision or rule which creates or confers special powers to take such action and pass an order of

eviction against any third party or a person who may be living with the senior citizen or in the premises belonging to the senior citizen. The duties as provided in Rule 21 and Rule 22 is primarily for strengthening and securing the social fabric to provide a protected stress free environment for the senior citizen and certainly not to create a forum or conferring special powers to evict any person irrespective of the right and obligation of such a party whose presence or possession may be adverse to that of a senior citizen.

……….

115. It is in this context that Rule 22 which is titled protection of life and property of senior citizens' has been placed in Chapter VI of the Rules of 2014 and an obligation has been placed on the Police Authorities to ensure that preventive measures are taken for the benefit and protection of senior citizens and the entire Rule 22 does not in any manner indicate or reflect any obligation imposed on the Police Authorities to carry out any remedial exercise beyond the already established framework of the forums created by law governing the citizens as a whole.

……….

125 Thus, it would be seen that what the Act and the Rules and the comprehensive Action Plan as framed by the State Government reflects is a preventive and facilitative scheme of affairs and it does not create any special adjudicatory forum nor does it envisage or confer any new adjudicatory/coercive powers with the Authorities while providing immediate redressal, beyond the existing framework of laws. The aforesaid provision/scheme would indicate that the measures as provided are service based, pre-emptive and preventive in nature and certainly not reactive or curative.

……..

127. Now, this brings the Court to consider an important provision i.e. Section 23 of the Act of 2007, which has an impact and it also confers some powers on the Tribunal which are in contrast to the powers as mentioned in Sections 5 to 9 of the Act of 2007. For the ease of reference, Section 23 is being reproduced hereinafter:-

23. Transfer of property to be void in certain circumstances. '(1) Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise,his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option ofthe transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part, thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

128. On the plain reading of the aforesaid provision, it would indicate that to activate, the said section, certain conditions as mentioned therein must exist:-

(i) a transfer is made by a senior citizen by way of a gift or otherwise after the commencement of this Act of his property ;

(ii) such a transfer is subject to the condition that the transferee would provide the basic amenities and for basic physical needs to the transferror ;

(iii) despite the said stipulation, the transferee refuses or fails to provide such amenities and physical needs, so promised;

129. If the aforesaid three conditions co-exist then such a transfer made at the option of the transferor shall be deemed to have been made by fraud or coercion or under undue influence and at the option of the transferor be declared void by the Tribunal.

……..

141. On the other hand, in ordinary and normal circumstances, any dispute between a senior citizen and his opponent, are to be adjudicated in the Civil Courts or other Forums which may be available as per law and in such Civil Courts or Forums, the judicial officers or the Authorities, as the case may be, be more sensitive to give priority, keeping in mind the provisions of Section 21 (ii) of the Act of 2007 read with Rule 21 and 22 of the Rules of 2014. The State or the District Magistrate who has been obligated in terms of Section 19 and 20 of the Act read with Rules 21 and 22 are required only to create a strengthened social framework for the social security of the senior citizens.

(emphasis added)

142. However, the Act or the Rules do not confer or create a special forum or a special authority with overriding powers or authority to do something in terms of the Act of 2007 which is otherwise available only with the regular courts and authorities. The overriding powers of this Act in terms of Section 3 is limited only to the extent of powers conferred on the Tribunal or the Authority which they have to discharge in terms of the Act of 2007 and not beyond that. The traditional forums and courts are free to proceed with the matters in accordance with law which are not covered by the matters which are within the ambit and jurisdiction of Maintenance Tribunal, Appellate Tribunal in terms of the Act of 2007.

…….

150. It is in the aforesaid backdrop that Section 23 is treated as a stand alone section and only upon the adherence of the three pre-conditions, that the said section comes into play and only in such circumstances which are limited and explained hereinabove, can in a limited case upon an order being passed by the Maintenance Tribunal/Appellate Tribunal declaring the instrument as void can, as a necessary corollary and as consequential impact of the order, the possession may be put back with the senior citizen and only to that limited extent, the Tribunal may pass an order of restitution that can be implemented and if need be through the District Magistrate by taking aid of the police authorities.

153. It will be relevant to observe that injunction is one of the most prolific preventive reliefs which are sought and granted by the courts, however, the Tribunal or the District Magistrate under the Act of 2007 or in terms of Rules of 2014 have not been invested with any such power.

154. Thus, where the Tribunal or the District Magistrate does not have the power to grant the injunction to prevent a breach of the legal obligation and then to suggest that the same Tribunal or the District Magistrate in absence of any clear conferment of power has been granted the power to evict a person becomes incongruous.

156. Thus, for all the aforesaid reasons, this Court opines that the powers exercised in terms of Section 21 of the Act of 2007 or in terms of Rule 21 and 22 of the Rules of 2014 cannot include passing of an order of eviction except as explained above, where Section 23 of the Act of 2007 applies.

G. Summary and Answers to the Questions Referred:-

157. In light of the detailed discussions hereinabove we summarize and answer the reference as under:-

Questions (i) and (ii)

The Maintenance Tribunal constituted under Section 7 of the Act of 2007 in exercise of its power under Sections 7, 8 and 9 are not empowered to pass an order of eviction while deciding an application before it in terms of Section 5 of the Act of 2007. The Appellate Tribunal in terms of Section 15 and 16 of the Act of 2007 is also not conferred with the power to order an eviction except where in an appeal the Appellate Tribunal allows the prayer of the senior citizen/parent arising out of the plea of Section 23 of the Act of 2007.

Question No. (iii)

Considering the scope of Section 21 of the Act of 2007, the Authority is not competent to pass an order of eviction as Section 21 and the Rules 21 and 22 of the Rules of 2014 do not confer any power of eviction on the District Magistrate. However, the Maintenance Tribunal/Appellate Tribunal only in cases covered by Section 23 of the Act of 2007, after it holds a document/instrument to be void then as a concomitant exercising its restitutionary powers can revert back the possession to the senior citizen/parent.

Question No. (iv)

In response to Question No. (iv), we find that the decision rendered by the Division Bench in Shivani Verma (Supra) does not lay down the correct law and accordingly, it is overruled. The decision of the Division Bench in Swaraj Varun (Supra) and Bipraji Singh (Supra) in so far as they hold that the power of eviction is not conferred on the Maintenance Tribunal and the Appellate Tribunal or the District Magistrate is upheld with a modification that it is subject to the exception where a case is covered by Section 23 of the Act of 2007 and a document is declared void then the Maintenance Tribunal/ Appellate Tribunal while exercising its restitutionay powers may in a given case, where required, may restore/ handover the possession to the senior citizen/parent.

20. Interestingly in the instant case the petitioner had not come with any pleading that the transfer deed/conveyance was executed in lieu of basic amenities for the transferor and it was the transferee, who refused or failed to provide such amenities but on the other hand the petitioner is doubting the Will Deed and, thereafter, the two sale-deeds, adjudication of which involves intricate questions of title and possession.

21. The petition does not claim any adjudication through the limited window of Section 23 of the Act, 2007, rather he wants substitution of procedure of full fledged trial of civil suit adjudicating title deed's validity through summary procedure by tribunal created under the Act, 2007 which is not permissible as per statutory scheme of the Act, 2007 as ratified by Full Bench decision of this Court in the case of **Onkar Nath Gaur** (supra).

22. The Senior Citizens Act, 2007 was enacted with the objective to provide a mechanism to secure maintenance and ensure welfare of senior citizens left bereft of support, financial or otherwise. The Act being a social legislation, ought to be construed liberally and its provisions should be implemented in light of the aims and objectives with which the Act was enacted, which for all intents and purposes in the immediate case herein is to ensure that a senior citizen without any semblance of support is not further deprived of the property.

23. Every property dispute pertaining to validity of conveyance/transfer deed qua senior citizens cannot be subject matter of adjudication under the Act unless it qualifies the pre-requisites of the Section 23 of the Act.

24. The legal mandate for protection of property as envisaged under Chapter V of the Act is to be read in conformity of the aim and object of the Act and conventional litigation even for senior citizens ensuring

protection of civil rights of property is not to be given complete go by, unless they are covered by statutory prescriptions contained under the Act and Rules through the limited window of Section 23 of the Act.

25. For better understanding the law pertaining to the protection of the property of senior citizens contemplated under Chapter V of the Act of 2007, it is pertinent to note that the fulfillment of the pre-requisites mentioned therein, attracts the Latin maxim ***'expressio unius est exclusio alterius,'*** which means that the express mention of one thing implies the exclusion of another. Thus, it can safely be concluded that, with respect to the protection of the property of a senior citizen, only the limited jurisdiction conferred under Section 23 of the Act of 2007 is available. Accordingly, no property dispute falling beyond the scope of Section 23 of the Act of 2007 can be permitted to be adjudicated by the statutory authorities mentioned under the said Act. Any attempt to adjudicate disputes beyond the realm of Section 23 of the Act of 2007 would amount to transgression of jurisdiction, since such jurisdiction has not been vested by the statute.;

The overriding powers of this Act in terms of Section 3 are limited only to the extent of powers conferred on the Tribunal or the Authority which they have to discharge in terms of the Act of 2007 and not beyond that. The traditional forums and courts are free to proceed with the matters in accordance with law which are not covered by the matters which are within the ambit and jurisdiction of Maintenance Tribunal, Appellate Tribunal in terms of the Act, 2007 as evident from Section 27 of the Act, 2007, which reads as under:-

"27. Jurisdiction of civil courts barred:- No civil Court shall have the jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act."

26. The submission of counsel for the petitioner that his property rights are to be protected by State authorities in view of mandate of the coordinate bench judgement of this Court rendered in case of **Shivani Verma vs. State of U.P. and others reported in 2023 (6) ADJ 496** as also followed in the case of **Dinesh Ahuja @ Chinu Vs. District Magistrate and two others 2024: AHC 182781-DB** is completely misplaced as Hon'ble Full Bench in case of **Onkar Nath Gaur and another Vs. District Magistrate/President Appellant Tribunal Lucknow and others reported in 2025 (5) ADJ 788 (FB) (LB)** has specifically overruled the dictum of **Shivani Verma** (supra).

27. In view of the aforesaid admitted factual scenario the irresistible conclusion, which this Court reaches is that the Act though one for the protection of Senior Citizens cannot be utilized for settling property disputes, except matters covered under Section 23 of the Act, 2007. There is a serious dispute regarding title of the property and Civil Suits inter-se parties are pending. Thus, this Court refrains itself from exercising our writ jurisdiction for the purpose of conferring jurisdiction to adjudicate the validity of the conveyance/title deeds in question upon authorities and the Tribunal created under the Act, 2007 which the law does not otherwise confer. At the same time, the deeds in question cannot be declared void in writ jurisdiction.

28. Accordingly, the instant writ petition fails and is dismissed. Cost made easy.

29. It is needless to mention that the parties are at liberty to approach the competent Courts of law, including the Civil Court, for the redressal of their grievance, if so advised.

(2026) 7 ILRA 2295
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.07.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 9556 of 2026

M/s Knots India Carpets Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the respondents were justified in refusing to issue a No-Objection Certificate for construction of a hotel on the disputed property solely on the basis of an old revenue entry showing Arazi No. 2404 as a pond in Fasli year 1291 (1884 CE), when the petitioner has a registered sale deed dated 19.11.1913, the property has continuously been recorded as abadi in the revenue records, including the current Khatauni for Fasli year 1425, no subsequent Khasra entry shows the disputed property as a pond, and the IIT-BHU report dated 15.04.2026 does not establish the existence of any pond or water body thereon?

Headnotes

U.P. Zamindari Abolition and Land Reforms Act, 1950 – s.1(2) – U.P. Revenue Code, 2006 – s.2, ss.59, 61 – Constitution of India – Art.14 – Revenue records – Pond – Abadi land – No-Objection Certificate – Construction of hotel – Refusal on basis of old revenue entry – Arazi No. 2404 recorded as pond in Fasli year 1291 (1884 CE) - in the Khasra of Fasli year 1359 Arazi No. 2404/1 was recorded as abadi and Arazi No. 2404/2 was recorded as pond - Thereafter, no records of the Khasra have been produced to show that, subsequent to Fasli year 1359, the property in dispute was ever recorded as pond in the Khasra - In the Khatauni for Fasli year 1361, Arazi No. 2404/1 and Arazi No. 2404/2 were recorded as abadi; in the Khatauni of Fasli year 1382, Arazi No. 2404 was recorded as abadi; in the Khatauni of Fasli year 1387, Arazi No. 2404 was recorded as abadi and even in the current Khatauni for Fasli year 1425, Arazi No. 2404 was recorded as abadi.

Held:

A. Doctrine of promissory estoppel — One of the central principles of the doctrine of promissory estoppel is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party, if the assumption is not adhered to.

B. Registered sale deed — Validity and genuineness — Presumption — It is a settled position of law that a registered sale deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts a high degree of sanctity to the document. Consequently, a court must not lightly or casually declare a registered instrument as a "sham". The burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the deed was never intended to operate as a bona-fide transfer of title.

C. U.P. Zamindari Abolition and Land Reforms Act, 1950 — U.P. Revenue Code, 2006 — Applicability — The property in dispute was included in the erstwhile Municipal Board, Benaras, even prior to enforcement of the

U.P. Municipalities Act, 1916. The provisions of Chapter VIII and Chapter IX of the Code, 2006, have been made subject to the applicability of any of the enactments specified at serial nos. 19 and 25 of the First Schedule, immediately preceding their repeal by the Code, 2006.

D. Registered sale deed — Validity and genuineness — Respondent No. 2 Corporation did not dispute the execution, validity or genuineness of the registered sale deed dated 19.11.1913 in respect of land measuring 2 bighas and 7 biswas comprised in Arazi No. 2404 in favour of the predecessor of the petitioner — Registered sale deed specifically recorded transfer of land with structures thereon — Respondent Corporation, having failed to challenge the validity and genuineness of the sale deed for about 113 years, could not subsequently allege that a pond existed over the property in dispute.
E. Revenue records — Pond — Abadi — Revenue entries relied upon by respondents did not support their case — Property continuously recorded as abadi from Fasli year 1361 onwards, including the current Khatauni for Fasli year 1425 — Only Khasra entry of Fasli year 1359 recorded Arazi No. 2404/2 as pond and no subsequent Khasra records were produced showing the property as pond — Respondents failed to explain how or why a part of Arazi No. 2404 was recorded as pond only in Fasli year 1359.
F. Pond — No-Objection Certificate — IIT-BHU report dated 15.04.2026 — Report did not establish existence of any pond or water body at the site and recommended "new pond development" — Property situated in densely populated area — Respondent No. 3 could not have denied No-Objection Certificate solely on the basis of an alleged pond entry of Fasli year 1291 (1884 CE) — Writ petition allowed — impugned letter dated 24.01.2026 quashed — respondent No. 2 Corporation directed to reconsider petitioner's case for issuance of No-Objection Certificate for construction of hotel. [Paras 29–34, 46, 49–54] (E-5)

Case Law Cited

Hinch Lal Tiwari v. State of U.P., (2001) 6 SCC 496;
Jagpal Singh v. State of Punjab, (2011) 11 SCC 396;
Jitendra Singh v. Ministry of Environment and Others, (2020) 20 SCC 581;
State of Rajasthan and Another v. Ultra Tech Cement Limited, (2022) 19 SCC 102;
Shiv Badan Pandey and Others v. State of U.P. and Others, Writ Petition No. 2636 (MB) of 2006;
Prem Singh and Others v. Birbal and Others, (2006) 5 SCC 353;
Jamila Begum (Dead) through LRs v. Shami Mohd. (Dead) through LRs and Another, (2019) 2 SCC 727;
Ratan Singh and Others v. Nirmal Gill and Others, (2021) 15 SCC 300;
Manuelsons Hotels Pvt. Ltd. v. State of Kerala and Others, Civil Appeal No. 2480 of 2008, decided on 11.05.2016.

List of Acts

Constitution of India;
U.P. Zamindari Abolition and Land Reforms Act, 1950;
U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956;
U.P. Revenue Code, 2006;
U.P. Tenancy Act, 1939;
U.P. Municipalities Act, 1916.

List of Keywords

Revenue records; Pond land; Abadi land; Fasli year 1291; Registered sale deed; No-Objection Certificate; Construction of hotel; Historical revenue entry; Khasra and Khatauni; Record of possession; Record of rights; Water body; Environmental protection; Registered instrument; Presumption of validity; Promissory estoppel; Article 14; Arbitrary action; Discriminatory action; Valid title and possession; U.P. Revenue Code; Due process of law; Restoration of pond.

Case Arising From

From the letter dated 24.01.2026 issued by Nagar Nigam, Varanasi, refusing to grant a No-Objection Certificate to the petitioner for construction of a hotel on the ground that Arazi No. 2404, Mauja Rampura, Varanasi, was recorded as a pond in the revenue records in Fasli year 1291 (corresponding to 1884 CE).

Appearances for Parties

Advs. for the Petitioner (s) : Shashvat Gupta
Advs. for the Respondent(s): C.S.C., Vineet Sankalp.

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Heard Shri Ashish Kumar Singh and Shri Tarun Agarwal, learned Senior Advocates assisted by Shri Shashwat Gupta, learned counsel for the petitioner, Shri M.C. Chaturvedi, learned Senior Counsel assisted by Shri Vineet Sankalp, learned counsel for respondent no. 2 and 3.

2. The present petition has been filed being aggrieved by the letter dated 24.01.2026, by means of which Nagar Nigam, Varanasi has refused to grant a no-objection certificate to the petitioner for the purpose of construction of a hotel essentially, on the ground that in the Fasli year 1291 (corresponding year 1884 CE), Arazi no. 2404, Mauja Rampura (Varanasi) was recorded as a pond in the revenue records.

3. The facts involved in the controversy are that the Municipal Board, Benaras, vide registered sale deed dated 19.11.1913, had transferred 2 Bighas and 7 Biswas of land situated in Mohalla Misir Pokhra, Benares to Maharaja Mahindra Chandra Nandy. The said sale deed was executed after obtaining the sanction of the Commissioner of the Benaras District, which was granted vide letter dated 31.05.1913, which was further sanctioned vide Municipal Board's resolution dated 27.09.1913, by means of which said sale deed land with structures thereon were transferred in favour of the purchaser.

4. Subsequently, by means of another registered sale deed dated 12.11.1920, Jnanendra Basu had transferred 5 biswas of land situated in Mohalla Misir Pokhra, Benaras, in favour of Maharaja Mahindra Chandra Nandy. The perusal of this sale deed further reveals that the vendor, Jnanendra Basu, had purchased the land so transferred, by means of a registered sale deed dated 04.03.1913.

5. Thus, Maharaja Mahindra Chandra Nandy became the owner of 2 bighas and 12 biswas of land, which was the total area of Arazi no. 2404. Besides, the property so transferred by means of the two registered sale deeds, came to be recorded in the name of Maharaja Mahindra Chandra Nandy in the records of the Municipal Board, Benares

6. The successors of Maharaja Mahindra Chandra Nandy, by means of a registered sale deed dated 25.09.1957, had thereafter transferred an area of 19,099 sq ft out of the total area of about 2 bighas and 12 biswas in Arazi No. 2404 to Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw Gandhi. Besides Godrej Dhunjishaw Gandhi and Shavak Dhunishaw Gandhi had purchased a plot of land measuring 7,808 sq ft from Raja Ram Sahu by means of a registered sale deed dated 11.02.1958.

7. Thereafter, Godrej Dhunjishaw Gandhi and Shavak Dhunrishaw Gandhi had transferred a plot of land measuring 3605.5 sq ft out of the total land purchased from Raja Ram Sahu by registered sale deed dated 21.09.1959 in favour of Sri Shiv Dayal Khemka Charitable Trust.

8. Ultimately Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw. Gandhi were having 22,571.84 sq ft of land comprised in Arazi nos. 2402 and 2404, Misir Pokhara, Varanasi and the said property was allotted property no. D-48/140-141 by the Municipal Board, Benaras. The property situated at D 48/140-141, Mazda Picture Palace, Misir Pokhra, Varanasi admeasuring 22571.84 sq ft i.e 2097.75 sq mtr is the subject matter in dispute in the present writ petition (hereinafter referred to as ' the property in dispute').

9. Subsequently, Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw Gandhi had constructed Mazda Cinema Hall over the aforesaid property having an area of 22,571.84 sq ft after obtaining a license and requisite permissions, including one dated 17.10.1962 from the Municipal Board, Benaras. Mazda Cinema continued to run over the property in dispute for the next fifty years to follow.

10. The successors of Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw Gandhi vide registered sale deed dated 08.11.2011, had ultimately transferred the land with building bearing property no. D-48/140-141, Mazda Picture Palace, Misir Pokhara, Varanasi, having a plot area of 22571.84 sq ft to the petitioner. Subsequent thereto, the property in dispute came to be recorded in the name of the petitioner in the records of the Municipal Corporation, Varanasi, erstwhile Municipal Board, Benaras.

11. It is contended on behalf of the petitioner that out of the total area of 22871.84 sq ft of land so purchased by the petitioner, an area of 19671.83 sqft is comprised in erstwhile Arazi No. 2404, and the remaining area of 2900 sq ft is comprised in erstwhile Arazi No.2402 and also that the present dispute pertains to an area of 1,9671.83 sqft comprised in erstwhile Arazi No.2404, which said fact is not disputed by the respondents.

12. The petitioner in the meanwhile had entered into a memorandum of understanding dated 09.02.2018 with the State of U.P. through the Secretary, Infrastructure & Industrial Development, for construction of, "Star Hotel" having a proposed investment of about Rs.100 crores. In pursuance thereto, the petitioner had applied for a no objection certificate from Nagar Nigam Varanasi, however, by means of the impugned letter dated 24.01.2026, the Additional Municipal Commissioner, Nagar Nigam-respondent no. 3 refused the no objection certificate on the ground that in the Fasli year 1291 (corresponding year 1884 CE), Arazi no.2404 was recorded as pond in the revenue records.

13. After filling of the present writ petition this court, vide order dated 20.03.2026, had directed the learned counsel for respondents no. 2 and 3 to obtain instructions in the matter. Subsequently, the instructions were placed before this court on 01.04.2026, wherein it was stated that Arazi No. 2404, measuring 2 bighas,12 biswas and 1 dhur, was entered as pond in the revenue records during the Fasli year 1291 and presently, it is recorded as abadi, in the Fasli year 1425 and has an area of 0.688 hectares. Further, it was stated that a letter dated 27.02.2026 had been issued to

the concerned Sub-Divisional Magistrate to correct the revenue entries in respect thereof and also that Nagar Nigam Varanasi would carry out beautification of the pond over Arazi No. 2404, once the revenue entries stood corrected, reliance was placed upon the judgement of the Apex Court in the case of Hinch Lal Tiwari Vs State of UP.

14. This court, while keeping in view the instructions submitted vide the order dated 01.04.2026, amongst others, had directed as under:-

"17 Under the circumstances we direct that Principal Secretary, Department of Urban Development, Government of U.P. and Municipal Commissioner, Nagar Nigam, Varanasi to file their personal affidavits in respect of the subject matter in controversy wherein amongst others they are required to elucidate that as to how land comprised in the erstwhile Arazi No. 2404 can be held to be pond land when the erstwhile Municipal Board, Banaras in the sale deed executed way back in the year 1913 had itself admitted that the same was an open land, more so when even as on date in the revenue records the land comprised in said Arazi is shown as abadi. Further they are also required to elucidate the manner in which, the respondents intend to restore the pond over Arazi No. 2404 admittedly having an area of 2 bighas and 12 biswas and 1 dhur a densely populated area of Varanasi presently being situated over the same.

18 We further direct that the personal affidavits, detailed above shall be filed prior to the next date of hearing fixed in the present writ petition."

15. In compliance thereof, the Principal Secretary, Department of Urban Development, Government of UP, has filed his affidavit dated 29.04.2026, wherein reliance has been placed upon a report dated 15.04.2026 of IIT, BHU, Varanasi. Further perusal of the report dated 15.04.2026 reveals that the same has been submitted in pursuance to a letter dated 07.04.2026 issued by Additional Municipal Commissioner-respondent no.3. The perusal of the affidavit also makes it evident that the respondents have not undertaken any exercise for the purposes of revival/development of the alleged pond other than obtaining the said report. Hence, it is evident that the respondents sprung into action only after filing of the present writ petition and passing of the order dated 01.04.2026 and the property in dispute admittedly continues to remain recorded as abadi land, all this while.

16. The petitioner, by means of a supplementary affidavit dated 13.04.2026, has also placed on record the fact that, in pursuance to the impugned letter, proceedings under Sections 59/61 of the UP Tenancy Act, 1939 have been initiated by Sub-Divisional Magistrate, Sadar, Varanasi. The petitioner has also brought on record a show cause notice dated 10.04.2026, issued by respondent no.3, calling upon the petitioner to produce all the records in respect of the property in dispute failing which, appropriate action would be taken in view of the fact that the land is recorded as a pond in the revenue records.

17. Subsequently, when the matter was listed before this Court on 30.04.2026, the following order was passed: -

"1. In pursuance of the earlier order dated 15.04.2026, personal affidavits filed on behalf of Respondent no.1- Principal Secretary, Urban Development Department, Lucknow and Respondent No.2- Municipal Commissioner, Nagar Nigam Bhawan, Varanasi, are taken on record.

2. In compliance of the aforesaid order dated 15.04.2026, Shri Himanshu Nagpal, Municipal Commissioner, Nagar Nigam Bhawan, Varanasi is personally present before this court.

3. Learned Senior Counsel appearing on behalf of petitioner has submitted that even assuming though not admitting that there was a pond, clearly the documents revealed that there was concrete construction on the date of vesting and he also asserts that even in the Master Plan, the Development Authority had not shown the land to be in the nature of pond. He, relying on the decision in the case of ***Shiv Badan Singh and Others Vs. State of U.P. and Others (Writ Petition No. 2636 (MB) of 2006; Neutral Citation: 2011:AHC-LKO:14699-DB)*** *has further submitted that even in case, since before the date of vesting or thereafter, if the plot in question was recorded as pond, it had lost its utility and was no more in use as a pond; and now, the land is being used for development and a MoU has also been entered into with the authorities.*

4. In view of the aforesaid, since the deed was executed by the State and thereafter, the development has taken place, in case the State proceeds to restore the land into a pond, in said circumstances, the petitioner has to be compensated.

5. Shri M.C. Chaturvedi, learned Additional Advocate General, has appeared before this court and seeks accommodation for today. He submits that some time may be granted to go through the affidavits filed by the respondents.

6. Accordingly, one week's time is granted to him to prepare his brief. He shall also produce the Master Plan and apprise the court of the nature of the land on the date of vesting.

7. On his request, list this case on 11.05.2026, as fresh at 10:00 AM. On the said date, Respondent No.2 shall remain present before this court.

8. Interim order, granted earlier, shall continue till the next date of listing."

18. It is made clear that the respondents have not produced the Master Plan of Varanasi to demonstrate as to whether a pond exists over the property in dispute or not, nor the respondents have apprised this Court regarding the nature of land comprised in the property in dispute on the date of vesting.

19. On 11.05.2026, again the matter was adjourned on the request of the respondents and was listed on 15.05.2026. Thereafter, on 15.05.2026, the matter was again adjourned on the request of the respondent on the ground that there was every likelihood that the matter would be resolved, the order so passed is as under:-

"1. Learned counsel for the respondents submits that a meeting was held on 14.05.2026 and there is a likelihood that the matter would be resolved.

2. On his request, put up this case as fresh on 27.05.2026.

3. Interim order, granted earlier, shall continue till the next date of listing."

20. When the matter was next listed before this court on 27.05.2026, it was submitted by Shri M C Chaturvedi, learned Senior Counsel that no further submissions were to be made on behalf of the respondents as far as the subject matter in controversy was concerned and, the affidavits of the Principal Secretary and Municipal Commissioner may be taken into consideration while deciding

the controversy involved. Hence, this court with the consent of parties proceeded to decide the present writ petition finally.

21. It is contended on behalf of the petitioner that it is no longer open for the respondents after having executed a sale deed in favour of the predecessor of the petitioner way back in the year 1913 in respect of land and structure to allege that the land over which the property in dispute is situated was a pond. It is further contended that, as per the own showing of the respondents, the land was recorded as abadi land in the revenue records since the Fasli year 1359 and continues to do so even as on today. Further, the land was included in the municipal limits prior to the date of vesting, i.e., 01.07.1952, and under the circumstances, the provisions of UP Zamindari Abolition and Land Reforms Act, 1950 as well as the provisions of UP Revenue Code, 2006 shall not be applicable to the property in dispute. It is further contended that, as the respondents themselves admit that there was land existing in the year 1913 and as such, were estopped from alleging that a pond existed over the property in dispute. It is stated that there is no question of any pond existing over the property in dispute, in view of the fact that the same is situated in a densely populated area of Varanasi, as admitted by the respondents. It is for this reason that even in the Master Plan of the Varanasi Development Authority, the land is not shown as a pond. Lastly, it is contended that the law laid down by the Apex Court in the case of Hinch Lal Tiwari and Jagdeep Singh would not be applicable to the facts and circumstances of the present case.

22. Per contra, it is contended on behalf of the respondents that a pond was situated over the property in dispute, and the controversy is duly covered by the law laid down by the Apex Court in the case of Hinch Lal Tiwari and the property in dispute has incorrectly been recorded as abadi in the revenue records.

23. There is no dispute between the parties in respect of the sale deed dated 19.11.1913, executed by the erstwhile Municipal Board, Benaras in favour of the predecessor of the petitioner, Maharaja Manindra Chandra Nandy and the subsequent transfers which ultimately led to the vesting of the title and possession of the property in dispute in the petitioner.

24. It is also admitted by the parties that the property in dispute has been recorded in the records of respondent no.2 -Corporation since the year 1927, for the purposes of payment of house tax and water tax.

25. The records also reveal that the property in dispute is situated over a highly densely populated area of Varanasi. In this regard, the petitioner has relied upon images obtained from Google Earth to support his contention. Further, in the affidavit filed by the Municipal Commissioner, amongst others, it is stated *,"That it is pertinent to mention here that, in the vicinity of this site, within a radius of approximately 500 m in a very densely populated area, the Municipal Corporation Varanasi has carried out the restoration and beautification of several ponds such as ...."* Thus, it is evident that there are buildings standing in the vicinity of the property in dispute and land was existing since the year 1913, even as per the showings of the respondents, if not prior thereto.

26. It is only after the filing of the present writ petition and the passing of the order dated 01.04.2026 by this Court that the respondent No. 3, vide the letter dated 07.04.2026, had sought a feasibility assessment report for the proposed renovation of the pond from IIT, BHU, Varanasi. Hence, it is beyond doubt that the entire exercise of renovation/ development of the pond at Arazi No. 2404 was undertaken by the respondents after the filing of the present writ petition and there is nothing on record to demonstrate that any such exercise was undertaken by the respondents in the past. The report of IIT-BHU, dated 15.04.2026, amongst others, also states that the surrounding areas of the property in dispute are densely populated, which is typical for most of the city. Even the photographs made part of the report; dated 15.04.2026, corroborate the stance of the petitioners that the property in dispute is situated in a densely populated area of city of Varanasi.

27. The relevant portion of the report pertaining to observations and assessments as contained in paragraph C of the report dated 15.04.2026 is being reproduced herein under:-

"C. Observations and Assessment

C. 1 ***Site location***

During the visual observations, the site is found to be a T-shaped plot as shown in Fig. 1.

The site has three access routes, of which prominent one sits on Godowliya-Luxa/ samapure-Luxa Road and the other two open in the alleys. The plot size is 0.688 hectare, as reported by officials at the site. While the width at main entrance is estimated as 20 m, the depth of the plot is estimated as 100 m. The surrounding areas are densely populated, which is typical for most of the city.

C.2 ***Topographical Observations***

During the visual observations, the site is found to be mostly plain with imperceptible gradient. While the majority of the site has uneven ground with some construction debris at the top with some shrubs and grass vegetation, some portion close to main entrance has signs of concreting (pavement or P.C.C.) as shown in Figs. 2 and 3. However, the site majorly appears filled with earth, silt and debris.

C3 ***Condition Assessment of Boundary Wall***

During the visual observations, as shown in Figs. 4 and 5, the site boundary wall was found to be severely damaged due to stresses coming from adjacent buildings which have been constructed with no offset at all. At some locations, the boundary wall has collapsed and disappeared as well.

C4 ***Surrounding Buildings***

The site is surrounded by buildings which have been built to their respective property lines. On the eastern side, there are multiple masonry buildings with load-bearing wall systems as shown in Fig. 2. The tallest of these may be classified as G+3. These masonry buildings have undergone reasonable damage and deterioration due to environmental exposure. On the western side, there is a multi-storeyed (G+7) reinforced concrete building as shown in Fig. 3, which is built at an offset which probably suffices the building bye-laws.

C5 ***Feasibility Assessment of the Pond***

Based on visual observations related to site location, topography, boundary wall condition and surrounding buildings reported in previous sub-sections, following points warrant attention:

The pond appears to have been filled with silt, earth and debris over time. Therefore, the pond re-development work should follow procedures and bye-laws of new pond development.

The surrounding buildings are directly abutting the site boundary, and these buildings also show signs of environmental degradation. Therefore, in case of a water body being developed, a detailed topographical study to understand hydraulic gradient followed by implementation of filters around the water body shall be required.

Development of pond shall contribute to the groundwater recharge, which is scarce in densely populated regions given that most of the spaces are paved. Providing a good surface runoff from the surrounding regions into the pond and not vice-versa shall be critical in this regard.'

(emphasis added)

28. Hence, the following conclusions can be drawn from the perusal of the report dated 15.04.2026 relied upon by the respondents:-

(i). The entire exercise of assessment for renovation/ development of pond were undertaken after the filing of the present writ petition and passing of the order dated 01.04.2026.

(ii). There is no presence of any pond or water body at site, and admittedly, the pond appears to have been filled with silt, earth and debris over time. Therefore, the pond redevelopment work should follow the procedures and bye-laws of new pond development. Thereby showing complete absence of a water body.

(iii). Although the contention of the respondents is that the pond is situated over Arazi No. 2404, having an area of 0.688 hectares, the assessment report has been prepared only with respect to a piece of land measuring 20 meters in width and 100 m in depth and apparently belonging to the petitioner, who claims to be the owner of a plot area of 22,571.84 sq ft i.e 2097.75 sq mtr comprised in Arazi No. 2404 and Arazi No. 2402.

(iv). The respondents have not undertaken any exercise regarding the manner in which they intend to restore the pond over Arazi No. 2404, having a total area of 0.688 hectares nor is there any averment to that effect in the affidavits filed by the respondents. Thus, it is only the property in dispute belonging to the petitioner that has been singled out.

(v). The property in dispute is situated in one of the densely populated areas of the city of Varanasi.

29. Now, coming to the revenue records relied upon by the respondents and the same reveal that allegedly Arazi No. 2404 was recorded as pond in Fasli year 1291,which corresponds to the year 1884 CE. Thereafter, no revenue records are available upto Fasli year 1359, and the revenue records for Fasli years 1356 to1359 Fasli are allegedly in a dilapidated condition and have neither been produced nor relied upon by the respondents. In the Khatauni for Fasli year 1361, Arazi No. 2404/1 and Arazi No. 2404/2 are recorded as abadi, in the Khatauni of Fasli year 1382, Arazi No.2404 is recorded as abadi, in the Khatauni of Fasli year 1387, Arazi No. 2404 is recorded as abadi. Admittedly, even in the current Khatauni for the Fasli year 1425, the Arazi No. 2404 is recorded as abadi. Thus, the property in dispute since the year 1954 CE, corresponding to Fasli year 1361 till date, has been recorded as abadi land and not as pond.

30 It is only in the Khasra of Fasli year 1359 that Arazi No. 2404/1 is recorded as abadi, and Arazi No. 2404/2 has been recorded as pond. Thereafter, no records of the Khasra have been

produced to show that, subsequent to Fasli year 1359, the property in dispute was ever recorded as pond in the Khasra. Further, there is no explanation whatsoever at the end of the respondents as to how and why it is only in the Khasra of Fasli year 1359, corresponding to the year 1952 CE, that a part of Arazi No. 2404 was recorded as pond, which was not so in the subsequent years till date.

31. Thus, the respondents do not dispute the fact that the property in dispute is recorded as abadi in the revenue records for the past about 74 years, commencing from the year 1954 CE till date and the records of years prior thereto, are either not available or are dilapidated.

32. Hence, it would not be out of place to mention here that even though Arazi No. 2404 was recorded as pond in the Fasli year 1291, land and structure were standing upon the same as would be evident from the sale deed dated 19.11.1913 executed by the erstwhile Municipal Board, Benaras in favour of Maharaja Mahindra Chandra Nandy, the recital of the sale deed reads as under:

"..... the transferor hereby conveys the apportioned plot of land measuring 2 Bighas 7 Biswas, as shown in the sketch referred to above, with structures thereon and the boundaries of which are given below, to the transferee absolutely, with all structures, easements, liberties, privileges..." Pursuant thereto, the property in dispute admittedly was also recorded in the registers of the respondent no. 2-Corporation, since the year 1927, for the purposes of payment of house tax and water tax.

33. As far as the revenue records are concerned, the same are not available after the Fasli year 1291, as duly admitted by the respondents. Thereafter, the revenue records for the Fasli year 1356 to Fasli year 1359 are in a dilapidated condition and have not been relied upon by the respondents. In the Khatauni of Fasli year 1361 till date, the property in dispute is recorded as abadi land. It is only in the Khasra for Fasli year 1359 that a part of Arazi No. 2404 is recorded as pond, but even in the Khasras of subsequent years it is not so. It is made clear in this regard that in the field book, the Khasra is the record of possession and the Khatauni is the record of rights. Thus, it is evident that, although a part of Arazi No. 2404 was recorded as pond in the record of possession for one particular year, it continued to be recorded as Abadi in the record of rights.

34. Further, it is the respondent No. 1 who is the custodian of revenue records, thus, an adverse inference ought to be drawn against the respondent No. 1 for the failure to produce the relevant revenue records. It is also surprising to note that the revenue records only in respect of the Fasli year 1291 are available, and no revenue records prior thereto or subsequent thereto up to the Fasli year 1358 are available with the respondents . Hence, we are of the view that the revenue records so relied upon by the respondents in support of their case are of little assistance to them.

35. It has also been vehemently argued by the learned counsel for the petitioner that the provisions of UP Zamindari Abolition & Land Reforms Act, 1950, and that of UP Revenue Code, 2006, would not be applicable to the property in dispute. In this regard, the Learned Counsel has placed reliance upon subsection (2) of Section (1) of the U.P. Zamindari Abolition & Land Reforms Act, 1950, wherein it is provided that the Act, 1950, extends to the whole of Uttar Pradesh except the areas which on 07.07.1949 were included in a municipality or a notified area under the

provisions of the United Provinces Municipalities Act, 1916. It is not disputed by the respondents that respondent no. 2 Corporation had sold the land to the predecessor of the petitioner vide registered sale deed dated 19.11.1913. Further, it is admitted in the affidavit filed by the Municipal Commissioner that the property in dispute was recorded in the register maintained by the respondent no. 3 Corporation for the years 1927-1935 and even thereafter. Thus, it is not disputed that the property in dispute was included in the erstwhile Municipal Board, Benaras, even prior to enforcement of the UP Municipalities Act, 1916.

36. As far as the applicability of the UP Revenue Code,2006 is concerned, the learned counsel has relied upon Section 2 of the Court, which relates to its applicability and reads as under:-

"2. Applicability of the Code. - *The provisions of this Code, except Chapters VIII and IX shall apply to the whole of Uttar Pradesh, and Chapters VIII and IX shall apply to the areas to which any of the enactments specified at serial numbers 19 and 25 of the First Schedule was applicable on the date immediately preceding their repeal by this Code."*

It is made clear that Chapter VIII of the Code, 2006 deals with management of land and other properties of Gram Panchayat or other local authorities, and Chapter IX of the Code, 2006 deals with tenures.

37. Thus, the applicability of provisions contained under Chapter VIII and Chapter IX of the Code, 2006, have been made subject to the applicability of any of the enactments specified at serial nos. 19 and 25 of the First Schedule, immediately preceding their repeal by the Code,2006. Serial no. 19 of the First Schedule of the Code, 2006 pertains to the UP Zamindari Abolition & Land Reforms Act, 1950 and serial no. 25 of the First Schedule of the Code ,2006 pertains to UP Urban Areas Zamindari Abolition & Land Reforms Act, 1950 . Hence, it is contended that as far as the provisions of the UP Zamindari Abolition & Land Reforms Act ,1950 are concerned, the same are not applicable in the present case for the reasons already assigned above.

38. Further, as far as the applicability of the UP Urban Areas Zamindari Abolition & Land Reforms Act, 1956 is concerned, it is contended that neither any exercise of demarcation under Section 5 of the Act, 1956 has ever been carried out by the State, nor any notification has been issued under Section 8 of the Act, 1956 thereby vesting the said agricultural area in the State. A specific plea in this regard has been raised in para 46 of the writ petition, however, the same remains uncontroverted by the respondents. It is further contended that, as would be evident from the records, the property in dispute would not fall in the category of an agricultural land situated in urban areas being recorded as abadi in the revenue records and also being recorded in the municipal records.

39. In view of the submissions so made, it is contended that Chapter VIII and Chapter IX of the Code, 2006 would not be applicable to the property in dispute. Chapter VIII of the Code, 2006, pertains to management of land and other properties by Gram Panchayat or other local authority. Further clause (v) of subsection (2) of Section 59 under the said Chapter provides for entrustment of ponds to a Gram Panchayat or other local authority. Section 61 under Chapter VIII pertains to management of village tanks. Hence, it is contended that no proceedings under Sections 59 /61of

the Code, 2006 could have been initiated against the petitioner by the respondents, as the provisions of Chapter VIII of the Code, 2006 shall not be applicable.

40. It is also been stated that in the proceedings so initiated against the petitioner, it has been wrongly mentioned in the notices issued by the concerned Sub-Divisional Magistrate, that the proceedings have been initiated under Section 59/61 of the U.P. Tenancy Act 1939 as there is no dispute regarding tenancy of the agricultural land, hence, the aforesaid provisions of the said Act, 1939 would not at all be attracted in the present case. In this regard, attention has also been drawn to para 6 of the affidavit filed by the Municipal Commissioner, wherein it has been stated that proceedings have been initiated under Section 59/61 of the U.P. Revenue Code, 2006 (previously U.P. ZA & LR Act, 1939), the year of enactment being wrongly mentioned as 1939 CE, and the same should have been 1950 CE.

41. It is further pointed out that Section 59 of the UP Tenancy Act, 1939 pertains to suit by tenant for declaration of right or share, and Section 61 of the UP Tenancy Act, 1939 pertains to suit as to class of tenancy, however, there is no dispute regarding tenancy of agricultural land in the present case, and as such, even otherwise, the said provisions would not be applicable.

42. We are of the view that the contention so raised on behalf of the petitioner has force, however, we find that no relief has been claimed by the petitioner in respect of the proceedings so initiated against the petitioner under the Code, 2006 or otherwise. Hence, we leave it open for the petitioner to raise such pleas in respect of the jurisdiction of the concerned Sub Divisional Magistrate to initiate proceedings under the UP Revenue Code ,2006 or UP Tenancy Act,1939,as the case maybe, before the appropriate forum as prescribed by law.

43. Now, adverting to the case of ***Hinch Lal Tiwari Vs State of U.P, (2001)6 SCC 496,*** in this case, the Apex Court had found that the patta had been granted over pond land and in the Khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and for the years 1393 to 1398 Fasli (1986-92), the description of the said survey number was given as pond.Further, no patta could have been granted in respect of land having a character of a pond. It is in these circumstances that the Apex Court had directed that private respondents shall vacate the land, and a direction was issued to the State to develop and maintain the same as a recreational spot, which will undoubtedly be in the best interest of the villagers.

44. Similarly, in the case of **Jagpal Singh Vs State of Punjab, (2011) 11 SCC 396,** the appellants were neither the owners nor the tenants of the land in question, which was recorded as a pond. They were, in fact, trespassers and unauthorized occupants of the land who had filled in the village pond and made constructions thereon. In this said case, the Apex Court, while issuing directions to all State Governments in the country to prepare a scheme for eviction of illegal /unauthorized occupants and restoring the land to the Gram Sabha /Gram Panchayat for the common use of the villagers, had further directed that regularization should only be permitted in exceptional cases.

45. Further, in the case of **Jitendra Singh Vs Ministry of Environment and others, (2020) 20 SCC 581** a private entity was involved in using excavators and other heavy machinery to

forcibly take over possession of a common pond, further, the concerned Industrial Development Authority had acquired land, including some local ponds, and had leased the same to private parties, including the concerned private entity and the representatives of the concerned Industrial Development Authority had started filling up certain ponds and developing an alternate area as a new water body to save the allotment so made in favour of the private entity. It is in the said circumstances that the Apex Court had held that schemes which extinguish local water bodies, albeit with alternatives as provided in the Government Order by the State of UP, are violative of Constitutional principles and are liable to be struck down. It was further directed that the allotment of all the water bodies (both ponds and canals), including to the private entity or any other similar third party in Tehsil Dadari, District Gautam Buddha Nagar, was illegal and was quashed.

46. However, when we consider the facts and circumstances of the present case in view of the law laid down by the Apex Court, we find that in the present case, the predecessors of the petitioner had a valid right, title, and interest over the property in dispute in pursuance to registered sale deeds. Further, the erstwhile Municipal Board, Benaras, way back in the year 1913 itself admitted the fact that there was land and structure existing over the property in dispute. Admittedly the revenue entries relied upon by the respondents, also do not support their case as the property in dispute continues to be recorded as abadi land for the past 72 years and there are no revenue records available prior thereto. Besides, the property in dispute is situated in a densely populated area of Varanasi. No exercise whatsoever was undertaken by the respondents for restoration of the pond in the past. It is only when the present writ petition was filed and the order dated 01.04.2026 was passed that the respondents woke up from their deep slumber and tried to justify the stand so taken by them. Even in the report dated 15.04.2026, prepared by IIT, BHU in haste at the instance of the respondents, there is nothing to demonstrate that there was a pond or any other water body existing over the property in dispute and it is for this reason that the report recommends for 'new pond development'. Even during the pendency of the present writ petition, the respondents have not raised any serious dispute in respect of the pleas raised in the writ petition. Hence, we are of the view that the law so laid down by the Apex Court, discussed in the paragraphs above, would not be applicable in the present set of circumstances.

47. Here, we would also like to advert to the law laid down by the Apex Court in the case of **State of Rajasthan and another Vs Ultra Tech Cement Limited., (2022) 19 SCC 102** wherein, with the idea of setting up a cement plant, the respondent company had acquired land through negotiations. For executing the project, the respondent company applied to the appellant State for a grant of an adjoining mining lease for mineral limestone and the State Government had finally issued a letter of intent for mining subject to certain conditions, however, subsequently, the State Government had held that the subject land, having been recorded in the revenue records as "Johad" (pond) and as such, no allotment could be made in favour of the respondent company. The High Court had allowed the appeal so filed by the respondent company. In the aforesaid circumstances, the Apex Court had held as under :-"

"13 In Narmada Bachao Andolan v. Union of India, this Court had the occasion to discuss the Precautionary Principle and it was held that the said principle and the corresponding burden of proof on the person who wants to change the status quo, will ordinarily apply in the case of polluting or other projects or industry where the extent of damage likely to be inflicted, is not

known. But when the effect of the project is known, then the principles of sustainable development would come into play which will ensure that mitigative steps can be taken to preserve the ecological balance. In the present case, there is no such uncertainty due to lack of availability of data or scientific material about the damage if any, likely to be caused to the ecological balance of the area. Instead, detailed spot inspections have been conducted by the revenue authorities from time to time that establish that there is no 'Johad' existing on the subject land. Despite that, the respondent'Company has been directed to develop an alternate 'Johad' in a planned manner at the same area, as a mitigative step which it has undertaken to execute.

14 In Lafarge Umiam Mining Private Limited, this Court has recognized the fact that the environment has different facets and universal dependence of humans for the use of environmental resources for the most basic needs, inescapably requires choices to be made at different levels on environmental protection and factor in the risks which are to be regulated, as recognized by the concept of sustainable development. Conceding that it is impossible to lay down 'across-the-board' principles and much would depend on the facts of each case, this Court opined that what was required to be seen was how much protection would be sufficient and whether ends would be served by diverting resources to other uses and at the same time, strike a fine balance between environmental protection and environmental risk. No such fine balance is required to be struck in the instant case when admittedly, the spot inspections show that there does not exist any 'Johad' on the subject land that is likely to be affected on account of the change proposed in the revenue records.

15 The directions issued in Jagpal Singh's case calling upon State Governments to prepare a scheme for eviction of illegal/unauthorized occupants of Gram Sabha land also do not come in the way of the respondent'Company. The purpose of the said direction was to prepare a scheme for removal of illegal occupants expeditiously. This does not prevent the respondent'Company from approaching the Court for correction in the revenue records when the site inspection reports prepared by the Revenue Authorities show that there is no water body or catchment area on the subject land.

16 The focus in the case of Electrotherm (India) Limited was on conducting public hearings as a mandatory requirement of the environmental clearance process and the Court has frowned upon doing away with public hearings in the course of the decisionmaking process. In the case of Common Cause, this Court was seized of the aspect of illegal/unlawful mining in the State of Odisha and it was observed that Courts cannot interfere with the Mining Policy or lay down limits on the extent of mining activity that should be permitted by the State/Central Government. The said decision does not have any application to the facts of the instant case where the appellant'State Government has already given an in-principle consent for setting up a cement plant in favour of the respondent'Company and the High Court was only required to examine the aspect of correction in the revenue records in relation to the subject land where a 'Johad' was mentioned, but none existed at site.

17 In Alembic Pharmaceuticals' case, the issue before this Court was with respect to the operation of industries without obtaining prior environmental clearance for a long time and their liability on account of such non-compliance. Noting that the industries had evaded the legally binding regime of obtaining environment clearance, it was held that penalty must be imposed on them for disobedience and non-compliance of the rules and regulations. Here, the respondent'Company has admittedly received environmental clearances and in spite of the same, its project has not taken off due to various hurdles created by the appellant'State Government.

Clearly, the present case is not one of breach of any norms for imposition of penalty on the respondent'Company.

18 Even the judgment of the Division Bench of the Rajasthan High Court in the case of Abdul Rehman is being completely misread by the appellant'State Government. The focus in the said judgment was on the restoration of the catchment area to its original shape for which a plan was directed to be drawn up which included demarcation of the catchment areas, demarcation of drainage channels etc. Nowhere in the said judgment has it been observed that the description of a land as a pond in the revenue records, when no pond exists on site, cannot be corrected after conducting a spot inspection. We are inclined to accept the submission made by learned counsel for the respondent'Company that in the absence of any pond at the spot, the decision rendered in the case of Abdul Rehman cannot be an impediment for processing the application of the respondent'Company for allocation of the subject land, for setting up a cement plant. The High Court has rightly referred to the decision of this Court in Director General, Research and Development, where noting the fact that there was no 'Gair-Mumkin' Nadi existing on the spot, it was observed that the decision of the High Court in Abdul Rahman will not come in the way of allotting the land to the petitioner.

19 For the aforesaid reasons, we concur with the findings returned in the impugned judgment which is upheld. The appellant'State Government is directed to take necessary steps to process the allotment of the subject land in favour of the respondent'Company within four weeks from today. The respondent'Company shall file a fresh undertaking with the State Government, within the same timeline, as was filed by it before the High Court, for initiating time bound activities for the benefit of the surrounding villages, as compensatory measures for the allocation of the subject land.

The appeal is dismissed while leaving the parties to bear their own expenses."

48. Besides, the petitioners have also relied upon the judgment of a Coordinate Bench of this court in ***Writ Petition No. 2636 (MB) of 2006, Shiv Badan Pandey and others vs. State of UP and others,*** wherein the dispute related to a piece of land having a character of a pond, which had lost its utility, and this court, while considering the case of Hinchlal Tiwari, had held as under :-

"16. The counter affidavit filed by the Sub Divisional Magistrate does not say anywhere that Khasra Plot No. 406 was ever recorded as Talaab (pond) in the Khatauni prior to the date of vesting or thereafter. What has been stated is that, as per the entry in the Nakal Khatauni of 1356 Fasli, the said Khasra Plot No. 406 measuring 3 bigha 17 biswa, had been recorded in Ziman-5 category to be used by the Asamis for cultivation of Singhara, a crop cultivated in water bodies. The said Khasra is recorded in the name of Bhusan son of Garibe Kahar in Khata Khatauni No. 98. In the year 1359 Fasli, the name of Naumi Lal son of Thakur Deen alongwith Bhusan Kahar finds place in Khata Khatauni No. 88.

17. He has concluded that the aforesaid Khasra fell under Mohal Umrao Singh and the tenure holder was using the same for Singhara cultivation etc. The entry in the Khasra for the year 1359 Fasli in relation to Khasra Plot No. 406 also reveals the area of the said Khasra as 3 bigha 17 biswa out of which 2 bigha land had been recorded as Tal Majarua. However, in column 19 of the said Khasra, the entire area is recorded as Talaab.

18. In the supplementary affidavit filed by the same officer, a site plan and also al survey report have been given, from where it is established that over plot No. 406, thirty four houses have

been constructed and people are living therein, including some of the petitioners, as informed by parties' counsel and that one bigha of land which has been allotted to the school also forms part of the same very Khasra Plot No. 406.

19. Though we are satisfied that in case revenue entry of pond in respect of certain land is recorded, may be since before the date of vesting or thereafter but since the pond has lost its utility and was no more in use as a pond and land so covered or pond so covered has been used for some public purposes or some good cause, namely, for development, it would not give a right to any party to remove all the developments and restore the pond, which, in fact, was no more in existence but even then for considering the plea of the petitioners, we have proceeded to examine the case, as if the said land was recorded as pond before the date of vesting.

20. In Hinch Lal Tiwari (supra) the apex court while holding that if a pond (talaab) has fallen into disuse because of drying up but some portion is covered by water in rainy season, then no part of it can be allotted to anyone as abadi site for purposes of building houses in paragraph 13, made an observation that 'it is important to note that material resources of the community like forests, tanks, ponds, hillocks, mountain etc. are nature's bounty they maintain delicate ecological balance. They need to be protected for a proper and health environment which enable people to enjoy a quality life which is essence of the guaranteed right under Articles 21 of the Constitution. The government, including revenue authorities, i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempt to seek allotment in non abadi sites'..

21. A plain reading of the aforesaid observation would reveal that reference has been drawn to the ponds and tanks which are community tanks or which vests in Gaon sabha. If the tenure holder is using the land for Singhara cultivation the land still would be cultivator land and would not be given the shape of color of pond, as mentioned therein."

49. Besides, there is another aspect of the subject matter in controversy, the Respondent No. 2 Corporation does not dispute the execution of the sale deed dated 19.11.1913 in respect of land measuring 2 bighas and 7 biswas comprised in Areas No. 2404 in favour of the predecessor of the petitioner, which had no character of a pond. It is a settled position of law that a registered sale deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts a high degree of sanctity to the document. Consequently, a court must not lightly or casually declare a registered instrument as a " sham". Relying upon the law and principles enunciated in the case of ***Prem Singh and others v Birbal and others, (2006) 5 SCC 353, Jamila Begum(Dead) through Lrs vs. Shami Mohd.(Dead). through Los and another (2019) 2 SCC 727, and Ratan Singh and others vs. Normal Gill and others, (2021) 15 SCC 300,*** this court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the deed was never intended to operate as a bona-fide transfer of title. However, in the present case, no such challenge has been made by the respondent no.2- Corporation, and as such it is beyond doubt that the sale deed is valid and genuine and so are it's contents.

50. The respondent No. 2- Corporation having failed to challenge the validity and genuineness of the sale deed dated 19.11.1913 and as such, the respondent No. 2 Corporation, after a lapse of about 113 years thereafter, would be estopped from alleging otherwise that there is pond situated at the property in dispute. One of the central principles of the doctrine of promissory estoppel is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party, if the assumption is not adhered to. In this regard, we rely upon the law laid by the Apex Court in the case of ***Manualsons Hotels Pvt Ltd v State of Kerala and others, Civil Appeal no. 2480 of 2008 decided on 11.05.2016***, wherein it was held as under :-

"21. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia v. Verwayen, 170 C.L.R. 394, by Deane,J. in the following words:

1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable - or, more accurately, unconscientious - departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party: (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption; (c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in

conscience to do so. Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.'

22. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference ' under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of

promissory estoppel ' one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."

51. Lastly we find that admittedly Arazi No. 2404 has an area of 0.668 hectares, however, the entire exercise of correction of revenue entries as well as the alleged restoration of pond is being undertaken only in respect of property in dispute belonging to the petitioner having an area of 22,571.84 sq ft i.e 2097.75 sq meters, while no such exercise has been undertaken in respect of the remaining land comprised in Arazi No. 2404. Thus, the action so resorted to by the respondents is not only arbitrary but also discriminatory and violative of Article 14 of the Constitution of India.

52. Moreover, the petitioner has a valid title and possession over the property in dispute in pursuance to the registered sale deed and as such the title and possession of the petitioner can only be disturbed by the respondents only after taking recourse to due process of law and till that point of time the petitioner is entitled to enjoy the benefits of the property in dispute being the owner thereof.

53. In the above background and the fact that respondent No. 2 -Corporation does not dispute the genuineness and validity of the sale deed dated 19.11.1913 and the property in dispute continues to be recorded as abadi in the revenue records, and there being nothing whatsoever on record to demonstrate that the character of the land was that of a pond in the past. We are of the view that respondent number 3 could not have denied the issuance of a no-objection certificate to the petitioner solely on the ground that a pond was existing over the property in dispute way back in the Fasli year 1291, corresponding to 1884 CE.

54. Under the circumstances, the present writ petition is allowed and the letter dated 24.1.2026 issued by respondent no. 3, morefully annexed as Annexure No. 1 to the writ petition, is quashed. Further, a writ of mandamus is issued to the respondent no. 2 corporation to reconsider the case of petitioner for issuance of a No Objection Certificate to the petitioner for the purpose of construction of hotel on the property in dispute keeping in view the findings above. The exercise so to be undertaken by the respondent no. 2-Corporation shall be completed expeditiously and preferably within a period of four weeks from the production of the certified copy of this order.

55. No order as to costs.

(2026) 7 ILRA 2314
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.07.2026

BEFORE

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

Writ C No. 61926 of 2009

Rayeesh Ahmad **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Whether rent due to a Nagar Palika Parishad from a tenant can be recovered as arrears of land revenue under Section 173-A of the U.P. Municipalities Act, 1916 or Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972?

Headnotes

U.P. Municipalities Act, 1916 – s.173-A – U.P. Public Moneys (Recovery of Dues) Act, 1972 – s.3 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – ss.279, 280 – Recovery of rent as arrears of land revenue – Nagar Palika – petitioner allotted a shop owned by the Nagar Palika on rent in the year 1998 for a period of fifteen years – Possession delivered only in November 2006 – In its meeting dated 30.12.2006, the Nagar Palika resolved that the petitioner would pay rent from November 2006 – Executive Officer issued notice dated 18.01.2008 demanding rent for the period prior to November 2006 – Pursuant to the directions of the District Magistrate dated 08.01.2008, a demand of ₹1,07,800 was raised – petitioner requested not to demand rent for the period during which possession of the shop had not been delivered – whether such arrears of rent due to the Nagar Palika could legally be recovered as arrears of land revenue.

Held:

A. U.P. Municipalities Act, 1916 – s.173-A – Recovery as arrears of land revenue – What is made recoverable as arrears of land revenue under Section 173-A of the Act of 1916 is any sum of money due to a Nagar Palika Parishad on account of tax other than a tax payable upon immediate demand – in the present case, the amount due is not on account of any tax but is due on account of rent for a shop let out to the petitioner – assuming that the rent in question was due to the Nagar Palika from the petitioner, it cannot be recovered as arrears of land revenue in view of the clear provision under Section 173-A of the Act of 1916.

B. U.P. Public Moneys (Recovery of Dues) Act, 1972 – s.3 – Nagar Palika is, by no means, the State Government or the Corporation so as to attract clause (d) of sub-section (1) of Section 3 of the Act of 1972 – the petitioner had not taken any loan, advance or credit either from the State Government or the Corporation, or a loan from a banking company or a Government company under a State-sponsored scheme, nor was he party to an agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern – given the character of the Nagar Palika as a body corporate, recovery of its contractual dues is beyond the contemplation of public money recoverable under the Act of 1972 – by no stretch of logic can the said Act apply to dues of money on account of rent payable to Nagar Palika by a tenant, as these are absolutely contractual dues.

C. U.P. Zamindari Abolition and Land Reforms Act, 1950 – ss.279, 280 – Nagar Palika could not realise arrears of rent by the methods prescribed under Sections 166 to 173 of the Act of 1916, which does not authorise recovery as arrears of land revenue – impugned citation issued under Sections 279 and 280 of the U.P.

Zamindari Abolition and Land Reforms Act, 1950 was not permissible – dues could, however, be recovered by a suit, subject to the bar of limitation – impugned citation dated 14.09.2009 quashed – Nagar Palika left at liberty to recover its dues by any other mode permissible in law. [Paras 10–12, 16–20, 21–22] (E-5)

Case Law Cited

Ram Bilas Tibrewal v. Chairman, Municipal Corporation Board, Titri Bazar and Others, 1998 All LJ 2496;
Titu Singh v. District Magistrate/Collector, Mathura and Others, (2003) 2 UPLBEC 1283;
Nand Kishor v. Collector/District Magistrate, Rampur and Others, 2011 (2) ALJ 50

List of Acts

Constitution of India;
U.P. Municipalities Act, 1916;
U.P. Public Moneys (Recovery of Dues) Act, 1972;
U.P. Zamindari Abolition and Land Reforms Act, 1950;
U.P. Town Areas Act, 1914.

List of Keywords

Recovery as arrears of land revenue; Rent dues; Nagar Palika Parishad; Municipal shop; Contractual dues; Tax dues; Revenue recovery citation; Jurisdiction; Recovery certificate; Tahsildar; Nagar Palika dues.

Case Arising From

From the recovery citation dated 14.09.2009 issued by the Tahsildar, Tahsil Swar, Rampur, for recovery of ₹1,10,000 as arrears of land revenue, together with interest and recovery charges, towards alleged rent dues of a shop belonging to Nagar Palika Parishad, Swar, Rampur.

Appearances for Parties

Advs. for the Petitioner (s): Mr. Sharad Sharma, Advocate for respondent no. 5
Advs. for the Respondent(s): Mr. Sanjay Kumar Ray, Standing Counsel for the State-respondents

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

The petitioner impugns the recovery certificate dated 14.09.2009 issued by the Tahsildar, Tahsil Swar, Rampur for recovery of a sum of ₹1,10,000 with interest and recovery charges.

2. The facts leading to the petition, according to the petitioner, are that there is a shop situated in the premises of the Nagar Palika Parishad, Tahsil Swar, Rampur and the owner of the shop is the Nagar Palika. The said shop had been rented out to the petitioner by the Nagar Palika in the year 1998 for a period of fifteen years. Possession of the shop was not given to the petitioner until the year 2006. On 30.12.2006, in a meeting of the Nagar Palika, it was resolved that rent would be paid by the petitioner from the month of November, 2006. It was also resolved that the petitioner shall deposit rent due by the 5th day of each succeeding month. The petitioner entered an agreement regarding the aforesaid terms and conditions with the Nagar Palika, represented by its Executive Officer. The agreement was drawn up in the form of an affidavit dated 30.12.2006, that was filed by the petitioner before the Executive Officer, Nagar Palika Parishad. The petitioner, after entering into the said agreement, commenced depositing rent with the Executive Officer regularly, month by month, and until date the petition was instituted, the deposit of rent has regularly been made. The Executive Officer sent a notice dated 18.01.2008 to the petitioner for recovery of the rent before the month of November, 2006.

3. A perusal of the notice shows that the Executive Officer has sent a notice dated 18.01.2008 in compliance with an order of the District Magistrate dated 08.01.2008, demanding a sum of ₹1,07,800, which the said officer demanded unilaterally. The deposit of this arrears of rent was directed to be made within seven days by the Nagar Palika. After receipt of the last mentioned notice, the petitioner contacted the Executive Officer personally on a number of occasions and requested him not to demand rent for the period when possession of the shop was not given to him, but the respondents did not relent. The request went unheeded. To the petitioner's dismay, he was suddenly confronted with the impugned citation dated 14.09.2009 issued by the Tahsildar for a sum of ₹1,07,800.

4. The petitioner agitates the point that without giving possession of the shop allotted to him till November, 2006, the respondents took the palpably unfair stand of demanding rent for a period of time prior to delivery of possession of the demised shop. It is asserted that the Tahsildar, Tahsil Swar, Rampur, under the directions of the District Magistrate, Rampur, has issued the impugned recovery citation against the petitioner, directing recovery of a sum of ₹1,07,800 together with interest and recovery charges. The impugned citation is assailed as manifestly illegal.

5. A counter affidavit has been filed by the Executive Officer, Nagar Palika Parishad, Swar, Rampur. It is averred in paragraph no. 5 that the impugned citation dated 14.09.2009 was issued against the petitioner in pursuance of the demand note issued by the Executive Officer. He says, therefore, that the citation is a consequential step and the demand note has not been challenged by the petitioner. Therefore, the petition is not maintainable.

6. In paragraph no. 6 of the counter affidavit filed on behalf of the Nagar Palika, it is said that the contents in paragraphs nos. 4 to 12 of the writ petition are related to the renting out of the shop to the petitioner by the Nagar Palika, which somehow has been described as the Corporation, and their board resolution, which was rejected by the State Government. It is said that these matters do not require any reply. It is then said that the petitioner was given possession of the shop in the month of November, 2006, and therefore, the Nagar Palika resolved not to recover any rent before November, 2006. But on the directions dated 18.01.2008 issued by the District Magistrate, Rampur, a demand note was sent to the Tahsildar, Swar, Rampur to recover rent from July, 1999 to November, 2006 from the petitioner as arrears of land revenue. The petitioner did not pay rent from July, 1999 to November, 2006, and therefore, a demand note was sent to respondent no. 4, leading to the impugned citation. We note that there is a persistent plea raised that since the demand note is not under challenge, the citation cannot be questioned, it being only a process to enforce the demand note.

7. The moot question is whether arrears of rent due to the Nagar Palika can be recovered as arrears of land revenue.

8. In paragraph no. 8 of the counter affidavit filed by the Nagar Palika, it is averred that the recovery citation was properly issued against the petitioner as money was due against him to the Nagar Palika. It is specifically pleaded that under Section 3 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 19722, the petitioner, who is a party to the agreement relating to advance, is liable to pay the amount as arreas of land revenue.

9. When the petition was called on for hearing, no one appeared on behalf of the petitioner. The writ petition, being an old matter of the year 2009, and a short question being involved, if rent due to the Nagar Palika could be recovered as arrears of land revenue under the Uttar Pradesh Municipalities Act, 1916, we heard this matter with the assistance of Mr. Sharad Sharma, learned Counsel appearing for the Nagar Palika Parishad, Swar, Rampur (respondent no. 5) and Mr. Sanjay Kumar Ray, learned Standing Counsel, appearing on behalf of the State.

10. We notice that the recovery of dues of a Nagar Palika Parishad as arrears of land revenue are dealt with under Section 173A of the Act of 1916. Section 173A of the Act of 1916 reads :

***173-A. Recovery of taxes as arrears of land revenue**.-(1) Where any sum is due on account of a tax, other than any tax payable upon immediate demand, from a person to a board, the Municipality may without prejudice to any other mode of recovery apply to the Collector to recover such sum together with costs of the proceedings as if it were an arrears of land revenue.*

(2) The Collector on being satisfied that the sum is due shall proceed to recover it as an arrear of land revenue.

11. A perusal of the aforesaid provision spares little doubt that what is made recoverable as arrears of land revenue is any sum of money due to a Nagar Palika Parishad on account of tax other than a tax payable upon immediate demand to a Board. It is only in cases where tax due to them, other than a tax payable on immediate demand, that the Board may, without prejudice to the other modes of recovery, apply to the Collector to recover such sum, together with costs of the proceedings, as if it were arrears of land revenue. The Collector, on his satisfaction that the sum is due, can proceed to recover as arrears of land revenue.

12. Here, the amount due is not on account of any tax. It is due on account of rent for a shop that was let out to the petitioner in the manner that it was allotted in the year 2009, but possession was delivered in November, 2006. What the Nagar Palika is demanding of the petitioner is rent for the period since the shop was allotted and until possession was delivered. We do not pronounce upon the point whether the Nagar Palika Parishad could, at all, have demanded rent for the period that possession of the shop was not delivered to the petitioner. We confine our holding in this case to the point that assuming that the rent in question was due to the Nagar Palika from the petitioner, it cannot be recovered as arrears of land revenue, in view of the clear provision under Section 173-A of the Act of 1916.

13. We may refer with profit the Bench decision of this Court in **Ram Bilas Tibrewal v. Chairman, Municipal Corporation Board, Titri Bazar and others**. This was a case where a sum of ₹37,296 was sought to be recovered from the petitioner as arrears of land revenue. The money claimed against the petitioner in **Ram Bilas Tibrewal** (supra) was in respect of a contract for realization of Tahbazari, settled in his favor by the Chairman of the Town Area, Titri Bazar. It was in the context of the aforesaid facts that their Lordships of the Division Bench, upon considering the provision of Section 173-A of the Act of 1916 as well as Section 21 of the Uttar Pradesh Town Areas Act, 1914, held :

6. A bare perusal of the two provisions, extracted above, reveals that the contention of the learned counsel of the petitioner is well founded. The aforesaid two provisions make recoverable as arrears of land revenue only such sum which is due on account of a tax. Admittedly, the amount alleged to be due from the petitioner is not due on account of a tax. Indeed, it is due on account of the contract of realisation of Tahbazari settled in favour of the petitioner. Therefore, for recovery of this due, the provisions of Section 173-A of Municipalities Act and Section 21 of Town Area Act cannot be resorted to. Under the provisions of U.P. Zamindari Abolition and Land Reforms Act 1950 only such sum can be recovered which is due as arrears of land revenue. It cannot be gainsaid that the amount in question is not due on account of a land revenue. Under the Provisions of U.P. Zamindari Abolition and Land Reforms Act, an amount other than land revenue can be realised as arrears of land revenue only if it is made recoverable as arrears of land revenue under any statutory provision or any agreement in that regard. If the money due is not a land revenue or is not made recoverable as arrears of land revenue in the manner aforesaid, it can be recovered only by filing a Civil Suit. The respondent No. 1 may, if so advised, institute a Civil Suit against the petitioner for recovery of the alleged dues but the amount can-not be realised through the impugned recovery proceeding. The impugned proceeding is totally without jurisdiction and deserves to be quashed.

14. A similar question arose again before a Division Bench in **Titu Singh v. District Magistrate/Collector, Mathura and others**. The question in **Titu Singh** (supra) was if any dues on account of shortfall in the theka money for collecting parking fee, that had to be re-auctioned, on account of the petitioner's default, resulting in the shortfall, could be recovered as arrears of land revenue. In **Titu Singh**, it was held by the Division Bench :

6. From perusal of the aforesaid provisions of the Municipalities Act and Town Area Act, it is clear that the contention of the learned Counsel for the petitioner is well founded. Under Section 173-A of the Municipalities Act, it is provided that any sum due on account of tax, other than octroi or toll or any similar tax payable upon immediate demand, from a person to a board, the board may, recover as arrears of land revenue. In the instance case the amount in question became due from the petitioner as a result of default in payment of Theka money between the parties. Similarly Section 21 of the Town Areas Act provides that arrears of any tax imposed under this Act may be recovered and no other amount. Therefore, the provisions of Section 173-A of the Municipalities Act, and Section 21 of the Town Areas Act are not attracted. The amount in question is not a tax imposed under the aforesaid two Act and as such the amount due from the petitioner could not be recovered as arrears of land revenue. Besides the aforesaid decisions, there are two recent decisions also in Bisheshwar Singh @ Kalloo v. District Magistrate/Collector, Shahjahanpur and others, 2001 (4) AWC 2556 and Rakesh Shukla v. District Magistrate/Sub-Divisional Magistrate, Phoolpur, Allahabad and another. 2002 (3) AWC 2397. In these decisions also, the Division Bench found that the Theka money could not be recovered as arrears of land revenue. However, the Bench did not interfere on the ground that the equity was not in favour of the petitioner.

15. We must now answer the question which the learned Counsel for the Nagar Palika has raised before us. He submits that even if the rent to the Nagar Palika on account of the shop in question, due against the petitioner is not recoverable as arrears of land revenue under Section 173-A of the Act of 1916, it is certainly recoverable under Section 3 of the Act of 1972. Section 3 of the Act of 1972 reads :

3. (1) Where any person is party'

(a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire purchase of, goods sold to him by the State Government or the Corporation, by way of financial assistance ; or

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of, goods sold to him, by a banking company or a Government company, as the case may be, under a State-sponsored scheme; or

(c) to any agreement relating to a gurantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or

(d) to any agreement providing that any money payable thereunder to the State Government 1[or the Corporation] shall be recoverable as arrears of land revenue; and such person'

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof ; or

(iii) otherwise fails to comply with the terms of the agreement,-

then, in the case of State Government, such officer as may be authorized in that behalf by the State Government by notification in the official Gazette, and in the case of the Corporation or a Government company the Managing Director or where there is no Managing Director then the Chairman of the Corporation, by whatever name called or such owner of the Corporation or Government Company as may be authorized in that behalf by the Managing Director or the Chairman thereof, and in the case of a banking company, the local agent thereof, by whatever name called may send a certificate to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) No suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1).

(4) In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or the Corporation, no arbitration proceedings shall lie at the instance of either party for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim :

Provided that whatever proceedings are taken against any person for the recovery of any such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person

against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in respect of the amount so paid, and the provisions of section 183 of the Uttar Pradesh Land Revenue Act, 1901, or section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as the case may be, shall mutatis mutandis apply in relation to such reference or enforcement as they apply in relation to any suit in the civil court.

(5) Save as otherwise expressly provided in the provisions to sub-section (4) of this section or in section 183 of the U.P. Land Revenue Act, 1901 or section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 every certificate sent to the collector under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any application under the Arbitration Act, 1940) or in any reference to arbitration, and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act.

16. A perusal of sub-clauses (a) to (d) of sub-section (1) of Section 3 of the Act of 1972 shows that in order to render any person liable to be proceeded with against for recovery of dues payable to the State Government or the U.P. Financial Corporation, or any other corporation notified by the State Government etc., certain conditions mentioned in the various clauses of sub-section (1) of Section 3 have to be satisfied. Under Section 2(a) of the Act of 1972, a Corporation has been defined as follows:

2. In this Act unless the context otherwise requires,"

(a) "Corporation" means the Uttar Pradesh Financial'Corporation established under the State Financial Corporation'Act, 1951, and includes any other Corporation owned or'controlled by the Central Government or the State Government'and specified in a notification issued in that behalf by the State'Government in the official Gazette ;

17. Likewise, a banking company has been defined under section 2(f) thus :

(f) 'banking company' means the State Bank of India, constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or a banking company as defined in the Banking Regulation Act, 1949 ; or a financing bank or Central Bank as defined in the Uttar Pradesh Co-operative Societies Act, 1965 not being a land development bank. ;

18. Under clause (a) of sub-section (1) of Section 3, money may be recovered as arrears of land revenue under the Act of 1972, where any person is a party to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire purchase of goods sold to him by the State Government or the Corporation by way of financial assistance, to borrow the phraseology of the statute. Under clause (b), if a man is party to any agreement relating to a loan, advance or grant given to him by a banking company or a Government company, under a State-sponsored scheme; or

if he is party to any agreement relating relating to a guarantee given by the State Government or a Corporation in respect of a loan raised by an industrial concern, or to any agreement providing that any money payable under such agreement to the State Government or Corporation shall be recoverable as arrears of rent revenue, and the person proceeded with it against commits default, or otherwise fails to comply with the terms of the agreement etc. The Nagar Palika is, by no means, the State Government or the Corporation, so as to attract clause (d) of sub-section 3(1) of the Act of 1972. The petitioner has not taken any loan, advance or credit either from the State Government or the Corporation, or a loan from a banking company or a Government company, under a State-sponsored scheme. He is not party to agreement relating to a guarantee given by the State Government or the Corporation in respect of the loan raised by an industrial concern.

19. Given the character of the Nagar Palika as a body corporate, recovery of its contractual dues are beyond the contemplation of public money recoverable under the Act of 1972. By no stretch of logic can the said Act apply to dues of money on account of rent that is payable to Nagar Palika by a tenant. These are absolutely contractual dues.

20. The question which we now have to deal with, on being raised by learned Counsel for the Nagar Palika too has been considered by a Bench decision of this Court in **Nand Kishor v. Collector/District Magistrate, Rampur and others.** In **Nand Kishor** (supra), the question precisely was one regarding recovery of dues of rent of a shop due to the Nagar Palika Parishad, Swar Rampur, that is to say, the respondents here, for the period July 1999 to 16.11.2006. The Court was of opinion that on facts, the petitioners could not escape liability to pay the rent for the period July, 1999 to 06.11.2006. However, regarding recovery of such rent as arrears of land revenue by resort to the provisions of the Act of 1972 or Sections 279 and 280 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 19507, it was, nevertheless held that the Nagar Palika could not realise arrears of rent by methods prescribed under Sections 166 to 173 of the Act of 1916, that is to say, the mode permissible under Chapter VI of the Act of 1916, which does not authorise recovery as arrears of land revenue. The impugned citation here has been issued under the provisions of the Sections 279 and 280 UP ZA & LR Act, which is not permissible. Of course, it can be recovered by a suit, subject to the bar of limitation.

21. In the result, this petition **succeeds** and stands **allowed**. The impugned citation dated 14.09.2009 issued by the Tahsildar, Tahsil Swar, Rampur (Annexure No. 1 to the writ petition) is hereby **quashed**.

22. It will be open to the Nagar Palika Parishad, Swar Rampur, to recover its dues by any other mode permissible in law.'

23. There shall be no order as to costs.

24. The Registrar (Compliance) is directed to communicate this order to the Tahsildar, Swar, Rampur through the learned Chief Judicial Magistrate, Rampur.

(2026) 7 ILRA 2322
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 437 of 2026

Anup Kumar Shrivastava **...Revisionist**
Versus
State of U.P. **...Opposite Party**

Issue for Consideration

Whether the Special Judge erred in rejecting the discharge application of the revisionist under Section 239 Cr.P.C. in a case under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, having regard to the reduction of the discrepant amount after investigation, the smallness of the discrepancy, the explanation of loans taken from friends and relatives, and the alleged non-application of mind in the grant of sanction?

Headnotes

Prevention of Corruption Act, 1988 (prior to amendment of 2018) --- S. 13(1)(e), 13(2) --- Code of Criminal Procedure, 1973 --- S. 239 --- Discharge --- Disproportionate assets --- Scope of inquiry at stage of discharge --- Explanation of accused a matter for trial.

HELD: At the stage of Section 239 Cr.P.C., the court has only to look into the prima facie case and decide whether the charge is groundless; it is not to conduct a mini-trial, weigh the evidence or accept the defence explanation as gospel truth. Under Section 13(1)(e), "known sources of income" means the sources known to the prosecution, and the onus to account satisfactorily for the assets lies on the accused, which he cannot discharge at the stage of Section 239. The fact that the discrepancy between income and expenditure was whittled down after investigation, though significant, cannot be the sole ground for discharge, nor can the fact that the discrepancy is a small fraction of the income. The revisionist will have the opportunity at trial to prove every amount received from valid sources, and that any amount borrowed from a friend or relative was within the limits prescribed under the relevant rules and duly intimated to the Government; at the stage of framing of charge there is no scope for such calculation and proof. Even strong suspicion is sufficient for framing charge. [Paras 17, 21-25]

Prevention of Corruption Act, 1988 --- S. 19 --- Sanction for prosecution --- Plea of non-application of mind --- Rejected.

HELD: Where the sanctioning officer stated that he had meticulously examined all the material collected during investigation and recorded his satisfaction regarding the charges before granting sanction, and it was not the case of the revisionist that the sanction order was not passed by the competent officer, it cannot be said that the sanction was accorded without application of mind. [Paras 20, 22]

Criminal revision dismissed. (E-14)

Case Law Cited

C.S. Krishnamurthy v. State of Karnataka, (2005) 4 SCC 81 --- referred to; *State of Tamil Nadu v. R. Soundirarasu*, (2023) 6 SCC 768 --- relied on; *Amit Kapoor v. Ramesh Chander and Others*, (2012) 9 SCC 460 --- relied on.

List of Acts / Statutes

Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Constitution of India.

List of Keywords

Disproportionate assets; Known sources of income; Discharge; Prima facie case; Strong suspicion; Sanction for prosecution; Application of mind; Framing of charge; Mini-trial.

Case Arising From

Order dated 19.03.2026 passed by the Special Judge, Prevention of Corruption Act, Court No. 1, Lucknow, rejecting the discharge application under Section 239 Cr.P.C. in Case Crime No. 24 of 2012, under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, Police Station Hazratganj, Lucknow.

Appearance for Parties

For the Revisionist(s): Avdhesh Kumar Pandey, Radhika Varma, Shreshth Srivastava, Trisha Singh, Sarika Mittal.

For the Opposite Party(s): G.A.

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

1. Heard submissions of Shri Shreshth Srivastava, Advocate and Ms. Sarika Mittal, learned counsel for the revisionist and learned AGA for the State against disposal of discharge application filed by the revisionist before the trial court.

2. Instant criminal revision, had been preferred against impugned order dated 19.03.2026 passed by learned Special Judge, Prevention of Corruption Act, Court No.1, Lucknow arising out of Case Crime No.24 of 2012 under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988. By the impugned order, the learned trial court has dismissed the discharge application filed by the revisionist under section 239 of the Code of Criminal Procedure.

3. The facts relevant for present revision are that on 15.11.2010 a Government Order No. 108/1/84/2010 was issued by the State Government on the basis of a communication received from the Anti-Corruption Department, directing an 'open' investigation against the revisionist. In the said enquiry allegedly discrepancy of Rs.3,16,341/- in respect of the revisionist between the known sources of income and the assets found, wherein the known income was stated to be Rs.10,89,199/-

and the assets found were Rs.13,24,450/-. On the basis of this Government Order, a report was prepared by the Anti-Corruption Department and the same was forwarded to the Inspector-in-Charge for the registration of the First Information Report under section 13(1)(e) r/w section 13 (2) of the Act. Pursuant to the said directions, the matter was forwarded to the Inspector-in-Charge, and on 20.01.2012 an FIR came to be registered against the revisionist. As per the report dated 28.03.2017 prepared by the Anti-Corruption Department for the check period from 01.04.2004 to 31.12.2004, a discrepancy of Rs.1,69,815/- was alleged in the income of the revisionist from known sources. The report recorded that the known income of the revisionist was Rs.10,89,199/-, whereas the total income assessed was Rs.12,59,014/-, and the matter was forwarded for approval to grant sanction under Section 19 of the Prevention of Corruption Act. He was posted as P.A., Revenue and Special Intelligence, Lucknow.

4. Learned counsel for the revisionist submitted that solely on the basis of the aforesaid alleged difference, the accused/applicant has been booked for the offences punishable under Sections 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. That Vide letter no. 1770/8 T.C. dated 9/8/2018, sanction was granted; however, the same was accorded without due application of mind. The revisionist further preferred a Discharge Application which was subsequently dismissed by the impugned order.

5. Feeling aggrieved by the said impugned order, the revisionist/accused has filed the present revision before this Court under Section 401 of the Code of Criminal Procedure / 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the impugned order dated 19/03/2026 passed by Special Judge (Prevention of Corruption Act), Lucknow, whereby discharge application moved by the revisionist has been dismissed. He has prayed for quashing of criminal proceedings initiated against him and also a prayer to discharge him from alleged charges.

6. Learned counsel for the revisionist submitted that the alleged check period in the present case is from 01/04/2004 to 31/12/2004. However, the Government Order directing initiation of departmental inquiry was issued only in the year 2010 and the FIR was subsequently registered in the year 2012. Thus, there is an inordinate and unexplained delay of about 8 years from the end of the alleged discrepancy during the check period till the registration of the FIR. The prosecution has failed to disclose any justification for such abnormal delay. Such prolonged and unexplained delay in initiation of criminal proceedings causes serious prejudice to the revisionist and is violative of the right to a speedy trial guaranteed under Article 21 of the Constitution of India.

7. He next submitted that the prosecution has failed to correctly ascertain the "known sources of income" of the applicant inasmuch as the report prepared by the department shows a discrepancy of Rs.1,69,815/- during the check period. It is well settled principle of law that in order to establish an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, the prosecution must prove :-

(i) the known sources of income of the accused;

(ii) the assets possessed by the accused during the check period;

(iii) that such assets are disproportionate to the known sources of income.

8. He also submitted that the Sanctioning Officer, while granting the sanction, has failed to apply his mind, which is sine qua non for granting the sanction under Section 19 of the Act. A careful reading of the sanctioning order would reveal that the order has been passed without recording any reason. Inasmuch as the the representation made by the applicant/accused has not been considered. Sanction order is non-speaking and thus contrary to ratio of Hon'ble Supreme Court in **C.S. Krishnamurthy vs State Of Karnatak (2005) 4 SCC 81.**

9. He further submitted that on perusal of impugned order, it is obvious that learned Special Judge, while rejecting the discharge application, has gone into a different tangent inasmuch as learned Special Judge has only dealt with the powers of the discharge but nowhere the contentions of the accused/applicant nor any finding on the arguments raised during the hearing of discharge application has been recorded. The discharge application has been dismissed in a mechanical manner without application of mind from.

10. From perusal of report as well as the sanction letter, it is quite imperative that the head of "known sources of income" has not been clearly demonstrated by the respondent inasmuch as the department has included the loan assets as well as the amount spent for the maintenance of the family members. Further the revisionist in his letter addressed to Additional Director, Revenue and Intelligence has clearly stated that he has taken loan from his friends etc. and therefore, the case against him under the Prevention of Corruption Act is only an abuse of process of law. The current proceedings are nothing but an abuse of absolute process of law which are being carried out to harass the revisionist.

11. The income which is available at the disposal of the public servant will only be considered to adjudicate the question of disproportionate assets. The amount, spent by the revisionist on his family, was also added by the department in his income. He has taken a house loan from IDBI Bank in the year 2025. The revisionist got a sale deed executed on 30/07/2005 of a land situated at Dali Bagh, Lucknow on 30/07/2005 from its owner Smt. Anjana Gadhoke. The said sale deed was executed in favour of the revisionist and his wife for sale consideration of Rs.6,00,000/-. The land was measuring 142.66 square meter which is part of Plot No.12, Dalibagh Butler Road, Lucknow. He took loan from his friends and relatives. Later on he built some flats by taking loan from friends and relatives and inform the competent officer in writing. There is discrepancy with regard to amount which was found discrepant to the "known sources of income" of the revisionist in FIR as well as in charge sheet. In the FIR discrepancy shown as Rs.3,16,341/- whereas after investigation this amount was reduced to Rs.1,69,815/-. This depicts a loophole in prosecution case which has been oversighted by learned trial court. The revisionist has informed department as well as Investigating Officer that he taken loan amounting to Rs.45,00,000/- from the friends and relatives for construction of flat of land purchased by him jointly with his wife. He is a member of Hindu Undivided Family (HUF) and assets and financial transaction attributable to the family have been wrongly and illegally treated as the exclusive income of the revisionist. But said facts has not been rebutted by the prosecution. The disputed amount of Rs.5,00,000/- as well as other amount reflected in calculation sheet are part of the same loan amount borrowed by the accused from his

friends and relatives. There is independent and separate source of income of the revisionist as alleged by the prosecution. No offence is made out against the revised on the facts of the case.

12. Learned Trial Court has erred in law in misapplying the concept of "strong suspicion" by proceeding on assumptions and conjectures rather than on legally admissible material, and has thereby wrongly recorded a prima facie case without demonstrating the existence of the essential ingredients of the alleged offence under section 13 of the Act, namely: (a) the determination of known sources of income; (b) proof of possession of assets disproportionate thereto; and (c) absence of satisfactory explanation by the accused.

13. Per contra, learned AGA submitted that at the stage of considering of discharge application and framing of charge that trial court is not expected to go for carrying out mathematical calculation of the discrepant amount and it is desirable that the learned trial court will place reliance of the amount calculated by the Investigating Agency on the basis of documents and only due to the fact that the amount discrepant is not a huge amount. The accused cannot be discharged.

14. Learned trial court has dismissed the discharge application after considering the grounds taken therein and evidence collected during investigation against revisionist at the stage of framing of charge roving inquiry into matter collected during investigation is not permitted. The trial court while framing of charge as to see whether there are sufficient material to proceed against the accused for said charges leveled against him.

15. The provisions of Section 13 of Prevention of Corruption Act, 1988 prior to the amendment of 2018 (Act 16 of 2018) which is invoked in the present case is being reproduced as under:

16. Subs. by Act 16 of 2018, S. 7 (w.e.f. 26-7-2018). Prior to substitution it read as:

"(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other be inadequate from any person whom he knows to have been, or to be, or to be any other person, any valuable thing without consideration or for a consideration which he likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,- (1) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage;or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to 7 years and shall also be liable to fine.

16. From perusal of aforesaid provisions, it appears that Section 13 of the Prevention of Corruption Act defines the offence of "criminal misconduct by a public servant. It penalised public officials to misuse their office, misappropriate property or mass wealth disproportionate to their known source of income which is implies intentional and enriching oneself in illicit manner during the period of office which includes holding assets or pecuniary sources disproportionate to known source income that cannot be amounted for satisfactorily.

17. Learned counsel for the revisionist placed reliance on a judgment of the Hon'ble Supreme Court in **State of Tamil Nadu vs. R. Soundirarasu, (2023) 6 SCC 768**, wherein the Supreme Court set aside the Madras High Court order, whereby a former Motor Vehicle Inspector and his wife were discharged in a case from the charge of disproportionate assets. Hon'ble Supreme Court ruled that the court must only evaluate a prima facie case at the discharge stage without conducting mini trial or weighing evidence. The trial court had refused to discharge the accused. The High Court allowed the criminal revision petition and evaluated the individual explanations regarding income and tax returns. The Apex Court allowed the State appeal, holding that the High Court erred while deeply analyzing the defense material and explanations prematurely. The courts cannot conduct detailed inquiry or except defense explanations as gospel truth before the trial begins. The Supreme Court restored the criminal proceedings, directing the trial to proceed according to law. It was directed that the Special Court shall now proceed to frame charge against the accused persons in accordance with law and put them to trial. In the opinion of Apex Court, the circumstances emerging from the record of the case, prima facie, indicated the involvement of the accused persons in the alleged offence. Having regard to the materials on record, it cannot be said that the charge against the accused persons is groundless. There are triable issues in the matter. If there are triable issues, the court is not expected to go into the veracity of the rival versions. Hon'ble Court observed in Paragraphs 52, 64 and 80 as under.

"52. The provisions which deal with the question of framing of charge or discharge, relatable to: (i) a sessions trial or, (ii) a trial of warrant case, or (iii) a summons case, are contained in three pairs of Sections under the Code of Criminal Procedure. These are Sections 227 and 228 reply in so far as, the sessions trial is concerned; Sections 239 and 240 reply relatable to

the trial of warrant cases; and Sections 245(1) and 245(2) reply in respect of summons case. The relevant provisions read as follows:

Section 227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the Accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the Accused, he shall discharge the Accused and record his reasons for so doing.

Section 228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the Accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the Accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the Accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the Accused.

(2) Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the Accused, and the Accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 239. When Accused shall be discharged.--If, upon considering the police report and the documents sent with it Under Section 173 and making such examination, if any, of the Accused as the Magistrate thinks necessary and after giving the prosecution and the Accused an opportunity of being heard, the Magistrate considers the charge against the Accused to be groundless, he shall discharge the Accused, and record his reasons for so doing.

Section 240. Framing of charge.--(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the Accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the Accused.

(2) The charge shall then be read and explained to the Accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 245. When Accused shall be discharged.--(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the Accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this Section shall be deemed to prevent a Magistrate from discharging the Accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

64. In Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra MANU/SC/0080/1971 : AIR 1972 SC 545, this Court has stated about the ambit of Section 251(A)(2) of the Code of Criminal Procedure 1898, which is in pari materia with the wordings used in Section 239 of the Code of Criminal Procedure as follows:

It cannot be said that the Court at the stage of framing the charge has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the Accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution.

In para 15, this Court has stated as:

Under Sub-section (2), if upon consideration of all the documents referred to in Section 173, Criminal Procedure Code and examining the Accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the Accused. This Sub-section has to be read along with Sub-section (3), according to which, if after hearing the arguments and hearing the Accused, the Magistrate thinks that there is ground for presuming that the Accused has committed an offence triable under Chap. XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the Accused. Reading the two Sub-sections together, it clearly means that if there is no ground for presuming that the Accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges.

80. Section 13(1)(e) of the Act 1988 makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the Accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the Accused was in possession of properties disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the Accused and within the knowledge of the Accused. It is for the Accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the Accused to give satisfactory explanation. The Accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the Code of Criminal Procedure. At the stage of Section 239 of the Code of Criminal Procedure, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless"

18. Learned counsel for the revisionist had submitted that unless the essential ingredients of the offence under Section 13(1)(e) are established, the offence is not complete. In the present case, an absence of proof of known sources of the income of the revisionist and the prosecution has nowhere disclosed or specified the sources from which such income is alleged to have been derived. Hence, the prosecution case is incomplete at the inception and the revisionist was entitled to be discharged.

19. In the present case, S.P., Anti-Corruption Wing, UP, Lucknow has given a calculation chart of proportionate assets after analyzing the particulars of income and expenditure of the revisionist and has stated that during the check period 01/04/2004 to 31/12/2004 is income from all valid sources has been found to be Rs.10,89,199/- whereas her total expenditure has been found to be Rs.12,59,014/- which is more than Rs.1,69,815/-.

20. In prosecution sanction order also this discrepant amount is shown as Rs.159,815/-. The sanctioning officer has stated that he has examined all the material produced before before him with regard to the allegation of discrepant assets of the employee, Sri Anoop Kumar Srivastava against whom open inquiry was conducted by the Anti-corruption Wing and thereafter FIR was lodged against him in Case Crime No. 24 of 2012, under Section 13(1)(e) read with section 13(2) PC Act at Police Station Hazratganj, Lucknow and after inquiry he has been chargesheeted for said offense. He has meticulously examined all the material collected during investigation and after recording his satisfaction regarding charges against him, he has granted sanction for prosecution for alleged offenses. It is not the case of the revisionist that the sanction order was not passed by the competent officer.

21. The mere fact that the discrepancy between income and expenditure was whittled down after investigation is significant but cannot found a sole ground to discharge the revisionist. Similarly, the fact that discrepancy is a small fraction of income of the revisionist is also not ground to discharge him from alleged charges.

22. On perusal of sanction order, it cannot be said that the same has been passed by the competent authority without application of mind. During trial of the case, the revisionist shall have opportunity to prove every single amount received by him from valid sources through the testimony of witnesses and by also filing contemporaneous document and intimation to the government. There are relevant rules with regard to investment, lending and borrowing with regard to a government servant and he has to prove to the satisfaction of the court. He will have to prove to the satisfaction of the court that any amount borrowed by him from a friend or relative was within purview of the limit prescribed in the relevant rules and was duly intimated in prescribed form to the government or to the officer authorized in behalf. However, at this stage of framing of charge, there is no scope of such calculation and proof.

23. In the case of **Amit Kapoor Vs. Ramesh Chander and Others (2012) 9 SCC 460**, Hon'ble Supreme Court held that even in the case of strong suspicion, charge can be framed. Paragraph 19 of the said judgment is quoted as under:-

"19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction,

the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist."

24. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that an accused had committed an offense, which, if put to trial could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of proof of guilt is not to be applied at that stage.

25. In the present case conclusions of inquiry report preceeding to lodging of the FIR, evidence collected during investigation, raised a serious doubt and a grave suspicion against the revisionist regarding his complicity in the offense, which leads to framing of charge against him to put him on trial for alleged offense.

26. I find no illegality, irregularity or perversity in the impugned order passed by learned court below whereby discharge application filed by the revisionist has been dismissed by learned Special Judge,.

27. Consequently, the revision is **dismissed.**

(2026) 7 ILRA 2333
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.07.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 3086 of 2025

Manju Sonkar **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issues for Consideration

(i) Whether a woman claiming to be the legally wedded wife of a man whose earlier marriage is in existence, who fails to establish solemnization of marriage and has neither pleaded nor proved a live-in relationship, is entitled to maintenance under Section 125 Cr.P.C.?

(ii) Whether the judgments in Anupama Pradhan v. Sultan Pradhan and Chanmuniya v. Virendra Kumar Singh Kushwaha have any application where the existence of the marital relationship is specifically denied and none of the parties belongs to the Scheduled Tribes community?

Headnotes

Code of Criminal Procedure, 1973 --- S. 125 --- Maintenance to wife --- Claim of marriage with a man whose earlier marriage is in existence --- Solemnization of marriage not established --- No pleading or material regarding live-in relationship --- Relationship categorically denied --- Claim not maintainable.

HELD: Where the very existence of the marital relationship has been specifically denied by the opposite party, the revisionist has failed to establish the solemnization of marriage between the parties, and there is neither any pleading nor any material on record to suggest that the parties were living in a live-in relationship, the claimant seeking maintenance under Section 125 Cr.P.C. cannot claim the benefit available to persons in a live-in relationship, particularly when the existence of such relationship has been categorically denied by the opposite party. [Paras 12, 13]

Hindu Marriage Act, 1955 --- S. 2(2) --- Precedent --- Distinguishable facts --- Scheduled Tribes community --- Factum of marriage in dispute.

HELD: In Anupama Pradhan (supra), the parties belonged to the Scheduled Tribes community, which was exempted under Section 2(2) of the Hindu Marriage Act and bigamy was permissible; since none of the parties in the present case belongs to the Scheduled Tribes community, the said judgment is not helpful to the revisionist. In Chanmuniya (supra), the factum of marriage between the parties was not in dispute, whereas in the present case the very existence of the marital relationship has been denied; hence, the ratio laid down therein has no application to the controversy involved. [Paras 11, 12]

Code of Criminal Procedure, 1973 --- Revisional jurisdiction --- Reasoned and speaking order of Trial Court --- No illegality, perversity or jurisdictional error --- No interference.

HELD: The Trial Court, upon due consideration of the entire material available on record, having passed a reasoned and speaking order, there is no illegality, perversity or jurisdictional error in the impugned order warranting interference in the exercise of revisional jurisdiction. [Para 14]

Criminal revision dismissed. (E-14)

Case Law Cited

Anupama Pradhan v. Sultan Pradhan, 1991 CrLJ 3216 --- distinguished; *Chanmuniya v. Virendra Kumar Singh Kushwaha and another*, 2011 (1) SCC 141 --- distinguished.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Hindu Marriage Act, 1955.

List of Keywords

Maintenance; Legally wedded wife; Subsisting earlier marriage; Second marriage; Solemnization of marriage; Live-in relationship; Scheduled Tribes; Revisional jurisdiction.

Case Arising From

Order dated 15.07.2022 passed by the Principal Judge, Family Court, Kaushambi, in Case No. 119 of 2017, Manju Sonkar and another v. Om Prakash, under Section 125 Cr.P.C., Police Station Kokhraj, District Kaushambi, rejecting the prayer for maintenance of the revisionist and accepting the prayer for maintenance of the minor child.

Appearance for Parties

For the Revisionist(s): Ravi Prakash, Satya Prakash Vishwakarma, Pradeep Kumar.
For the Opposite Party(s): G.A.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. This matter was mentioned in the morning for being taken up.

2. It is, accordingly, taken up.

3. Heard Mr. Pradeep Kumar, learned counsel for the revisionist, learned A.G.A. representing the State and perused the material available on record.

4. As per office report, notice upon opposite party no. 2 has been duly served. However, neither he nor anyone on his behalf is present to oppose the present Criminal Revision.

5. Revisionist Manju Sonkar has approached this Court by means of present Criminal Revision challenging the impugned order dated 15.07.2022 passed by the Principal Judge, Family Court, Kaushambi (hereinafter referred to as "the Trial Court") in Case No. 119 of 2017, Manju Sonkar and another v. Om Prakash, under Section 125 Cr.P.C., Police Station Kokhraj, District Kaushambi, whereby the the Trial Court rejected the prayer for maintenance under Section 125 Cr.P.C. made by the revisionist and accepted the prayer for maintenance to the biological minor child of revisionist and opposite party no. 2.

6. Feeling aggrieved from the aforesaid order, the present revision has been filed on the ground that the impugned order is arbitrary, illegal and suffers from material irregularity. It has been passed without application of judicial mind committing manifest error in rejecting the maintenance for the revisionist. It is thus contended that the impugned order is liable to be modified by this Court invoking its revisional jurisdiction.

7. It is submitted by the learned counsel for the revisionist that the Trial Court allowed the claim for maintenance of her minor son but at the same time rejected the claim of the revisionist saying that she is not legally wedded wife of opposite party no. 2. The finding of the Trial Court that the revisionist is not legally wedded wife of opposite party no. 2, is based upon the facts that opposite party no. 2 had already been married with another woman and his marriage is in existence. It is further observed that as per Hindu Law, in the event of existence of a marriage, second marriage is not permitted. Learned counsel for the revisionist further submitted that the revisionist's claim is that she is legally wedded wife of opposite party no. 2 and only on the ground that opposite party no. 2 has another wife from his earlier marriage which is in existence, the revisionist cannot be held dis-entitled from getting maintenance while the revisionist had no knowledge about the existence of previous marriage of opposite party no. 2. In view of above, it is thus contended that the findings of the Trial Court, to the extent it rejects the maintenance to opposite party no. 2, is not sustainable in the eyes of law. It is liable to be set aside by this Court.

8. To buttress his submissions, learned counsel for the revisionist has relied upon the judgment of High Court of Orissa in **Anupama Pradhan v. Sultan Pradhan, 1991 CrLJ 3216** and the judgment of Supreme Court in **Chanmuniya v. Virendra Kumar Singh Kushwaha and another, 2011 (1) SCC 141**. In paragraph 9 of **Anupama Pradhan** (*supra*), it has been observed as under:

" 9. So far as the second point is concerned, it is seen that the assertion of the petitioner that she is the legally married wife of the o. p. has been corroborated not only by her father (p.w. 2) but also by her caste men (p. ws. 3 and 4). That apart, parties have admitted, as already stated above, that they lived as wife and husband for a long period of 12 years and that the petitioner has given birth to three children through the o. p. during that period. As against all these evidence, the denial evidence of the o. p. does not find corroboration. In the face of all these evidence, the learned Magistrate has recorded a finding that the petitioner is not the legally married wife of the o. p. merely because there was no evidence from the side of the petitioner as to the procedure of the marriage prevalent in her caste and also for non-examination of the priest and barber. It has been laid down in a number of decisions by this Court that proceeding under section 125 of the Code is of summary nature and that the intricacies of the law are not required to be gone into and that where the man and woman lived together as husband and wife and treated as such by the community and the man treated the woman as his wife, marriage between them has to be inferred for the limited purpose of section 125 of the Code. To cite one of them is Saudamini Dei v. Bhagirathi Raj, 53(1982) C.L.T. 93. In view of such decision, I hold, on the basis of aforesaid evidence, that the petitioner is the legally married wife of the o. p. and the finding of the learned Magistrate being perverse is set aside."

9. Learned counsel for the revisionist has placed reliance upon paragraph 45 **Chanmuniya** (supra) where it has been held as under:

"We, therefore, request the Hon'ble Chief Justice to refer the following, amongst other, questions to be decided by a larger Bench. According to us, the questions are: 1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 CrPC? 2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 CrPC having regard to the provisions of the Domestic Violence Act, 2005? 3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 CrPC?"

10. Per contra, learned counsel for opposite party no. 2 and the learned A.G.A. representing the State have vehemently opposed the revision and supported the impugned judgement. It is submitted that although it is the assertion of the revisionist that she is legally wedded wife of opposite party no. 2 but in existence of earlier marriage of opposite party no. 2, second marriage is not a valid marriage under the law. As regards the solemnization of marriage as per the required rituals and without knowledge of earlier marriage is concerned, in paragraph 17 of the impugned judgment it has been observed that the revisionist could not produce any credible evidence in this regard. It is thus contended that in absence of any evidence regarding due solemnization of marriage between the revisionist and opposite party no. 2, the revisionist cannot be said to be a legally wedded wife of opposite party no. 2, even in absence of subsistence of any earlier marriage. In view of above, it is contended that the revisionist is not entitled to get maintenance from opposite party no. 2. The present criminal revision is devoid of merit and is liable to be dismissed by this Court.

11. We have heard the learned counsel for parties and perused the material available on record. A perusal of the judgment in **Anupama Pradhan** (*supra*) reveals that the facts of the present case are different from that case. In that case parties would belong to the Scheduled Tribes Community which was exempted under Section 2(2) of the Hindu Marriage Act and bigamy was permissible. However, in the present case none of the parties belongs to scheduled tribes community. Therefore, the judgment in Anupama Pradhan (supra), relied by the revisionist, is not in any way helpful to the revisionist.

12. The Supreme Court in **Chanmuniya** (*supra*) observed that where a woman has lived with a man for a considerable period of time, she may be entitled to claim maintenance under Section 125 Cr.P.C. by treating such relationship as akin to that of a legally wedded wife. However, it is pertinent to note that, in the said case, the factum of marriage between the parties was not in dispute. In the present case, on the contrary, the very existence of the marital relationship has been specifically denied and the revisionist has failed to establish the solemnization of marriage between the parties. Opposite party no. 2 has categorically denied having any relationship with the revisionist. Moreover, there is neither any pleading nor any material on record to suggest that the parties were living in a live-in relationship. Accordingly, the facts of **Chanmuniya** (*supra*) are clearly distinguishable from the facts of the present case, and the ratio laid down therein has no application to the controversy involved in the present revision.

13. Where there is neither any specific pleading regarding the existence of a live-in relationship nor any evidence establishing the solemnization of marriage between the parties, the claimant seeking maintenance under Section 125 Cr.P.C. cannot claim the benefit available to persons in a live-in relationship, particularly when the existence of such relationship has been categorically denied by the opposite party.

14. In view of the aforesaid, we are of the opinion that the submissions urged by the learned counsel appearing on behalf of opposite parties are clearly borne out from the record. The Trial Court, upon due consideration of the entire material available on record, has passed a reasoned and speaking order. This Court finds no illegality, perversity, or jurisdictional error in the impugned order warranting interference in the exercise of its revisional jurisdiction. The present Criminal Revision is devoid of merit and is, accordingly, liable to be dismissed.

15. It is, accordingly, **dismissed**.

(2026) 7 ILRA 2337
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.07.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 4112 of 2025

Smt. Kusum ...Revisionist
Versus
State of U.P. & Ors. ...Opposite Parties

Issue for Consideration

Whether a mother, in whose favour maintenance has been granted under Section 125 Cr.P.C. against her real son, can seek that the same liability be fastened upon her step-son as well?

Headnotes

Code of Criminal Procedure, 1973 --- S. 125(1)(d) --- Maintenance to parents --- Mother --- Real son and step-son --- Maintenance granted against real son and accepted by him --- Inability to maintain comes to an end --- Liability on step-son not fastened.

HELD: While considering maintenance to parents, the court has to see the relation of parent and child between the parties, whether the person seeking maintenance is unable to maintain himself/herself, and whether the person from whom maintenance is claimed has sufficient means to provide such maintenance. The revisionist, being the real mother of opposite party no. 3 and stepmother of opposite party no. 2, having been granted maintenance against opposite party no. 3, who accepted the order of the trial court, is now capable of maintaining herself by getting the maintenance amount from her real son and has lost her status of incapability to maintain herself. [Para 7]

Code of Criminal Procedure, 1973 --- S. 125 --- Two or more persons under obligation to maintain --- Discretion of Court as to liability and extent --- Claimant cannot claim another maintenance after order in her favour.

HELD: The inability of the person claiming maintenance to maintain himself/herself comes to an end after the order of Court to pay maintenance, and the person in whose favour the maintenance order is passed cannot claim another maintenance from another person. Where two or more persons are under obligation to maintain the applicant, it is for the Court to decide from whom and to what extent the maintenance be made payable. [Para 8]

Criminal revision, found to have been filed only with the intention to harass opposite party no. 2 without any substantive legal basis, dismissed. (E-14)

Case Law Cited

No case law cited.

List of Acts / Statutes

Code of Criminal Procedure, 1973.

List of Keywords

Maintenance; Parents; Mother; Real son; Step-son; Inability to maintain; Sufficient means; Apportionment of liability.

Case Arising From

Judgment and order dated 15.05.2025 passed by the Additional Principal Judge, Family Court No. 2, Muzaffarnagar, in Case No. 1405 of 2022 (CNR No. UPMZ020034652022) (Rukhsar Khan v. Tanveer Khan), under Section 125 Cr.P.C., Police Station Jamaniya, District Ghazipur.

Appearance for Parties

For the Revisionist(s): Abhishe Pandey, Praveen Singh.

For the Opposite Party(s): Chakra Dhaar Mishra, G.A.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Praveen Singh, learned counsel appearing on behalf of learned counsel for revisionist, learned AGA representing opposite party no. 1, Mr. Anand Kumar Tiwari, Advocate holding brief of Mr. Chakra Dhaar Mishra, learned counsel for opposite party no. 2 and perused the record.

2. The revisionist Smt. Kusum has approached this Court by means of present criminal revision assailing the validity of impugned judgment and order dated 15.05.2025 passed by Additional Principal Judge, Family Court No. 2, Muzaffarnagar (hereinafter referred to as trial court) passed in Case No. 1405 of 2022 (CNR No. UPMZ020034652022) (Rukhsar Khan Vs. Tanveer Khan) under section 125 Cr.P.C., Police Station Jamaniya, District Ghazipur wherein the trial court allowing the application u/s 125 Cr.P.C. filed by the revisionist directed opposite party no. 2 to pay Rs. 8,000/- per month maintenance to the revisionist.

3. Feeling aggrieved from that order the present criminal revision has been filed on the grounds that the impugned order is wholly illegal unjustified, against the provisions of law, based on presumptions, the trial court committed manifest error by passing the impugned order, it is based on surmises and conjunctures, the trial court passed the impugned order arbitrarily, illegally without going into the merit of the case. Accordingly, the impugned order is liable to be set aside by this Court in exercise of its revisional jurisdiction.

4. After some length of argument learned counsel for revisionist confined his argument only to the extent that the trial court held fastening opposite party no. 3 to pay the amount of maintenance while no liability upon opposite party no. 2 has been fastened. Elaborating his submissions learned counsel for revisionist submitted that the opposite party no. 3 is the real son of the revisionist while opposite party no. 2 is her step son. Only on the ground that Opposite Party No. 3 is her real son, whereas the trial court discharged the opposite party no. 2 from his liability due to being step son of

the revisionist. It is, therefore, contended that the impugned order is liable to be modified by fastening the same liability upon Opposite Party No. 2 as has been imposed upon Opposite Party No. 3.

5. Per contra learned AGA and learned counsel appearing on behalf of opposite party no. 2 vehemently opposed the criminal revision and submitted that in presence of real son having sufficient means to maintain his mother, her step son cannot be held liable for the same. In view of above the present criminal revision is not only devoid of merit but it is filed with malafide intention, therefore, it is liable to be dismissed by this Court.

6. Section 125 Cr.P.C. provides as under:-

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain –

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person. Explanation. - For the purposes of this Chapter, -

(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married. (

2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001) remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001). from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

7. While considering the maintenance to parents the court has to see the relation of parent and children between the parties and further whether the parties seeking maintenance is unable to maintain his/her child parent as the case may be. The Court must also determine whether the person from whom maintenance is claimed has sufficient means to provide such maintenance. From the submissions advanced by both sides, it is evident that the revisionist is the real mother of opposite party No. 3 and the stepmother of opposite party No. 2. It is possible that, at the time of filing the application under Section 125 Cr.P.C., the revisionist was unable to maintain herself but after the order of trial court the amount for her maintenance has been earned by court's order, opposite party no. 3 has not challenged such order meaning thereby opposite party no. 3 is accepted the order of trial court in aforesaid circumstance now the revisionist is capable to maintain herself getting the maintenance amount from her real son so now she is lost her status of incapability to maintain herself.

8. Even a person having insufficient means to maintain himself may have right to file application for maintenance against relevant persons but in furtherance of such proceeding of maintenance if the Court allows the same fastening a person liable to maintain the person claiming maintenance then by virtue of order of Court. The inability of person claiming maintenance to maintain himself/herself become to an end after order of Court to pay maintenance the person in whose favour the maintenance order is passed cannot claim another maintenance to another person. Similarly it is right of the claimant that if there two or more persons are under obligation to maintain the applicant from whom and in which ratio the maintenance amount be paid. It is Court to decide that from whom and to what extent maintenance be made payable.

9. In view of above we find that this criminal revision has been filed only with intention to harass the opposite party no. 2 without any substantive legal basis. Accordingly, the present criminal revision is devoid of merit and is liable to be dismissed. The criminal revision is hereby **dismissed**.

(2026) 7 ILRA 2341
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 5330 of 2025

Umesh Vidyarthi **...Revisionist**
Versus
Madhubala & Anr. **...Opposite Parties**

Issues for Consideration

(i) Whether the Trial Court, in proceedings under Section 125 Cr.P.C., was obliged to defer pronouncement of judgment until decision of an application under Section 340 Cr.P.C. which was filed after conclusion of final arguments, when the matter had already been fixed for pronouncement of judgment?

(ii) Whether maintenance awarded to the wife at the rate of Rs. 20,000/- per month was excessive and disproportionate to the income of the revisionist, so as to warrant interference in revisional jurisdiction?

Headnotes

Code of Criminal Procedure, 1973 --- Ss. 125, 340 --- Maintenance proceedings --- Application under Section 340 filed after conclusion of final arguments and when matter fixed for pronouncement of judgment --- Trial Court not obliged to defer judgment --- Amit Bajpai (supra) distinguished.

HELD: Proceedings contemplated under Section 340 Cr.P.C. are independent in nature and are not connected with the adjudication of proceedings under Section 125 Cr.P.C. Merely because an application under Section 340 Cr.P.C. is filed at the stage when the matter has already been reserved for judgment would not ipso facto oblige the Trial Court to defer pronouncement of judgment, and it is always open to the concerned party to pursue the proceedings under Section 340 Cr.P.C. independently in accordance with law. Where the application under Section 340 Cr.P.C. was filed only on 22.07.2025, after conclusion of final arguments, as indicated by the endorsements made on the application itself, the Trial Court cannot be faulted for pronouncing the judgment without first deciding the said application. The decision in *Amit Bajpai*, wherein the application under Section 340 Cr.P.C. had been filed on 31.03.2022 and duly registered, and the application under Section 125 Cr.P.C. was decided on 14.06.2023 without considering it, was rendered in the peculiar facts of that case and has no application to the present case. [Paras 12-16]

Code of Criminal Procedure, 1973 --- S. 125 --- Quantum of maintenance --- Determination on admitted income of husband and financial status of parties --- Revisional jurisdiction --- Interference declined.

HELD: Where the Trial Court determined the amount payable after taking into consideration the admitted income of the revisionist, the material available on record and the financial status of the parties, and no perversity or illegality is pointed out in its findings, maintenance awarded at the rate of Rs. 20,000/- per

month cannot be said to be arbitrary, unreasonable or excessive so as to warrant interference in exercise of revisional jurisdiction. The impugned judgment does not suffer from any jurisdictional error, manifest illegality or material irregularity. [Paras 17-18]

Criminal revision dismissed. (E-14)

Case Law Cited

Amit Bajpai v. State of U.P. and another, Criminal Revision No. 3760 of 2023, decided on 15.12.2023 --- distinguished; *Rajnesh v. Neha*, (2021) 2 SCC 324--- referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973.

List of Keywords

Maintenance; Deferment of judgment; Reserved for judgment; Quantum of maintenance; Admitted income; Revisional jurisdiction.

Case Arising From

Order dated 30.07.2025 passed by the Principal Judge, Family Court, Sonbhadra, in Criminal Misc. Case No. 84 of 2020, Madhubala v. Umesh Vidyarthi, under Section 125 Cr.P.C., Police Station Robertsganj, District Sonbhadra.

Appearance for Parties

For the Revisionist(s): Satyarth Agarwal, Siddharth Agrawal.

For the Opposite Party(s): G.A., Gaurav Dwivedi, Kamlesh Kumar Dwivedi.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Siddharth Agrawal, learned counsel for the revisionist, Mr. Kamlesh Kumar Dwivedi, learned counsel appearing for opposite party no. 2 and learned A.G.A. for the State.

2. Perused the record.

3. Revisionist Umesh Vidyarthi has approached this Court by means of present Criminal Revision challenging the impugned order dated 30.07.2025 passed by the Principal Judge, Family Court, Sonbhadra (hereinafter referred to as "the Trial Court") in Criminal Misc. Case No. 84 of 2020, Madhubala v. Umesh Vidyarthi, under Section 125 Cr.P.C., Police Station Robertsganj, District Sonbhadra.

4. By the impugned order, the Trial Court has partly allowed the application for maintenance filed by opposite party no. 2 and directed the revisionist to pay maintenance to opposite party no. 2 at the rate of Rs.15,000/- per month from the date of institution of the application till

30.07.2025 and Rs. 20,000/- per month from the date of the order onwards as maintenance.

5. Feeling aggrieved from the aforesaid order, the revisionist preferred the present Criminal Revision on the ground that the impugned order suffers from manifest illegality and material irregularity inasmuch as the quantum of maintenance awarded by the Trial Court is excessive and wholly disproportionate to the actual income of the revisionist. It is urged that the Trial Court has failed to correctly appreciate the material brought on record with regard to the income of the revisionist. The Trial Court has exercised its jurisdiction in an arbitrary manner.

6. It is further submitted that while deciding the proceedings under Section 125 Cr.P.C., the Trial Court has failed to take into consideration the directions issued by this Court in **Criminal Revision No. 3760 of 2023, Amit Bajpai v. State of U.P. and another, decided on 15.12.2023**, wherein it has been observed that where an application under Section 340 Cr.P.C. has been filed, the proceedings should ordinarily be concluded only after the said application is decided in accordance with law. According to the learned counsel, despite the pendency of the application under Section 340 Cr.P.C., the Trial Court proceeded to decide the maintenance proceedings without adjudicating the said application and without affording adequate opportunity to the revisionist to establish his allegations regarding fabrication and forgery of documents relied upon by opposite party no. 1.

7. Learned counsel for the revisionist further submits that pursuant to the order dated 10.07.2025 passed by this Court, an application under Section 340 Cr.P.C. was filed before the Trial Court. However, without deciding the said application, the Trial Court proceeded to pronounce the impugned judgment. It is thus contended that the procedure adopted by the Trial Court is contrary to law.

8. It is next submitted that opposite party no. 1 is residing separately without any sufficient cause. Attention of the Court has also been invited to the affidavit filed by opposite party no. 1. Pursuant to the directions issued by the Supreme Court in **Rajnesh v. Neha, (2020) 13 SCC 454**, wherein she has disclosed that she is an M.B.A. graduate and was previously employed but voluntarily left her employment. It is contended that she intentionally resigned from service only with a view to claiming maintenance from the revisionist, despite being capable of maintaining herself. It is also submitted that the declared monthly income of the revisionist is approximately Rs. 60,000/- only. His basic pay is Rs. 50,000/- per month. Therefore, the direction to pay maintenance at the rate of Rs. 20,000/- per month is excessive and deserves to be suitably reduced.

9. Per contra, learned A.G.A. and learned counsel appearing for opposite party no. 1 have vehemently opposed the Criminal Revision and supported the impugned order. It is submitted that the Trial Court has recorded a categorical finding in paragraph 31 of the impugned judgment that the revisionist himself admitted that his basic pay is Rs. 50,000/- per month and that he is serving as a Divisional Engineer in the Railways. In paragraph 32, the Trial Court has further recorded the admission of the revisionist that his monthly salary was Rs. 74,513/-. It is, therefore, contended that having regard to the admitted income of the revisionist, the maintenance awarded cannot be said to be excessive. Learned counsel further submits that with annual increments and revision of dearness allowance admissible to Central Government employees, the present monthly income of the revisionist would, in all probability, exceed Rs. 80,000/- per month. Accordingly, the maintenance awarded is fully justified and is in accordance with the principles laid down by the Supreme Court in **Rajnesh** (*supra*).

10. Learned A.G.A. as well as learned counsel for opposite party no. 1 submits that insofar as the grievance relating to non-disposal of the application under Section 340 Cr.P.C. is concerned, learned counsel for opposite party no. 2 submits that by the time the said application was filed, the evidence had already concluded, final arguments had been heard and the matter had been fixed for pronouncement of judgment. Therefore, no fault can be found with the Trial Court in proceeding to pronounce the judgment. It is submitted that had the revisionist been bona fide, he ought to have moved the application at an appropriate stage of the proceedings and not after conclusion of the final hearing. It is thus contended that the decision rendered in **Amit Bajpai** (*supra*) has no application to the facts of the present case.

11. When confronted with above, learned counsel for the revisionist submits that although the order of this Court was passed on 10.07.2025, the same was uploaded only on 21.07.2025, leaving the revisionist with no effective opportunity to file the application under Section 340 Cr.P.C. before the Trial Court prior to the conclusion of the proceedings.

12. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of the record, this Court finds that the reliance placed by the revisionist upon the decision of this Court in **Amit Bajpai** (*supra*) is wholly misconceived.

13. In **Amit Bajpai** (*supra*), the application under Section 340 Cr.P.C. had been filed on 31.03.2022 and was duly registered as miscellaneous application. Despite the pendency of the said application, the Trial Court proceeded to decide the application under Section 125 Cr.P.C. on 14.06.2023 without considering the application under Section 340 Cr.P.C. It was in the peculiar facts of that case that this Court issued the directions relied upon by the revisionist.

14. The facts of the present case, however, stand on an entirely different footing. From the material brought on record, it transpires that the application under Section 340 Cr.P.C., registered as Application No. 76-?/15 in Case No. 84 of 2020, was filed only on 22.07.2025 after conclusion of final arguments and when the matter had already been fixed for pronouncement of judgment. A perusal of the application dated 22.07.2025 reveals that an endorsement was made on the left margin stating "श्रीमान जी बहस पूर्ण होने के बाद दख़िल कर रहे हैं घोर आपत्ति है". Thereafter, in the said application another endorsement has been made at the bottom in the left side stating "कंप्यूटर से सत्यापित कारण के पश्चात पेश हो". The endorsements made on the application clearly indicate that the proceedings had reached the stage of final adjudication. In such circumstances, the Trial Court cannot be faulted for proceeding to pronounce the judgment without first deciding the application under Section 340 Cr.P.C.

15. It is also remarkable that proceedings contemplated under Section 340 Cr.P.C. are independent in nature and are not connected with the adjudication of proceedings under Section 125 Cr.P.C. Merely because an application under Section 340 Cr.P.C. is filed at the stage when the matter has already been reserved for judgment would not *ipso facto* oblige the Trial Court to defer pronouncement of judgment. It is always open to the concerned party to pursue the proceedings under Section 340 Cr.P.C. independently in accordance with law.

16. In the opinion of this Court, therefore, the judgment rendered in **Amit Bajpai** *(supra)* does not advance the case of the revisionist and has no application to the facts of the present case.

17. So far as the quantum of maintenance is concerned, the Trial Court has taken into consideration the admitted income of the revisionist, the material available on record and the financial status of the parties before determining the amount payable. No perversity or illegality has been pointed out in the findings recorded by the Trial Court. This Court does not find the maintenance awarded at the rate of Rs. 20,000/- per month to be arbitrary, unreasonable or excessive warranting interference in exercise of revisional jurisdiction.

18. In view of aforesaid discussion, this Court is of the considered view that the impugned judgment and order does not suffer from any jurisdictional error, manifest illegality or material irregularity warranting interference by this Court. The present Criminal Revision is devoid of merit.

19. It is, accordingly, **dismissed**.

(2026) 7 ILRA 2346
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.07.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 2229 of 2026

Faimuddeen & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Is there non-compliance of the judgement of the Supreme Court in Re: Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022 – (2025) 5 SCC 1) with specific reference to paragraphs 85 and 86 of that judgement?,
(2) Does the authority to demolish, justify the act of demolishing a structure or, is there a duty on the anvil of parens patriae upon the State, not to demolish a dwelling place in the absence of public need/purpose?,
(3) Would steps taken in the direction of demolishing a structure immediately 8 following the commission of an offence, be a colourable exercise of executive discretion?,
(4) how is the High Court to balance the conflicting interests between the statutory authority of the State to demolish a structure and the fundamental right of the average citizen under article 21 and 14, to prevent it?, and
(5) can "reasonable apprehension" of demolition be a cause of action for a citizen to approach this Court and if 'yes', what is the bare minimum for this Court to hold the existence of such "reasonable apprehension"?

Headnotes

Constitution of India – Arts. 14, 21, 300-A – U.P. Urban Planning and Development Act, 1973 – ss. 7, 16 – Demolition of dwelling places – Executive discretion – Accused in criminal case – Retributive exercise of executive discretion – Right to life – Right to livelihood and shelter – Due process of law – Reasonable apprehension of demolition **–** Petitioners residing in a residential house since 2001 – no objection regarding title, construction or land use raised by authorities for several years – commercial establishments, namely "Indian Lodge" and a saw mill, also in existence for several years – criminal case registered against a relative of the petitioners – notice issued in respect of the residential property and apprehension of demolition raised – State contended that the petition was premature and that no demolition would take place without adherence to the procedure established by law.

Held:

The Court observed that demolitions had continued at will notwithstanding the judgment of the Supreme Court in *Re: Directions in the Matter of Demolition of Structures*, (2025) 5 SCC 1, and accordingly adopted the directions given by the Supreme Court in paragraphs 94, 94.1 to 94.15 and 95 to 97 of the said judgment as directions of this Court, violation whereof would invite contempt proceedings against the officer concerned.

Right to shelter is a facet of Article 21 and, in a meaningful democracy, the right of the individual must be protected, if the need arises, from the might of the State; even where an unauthorised dwelling place is liable to be removed, the person in occupation must be given reasonable time, with the assistance of the State, to resettle himself elsewhere. Any action taken by a public authority invested with statutory powers has to satisfy two standards, namely, that the action must be within the scope of the authority conferred by law and secondly, it must be reasonable; even if an action is within the statutory authority, if it is unreasonable, the procedure established by law under which such action is taken is itself unreasonable.

Illegal construction must not be condoned and, where necessary, must be brought down, as the citizen does not have a right to shelter by violating municipal laws; nevertheless, the endeavour of the State must be to assist the citizen by rectifying the wrong through compounding where possible, else by giving reasonable time to resettle himself and thereafter demolish the offending structure. The option of demolishing a dwelling place should be the last and the State must explore options of avoiding such eventuality; where there is no option other than demolishing it entirely, cogent reasons have to be recorded, and the final demolition order must spell out whether the violation is compoundable and, if not, the reasons why it cannot be compounded and why demolition is the only available option.

Colourable exercise of executive discretion can render an otherwise lawful act unlawful where the entrusted power is exercised for a reason other than that for which the power was intended and the resultant effect is adverse upon another, rendering the action unlawful on account of malice in law. The Court carved out a Specie of Retributive Exercise of Executive Discretion as the Vilest Specie of the Genus Colourable Exercise of Executive Discretion.

Bulldozing the house of a person accused of an offence, where the State is not acting with the avowed aims of enforcing municipal laws but to punish the accused and his entire family while projecting the action as one of removing an illegal construction, constitutes retributive exercise of executive discretion. Where a particular structure is chosen all of a sudden for demolition while similarly situated structures in the same vicinity are not touched, *mala fide* may loom large and, where the occupant was recently involved in a criminal case, a presumption could be drawn that the real motive was to penalise the accused without trying him before the court of law. The development authority shall not act selectively against an individual while ignoring similar violations in the vicinity.

Protection of a right is to be distinguished from its restoration or remedy after violation; a citizen need not wait until the right is actually infringed and, where the right is threatened with violation or its violation is imminent, Article 226 may be invoked for pre-violation protection. Law cannot take action for internal thoughts but can act after overt acts; where overt acts towards violation have already been done and the person approaches the Court giving sufficient particulars of proximate actions as would imminently lead to violation of the right, the Court may restrain the threatened violation.

Rushing to demolish the dwelling place of a person accused of an offence under the garb of violation of municipal laws is impermissible, being a retributive exercise of executive discretion. No action may be taken to demolish the house of the accused for a period of two years from the date of registration of the FIR; after expiry of two years, the State may examine the final order must reflect whether compounding of the deviations is possible, and if not, the directions of the Supreme Court in the bulldozer case shall be followed. Where removal is necessary for reclaiming land for a public purpose and such action is not restricted to the house of the accused alone, demolition may be undertaken in accordance with law and the directions of the Supreme Court, in which event the two-year hiatus shall not be binding.

As regards illegal dwelling places, where the violator has stayed in the illegal structure for three years or more, the authority shall intimate the violator one year before initiation of proceedings under municipal law, subject to waiver in case of compelling urgency of larger public need to be justified by the State. Notices for violation of construction norms shall be valid only if simultaneous proceedings are initiated against the erring officers, inter alia, under the Prevention of Corruption Act, 1988, and disciplinary proceedings shall be brought to their logical end within a reasonable time and, in any case, not later than six months. Development authority shall not act selectively against an individual while ignoring similar violations in the vicinity, and an aggrieved person shall be at liberty to approach the Court alleging "retributive exercise of executive discretion" and violation of fundamental rights.

In the present case, proceedings for demolition of the petitioners' residence and lodge quashed as being hit by retributive exercise of executive discretion and no proceedings permitted to be initiated for two years from the date of registration of the FIR; however, where removal of the structures before expiry of two years is necessary for a proved public purpose, on the basis of documents and affidavits, the same may be undertaken in compliance with the directions contained in paragraph 75 of the judgment.

[Paras 8, 18–22, 32–38, 40–41, 46, 49–58, 60, 64–65, 72–79]. (E-5)

Case Law Cited

In re: Directions in the Matter of Demolition of Structures, (2025) 5 SCC 1;

Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad and Others, 2024 SCC OnLine SC 3767;
Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545;
Chameli Singh v. State of U.P., (1996) 2 SCC 549;
Shiv Sagar Tiwari v. Union of India, (1997) 1 SCC 444;
K. Ramadas Shenoy v. Town Municipal Council, Udipi, (1974) 2 SCC 506;
S.M.D. Kiran Pasha v. Government of A.P., (1990) 1 SCC 328;
Mansi Brar Fernandes v. Shubha Sharma and Another, (2026) 4 SCC 1972;
Zulfiquar Haider and Another v. State of Uttar Pradesh and Others, 2025 SCC OnLine SC 766;
G.N. Khajuria v. Delhi Development Authority, (1995) 5 SCC 762.

List of Acts

Constitution of India;
U.P. Urban Planning and Development Act, 1973;
Prevention of Corruption Act, 1988;
Indian Forest Act, 1927;
U.P. Transit of Timber and Other Forest Produce Rules, 1978.

List of Keywords

Demolition of dwelling place; Executive discretion; Retributive exercise of executive discretion; Rule of law; Due process of law; Article 21; Right to life; Right to livelihood; Right to shelter; Article 14; Article 300-A; Accused in criminal case; Reasonable apprehension of demolition; Illegal construction; Municipal laws; Selective action; Malice in law; Public purpose; Resettlement; Notice before demolition; Development authority; Simultaneous proceedings against erring officers; Prevention of Corruption Act; Contempt proceedings; Judicial review; Article 226.

Case Arising From

From the proceedings initiated by the respondent authorities following registration of FIR against a relative of the petitioners, including issuance of notice to the petitioner No. 2 in respect of the residential house, sealing of the commercial establishment "Indian Lodge" and the saw mill, and the apprehension of demolition of the petitioners' properties by mechanical means.

Appearances for Parties

Advs. for the Petitioner (s) : Shamsuddin Khan, Syed Ahmed Faizan, Zaheer Asghar
Advs. for the Respondent(s): C.S.C., Dileep Kumar Srivastava, Sant Ram Sharma

(Delivered by Hon'ble Atul Sreedharan, J.)

لوگ ٹوٹ جاتے ہیں ایک گھر بنانے میں
تم ترس نہیں کھاتے بستیاں جلانے میں
लोग टूट जाते एक घर बनाने में
तुम तरस नहीं खाते बस्तियां जलाने में

People face ruination in just making a home and you feel no remorse setting ablaze entire settlements

.....Bashir Badr (passed away on: 28/05/2026)

"….. For an average citizen, the construction of a house is often the culmination of years of hard work, dreams, and aspirations. A house is not just a property but embodies the collective hopes of a family or individuals for stability, security, and a future. Having a house or a roof over one's head gives satisfaction to any person. It gives a sense of dignity and a sense of belonging…."

'Home is where the heart and hearth is', so it is said. It is where a warm meal awaits a man when he returns from a gruelling day's work, it is where his wife (in the larger Indian context even today) feels a sense of pride and accomplishment as a sheet anchor of the family, holding it together through trying times, it is where his children have a stable and settled environment to study and progress in knowledge and ability, to contribute to the family, society and nation once they grow up, it is where his old parents rest blissfully in the evening of their lives making peace with the aches and pains only because of they have a home. A man can absorb the uncertainties of life and bounce back if he has a shelter over his head. Take that away abruptly without giving him adequate time to re-settle himself elsewhere, and you may have consigned, not just him, to the deepest abyss of despair, but all those dependent on him, whose normal rhythm of life was dictated by a sense of security of not having to bother about a safe shelter.

2. The Supreme Court of India recently passed an epoch-making judgement in "**In re: Directions in the Matter of Demolition of Structures**" (hereinafter referred to as the "bulldozer case"), to put an end to State action of razing the houses of those accused of a crime. This action by the State is largely to satiate the perceived blood lust of a society fed on a staple diet of bulldozer justice over the electronic media, social media and messaging platforms, on account of which the State of Uttar Pradesh (and now several others), has found it convenient to raze the dwelling place of citizens in the name of irradicating "land mafia" and removing "illegal encroachments", a phrase substituting the word "criminals" after the Supreme Court judgement against demolition of dwelling places of persons accused of crime. This judgement was followed up by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Ors.,** and supplementary directions were passed. While the bulldozer case was to prevent and regulate the demolishment of dwelling place of the accused after the commission of an offence, the judgment in Rajendra Kumar Barjatya issued directions in paragraph 21 of far reaching consequences to prevent the mushrooming of illegal dwelling places.

3. Two situations emerge for consideration before this Court. The **First** relates to the demolition of dwelling places of persons accused of a crime. The **Second** is demolition of dwelling places (residence and/or place of business) which have existed for long, under the pretext that they are illegal encroachments on government land. However, the judgment of the Supreme Court notwithstanding, the demolition of structures continue at will, with the State running through the mandatory directions of the Supreme Court in the case abovementioned within a couple of months and then demolishing the structure even before the affected citizen has a fighting chance to approach the courts for succour. This decision of the Supreme Court notwithstanding, the executive continues with its actions of demolishing homes across the country with impunity4, and therefore this judgement aims to curtail all demolitions of dwelling places in the State of Uttar Pradesh by inter alia adopting all the directions of the Supreme Court passed In re: **Directions in the Matter of Demolition of Structures** and **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam**

Vikas Parishad and Ors., as direction of this Court and ensure that all future demolitions of dwelling places in the State Uttar Pradesh are strictly in accordance with the directions of Supreme Court, passed in aforementioned judgements and the judgement of this Court, and any violation of the same, the citizen so affected can sustain a contempt petition before this Court instead of approaching the Supreme Court.

4. There are three Petitioners in the case under judgement. They reside at 386 Thokchand, Ward No. 11 Bharua Sumerpur in District Hamirpur. Petitioners 1, 2 and 3 are son, father and mother, respectively. According to the Petitioners, the residential house was purchased through an agreement to sell dated 11/12/2001, and the Petitioner No. 2, by another sale deed executed on 11/12/2001, purchased additional portion of the property from the same seller and later, by a third sale deed dated 27/01/2009, purchased the remaining part of the property from the seller Maiya Deen, and on the basis of the aforesaid sale deeds, the Petitioner No. 2 claims himself to be the owner in possession of the residential property. However, the title deeds of the house are presently inside the house to which the Petitioners do not have access to.

5. An FIR bearing Crime No. 20/2026 came to be registered against one Aafan Khan, S/o. Ainuddin @ Maulana Khan, R/o. Kamlesh Tiraha, Kasbah and Thana Sumerpur, District Hamirpur, u/ss. 64(1), 62/351(3), 61(2) of the BNS and s. 67(A) of the IT Act, s. 3 and 4 of the POCSO Act and s. 3 and 5(1) of the U.P Prohibition of Unlawful Religious Conversion Act. The accused Aafan Khan is the cousin of Petitioner No.1 and the nephew of Petitioner Nos. 2 and 3. It is stated on behalf of the Petitioners that a mob targeted the house of the Petitioners immediately after the incident, allegedly in collusion with the police.

6. The case of the Petitioners appears to be **(1)** that though the Petitioners are not co-accused in the FIR (subsequently, the Petitioner No.1 was included as a co-accused during the pendency of this petition), the Respondents have issued a notice to the Petitioner No.2 who owns the residential house in which they dwell, immediately after the commission of the offence and registration of the FIR. **(2)** A commercial property registered in the name of the Petitioner No.3 as "Indian Lodge", has been sealed by the Respondents, **(3)** a saw mill, the license of which has been renewed in the name of the Petitioner No.2 on 11/02/2025, has lapsed and its renewal is pending, which too has been sealed by the Respondents, and **(4)** an apprehension has been voiced by the Petitioners that their properties are marked for destruction by mechanical means (a euphemism for bull dozer action). The prayer is for judicial intervention to prevent the anticipated destruction of the properties.

7. The State on the other hand has argued for the dismissal of the petition on the grounds that (1) the petition is premature as no cause of action has arisen and the Petitioners have to respond to the notices issued to them, (2) that the residence and the lodge have not been sealed, (3) that the Petitioners have not approached the Court with clean hands as they have concealed the fact that the saw mill was sealed as prohibited wood (neem and dhaak) were recovered from its premises, and (4) an assurance has been given orally by Mr. Anoop Trivedi, the Ld. Additional Advocate General that no demolition would take place without adhering to the procedure established by law and without giving a due opportunity to the Petitioners to place their case before the authorities concerned.

8. This Court is a witness to several cases where the notice for demolition is issued to persons occupying a dwelling place, hard on the heels upon registration of an FIR and thereafter demolished after the ostensible fulfilment of statutory requirements. These demolitions have continued unabated, notwithstanding the law laid down by the Supreme Court in Re: **Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022 - (2025) 5 SCC 1)** that punitive demolition of structures is violative of the separation of powers, as the authority to punish for an offence, vests exclusively with the judiciary.

9. Therefore, bearing in mind the overarching nature of the case spanning the right of the state to demolish a dwelling place and the rights of its occupants under Article 14 and 21, and how these demolitions continue in the State despite the judgement of the Supreme Court which compelled this Court to frame the following issues for consideration. **(1) Is there non-compliance of the judgement of the Supreme Court in Re: Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022 - (2025) 5 SCC 1) with specific reference to paragraphs 85 and 86 of that judgement?, (2) Does the authority to demolish, justify the act of demolishing a structure or, is there a duty on the anvil of parens patriae upon the State, not to demolish a dwelling place in the absence of public need/purpose?, (3) Would steps taken in the direction of demolishing a structure immediately following the commission of an offence, be a colourable exercise of executive discretion?, (4) how is the High Court to balance the conflicting interests between the statutory authority of the State to demolish a structure and the fundamental right of the average citizen under article 21 and 14, to prevent it?, and (5) can "reasonable apprehension" of demolition be a cause of action for a citizen to approach this Court and if 'yes', what is the bare minimum for this Court to hold the existence of such "reasonable apprehension"?** All these questions are answered together in this judgment generally.

10. The parties have advanced oral arguments through their respective Ld. Counsels and have placed on record their written submissions in support of their arguments.

THE PETITIONER'S CASE

11. On behalf of the Petitioners, Mr. S.M.A. Naqvi, Ld. Sr. Counsel, has argued that the Petitioners are law abiding citizens and the sealing of their residential house, sawmill and the lodge, without any notice and in disregard of the procedural formalities prescribed under the law, renders the state action unconstitutional and violative of the petitioners rights under Article 14, 19(1)(g), 21 and 300-A of the Constitution of India. It is further submitted that the Petitioners are residing in the residential house since the year 2001 and till date no objection regarding the title, construction or land use was ever raised by the authorities. As regards the commercial establishments being the 'Indian Lodge' and the 'Saw Mill', they are registered as per the requirement of law and license has been granted by the authorities concerned and has been in operation for more that twenty-five years without any objection.

12. He has further submitted that on 16/01/2026, a criminal case was registered against one Aafan Khan, S/o. Ainuddin @ Maulana Khan, a relative of the Petitioners, who is a resident of Kamlesh Tiraha, Kasba and Thana Sumerpur, District Hamirpur. The details of the FIR is already given in paragraph 5 supra. Upon the registration of the aforementioned FIR against the accused,

who is not sharing the same roof with the Petitioners, and neither has he any concern in the business interests of the Petitioners in the commercial establishments in question, the Respondent authorities are threatening to demolish the residential house of the Petitioners and have already sealed the 'Indian Lodge' and the 'Saw Mill'. The Ld. Counsel for the Petitioners has placed reliance on the judgment of the Supreme Court in **Re; Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022, reported in 2025 5 SCC 1)** to canvas the proposition that the action of the Respondent authorities violate the rule of law and the doctrine of 'Separation of Powers' as the Petitioners have been condemned by the executive without recourse to the prescribed procedure.

THE RESPONDENT'S CASE

13. Mr. Anoop Trivedi, Ld. Additional Advocate General has submitted that the State has not yet sealed the residential house of the Petitioners nor their commercial establishment operating under the name and style of the "Indian Lodge". He has categorically stated that the demolition or sealing of the said two properties shall not take place without adherence to procedure established by law.

14. As regards the sealing of the sawmill, the Ld. Additional Advocate General has stated that the same was done at the behest of the Forest Department as wood (Neem and Dhaak) whose possession is prohibited under the law, was recovered from the premises of the Petitioner's saw mill. In this regard, he has placed on record instructions dated 20/01/2026, received by his office from the Divisional Forest Officer, District Hamirpur, annexing the recovery memo and the seizure report disclosing that the saw mill which was licensed in the name of the Petitioner No. 2, was being operated even after the expiry of the license on 31/12/2025 and upon inspection, the prohibited wood mentioned hereinabove was recovered which resulted in the sealing of the saw mill and the issuance of a show cause notice dated 20/01/2026 to the Petitioner No. 2, which was not replied to till the date on which this case was being heard. He has also submitted that in the event the Petitioner No. 2 submits his reply, further proceedings shall be undertaken as per Rule 8 of the Rules of 2018 after considering his reply.

15. The Ld. AAG has also brought on record, an FIR dated 18/01/2026 being Case Crime No. 22/2026, registered against the Petitioner No. 2 under sections 69, 41, 42 and 77 of the Indian Forest Act, 1927 and section 3, 28 of the UP Transit of Timber and Other Forest Produce Rules, 1978 (two days after the registration of the FIR against Aafan Khan, the nephew of the Petitioner No. 2 was registered on 16/01/2026).

16. For the sake of brevity, this Court is not diving deep into the intricate facts of the case for the same is not essential for a decision as, this case examines the province of 'Executive Discretion and Action' in the backdrop of the rights of citizen's protected under the Constitution.

17. In the bulldozer case, the focus of the Supreme Court was on the question if the dwelling place of a person accused of an offence or even convicted, could be razed without following the due process of law and how such individuals can be protected from arbitrary State action? (paragraph 15 and 16 of that judgement)

18. The Supreme Court also held that it was only the justice system that could adjudge the guilt of an accused and if so found guilty, punish him for the same (paragraph 19 of that judgement). It further emphasised the protection of human rights and dignity and the enforcement of the rule of law to prevent the abuse of power (paragraph 22 of that judgment). Supreme Court laid down that the rule of law is a safeguard against arbitrary State action and would ensure that governance is based upon established legal principles rather than arbitrary discretion (paragraph 32 of that judgement).

19. After emphasising the importance of governance by rule of law, the Supreme Court spoke about the separation of powers and referred to Indira Nehru Gandhi Vs. Raj Narain -1975 Supp SCC 1, and held that the separation of powers was a part of the basic structure of the Constitution (paragraph 40 of that judgement) and State actions causing loss are actionable under public law with the Courts as protectors of civil liberties would safeguard the public from the devastating result of State action (paragraph 51 of that judgment). The Supreme Court emphasised the importance of the "principles of public accountability" and held that the said principle is applicable on the government officials and that every officer in the hierarchy of the State being a public officer or a public servant is accountable to the State and the public and the same should be applied in the larger public interest for proper governance (paragraph 52 of that judgment).

20. The Supreme Court went on to hold that an accused or the convict also have certain rights and safeguards and the destruction of their house would be an act contrary to the principles of the rule of law and the State acting as Judge, would be violative of the concept of separation of powers and those who take the law into their own hands must suffer the just desserts for their actions (paragraph 56 of that judgement). It also held that the accused have certain legal and constitutional safeguards and that the State and its servants cannot act arbitrarily against accused or convicts without following the due process sanctioned by law and where, the right of the accused or the convict has been violated on account of illegal or arbitrary exercise of State authority, compensation would be due to the affected person and the public servant responsible shall be taken to task for his indiscretion (paragraph 65 of that judgement).

21. As per the Supreme Court, the executive has no right to declare a person guilty of an offence as that was only through a process of judicial scrutiny, and therefore it cannot demolish the property of an accused as a punishment without following the due process of law. (paragraph 74 of that judgement). Would this mean that a person accused of crime or convicted of a crime could have his house demolished immediately after he was made an accused in a criminal case only because the procedure established by law was followed? The Supreme Court has in places said that the house cannot be demolished if the intention was punitive and at places stated that it cannot be demolished unless the due process of law was adhered to. However, what the Supreme Court has not taken into consideration in the bulldozer case is that demolishment of the house of the convict is not a prescribed punishment under the Bharatiya Nyaya Sanhita. The demolition of a dwelling place is governed by municipal laws, building code violations, unauthorised constructions, structures declared as dangerous to human habitation and violation of urban planning statutes. The Supreme Court posed a question to itself if the house of a person accused or convicted of a crime can be inflicted the punishment of demolition of his house and holds that "The answer is an emphatic "No"" (paragraph 78 of that judgement). However, two paragraphs before, the Supreme

Court holds that in the case of a person accused or convicted of an offence, his property/properties cannot be demolished without following the due process of law prescribed by law (paragraph 76). This is open to interpretation by the executive to mean that it has the right to demolish the property belonging to an accused or a convict after complying with the due process of law.

22. The bulldozer judgment also holds that right to shelter as one of the facets of Article 21. The State argued that in all the cases where removal of illegal construction was ordered, it was merely a coincidence that one of the members living in the house to be demolished was an accused in a criminal case. Whereas the Petitioners argued that the proximity between the offence and the proceedings for demolitions were so short that the State action betrayed the motive as punitive. Supreme Court considered the conflicting arguments of the State and the Petitioners and held that at times it maybe a coincidence as stated by the State. But, when a structure is chosen suddenly for demolition while the rest of the structures in the vicinity or the same neighbourhood are untouched, mala fide could loom large and a presumption could be drawn that the apparent reason could be the removal of illegal construction while the actual reason could be to punish the accused (paragraphs 79, 81-82, 84 of that judgement).

THE INTERPLAY BETWEEN RIGHT TO LIFE, LIVELIHOOD AND SHELTER

23. The fountainhead case examining the interplay between the right to life and livelihood is the Constitution Bench judgement of the Supreme Court in **Olga Tellis Vs. Bombay Municipal Corporation**. The pavement and slum dwellers of Mumbai approached the Supreme Court against the action of the Bombay Municipal Corporation (hereinafter referred to as the "BMC"). In that case, the Petitioner did not contend that they have a right to live on the pavements but that they had a right to live which would be illusory if they did not have a right to livelihood. It was non-availability of the means of employment at the place where they originally hailed from that compelled them to flock to Mumbai, and that this right can only be curtailed or taken away by a procedure established by law that was "fair and reasonable and not fanciful or arbitrary such as prescribed by the Bombay Municipal Corporation Act and the Bombay Police Act" (paragraph 2). In Olga Tellis, the Petitioners had challenged the proposed act of the Respondents to demolish the huts of the Petitioners (paragraph 9). The argument of the Petitioners was that their eviction from the pavements and slums will lead to a vicious circle of deprivation of employment, livelihood and therefore life itself (paragraph 21).

24. A contention was raised by the Respondents (in Olga Tellis) that the Petitioners be estopped from projecting their fundamental rights as a defence to the demolition of their huts, to which the constitution Bench responded by holding that "**There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose**". Poignant and powerful words from the Supreme Court which are ever more relevant today than ever before when houses are demolished across India, even after the judgement of the Supreme Court in the bulldozer case.

25. The flagship argument of the Petitioners in Olga Tellis was that the right to life protected by Article 21 is meaningless if the right to livelihood is not read into it. They submitted that they

would be deprived of their livelihood if they are evicted from their slum and pavement dwellings as they cannot find meaningful work for themselves if they do not have a home to live in, irrespective of the condition that it is in. The Constitution Bench held **"Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood"**. The observations of the Supreme Court establish as an indelible proposition that right to life includes the right to livelihood and that the suspension of the right to livelihood even for a single day, without any compelling cause would be a violation of the affected person's right to life itself.

26. Further, in the same judgement, the Supreme Court analyses Art. 39(a), a Directive Principle of State Policy and reiterates that the policy of the State shall be directed in securing its citizens and adequate means of livelihood and within the financial limitations of the State, endeavour for securing the right to work of those who are unemployed, a required of the State in Art 41. The Supreme Court held **"…..That If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21".**

27. Interestingly, in the year 1985, when the judgement in Olga Tellis was passed by the Supreme Court, the total population of India was 772,648,000 or seven hundred and seventy two million and six hundred and forty-eight thousand, or seventy seven crores twenty six lakhs and forty eight thousand. Strangely, the State, for some inexplicable and convoluted reasoning, takes pride in confessing that it today feeds, free of charge, more than 800,000,000, eight hundred

million or more than eighty crore citizens each month, which is more than the entire population of India as it stood in the year 1985, and more than 50% of its entire population today which is approximately 1400,000,000 one thousand four hundred million or one hundred and forty crores or one billion and four hundred million people, who would otherwise perish from starvation, being incapable of generating sufficient wealth to afford two square meals a day.

28. There is a nexus between poverty, unemployment and migration of citizens from rural areas and semi urban areas of the country to the larger cities which leads to creation of unauthorised colonies and ghettos which get marked for demolition one fine day after decades of their existence. This problem was red flagged by the Constitution Bench of the Supreme Court in Olga Tellis, forty-six years ago, at paragraph 32 of that judgment.

29. The increasing population of the country is directly proportional to the reduction of resources with the most valuable resource being **land**. The area of land that India had in the year 1985 is the same area that it has in 2026. However, the population which requires land for habitation has increased about 100% in these forty-six years. The density of population in the State of Uttar Pradesh is 829/sqkm (eight hundred and twenty nine persons per square kilometre) as per the census of 2011 which is more than double the national average of 364/sqkm (three hundred and sixty four persons per square kilometre) thus, land is a premium commodity and compels those who cannot afford legitimate housing to move to areas where housing is cheaper but its legitimacy is dubious. The residents of these unauthorised colonies are the *les miserables* of our people, poor, lower middle class and at some places, the middle class. This is not to say that the rich in India live in houses and gated communities that are fully legitimate, but they remain largely untouchable on account of their influence through wealth and/or bureaucratic and political patronage and the ubiquitous and all pervasive culture of corruption that has been normalised and institutionalised in India.

30. Generation of wealth in any society is by way of employment (by self-employment or working for another or a company). In an article published in an online magazine "Mint" on 27/03/2024, drawing data from the "Indian Employment Report 2024", jointly published by the International Labour Organisation and the Institute of Human Development. It reflects that the percentage of youth possessing at least a secondary education amongst the total unemployed youth doubled from 35.2% in 2000 to 65.7 percent to 2022. This coupled with India's GDP per capita for the year 2025 was $2523.4 which roughly translates to ₹ 2,41,422.29. Which amounts to a little more than ₹ 20,000/month. The per capita income in the State of Uttar Pradesh for the year 2024-2025 was ₹ 1,09,000/- (rupees one lakh and nine thousand) which is about ₹ 9083/- (rupees nine thousand and eighty three) per month, which is less than 50% of the national average, making the State, the second poorest State in India after Bihar.

31. Human experience of the ground reality which this Court must draw upon, is that it is almost impossible for a person earning just about ₹ 9,083/month to own a dwelling place in a gated community, built on a land acquired legitimately with all State clearances. Thus, while the constitution law acknowledges the right to shelter as a fundamental right of even a person who earns only ₹ 9,083/- a month, he falls foul of the municipal laws while fulfilling his fundamental right as he is unable to possess a home that is compliant of the intricate requirement of the

municipal laws because of his pathetic financial condition, thus making his home a vulnerable target for demolition, maybe decades later.

32. The irony of this picture is that while the Constitution Courts acknowledge that a citizen's right to shelter is a fundamental right, it can still be demolished for being violative of the municipal laws. There however is a limitation upon all fundamental rights which the Courts have consistently held as reasonable for rights are not absolute and can be curtailed or extinguished as per procedure established by law. Thus, the fundamental right to shelter can be trumped (no pun intended) if the property is not compliant of the municipal laws.

33. The Supreme Court held that right to life includes the right to livelihood and that if the pavement dwellers were evicted, they will be deprived of their right to livelihood. Thereafter, it held that the constitution does not put an absolute restriction on the deprivation of life which is in accordance with procedure established by law (paragraph 37 of Olga Tellis). But it also held that the procedure prescribed by law for depriving a person of his fundamental right must conform to the broad principles of justice and fair play as procedure that is unjust or unfair would be unreasonable thereby vitiating the law and the action taken under it. It held "**Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it**".

34. While in Olga Tellis, the Supreme Court examined the intersection between the right to life and right to livelihood and how the right to life can be rendered meaningless without acknowledging the right to livelihood and laid down how a dwelling place, be it on a pavement or in a slum, was an integral part of the right to livelihood of a citizen.

35. As regards the **right to shelter**, the Supreme Court in **Chameli Singh Vs. State of U.P** held that "**....Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right**". The Supreme Court has clearly emphasised and laid down that the right to life does not mean the right to live an animal existence but includes the right to shelter which is essential for the overall and wholesome development of the human being as a human being. In **Shiv Sagar Tiwari Vs. Union of India**, the Supreme Court took cognizance of its earlier judgement in Olga Tellis and held "**May we also observe that life, livelihood and shelter are so mixed, mingled and fused that it is difficult to separate them. To**

take away life, it would be enough to take away livelihood; and to earn livelihood, which in urban areas is ordinarily at places away from one's own home and hearth, shelter would be necessary - be it a house or even a pavement".

36. Most recently, the Supreme Court **in Mansi Brar Fernandes Vs. Shubha Sharma** observed that "**This Court has, in a catena of decisions, consistently held and reaffirmed that the Right to Shelter is an integral part of the right to life under Article 21 of the Constitution. This recognition casts a corresponding duty on the State to ensure access to adequate housing, particularly for weaker sections**".

37. Likewise, the Supreme Court in **Zulfiquar Haider and Another Vs. State of Uttar Pradesh and Ors.**, while examining a case where the property of the Petitioners were razed to the ground without adhering to the procedure mandated by the Supreme Court in the bulldozer case, the Supreme Court expressed its angst on the manner in which the demolitions were undertaken by observing that "these cases shock our conscience" (paragraph 3) as the demolition was carried out close on the heels of the judgment of the Supreme Court in the bulldozer case. As regards the right to shelter being a right to life, the Supreme Court held "**The authorities, especially the development authority, must remember that the right to shelter is also an integral part of Article 21 of the Constitution of India. This right can be taken away only by following due process of law. Moreover, our country is governed by the rule of law, which is an integral part of the basic structure of the Constitution. The residential structures of citizens cannot be demolished in such a summary manner without following the principles of natural justice…".** The Supreme Court was sensitive to the loss of the Petitioners in that case and awarded a compensation of ₹ 10,00,000/- to each of the Petitioners.

38. Thus, the discussion on the judgements hereinabove, is merely an elucidation of the law laid down over decades of judicial pronouncements that the right to life, include the right to livelihood and the right to shelter without which, the right to life itself would be rendered meaningless and animalistic. However, these judgements of the Supreme Court notwithstanding, the demolitions continue with impunity as though these judgments do not exist, or the State is certain that the defiance towards the law laid down by the highest Court of the land shall not visit them with any adverse consequences.

39. In an article by the online site sabrangindia.in titled "**When the Rule of the Bulldozer Outpaces the Rule of Law: One year after this landmark judgment",** where instances of bulldozing dwelling places without complying with the procedure given in the bulldozer case, have been documented, and the first case mentioned in the article was of the March 2025 from Prayagraj in Uttar Pradesh, where the Supreme Court awarded compensation of ₹ 10,00,000/- to each of the six Petitioners in that case. Therefore, the question arises with regard to the cause for such demolitions by the State, which already as stated by this Court in paragraph 2 supra, is an act by the State under the perception that it is satiating the bloodlust of a society that is intolerant to due process of law or the procedure established by law and wants immediate redressal of grievance by bulldozing the house of the accused even before the criminal justice system has found the accused guilty as charged. The State is certain that that the society suffers from collective schadenfreude and shall applaud the State for dispensing vigilante style summary justice, without adhering to the

procedure established by law and secures pleasure from the misfortune of the other person suffering loss. In such a situation, it is for the Constitution Courts to evolve a jurisprudence that is Constitutionally and legally valid.

Retributive Exercise of Executive Discretion: the pressing need to carve a new specie from the genus of Colourable Exercise of Executive Discretion.

40. Colourable Exercise of Executive Discretion can render an otherwise lawful act, unlawful. Simply stated, it means that where the entrusted power or authority is exercised for a reason other than which the power was intended, and the resultant effect is adverse upon another, that action, though otherwise legitimate under the law, is rendered unlawful on account of malice in law.

41. The continuation of the bulldozer actions by the State as is attempted in the case of the Petitioners herein, has compelled this Court to carve out a Specie of **Retributive Exercise of Executive Discretion** as the Vilest Specie of the Genus Colourable Exercise of Executive Discretion. In bulldozing the house of a person accused of an offence, the State is not acting with the avowed aims of enforcing the Statement of Objects and Reasons of the municipal laws but to punish the accused and his entire family staying in that house, while projecting the action as one of removing an illegal construction.

42. A dilemma that has dogged the courts since time immemorial is the choice between enforcing the legislative will as it is or doing justice. Though they are cognate concepts the distinction between them is real and palpable. While Laws generally, are the enforceable will of the sovereign and in a democracy like ours, the will of "we the people of India", enacted through the legislature by elected representatives, resulting in codified rights and liabilities. Justice on the other hand, is the enforcement of constitutional rights of citizens by the courts with the preamble as its north star, while adhering to constitutional values and imperatives for the fulfilment of the constitutional ideal of securing a welfare state and enforcing the rule of law.

43. The vexatious question before this court in such cases is whether the will of the legislature should be enforced as it is without any consideration for the consequences that may follow for the citizen? The legislature being elected by the people, unquestionably legislates for the larger good of the society. It is also undeniable that the legislature acts in good faith and that must always be the presumption. However, the operation of the laws may not have the effect desired by the legislature, for at times the road to hell is paved with good intentions.

44. The enforcement of the statute 'as it is', can at times result in grave injustice. Illustratively, the courts have seen at times the injustice resulting from the application of the provisions of the POCSO where minors from the rural landscape, economically backward, Illiterate or semi-literate, elope, stay together, work as manual labourers, get married and have children and upon their return to their village, the husband is arrested, tried and convicted and imprisoned for a minimum of ten years only because of his wife being a minor on the date on which they eloped. Courts have grappled with the question as to how is justice served by imprisoning the husband, the sole bread winner and exposing the wife and children to destitution as they find no support from their respective families? So is the case with the enforcement of municipal laws which at times is not for

the bonafide purpose of securing the ends of the municipal laws, but to punish the accused and his entire family which includes women, the old and children, by demolishing his house for an offence he is alleged to have committed, resulting in them be rendered homeless overnight and suffer destitution till they find an alternate shelter.

45. In the context of the present case under judgment, the chapter on directive principles of State policy, is the conscience governing State action. It amplifies the desire of the constitution to secure a welfare state with prevalence of the rule of law and making the state aware that is actions must be towards that end alone. Though well settled it is, that this chapter is non justiciable, yet the same remains a guide to the State while it performs its executive functions, and the judiciary to examine if State action, though legal under statute, is just?

46. Thus, where the motive behind a state action, apparent or actual, is for purposes other than the Statement of Objects and Reasons of the municipal laws, then it would be reasonable to infer malice on the part of the State for acting in contravention of Art. 39(a) by creating a circumstance where the right to livelihood of the citizen is put to sword while Art. 39(a) of the Constitution demands that State policy must be directed to create livelihood for the citizen. Therefore, where the State, instead of creating an environment where the citizen can fulfil his right to livelihood, acts in contravention to the Statement of Objects and Reasons of the municipal laws and extinguishes the right to livelihood of a citizen by violating his right to shelter, the Courts may infer malice in law, as the act would a Retributive Exercise of Executive Discretion.

47. In the present era, where there is rampant violations of building norms and it is also a well-known fact that most of the buildings, including at times build by the development authority itself, is not complying with the norms; and as such one sided action to correct the measures, by way of the retributive exercise of the executive discretion, has also to be dealt with; or else this Court will be failing in its constitutional obligation itself. The Court must adapt to the changing times and understand the dynamics of the times and accordingly mould the law in order to fit the times without doing violence to the *just scriptum*. In the words of the eminent jurist and constitutionalist V. Sudhish Pai **"The Need for adapting the law to meet the new urges in society, i.e., demanded the readjustment of legal norms by a changed social context in a changing society, brings home the truth of the Holmesian aphorism that the life of the law has not been logic, but experience and that law is forever adopting new principles from life at one end and sloughing off old ones at the other. As in life, so in law, things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, which indeed it should, must adapt itself to cope with new situations. The Court must understand the purpose of law in society and help law to achieve that purpose. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality"**.

48. In the case of **K. Ramadas Shenoy v. Town Municipal Council, Udipi**, the Apex Court observed that when the municipality acts in excess of the powers conferred by the Act or abuses the powers, then in those cases as a matter of fact it is usurping powers which it does not possess; and if under pretext of any authority, which the law does not give to the municipality, it goes beyond

the limits of its authority, and infringes or violates the rights of others, it becomes like all other individuals, amenable to the jurisdiction of the court.

49. This however is not to mean that the citizen has a right to shelter by violating the municipal laws, but only states that where such violation occurs, the endeavour of the State must be to assist the citizen by rectifying the wrong through compounding where possible, else assist him by giving him reasonable time to resettle himself and thereafter demolish the offending structure. But a pedantic application of the municipal law and running through its requirements within three to six months and thereafter demolish his dwelling where he may have been residing for decades, would not be the hallmark of a welfare State. It has to be borne in mind by the State, that the Supreme Court in the bulldozer case has mandated that the final order of demolition of a dwelling place shall mandatorily spell out whether the violation of municipal law was compoundable and if not, the reasons why it cannot be compounded and the extreme step of demolition is the only available option. The spirit of the Supreme Court judgment is that the option of demolishing a dwelling place should be the last and the State must explore options of avoiding such an eventuality, and where there is no option other than demolishing it entirely, cogent reasons have to be recorded disclosing why the State has no option but to demolish the entire structure as regularisation/compounding was an impossibility. If the State order does not disclose this in the order of demolishment, and the Structure is demolished, the State would be in gross contempt of the Supreme Court order, and now of this Court, it having adopted the same by this judgement.

50. Though, the state action may seem to be in consonance with the municipal laws as far as fairness of procedure is concerned, the action would still be ultra vires of the statute on account of the contrived motive behind the State action. Whether the motive was in accordance with the statute or the same was malicious, can reasonable be inferred from the attending circumstances specific to every case which may suggest that the state action is bad on account of malice in law.

51. In this regard, it would be relevant to refer to to the objects behind "Utter Pradesh Urban Planning and Development Act, 1973"; which is to provide for the development of certain areas of Uttar Pradesh, according to plan and for matters ancillary thereto. Under Chapter II of the Act, 1973, the objects of the development authority have been clearly spelled out. For ready reference Section 7 of the Act, 1973 is reproduced below:

"7. Objects of the Authority - The objects of the [local development authority]1 shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto Provided that save as provided in this Act nothing contained in this Act shall be construed as authorizing the disregard by the Authority of any law for the time being in force".

52. Thereafter Chapter III of the Act, 1973 deals with the Master Plan and Zonal Development Plan; and lays down the procedure to be followed in the preparation and approval of the plan; and

thereafter under Chapter V, Section 16 of the Act, 1973, provides that no person shall use or permit to use any land or building in the zone, otherwise than in conformity with the Master Plan/Zonal Plan. For ready reference, Section 16 of the Act, 1973 is reproduced below:

"16. Uses of land and buildings in contravention of plans - After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan

:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by bye-laws made in that behalf, any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force".

53. The State cannot be compelled to fulfil its obligations under Part IV, but acting contrary to the same and thereby violating any right in Part III, would raise a reasonable presumption that such State action is motivated by malice.

54. Part IV of the constitution is not a garnishing on the surface of a dish to make it presentable, but an important ingredient that makes the dish itself edible and palatable. It is what the State must strive for to justify its existence by establishing a welfare state, run in accordance with the rule of law, guided by the preamble to secure for its citizens *inter alia*, Justice.

55. Article 39(a) particularly obliges the State to direct its policies to secure adequate means of livelihood for its citizens within its financial limitations. The right to livelihood and shelter have been equated with right to life itself in the light of judicial pronouncements discussed herein above. Thus, where the State uses the municipal laws to punish an accused for an offence by demolishing his house in order to satiate the collective schadenfreude of the people, that the State has taken vengeance on their behalf, the same would be a Retributive Exercise of Executive Discretion and an act most viciously malicious in law which ought to be prevented by the Courts from taking place or compensation in favour of the affected can be ordered, where the impugned action has already taken place, as was done by the Supreme Court in **Zulfiquar Haider's** case at paragraph 38 supra.

56. During arguments, it was submitted on behalf of the Respondent State that the petition be dismissed as it is premature. As per Respondent, the State has only issued notice to the Petitioners and that they have the right to place their case before the Respondent authority and if after hearing the Petitioners, any order of demolition was passed against the properties of the Petitioners, they could have then approached this Court under Art. 226 of the Constitution. The question raised by the said argument was as to when was the right stage for the Petitioners to have approached this Court to protect their right under Art. 21?

57. This issue in no longer *res integra* and has been settled by the Supreme Court in S.M.D. Kiran Pasha Vs. Government of A.P where the Supreme Court held **"…. Article 21 giving protection of life and personal liberty provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. For enforcement of one's right to life and personal liberty resort to Article 226(1) has thus been provided for…. The**

right to life and personal liberty has been guaranteed as a fundamental right and for its enforcement one could resort to Article 226 of the Constitution for issuance of appropriate writ, order or direction. Precisely at what stage resort to Article 226 has been envisaged in the Constitution? When a right is so guaranteed, it has to be understood in relation to its orbit and its infringement.... The question is at what stage the right can be enforced? Does a citizen have to wait till the right is infringed? Is there no way of enforcement of the right before it is actually infringed? Can the obligation or compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed? What remedy will be left to a person when his right to life is violated? When a right is yet to be violated, but is threatened with violation can the citizen move the court for protection of the right? The protection of the right is to be distinguished from its restoration or remedy after violation. When right to personal liberty is guaranteed and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent, and the person whose right is so threatened or its violation so imminent resorts to Article 226 of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the court examines the legality of the action? Resort to Article 226 after the right to personal liberty is already violated is different from the pre-violation protection. Post-violation resort to Article 226 is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to infringe the right by all those who are so obligated or compelled….. The question may arise what precisely may amount to threat or imminence of violation. Law surely cannot take action for internal thoughts but can act only after overt acts. If overt acts towards violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the court under Article 226 giving sufficient particulars of proximate actions as would imminently lead to violation of right, should not the court call upon those alleged to have taken those steps to appear and show cause why they should not be restrained from violating that right? Instead of doing so would it be the proper course to be adopted to tell the petitioner that the court cannot take any action towards preventive justice until his right is actually violated.... If a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right".

58. When the aforementioned judgement is seen in the context of the facts and circumstances of the present case, it is undisputed that the notice has been issued to the Petitioners with regards to their structures. This coupled with the past actions of the Government of Uttar Pradesh in demolishing dwelling places without being sensitive to the human cost of the actions, the apprehension of the Petitioners in this case is reasonable that the Sword of Damocles hangs heavy over their heads and that their dwelling places may fall to the bulldozers after the State runs through the formality of procedural compliance. Also, the fact that previous actions of the State in targeting largely the houses of muslims accused of offence, there is reasonable apprehension that the Petitioners are next.

59. Selective outrage results in selective injustice. The Ld. Solicitor General who argued on behalf of the UOI in the bulldozer case submitted before the Supreme Court that the houses that were being demolished were found to be in violation of the municipal laws or the panchayat laws governing them and in some cases, it may have been sheer coincidence that properties which were in breach of municipal laws may have been owned by persons accused of an offence. This postulate put forth by the Ld. Solicitor General was disputed by the Petitioner side which disclosed that the proximity between the alleged offence being committed and the razing of the accused's house was so short that the inference of the house being razed to the ground on account of the allegation against the accused person, was not merely apparent but glaringly evident.

60. The Supreme Court, analysing the arguments of both the sides very rightly held **"when a particular structure is chosen all of a sudden for demolition and the rest of the similarly situated structures in the same vicinity are not even being touched, *mala fide* may loom large. In such cases, where the authorities indulge into arbitrary pick and choose of the structures and it is established that soon before initiation of such an action an occupant of the structure was found to be involved in a criminal case, a presumption could be drawn that the real motive for such demolition proceedings was not the illegal structure but an action of penalising the accused without even trying him before the court of law".** Thus, the devil is in the details. If the intention of the State is to remove illegal construction, it cannot be restricted only to a single house but to all those houses which are in the vicinity and are also violative of the municipal or panchayat laws. Selectively demolishing a house belonging to an accused immediately after the registration of the FIR, is downright malicious.

61. Selective action against dwelling premises is gaining currency in other parts of the country also with which, this Court is however not concerned as it lacks the jurisdiction. However, in order to illustrate similar selective action which led to selective discrimination and injustice, this Court refers to an interim order passed by the Ld. Single Bench of the High Court of Jammu and Kashmir and Ladakh at Jammu, in **OWP No. 122/2002 - Adm. Jammu Municipality and Anr Vs. Surat Singh and Anr.,** took cognizance of the discrimination against the Respondent No. 1 (owner of a commercial property) who was being subjected to a **"...discriminatory exercise of statutory powers|"** by the municipal authorities while other similarly situated hotels, banquet halls, coaching centres and other commercial establishments, suffering the same identical defects as that of the Respondent No. 1's property or even more serious, continued to operate without any meaningful action against them. Wherever the law is applied selectively and discriminatively, without any intelligible differentia, it results in injustice. Denying the existence of selective outrage resulting in selective bulldozer action, is to applaud the emperor's new clothes.

DWELLING PLACES IN CONFLICT WITH MUNICIPAL LAWS

62. The bulldozer judgement was followed by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others**. In that case, the Respondent No. 5 was the original allottee of the land sold by the Respondent No.1. Respondent No. 1 carried out construction contrary to the norms, terms and conditions and sold it to the Petitioner before the Supreme Court. Respondent No.1's case is that it gave several notices to the Respondent No.5 to compound the defects or remove the same. As it got no response from the

Respondent No.5, and as the police was not giving the Respondent No.1 any protection to carry out the demolition and so, the Respondent No.1 approached this Court in a Writ Petition and sought police protection to demolish the structure of the Respondent No.5. The Petitioner (before the Supreme Court) was not a party before this Court. This Court directed the police to assist the Respondent No.1 to carry out the demolition. The Supreme Court dismisses the appeal and gives further directions to supplement the directions given earlier in the bulldozer case.

63. In Rajendra Kumar Barjatya's case, the Supreme Court recognised the power of the State to remove illegal construction, the long occupancy by the affected party notwithstanding. Referring to precedents, the Supreme Court held that unauthorised construction cannot be perpetuated and if the construction made was contrary to the rules it would be illegal and amenable to be demolished. Inaction by the officers of the State is no protection for illegal construction (paragraph 19). There is no difficulty with the observation of the Supreme Court and indeed, illegal construction must not be condoned and where necessary, must be brought down.

64. The law has traditionally always held in favour of the larger public good as opposed to the rights of the individual, which must give way to the comfort of the majority. Thus, demolition of dwelling places for the purpose of widening the road or reclaiming State land for development purposes has been given impetus to by the courts which in such circumstances have held against the individual. This is more so in cases where the structure is unauthorised. Though there is no official data as to what percentage of dwelling places are unauthorised in India, but it would be reasonable to find that a sizable number of the houses in India may be falling foul of the municipal laws. By no stretch of imagination can protection be accorded to such construction and they must be removed if the need occurred and the Supreme Court is right when it holds that prolonged stay does not perfect a right. But the question is whether it would be just and proper to bear in mind the right to shelter of the person living in such a dwelling place, only for the limited purpose of giving him reasonable and sufficient time to resettle himself and his family elsewhere, rather than be forced on to the pavement in the dead of night or go to a night shelter.

65. The Constitution also stands by the rights of the "little man" of this country who may have no prominence in society on account of his minimal financial status and not being a person of means. In removing dwelling places found non-compliant with the municipal laws, the Benthamite utilitarian approach of summarily evicting the few for the larger good of the many, would be a square peg in a round hole in the Indian context. The Constitution is an inorganic being with its life infused by the aspirations of the people it serves. Such aspirations change with time which the constitution accommodates without doing violence to its basic structure. So the question is in what manner should this Gordian knot of balancing equities of the State on one hand and that of the individual be managed?

66. No dwelling place comes up overnight. The authorities who have the duty to ensure that such structures do not come up, close their eyes deliberately on account of political or bureaucratic support that the builder has or out of dishonesty.

67. Over decades, the average Indian has normalised corruption. It is no longer wrong as long as one does not get caught. Even in the rankings of Transparency Internation 2025 report, India

ranks at 91 amongst 182 nations, but even that does not shame us. The recent controversy relating to the theft of donations at the Ram Temple is the proverbial last straw on the camel's back. Nothing can shame a people who remain unfazed by the theft at the Ram Temple which epitomises the nadir of the Indian's integrity. The collective absence of integrity affects every institution including the municipal authorities and other such authorities whose dishonesty enabled the individual to construct a house which was non-compliant, inter alia of the municipal laws. This was facilitated by those who take bribes from builders and close their eyes to the illegalities and violations being committed by the builders who sell it off to the buyer who then suffers the enforcement of the law a couple of decades later and finds himself on the streets within six months of the start of the eviction procedure and his house razed to the ground. Rampant corruption in the country would lead to the illicit concentration of wealth in the hand of a few widening the chasm between the haves and the have nots and lays down the script for a civil unrest in days to come. If the State is serious, actually serious, about curtailing corruption and retrieving India from the abject morass of dishonesty and complete lack of integrity, it should consider amending the Prevention of Corruption Act, 1988 to include the death penalty for those convicted of corruption.

68. This Court has already held hereinabove that it is not in favour of persons violating buildings regulations but it is also imperative that while undoing the mischief, which would require demolition of the unauthorized constructions, the delinquent officers are also to be punished in accordance with law; and this Court's view is also fortified by a decision of the Apex Court in the **G.N. Khajuria Vs. D.D.A**

69. In a meaningful democracy, the right of the individual must be protected, if the need arises, from the might of the State. A former President of the Supreme Court of Israel observed **"Democracy is not satisfied merely by abiding by proper elections and legislative supremacy. Democracy has its own internal morality based on the dignity and equality of all human beings. Thus, in addition to formal requirements (elections and the rule of the majority), there are also substantive requirements. These are reflected in the supremacy of such underlying democratic values and principles as separation of powers, the rule of law, and independence of the judiciary. They are based on such fundamental values as tolerance, good faith, justice, reasonableness, and public order. Above all, democracy cannot exist without the protection of individual human rights-rights so essential that they must be insulated from the power of the majority" (emphasis added).**

70. V. Sudhish Pai, wrote that **"....The Constitution, apart from being a legal document is also, and even more, a political and social testament created to secure the goals set out in the Preamble-justice, liberty, equality, and fraternity. The individual lies at the core of the constitutional focus and the ideals envisioned in the Preamble animate the vision of securing a dignified existence to the individual" (emphasis added).**

71. When the opinion of the two jurists are juxtaposed with the facts of the case, it is seen that the person, whose dwelling place is to be demolished, and who has been in occupation of the same for decades, but never had a clear right to the land on which the house stood, also must be given a reasonable time, with the assistance of the State to

resettle him elsewhere, as the State was just as complicit through its corrupt agents (the bureaucracy) in the illegal occupation of the land by the proposed evictee. Though the occupation of State land by the evictee cannot be clothed with legality, at the same time, the dishonesty of the State must not be condoned either.

DIRECTIONS

72. This Court adopts the directions given in paragraphs 94, 94.1 to 94.15 and 95 to 97, by the Supreme Court ***In re***, **Directions in the Matter of Demolition of Structures - (2025) 5 SCC 1.**

73. This Court also adopts the direction given in paragraph 21 by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others - 2024 SCC OnLine 3767.**

74. As it has been held by this Court that rushing to demolish the dwelling place of a person accused of an offence under the garb of the same being violative of municipal laws, is impermissible the same being a retributive exercise of executive discretion and so, no action may be taken to demolish his house for a period of two years from the date of registration of the FIR and during the hiatus of two years, as the immediate action, rather than to reclaim State land, is to satiate the presumable public anger immediately following the offence which would dissipate with the passage of time, and the State may no longer feel the necessity to destroy the property. After two years, the State can examine, as the Supreme Court has mandated in the bulldozer case, that the final order must reflect the reasons whether compounding of the deviations is possible the property and if compounding is not possible, then it shall abide by the direction of the Supreme Court in the bulldozer case which has been adopted by this Court as part of this order at paragraph 73 supra.

75. If however, the removal is necessary for reclaiming the land for public purpose and such action it is not restricted to the house of accused alone, then it permissible, subject to compliance with direction given by the Supreme Court in the bulldozer case (paragraph 73 *supra*), to move for demolition in accordance with law, in which case the hiatus of two years before taking action, shall not be binding.

76. As regards removal of dwelling places which are illegal constructions, the State shall follow the direction of the Supreme Court in the bulldozer case in paragraph 67 supra with one additional condition - that where the violater has stayed in the illegal structure for three years or more, the authority shall intimate the violater one year before the initiation of procedure under the municipal law and the dispatch of intimation through notice shall be as directed by the Supreme Court in the bulldozer case. This is essential so as to give reasonable notice of intent on the part of the State so as to enable the violater a full one year to resettle himself elsewhere, however, the prior intimation of one year’s notice before initiating procedure under the municipal law may be waived where there is “compelling urgency” of larger public need to be

justified by the State. This is necessary as the State is particeps criminis by assisting the violater through "connivance" (as has been held by the Supreme Court in the two judgments mentioned hereinabove which is a euphemism for blatant corruption) to build the offending structure, give electricity and water supply which even today is largely a sovereign function.

77. Additionally, In case notices are issued for the violation of the construction norms, the same shall only be valid if simultaneous proceedings are also initiated against the erring officers inter alia under the relevant provisions of the Prevention of Corruption Act, 1988. The disciplinary action against the erring officer shall also be initiated and the same shall also be required to brought to its logical end, adhering to the procedures prescribed within a reasonable time and in any case not later than 6 months, from the date of initiation of the proceedings/issuance of notice for the violation of the construction norms; needless to say that for demolishing the construction, it shall abide by the directions of the Apex Court in the Bulldozer case, which this Court has also adopted, as part of this order at Paragraph No.73 (supra).

78. The action of the development authority, shall not reflect in any manner that it is only against an individual, while ignoring a similar violation in the vicinity, with respect to the other constructions; and if such will be the case, the aggrieved person, shall be at liberty to approach this Court, alleging 'retributive exercise of executive discretion' and violation of the fundamental rights

79. As regards the Petitioners in the present case, proceedings for demolishment of their Residence and Lodge stand quashed as the said proceedings are hit by retributive exercise of executive discretion, and no proceedings shall be initiated for two years from the date of registration of the FIR relevant in this case. In the event, there is need for removing these structures before two years for proved public purpose (not beyond reasonable doubt, but on the basis of documents and affidavits), then the same may be done by complying with the directions in paragraph 75 supra.

80. As regards the proceedings against the Petitioners under the Forest Act in relation to the sealing of their saw mill on account of recovering wood of protected trees, the same shall continue unaffected by this order.

81. This order shall be communicated to the Chief Secretary of the State for onward dispatch to all the relevant offices in the districts for strict compliance.

82. Any violation of the direction herein, would result in contempt proceedings against the officer concerned which may be filed before this Court.

83. Accordingly, the writ petition is disposed of.

(2026) 7 ILRA 2369
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

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

Criminal Appeal No. 20880 of 2026

Chandan Kumar **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether a writ of mandamus can be issued to compel an administrative or utility authority to entertain complaints regarding private monetary fraud or non-registration of criminal offenses?
(b) Whether a writ petition is maintainable when statutory criminal machinery has not been invoked?

Headnotes

A. Criminal/Misc. Law – Mandamus for Investigation - The petitioner alleged that three cheques belonging to his firm (*M/S Ananta Enterprises*) were lost. On 30.12.2025, he received a bank SMS stating that Cheque No. 115323 (amounting to ₹80,000) was debited in favour of the Executive Engineer, Electric Store Division, Purvanchal Vidyut Vitran Nigam, Prayagraj. Upon inquiry, the Executive Engineer revealed that the cheque was submitted by Respondent No. 5 (*Mrs. Urmila Gupta / Fusion Wellness Centre*) to clear her electricity dues. The petitioner submitted complaints on the Chief Minister's Portal alleging theft, fraud, and collusion between electricity officials and Respondent No. 5 under the Bharatiya Nyaya Sanhita, 2023 (B.N.S.). Due to non-action on his portal complaints, the petitioner approached the High Court seeking a writ of mandamus directing the Executive Engineer to decide his complaints.

B. Mandamus is not a writ of right and is not granted as a matter of course (*ex debito justitiae*). Its grant or refusal is at the discretion of the court. A court may refuse mandamus unless it is shown that there is a clear legal right of the applicant or statutory duty of the respondent and there is no alternative remedy available to the applicant. (Para 10)

Mandamus is an action or judicial proceeding of a civil nature extraordinary in the sense that it can be maintained only when there is no other adequate remedy, prerogative in its character to the extent that the issue is discretionary, to enforce only clear legal rights, and to compel courts to take jurisdiction or proceed in the exercise of their jurisdiction, or to compel corporations, public and private, and public boards, commissions, or officers, to exercise their jurisdiction or discretion and to perform ministerial duties, which duties result from an office, trust, or station, and are clearly and peremptorily enjoined by law as absolute and official. **It is intended to supply deficiency in law. It can only be issued as a last resort, where the court is satisfied that without its aid there would be failure of justice.** (Para 9)

C. The discretion of the court...is not arbitrary and it must be exercised fairly, reasonably and on sound and well established legal principles. The court, in the exercise of discretion, must take into account wide variety of circumstances. It must consider the facts of the case, the exigency which calls for the exercise of discretion, the consequences of granting or refusing the writ, the nature and extent of injury likely to ensue by the grant or refusal of the writ, etc. **In short, courts discretion must be governed by considerations of public policy, public interest and public good.** (Para 11, 12)

D. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus. Mandamus is the most valuable and essential remedy in the Administrative Justice resorted to supply want of some appropriate ordinary remedy. There must be a legal right and corresponding legal duty. The duty sought to be enforced must be of a public character and must emanate from the Constitution, a statute, statutory rules, or the common law. (Para 14, 15, 19, 20)

E. Writ of mandamus must serve a practical and enforceable purpose, and the Court does not issue futile or ineffective writs. (Para 20)

The fabric of complaint submitted by petitioner on Chief Minister's portal clearly exhibits that he is aggrieved by non-registration of criminal case. The petitioner has got efficacious remedy of invoking statutory safeguards for redressal of his grievance for registration of criminal case particularly statutory scheme framed u/Chapter XIII of B.N.S.S., 2023 (Information to the police and their powers to investigate) which includes even default remedy of refusal on the part of an officer in-charge of a police station to record the information and investigate. (Para 21)

The petitioner utterly failed to respond that how the scheme contained in B.N.S.S. for registration of criminal case is not efficacious one, though the statutory remedy lies therein. Petitioner also failed to demonstrate any indefeasible right and corresponding obligation fastened by law upon the authorities concerned in the nature of public duty. (Para 22, 23)

Writ petition dismissed. (E-4)

Case Law Cited

1. Hardik Pravin Kumar Shah Vs. Union of India, 2021 Supreme(Online)(Guj.) 3585 (Para 9)
2. Union of India Vs. S.B. Vohra, (2004) 2 SCC 150 (Para 10)
3. Oriental Bank of Commerce Vs. Sunder Lal Jain, (2008) 2 SCC 280 (Para 13)
4. State of Kerala Vs. A.Lakshmi Kutty, 1986 (4) SCC 632 (Para 15)
5. Mr. R.S. Madireddy and another etc. Vs. Union of India and others etc., 2024 INSC 425 (Para 17)
6. Rikhab Chand Jain Vs. Union of India and others, 2025 INSC 1337 (Para 18)

List of Keywords

mandamus, public duty, registration of criminal case, remedy, extraordinary, right, deficiency in law, constitution, statutory rules, fundamental, infringement.

Appearances for Parties

For Petitioner(s): Amit Kumar Pandey
For Respondent(s): C.S.C., Narendra Kumar Tiwari

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard learned counsel for the petitioner, Sri Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel for the respondent no. 1 to 3 and Sri Rakesh Kumar Mishra, Advocate holding brief of Sri Narendra Kumar Tiwari, learned counsel for respondent no.4.

2. The instant writ petition has been filed under Article 226 of the Constitution of India with the following prayer:

"a) TO ISSUE a writ order or direction to the respondents to decide the complaint letter via the Chief Minister's Portal Complaint No. 40017526002646 dated 12.01.2026 and Complaint No. 40017526008467 dated 07.02.2026 pending before the respondent no. 4 (Executive Engineer), Department of Electricity, Myohall, Prayagraj within stipulated time."

3. Facts in brief are being recapitulated as under:

(i) The Petitioner claims that cheques bearing numbers 115323, 115324 and 115325 belonging to his firm M/S Ananta Enterprises were lost. Apprehending their misuse, the petitioner allegedly submitted a complaint at Police Station Colonelganj, Prayagraj on 05.11.2025 but the same remained of no avail. Thereafter the petitioner received an SMS on 30.12.2025 from his Bank informing him that a cheque bearing number 115323 for an amount of Rs.80,000/- had been processed for encashment in favour of the Executive Engineer, Electric Store Division Purvanchal Vidyut Vitran Nigam, Myohall, Prayagraj (4th respondent) towards payment of electricity dues.

(ii) Immediately on 31.12.2025, the petitioner approached the 4th respondent, and informed him that the cheque had been stolen and misused for clearing of someone else's electricity dues. In turn, the 4th respondent informed that the cheque in question had been deposited by a certain Fusion Wellness Centre having consumer I.D. number 2711948715 belonging to Mrs. Urmila Gupta (5th respondent).

4. The contention raised by petitioner is that he had never issued the said cheques in favour of 5th respondent who by misusing the cheques defrauded the petitioner. It has further been submitted that the theft and fraudulent use of cheque constitutes offences under Sections 316(2), 318(4), 336(3), 338, 340(2), 61(2) of B.N.S., 2023 corresponding to erstwhile Sections 406, 420, 467, 468, 471 and 120-B of IPC.

5. When the 4th respondent failed to take any action on the petitioner's complaint, he was constrained to file a criminal complaint for the redressal of his grievance on the Chief Minister portal.

6. The petitioner has further alleged that the officials of Electricity Department are acting in collusion with respondent no.5 and on account of such collusion no action has been taken on the petitioner's complaint.

7. On being confronted with respect to the law for the issue of a writ of mandamus, the learned counsel for the petitioner, utterly failed to point out the statutory or legal right of the petitioner which had been infringed and in what manner the respondents was obliged to redress the petitioner's complaint on administrative side.

8. It is settled law that before an applicant could ask for a writ of mandamus or an order in the nature of mandamus, he has to satisfy the Court that the following conditions are fulfilled.

(a) The applicant has a legal right;

(b) The opposite party has a legal duty;

(c) The application is made in good faith;

(d) The applicant has no other alternative remedy; and

(e) The opposite party has refused relief at least due to inaction i.e. demand and refusal.

9. In the case of **Hardik Pravin Kumar Shah Vs. Union of India, 2021 Supreme(Online)(Guj) 3585,** the Gujarat High Court, speaking through Hon□ble Mr. Justice J.B. Pardiwala (as His Lordship, then was), held that mandamus is an action or judicial proceeding of a civil nature extraordinary in the sense that it can be maintained only when there is no other adequate remedy, prerogative in its character to the extent that the issue is discretionary, to enforce only clear legal rights, and to compel courts to take jurisdiction or proceed in the exercise of their jurisdiction, or to compel corporations, public and private, and public boards, commissions, or officers, to exercise their jurisdiction or discretion and to perform ministerial duties, which duties result from an office, trust, or station, and are clearly and peremptorily enjoined by law as absolute and official. It is intended to supply deficiency in law. It can only be issued as a last resort, where the court is satisfied that without its aid there would be failure of justice.

10. Mandamus is not a writ of right and is not granted as a matter of course (ex debito justitiae). Its grant or refusal is at the discretion of the court. A court may refuse mandamus unless it is shown that there is a clear legal right of the applicant or statutory duty of the respondent and there is no alternative remedy available to the applicant. **[See: Union of India v. S.B. Vohra, (2004) 2 SCC 150].**

11. The discretion of the court, however, is not arbitrary and it must be exercised fairly, reasonably and on sound and well established legal principles.

12. The court, in the exercise of discretion, must take into account wide variety of circumstances. It must consider the facts of the case, the exigency which calls for the exercise of discretion, the consequences of granting or refusing the writ, the nature and extent of injury likely to ensue by the grant or refusal of the writ, etc. In short, courts discretion must be governed by considerations of public policy, public interest and public good.

13. In the decision reported in **(2008) 2 SCC 280, Oriental Bank of Commerce v. Sunder Lal Jain**, in paragraphs 11 and 12, the Supreme Court held thus:

"11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

.Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said

that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned an interest which private litigants are apt to overlook when striving for private ends. The court C/SCA/13653/2020 JUDGMENT should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah, Rai Shivendra Bahadur (Dr.) v. Nalanda College and Umakant Saran (Dr.) v. State of Bihar this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case, SCC pp. 152 53) "15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not

entitled to apply for grant of a writ of mandamus under Article 226 the Constitution and the High Court was not competent to issue the same.

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities....."

14. Mandamus is the most valuable and essential remedy in the Administrative Justice resorted to supply want of some appropriate ordinary remedy. The functions of the writ court is to compel the performance of public duty, for which, the person approaching the writ court , has a clear, specific and unequivocal, constitutional or statutory or legal right to the relief sought and a failure on the part of those who are bound to perform certain duties and functions, as laid down by the legislature or directions issued for the purpose of enforcing the provisions of an enactment or of any delegated or subordinate legislation. There must be a legal right and corresponding legal duty.

15. In **State of Kerala v. A.Lakshmi Kutty, reported in 1986 (4) SCC 632**, the Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

16. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)"

17. The Supreme Court in case of Mr**. R.S. Madireddy and another etc. Vs. Union of India and others etc., 2024 INSC 425**, while delineating the scope for the issue of a writ of mandamus under Article 226 of the Constitution of India has reiterated that the existence of an enforceable legal right in the petitioner and the corresponding public or statutory duty cast upon the respondent are sine qua non for issuance of such a writ.

18. The Supreme Court **Rikhab Chand Jain Vs. Union of India and others, 2025 INSC 1337** has reiterated the settled principles governing the exercise of writ jurisdiction under Article 226 of Constitution of India and has emphasized that such jurisdiction is discretionary in nature and ordinarily ought not to be exercised wherein efficacious statutory remedy is available, except in exceptional circumstances recognized in law.

19. A prerogative writ, like, a Mandamus cannot be demanded ***ex debito justiatiae,*** but it can be issued by the court in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought.

20. The principles governing the issuance of a writ of mandamus may be summarised as follows:

(i) The petitioner must establish the existence of a clear and enforceable legal right to compel the respondent to do or to abstain from doing something.

(ii) There must be a corresponding legal obligation or public duty cast upon the respondent, the performance of which the petitioner is entitled to demand.

(iii) The duty sought to be enforced must be of a public character and must emanate from the Constitution, a statute, statutory rules, or the common law.

(iv) The remedy of mandamus is neither intended to supplant the ordinary remedies available before a competent civil court, nor does it deprive the respondent of any lawful defence available in such proceedings.

(v) The power to issue a writ of mandamus is discretionary. Ordinarily, where an equally efficacious alternative remedy is available, it is a sound exercise of judicial discretion to decline the writ and relegate the petitioner to the ordinary remedy prescribed by law.

(vi) A writ of mandamus is neither a writ of right nor one issued as a matter of course. Its grant depends upon the facts and circumstances of each case and is governed by the judicial discretion of the Court.

(vii) While exercising jurisdiction under Article 226 of the Constitution, the High Court does not function as a court of appeal. It does not reassess factual matters or substitute its own opinion for that of the statutory authority entrusted with the decision-making process. The writ is ordinarily issued only where the petitioner demonstrates a direct and substantial infringement, or an imminent threat of infringement, of a legal or fundamental right.

(viii) A writ of mandamus is not maintainable for the resolution of purely private disputes or for the enforcement of private rights unconnected with a public duty.

(ix) No writ of mandamus can be issued against His excellency the President of India or the Governor of a State in view of the constitutional immunity conferred upon them.

(x) Lastly, the Court will not issue a writ of mandamus where compliance with its directions is impossible or unlikely. A writ of mandamus must serve a practical and enforceable purpose, and the Court does not issue futile or ineffective writs.

21. The fabric of complaint submitted by petitioner on Chief Minister□s portal clearly exhibits that he is aggrieved by non-registration of criminal case. The petitioner has got efficacious remedy of invoking statutory safeguards for redressal of his grievance for registration of criminal case particularly statutory scheme framed under Chapter XIII of B.N.S.S., 2023 (Information to the police and their powers to investigate) which includes even default remedy of refusal on the part of an officer in-charge of a police station to record the information and investigate.

22. The petitioner utterly failed to respond that how the scheme contained in B.N.S.S. for registration of criminal case is not efficacious one, though the statutory remedy lies therein.

23. On close scrutiny and examination of factual matrix of this case, it comes out that petitioner utterly failed to demonstrate any indefeasible right and corresponding obligation fastened by law upon the authorities concerned in the nature of public duty. Thus, the present writ petition fails and is accordingly, **dismissed.**

24. No order as to costs.

25. However, the liberty would rest with the petitioner to avail his statutory remedies including one provided under Chapter XIII of B.N.S.S., 2023, if so advised.

(2026) 7 ILRA 2377
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.07.2026

BEFORE

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

Criminal Appeal No. 21019 of 2026

Santosh Kumar Sharma **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether an Electrohomeopathy/Community Health Certificate holder can practice Allopathy?
(b) Whether sealing a non-compliant clinic violates fundamental rights under Article 19(1)(g)?

Headnotes

A. Constitutional Law - The petitioner claimed eligibility to practice modern scientific medicine based on a Vocational Certificate Code No. 802 (Community Health) obtained in 2005 from the National Institute of Open Schooling (NIOS), along with a diploma/certificate in Electrohomeopathy. On 01.05.2025, the CMO, Etah, issued a show cause notice and sealed the petitioner's clinic due to unauthorized practice and clinical non-compliance.

The petitioner previously filed *Writ-C No. 41953 of 2024*, which was disposed of on 08.01.2026 directing the CMO, Etah, to consider the petitioner's objections and decide the matter by a reasoned order. The CMO, Etah, rejected the petitioner's representation and refused to unseal the clinic on multiple grounds:

- Practicing allopathy without being registered with the CMO office as required by G.O. dated 16.09.2021.
- Electrohomeopathy certificate holders are strictly barred from practicing modern allopathic medicine.
- Failure to meet clinical establishment standards (non-compliance with the Clinical Establishments Act, 2010).
- Lack of mandatory Bio-Medical Waste Management systems, Fire NOC, and infection control measures.

B. A person, who does not have knowledge of a particular system of medicine but practices in that system is a quack and a mere pretender of medical knowledge or skill or to put it differently, can be maximum termed a charlatan. (Para 11)

The petitioner though in possession of a certificate in electrohomeopathy is not thereby entitled to practice modern medicine, particularly the allopathic system. The seal on the petitioner's clinic has been declined to be removed for the reason that it does not meet the standards to operate a hospital/clinic, and even unqualified doctors were found to be practicing modern medicine on the premises of the hospital in question. (Para 10)

C. A person can practice in allopathic system of medicine in State or in the country only if he possesses a recognized medical qualification. Permitting a person, who does not possess the recognized medical qualification in the allopathic medicine would be in direct conflict with the Statute governing the field. The petitioner's clinic is admittedly not registered with the office of CMO, which is a *sine qua non* for practicing modern medicine and treating patients. (Para 12, 13)

D. The right to practice a profession u/Article 19(1)(g) of the Constitution of India is not an absolute right and remains subject to reasonable restrictions that the State may impose in the

interest of the general public u/Article 19(1)(g) of the Constitution of India. Regulatory measures ensure that only qualified and registered persons practice medicine and the clinical establishment meet prescribed standards. Such restrictions are legitimate and proportionate restriction in the interest of public health and cannot be said to offend Article 19(1) (g). (Para 14)

Petitioner is not entitled to practice modern medicine (allopathy) on the strength of his electrohomeopathy certificate. More so, his clinic/hospital also failed to meet the standards prescribed by various GOs as well as the NCISM Act, 2020. (Para 15)

Writ petition dismissed. (E-4)

Case Law Cited

1. Poonam Verma Vs. Ashwin Patel, (1996) 40 SCC 332 (Para 8)
2. Dr. Mukhtar Chand Vs. State of Punjab, (1998) 7 SCC 579 (Para 8)
3. Chintaman Rao Vs. State of M.P., AIR 1951 SC 118 (Para 14)
4. State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534 (Para 14)

List of Acts

National Commission for Indian System of Medicine (NCISM) Act, 2020; Clinical Establishments Act, 2010.

List of Keywords

modern medicine, electrohomoeopathy, certificate, standards, prescribed, constitution of india, 19(1)(g), recognized, qualification, regulatory measures, public health, interest.

Appearances for Parties

For Petitioner(s): Ashok Kumar Singh, Pratibha Singh
For Respondent(s): C.S.C.

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Ashok Kumar Singh, learned Counsel for the petitioner and Mr. Akhilesh Kumar Tripathi, learned Standing Counsel appearing on behalf of respondent nos.1 to 5.

2. The writ petition assails the order dated 16.02.2026 passed by fourth respondent/Chief Medical Officer, Etah, District Etah, whereby the hospital of the petitioner has been sealed in compliance of letter no.1670/(1)/03.06.2024/ issued by the Principal Secretary, Government of U.P. Further, the petitioner has prayed for the issue of a writ in the nature of mandamus commanding State authorities to permit the petitioner to operate his Clinic and practice modern medicine.

3. Facts in brief are being delineated as under:

(i) The petitioner claims that he has obtained Vocational Certificate Code No.802 (Community Health) in the year 2005 from the National Institute of Open Schooling and based on said certificate is eligible to practice modern scientific medicine.

(ii) The petitioner was put under notice on 26.06.2019 by the Chief Medical Officer, Etah to submit his degrees and educational record entitling him to practice medicine to which the petitioner replied on 03.07.2019. Thereafter, he again submitted a detailed stand on 27.12.2024, annexing all his academic testimonials with a request to withdraw the notice.

(iii) The petitioner was lastly served with a show cause notice dated 01.05.2025 for the closure of his Clinic, which impelled the petitioner to knock the doors of this Court by virtue of **Writ-C No.41953 of 2024 (Santosh Kumar Sharma Vs. State of U.P.).** The said writ petition was disposed off on 08.01.2026 with following order:

"1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The petitioner has been issued show cause notice dated 01.05.2025 for certain deficiency found in the clinic of the petitioner and also sealed the clinic.

3. It appears from the show cause notice that three days' time has been granted to the petitioner to submit documents as sought for.

4. Learned counsel for the petitioner has contended that several replies to the show cause notice have been given by the petitioner, but the competent authority has not yet considered the same.

5. Learned Standing Counsel would submit that no useful purpose would be served in keeping the writ petition pending and appropriate direction may be issued to the competent authority to consider the grievance of the petitioner.

6. In view of the aforesaid facts, we dispose off the writ petition permitting the petitioner to file a detailed objection/representation against the show cause notice dated 01.05.2025 before the respondent no.4-Chief Medical Officer, Etah within a period of two weeks from today. On filing such objection enclosing earlier objections filed against the said show cause notice, the respondent No.4 is directed to decide the objection of the petitioner against the show cause notice within a period of one month from the date he receives the objection of the petitioner, after giving due notice and opportunity of hearing and supplying all materials to be relied upon by the authority concerned against the petitioner."

(iv) The petitioner submitted an exhaustive representation in compliance of order dated 08.01.2024 along with relevant documents which he relied upon, to show his authority to practice medicine, but his representation could not find favour with the respondents.

(v) The petitioner's representation has been rejected vide order dated 16.02.2026 passed by respondent no.4 observing inter-alia that petitioner is practicing and treating patient with allopathic medicines, but is not entitled to practice aforesaid stream of medicine without being registered in the office of the Chief Medical Officer as warranted by Government Order No.2374/5-2001 dated 16.09.2021. It was also remarked that no registration/operation of Clinic can be permitted for a practitioner holding a degree in 'Electrohomeopathy'.

(vi) It has further been mentioned that the holder of a certificate/diploma in Electrohomeopathy cannot be allowed to practice allopathic medicine being prohibited by Government Orders no. Anubhag-1, Sankhya-1297/71- Ayush-2016 Davlu-283/293/2014, Lucknow dated 03.08.2016 and Uttar Pradesh Chikisa Anubhag-6, Sankhya-726/Panch-6-2023 Lucknow dated 13.04.2023.

Further, the clinic set up by the petitioner does not meet the standards set up by Manak Dainik Sthapan (Registrikaran aur Viniyaman), Adhiniyam, 2010, Uttar Pradesh Shashan, Chikitsa Anubhag-6, Sankhya-2374/panch-5-2021 Lucknow dated 16.09.2021 and Uttar Pradesh Shashan Ayush Anubhag-1, Sankhya-1297/71-Ayush-1-2016-davlu-283/2014, Lucknow dated 03.08.2016.

(vii) Lastly, the so called clinic/hospital does not have a biomedical waste management system and even a fire NOC was not found. The hospital/clinic was not found observing infection prevention and control system, which is non-compliance with mandatory provisions to run a clinic/hospital.

(viii) Since the petitioner could not show any valid qualification to practice allopathic medicine or authority to operate a clinic, the registration of the petitioner to practice allopathic medicine was not found valid and, consequently, the seal on his hospital was not removed. The criminal law has also been set in motion and the representation of the petitioner rejected.

4. Learned counsel for the petitioner strenuously urged that adequate opportunity of hearing was not afforded before passing order under challenge. It is further contended that the complaint moved by respondent no.6 was actuated by sheer vengeance, and the petitioner having long experience in the field of medicine, ought not have been deprived of by sealing his clinic/hospital.

5. It was further submitted that right to practice a profession, including medicine, is an integral part of Article 19(1) (g) of the Constitution of India and impugned order being exfacie bad warrants interference.

6. Refuting the submissions of the learned Counsel for the petitioner, the learned Standing Counsel submitted that the certificate of electrohomeopathy can by no stretch of imagination confer authority upon the petitioner to practice modern medicine, and order passed by 4th respondent is valid in the eyes of law.

7. The health of public at large is the primary responsibility of the State Government. As such, any quack cannot be permitted to play with the health of the general public. The practice of medicine is regulated by the Statutes and Government Orders, which occupy the field and prescribe standards. It is the State's duty to protect public health from unqualified practitioners.

8. It is well settled that a practitioner registered under one system of medicine cannot transgress and practice another system, particularly 'allopathy' without requisite qualification and registration, and that doing so amounts to negligence per se exposing both the practitioner and the public to grave risk **(see Poonam Verma Vs. Ashwin Patel (1996) 40 SCC 332)**. Likewise, the Supreme Court has held that a practitioner of Indian system of medicine is not entitled to prescribe allopathic drugs unless expressly permitted by the governing statute or rules framed thereunder **(see Dr. Mukhtar Chand Vs. State of Punjab (1998) 7 Scc 579).**

9. The petitioner's certificate in electrohomeopathy by no stretch of imagination can be said to be a valid degree/diploma entitling him to practice modern medicine (allopath).

10. Having considered the rival submissions advanced by parties and perused the record, it comes out that the petitioner though in possession of a certificate in electrohomeopathy is not thereby entitled to practice modern medicine, particularly the allopathic system. The seal on the petitioner's clinic has been declined to be removed for the reason that it does not meet the standards to operate a hospital/clinic, and even unqualified doctors were found to be practicing modern medicine on the premises of the hospital in question.

11. A person, who does not have knowledge of a particular system of medicine but practices in that system is a quack and a mere pretender of medical knowledge or skill or to put it differently, can be maximum termed a charlatan.

12. A person can practice in allopathic system of medicine in State or in the country only if he possess a recognized medical qualification. Permitting a person, who does not possess the recognized medical qualification in the allopathic medicine would be in direct conflict with the Statute governing the field. In the case of **Dr. Mukhtar Chand (supra)** the Supreme Court has held:-

"47. A harmonious reading of Section 15 of 1956 Act and Section 17 of 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian medicine or Central Register of Indian Medicine to practise modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of 1956 Act.

48. The right to practise modern scientific medicine or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made thereunder by State Governments. Indeed, Ms. Indira Jaising has also submitted that the right to practise a system of medicine is derived from the Act under which a medical practitioner is registered. But she has strenuously argued that the right which the holders of degree in integrated courses of Indian medicine are claiming is to have their prescription of allopathic medicine, honored by a pharmacist or the chemist under the Pharmacy Act and the Drugs Act. This argument is too technical to be acceded to because prescribing a drug is a concomitant of the right to practise a system of medicine. Therefore, in a broader sense the right to prescribe drugs of a system of medicine would be synonymous with the right to practise that system of medicine. In that sense, the right to prescribe allopathic drug cannot be wholly divorced from the claim to practice allopathic medicine."

13. The petitioner's clinic is admittedly not registered with the office of Chief Medical Officer, which is a sine qua non for practicing modern medicine and treating patients.

14. The right to practice a profession under Article 19(1) (g) of the Constitution of India is not an absolute right and remains subject to reasonable restrictions that the State may impose in the interest of the general public under Article 19(1) (g) of the Constitution of India **(see Chintaman Rao Vs. State of M.P., AIR 1951 SC 118).** Regulatory measures ensure that only qualified and registered persons practice medicine and the clinical establishment meet prescribed standards. Such restrictions are legitimate and proportionate restriction in the interest of public health and cannot be said to offend Article 19(1) (g) of the Constitution of India **(see State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534).**

15. In view of the aforesaid factual matrix and the law, the inescapable conclusion is that the petitioner is not entitled to practice modern medicine (allopathy) on the strength of his electrohomeopathy certificate. More so, his clinic/hospital also failed to meet the standards prescribed by various Government Orders as well as the **National Commission for Indian System of Medicine (NCISM) Act, 2020**. This Court under Article 226 of the Constitution of India cannot substitute its own wisdom and findings for those of competent expert authorities. The petitioner is not entitled to practice modern medicine. Accordingly, the writ petition fails and is hereby **dismissed.**

16. No order as to cost.

(2026) 7 ILRA 2382
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.07.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE VIVEK SARAN, J.

Criminal Appeal No. 52748 of 2016

Smt. Prema Devi **...Appellant**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether a Sub-Registrar, Assistant Inspector General of Registration, or any administrative authority under the Registration Act, 1908 has the legal authority to cancel or annul a sale deed after it has been duly registered?
(b) Whether administrative authorities can conduct inquiries into allegations of fraud, impersonation, or forgery to cancel a registered instrument?
(c) Whether an administrative cancellation order passed under the U.P. GO dated 13.08.2013 remains valid if the order was passed prior to the High Court subsequently quashing the underlying G.O.?

Headnotes:

A. Property Law – On 14.07.2016, one Jang Bahadur filed a complaint alleging that his brother, Firangi Prasad, impersonated him to illegally sell his land (situated at villages Rakauli, Jharkata, Sodhaveer, and Kohna, Gopalpur, District Gorakhpur) to Firangi's wife, Smt. Prema Devi, via a registered sale deed dated 12.07.2016. Based on an inquiry under the U.P. GO dated 13.08.2013, the Assistant Inspector General of Registration, Gorakhpur, cancelled the sale deed on 24.09.2016 on grounds of fraud and impersonation. Prema Devi challenged the cancellation order before the High Court on the ground that registering authorities have no power/jurisdiction under the Registration Act, 1908 to cancel a registered document.

B. A duly registered sale deed under the Act cannot be set aside by registering authority or by any authority invoking administrative powers, if the registration is questioned even on the count of impersonation/fraud. (Para 9)

C. The GO dated 13.8.2013 confers unfettered and arbitrary powers upon the Registering Authority in violation of the express provisions of the Registration Act and such GO cannot be invoked to annul a document. The GO dated 13.8.2013 is not only arbitrary but is wholly without jurisdiction and cannot be sustained. GO dated 13.08.2013 has been quashed as being wholly without jurisdiction on the count that no enquiry could be initiated by the authority or the document could have been annulled by the authority. (Para 10)
Once the law is settled then there can be no other view possible in the matter regarding the competence of the authorities to annul the duly registered sale-deed. (Para 11)

D. Once the GO has been set aside then any action which may have been taken by any authority cannot survive. Respondents' submission that the order impugned has been passed prior to the quashing of the GO by this Court is wholly misconceived and cannot be appreciated. (Para 12)

The order dated 24.09.2016 passed by the Assistant Inspector General of Registration, Gorakhpur is quashed. (Para 13)

Writ petition allowed. (E-4)

Case Law Cited

1. Smt. Kusum Lata Vs. State of U.P., 2018 (6) ADJ 344 (Para 5)
2. Krishna Kumar Saxena and another Vs. State of U.P. and 9 Others, 2018(5) ADJ 156 (Para 5)

List of Acts

Registration Act, 1908.

List of Keywords

cancellation order, registration, complaint, fraud, jurisdiction, impersonation, forgery, sale deed.

Appearances for Parties

For Petitioner(s): Ashwani Kumar Mishra
For Respondent(s): C.S.C., Hari Pratap Gupta, Ramesh Chandra Tiwari

(Delivered by Hon'ble Vivek Saran, J.)

1. Heard Sri Ashwani Kumar Mishra, learned counsel for the petitioner, learned Standing Counsel for the respondent nos.1 and 2 and Sri Ramesh Chandra Tiwari, learned counsel for the respondent nos.3 to 5.

2. The instant petition has been preferred with the following relief:

"I. Issue a writ order or direction in the nature of certiorari for quashing the impugned order dated 24.09.2016 passed by the Assistant Insptector General of Registration, Gorakhpur."

3. The brief facts leading to the filing of the petitions are as follows:

The complaint was made by one Jang Bahadur @ Jangi @ Jangi Prasad @ Jagdish before respondent no.2 on 14.07.2016 alleging that the registered sale deed dated 12.07.2026 bearing Registration No.2452/2016 alleging that his real brother Firangi Prasad impersonated complainant/Jang Bahadur has sold his land situate at villages Rakauli, Jharkata, Sodhaveer and Kohna, Gopalpur, District Gorakhpur to how own wife Prema Devi and as the said sale deed has been executed by playing fraud, therefore, the same may be cancelled.

4. On the said complaint vide order dated 14.07.2016 the Deputy Registrar, Gola, Gorakhpur was directed to submit a report and also other executants and the marginal witness and the deed writer were also informed to submit proof of identity. Thereafter on the basis of an enquiry and exercising the provisions of the Government Order dated 13.08.2013 bearing no.क0नि0-07-684/11-2013-700(446)/13, the respondent no.2/Assistant Inspector General of Registration, Gorakhpur cancelled the sale deed dated 12.07.2016 being Registration No.2452 of 2016 registered at the office of Sub-Registrar, Gola Janpad, Gorakhpur.

5. Learned counsel for the petitioner has submitted that the registering authority under the Registration Act, 1908 (hereinafter referred to as 'the Act') after registration of sale-deed becomes functus officio and ceases to have any jurisdiction or authority and neither the Sub-Registrar nor any superior officer has authority to cancel a duly registered sale-deed. He further submitted that the Full Bench of this Court inRe:**Smt. Kusum Lata v. State of U.P.1** has held that a duly registered sale-deed under the Act cannot be cancelled by an envoking administrative power and it is only the civil court of competent jurisdiction which can hold a duly registered document as null and void. He has further submitted that even the Government Order dated 13.08.2013 has been quashed by this Court inRe: **Krishna Kumar Saxena and another v. State of U.P. and 9 Others2.**

6. Learned counsel for the respondents has submitted that the order dated 24.09.2016 passed by the respondent no.2 is wholly just and legal and call for no interference, as the same is on the basis of a fact finding enquiry. He has further submitted that at the relevant time of passing the order, the Government Order dated 13.08.2013 was in existence and any quashing of the Government Order at a subsequent stage would not nullify its effect. He has further made a statement at bar that the contesting respondent are pursuing appropriate civil remedies as well.

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

8. The sole issue for consideration before this Court is as to whether the respondent no.2 was justified in cancelling the duly registered sale-deed.

9. There is no dispute about the settled legal position with respect to the judgment rendered inRe: **Smt. Kusum Lata (supra)** that a duly registered saldeed under the Act cannot be set aside by registering authority or by any authority invoking administrative powers, if the registration is questioned even on the count of impersonation/fraud. The relevant paragraphs of the judgment are reproduced hereunder:

"(1) - This Larger Bench has been constituted under the orders of Hon'ble the Chief Justice on basis of the order dated 22.05.2017 passed in Writ-C No. 2973 of 2016. In the case aforesaid, a Division Bench of this Court arrived at the conclusion that the view taken in the case of Radhey Shyam Arora Versus State of U.P. and 6 others (Writ-C No. 63439 of 2013), decided on 20.11.2013 is in conflict with a view taken in Raj Kumari Versus State of U.P. and others (Misc. Bench No. 2562 of 2014), decided on 28.03.2014 and looking to the divergent views taken by two Division Benches matter requires consideration by a Larger Bench. The Division Bench under the order dated 22.05.2017 referred following questions for adjudication by Larger Bench:-

"(a). Whether after a sale deed has been registered, the Assistant Registrar has any authority of law to cancel the registered sale deed under the provisions of the Registration Act, 1908 even if allegation of impersonation/fraud are made?

(b). Whether the allegations of fraud are essentially, an allegation of fact which need examination of oral or documentary evidence and can be adjudicated on the basis of evidence to be led by the parties before competent civil court?

(c). Whether the judgment in the case of Raj Kumari (supra) or the judgment in the case of Radhey Shyam Arora (supra) lays down the correct law?....."

"(10)- The reference is answered in the terms that a sale deed registered under the Act, 1908 cannot be cancelled or set aside by registering authority or by any authority invoking administrative powers, if the registration is questioned even on the count of impersonation/ fraud."

10. Further it is also not in dispute that this Court inRe**: Krishna Kumar Saxena and another (supra)** has also quashed the Government Order dated 13.08.2013 as being wholly without jurisdiction on the count that no enquiry could be initiated by the authority or the document could have been anulled by the authority. The relevant paragraphs are extracted hereunder:

"(30)- The Government Order dated 13.8.2013 confers unfettered and arbitrary powers upon the Registering Authority in violation of the express provisions of the Registration Act and such Government Order cannot be invoked to annual a document. ***The Government Order dated 13.8.2013 is not only arbitrary but is wholly without jurisdiction and cannot be sustained.***

(33)- In the light of the aforesaid, we find that the respondent nos. 4 to 10 had no locus standi to question the veracity of the sale deed. No enquiry could have been initiated nor the authority could have annulled the document. Consequently, the impugned orders dated 23.9.2016 and 18.10.2016 passed by Assistant Inspector General (Registration/Stamp), Rampur being without jurisdiction cannot be sustained and are hereby quashed. ***The Government Order dated 13.8.2013 is also quashed."***

11. Further this Court finds that once the law is settled then there can be no other view possible in the matter regarding the competence of the authorities to annul the duly registered sale-deed.

12. Insofar as the submission of learned counsel for the respondents that the order impugned has been passed prior to the quashing of the Government order by this Court is wholly misconceived and cannot be appreciated. Once the Government order has been set aside then any action which may have been taken by any authority cannot survive.

13. In view of the aforesaid discussion, the writ petition succeeds and is ***allowed,*** the order dated 24.09.2016 passed by the Assistant Inspector General of Registration, Gorakhpur is quashed.

14. No order as to cost.

15. It is however open for the respondents to seek appropriate civil remedies available to him under law and the same shall be decided on merits without being influenced by this judgment.

(2026) 7 ILRA 2386
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 4718 of 2026

Amarnath **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Issue(s) for consideration

(a) Whether the Information Commission can impose a penalty u/s 20(1) without forming an objective opinion based on evidence and without giving the PIO an opportunity to show reasonable cause?
(b) Whether the imposition of a monetary penalty under the RTI Act constitutes an adverse civil consequence requiring strict adherence to natural justice?

Headnotes

A. Right to Information Law - Service Law – Right to Information Act, 2005: Section 20(1); Constitution of India: Article 14, 21 - Respondent No. 2 submitted an RTI application seeking certain information. The petitioner, serving as a Block Education Officer and designated Public Information Officer (PIO), failed to supply the information within the statutory 30-day timeline due to communication lapses by subordinate staff. On 06.09.2023, the State Information Commission, U.P. (Respondent No. 1) passed an ex-parte order in Complaint Case No. S-6/275/C/2023 imposing a penalty of ₹25,000/- on the petitioner u/s 20(1) of the RTI Act, 2005. The petitioner was neither served prior notice nor granted an opportunity to submit an explanation.

On 12.01.2024, the petitioner supplied the required information to the applicant and filed a review petition before the SIC explaining the reasonable cause for the delay. However, the SIC rejected the review petition on 22.02.2024. The petitioner approached the High Court seeking a writ of certiorari to quash both the penalty order and the review rejection order.

B. The respondent is an instrumentality of the State, and therefore, all its administrative decisions would be subject to the doctrine of equality and fair play, as incorporated in Articles 14 and 21 of the Constitution of India. If any of its actions or administrative decisions result in civil consequences, the actions or decisions could be judicially reviewed or tested on the anvil of principles of natural justice.

The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.

Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non- pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Besides the fact that any citizen has an inalienable fundamental right to be heard before he or she is condemned (the principle of audi alteram partem) as guaranteed u/Article 21 of our Constitution, the very imposition of penalty also gives rise to an adverse civil consequence. Thus, even on that count, the petitioner ought to have been provided with an adequate and reasonable opportunity of being heard before the imposition of penalty of Rs. 25,000/- by the impugned order. (Para 6, 13)

C. Before imposing a penalty u/s 20 of the Act, 2005, the competent authority must give the PIO a reasonable opportunity of being heard and must examine whether there was any reasonable cause for the delay or non-supply of information. (Para 14)

The whole mechanism for imposition of penalty to the petitioner has been given a complete go by in the present case. No opinion is found to have been formed by the SIC in arriving at a decision to impose a penalty of Rs. 25,000/- on the petitioner as neither any notice and/or show-cause was issued to the petitioner prior to the imposition of such a penalty nor any opportunity was provided to file a reply and/or explain or prove that he was reasonable and diligent. Apparently, there was no material on record to form any such opinion on the part of the concerned Authority, for imposition of penalty. To add insult to injury, even no opportunity of hearing was provided to the petitioner as mandated by the first proviso to Section 20(1) of the RTI Act, 2005. (Para 11, 12)

The impugned order dated 06.09.2023 is unsustainable in the eyes of law and as such the same is hereby quashed and set-aside on the grounds of being in violation of the principles of natural justice. Consequently, the impugned order dismissing the review Application is also accordingly, quashed and set aside. (Para 15)
Writ petition allowed. (E-4)

Case Law Cited

1. State of Orissa Vs. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269. (Para 6)
2. Prakash Ratan Sinha Vs State of Bihar and others, (2009) 14 SCC 690 (Para 13)
3. Manohar Vs. State of Maharashtra & others, (2012) 13 SCC 14 (Para 14)

List of Acts

Right to Information Act, 2005; Constitution of India.

List of Keywords

violation, natural justice, penalty, information, reasonable cause, opinion, delay, administrative decisions, civil consequences.

Appearances for Parties

For Petitioner(s): Palak Sahai Gupta
For Respondent(s): Shikhar Anand

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

"I) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 06.09.2023 passed by Respondent No.1 in Complaint Case No. ??- 6/275/??/2023,

whereby a penalty of ?25,000/- has been imposed upon the petitioner under Section 20 of the Right to Information Act, 2005; and the order dated 22.02.2024 passed by Respondent No.1 in Review Petition No. ??-6/152/???./2024 (arising out of the aforesaid complaint case), whereby the review preferred by the petitioner has been rejected ;

II. Issue a writ, order or direction in the nature of Mandamus commanding the Respondent No.1 to reconsider and decide the complaint case afresh, strictly in accordance with law, after affording the petitioner a proper, effective and meaningful opportunity of hearing ;

III. Issue an appropriate writ, order or direction staying the operation, effect and recovery of the impugned penalty imposed vide order dated 06.09.2023, during the pendency of the present writ petition ."

2. It has been submitted that the petitioner is a Block Education Officer and also a “Public Information Officer”, who could not provide the information on time due to various reasons including certain lapses on the part of his subordinates to abreast him about the requisite information as sought by the Respondent No.2 (Information seeker/applicant). It has also been submitted that the requisite information as on date has already been provided on 12.01.2024 to the respondent no. 2.

3. It is the case of the learned counsel for the petitioner that despite the fact that the information has been provided and there existed a reasonable cause for delay, the impugned order dated 06.09.2023 imposing penalty on the petitioner has been passed ex- parte, as he was never put to notice nor provided any opportunity to explain, before the penalty of Rs. 25,000/- was imposed on him as provided for under Section 20(1) of the Right to Information Act, 2005 (hereinafter referred as to "the Act, 2005 "). He further submits that even the review application against the said order of imposing penalty, which has been filed seeking to bring on records the factum of information having been already provided and also a reasonable cause existed for delaying the providing of requisite information, the State Information Commission (hereinafter to be referred as ?SIC?) has been pleased to dismiss the said Application by its order dated 22.2.2024. Thus, a prayer has been made to quash the impugned order dated 06.09.2023 imposing penalty upon the petitioner as well as the order of dismissal of review order dated 22.02.2024.

4. On the other hand, Mr. Shikhar Anand, learned counsel appearing on behalf of State Information Commission has supported the impugned order and has submitted that the same does not require any interference.

5. We have heard the learned counsel for the parties and have perused the material available on record.

6. From a bare reading of the impugned order, it is not clear as to whether the petitioner, who was the Public Information Officer, was specifically afforded an opportunity of hearing before the imposition of a penalty of Rs. 25,000/- or not. Apparently, the said imposition of penalty as being in the nature of civil consequences cannot be imposed, without following the principles of natural justice and giving the affected person an opportunity to be heard as has been held by the

Hon'ble Apex Court in the well celebrated judgment of ***State of Orissa Vs. Dr. (Miss) Binapani Dei; AIR 1967 SC 1269.***

7. However, at this stage, we go a little deeper and note that Section 20 (1) of the Act, 2005, which has been invoked by the SIC to impose penalty on the petitioner provides for the following: -

"Section 20. Penalties.- (1)Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be."

8. A facial reading of the aforesaid provision would show that the penalty is to be imposed when an opinion is formed by the concerned authority that the erring officer, without any reasonable cause;

(a) refused to receive an application for information

or

(b) has not furnished information within the time specified under sub-section (1) of section 7

or

(c) malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information

or

(d) destroyed information which was the subject of the request

or

(e) obstructed in any manner in furnishing the information.

9 . This Court finds that the imposition of penalty by the authority concerned (SIC or the CIC as the case may be) has to be based on an opinion formed by the said Authority in accordance with law. Meaning thereby, that the said opinion is not to be understood in the traditional meaning of being an expression of belief or idea or emotions based on a personal opinion or without any basis, but in contradiction ought to be based on some material available from the records of the said case. It is for this very reason and necessarily to be in the nature of collecting materials, so as to enable the concerned authority to form an opinion, that the Second Proviso to Section 20 (1) of the Act, 2005 provides for the erring Public Information Officer an opportunity to prove that he acted reasonably and diligently. According to this Court, the ?proof? as envisaged by the legislature ought to be in the nature of material and/or documents only, which would prove the diligence or otherwise, of the erring officer in providing of information under the Act. We find that the formation of opinion is the triggering point for imposition of penalty under the provisions of Section 20(1) of the RTI Act, 2005 and obviously, the said opinion has to be formed on the basis of proof provided (or not provided, if opportunity given) by the erring Public Information Officer and after the same is examined for its responsibility and diligence as envisaged under the RTI Act, 2005.

10. Further, we also find that the matter of forming an opinion on the basis of the material collected in terms of second proviso as explained herein above, does not ends with the said burden of proof by the erring officer but extends to providing of hearing on the said material collected. Apparently, the first proviso to Section 20 (1) of the Act, 2005 clearly states that the concerned authority before imposing any penalty has to also give a reasonable opportunity of hearing to the said erring Public Information Officer. Thus, a robust mechanism for imposing of penalty has been provided under the Act, 2005 itself, which needless to say is also in tandem with the observance of principles of natural justice.

11. Unfortunately we find the whole mechanism for imposition of penalty to the petitioner has been given a complete go by in the present case.

12. Admittedly, we do not find any opinion having been formed by the SIC in arriving at a decision to impose a penalty of Rs. 25,000/- on the petitioner as neither any notice and/or show-cause was issued to the petitioner prior to the imposition of such a penalty nor any opportunity was provided to file a reply and/or explain or prove that he was reasonable and diligence. Apparently, there was no material on record to form any such opinion on the part of the concerned Authority, for imposition of penalty. To add insult to injury, even no opportunity of hearing was provided to the petitioner as mandated by the first proviso to Section 20(1) of the RTI Act, 2005.

13. Going further, we find that besides the fact that any citizen has an inalienable fundamental right to be heard before he or she is condemned (the principle of audi alteram partem) as guaranteed under Article 21 of our Constitution, this Court also finds that the very imposition of penalty also gives rise to an adverse civil consequence. Thus, even on that count, the petitioner ought to have been

provided with an adequate and reasonable opportunity of being heard before the imposition of penalty of Rs. 25,000/- by the impugned order. The Hon'ble Supreme Court in the case of ***Prakash Ratan Sinha Vs State of Bihar and others; reported in (2009) 14 SCC 690***; on an issue dealing with the doctrine of 'Equality and Fair Play' and also the principles of natural justice has in paragraph Nos. 9 and 13 held as under:

"9. The respondent is an instrumentality of the State, and therefore, all its administrative decisions would be subject to the doctrine of equality and fair play, as incorporated in Articles 14 and 21 of the Constitution of India. If any of its actions or administrative decisions result in civil consequences, the actions or decisions could be judicially reviewed or tested on the anvil of principles of natural justice. This principle of law has been laid down by this Court in catena of cases.

xxxxxxxx

13. A similar view has also been taken by the Hon'ble Supreme Court in the case "Canara Bank and others Vs. Debasis Das and others " (2003) 4 SCC 557, wherein the Hon'ble Supreme Court in paragraph No. 19 has held as under: "19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.."

14. Further, the Hon'ble Supreme Court in the case of ***Manohar Vs. State of Maharashtra & others;*** reported in ***(2012) 13 SCC 14***; has held that before imposing a penalty under Section 20 of the Act, 2005, the competent authority must give the Public Information Officer a reasonable opportunity of being heard and must examine whether there was any reasonable cause for the delay or non-supply of information. Since it is the case of the petitioner that no notice was ever served nor any opportunity of filing any reply and/or explanation or any hearing was provided to him before imposing the penalty of Rs. 25,000/-, we find that the ratio of the **Manohar Case (Supra)** is squarely applicable to the facts and circumstances of the present case.

15. For the foregoing discussion, the impugned order dated 06.09.2023 is unsustainable in the eyes of law and as such the same is hereby quashed and set-aside on the grounds of being in violation of the principles of natural justice. Consequently, the impugned order dismissing the review Application losses its significance. However, for the sake of clarity the same is also accordingly, quashed and set aside.

16. Accordingly, the writ petition is *allowed in the aforesaid terms*.

17. There shall be no order as to cost(s).

(2026) 7 ILRA 2392
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 4800 of 2026

Janardan Singh **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether sending unilateral, unacknowledged representation letters over several years keeps a monetary claim alive, or if the claim becomes time-barred (stale) after the statutory three-year limitation period expires?
(b) Whether a writ petition u/Article 226 is maintainable solely to recover unpaid dues arising out of a commercial contract with the State in the absence of a constitutional or statutory violation?
(c) Whether the High Court in its extraordinary writ jurisdiction can adjudicate contractual money claims when the State disputes both the claim amount and the underlying communications?

Headnotes

A. Contract Law – Release of outstanding contractual payments - The petitioner, Janardan Singh, was awarded contracts by the Flood Works Division, District Gonda, for protective works along the Charsari Embankment. The petitioner completed the assigned contractual work during the financial year 2016–17. Following completion of the work, the petitioner allegedly sent multiple letters and reminders over a period of roughly ten years—including representations dated 10.08.2022 and 25.02.2023—demanding the release of outstanding contractual payments from the Irrigation and Water Resources Department of Uttar Pradesh.

Throughout this period, the State authorities neither formally admitted nor acknowledged any liability or pending monetary dues owed to the petitioner. Furthermore, the State disputed both the claim amount and the receipt/validity of the correspondence submitted by the petitioner. In 2026—nearly a decade after completing the work—the petitioner filed the present writ petition u/Article 226 of the Constitution of India before the High Court of Judicature at Allahabad (Lucknow Bench), seeking a writ of mandamus to compel the State respondents to release the outstanding payments along with interest.

B. Once the clock of limitation starts ticking, it cannot be stopped and/or extended by sending of letters/communications in a one way traffic. Such an activity cannot stretch the limitation by any period. The claim has now become a stale claim, as a period of more than three years has elapsed from the date on which the cause of action arose, during which the petitioner could have asserted his claim. Since there is no admission of liability on the part of the State respondents, the period of limitation cannot be extended in any manner whatsoever. The petitioner ought to have been vigilant of its rights and the statutory period of limitation, in that regard. (Para 4)

Reminder letter also does not extend the period of limitation in any manner. The work had been completed in 2016-17 and merely belated representation dated 10.08.2022 and 25.02.2023 had been sent by the petitioner without any consequence. (Para 5)

C. Maintainability of a writ petition u/Article 226 in the case of a money claim - For invoking the writ jurisdiction, involvement of any constitutional or statutory right was essential and in the absence of a statutory right, the remedy u/Article 226 could not be availed to claim any money in respect of breach of contract, tort or otherwise. The petitioner's claim involves disputed questions of fact. In absence of any constitutional or statutory rights being involved, a writ proceeding would not lie to enforce a contractual obligation even if it is sought to be enforced against the State or its authorities. (Para 6)

Maintainability of writ petition in contractual dispute between an individual and the state - If facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings u/Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc. (Para 7)

Writ petition dismissed. (E-4)

Case Law Cited

1. M/S B and T AG Vs. Ministry of Defence, MANU/SC/0601/2023 (Para 4)
2. Secunderabad Cantonment Board Vs. M/S B. Ramachandraiah And Sons, AIR 2021 SC 1391 (Para 5)
3. Hindustan Petroleum Corporation Limited and others Vs. Dolly Das, (1999) 4 SCC 450 (Para 6)
4. Joshi Technologies International Inc. Vs. Union of India and others, (2015) 7 SCC 728 (Para 7)

List of Keywords

outstanding payments, contractual dispute, payment, constitutional, statutory right, absence, jurisdiction.

Appearances for Parties

For Petitioner(s): Krishna Kumar Singh, Priya Gupta, Sandeep Kumar
For Respondent(s): C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial relief(s):-

(i) Issue a writ, order or direction in the nature of MANDAMUS, directing the Respondents to release the outstanding payments due to the petitioner for work completed under contracts awarded by the Flood Works Division, District Gonda, for the protection of the Charsari Embankment, along with interest, in the interest of justice."

3. Upon perusal of the record, it is clear that the work was carried out by the petitioner during the year 2016-17, and the petitioner has allegedly been writing to the authorities seeking payment of his outstanding dues. However, there is not a single document on record whereby the State authorities have admitted and/or acknowledged their liability towards the petitioner. The petitioner has only placed on record copies of the letters written by him to the authorities over the past 10 years seeking payment of the said amount. Interestingly, the learned Additional Chief

Standing Counsel appearing for the State has disputed the amount and also the correspondence sent by the petitioner.

4. In our view, the claim has now become a stale claim, as a period of more than three years has elapsed from the date on which the cause of action arose, during which the petitioner could have asserted his claim. Since there is no admission of liability on the part of the State-respondents, the period of limitation cannot be extended in any manner whatsoever. It is settled law that once the clock of limitation starts ticking, it cannot be stopped and/or extended by sending of letters/communications in a one way traffic. Such an activity cannot stretch the limitation by any period. The petitioner ought to have been vigilant of its rights and the statutory period of limitation, in that regard. ***(M/S B and T AG vs. Ministry of Defence; reported in MANU/SC/0601/2023).***

5. Further, we find that the work had been completed in 2016-17 and merely belated representation dated 10.08.2022 and 25.02.2023 had been sent by the petitioner without any consequence. We hold that the reminder letter also does not extend the period of limitation in any manner***. (Secunderabad Cantonment Board vs M/S B. Ramachandraiah And Sons; reported in AIR 2021 SUPREME COURT 1391).***

6. Further, the petitioner's claim involves disputed questions of fact. As regards the question of maintainability of a writ petition under Article 226 in the case of a money claim, the same came up for consideration in several judgments before the Hon'ble Supreme Court, including in the case of ***Hindustan Petroleum Corporation Limited and others Vs. Dolly Das reported in (1999) 4 SCC 450,*** wherein it was held that for invoking the writ jurisdiction, involvement of any constitutional or statutory right was essential and in the absence of a statutory right, the remedy under Article 226 could not be availed to claim any money in respect of breach of contract, tort or otherwise. It was reiterated that in absence of any constitutional or statutory rights being involved, a writ proceeding would not lie to enforce a contractual obligation even if it is sought to be enforced against the State or its authorities.

7. The said principle was also reiterated in ***Joshi Technologies International Inc. vs. Union of India and others (2015) 7 SCC 728,*** wherein the Apex court after enumerating the various facets of litigation, in which writ petition would be maintainable in contractual dispute between an individual and the state, went on to also hold that if facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

8. In view of the foregoing discussions, and keeping in view the facts of the case at hand, we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution.

9. The writ petition is, accordingly, **dismissed.**

(2026) 7 ILRA 2395
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 02.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 5596 of 2026

Smt. Pushpa Devi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the expression "COVID duty" under welfare G.O.s extends to essential service employees (e.g., electricity supply) who keep medical infrastructure operational, or is it restricted strictly to hospital staff?
(b) Whether the High Court should remand the matter back to the administrative authority for fresh consideration after quashing an improper order, or grant direct monetary relief?

Headnotes

A. Social Security and Welfare Law - The petitioner's late husband, Sunder Lal, was an employee of Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL). He was assigned frontline duties to maintain and ensure uninterrupted electricity supply to hospitals, oxygen plants, and residential locations housing COVID-19 patients. While discharging these essential duties, he contracted COVID-19 and passed away on 23.04.2021. Official certificates from the CMO, Lucknow, and the Electricity Department confirmed the cause of death and his frontline duty deployment.

Despite favorable recommendations from MVVNL (13.09.2021) and the DM, Lucknow (16.09.2021), the designated State Committee rejected her claim on 06.10.2022. The Committee claimed he was not covered under G.O. dated 11.04.2020 because he was not directly involved in medical treatment (*COVID roktham, upchar and bachao*). Pushpa Devi approached the High Court seeking a writ of certiorari to quash the rejection order and a writ of mandamus for the release of the ₹50 Lakh ex-gratia payment.

B. A myopic interpretation cannot be given to COVID-Duty so as to confine only to those persons, who were specially assigned to discharge their duties in treatment of people physically in hospitals. People who worked in the electricity department, water supply department, telephone department, police department and such other essential services departments, during COVID-Period should be taken to be on COVID Duty as their discharge of duties helped the State Government in containing the spread of pandemic covid-19 virus and also provided an impetus in the treatment and protection of COVID-19 patients by keeping them in confinement. (Para 7)

A Government Employee engaged in supply of essential services particularly for smooth running of hospitals do face the challenge of COVID 19 pandemic and as such can be included as a Corona Warrior for grant of ex gratia compensation in event of his/her death due to infection of COVID-19, though not directly deployed in a hospital, upon a

pragmatic reading and interpretation of relevant GOs dated 20.05.2020 and 22.06.2021 as being subordinate welfare legislation. (Para 8)

Since the deceased was regularly engaged in ensuring an uninterrupted supply of electricity to hospitals and oxygen plants where COVID-19 patients were admitted and treated, he is entitled to be treated as a COVID Warrior. Thus, the petitioner is fully covered by the GO which provides for payment of compensation to the family of a person who contracts COVID-19 while performing duties related to the prevention, control and management of the COVID-19 pandemic. Accordingly, the impugned order dated 06.10.2022 is hereby quashed and set-aside. (Para 6, 9)

C. The Constitutional or statutory remedies are not intended for academic discourse. If a case deserves relief, it must be granted then and there, unflinchingly if need be. Balancing of equities is not to be confused with avoiding or postponing the relief. 'Consider jurisprudence' of remanding the matter back has been deprecated by Hon'ble Supreme Court. The husband of the petitioner died due to COVID-19 on 23.04.2021 and the issue had been hanging fire for more than five years. The Hon'ble Court took cognizance of the time already lapsed in releasing the ex-gratia amount and instead of remanding the matter to the competent authority for considering the claim of the petitioner *denovo* in view of the aforesaid observation, granted the relief. (Para 10)

Writ petition is allowed with consequential reliefs. (E-4)

Case Law Cited

1. Smt. Pushpa Devi Vs. State of U.P. and others, Division Bench judgment of this Court dated April 17, 2026 passed in Writ-C No. 34909 of 2023 (Para 4)
2. Vipin Kashyap Vs. State of U.P. and others, Division Bench judgment of this Court dated April 29, 2026 passed in Writ-C No. 42989 of 2025 (Para 4)
3. Smt. Premlata Pandey Vs. State of U.P. and 3 others, Writ-C No.17575 of 2023, decided on 29.05.2023 (Para 7)
4. Mahendra Prasad Agarwal Vs. Arvind Kumar Singh, 2026 INSC 175 (Para 10)

List of Acts/Orders

Government Order dated 11.04.2020.

List of Keywords

essential services, smooth running, ex-gratia, consider jurisprudence, constitutional, statutory, remedy, myopic interpretation, warrior, directly deployed.

Appearances for Parties

For Petitioner(s): Shobhit Singh, Ajai Kumar Singh, Prabhat Rathore, Rifat Naaz
For Respondent(s): C.S.C., Aprajita Bansal

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

"A. Issue a writ, order or direction in the nature of Certiorari to quash an order passed by the Committee constituted vide office order dated 06.10.2022 wherein on 10.10.2022 and 14.11.2022 the meeting was held and the claim of the petitioner to release ex gratia compensation of Rs. 50,00,000/- (Fifty Lakh Rupees) in pursuance of the Government Order dated 11.04.2020 has been rejected annexed as Annexure No. 1.

B. Issue a writ, order or direction in the nature of Mandamus commanding and directing the Respondent No. 1 to release the payment of ex-gratia compensation of Rs. 50 lakhs as financial aid provided in the Government order dated 11.04.2020 in favor of the petitioner. "

3. The present petition has been filed by the widow of Late Sunder Lal, who died due to COVID-19. Learned counsel for the petitioner submits that the petitioner is aggrieved by the impugned order dated 06.10.2022, whereby the claim of the petitioner was rejected on the ground that the petitioner was held not to be covered under the Government Order dated 11.04.2020. It is the submission of petitioner that her husband was an employee of the Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL) and he got infected with COVID-19 disease while discharging his duties with respect to the containment of COVID-19 disease and as such in view of the Government Order dated 11.04.2020 and subsequent notifications dated 22.06.2021 of the State Government the petitioner is entitled for ex-gratia payment of Rs. 50,00,000/- (Rs. 50 Lakhs).

4. In order to buttress his arguments, learned counsel for the petitioner relies upon Division Bench judgments of this Court dated ***April 17, 2026 passed in Writ-C No. 34909 of 2023 (Smt. Pushpa Devi Vs. State of U.P. and others) and dated April 29, 2026 passed in Writ-C No. 42989 of 2025 (Vipin Kashyap Vs. State of U.P. and others)*** in which the persons who were involved in similar activities have been declared COVID Warrior and have been awarded the claims as raised by the petitioner in the instant petition.

5. On the other hand, learned counsel for the respondent has supported the impugned order and submitted that the husband of the petitioner (deceased) did not perform any duty so as to come within the expression of "COVID roktham, upchar and bachao" i.e. containment of COVID pandemic/COVID-19 treatment and protection from infection of COVID.

6. Having heard learned counsel for the parties. A perusal of the record would reveal that Chief Medical Officer Luknow vide a certificate dated 04.08.2021 has certified the death of the husband of the petitioner due to COVID-19 disease. It also appears that the husband of the petitioner (deceased) was assigned duty for the prevention and control of COVID-19 and to ensure uninterpreted power supply to hospitals, oxygen plants, people

staying at homes and others. A certificate dated 11.08.2021 issued by the Electricity Department, which has been annexed as Annexure No. 2, indicates that the deceased was an employee in the electricity department and was assigned duty for maintenance and supply of electricity for the aforesaid purpose. The report/certificate further indicates that the deceased was on the front-line and was engaged in ensuring an uninterrupted electricity supply to the houses and hospitals wherein the COVID patients were staying and admitted. We also find that a recommendation Letter dated 13.09.2021 was also issued in favour of petitioner by the concerned Electricity Department (MVVNL), which was followed by a Letter dated 16.09.2021 relating to the release of the said ex-gratia amount in favour of the petitioner by the concerned District Magistrate, Lucknow.

7. Further, we find that a Division Bench of this Court in ***Smt. Pushpa Devi (Supra)*** involving similar issue of payment of ex-gratia to the dependent of an employee of Electricity Department, who died due to COVID-19 after considering another judgment of this Court in ***Smt. Premlata Pandey Versus State of U.P. and 3 others, (Writ-C No.17575 of 2023) decided on 29.05.202***3, which was related to compensation to a Head Constable in the Police Department, who died due to COVID-19, noted that a myopic interpretation cannot be given to COVID-Duty so as to confine only to those persons, who were specially assigned to discharge their duties in treatment of people physically in hospitals.The Division Bench went on to hold in the said case of ***Smt. Pushpa Devi (Supra)*** that in the electricity department, water supply department, telephone department, police department and such other essential services departments who worked during COVID-Period should be taken to be on COVID-Duty as their discharge of duties helped the State Government in containing the spread of pandemic covid-19 virus and also provided an impetus in the treatment and protection of COVID-19 patients by keeping them in confinement.

8. Similarly, a Co-ordinate Bench of this Court in ***Vipin Kashyap (Supra)*** when was faced with a similar issue of an employee engaged in the Electricity Department i.e. Northern Electricity Distribution Corporation Limited, Mathura went on to acknowledge and hold that a Government Employee engaged in supply of essential services particularly for smooth running of hospitals do face the challenge of COVID 19 pandemic and as such can be included as a Corona Warrior for grant of ex gratia compensation in event of his/her death due to infection of COVID-19, though not directly deployed in a hospital, upon a pragmatic reading and interpretation of relevant Government Orders dated 20.05.2020 and 22.06.2021 as being subordinate welfare legislation.

9. Since the deceased was regularly engaged in ensuring an uninterrupted supply of electricity to hospitals and oxygen plants where

COVID-19 patients were admitted and treated, he is entitled to be treated as a COVID Warrior. Thus, we are of the considered view that the petitioner is fully covered by the Government Order which provides for payment of compensation to the family of a person who contracts COVID-19 while performing duties related to the prevention, control and management of the COVID-19 pandemic. Accordingly, the impugned order dated 06.10.2022 is hereby quashed and set-aside.

10. Normally, we would have remanded the matter to the competent authority for considering the claim of the petitioner denovo in view of our aforesaid observation. However, we are cognizant of the time already lapsed in releasing the ex-gratia amount as notably the husband of the petitioner died due to COVID-19 on 23.04.2021 and the issue had been hanging fire for more than five years. Recently, the Hon'ble Supreme Court in the case of ***Mahendra Prasad Agarwal Vs. Arvind Kumar Singh: 2026 INSC 175***, held that if relief deserves then it should be granted then and there and it has further deprecated 'consider jurisprudence' of remanding the matter back. The relevant paragraphs of the aforementioned judgment are extracted as under :

"14. There is no doubt about the fact that the "consider jurisprudence", so routinely adopted these days and if we may use the expression - to throw the ball out of the Court, is counterproductive and harms the system.

15. When a claim of a right is legal and justified, relief must follow. The Constitutional or statutory remedies are not intended for academic discourse. If a case deserves relief, it must be granted then and there, unflinchingly if need be. Balancing of equities is not to be confused with avoiding or postponing the relief. These are not matters of law, but of its working and practice. Unlike law and its procedures, good practices that evolve over a period of time are far more precious than written laws, as it is in this practice that we see acceptance and internalization of the spirit of law. It is necessary to recognize, nurture and develop good practices which become habits. These habits come from the shared belief, values and attitudes that breathe vitality into rule of law. Legal culture integrates collective beliefs, fostering habits. It is necessary and in fact compelling to keep our remedies simple, effective and efficient."

11. Keeping the totality of the aforesaid facts and circumstances and for all the aforesaid reasons, **the writ petition is allowed with consequential reliefs**. Accordingly, the respondents/ authority concerned is directed to make payment of ex-gratia compensation as per the Government Order dated 11.04.2020 to the petitioner within a period of eight weeks from the date of production of a certified copy of this order.

12. There shall be no order as to cost (s).

(2026) 7 ILRA 2400
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 5923 of 2026

Hari Narayan Tiwari ...Petitioner
Versus
State Information Commission U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether a High Court, while exercising its extraordinary discretionary jurisdiction u/Article 226 of the Constitution, can dismiss a writ petition solely on the ground of inordinate, unexplained delay and laches?
(b) Whether absence of a prescribed statutory limitation period u/Article 226 entitles a litigant to challenge a stale administrative order (passed nearly three years prior) without offering any reasonable explanation for the delay?

Headnotes

A. Constitutional Law – Delay and laches - It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction u/Article 226, this Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. (Para 5)

The High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. (Para 6)

A constitutional court has a duty to protect the rights of the citizens but also has to be alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the *lis* at a belated stage should be entertained or not. (Para 8)

In present case, the Petitioner is seeking to challenge a stale order dated 07.08.2023 passed by the State Information Commission, Lucknow (Respondent No.2). There had been an inordinate delay of close to three years in approaching this court. The doctrine of delay and laches squarely apply to the facts of the present case and the same cannot be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same, bearing in mind that it is exercising an extraordinary and equitable jurisdiction. However, in the present case, no reason has been given nor any effort has been made by the petitioner to explain the delay. (Para 7, 9)

Writ petition dismissed. (E-4)

Case Law Cited

1. Tridip Kumar Dingal and others v. State of W.B and others, (2009) 1 SCC 768 (Para 5)
2. Karnataka Power Corportion Ltd. and another v. K. Thangappan and another, (2006) 4 SCC 322 (Para 6)

List of Keywords

delay, laches, maintainable, fundamental, discretionary, jurisdiction, negligence, omission.

Appearances for Parties

For Petitioner(s): Anil Kumar Tiwari, Ujjawal Tewari
For Respondent(s): Shikhar Anand

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner has sought the following substantial relief(s):-

"i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 7.8.2023 passed by learned State Information Commissioner, Lucknow i.e. opposite party No.2, contained in Annexure No.1 to this writ petition."

3. Bare perusal of the impugned order it is clear that the same had been passed on August 7, 2023. No explanation has been given with regard to delay in filing the present petition at this belated stage.

4. Although there is no doubt that no limitation has been prescribed in law for filing a Writ Petition under Article 226 of our constitution. However, when the extraordinary jurisdiction of a writ is invoked, this court is called upon to satisfy itself as to whether within a reasonable time the jurisdiction has been invoked or not.

5. Pertinently, if it is found that the writ petitioner is guilty of delay and latches, this Court can very well dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, this Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court. The Hon'ble Aex Court in the case of Tridip Kumar Dingal and others v. State of W.B and others, ***(2009) 1 SCC 768*** has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations Is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a Patna High Court CWJC No. 6284 of 2024 dt.08-05-2024 writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006: (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court (AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136: (1992) 21 ATC 675: (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110], Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

6. To the same effect is the Judgment of the Supreme Court in **Karnataka Power Corportion Ltd. and another v. K. Thangappan and another, *(2006) 4 SCC 322*** whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221: 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808: AIR 1969 SC 329]. Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried

upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84: AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566: AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights Patna High Court CWJC No. 6284 of 2024 dt.08-05-2024 in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

7. Having regard to the afore-stated principles of law enunciated herein above, when we turn our attention to the facts on hand, it is apparent that the Petitioner is seeking to challenge a stale order dated August 7, 2023 passed by the State Information Commission, Lucknow. We are clear in our mind that there had been an inordinate delay of close to three years in approaching this court. The doctrine of delay and laches squarely apply to the facts of the present case and the same cannot be lightly brushed aside. We are conscious of the fact that a writ court is required to weigh the explanation offered and the acceptability of the same, bearing in mind that it is exercising an extraordinary and equitable jurisdiction. However, in the present case, we do not find any explanation to be forthcoming.

8. As a matter of fact there is not even an effort to explain the said laches. No doubt, we as a constitutional court have a duty to protect the rights of the citizens but we cannot be oblivious to the fact that we also have to alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.

9. For all the aforesaid reasons and primarily because no reasons nor any effort has been made by the petitioner to explain the delay in approaching this Court, the present Writ Petition is being ***dismissed as not maintainable*** on the ground of laches.

(2026) 7 ILRA 2404
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.07.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 7398 of 2026

M/S Anu Enterprises ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether rights and claims arising out of non-statutory contracts, Letters of Intent, or contractual breaches can be enforced via a writ petition u/Article 226?
(b) Whether a contractor can indirectly challenge an inter-departmental State order transferring project oversight between government entities?
(c) Whether the High Court should exercise discretionary writ jurisdiction when efficacious statutory/common law remedies exist?

Headnotes

A. Civil Law – Tenders and Contracts - Respondent No. 3 (U.P. State Construction and Infrastructure Development Corporation) awarded two construction tenders for Mini Indoor Stadiums in Ambedkarnagar to the petitioner. Letters of Intent (LOIs) were issued to the petitioner on 21.04.2026 and 22.04.2026. On 29.04.2026, the Special Secretary, Government of U.P., issued a communication directing that Respondent No. 7 (U.P. Projects Corporation Limited) would replace Respondent No. 3 as the nodal agency for the projects due to unsatisfactory execution by Respondent No. 3.

Consequently, the petitioner was restrained from executing the work, and Respondent No. 7 issued fresh short-term e-tender notices (Nos. 20 & 21/GM-3/UPPCL/2026-27). The petitioner approached the High Court seeking to quash the State's communication dated 29.04.2026 and the fresh e-tender notices, alongside a mandamus directing the State to allow it to complete the work under the original LOIs.

B. If a person is aggrieved in respect of non-statutory and purely contractual rights flowing from a contract, remedy u/Article 226 of the Constitution is not available. If a term of contract is violated, ordinarily remedy is not the writ petition u/Article 226. Disputes arising out of terms of such contract or alleged breaches have to be settled by ordinary principles of law of contract. (Para 10)

Entertainability of a Writ Petition in contractual matter - The contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil Court, as the case may be. (Para 11, 13)

Ordinarily the court will not entertain a petition for a writ u/article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again, the High Court

does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. (Para 14)

If the petitioner is of the opinion that respondent no. 3 has committed a breach of the contractual obligations arising out of the LOIs, it is open to the petitioner to initiate appropriate proceedings against respondent no. 3 for recovery of damages or any other relief available in law. The action of the Government vide letter dated 29.04.2026 is upon the respondent no.3 and the said action cannot be indirectly challenged by the petitioner by way of filing a writ petition. If at all, the grievance arising from the transfer of the projects is one which respondent no.3 may choose to agitate. It is upto the respondent no.3 to initiate appropriate proceedings against the State. The respondent no.3 cannot be permitted to indulge in proxy litigation through the petitioner. In any case, the petitioner shall remain at liberty to seek compensation for loss of profit or any other consequential relief by invoking the arbitration clause or by instituting appropriate civil proceedings, against the respondent no.3, in accordance with law. (Para 8)

C. The disputes relating to interpretation of terms and conditions of a contract could not be examined/challenged or agitated in a petition filed u/Article 226. It is a matter for adjudication by a civil court or in arbitration, if provided for in the contract or before the DRT or under the Securitization Act. It has to be understood that the present writ petition requires interpretation of several terms of the conditions of contract executed between the petitioner and the Respondent No.3, to arrive at any decision. (Para 12)

The grounds canvassed by the petitioner is in the nature of breach of contract and no writ or order can be issued u/Article 226 so as to compel the authorities to remedy a breach of contract, pure and simple. However, that does not mean that the petitioner is remediless, as the petitioner can very well approach the competent court for adjudication by a Civil Court or by the mechanism of arbitration, if provided for in the contract.

Writ petition dismissed. (E-4)

Case Law Cited

1. Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others, 2024(7) SCR 532; 2024 AIR (SC) 3784 (Para 5)
2. Bareilly Development Authority Vs. Ajai Pal Singh, AIR 1989 SC 1076 (Para 10)
3. Kerala State Electricity Board and another Vs. Kurian E. Kalathil and others, 2000 (6) SCC 293 (Para 10)
4. State of U.P. and others Vs. Bridge & Roof Co., AIR 1996 SC 3515 (Para 10)
5. Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. and Ors., 2010 (11) SCC 186 (Para 12)
6. Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond and Gem Development Corporation Ltd. and Anr., 2013(5) SCC 470 (Para 13)
7. Rikhab Chand Jain Vs. Union of India, 2025 SCC OnLine SC 2510 (Para 14)

List of Keywords

terms and conditions, contractual rights, entertainability, writ petition, tender, construction.

Appearances for Parties

For Petitioner(s): Hemant Kumar Mishra, Abhishek Mishra, Arti Ganguly
For Respondent(s): C.S.C., I.M. Pandey Ist, Naresh Chandra Mehrotra

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the petitioner as well as Shri Pankaj Khare and Ms. Isha Mittal, learned Additional Chief Standing Counsel for the State-respondent(s) and perused the materials available on record.

2. This writ petition has been filed by the petitioner for the following main relief(s):

"(a) To issue a writ order or direction in the nature of Certiorari quashing the impugned order dated 29.04.2026 issued by the Opposite Party No. 1, contained as Annexure no. 1 to this Writ Petition.

(b) To issue a writ order or direction in the nature of Certiorari quashing the impugned Short Term e-tender notice no. 20/ GM-3/ UPPCL/ 2026-27 dated 30.06.2026 and tender no. 21/ GM-3/UPPCL/2026-27 dated 30.06.2026 issued by the Opposite Party No. 7, contained as Annexure No. 2 and 3 to this Writ Petition respectively.

(c) To issue a writ order or direction in the nature of MANDAMUS commanding the Opposite Party No. 1 to allow the Petitioner to complete its work in terms of the Letter of Intent dated 21.04.2026 in respect of Pandit Deen Dayal Upadhyay Rajkiya Model Inter College, Khajuri, Ambedkarnagar and letter of Intent dated 22.04.2026 in respect of Rajkiya Inter College, Akbarpur, Ambedkarnagar."

3. The factual matrix indicates that respondent no.3, namely, the Uttar Pradesh State Construction and Infrastructure Development Corporation, had been entrusted by the State of Uttar Pradesh with the execution of certain projects. For carrying out the said projects, respondent no. 3 invited several tenders, and the petitioner was declared successful in respect of two projects, namely, (i) the construction of a Mini Indoor Stadium at Pandit Deen Dayal Upadhyay Rajkiya Model Inter College, Khajuri, Ambedkar Nagar, and (ii) the construction of a Mini Indoor Stadium at Rajkiya Inter College, Akbarpur, District Ambedkar Nagar.

4. Letters of Intent in respect of the aforesaid projects were issued to the petitioner on 21.04.2026 and 22.04.2026 by respondent no. 3. However, by order dated 29.04.2026, the Special Secretary, Government of Uttar Pradesh, addressed a communication to the Director, Secondary Education, directing that the U.P. Projects Corporation Limited (respondent no. 7), instead of respondent no. 3, would act as the nodal agency for execution of the said two projects in respect of which the petitioner had already been awarded the tenders. Pursuant to the said communication, the petitioner was restrained from executing the works allotted to him by respondent no. 3. Furthermore, respondent no. 7 issued short-term tenders for both the projects and proceeded to open the technical bids in respect thereof.

5. Learned counsel for the petitioner submits that, once the petitioner had been declared successful in the tender process and Letters of Intent had been issued in his favour by respondent no. 3, the communication dated 29.04.2026 issued by the Special Secretary, Government of Uttar Pradesh, indirectly takes away the valuable rights that had accrued to the petitioner under the tender process. It is contended that the petitioner could not have been deprived of the contract in the aforesaid manner after the issuance of the Letters of Intent.

Learned counsel has placed reliance upon a judgment of the Hon'ble Supreme Court in ***Subodh Kumar Singh Rathour vs. Chief Executive Officer and others*** *reported in 2024(7) SCR 532 : 2024 AIR (SC) 3784.*

6. Per contra, learned counsel appearing for the State submits that the present writ petition is not maintainable, as the petitioner has no locus standi to invoke the writ jurisdiction in the facts of the present case. It is further submitted that any grievance arising out of the tender or the Letters of Intent issued by respondent no. 3 is contractual in nature and is liable to be resolved in terms of the arbitration clause contained therein. Learned counsel further submits that the State, in its wisdom, transferred the projects to another nodal agency, namely, respondent no. 7, as the works were not being executed satisfactorily by respondent no. 3.

7. The question that arises for consideration in the present writ petition is whether the rights that accrued to the petitioner pursuant to the issuance of the Letters of Intent and the award of the tenders can be enforced in proceedings under Article 226 of the Constitution of India, or whether the petitioner is required to seek redress before the appropriate forum, such as the Arbitral Tribunal or the competent Civil Court, in accordance with law.

8. In our considered view, if the petitioner is of the opinion that respondent no. 3 has committed a breach of the contractual obligations arising out of the Letters of Intent, it is open to the petitioner to initiate appropriate proceedings against respondent no. 3 for recovery of damages or any other relief available in law. The action of the Government vide letter dated 29.04.2026 is upon the respondent no.3 and the said action cannot be indirectly challenged by the petitioner by way of filing a writ petition. If at all, the grievance arising from the transfer of the projects is one which respondent no.3 may choose to agitate. It is upto the respondent no.3 to initiate appropriate proceedings against the State. The respondent no.3 cannot be permitted to indulge in proxy litigation through the petitioner. In any case, the petitioner shall remain at liberty to seek compensation for loss of profit or any other consequential relief by invoking the arbitration clause or by instituting appropriate civil proceedings, against the respondent no.3, in accordance with law.

9. The judgments relied upon by learned counsel for the petitioner lay down general principles of law. However, the same are distinguishable on facts and do not advance the case of the petitioner in the peculiar facts and circumstances of the present case. Consequently, the said decisions are of no assistance to the petitioner.

10. The Hon'ble Supreme Court in the case of **Bareilly Development Authority vs. Ajai Pal Singh, AIR 1989 SC 1076;** has held that, if a person is aggrieved in respect of non-statutory and purely contractual rights flowing from a contract, remedy under Article 226 of the Constitution is not available. Similarly, in ***Kerala State Electricity Board and another Vs. Kurian E. Kalathil and others, 2000(6) SCC 293***, the Apex Court held that, if a term of contract is violated, ordinarily remedy is not the writ petition under Article 226. Disputes arising out of terms of such contract or alleged breaches have to be settled by ordinary principles of law of contract.

11. In ***State of U.P. and others vs. Bridge & Roof Co.; AIR 1996 SC 3515***; the Apex Court, when called upon to examine the entertainability of a Writ Petition in contractual matter, held as follows:

"*Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil Court, as the case may be.*"

12. It has to be understood that the present writ petition requires interpretation of several terms of the conditions of contract executed between the petitioner and the Respondent No.3, to arrive at any decision. In ***Zonal Manager, Central Bank of India vs. Devi Ispat Ltd. and Ors., 2010(11) SCC 186***; the Apex Court said:

"It is settled law that the disputes relating to interpretation of terms and conditions of a contract could not be examined/challenged or agitated in a petition filed under Article 226 of the Constitution. It is a matter for adjudication by a civil court or in arbitration, if provided for in the contract or before the DRT or under the Securitization Act."

Further, it has to be understood that the grounds canvassed by the learned Counsel for the petitioner is in the nature of breach of contract and this court is clear in its mind that no writ or order can be issued under Article 226 so as to compel the authorities to remedy a breach of contract, pure and simple. However, that does not mean that the petitioner is remediless, as the petitioner can very well approach the competent court for adjudication by a Civil Court or by the mechanism of arbitration, if provided for in the contract.

13. The Supreme Court referring the judgment of ***Bareilly Development Authority vs. Ajai Pal Singh (supra), and Bridge & Roof Co. (India) Ltd., (supra), in the case of Rajasthan State Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem Development Corporation Ltd. and Anr.; 2013(5) SCC 470*** has observed as under:

"There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties."

14. Recently, the Supreme Court in ***Rikhab Chand Jain vs. Union of India*** reported in ***(2025 SCC OnLine SC 2510),*** while holding the concept of entertainability and maintainability of writ petition held, relevant to the context:

"9. While deciding whether to entertain a petition under Article 226 bearing in mind the precedents in the field, a writ court ought to additionally notice the forum designated by the statute for the litigant to approach. This is necessary because the alternative forum that is provided by the

statute has to be one which can dispense speedy and efficacious relief. However, as in the present case, if the statutorily designated alternative forum happens to be the high court itself whose jurisdiction under Article 226 is invoked and not any ordinary statutory functionary/tribunal, refusal to entertain the petition should be the rule and entertaining it an exception."

10. We may profitably refer, in this context, to the Constitution Bench decision in ***Thansingh Nathmal v. A. Mazid, Superintendent of Taxes, AIR 1964 SC 1419.*** *In Thansingh Nathmal (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows:*

"The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. ***Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again, the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed****. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction* ***for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."***

(emphasis ours)

11. Since the appellant had a remedy by way of a reference before the High Court against the order dated 23rd June, 2000 of the CEGAT, we do not consider refusal to exercise discretion in favour of the appellant to be so fundamentally incorrect that interference is warranted."

15. In view of above exposition of law and for all the aforesaid reasons, petitioner as having remedy in common law regarding alleged breach of contract, we hold that the same cannot be enforced by way of writ petition under Article 226 of the Constitution. Accordingly, the present writ petition is **dismissed**.

(2026) 7 ILRA 2410
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.07.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.
THE HON'BLE VIVEK SARAN, J.

Writ C No. 28159 of 2026

Shivalik Small Finance Bank Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether the High Court should issue a writ directing time-bound execution/dispossession u/s 14 of the SARFAESI Act when proceedings are moving through normal administrative channels?
(b) Whether the principle in *Dilip Kumar Singh* Vs. *State of U.P.* (that an S.A. u/s 17 does not trigger an automatic stay) obligates the High Court to issue a mandamus for physical dispossession?

Headnotes

A. Finance and Revenue Law – Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002: Section 14, 17 - On 01.11.2025, the Additional District Magistrate (F&R), Gautam Budh Nagar, passed an order u/s 14 of the SARFAESI Act to assist the petitioner bank in taking physical possession of the secured asset. Physical possession was not immediately delivered. Meanwhile, the borrower filed Securitisation Application (S.A.) No. 516 of 2026 before the DRT, which was actively scheduled for hearing on 24.09.2026.

The bank contended that since there was no formal interim stay order granted by the DRT, the pending S.A. created no legal bar against dispossession. Relying on *Dilip Kumar Singh v. State of U.P.* (*infra*), the bank argued that filing an S.A. u/s 17 does not operate as an automatic stay and requested a direction for immediate physical possession. The State submitted that proceeding with forced dispossession while the borrower's statutory challenge is pending before the DRT with a fixed hearing date would render the borrower's legal remedies meaningless.

B. It would be most inappropriate to Court to entertain the writ petition u/Article 226 or u/Article 227 simply for the purpose of expediting hearing of cases as it would create a class of litigants who moved the Court in a separate and preferential category, whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel. (Para 9, 10)

Admittedly, before this Court the effort of the petitioner/financial institution is to seek dispossession by force of the borrower from the mortgaged property that too during the pendency of the legal recourse taken by the borrower. (Para 6)

Petitioner's argument that aforementioned judgment empowers this Court to direct dispossession of borrower of secured asset is misplaced. There is no doubt that the ADM (Finance and Revenue) has to proceed for dis-possession once an application u/s 14 of the Act is made and **the said Act is a ministerial act but it is always upon to the concerned authority to fix priority as per the number of cases pending before it.** (Para 7, 8)

Nothing has been brought on record to demonstrate the number of matters which are pending before the concerned SDM to which such a direction is sought to be issued by the petitioner. Thus, it would be fit to hold that as the S.A. No.516 of 2016 is pending before the DRT with a specific date fixed as 24.09.2026 then the respondent no.3/ADM (Finance & Revenue) be left to determine the manner in which he decides to proceed, although it is expected from the authority that it would be adhering to the statutory provision and law laid down in that regard. (Para 11, 12)

Writ petition dismissed. (E-4)

Case Law Cited

1. Dilip Kumar Singh and Another Vs. State of U.P. and Others, (2013) 1 ADJ 91 (DB) (Para 3)
2. Alishad Usmani and others Vs. Ali Isteba and Ors., 2015 (109) ALR 513 (Para 9)
3. High Court Bar Association, Allahabad Vs. State of U.P. and Others, (2021) 6 SCC 267 (Para 10)

List of Acts/Orders

Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

List of Keywords

finance, revenue, dispossession, force, ministerial act, borrower, secured asset, preferential category, expediting, hearing of cases, bank, automatic stay.

Appearances for Parties

For Petitioner(s): Nishant Verma, Sagar Mehrotra
For Respondent(s): C.S.C.

(Delivered by Hon'ble Vivek Saran, J.)

1. Heard Sri Sagar Mehrotra, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The instant petition has been filed with following relief:

"I. Issue an appropriate writ, order or direction to Respondent Nos.4 and 5 to provide physical possession of the secured asset to the Petitioner in compliance with the order passed by the Respondent No.3/Additional District Magistrate (Finance and Revenue), District Gautam Budh Nagar on 01.11.2025 under Section 14 of the SARFAESI Act, 2002, in time-bound manner."

3. Learned counsel for the petitioner submits that inspite of the order dated 11.01.2025 passed by the Additional District Magistrate, the physical possession of the secured assets had yet not been handed over. He submits that the respondent no.3 is duty bound to get his order complied with. He further submits that although the borrower has preferred S.A. No.516 of 2026 and in which although the next date fixed by the Court is 24.09.2026 but as on date there is no interim order and as such there is no embargo on the Additional District Magistrate (Finance and Revenue) to proceed for dispossession. He further relied upon a judgment passed by the Co-ordinate Bench of this Court inre:**Dilip Kumar Singh and Another v. State of U.P. and Others1** to buttress his submission.

4. Per contra, learned Standing Counsel submits that although it is abundant duty of the respondent no.3/Additional District Magistrate (Finance and Revenue) to proceed for dispossession but in the instant case since the borrower has filed S.A. No.516 of 2026 and which is pending adjudication and 24.09.2026 is fixed, therefore proceeding with the matter would render the efforts of the borrower by taking legal recourse meaningless.

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

6. Admittedly, before this Court the effort of the petitioner/financial institution is to seek dispossession by force of the borrower from the mortgaged property that too during the pendency of the legal recourse taken by the borrower as admittedly S.A. No.516 of 2026 is pending adjudication before the Debt Recovery Tribunal and in which a date is fixed.

7. The judgment relied upon by learned counsel for the petitioner inre: **Dilip Kumar Singh and Another (Supra)** rendered by the coordinate Bench of this Court while determining issue no.3 it held that there would not be any automatic stay merely by filing the application under Section 17 of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') and also that the Tribunal can impose a condition relating to deposit. The relevant paragraph of the said judgment reads as under:

"17. We accordingly hold that there will be no automatic stay on filing of an application under Section 17 of the Securitisation Act, and the Tribunal while granting stay of auction can impose a condition relating to deposit. Re. Question (iii)"

8. Thus the reliance of the learned counsel that this judgment empowers this Court to direct dispossession of borrower of secured asset is misplaced. There is no doubt that the Additional District Magistrate (Finance and Revenue) has to proceed for dis-possession once an application under Section 14 of the Act is made and the said Act is a ministerial act but it is always upon to the concerned authority to fix priority as per the number of cases pending before it.

9. A coordinate Bench of this Court inre: **Alishad Usmani and others vs. Ali Isteba and Ors.2** has held that it would be most inappropriate to Court to entertain the writ petition under Article 226 or under Article 227 of the Constitution of India simply for the purpose of expediting hearing of cases as it would create a class of litigants who moved the Court in a separate and preferential category, whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel. The relevant paragraph of the judgment reads as under:

1. "…...It would be most inappropriate to Court to entertain a writ petition under Article 226 and/or under Article 227 of the Constitution simply for the purpose of expediting the hearing of a suit. Such orders, if granted, place a class of litigants, who

move the court in a separate and preferential category whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel…."

10. The same view has also been expressed by the Constitutional Bench of the Hon'ble Supreme Court inre: **High Court Bar Association, Allahabad vs. State of U.P. and Others3.** The relevant paragraph reads as under:

"42. Therefore, constitutional Courts should not normally fix a time-bound schedule for disposal of cases pending in any Court. The pattern of pendency of various categories of cases pending in every Court, including High Courts, is different. The situation at the grassroots level is better known to the judges of the concerned Courts. Therefore, the issue of giving out-of- turn priority to certain cases should be best left to the concerned Courts. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.

43. There is another important reason for adopting the said approach. Not every litigant can easily afford to file proceedings in the constitutional Courts. Those litigants who can afford to approach the constitutional Courts cannot be allowed to take undue advantage by getting an order directing out-of-turn disposal of their cases while all other litigants patiently wait in the queue for their turn to come. The Courts, superior in the judicial hierarchy, cannot interfere with the day-to-day functioning of the other Courts by directing that only certain cases should be decided out of turn within a time frame. In a sense, no Court of law is inferior to the other. This Court is not superior to the High Courts in the judicial hierarchy. Therefore, the Judges of the High Courts should be allowed to set their priorities on a rational basis. Thus, as far as setting the outer limit is concerned, it should be best left to the concerned Courts unless there are very extraordinary circumstances."

11. Nothing has been brought on record to demonstrate the number of matters which are pending before the concerned SDM to which such a direction is sought to be issued by the petitioner.

12. Thus it would be in the fitness of thing that as the S.A. No.516 of 2016 is pending before the Debt Recovery Tribunal with a specific date fixed as 24.09.2026 then the respondent no.3/Additional District Magistrate (Finance & Revenue) be left to determine the manner in which he decides to proceed, although it is expected from the authority that it would be adhering to the statutory provision and law laid down in that regard.

13. In this view of the matter, we do not find it as a fit case to exercise our discretion. The writ petition is accordingly, **dismissed.**

14. No order as to costs.

(2026) 7 ILRA 2414
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.07.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.
THE HON'BLE VIVEK SARAN, J.

Writ C No. 32565 of 2021

Bharat Lal Gupta **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Issue(s) for consideration

(a) Whether public authorities can routinely deny or refuse to issue/renew a Character Certificate merely because a minor criminal case involving non-heinous offenses is pending?
(b) How should authorities handle character verification when criminal cases are pending or disclosed?

Headnotes

A. Civil Law – Cancellation of candidature – character certificate - On 04.01.2021, the petitioner submitted an application to the District Magistrate, Jalaun at Orai (Respondent No. 2), seeking the renewal/issuance of a Character Certificate. On 01.11.2021, the District Magistrate rejected the application on the sole ground that Case Crime No. 913 of 2018 u/Ss 323 (voluntarily causing hurt), 504 (intentional insult), and 506 (criminal intimidation) of the Indian Penal Code (IPC) was pending against the petitioner. The petitioner approached the High Court via Article 226 seeking a writ of certiorari to quash the rejection order dated 01.11.2021 and a mandamus directing the authorities to issue/renew the Character Certificate.

B. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case. (Para 6)

In the present case the prayer to grant character certificate in favour of the petitioner was rejected due to pendency of Case Crime No.913 of 2018 u/Ss 323, 504 and 506 IPC. Due to pendency of the aforesaid case, the application for grant of character certificate could not be rejected. (Para 9, 10)

Order dated 01.11.2021 passed by respondent no.2 is hereby quashed.

Writ petition allowed. (E-4)

Case Law Cited

1. Anil Kumar Vs. State of U.P. and others, Writ-C No.718 of 2025, Neutral Citation No.2025:AHC-LKO:32272-DB) (Para 5)
2. Avatar Singh Vs. Union of India, 2016 (8) SCC 471 (Para 6)
3. Naveen Rajhans Vs. State of U.P and 5 Others, Writ-A No. 6543 of 2023, decided on 28.04.2023 (Para 7)
4. Sonu Yadav Vs. State of U.P. and 5 Others, Writ-A No. 4577 of 2019, decided on 08.01.2021 (Para 8)

List of Keywords

character certificate, pendency, criminal case, candidate, application, grant, verification, service, cancellation, candidature.

Appearances for Parties
For Petitioner(s): Ajay Sengar, Mritunjay Verma, Vishnu Kant Tiwari
For Respondent(s): C.S.C.

(Delivered by Hon'ble Vivek Saran, J.)

1. Heard Sri Amit Kumar Singh holding brief of Sri Vishnu Kant Tiwari, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. The present writ petition has been filed by the petitioner with the prayer to call for the records and quash the impugned order dated 01.11.2021 passed by respondent no.3 rejecting the application for renewal of the Character Certificate as renewed earlier and further to direct the respondent no.2 to consider and pass a fresh order in accordance with law upon the application dated 4.1.2021 submitted by the petitioner for issuance of the Character Certificate as issued earlier.

3. It is informed by learned counsel for the petitioner that he does not wish to file rejoinder affidavit in response the counter affidavit filed by the learned Standing Counsel on behalf of respondent no.2.

4. In para no.23 of the counter affidavit it is stated that the petitioner is not entitled to have any relief from this Hon'ble Court, hence petition is liable to be dismissed.

5. Learned counsel for the petitioner submits that application for grant of Character Certificate to the petitioner was rejected by the District Magistrate, Jalaun at Orai/Respondent No.2 vide order dated 01.11.2021, hence present writ petition has been filed. Learned counsel for the petitioner has placed reliance upon the judgement and order dated 28.05.2025 passed in **Writ-C No.718 of 2025, Anil Kumar Vs. State of U.P. and others (Neutral Citation No.2025:AHC-LKO:32272-DB)** along with connected matters. He has placed reliance upon para no.19 and 20 of the aforesaid judgement which reads as follows:-

"19. In this case also on account of pendency of a criminal case bearing Case Crime No.138 of 2018 under Section 323, 504 and 506 IPC issuance of character certificate to the petitioner has been declined.

20. In view of the reasons already given by us in our order dated 26.05.2025, the impugned order is quashed. The concerned authority whether it is Superintendent of Police or the District Magistrate should issue a certificate on the format mentioned in the above quoted order and in terms thereof, within a period of three weeks from the date a certified copy of this order is submitted."

6. It is thus argued that the application for grant of Character Certificate having been rejected before the order of acquittal was passed by the Criminal Law Court, the respondent is required to revisit the decision in the light of the law laid down in the case of **Avatar Singh v. Union of India, 2016 (8) SCC 471** and the principle enunciated vide paragraph 38 runs as follows:

"38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

7. It is submitted further that in identical set of facts, writ petition was filed by one **Naveen Rajhansh being writ A No. 6543 of 2023, (Naveen Rajhans, State of U.P and 5 Others)**, decided on 28.4.2023, who was selected in Civil Police, but was not being offered appointment only on account of pending criminal case. This Court considered this aspect of the matter in the light of judgment of **Avtar Singh (supra)** and allowed the writ petition by setting aside the order with a further direction to process appointment of that petitioner.

8. It was a criminal case instituted in the year 2020 which have been disclosed by the petitioner however, he does not dispute the legal proposition as discussed in the case of Naveen Rajhansh and also another judgment of the High Court in the case of **Sonu Yadav v. State of U.P. and 5 Others, Writ A No. 4577 of 2019, decided on 8th January, 2021.**

9. In the present case the prayer to grant character certificate in favour of the petitioner was rejected due to pendency of Case Crime No.913 of 2018 under Sections 323, 504 and 506 IPC.

10. From the perusal of the aforesaid judgement, relevant paragraphs of which have already been quoted above, we are of the opinion that due to pendency of the aforesaid case under Section 323, 504 and 506 IPC, the application for grant of character certificate could not be rejected.

11. In this view of the matter, the order dated 01.11.2021 passed by respondent no.2 brought on record as Annexure-10 to the writ petition is hereby quashed.

12. The concerned authority namely District Magistrate should issue a certificate on the format mentioned in the aforesaid judgement and in terms thereof within a period of three weeks from the date of production of certified copy of this order.

13. The writ petition thus stands **allowed** as above.

14. Learned counsel for the petitioner is further directed to place the copy of the certified copy of the judgement as referred above along with copy of this order before the respondent no.2.

(2026) 7 ILRA 2418
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. GARIMA PRASHAD, J.

Writ C No. 26566 of 2026

Sheela Devi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether an administrative authority can reject a welfare scheme claim for a train accident by presuming suicide without concrete evidence?
(b) Whether a train accident falls within the scope of covered risks under Clause 5 of the G.O. dated 28.02.2020?

Headnotes

A. Social Security and Welfare Law – On 13.11.2024, Late Kishor Kumar Yadav (husband of the petitioner) died on the spot near Handia Railway Track after being hit by a moving train. The revenue records (*Khasra-Khatauni*) established that the deceased was a recorded tenure holder and active cultivator (*Krishak*). Official documents, including the Police G.D. entry, Panchnama, and Post-Mortem Report, confirmed death due to multiple accidental injuries from a moving train, with no indication of foul play or suicide.

Sheela Devi submitted a claim under the *Mukhyamantri Krishak Durghatna Kalyan Yojana* (governed by G.O. dated 28.02.2020). However, the DM, Prayagraj, rejected her application on 20.05.2025 via a brief order based on an SDM report, presuming that because the deceased was a driver and died on railway tracks, it was a case of suicide. The petitioner approached the High Court seeking a writ of certiorari to quash the rejection order and a writ of mandamus for the release of admissible compensation.

B. Where there was no material to conclusively establish the probability of suicide, denial of the benefit amounts to an arbitrary exercise of discretion, based on a purely mechanical presumption against the petitioner, in deciding entitlement under a state welfare scheme. The purpose of the welfare scheme is to advance the object of the policy. It appears that the impugned order relies solely on the report of the Sub-Divisional Magistrate, Handia, District Prayagraj. (Para 13)

The assumption that because the body was found on the tracks, the same cannot be a train accident and has to be attributed to a mens rea of suicide cannot be allowed to stand without any actual evidence of suicide. (Para 14)

In case of death or disability also, the benefits would not be given if the same has occurred due to suicide or it is the outcome of any crime. In the facts of the case, there is absolutely no evidence to show that the death of Late Kishor Kumar Yadav falls under any of the exceptions particularly when they could not find any evidence to prove that the death was a suicide, which cannot be the justified reason to deny benefits of the scheme to the petitioner. (Para 12)

Impugned order dated 20.05.2025 passed by respondent no. 2, District Magistrate, Prayagraj, is accordingly quashed. The matter is remanded to the District Magistrate, Prayagraj, for fresh consideration. (Para 16)

Writ petition allowed. (E-4)

Case Law Cited

1. Manoj Kumar Vs. State of U.P., AHC-LKO:75301-DB (Para 14)
2. Gayatri Devi Vs. State of U.P. and Others, 2025 SCC OnLine All 8086 (Para 15)
3. Union of India Vs. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 (Para 15)

List of Acts/Orders

Mukhyamantri Krishak Durghatna Kalyan Yojana, 2020.

List of Keywords

state welfare scheme, suicide, evidence, arbitrary, mens rea, presumption, probability, death, disability, denial, benefit.

Appearances for Parties

For Petitioner(s): Arun Kumar Yadav, Sachin Kanaujiya
For Respondent(s): C.S.C.

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking issuance of an appropriate writ, or direction in the nature of certiorari quashing the impugned order dated 20.05.2025 passed by the respondent no. 2 District Magistrate, Prayagraj, whereby the claim of the petitioner under the 'Mukhyamantri Krishak Durghatna Kalyan Yojana' has been rejected, and further praying for a direction in the nature of mandamus to the respondent no. 2 to forthwith process and grant the admissible financial assistance/compensation to the petitioner under the aforesaid scheme.

3. Brief facts of the case are that on 13.11.2024, the husband of the petitioner, namely Late Kishor Kumar Yadav met with a tragic train accident near Handia Railway Track and died on the spot after being hit by a moving train. The incident was duly reported to the local police and the concerned railway authorities.

4. It is a matter of fact that the State Government has brought a welfare scheme known as 'Mukhyamantri Krishak Durghatna Kalyan Yojana' to provide financial assistance to the families of farmers who die in accidents. In this regard, the Additional Chief Secretary, Government of Uttar Pradesh, issued a Government Order dated 28.02.2020 laying down the guidelines for extending benefits under the said scheme. Accordingly, after the death of her husband, the petitioner submitted a claim under the aforesaid scheme after completing all required formalities.

5. Learned counsel for the petitioner contends that the petitioner submitted an application before the Tehsil Office, Handia under the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020, enclosing all necessary documents stating that her husband Kishor Kumar Yadav died accidentally after being hit by a train near Handia Railway Track. It is stated that the Death

Certificate of the deceased Kishor Kumar Yadav, issued by the competent authority on 02.12.2024, confirms that the death occurred due to accidental injuries.

6. It was further submitted that the Family Register (Parivar Register) issued by the competent revenue authority on 18.12.2024 recorded the names of the deceased Kishor Kumar Yadav and his legal heirs, including the petitioner, thereby establishing the petitioner's status as the lawful heir entitled to claim benefits under the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020. As per the Police G.D. entry report, it has been clearly recorded that the deceased Kishor Kumar Yadav died due to grievous injuries sustained in a train accident and pursuant thereto, a Panchnama was prepared and Post-Mortem Examination conducted on 14.11.2024, which establishes that the cause of death was accidental in nature resulting from multiple injuries for being hit by a moving train. There is no finding of suicide or any other foul play by a third party, thereby substantiating that the death squarely falls within the ambit of an "accidental death" as defined under Clause 2 of the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020.

7. It was also contended on behalf of the petitioner that the Khasra-Khatauni of the agricultural holding standing in the name of the deceased Kishor Kumar Yadav clearly demonstrated that he was a recorded tenure holder and an active cultivator of agricultural land. The said revenue record established beyond doubt that the deceased was a "Krishak" (farmer) within the meaning of the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020 and, therefore, fully eligible to claim the benefits under the said welfare scheme.

8. Learned counsel representing the State authorities attempted to defend the impugned order and submitted that the husband of the petitioner was a driver and that it was a case of suicide, which was outside the scope of the benefits provided under the Scheme. However, he could not demonstrate any documentary evidence leading to the conclusion that it was a case of suicide and not an accidental death.

9. As appeared from the records that the accidental death of the deceased Kishor Kumar Yadav was not under dispute and it was also not disputed that he was depending upon farming for his livelihood and that he was sole bread earner of his family. The death certificate annexed with the petition demonstrated the accidental injuries that could have been considered as conclusive evidence of the accidental death.

10. After perusal of records, it also appears that the order dated 20.05.2025 was passed in a cursory manner with a single line that relying on the report of the Sub-Divisional Magistrate, Handia, District Prayagraj, it was decided that the deceased was a driver and since he had died in a train accident it was a case of suicide.

11. Learned counsel for the petitioner further submitted that the Additional Chief Secretary U.P. Government has issued Government Order dated 28.02.2020 for determination of the guidelines for providing benefits under the scheme of "Mukhyamantri Krishak Durghatna Kalyan Yojana" and present case is fully covered under Clause 2 of the Government Order dated 28.02.2020. Relevant part of the guideline is reproduced below for ready reference:

"Subject: Guidelines for the implementation of the "Chief Minister's Farmer Accident Welfare Scheme" in case of accidental death/disability of farmers in Uttar Pradesh.

The State Government has decided to implement the "Chief Minister's Farmer Accident Welfare Scheme" with the objective of providing social security to the families of farmers in case of accidental death or disability. The following guidelines are being issued for this purpose:

1. This scheme will be effective from September 14, 2019.

2. Eligibility (Definition of Farmer):

This scheme is for farmers residing in Uttar Pradesh who suffer accidental death or disability. A farmer is defined as follows:

(1) Account holder/co-account holder recorded in the revenue records, i.e., the land register (Khatauni).

OR

(2) Earning members of the account holder/co-account holder's family whose primary source of livelihood is agricultural income from the land registered in the name of the account holder/co-account holder.

OR

(3) Landless individuals who cultivate land obtained on lease or on a sharecropping basis, and whose main source of livelihood is agriculture on such leased or sharecropped land. Lessees include tenant farmers, government lessees, and private lessees.

4. Age:

The farmer's age should be between 18 and 70 years on the date of death/disability.

5. Coverage of the Scheme:

(1) If a farmer suffers accidental death/disability due to fire, flood, lightning, electric shock, snakebite, attack/injury by animals/creatures, drowning in the sea, river, lake, pond, or well, storm, falling from or being crushed by a tree, house collapse, accident involving train/road/aircraft/other vehicles, landslide, earthquake, gas leak, explosion, falling into a sewer chamber, or any other cause, then financial assistance will be provided to the farmer/legal heir(s) under this scheme."

12. After reading relevant provisions in the policy and the clause explaining coverage of the scheme, it is clear that in case of death or disability also, the benefits would not be given if the same has occurred due to suicide or it is the outcome of any crime. In the facts of the case,

there is absolutely no evidence to show that the death of Late Kishor Kumar Yadav falls under any of these exceptions particularly when they could not find any evidence to prove that the death was a suicide, which cannot be the justified reason to deny benefits of the scheme to the petitioner.

13. It appears that the impugned order relies solely on the report of the Sub-Divisional Magistrate, Handia, District Prayagraj. The purpose of the welfare scheme is to advance the object of the policy. Where there was no material to conclusively establish the probability of suicide, denial of the benefit amounts to an arbitrary exercise of discretion, based on a purely mechanical presumption against the petitioner, in deciding entitlement under a state welfare scheme.

14. This Court in case of **Manoj Kumar vs. State of U.P., Neutral Citation No. 2025:AHC-LKO:75301-DB**, has considered similar issue and held as under:- " The assumption that because the body was found on the tracks, the same cannot be a train accident and has to be attributed to a mens rea of suicide cannot be allowed to stand without any actual evidence of suicide."

15. In **Gayatri Devi vs. State of U.P. and Others, 2025 SCC OnLine All 8086** has also relied upon judgement of the Supreme Court in **Union of India Vs Prabhakaran Vijaya Kumar, (2008) 9 SCC 527**, and thereafter held that:

22. In view of the above discussion, this Court is of the considered view that the rejection of the petitioner's claim is based on an unduly drawn narrow interpretation of the scheme and merely based on assumptions not supported by proper enquiry, and therefore, the writ petition deserves to be allowed and is hereby allowed. The impugned order dated 25.08.2021 passed by the respondent no. 2, District Magistrate, Kannauj, rejecting the petitioner's claim under the 'Mukhyamantri Krishak Durghatna Kalyan Yojana' and the information order dated 31.07.2021 issued by respondent no. 3 are hereby quashed. The matter is remanded to the District Magistrate, Kannauj, to reconsider the petitioner's claim afresh in accordance with law and in the light of the observations made hereinabove, after affording an opportunity of hearing to the petitioner and after conducting a proper enquiry, if required. The said exercise shall be completed expeditiously, preferably within a period of eight weeks from the date of production of a certified copy of this order. No order as to costs."

16. In view of the above legal proposition which is fully applicable to the facts of this case, in our considered view, the writ petition deserves to be **allowed**. Thus the writ petition is allowed and the impugned order dated 20.5.2025 passed by respondent no. 2, District Magistrate, Prayagraj, is accordingly quashed insofar as it relates to the petitioner's application regarding deceased Kishor Kumar Yadav. The matter is remanded to the District Magistrate, Prayagraj, for fresh consideration of the petitioner's claim on the basis of undisputed material discussed above and in the light of observations made above. The petitioner may file a fresh representation within four weeks from the date of receipt of a certified copy of this order, which shall be decided by the competent authority by a reasoned and speaking order within a further period of eight weeks. No order as to costs.

(2026) 7 ILRA 2423
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.07.2026

BEFORE

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

Writ C No. 3483 of 2026

Matsya Jivi Sahkari Samiti Ltd. Merapur ...Petitioner(s)
Versus
State of U.P. & Ors. ...Respondent(s)

Issue(s) for consideration

(a) Whether fishing rights accrue or be legally exercised without the express approval of the DM under the governing Government Order?
(b) Whether administrative practice or local "tradition" can legitimize unauthorized fishing or override explicit statutory provisions and Government Orders?

Headnotes

A. Civil/Revenue Law – Tenders and Contracts – Auction of Fishing Rights - In response to an auction notice dated 13.11.2024 for fishing rights in Sector 9 of the Yamuna River (Tehsil Sadar, District Hamirpur), the petitioner society participated in the auction held on 29.11.2024, emerged as the highest bidder, and deposited the requisite bid amount. The underlying auction notice was challenged in appeal before the Commissioner, Chitrakoot, who quashed the notice on 21.03.2025. Although the High Court subsequently stayed the Commissioner's order in *Writ Petition No. 10497 of 2025*, the District Magistrate, Hamirpur, never issued a formal approval or executed a lease deed as mandated by Paragraph 8 of the GO dated 10.01.2019.
On 15.12.2025, the SDO Hamirpur rejected the petitioner's representation seeking a refund of the bid amount. The rejection was based on a Fisheries Department inquiry report claiming that, per local "tradition," the petitioner had carried out fishing operations (and sublet the rights) on the strength of being the highest bidder without waiting for formal approval.

B. When a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authority while acting under the said Act are only creator of Statute. They must act within the four-corners thereof. (Para 14, 15)
The GO, admittedly holding the field governing fishing lease, not only creates a right, but simultaneously prescribes the authority competent to exercise such power and the manner in which it is to be exercised. The prescribed procedure, therefore, becomes an indispensable condition precedent to the validity of the proceedings. Any deviation therefrom strikes at the very root of jurisdiction and renders the consequential action legally unsustainable. (Para 13)

Once the GO requires execution of lease in a particular manner and mandates permission for fishing rights, the same is required to be done in that manner only. (Para 12)

The Approval contemplated under the GO dated 10.01.2019 is not an empty formality but constitutes a condition precedent for the accrual of any enforceable right in favour of the highest bidder. Unless such approval is granted and the lease is formally executed, no legal right can be said to have vested in favour of

the petitioner. Despite being the highest bidder, the lease in favour of the petitioner for fishing rights was never approved. (Para 9, 11)

If fishing without lease rights were carried out (but same requires stricter proof) but admittedly no report of theft was ever lodged by the authorities, it is an indication of either connivance of authorities with the petitioner or their lackadaisical attitude; and, in both eventualities the responsibility of erring officials was required to be fixed. (Para 10)

C. No prevailing administrative practice or local tradition can override mandatory requirements prescribed under the GO dated 10.01.2019. (Para 16)

Fishing in the absence of a lease, by the petitioner, if at all, done, is nothing less than an offence and requires the State to take suitable recourse to law, may be penal action or recovery of loss and damages permissible under the law. No tradition can legitimize the same having no sanctity of law. The lease rights having not been crystallized as no approval by the District Magistrate was granted, the respondents do not have authority to withhold the bid amount. (Para 17, 18)

The impugned order dated 15.12.2025 passed by the Sub-Divisional Officer is accordingly quashed. The respondent no. 3 is directed to refund the bid amount to the petitioner forthwith. (Para 19)
Writ petition allowed. (E-4)

Case Law Cited

1. Nazir Ahmad Vs. King Emperor, AIR 1936 Privy Council 253 (Para 14)
2. State of U.P. Vs. Singara Singh, AIR 1964 SC 358 (Para 14)
3. Prabha Shanker Dubey Vs. State of M.P., (2004) 2 SCC 56, Para 11 (Para 14)
4. Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & others, (2003) 2 SCC 111 (Para 15)

List of Acts/Orders

Government Order dated 10.01.2019.

List of Keywords

auction, fishing rights, administrative practice, mandatory requirement, local tradition, condition precedent, jurisdiction, prescribed procedure.

Appearances for Parties

For Petitioner(s): Sanjeev Kumar Saxena
For Respondent(s): C.S.C.

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Sanjeev Kumar Saxena, learned counsel for the petitioner and Mr. Girjesh Kumar Tripathi, learned Additional Chief Standing Counsel for the State respondents.

2. Feeling aggrieved by the order dated 15.12.2025 passed by Sub-Divisional Officer, Hamirpur, the petitioner has approached this Court challenging the denial of refund of bid amount. The petitioner has further prayed for issuance of writ of mandamus commanding the third respondent i.e. Sub-Divisional Officer Sadar, District Hamirpur, to refund the bid amount.

3. Undisputed facts giving rise to the present writ petition are that the petitioner's society participated in auction proceedings held on 29.11.2024 in pursuance of Auction notice dated 13.11.2024 for fishing rights qua Sector 9 of Yamuna River flowing in Tehsil Sadar, District Hamirpur. The petitioner emerged as the highest bidder and deposited the bid amount accordingly, but the lease rights could not fructify into a formal lease agreement by giving it the shape of a formal agreement as warranted by paragraph no. 8 of Government Order dated 10th January, 2019, which requires that, if the allotment of fishing rights is as per rule and procedure prescribed, the District Magistrate shall accord his approval. The advertisement dated 13.11.2024 published for fishing rights of Sector 9 of Yamuna River was the subject matter of challenge in appeal, bearing no. 168 of 2025 under Section 207 of U.P. Revenue Code, before Commissioner Chitrakoot, Banda Division. The said appeal was allowed, and the auction notice dated 13.11.2024 was quashed. Thereafter, the order dated 13.11.2024 passed by the Commissioner was put to challenge by means of Writ Petition No. 10497 of 2025, and this Court stayed the operation and implementation of the order dated 21.03.2025 passed by the Commissioner. The fishing rights/lease allotted to the petitioner could not be settled in favour of the petitioner in the absence of approval by the District Magistrate, Hamirpur, owing to litigation before the Commissioner and thereafter before this Court.

4. Petitioner filed Writ Petition No. 23860 of 2025 before this Hon'ble Court seeking refund of the bid amount on the ground that despite being declared the highest bidder, he was prevented from lawfully exercising fishing rights owing to the absence of statutory approval by the District Magistrate. The said writ petition was decided vide order dated 06.08.2025 requiring the third respondent to take a decision on the representation of petitioner.

5. In compliance of the order dated 06.08.2025 passed in Writ Petition No. 23860 of 2025, the third respondent passed the order impugned dated 15.12.2025 declining refund of the bid amount only on the ground that once the petitioner was declared the highest bidder, he started enjoying fishing rights without waiting for a formal approval by the District Magistrate.

6. While challenging the impugned order, the learned counsel for the petitioner contended that once the order passed by Commissioner quashing the auction notice/advertisement dated 13.11.2024 was stayed, it was incumbent upon the second respondent/District Magistrate to approve the lease rights in favour of petitioner but on one hand, the petitioner was not permitted to fish and on the other hand, his bid amount has wrongly been withheld by the State authorities which is nothing but an unjust enrichment of the State at the expense of the petitioner.

7. The further submission advanced by learned counsel for the petitioner is that there is no question of fishing in the absence of approval accorded by the District Magistrate as warranted in terms of Government Order dated 10th January, 2019. The petitioner, having not done fishing, is entitled to his bid amount.

8. On the other hand, learned counsel for the State submitted that an inquiry was conducted to find out whether the petitioner had enjoyed the fishing rights or not. It is evident from the report submitted by the Chief Executive Officer, Department of Fisheries, Hamirpur that on the strength of receipt of the highest bid, the petitioner continued fishing throughout the period, based on tradition. Even the lease was sublet by Secretary of the petitioner's society, and those sublessees were found fishing in the river in question on 11.04.2025; as such, the petitioner has enjoyed the fishing rights. The said letter as submitted by the Chief Executive Officer, Department of Fisheries, Hamirpur addressed to the District Magistrate, Hamirpur, is on record in the shape of Annexure 5 to the counter affidavit. Further submission of learned counsel for the State is that in District Hamirpur, fishing in pursuance of receipt of highest bid is a tradition. Thus, having enjoyed fishing rights, it does not lie in the mouth of the petitioner to ask for a refund of the bid amount.

9. Having heard learned counsel for the parties, it comes out that despite being the highest bidder, the lease in favour of the petitioner for fishing rights was never approved, which is a condition precedent for enjoying fishing rights in terms of paragraph no. 8 of Government Order dated 10th January, 2019, which reads as under :

" यदि जिलाधिकारी का समाधान हो जाता है कि मत्स्य आखेट क्षेत्र को आवंटित करने का निर्णय नियमों के उपबन्धों के अनुसार किया गया है तो जिलाधिकारी पट्टा/नीलामी की की स्वीकृति बिन्दु संख्या 12 में निर्धारित शर्तों के अधीन प्रदान कर देगें।"

10. We fail to understand how in the absence of any approval as required by the Government Order dated 10th January, 2019, the authorities permitted the petitioner to enjoy fishing rights, particularly in the absence of the requisite approval and formal lease deed. The fishing done, if any, at the end of petitioner was nothing less than an offence of theft of state property. If fishing without lease rights were carried out (but same requires stricter proof) but admittedly no report of theft was ever lodged by the authorities, it is an indication of either connivance of authorities with the petitioner or their lackadaisical attitude; and, in both eventualities the responsibility of erring officials was required to be fixed.

11. The Approval contemplated under paragraph 8 of the Government Order dated 10 January 2019 is not an empty formality but constitutes a condition precedent for the accrual of any enforceable right in favour of the highest bidder. Unless such approval is granted and the lease is formally executed, no legal right can be said to have vested in favour of the petitioner.

12. Once the Government Order requires execution of lease in a particular manner and mandates permission for fishing rights, the same is required to be done in that manner only.

13. The Government order, admittedly holding the field governing fishing lease, not only creates a right, but simultaneously prescribes the authority competent to exercise such power and the manner in which it is to be exercised. The prescribed procedure, therefore, becomes an indispensable condition precedent to the validity of the proceedings. Any

deviation therefrom strikes at the very root of jurisdiction and renders the consequential action legally unsustainable.

14. It is trite law that where the law prescribes a procedure for doing a thing, the thing has to be done in that manner alone and other ways are necessarily forbidden. This principle has been echoing the horizon of jurisprudence since a very long time, not only in this country but virtually the world over wherever there is an establishment managed under a Constitution with an independent judiciary. As far back as in the year 1936 in the case of **Nazir Ahmad Vs. King Emperor**; the Privy Council held that a thing required to be done in a particular way has to be done in that way or not at all. This principle consistently has been accepted and adopted by the Indian Courts including the Supreme Court in a catena of decisions, such as, **State of U.P. Vs. Singara Singh,** and **Prabha Shanker Dubey Vs. State of M.P.**

15. A larger Bench of the Supreme Court comprising of three Hon'ble Judges, in the case of **Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & others,** has held that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner. In this case, the Supreme Court held:

"It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authority while acting under the said Act are only creator of Statute. They must act within the four-corners thereof."

16. No prevailing administrative practice or local tradition can override mandatory requirements prescribed under the Government Order dated 10 January 2019.

17. Fishing in the absence of a lease by the petitioner, if at all, done, requires the State to take suitable recourse to law may be penal action or recovery of loss and damages permissible under the law.

18. Fishing in the absence of a lease, by the petitioner, if at all, done, is nothing less than an offence. No tradition can legitimize the same having no sanctity of law. The lease rights having not been crystallized as no approval by the District Magistrate was granted, the respondents do not have authority to withhold the bid amount.

19. In view of the foregoing reasons, the impugned order dated 15th December, 2025 passed by the Sub-Divisional Officer, Hamirpur, is unsustainable and is accordingly quashed. The writ petition is allowed. The respondent no. 3 is directed to refund the bid amount to the petitioner forthwith.

20. No order as to costs.

21. It is needless to mention that if fishing has been done by the petitioner without any authority of law and there is concrete evidence in this regard, the State is always at liberty to seek appropriate remedy prescribed by the law.

(2026) 7 ILRA 2428
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 9462 of 1979

Pardeshi **...Petitioner**
Versus
D.D.C. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the Joint Director of Consolidation exceeded the narrower revisional jurisdiction u/s 48 of the U.P. Consolidation of Holdings Act (prior to the 10.11.1980 amendment) by improperly setting aside the factual findings recorded by the Assistant Settlement Officer of Consolidation (ASOC)?
(b) Whether a presumption of a Joint Hindu Family automatically implies a presumption that property acquired by an individual member is Joint Family Property (*Karta Khandan*), or whether separate acquisition by a member of a joint family remains their exclusive property unless proved to be acquired from joint family funds or thrown into a common hotchpotch?
(c) Upon whom does the burden of proof lie when claiming co-tenancy rights over land after a family partition/separation, and whether the private respondents discharged this burden to prove joint acquisition or representative capacity (*Karta*)?
(d) Whether co-tenancy rights can be granted based on an ancestor's early revenue entry (Smt. Jhinka @ Chhotka in 1323 Fasli) when there is a complete lack of continuity and identity linking it to the subsequent individual entries (Chetai in 1348, 1353, and 1356 Fasli) after the land re-entered the landlord's possession?

Headnotes

A. Land Reform Law – U.P. Zamindari Abolition and Land Reforms Act, 1950: Section 229-B; U.P. Consolidation of Holdings Act 1953: Section 9-A(2), 48 - Khata No. 277 (Plot Nos. 34, 35, and 37/1; total area 3-8-3) in Village Baro, Pargana Maghar Basti, District Basti. Recorded exclusively in the name of the petitioners (legal heirs of Chetai) as *Sirdar*. Respondent Nos. 2 and 3 filed an objection u/s 9-A(2) (U.P.C.H. Act). They claimed that the land was originally acquired by Ghirau (their uncle/common ancestor), passed to his widow Smt. Jhinka @ Chhotka, and was later succeeded jointly by Chetai, Jaglal, and Faujdar. They alleged Chetai was recorded as the *Karta* (head) of the Joint Hindu Family and sought 1/3rd share each as co-tenants.

The holding was acquired exclusively by Chetai in his individual capacity after a family separation/partition. There was no continuity or identity linking Smt. Jhinka's earlier entry (1323 Fasli) with Chetai's later entries. There was no evidence that the land was acquired using joint family funds.
Consolidation Officer (Order dated 30.05.1978): Allowed the objection of Respondent Nos. 2 & 3, holding that Chetai was recorded as *Karta Khandan*, and granted co-tenancy rights declaring 1/3rd share each.
Assistant Settlement Officer of Consolidation (ASOC) (Order dated 29.12.1978): Allowed the appeal of the petitioners. Set aside the CO's order, holding that:

- Revenue records lacked continuity/identity between Smt. Jhinka's 1323 Fasli entry and Chetai's later entries (1348, 1353, and 1356 Fasli).

- The family had already separated, placing the burden of proof on the respondents to show the acquisition was joint, which they failed to do.
- Ordered Khata No. 277 to be recorded exclusively in the name of the petitioners.

Joint Director of Consolidation (Revisional Court) (Order dated 17.08.1979): Allowed the revision filed by Respondent Nos. 2 & 3, setting aside the appellate order and restoring the CO's order granting co-tenancy.

High Court Writ Petition (1979): Petitioners challenged the revisional order dated 17.08.1979 u/Article 226 of the Constitution. Stay on dispossession was granted on 22.11.1979. (Para 8)

B. Any member of joint family can acquire his separate property from his own fund. A member of the joint Hindu family, even if he is joint can possess separate property. **Such property belongs exclusively to him and no member of the co-parcenery, not even his male heirs can acquire any interest in it.** (Para 15)

There can be presumption of Joint family but there can no presumption of Joint family property. (Para 16)

In present case, appellate court has taken into consideration the revenue entry, duration mentioned in the khatauni as well as fact of non continuity and identity of revenue entry of the Khata in dispute in holding that co-tenancy cannot be allowed in favour of respondent nos.2 and 3. Appellate court also recorded that after separation of family, the settlement was made in favour of petitioners' father Chetai, as such it cannot be said that the name of Chetai was recorded as *Karta Khandan*. The Joint Director of Consolidation has allowed the revision filed by respondent nos.2 & 3 without reversing the finding of fact recorded by appellate court in proper manner. The perusal of revisional order demonstrate that revisional court has mentioned the duration of entry in 1348 Fasli as one year, but the Khatauni of 1348 Fasli which is annexed along with writ petition as annexure no.1 demonstrate that duration of entry was 9 years, as such the impugned revisional order cannot be sustained in the eye of law. (Para 13)

In the year 1979, the DDC had limited jurisdiction u/s 48 of U.P.C.H. Act, as section 48 of U.P.C.H. Act was amended giving wider power w.e.f. 10.11.1980, as such the revisional order dated 17.08.1979 cannot be sustained on the ground of limited revisional jurisdiction also. (Para 14)

Impugned revisional order dated 17.08.1979 passed by respondent no.1-Joint Director of Consolidation cannot be sustained in the eye of law and is hereby set aside. Order of appellate court dated 29.12.1978 passed by ASOC is hereby maintained. (Para 17)

Writ petition allowed. (E-4)

Case Law Cited

1. Ram Chandra Dubey and another Vs. Deputy Director of Consolidation, Deoria and others., 1978 RD 1 (Para 15)
2. Bala Charan and others Vs. State of U.P. and others, 1978 RD 51 (Para 16)

List of Acts/Orders

U.P. Zamindari Abolition and Land Reforms Act, 1950; U.P. Consolidation of Holdings Act 1953.

List of Keywords

consolidation, revisional, joint, family, property, *karta,* settlement, separation, co-parcenery, heirs, interest, presumption.

Appearances for Parties

For Petitioner(s): Shashi Prakash Misra

For Respondent(s): Amit Kumar Singh, Rama Nand Pandey

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

1. Heard Mr. Ramesh Chandra as well Mr. Shashi Prakash Mishra, learned counsel for the petitioners, Mr.Amit Kumar Singh, learned counsel for the private respondents and Mr. Sanjay Kumar Ray, learned Standing Counsel for the state respondents.

2. Brief facts of the case are that the dispute relates to plot no.34 (2-11-4), plot no.35 (0-8-19) and plot no. 37/1 (0-8-0) total area 3-8-3 of khata no.277, situated in village-Baro, Tappa-Menhdawal, Pargana-Maghar Basti, Tehsil-Khalilabad, District-Basti. In the basic year of consolidation operation, the aforementioned Khata no.277 was recorded in the name of petitioners in exclusive manner as Sirdar. One suit under section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the U.P.Z.A.& L.R. Act) was filed by respondent nos.2 and 3 (Jaglal and Faujdar) which was dismissed by trial court vide judgement and decree dated 16.11.1970. Against the judgement and decree of trial court dated 16.11.1970, appeal was filed by respondent nos.2 and 3, which was allowed and matter was remanded back before trial court to decide the suit afresh. During pendency of the suit under section 229-B of U.P.Z.A. & L.R. Act village in question came under the consolidation operation accordingly suit under section 229-B of U.P.Z.A. & L.R. Act was dismissed as abated. Against the basic year entry of Khata in question, an objection under section 9-A (2) of U.P. Consolidation of Holdings Act 1953 (hereinafter referred as the U.P.C.H. Act) was filed by respondent nos. 2 and 3 with the allegation that Khata in dispute was acquired by Ghirau son of Rupan and after death of Ghirau, Khata in question was recorded in the name of his widow Smt. Jhinka @ Chhotka and after the death of Smt. Jhinka @ Chhotka. Khata in dispute was succeeded by Chetai, Jaglal and Fauzdar, but the Khata in dispute was wrongly recorded in the name of Chetai in cxclusive manner as such respondent nos.2 and 3 be recorded over Khata in dispute along with legal heirs of Chetai. The legal heirs of Chetai. contested the claim of respondent nos.2 and 3 stating that Khata in dispute was acquired by Chetai after the separation taken place between Chetai and his brothers. The claim was also set up by petitioners that the Khata in dispute was not recorded in the name of Smt. Jhinka @ Chhotka as there was no identity and continuity of the holdings of Smt. Jhinka @ Chhotka. The claim was also set up on behalf of petitioners that the present holding is new holding acquired exclusively by Chetai. The claim was also set up by petitioners that there was no pleading of joint acquisition by Chetai and respondent nos.2 and 3 from any joint family fund. Issues were framed before the consolidation officer and parties have adduced evidence in support of their case. Consolidation officer vide order dated 30.5.1978, allowed the objection filed by respondent nos.2 and 3 directing to record the name of respondent nos.2 and as co-tenure holder of Khata nos.277as well as declared 1/3rd share of petitioner, respondent nos.2 and 3. Against the order of Consolidation Officer dated 30.5.1978, an appeal under section 11 (1) of U.P.C.H. Act was filed by petitioners before Settlement Officer of Consolidation. Assistant Settlement Officer of Consolidation heard the matter and vide order dated 29.12.1978 allowed the appeal filed by petitioners setting aside the order of Consolidation Officer dated 30.5.1978 and directed that Khata no.277 shall be recorded in the name of petitioners in exclusive manner as well as name of respondent nod.2 and 3 was ordered to be expunged. Against the order dated 29.12.1978 revision under Section 48 of U.P.C.H. Act was filed by respondent nos.2 and 3. The aforementioned

revision was heard by Joint Director of Consolidation Officer and same was allowed vide order dated 17.8.1979 accepting the claim of co-tenancy set up by respondent nos.2 and 3 setting aside the appellate order and maintaining the order of consolidation officer. Hence this petition on behalf of the petitioners for the following relief:-

"(i). Issue a writ in the nature of certiorari quashing the order of the respondent no.1 dated 17.8.1979 (Annexue IV) and confirming the order of the Assistant Settlement Officer Consolidation dated 29.12.1978 (Annexure III)."

3. This court admitted the writ petition and dispossession of the petitioners from the land in dispute was stayed vide order dated 22.11.1979.

4. In pursuance of the order dated 22.11.1979, parties have exchanged their pleadings.

5. Learned Counsel for the petitioners submitted that petitioners were recorded in the basic year of consolidation operation over the khata in dispute as khata in dispute was acquired by petitioners' father namely Chetai as his exclusive holding. He submitted that suit under section 229-B of U.P.Z.A.&L.R. Act filed by respondent nos.2 and 3 was dismissed as abated due to consolidation operation in the village in question. He submitted that objection under section 9-A (2) of U.P.C.H. Act filed by respondent nos.2 and 3 was allowed in illegal and arbitrary manner granting co-tenancy right to respondent nos.2 and 3 as such title appeal filed on behalf of petitioners was allowed and the order passed by Consolidation Officer was set aside recording finding of fact that Co-tenancy cannot be granted to respondent nos.2 and 3 in the facts and circumstances of the case. He submitted that Deputy Director of Consolidation has exceeded his revisional jurisdiction at the relevant point of time in setting aside the order of Settlement Officer of Consolidation and maintaining the order of Consolidation Officer. He further submitted that there is no continuity and identity of the holding in the name of Smt. Jhinka @ Chotka in 1323 fasli, as such co-tenancy cannot be granted to respondent nos.2 and 3. He submitted that Khata in dispute was acquired by Chetai as such unless cliam for granting co-tenancy is proved in accordance with law, the title objection cannot be allowed by consolidation officer. He further submitted that revisional court has misread and misconstrued the record of the case while passing the impugned revisional order allowing the claim of co-tenancy. He further submitted that statement of witness should be read as a whole to assess its value rather considering the evidence of witnesses in piecemeal. He further submitted that it is settled principle of law that member of joint Hindu family can acquire his property in exclusive manner, as such even being member of joint family, exclusive tenancy right can be acquired by one branch of the family although in the present case there was separation in the family when the settlement of the khata in dispute was made in favour of petitioner's father namely Chetai. He submitted that impugned revisional order passed by Director of Consolidation should be set aside and the order passed by Assistant Settlement Officer of Consolidation should be maintained.

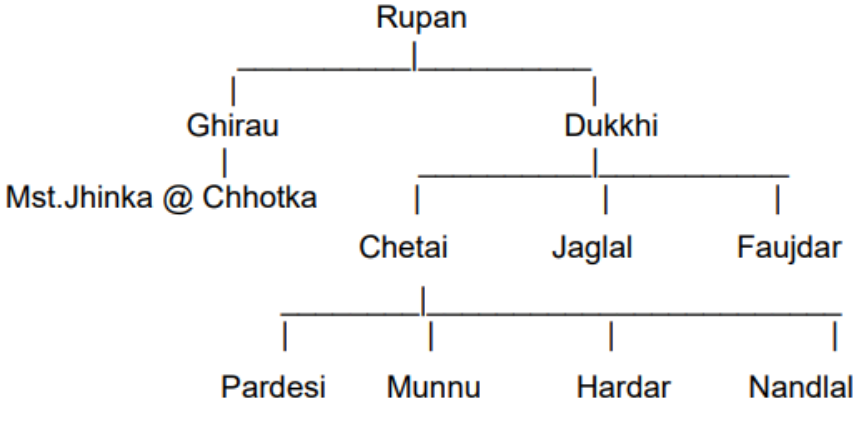
6. On the other hand, learned counsel for the private respondents submitted that name of Chetai was recorded over the Khata in dispute being eldest member of family as karta khandan as such there is no illegality in granting co-tenancy to respondent nos.2 and 3, who are real brothers of Chetai. He submitted that Consolidation Officer after framing issues and considering the evidence

on record has held that name of Chetai was recorded over Khata in dispute in the capacity of Karta Khandan as such respondent nos.2 and 3, who are real brothers of Chetai are entitled to co-tenancy right but the order of Consolidation Officer has been illegally set aside in appeal by Assistant Settlement Officer of Consolidation, accordingly Joint Director of Consolidation has rightly set aside the order of Assistant Settlement Officer of Consolidation and maintained order of Consolidation Officer granting co-tenancy right to respondent nos.2 and 3. He submitted that Joint Director of Consolidation has not exceeded his revisional jurisdiction rather exercise revisional power in maintaining the order of Consolidation Officer which was passed considering the evidence on record granting co-tenancy right to respondent nos.2 and 3. He submitted that no interference is required against the impugned order passed by Joint Director of Consolidation under section 48 of U.P.C.H. Act and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the counsel for the parties and perused record.

8. There is no dispute about the fact that in the basic year of consolidation operation, petitioners who are sons of Chetai were recorded. There is also no dispute about the fact that against the basic year entry of Khata in dispute, an objection under section 9-A(2) of U.P.C.H. Act filed by respondent nos.2 and 3 for granting co-tenancy right was allowed by consolidation officer vide order dated 30.5.1978. There is also no dispute about the fact that title appeal filed by petitioners was allowed by Assistant Settlement Officer of Consolidation vide order dated 29.12.1978 setting aside the order of Consolidation Officer dated 30.05.1978. There is also no dispute about the fact that revision filed by respondent nos.2 and 3 was allowed by Joint Director of Consolidation vide order dated 17.8.1979 setting aside the appellate order dated 29.12.1978 and maintaining the order of Consolidation Officer dated 30.5.1978.

9. In order to appreciate the controversy involved in the matter, perusal of family pedigree as mentioned in paragraph no.2 of writ petition will be necessary, which is as under:-



10. The aforementioned family pedigree is not disputed between the parties.

11. The perusal of two issues framed before the consolidation officer will be also necessary, which is as under:-

1. क्या जगलाल व औतार विविदित खाता के सहखातेदार व कब्ज़ा है

2. यदि हां तो पक्षो का अंश क्या है?

12. The Consolidation officer, considering the evidence, has held that name of Chetai was recorded over Khata in dispute as Karta Khandan, as such respondent nos.2 and 3 will be entitled to co-tenancy right over Khata in dispute. The assistant settlement officer of consolidation, while deciding the appeal filed by petitioners, has considered the question of granting co-tenancy right in detail in the light of revenue entry of plot in question, as such perusal of relevant portion of the appellate order will be necessary, which is as under:-

"उपरोक्त वंशवृक्ष पक्षो को स्वीकार है। अपीलान्ट का कथन कि विवादित गाटा तनहा चेतई ने पैदा किया। उत्तरवादी के तरफ से नकल खतौनी १३१३ फ० दाखिल है जिसमे स्पष्ट है कि विवादित गाटा छोटका विधवा घिराऊ के नाम काश्तकार दखीलकार दर्ज है (उत्तरवादीगण) ने आपत्ति के पैरा ग्राफ २ में कहा कि विवादित गाटा घिराऊ ने पैदा करायी थी और उनके मरने के बाद श्रीमती झीनका उर्फ छोटका के नाम दर्ज हुई और उनके मरने के बाद फरीकन को मिली बयान में कहा गया है कि जमीन निजाई दुखी व घिराऊ की पैदा करायी है उनके मरने के वाद विवादित गाटा झीनका और उनकी औरत को मिली तथा झीनका के मरने के वाद उभय पक्ष को मिली। अपीलान्ट परदेशी ने अपने बयान में कहा है कि विवादित गाटा उनके वाप चेतई की पैदा की हुई है।

विद्वान चक्वन्दी अधिकारी ने अपने निर्णय मे लिखा है कि परदेशी ने अपने वयान मजीद में ही कहा है कि आराजी निजाई के आलावा उनके पूर्वजो में पैदा की हुई कुछ नही है उनमे पिता चैतई, जग लाल व फौजदार से जमीदारी टूटने के पहले से अलग होकर मर गये और अपना अलग मकान वना लिया जिरह मे परदेशी ने वसलीम किया है कि घिराऊ की औरत झीनका उर्फ छोटका थी जो उनके होश के पहले मर गये। खेत उनके फिर ने कितने दिन पहले लिया था और किस शर्त पर लिया था इनके जानकारी परदेशी को नहीं है, परदेशी ने कहा है कि वटवारे को जानकारी उनके पिता की है उन्हें नहीं है परदेशी को यह भी जानकारी नही है कि वटवारे के कितने दिन बाद चेतई मरे। इस कारण विद्वान चक्वन्दी अधिकारी ने परदेशी के जवानी सहादत पर विश्वास नहीं किया। उत्तर वादी के जबानी सहावत की वगैर व्याख्या किये ही विश्वासनीय मान लिया ।

परदेशी का आराजी निजाई के अलावा मेरे वावा की पैदा की हुई कुछ भी नही है' का अर्थ विद्धान चक्वन्दी अधिकारी ने गलत लगाया है आराजी निजाई के वावत परदेशी ने पहले ही कह दिया है कि उसके पिता चेतई की पैदा किया हुआ है उसके उपरोक्त वयान से यह स्पष्ट होता है कि आराजी निजाई के अलावा भो उसके वाबा की पैदा की हुई कुछ नहीं है अर्थर्थात पूर्वजो की पैदा की हुई भूमि विवादित ग्राम कुछ नही है। भार आपत्तिक्ता पर था कि वर सावित करता कि परिवार सम्मिलित अविभक्त हिन्दू परिवार था और अविभक्त हिन्दू परिवार के उपार्जन से विवादित गाटा खरीदा गया अथवा उपार्जित किया गया। अपीलान्ट का कथन है कि विभाजन वहुत पहले हो गया था जवकि फौजदार ने अपने बयान ने कहा है कि आराजी निजाई घिराऊ व दुखी की पैदा की हुई है दोनो आदमी एक मे रहते थे बड़ा घिराऊ थे। बड़ा होने के नाते उनका नाम दर्ज हो गया। उत्तरवादी फौजदार तथा उनके गवाह जगलाल के बयान से स्पष् है कि पक्ष फाट कर विवादित गाटा को जोतते है अतः पक्षों की अलहदगी हो गयी है। जव एक बार हिंदू परिवार विभक्त हो गया तो भार उस व्यक्ति पर है जो कहता है कि विवादित गाटा के पैदा होने के समय परिवार संयुक्त था । उत्तरवादीगण के साक्ष्य के देखने से स्पष्ट है कि उत्तरवादीगण यह सावित करने में असमर्थ है कि जव विवादित गाटा पैदा किया गया उस समय परिबार संयुक्त था ।

विद्वान अधिवक्ता उत्तरवादी ने १९६४ आर०डी० पेज ७०, १९६८ आर०डी० पेज ३६६ ए० ३०आर० १९५६ सुप्रिम कोर्ट पेज ६०६ वाम्वे लिाया परन्तु उक्त कटिंग इस बाद पर नही लागू होगी। १९६४-२१० डी० पेज ७० इसलिये इच्वाद पर लागू नहीं होगा

क्योंकि इस वाद मे यह साबित नहीं है कि वादी गण (उत्तरवादी गण) का कब्जा विवादित गाटो पर उनके अँश के अनुसार सावित नही है और न यह सावित है कि विवादित गाटा ज्वाइन्ट फोमली प्रापटी है । १९६८ आर०डी० पेज ३६६, ३सलिये नही लागू होगा क्योंकि विवादित गाटा १२८२ फसली अथवा उसके पूर्व के की पैदा की हुई नहीं है और पत्रावली मे न ऐसा कोई साक्ष्य है। १९५६ २० आ.०आर० सुप्रिम कोर्ट पेज २०६ भी इस वाद पर नही लागू होगा क्यों कि विवादित गाटा कर्ता सानान हिन्दू परिवार द्वारा पैदा करना सावित नही है

उपरोक्त के विपरीत विवादित गाटा १३२३ फ० मे छोटका विधवा घिराऊ के नाम अंकित है काश्तकार दखोलकार । १३४८ फ० में विवादित गाटा अपीलान्ट के पिता चैतई, १ वर्षा मुद्दत कर दे दर्ज है १५६ फ० मे विवादित गाटा चैतई, के नाम म० १७ वर्षो करके दर्ज है। १३५३ फ०में विवादित गाटा जमन ८ मु० २० वर्ष करके अपीलान्ट के पिता चैतई, का नाम अंकित है इससे स्पष्ट है कि विवादित गाटा १३३६ फ० में चेतइ अपीलान्ट के पिता ने पैदा किया जो ९३२३ फ० से (कनेक्ट) नहीं होता। यदि अपीलान्ट श्रीमती छोटका से वरासतन पाते तो इन्द्राज मुताविक ९३२३ फ० के होता । १३२३ फ० के मुद्दत से १३४८ फ० १३५६ फ० १३५६ फ० के मुद्दत से लिंक नही करता है। उत्तरवादी गण का यह कथन नही है कि वे श्रीमती छोटका के वारिस थे और न यही साक्ष्य है कि श्रीमती छोटका कब मरी विवादित गाटा अपीलान्ट के पिता चैतई, के नाम १३८८ फ० मे मुद्दत १ वर्ष करके दर्ज है भार उत्तरवादी गण पर है कि वे साबित करें कि विवादित गाटा कामन एनसेस्टर द्वारा पैदा किया गया था रिप्रजेन्टेटिव कैपेसिटी में पैदा किया गया।

१९७८ आर० डी० पेज१ मे सीरदारी गाटा के वावत यह मत व्यक्त किया गया हैकि -

It is also settled that members of the joint Hindu family even if he is joint co-possession separate property such property belongs exclusively to him and no members of the co-possessary can claim any interest.

सर्व प्रथम उत्तरवादी गण यह सावित करने में असमर्थ रहे कि विवादित गाटा घिराऊ ने रिप्रजेन्टेटिव कैपेसिटी मे विवादित गाटो को पैदा किया । इसके अलावा घिराऊ की पत्नी श्रीमती छोटका के मृत्यु के पश्चात विवादित गाटा चेतई के नाम तनहा दर्ज हुआ और भिन्न मुद्दत के साथ इसने स्पष्ट हो कि कान्टीनियुटी समाप्त हो गयी। श्रीमती छोटका के मृत्यु के पश्चात जमींदारान ने विवादित गाटा पर कब्जा कर लिया होगा और नेतई के नाम तनहा इंतजाम किया होगा। उत्तरवादी गण का यह केस नहीं है कि चेतई के साथ इंतजाम रिप्रेजेन्टेटिव कैपेसिटी में हुआ। अतः मैं इस निष्कर्ष पर पहुंचा कि विवादित गाटा तनहा अपीलान्ट का है उत्तर वादी गण सहखातेदार नही है अपील मे बल है और स्वीकार होने योग्य है।

आदेश

अपील स्वीकार की जाती है विद्वान चकबन्दी अधिकारी का निर्णय दिनांक ३०-५-७८ निरस्त किया जाता है। खाता संख्या २७७ अपीलान्ट परदेशी आदि के नाम तनहा दर्ज रहेगा और उत्तरवादी गण जगलाल आदि के सहखातेदार का विवाद खारिज होगा।

वाद अमल दरामद मिसिल दाखिल दफ्तर हो ।

सत्यप्रतिलिपिः

ह० सी० पी०एन० सिंह
स०ब०अ०, बस्ती २९-१२-७८"

13. Perusal of finding of fact recorded by Assistant Settlement Officer of Consolidation as quoted above demonstrate that appellate court has taken into consideration the revenue entry, duration mentioned in the khatauni as well as fact of non continiuty and identity of revenue entry of the Khata in dispute in holding that co-tenancy cannot be allowed in favour of respondent nos.2 and

3. The finding of fact has also been recorded by appellate court that after separation of family, the settlement was made in favour of petitioners' father Chetai, as such it cannot be said that the name of Chetai was recorded as Karta Khandan. The Joint Director of Consolidation has allowed the revision filed by respondent nos.2 & 3 without reversing the finding of fact recorded by appellate court in proper manner. The perusal of revisional order demonstrate that revisional court has mentioned the duration of entry in 1348 Fasli as one year, but the Khatauni of 1348 Fasli which is annexed along with writ petition as annexure no.1 demonstrate that duration of entry was 9 years, as such the impugned revisional order cannot be sustained in the eye of law.

14. It is also material to mention that in the year 1979, the Deputy Director of Consolidation was having limited jurisdiction under section 48 of U.P.C.H. Act, as section 48 of U.P.C.H. Act was amended giving wider power with effect from 10.11.1980, as such the revisional order dated 17.8.1979 cannot be sustained on the ground of limited revisional jurisdiction also.

15. It is also well settled principle of law that any member of joint family can acquire his separate property from his own fund as held by this court in the case reported in 1978 RD 1 Ram Chandra Dubey and another vs. Deputy Director of Consolidation, Deoria and others. Paragraph nos. 20, 21, 22 and 23 of judgment will be relevant for perusal, which are as under:-

"20. Accordingly, I find that the view taken by the Consolidation Authorities that the land belongs to the joint family and that the respondent No. 4 had half share in Khata No. 50 is correct and does not call for interference. Hence the mere fact that the sale-deed was executed in favour of the petitioners alone, that would not mean that the respondent No. 4 would not be entitled to get the right of Bhumidhar along with them.

21. So far as Khata Nos. 95-A and 95-B are concerned, the same were also entered in the name of Sarju as his Sirdari. It is also settled that a member of the joint Hindu family, even if he is joint can possess separate property. Such property belongs exclusively to him and no member of the co-parcenery, not even his male heirs can acquire any interest in it. Accordingly even if it is correct that the petitioners were the members of the joint family of which the respondent No. 4 was also a co-parcener, the same would not entitle respondent No. 4 to get rights of a sirdar over the disputed land. The Settlement Officer and the Deputy Director of Consolidation held the respondent No. 4 to be the sirdar of this Khata simply on the basis that he was a member of the joint family. None of the two authorities found any evidence on record to show that the property was either acquired by respondent No. 4 along with the petitioner or that the petitioners threw it into the common hotch-potch. The claim of the respondent No. 4, therefore, over these plots simply on the basis that as both the parties were living jointly, therefore, the property must be held to be the joint property of all cannot be accepted. The sub-mission of the learned counsel for the respondent No. 4 that the name of Sarju was recorded in the representative capacity because he was the Karta of the family cannot also be accepted inasmuch as there is no evidence on record to prove that the land of these two Khatas was ever treated by the petitioners or the respondent No. 4 as that of the joint family. Accordingly, the claim of respondent No. 4 with regard to Khata Nos. 95-A and 95-B cannot be upheld.

22. In the result, the writ petition succeeds in part and is accordingly allowed. The judgments of the Settlement Officer, Consolidation and that of the Deputy Director of

Consolidation with regard to Khata No. 50 is upheld but that of sirdari Khata Nos. 95-A and 95-B are quashed. Consequently, the judgment of the Consolidation Officer is restored. In the circumstances of the case the parties shall bear their own costs.

23. Petition partly allowed."

16. This Court in another case reported in **1978 RD 51 Bala Charan and others Vs. State of Uttar Pradesh and others** has held that there can be presumption of Joint family but there can no presumption of Joint family property. paragraph nos.6, 7 and 8 of the judgment renderedin **Bala Charan (Supra)** will be relevant for persual, which are as under:-

"6. In the case in hand no evidence was adduced on behalf of the opposite parties that there was nucleus from which the plots in question were acquired. It was not proved that the Patta was acquired out of the joint family funds, nor was it established that the income raised out of the plots in question was utilised by the other members of the joint Hindu family, nor any effort was made to show that the plots in question were blended with the joint family property and the opposite parties had thus acquired co-tenancy rights therein. The fact that the plots standing in the name of Mitthoo were held to be joint family property would not go to prove that the plots in question which stood in the name of Thakur were also joint family property. The Deputy Director of Consolidation had thus erred in holding that the opposite parties had acquired co-tenancy rights in the said plots. The Consolidation Officer had also erred likewise. In my view the Settlement Officer (Consolidation) had applied the correct principles of law to the facts of the case. The orders passed by the Deputy Director as also the Consolidation Officer cannot, therefore, be maintained.

7. In the result, the petition is allowed with costs. The order dated 23-7-1968 passed by the Consolidation Officer and the order dated 5-8-1970 passed by the Deputy Director of Consolidation are quashed. The order dated 8-11-1968 passed by the Settlement Officer (Consolidation) is restored.

8. Petition allowed."

17. Considering the findings of fact recorded by Assistant Settlement officer of Consolidation while deciding the appeal under section 11 (1) of U.P.C.H. Act, revenue entry of plot in question demonstrate that there is no identity and continuity of in dispute jurisdiction of revisional court under section 48 of U.P.C.H. Act in the year 1979 as well as the ratio of law laid down by this court in **Ram Chandra Dubey (supra) & Bala Charan (Supra)**, the impugned revisional order dated 17.8.1979 passed by respondent no.1-Joint Director of Consolidation cannot be sustained in the eye of law as such the same is hereby set aside.

18. **The writ petition is allowed.** The Order of appellate court dated 29.12.1978 passed by Assistant Settlement Officer of Consolidation is hereby maintained.

19. No order as to cost.

(2026) 7 ILRA 2437
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.07.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 4559 of 2025

Tata Projects Ltd. ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether NHAI had effectively handed over the project site and Right of Way in accordance with Articles 8.1 and 8.2 of the EPC Agreement?
(b) Whether the existence of an arbitration clause required the petitioner to pursue arbitration instead of invoking the writ jurisdiction of the High Court, or whether the case involved an arbitrary exercise of public power that could be examined u/Article 226?
(c) Whether any second party rights have occurred during the pendency of this petition and if not, to save time, the second party if in possession of land under construction of Highway could be given further time in larger public interest?

Headnotes

A. Contract Law – The National Highways Authority of India (NHAI) awarded Tata Projects a contract for widening and upgrading approximately **50.254 km of National Highway NH-709A**, between Garhmukteshwar and Meerut, at an initial cost of about **₹940.68 crore**. The Letter of Acceptance was issued on 12.03.2021, the EPC Agreement was executed on 26.08.2021, and the appointed date was 10.10.2021. The project was originally scheduled for completion by 10.10.2023.

The contract required NHAI to provide at least **90% of the Right of Way**, free from encroachments and encumbrances, in contiguous stretches of at least five kilometres. Tata Projects asserted that the land was not actually made available in the condition and manner required by the agreement. It alleged that the project was obstructed by:

- Unresolved land-acquisition and compensation issues.
- Mosques, temples, Eidgahs, houses, boundary walls and other permanent structures.
- Trees, electricity poles, pipelines, borewells and other utilities.
- Protests by landowners and local residents.
- Delays in design approvals and changes in the scope of work.

NHAI, however, relied on a **Handover Memorandum dated 21.09.2021**, which recorded that 47.620 km, or 94.76% of the project length, had been handed over to the contractor. Although Tata Projects repeatedly sought extensions of time, NHAI initially granted only a limited extension of 42 days. The Authority's Engineer later recommended further extensions, including an interim extension of 196 days and, subsequently, an additional 247 days. The Engineer also recorded that significant portions of the project remained affected by continuing hindrances.

NHAI issued a cure-period notice and later a termination/show-cause notice, alleging slow progress, failure to complete the project and inadequate maintenance. Tata Projects submitted detailed replies, blaming the delay primarily on NHAI's failure to provide a clear and obstruction-free site. NHAI nevertheless terminated the contract in January 2025.

Tata Projects challenged the termination before the High Court u/Article 226 of the Constitution.

B. In matters of commercial disputes emanating from the contract/ agreement reached between the parties, the Court must discourage invoking its extraordinary jurisdiction u/Article 226 of the Constitution, merely for the reasons that state or its officer purport to operate within the contractual field. (Para 58)

If the decision suffers from the vice of arbitrariness or caprice and does not pass the test of reasonableness then such decision is judicially reviewable u/Article 226 of the Constitution. The judicial review will not be permitted to be invoked to protect the private interest at the cost of public interest or to decide the contractual disputes. (Para 59)

(i) Disputed question of fact cannot be made a smokescreen to guillotine a genuine claim raised in the writ petition. In case of termination of contract where variety of situations may arise and the state authority repudiates the contracts mid-term in purported exercise of power under the contract, if the only aspect is the interpretation of true scope of documentary material in the light of pleadings raised, the Court may still grant relief to the party approaching the Court. (Para 61)

Mere existence of disputed question of fact by itself, does not take away the jurisdiction of this Court in granting appropriate relief to the petitioner. If the Court is satisfied that facts were being disputed by the state merely to create a ground for rejection of the writ petition raising the plea of disputed question of facts, the Court can go into and investigate the disputed facts vis-a-vis pleadings raised by the parties to record its own finding as to the facts of the case. Thus, **unless and until there is such a complex factual issue involved in a case that needed proper adjudication for appreciation of facts and pleadings which may be in the realm of a common law remedy or otherwise referable to alternative dispute resolution fora, if the sufficient material is otherwise available on record, the Court would not shirk away from discharging its duty of judicial review u/Article 226 of the Constitution.**

(ii) Wherever there is an arbitrariness in state action then the Court being the guardian of fundamental rights, is duty bound to interfere with arbitrariness, irrationality and mala fide and bias but of course, with a caution and self limitation this power to be exercised. There should be fair play and reasonableness approach on the part of the state where it is a mere party to the contract. If the right of way was not available and there was a delay in executing and completing the project, it was attributable to laxity and casual approach on the part of the state in not performing its own obligations. (Para 62, 63)

(iii) When the first party to the contract itself failed to discharge its duties and obligations, then it cannot be said to be in a driver's seat under an agreement to navigate through the provisions that empower to it to terminate the contract unilaterally. The impugned action has been taken purely on the basis of alleged poor maintenance and non-completion of project within time citing without giving any example and statistic details that land, as was promised under the agreement to be the part of the Memorandum of association was physically ever handed over to the petitioner, the second party to the contract to invoke the termination clause. (Para 64)

Proper reply was submitted by the petitioner to the show cause notice citing places, situations where the land was full of hindrances, the delays in removal of those hindrances, non-cooperation of the authority and delay in approving the design to execute the project as per the Narrative of Statement submitted initially by the petitioner. Not a single explanation offered by the petitioner was considered while taking decision in the matter of notice of termination of contract. Merely date of reply dated 3rd January, 2025 has been referred. (Para 66)

What is reasonableness in approach means looking to the facts of a case and in the given scenario what a prudent man would think about and what action would he take. In the present case a National Highway Project with 50.254 kms was underway. Standing private constructions with land issue where farmer's are agitating and temple and mosque structures are such which a private party could not have removed except with the help of State Authorities. Either the NHAI had given time schedule along with 'Handover Memorandum' that it would get the entire land procured with possession and that too with a 'Right of Way', or should have subsequently done the job writing such letters at subsequent stages meeting the objections if any. At least a prudent person would have behaved this way. However**, in the present case NHAI Project Director and at his level only complained about maintenance and slow pace of work and even ignored Authority's Engineer's own letter dated 10.07.2024 demanding extension**

of time of 248 days while giving cure period notice and then termination notice. This is an absolute arbitrariness, apparent on the face of record. Again the arbitrariness was so much so that while terminating contract under the order impugned petitioner's reply was not referred to by discussing the same. This is indicative of unerringly pointing to arbitrariness. (Para 67, 68)

C. There has been no change in the stand of NHAI that a third party right was not created pursuant to the interim order passed by this Court and no contract was awarded to a third party nor, any such statement has come up in any of the affidavits filed on behalf of NHAI. (Para 71)

It is also not the case of NHAI that possession of the land was taken from the petitioner. The petitioner's construction company the second party to the contract continued to remain there with all its articles and construction machines and materials on the spot. The status quo as was there on the date of filing of the petition remained continued and the construction work though did not proceed but remained under the control of second party to the contract. (Para 72, 73)

Accordingly, the order dated 14.01.2025 terminating the contract by the respondent No.- 2 and a subsequent action of forfeiting the bank guarantees and issuance of fresh tender dated 03.02.2025 are hereby quashed. As a consequence to the above and since the construction of the highway and its maintenance project is to basically meant to serve public interest and since petitioner in affidavit has assured to complete the entire work under the contract within 14 months, it is found appropriate for the parties to conduct a joint site inspection afresh,…and taking recourse to the provisions as contained under the EPC agreement and to arrive at an agreement to conclude the project within the re-scheduled timeline taking into consideration the letter of Engineer's Authority in the light of the report dated 10.07.2024 vis-a-vis the interim report to be obtained after joint inspection as directed above and applying the principles contained u/Articles 13, 15, 16 and 17 of the EPC agreement. (Para 74, 75)

Writ petition allowed. (E-4)

Case Law Cited

1. Union of India and others Vs. Puna Hinda, (2021) 10 SCC 690 (Para 16)
2. ABL International Ltd and others Vs. Export Credit Guarantee Corporation of India Ltd and others, (2024) 3 SCC 553 (Para 19)
3. MP Power Management Company Ltd Vs. M/s Sky Power Southeast Solar India Pvt Ltd. and others, (2023) 2 SCC 703 (Para 19)
4. A.P. Electrical Equipment Corporation Vs. Tehsildar and others, (2025) SCC Online SC 447 (Para 19)
5. Radha Krishna Agrawal and others Vs. State of Bihar and others, (1977) 3 SCC 457 (Para 58)
6. Lekhraj Sathram Das Lalwani Vs. Custodian, AIR 1966 SC 334 (Para 59)
7. Bachhandri Rath Vs. State of Orissa, (1972) 4 SCC 781 (Para 59)
8. Ramanna Dayaram Shetty Vs. International Airport Authority of India, (1979) 3 SCC 489 (Para 59)
9. Bitarally Vs. Seaton, (1959) SCC Online US SC 87 (Para 59)
10. Jagdish Mandal Vs. State of Orissa and others, (2007) 14 SCC 517 (Para 59)
11. Silppi Constructions Contractors Vs. Union of India and another, (2020) 16 SCC 489 (Para 62)

List of Keywords

highway, authority, land, public interest, acquisition, project, right of way, contractor, national, compensation, arbitrariness, poor maintenance, non-completion, irrationality, mala fides, perversity.

Appearances for Parties

For Petitioner(s): Varad Nath

For Respondent(s): Aushim Luthra, A.S.G.I., Pragya Pandey, Pranjal Mehrotra

(Delivered by Hon'ble Ajit Kumar, J.
&
Hon'ble Mrs. Swarupama Chaturvedi, J.)

For convenience, this judgment is structured as per the following index for proper consideration of facts, controversy involved, law points that arise for consideration in this petition.

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1. FACTS

1. Briefly stated facts of the case are that respondent- National Highway Authority (hereinafter referred to as 'Authority) issued a Request For Proposals (hereinafter referred to as 'RFP') on 11th December, 2018 for widening and strengthening for improvement and up-gradation of NH-709A, Garhmukteshwar (Chainage-83+200 of NH-24) to Meerut (Chainage 9+860 of NH-235) including connector to NH-119 Package XII in the State of Uttar Pradesh. The contract of the Highway was for a stretch of 50.254 Km at the cost of Rs.940.68 Crores.

2. The petitioner upon being successfully selected as a bidder, was issued with a Letter of Acceptance (for short 'LOA') on 12th March, 2021 for the development of the above section of NH-709A.

3. With the issuance of letter of acceptance and signing of EPC agreement between the authority and the contractor with declaration of the appointed day as 10th October, 2021 prescribing the dead line for completion of project as 10th October, 2023, the petitioner submitted work programme by way of Narrative Statement on 2nd December, 2021 as per Article 10(iii)-b. This narrative statement of programme had project overview, objective of the document qua methodology and assumption made by which the works programme have been developed, eight points scope of work, scheduling of methodology with key dates of projects with reference to Milestone-1, Milestone-2 and Milestone-3 totaling 730 days from the appointed day. It also referred to the land handover as per Article 3 & 8, utility shifting, submissions of approval of drawing, execution of work.

4. The MSE International link, the Authority's Engineer forwarded the above narrative statement of programme to the authority namely the Project Director, National Highways vide letter dated 20th December, 2021.

5. Under the contract while the NHAI was to provide absolute possession of the entire stretch of the highway area free from encumbrances/ hindrances to facilitate the work, which according to the respondent No.- 2, was provided to the petitioner as per the acknowledgment by the petitioner himself under his letter dated 26th August, 2021. Petitioner repeatedly raised a plea of not providing hindrance free 5 kms contiguous stretch at a time to carry out the work which delayed the project work getting completed within the time schedule. Ultimately, a curative notice was issued to the petitioner on 11th October, 2024 to which petitioner submitted a detailed reply on 19th November, 2024 raising the issue of not providing free stretch of land as per the agreement within 150 days which resulted in delay in completion of project. Petitioner thereafter also repeatedly made applications vide different replies but according to him, all remained unaddressed and ultimately a show cause notice was issued to him to which he also submitted a reply. However, contract was terminated mid-term vide order dated 25th November, 2024 by the respondent No.- 2 citing various provisions contained under various clauses of the agreement for low maintenance and also not completing the project within time. It is this order terminating the contract which is impugned in this petition and so also the consequential actions by the concerned respondent.

2. Record of Proceedings

6. In order to put the record straight we reproduce the record of proceedings in following manner:

(i). This petition after adjournment being granted on 18th February, 2025 while came up for admission as a fresh, a preliminary objection was raised as to the maintainability of this petition, however, on 6th March, 2025 an adjournment was granted and then the petition was entertained on merits and interim relief was also granted. The order dated 18th March, 2025 is reproduced hereunder:

"Heard Sri Shashi Nandan and Sri Amit Saxena, learned Senior counsels assisted by Sri Varad Nath, for the petitioner and Sri Makrand Adkar and Ms. Pragya Pandey, learned counsel for the respondents.

The petitioner was awarded a contract on 26.8.2021 for construction of a patch of national highway. The work itself was to be completed by 10.10.2023. By the impugned action the contract has been cancelled on the ground that though the period for completion of work has expired yet, physical completion of work is to the extent of 51.05%, whereas financial progress is only to the extent of 48.37%. Various documents and reports have been relied upon to contend that in fact the land on which road was to be constructed was not made available to the petitioner on account of various protests and disputes raised by the tenure holders and there was thus no failure on part of the petitioner to comply with the contract. It is also submitted that the respondents themselves have acknowledged such facts and have extended the term of contract thrice.

Learned Senior counsel for the petitioner then argues that 91% of the land for road construction has been made available only by December, 2024 and, therefore, the respondents having failed to provide the land cannot allege any failure on part of the petitioner in complying with the contract. It is also submitted that a fresh tender is now floated, wherein 15 months time is allowed for completion of work and the cost of project is assessed at Rs.873.31 crores which would result in additional financial losses to the State of several hundred crores. The petitioner further contends that they undertake to complete the work by December, 2025 itself.

On behalf of the petitioner, it is submitted that the overwhelming public interest requires this Court to intervene in the matter as not only the project would be completed in a shorter time but there would be substantial saving for the NHAI if the petitioner is allowed to complete the contract.

The petition is opposed by Sri Makrand Adkar, learned counsel for the respondents primarily on the ground that there is an arbitration clause and, therefore the remedy of the petitioner would be to approach the arbitrator once the contract is cancelled. It is also submitted that the authorities themselves have adopted a generous approach towards the petitioner and various extensions have been granted as there has been substantial failure on part of the petitioner in concluding the contract, as such the authorities are left with no option but to terminate the contract and issue fresh bids.

Learned counsel for the respondents also submits that the allegation that there was a failure on part of NHAI in offering land for road construction is factually incorrect.

We have heard learned counsel for the parties and have perused the materials on record.

Ordinarily this Court would not entertain a writ where there exits an arbitration clause and the allegation in the writ pertains to violation of various clauses of contract. However, in the facts of the present case, we are proceeding to examine the cause primarily for two reasons. The issue as to whether land for the project was made available earlier or is made available only in December, 2024, as is alleged in the petition, can be examined if a reply is received from the respondents on this aspect. Firstly, we find that by issuing re-tender the road will now be completed within 15 months which would expire some time in June, 2026, whereas the petitioner undertakes to complete the work by December, 2025. Secondly, there is a substantial enhancement of cost. In such circumstances, we are of the prima facie view that the core issue of contest between

the parties can be examined for the limited purposes, by this Court, so as to ascertain as to whether predominant public interest warrants exercise of writ jurisdiction by this Court in the facts of the present case, or not"

Learned counsel for the respondents fairly submits that the NHAI shall file an affidavit, within a week, specifying the dates when the possession of the land was given to the petitioner. A fair stand is also taken that till such affidavit is filed the respondents shall not award any fresh contract. In view of the fair stand taken by the respondents, we adjourn the matter to 25.3.2025. An advance copy of the affidavit proposed to be filed by NHAI will be served upon the counsel for the petitioner by 25.3.2025.

Post as fresh once again on 25.3.2025."

(emphasis added)

(ii). Thus, the Court granted interim relief to the effect that no fresh contract shall be awarded in favour of a third party until such affidavit as required was filed. Thereafter certain dates were fixed in the matter and interim order was made to continue and the Court was compelled to make strict observations on 26th November, 2025 that if the order dated 18th March, 2025 was not complied with by the next date, the Court shall be at liberty to exercise its extraordinary power under Article 215 of the Constitution. The order dated 26th November, 2025 is reproduced hereunder:

"1. Heard Sri Varad Nath, learned counsel for the petitioner and Sri Rakesh Pandey, learned Senior Advocate assisted by Sri Pranjal Mehrotra, for respondents no. 2 and 3.

2. At the very outset, learned counsel for the petitioner has drawn the attention of this Court to the last paragraph of the order dated 18.03.2025, where there was a specific direction to the NHAI which is unequivocal, unambiguous and incapable of multiple interpretations. The said direction was to file an affidavit within a week of the said order specifying the dates when the possession of the land was given to the petitioner. The said order admittedly has not been complied with till date. The Court takes note of this conduct on the part of the respondents as contumacious. An order that is passed by the Court which is absolutely categorically clear, had to be complied with.

3. This was subsequently reiterated in the order by this Court on 16.09.2025 in paragraph '1' where it is stated that the affidavit which was required to be filed by the respondent specifying the dates when the possession of the land was handed over to the petitioner and the work was to be executed, has not been disclosed by the NHAI in any of the affidavit filed by it so far.

4. Learned counsel for the respondent NHAI submits that they have filed another affidavit, however, the disclosure required by this Court was not there in the said affidavit.

5. This Court takes serious note of the conduct of the respondent no. 2. However, by way of a last opportunity, ten days' time is granted to the respondents to comply with the order dated

18.03.2025 on or before the next date of hearing, failing which this Court shall be at liberty to exercise its jurisdiction under Article 215 of the Constitution and proceed to initiate contempt proceedings against the Chief General Manager of the National Highway Authority of India on the next date of hearing.

6. The advance copy be supplied to learned counsel for the petitioner and thereafter, three days' time is granted to petitioner to file any response, if any, to it.

7. Put up this matter on 09.12.2025 in daily cause list."

(emphasis added)

(iii). It is after the above order was passed that a supplementary affidavit came to be filed bringing on record the 'Handover Memorandum' on 30th November, 2025. Thereafter the matter was heard on certain dates and finally it was reserved on 9th February, 2026. Seeking certain clarification as to whether the document brought on record was really a 'Handover Memorandum' within the meaning of Article 8.2 of EPC Agreement, the matter was listed for further hearing on 24th April, 2026. Learned Senior Advocate for NHAI sought time to bring the entire document and with further averments clarifying its stand regarding Handover Memorandum and 11th May, 2026 was fixed. The document namely Handover Memorandum came to be filed stating clearly that it was document acknowledging handing over possession of more than 90% of land initially. On 15th May, 2026 the matter was finally heard and judgment was reserved.

3. Arguments Advanced on behalf of of Petitioner

7. Assailing the order terminating the contract following arguments have been advanced by learned Senior Advocate :

(I). First party to the contract was under an obligation to procure the site and provide the same as an unencumbered land with a 'Right of Way' to the contractor as per the schedule 'A' of the bid document in terms of its Article 8.1 and 8.2 and liability of the contractor for the termination of contract mid-term would only be in the event of default as per the Article 23 of the agreement.

(II). With the appointment of Authority's Engineer as an interface between the first party and the second party to agreement, duties were assigned under Article 18.2 to the Authority's Engineer regarding assessment of performance of work under the contract and to take an appropriate action with the approval of the authorities before determining time extension, additional cost, if any to be paid, termination payment, if any, issuance of completion certificate and any other allied matter that was not specified and which may have created financial liability on either party. It was argued that delegation of power under the agreement by the first party to its engineer was to not only to ensure that second party carried out the work under the contract as per terms and conditions laid therein but also to impress upon the authority to facilitate delivery of possession of hindrance free land. So there was to be a coordinated effort between the Authority's

Engineer and the contractor to get the task accomplished as per the agreement. However, Authority Engineer's crucial reports submitted time to time for extension of time, were not paid any heed.

(III). Despite letter written to the Authority's Engineer on 7th July, 2022 citing reasons for delays due to obstructions/ impediments, the details of which were given in the letter and request being made for extension of 248 days and further, despite the fact that Authority's own Engineer had recommended for 130 days extension earlier, the respondent authorities provided only 42 days extension vide their letter dated 8th August, 2022 and that too without providing hindrance free stretch of land to carry out work. Inasmuch as, the highway authority always failed to discharge its duty to provide 5 kms long stretch free land at a time to facilitate the smooth and hurdle-free working.

(IV). The respondents' own admission in their letter dated 16th October, 2023 written to the Sub-Divisional Magistrate that plot No. 303 in village Sisoli, Plot No.- 220 in village Bhagwanpur Chattawan and plot No.- 281 in village Mau Khas were not provided, the project got delayed.

(V). The acquisition notice under the National Highways Act, 1956 published on 5th February, 2024 for a stretch of 12.13 km land on Gardmukteshwar to Meerut section published on 5th February, 2024 is an admission of the respondents highway authority, the first party to contract, to the effect that 12 kms land was still not available for which they were proceeding for acquisition. The documents sufficiently demonstrated that possession of the entire stretch or at least 90% of total land was still not available to the National Highway to be handed over to the petitioner so as to carry out the work and thus, petitioner could not have been saddled with the liability of delay in work in the absence of available land free from encumbrances and hindrances in terms of Article 9.2 of the agreement.

(VI). The manner and method in which impugned order has been passed showed lack of application of mind by the authority as none of the facts pleaded in reply nor, the relevant material available with the respondent, was taken into account.

(VII). Although the petitioner had submitted a detailed reply to the show cause notice and also letter of Authority's Engineer raising issues qua availability of land with the respondents and yet the respondents failed to consider any of such letters nor, even referred to reply submitted by the petitioner while arriving at a conclusion that the contractor, namely second party to the contract was chiefly responsible for the delay in completion project for having carried out the work at a very slow pace. Thus, this finding arrived at under the order impugned, according to the learned counsel for the petitioner, was perverse. Thus lack of application of mind by the authorities, has vitiated the order impugned and as such it was rendered unsustainable.

(VIII). The National Highway Authority was very much State within the meaning of Article 12 of the Constitution and, therefore, any act even in the realm of contract, if was a result of arbitrary exercise of power, as the case in hand was, it stood hit by Article 14 of the Constitution and hence deserved to be interfered with by even a writ Court.

8. Relying upon the Authority's Engineer's letter dated 26th September, 2022 Mr. Saxena drew the attention of the Court towards the last remark column, according to which 15.926 kms of stretch out of total 50.25 kms. i.e. 32% was hindered and work front was not available due to standing trees, land acquisition issues, building, religious structures, government structures. Further, the contractor was unable to carry out the construction work upto 3.2 km at a stretch in length since 15th July, 2022 due to Dotai villagers' agitation and Jama Masjid Eidgah Samiti' stand, who were demanding 4 times compensation qua their land required for shifting the Dotai Mosque Eidgaah and demand for another pass 2.392 kms. He submitted that this document had been filed as Annexure-14 to the petition and referred to in paragraph 39 of the writ petition which had not been specifically denied vide paragraph 28 of the counter affidavit.

9. Sri Saxena emphasized further that despite twice order being passed by this Court on 18th March, 2025 and 9th December, 2025, no document had been filed giving date-wise chart of handing over the available vacant land to the petitioner with 5 km contiguous stretch in terms of the agreement, and it also reflected fair admission of the pleadings raised in the writ petition with supported documents brought on record and hence petitioner could not have been blamed for delays in completion of task under the project per agreement.

10. It was further argued that any fresh opportunity to a new contractor would not only enhance the project cost further but also further delay in completing the formality. Further, it was argued that considering the fact that 50% of the physical work was carried out under the project by the petitioner, overwhelming public interest would be to get the project completed by the present petitioner subject to the escalation of price for the project having remained stalled over a period of more than one year.

11. Mr. Saxena lastly argued that given an opportunity, petitioner would be completing the projects in terms of the agreement in the next 14 months' time and this fact had been pleaded in paragraph 19.9 of the rejoinder affidavit.

4. Supportive Documents placed on behalf of petitioner

12. In support of his above submissions, learned Senior Advocate has taken the Court to the various documents in the nature of letter written by the Authority's Engineer to the respondent No.2 dated 20th December, 2021 and letter of the petitioner to respondent No.- 2 dated 7th July, 2022 then again letter written by the petitioner to respondent No.- 2 dated 17th August, 2022 in reply to the letter of respondent No.- 2 dated 8th August, 2022, another letter written by the petitioner to the respondent No. 2 on 30th August, 2022. Then again petitioner's letter dated 29th September, 2022, which was accompanied by the Authority's Engineer report/letter dated 26th September, 2022. Again letter of the petitioner dated 21st December, 2022 to the respondent No. 2 in reply to the letter dated 9th November, 2022, then again letter dated 21st December, 2022 subsequently letters written on 3rd January, 2023 and 6th January, 2023 and the delay analysis report prepared by the petitioner and sent vide letter dated 17th March, 2023, letter dated 10th July, 2023 then letter of Authority's Engineer dated 1st August, 2023, letter dated 12th August, 2023 and 30th September, 2023 to the respondent No.- 2, Authority's Engineer report to the respondent No.- 2 dated 21st November, 2023, 10th July, 2024, letter of the petitioner dated 17th September, 2024

to the respondent No. 2 and then authority's engineer's letter dated 25th August, 2023 and 16th August, 2024. All these correspondences took places between the petitioner and the authority engineer, his report and respondent's authority prior to the issuance of cure period notice dated 11th October, 2024.

5. Arguments advanced on behalf of NHAI

13. Meeting the above submissions, Sri Rakesh Pande, learned Senior Advocate appearing for NHAI has raised following points:

(I). In terms of the agreement reached between the parties more than 90% of the land was made available to carry out the project and this was acknowledged by the petitioner himself under the letter of their authorized signatory dated 21st September, 2021. Thus, as on 21st September, 2021 90% of the land was made available and only 10% of the land was made to available.

(II). The contract very specifically provided vide Article 9.2 that hindered land with building structures on land, trees and any other immovable property on or attached to the site shall be referred to in the 'Handover Memorandum' will be subject to Article 8.2(iii). According to him, vacant land and encumbered land are two different things. The unencumbered land means a land regarding which there is no claim of title or possession and it is free from encumbrances. The building structure and the trees attached to the site were to be ultimately removed by the contractor as per Article 9.2 read with 9.3, 9.4 and 9.5 of the agreement to ensure that the land remains vacant for execution of work. Thus, according to Mr. Pande, the existence of utilities, structures, poles and trees would not amount to such hindrances which may have delayed the project and it was for the second party of contract to have removed them with the assistance of the authority.

14. According to Mr. Pande, status of land in possession was 94.76% and, therefore, it would be wrong to suggest even that possession was not made available.

6. Supportive documents placed on behalf of NHAI

15. In support of his above submissions Mr. Pande, learned Senior Advocate has placed reliance upon the documents namely Handover Memorandum filed as Annexure - 2 to the supplementary counter affidavit. According to him as per documents brought on record and contract petitioner had been allotted hindrance free land and sufficient time to complete the work with further extension of time which he had prayed for and, therefore, the contract was rightly terminated mid-term upon failure of petitioner to carry out necessary maintenance and also failure in completing the project within time. Fresh tender bids have been entertained and tender has been finalized and it would have been awarded but for the interim protection granted to the petitioner by this Court. He also placed before the Court arbitration clause of the agreement vide Article 26, which the petitioner, according to him, ought to have invoked as he raised pleas regarding delays at the end of the respondent authority NHAI which the NHAI seriously disputed. He argued that material brought on record by way of annexure could be better appreciated and examined to arrive at conclusion by the arbitrator instead of this Court exercising power under Article 226 of the Constitution.

16. In support of his submission regarding arbitration Mr. Pandey, has placed reliance upon the judgment of Supreme Court in the case of **Union of India and others v. Puna Hinda (2021) 10 SCC 690.**

7. Rejoinder argument advanced on behalf of the Petitioner

17. Meeting the above submissions in rejoinder, Mr. Saxena, learned Senior Advocate has again relied upon the documents filed along with counter affidavit which, according to him, demonstrate that the land was not made available as per 'Handover Memorandum' and the subsequent acquisition notification itself showed that entire land was not available till 2024. He has placed reliance upon the letter of NHAI dated 15th March, 2024 which was sufficiently indicative of a fact that amount of compensation was being processed for the purposes of payment to the land owners in the matter of acquisition of land and the letter dated 12th July, 2024 showed that in between Garhmukteshwar and Meerut of NHA-709A, it was for non payment of compensation that project could not be carried through and farmers/ land owners protested against possession. These documents have been brought on record as Annexure - 4 to the rejoinder affidavit filed in reply to the supplementary counter affidavit.

18. Mr. Saxena had also placed reliance upon the document of respondent that showed that possession of entire land was not handed over till as late as 2023-2024 as against the claim set up through the acknowledgment letter of petitioner.

19. Meeting the submission on the point of alternative remedy by way of arbitration, invoking the relevant clause of the agreement and scope of interference by High Court in matters of contract, Sri Saxena has placed reliance firstly upon the authority of Supreme Court in the case **of ABL International Ltd and others v. Export Credit Guarantee Corporation of India Ltd and others (2024) 3 SCC 553 and MP Power Management Company Ltd v. M/s Sky Power Southeast Solar India Pvt Ltd. and others (2023) 2 SCC 703 and A.P. Electrical Equipment Corporation v. Tehsildar and others (2025) SCC Online SC 447.**

8. Discussion & Analysis

20. Having heard learned counsel for the respective parties and having perused the records, We find there to be a serious dispute in this case as to the real and effective transfer of unencumbered and hindrance free land to the petitioner as per the agreement at the very beginning and thereafter as well, with free Right of Way and hindrances free land at a stretch of 5 kms in contiguous parts of the total length, which made it impossible for contractor to complete the project within the time line prescribed under the agreement; and further that the respondent authority of NHAI instead of giving objective construction to the replies filed by the petitioner and ignoring reports of the Authority's own Engineer, it proceeded to rescind the contract mid term. Thus following two points arise for consideration of this Court to test the correctness of the order impugned:-

(I). Whether the terms conditions given under the agreement in handing over the possession of land site after its due procurement in terms of Article 8.1 and 8.2 of the agreement

and the documents brought on record by the authority do effective factum of delivery of possession of such land site without there being any dispute whatsoever.

(II). Whether disputed questions of facts arise in this case for which the petitioner should be relegated to the remedy of arbitration invoking Article 26 of the agreement or there is a fair admission of the respondents reflected from the documents brought on record as to issue and it is all question of law regarding exercise of power to terminate the contract mid-term for being arbitrary and unlawful and paramount public interest involved in the matter to hear and decide the petition on merits.

21. In order to find answer to the above points it is necessary for us to first go through the basic terms and conditions prescribed for under the agreement called Engineering, Procurement and Construction Agreement (for short 'EPC').

22. The basic features like making available the land, free 'Right of Way' to carry out the work, terms and conditions, notice etc., force majeure and termination of contract mid-term as provided under the EPC Agreement are summarised as under:

(i). The work was to be completed within two years of the appointed day.

(ii). The authority was under obligation vide Article 3 to provide at least not less than 90% of the procured land to carry out the project, free from encumbrance within 30 days of the agreement, approval of the railways for general arrangement drawings so as to construct road over-bridges/ under-bridges at level crossings on the project highway, within 60 days of the appointed date.

(iii). Delay in the right of way by the authority (NHAI) or approval of general arrangement drawing (for short 'GAD') by the railways would entitle the contract to damages, environment, clearance certificate, prior to the date of issuance of LOA. Article 3 deals with obligations of Authority. Relevant Article 3.1(i), (ii) & (iii) are reproduced hereunder:

"***3.1 Obligations of the Authority***

(i) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

(ii) The Authority shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works.

(iii) The Authority shall, upon submission of the Performance Security as per the RFP by the Contractor, shall provide to the Contractor:

(a) No less than 90% (ninety per cent) of the required Right of Way of the Construction Zone of total length of the Project Highway within a period of 30 (thirty) days from the date of this Agreement, which shall be in contiguous stretches of length not less than 5 (five) kilometre.

(b) approval of the general arrangement drawings (the "GAD") from railway authorities to enable the Contractor to construct road over- bridges/under-bridges at level crossings on the Project Highway in accordance with the Specifications and Standards, and subject to the terms and conditions specified in such approval, within a period of 60 (sixty) days from the Appointed Date, and reimbursement of all the costs and expenses paid by the Contractor to the railway authorities for and in respect of the road over-bridges/under bridges; and

(c) all environmental clearances as required under Clause 3.3 for the project Highway are not required."

(emphasis added)

(iv). Vide Article 4 certain obligations were cast upon the contractor for carrying out the work under the contract as per the EPC Agreement carrying out survey etc. and management and then obligations relating to the shop contracts and other agreements regarding employment of foreign nationals and contract personnel, coordination of work with the authority and clearances of site.

(v). Article 5.2 provided vide its clause (g) & (h) that authority shall be giving guarantees as to good and valid right to the site and grant of 'Right of Way' in respect thereof, to the contractor and shall have to ensure that it has procured right of way and environment clearances qua 90% of the total length of highway project. This clause (g) & (h) are reproduced hereunder:

"(g). It has good and valid right to the Site and has the power and authority to grant the Right of Way in respect thereof to the Contractor; and

(h). It has procured Right of Way and environment clearances such that the Contractor can commence construction forthwith on 90% (ninety per cent) of the total length of the Project Highway."

(vi). 'Site' has been defined vide Article 8.1 and 'Right of Way' has been defined vide clause 8.2 of Article 8 and relevant sub-clauses (i), (ii) & (iii) of the said article, relevant for the purposes of the case. Article 8.1 & clauses (i), (ii) & (iii) of Article 8.2 are reproduced hereunder:

"8.1 The Site

The site of the Project Highway (the "Site") shall comprise the site described in Schedule-A in respect of which the Right of Way shall be provided by the Authority to the Contractor. The Authority shall be responsible for:

(a) acquiring and providing Right of Way on the Site in accordance with the alignment finalized by the Authority, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and

(b) obtaining licences and permits for environment clearance for the Project Highway.

*"**8.2 Procurement of the Site***

(i). The Authority Representative, the Contractor and Authority's Engineer shall, within 10 (ten) days of the date of this Agreement, inspect the Site and prepare a detailed memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other Immovable property on or attached to the Site (hereinafter referred to as the "Handover Memorandum"). Subject to the provisions of Clause 8.2 (ii), the Handover Memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Contractor along with details of hindrances in the Construction Zone. For sake of clarity the Handover Memorandum shall clearly specify the parts of Site where work can be executed. Signing of the Handover Memorandum, in three counterparts (each of which shall constitute an original), by the authorized representatives of the Authority, Contractor and Authority's Engineer shall be deemed to constitute a valid evidence of giving the Right of Way to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

(ii). Whenever the Authority is ready to hand over any part or parts of the Site included in the Appendix, it shall inform the Contractor, by notice, of the proposed date and time such of hand over. The Authority Representative and the Contractor shall, on the date so notified, inspect the specified parts of the Site, and prepare a memorandum containing an inventory of the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site so handed over. The signing of the memorandum, in three (3) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid evidence of giving the relevant Right of Way to the Contractor.

If the contractor fails to join for site inspection or disputes the parts of the site available for work, the Authority's Engineer shall decide the parts of the site where work can be executed and notify to both the parties within 3 days of the proposed date of inspection. The parties agree that such notification of the Authority's Engineer as mentioned hereinabove shall be final and binding on the parties.

(iii). The Authority shall provide the Right of Way to the Contractor in respect of all land included in the Appendix by the date specified in Schedule-A for those parts of the Site referred to therein, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in a sum calculated in accordance with Clause 8.3. The Contractor agrees that it shall not be entitled to claim any other damages on account of any such delay by the Authority."

(emphasis added)

(vii). Vide clauses 9.1 & 9.2 of Article 9 Utilities and Trees have come to be defined. Clause 9.1, 9.2, 9.3 & 9.4 of Article 9 being relevant are reproduced hereunder:

"9.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, it shall be the responsibility of the Contractor to ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility.

9.2 Shifting of obstructing utilities

The Contractor shall, in accordance with Applicable Laws and with assistance of the Authority, undertake the work of shifting of any utility (including electric lines, water pipes, gas pipelines and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project Highway in accordance with this Agreement. The cost of such shifting, as per estimates prepared by the entity owning the utility and approved by the Authority, shall be reimbursed by the Authority to the Contractor. The scope of work of such shifting of Utilities shall be as indicated in Schedule-B-1. In the event of any delay of such shifting on the part of the contractor, no extension of time for completion of the project and no claims, in any manner, shall be admissible on this account against the Authority.

The work of shifting of Utilities can be taken up by the Contractor any time after signing of the Agreement.

9.3 New utilities

(i) The Contractor shall allow, subject to the permission from the Authority and such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electricity lines/ cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project Highway in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.

(ii) The Authority may, by notice, require the Contractor to connect any adjoining road to the Project Highway, and the connecting portion thereof falling within the Site shall be constructed by the Contractor at the Authority□s cost in accordance with Article 10.

(iii). The Authority may by notice require the Contractor to connect, through a payed road any adjoining service station, hotel, motel or any other public facility or amenity to the Project Highway, whereupon the connecting portion thereof that falls within the Site shall be constructed by the Contractor on payment of the cost. The cost to be paid by the Authority to the Contractor shall be determined by the Authority's Engineer. For the avoidance of doubt, in the event such road is to be constructed for the benefit of any entity, the Authority may require such

entity to make an advance deposit with the Contractor or the Authority, as the case may be, of an amount equal to the estimated cost as determined by the Authority's Engineer and such advance shall be adjusted against the cost of construction as determined by the Authority's Engineer hereunder.

(iv). In the event construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Authority's Engineer.

9.4 Felling of trees

The Authority shall assist the Contractor in obtaining the Applicable Permits for felling of trees in non-forest area to be identified by the Authority for this purpose if, and only if, such trees cause a Material Adverse Effect on the construction or maintenance of the Project Highway. The Contractor shall fell these trees as per the Permits obtained. The cost of such felling shall be borne by the Authority and in the event of any delay in felling thereof for reasons beyond the control of the Contractor; it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. The Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate. For the avoidance of doubt, the Parties agree that if any felling of trees hereunder is in a forest area, the Applicable Permit thereof shall be procured by the Authority within the time specified in the Agreement."

(emphasis added)

(viii). Article 10 provides for design and construction of the project highway. Sub-clause (iv) of clause 10.3 and clause 10.5 are reproduced hereunder:

"10.3 Construction of the Project Highway

(iv). In the event that the Contractor fails to achieve the Project Completion within a period of 90 (ninety) days from the Schedule Completion Date set forth in Schedule-J. unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, the contractor shall be deemed to be ineligible for bidding any future projects of the Authority, both as the sole party or as one of the parties of Joint Venture/ Consortium during the period from Scheduled Completion Date to issuance of Completion Certificate. This restriction is applicable if the contract value of the delayed project is not less than Rs. 300 Crore.

10.5 Extension of time for completion

(i) Without prejudice to any other provision of this Agreemeht for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the "Time Extension") to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

(a) delay in providing the Right of Way of Construction Zone, environmental clearances or approval of railway authorities, specified in Clause 3.1 (iv);

(b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 13);

(c) occurrence of a Force Majeure Event;

(d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other contractors on the Site; and

(e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

(ii) The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.5 (i), inform the Authority's Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.

(iii) On the failure of the Contractor to issue to the Authority's Engineer a notice in accordance with the provisions of Clause 10.5 (ii) within the time specified therein, the Contractor shall not be entitled to any time Extension and shall forfeit its right for any such claims in future. For the avoidable of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5 (iii), the Authority shall be discharged from all liability in connection with the claim.

(iv) The Authority's Engineer shall, on receipt of the claim in accordance with the provisions of Clause 10.5 (ii), examine the claim expeditiously within the time frame specified herein. In the event the Authority's Engineer requires any clarifications to examine the claim, the Authority's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Authority's Engineer requesting for clarification, furnish the same to the Authority's Engineer within 10 (ten) days thereof. The Authority's Engineer shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension.

Provided that when determining each extension of time under this Clause 10.5, the Authority's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

(v) If the event or circumstance giving rise to the notice has a continuing effect:

(a) a fully detailed claim shall be considered as interim;

(b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and

(c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine the same in accordance with the provisions of Clause 10.5 (iv) within a period of 30 (thirty) days of the receipt thereof."

(emphasis added)

(ix). Vide Article 11 quality assurance by the contractor, monitoring and supervision by the Authority's Engineer has been provided for. Article 11.8 and 11.14 are relevant and are reproduced hereunder:

"11.8 Inspection

(i) The Authority's Engineer and its authorised representative shall at all reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and

(b) during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials.

(ii) The Contractor shall give the Authority's Engineer and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

(iii) The Authority's Engineer shall submit a monthly inspection report (the "Inspection Report") to the Authority and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Authority's Engineer shall not

relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever."

11.14 Delays during construction

Without prejudice to the provisions of Clause 10.3 (ii), in the event the Contractor does not achieve any of the Project Milestones or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project Highway is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Authority's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date."

(emphasis added)

(x). Vide Article 18 of EPC Agreement provides for appointment and Authority's Engineer in accordance with the terms of reference set forth in Annexure 1 of Schedule ' N. For the purposes of exercise of authority by the Authority's Engineer force majeure and termination is provided in Article 21 of Part V of EPC. Article 18.2 relevant here in this case is reproduced hereunder:

"*18.2 Duties and authority of the Authority's Engineer*

(i) The Authority's Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement and substantially in accordance with the terms of reference ("Terms of Reference" or "TOR") set forth in Annexure-I of Schedule N, but subject to obtaining prior written approval of the Authority before determining:

(a) any Time Extension;

(b) any additional cost to be paid by the Authority to the Contractor;

(a) the Termination Payment;

d) issuance of Completion Certificate; or

(e) any other matter which is not specified in (a), (b), (c) or (d) above and which creates financial liability on either Party."

(xi). Vide Article 23, 60 days cure period notice was prescribed for. Vide clauses (ii) & (iii) of Article 23, 15 days notice of termination was prescribed for. Vide Article 23.3 termination for Authority's convenience is prescribed for. Clause (i), (ii) & (iii) of Article 23.1 and Article 23.2 and Article 23.3 are reproduced hereunder:

"23.1 Termination for Contractor Default

(i) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the "Contractor Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

(a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;

(b) after the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;

(c) ***the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty five) days;***

(d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the Authority;

(e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority's Engineer;

(f) the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;

(g) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's Engineer;

(h) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Authority;

(i) the Contractor creates any Encumbrance in breach of this Agreement;

(j) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;

(k) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;

(l) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(m) a resolution for winding up or insolvency of the Contractor is passed, or any petition for winding up or insolvency of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver or interim resolution professional, as the case may be, is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:

i. the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and

ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;

(n) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be false or the Contractor is at any time hereafter found to be in breach or non-compliance thereof;

(o) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(p) ***the Contractor has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or***

(q) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

(r) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

i. for doing or forbearing to do any action in relation to the Contract, or

ii. for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's personnel, agents or subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-

paragraph (s). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

(ii) ***Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall a notice inform the Contractor of and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.***

(iii) The following shall apply in respect of cure of any of the defaults and/ or breaches of the Agreement:

(a) The Cure Period shall commence from the date of the notice by the Authority to the Contractor asking the latter to cure the breach or default specified in such notice;

(b) The Cure Period provided in the Agreement shall not relieve the Contractor from liability for Damages caused by its breach or default;

(c) The Cure Period shall not in any way be extended by any period of suspension under the Agreement;

(d) If the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority hereunder the applicable Cure Period (and any liability of the Contractor for damages incurred) shall be extended by the period taken by the Authority to accord its required approval.

(iv) After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or arrange for any other entities to do so. The Authority and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

23.2 Termination for Authority Default

(i) In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

(a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;

(b) the Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;

(c) the Authority has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the environmental clearances required for construction of the Project Highway;

(d) the Authority becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect;

(e) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;

(f) the Authority's Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents; or

(g) the whole work is suspended by Authority beyond 120 (one hundred twenty) days for any reason which is not attributed to the Contractor.

(ii) Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

If on the consideration of the Authority's representation or otherwise, the contractor does not issue the Termination Notice on such 15th (fifteenth) day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor and he would be deemed to have waived any claim and forfeited any right to any other remedy on that count or in relation to such action or omission.

23.3 Termination for Authority's convenience

Notwithstanding anything stated hereinabove, the Authority may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice provided to the Contractor."

(emphasis added)

(xii). Article 25 provided Liability and Indemnity and Article 26 provided for resolution of dispute between the parties including arbitration vide Article 26.3.

23. From a bare reading of the aforesaid Articles of EPC Agreement following undisputed conditions regarding availability of land under the agreement vis-a-vis the obligations and duties emerge out:

(i). The project highway site shall be procured by the authority.

(ii). The possession of the project highway site will be made available to the contractor free from all encroachments, encumbrances with further free access.

(iii). It will be authority's duty to design the site in terms of alignment of national highway road.

(iv). The authority shall provide 'Right of Way' on the site in accordance with the alignment. The right of way as defined, a site in accordance with alignment finalised by the authority free from all encroachments and encumbrances. Clause 3 provides for right of way to the contractor in respect of all land included the appendix by the dates specified in schedule A for those parts of site referred therein and in the event delay occurs then force majeure clause of the agreement can be enforced.

(v). It will be authority's duty to obtain environment clearance and licences for the project highway.

(vi). The authority's representative, the contractor and Authority's Engineer shall inspect the site within 10 days of the agreement.

(vii). Soon after the above inspection a memorandum would be prepared containing inventory of the site qua vacant land and encumbered land, buildings structure, road works, trees and any other immovable property on or attached to the site. This would be a Handover Memorandum.

(viii). The Handover Memorandum shall contain Appendix regarding details of those parts of the site which are vacant having access as the land where 'Right of Way' has not been given to the contractor with further details of hindrances in the construction zone.

(ix). The site of project will be prepared as per schedule - A of the agreement.

(x). The authority is to provide right of way to the contractor in respect of all the land included in the appendix by the date specified in Schedule- A and in the event of breach of this, contractor would be entitled to damages etc.

(xi). Upon a careful reading of aforesaid clauses, we find that soon after the agreement is reached within 10 days, the Authority Engineer shall inspect the site the and prepare a detailed memorandum containing an entry of site vacant and unencumbered land, buildings, structures, trees and other removal properties and the documents hand over memorandum would carry with the appendix specifying the vacant access, specifying the site with detail of access and where right of

way and access has not been provided along with other details of hindrances in the construction zone. The hand over memorandum shall also provide clearly the part of site where work can be executed and the hand over memorandum shall have the counter parts and each shall construe as original by the authorised representatives of the authority, contractor and Authority Engineer.

(xii). The agreement defines □Right of Way□ as under:

'Right of Way' means and refers to the total land required and acquired for the project, both in its width and length, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for constructions and maintenance of the Project Highway in accordance with this Agreement."

(xiii). 90% of the total length of project shall be handed over to the contractor prior to the appointed day.

(xiv). Conditions specified in the clauses contained in Article 8.2 shall not be waived by either of the parties.

(xv). Existing rights of way, easements, privileges, liberties and appurtenances to the site shall not be deemed to be encumbrances.

(xvi). The contractor would have to shoulder the responsibility to shift obstructing utilities like electric lines, water pipes, gas pipelines, telephone cables to appropriate location if these utilities create obstructions in the work or maintenance of project highway in accordance with law and the cost incurred in such reallocation will be borne by the authority. Such work and shifting of utilities has been indicated in Schedule □ B-1 of the agreement.

(xvii). The contractor shall allow use of site for laying down new public telephone utilities like lines, electric lines, water pipelines, cables and other new public utilities subject to permission from the authority for which the damages may be claimed.

(xviii). The authority shall be assisting the contractor in obtaining applicable permits for cutting of trees in non forest area to be identified by the authority for the purposes if such trees cause a material adverse effect on construction and maintenance of the project. Dismantling of structures would be done by the contractor to get the land free from hindrances in respect of which the compensation has already been paid by the authority to the land owners and the land was handed over to the contractor.

24. Thus, from the above, we find that agreement very comprehensively prescribed terms and conditions to ensure good time bound execution of work with a right to reserve with contractor to enforce obligations of the Authority to ensure carrying out of the project as per the agreement. It also provides for the authority to adopt measures in the event of default by contractor in carrying out the work as per the agreement within the time schedule and upon failure of contractor to complete the project denying core period to terminate contract.

25. Now, it is in the above background of conditions laid under the agreement that we proceed to examine the documents brought on record to reach out to the conclusion as answer to the points framed above by us.

26. As the pleadings raised in the writ petition demonstrate so also the documents brought on record, the reasons for delays in completion of project, which according to the petitioner, was attributable to hindrances and land issues. Petitioner had applied for the first time on 7th July, 2022 for extension of time taking recourse to the Article 10.5. The total time demanded by petitioner 248 days so as to enable him to complete the project by 15th June, 2022. However, the Authority□s Engineer vide letter dated 27th July, 2022 recommended an extension of time only 39 days and resultantly the respondent No.- 2 namely the NHAI Project Director accorded extension of only 42 days for Milestone-1 and denied any other extension for Milestone 2 & 3. Relevant para (iv) of letter dated 8th February, 2022 is reproduced hereunder:

"iv. As per clause 9.2 Article 9.2 of CA the shifting of obstructing Utilities (including electric lines, water pipes, Gs pipeline etc) & dismantling of structures is the obligation of contractor. Further, in respect of tree cutting of protect & non-protected forest, permission was obtained within 150 days (i.e upto 09.03.2022) from the Appointed Date and tree cutting by respective DLM was in progress. Further, length of 20.340 Km was considered to be hindered after 150 days as stated in the contractor's letter/ respective MPR. Thus, length considered handed over to the contractor shall be 29.914 Km (50.254 Km □ 20.340 Km). It is pertinent to mention that contractor/ AE has submitted the proposal based on land available within 150 days & delays upto 15.06.2022. Since, the project milestone-1 (21.06.2022) date has been passed, hence, effected delay days is worked out for 104 days (10.03.2022 to 21.06.2022) as (50.254-29.914)/ 50.254 x 104 days = 42.09 days or say 42 days."

27. Petitioner raised objection to the criteria adopted by the Authority's Engineer in evaluating time extension request. The petitioner continued to reiterate but the maximum period remained granted 42 days vide letter of the Authority dated 9th November, 2022. While the correspondence went on between the petitioner the Authority's Engineer and the Authority, a development took place in the form of letter of Authority's Engineer dated 21st November, 2023 acknowledging the presence of hindrances/ encumbrances of the project land which, according to the petitioner caused the delay in project and hence it recommended for further extension of time for 196 days. Authority's Engineer's recommendation as contained in its letter dated 21st November, 2023 is reproduced hereunder:

"9. AE's Recommendations of Interim EOT:

Considering the aforesaid data points made available, the AE Representative is delighted to recommend the following to the Authority for grant of interim EOT to the EPC Contractor in terms of Clause 10.5 of the Contract Agreement:-

a) Since hindrances/ encumbrances are continuing on affected project stretch as per Annexure-I even on date, this recommendation of EOT is interim only.

b) Considering EPC Contractor's letter, No TPL/GM/NHAI/FY22-23/ 709A/843, dated 17.03.2023, there is an estimated delay of 196 days up to the scheduled date of completion of 09.10.2023 for which EPC Contractor is not liable. EPC Contractor is therefore recommended an interim EOT of 196 days (Interim EOT-2) to be granted by the Competent."

28. While the matter lingered on, the Authority's Engineer prepared a comprehensive report vide letter dated 10th July, 2024 addressed to the Project Director, NHAI, recording reasons for delay in carrying out the project and proposed 5th January, 2025 as revised schedule complete date. This letter of the Authority's Engineer acquires significance and relevance year because it was based upon the survey conducted on the spot and the reasons assigned for the delay in project. The relevant extract thereof is reproduced hereunder:

"10. AE's Recommendations of Interim EOT-3:

Considering the aforesaid data points made available, the AE Representative is delighted to recommend the following to the Authority for grant of interim EOT to the EPC Contractor in terms of Clause 10.5 of the Contract Agreement: -

a) Since hindrances/encumbrances are continuing on affected project stretch as per Annexure-I and Annexure-11 even on date, this recommendation of EOT is interim only.

b) Considering the EOT-1 of 42 days and EOT-2 of 196 days to the EPC Contractor, this interim recommendation is for an additional of 247 Days to be reckoned from Revised Scheduled Completion Date of 22/4/2024 as per EOT-2 recommendations. Considering EOT-3, the revised Scheduled Completion Date stands at 5th January 2025 for 100% completion of the Project Highways in all respects inclusive of the Change of Scope work items under consideration for approval by the Competent Authority.

c) The Revised Milestones/Scheduled Completion Date pursuant to Clause 6 of Schedule J of the Contract Agreement considering the current interim recommendation EOT-3 stand modified as follows: -

Sr. No.	Milestone	Revised Project Milestone as per Project Length handed over to the EPC Contractor on AD+90 days,	Revised Date	Status
1	MS-I	10% x68.615% x Rs 954.90 Cr = Rs. 65.54 Cr.	Completed on 02-Aug-22	Achieved
2	MS-II	35% x 68.615% x 954.9 = Rs.229.32 Cr.	23-Dec-22	Achieved
3	Revised MS-III	70% x 1043.07 Cr. = Rs. 730.149 Cr.	16-Sep-2024	Yet to be achieved.
4	Revised Scheduled	100% of effective Project Completion Cost subject to a	05-Jan-2025	Yet to be achieved.

	Completion Date	maximum of Rs. 1043.07 Cr including amounting to Rs.88.15 Cr. Change of Scope work items considering for approval by the Competent Authority.		

The EPC Contractor has to submit his resource based Revised work program with enhanced resources to achieve above mentioned milestones. In this context it is highly recommended that EPC Contractor executes the works at site in 03 parallel sections concurrently with additional mobilization of necessary and augmented as mentioned below:

i. Grade Separated Interchanges at km 0+000, km 38+120, km 12+134;

ii. Change of Scope Work items including all additional underpasses, service roads etc under approval by the Authority

iii. Rest of the Highways/Structures/balance CD works etc including balance scope as per Schedule B of the Contract Agreement

d) ***While EPC Contractor has achieved a financial progress of 36% i.e. Rs.343.76 Cr upto IPC-22, and works amounting to Rs. 297.56 Cr are continued to be delayed due to ongoing hindrances/encumbrances for which EPC Contractor is not liable, the EPC Contractor may be allowed escalation as per the rate prevailing on the original date of completion of 09.10.2023 on balance works amounting upto Rs.297.56 Cr. value of works.***

e) Since there is impending delay in completion of value of works amounting to Rs.313.58 till IPC 22 due to slow progress by the EPC Contractor until interim EOT-2, necessary damages may be charged to EPC Contractor pursuant to Clause 10.3 read with Clause 10.6 of the Contract Agreement.

f) The EPC Contractor has not made any financial claim so for pursuant to Clauses 3.1, 8.3, 9.5 and any other applicable claim condition in terms of Schedule O of the EPC Contract dated 26-08-2021 and the Authority also has not abrogated applicable delay damages to the EPC Contractor in terms of Clause 10.3 of the Contract Agreement with the understanding that either party shall consider and agree exclusively vide a settlement agreement for not making any claim or charging applicable damages in acceptance of this recommendation of EOT-3 unconditionally.

g) The aforesaid recommendations of the EOT are based on the assumption that since there has been persistent slow progress by EPC Contractor, the EPC Contractor shall be accepting these recommendations unconditionally and shall not make any financial claims in future for the EOT and the Authority also will not charge any LDs to the EPC Contractor for his slow progress/non-performance up to the revised scheduled completion date of 05.01.2025.

h) ***Any further extension of time/escalation will be recommended by the Authority Engineer/Authority as per performance of EPC Contractor measured against the Revised work program submitted vide his email dated 09.07.2024 to achieve the revised financial Milestones as outlined in point (c) above."***

(emphasis added)

29. The annexure appended to the report/ letter also acquires significance because it refers to the length in meters which were not hindrance free even on 10th July, 2024 and the total land comes out to be as per main carriage way 7.998 km. out of total project length of 50.254 km. The letter also recorded that Handover Memorandum showed encumbrance/ hindrance free project site admeasuring 47.620 km. out of total project length 50.254 km. with necessary access and right of way handed over to the contractor but as per the joint site visit by Authority's Engineer team, the contractor and the authority dated March, 2023 a total of 15.66 km. of the project length was encumbered with various hindrances. Thus making effective available land only to the tune of 34.594 km.

30. From the perusal of the annexure to the report/ letter it is worth noticing that hindrances that accounted for 7.998 km. as recorded above, were basically for buildings, temples, mosque, boundary wall and land issues, besides the other land full of hindrances in terms of trees, electricity polls etc. so it had come in black and white in the report of Authority's Engineer dated 10th July, 2024 that till that date land issues were there, the permanent structures were there and hence the land, possession of which was required to be given as per the Article 8.1(a), 8.2(i), 8.2(ii) and 8.2 (iii) was not there.

31. It is worth noticing here that as per the EPC the work was to completed by July, 2022 whereas even 90% land site were not available as per the agreement as on 10th July, 2024. On 17th September, 2024 the petitioner submitted a revised schedule for completion of the project appending therewith the details but the NHAI proceeded to issue a cure period notice on 11th October, 2024 in terms of Article 23.1(i) of the agreement.

32. The petitioner submitted a detailed reply to the notice on 19th November, 2024 citing that the handover of land at site of project was still not complete and land issues were there but the authority brushed aside the reply and directed the petitioner to complete the project in terms of the extended period earlier granted and to achieve the finish line at the earliest. Further time extension request and rescheduling the time line was rejected vide letter dated 11th December, 2024.

33. The contractor in his reply dated 16th December, 2024 cited the status of the site of land and hindrances still to be existing and prayed for support in the matter for the practical problem that had arisen and in the light of the earlier response of the petitioner some sympathetic consideration should be accorded, however, still the contractor assured to complete the project on agreed if extended time lines, was allowed.

34. The Authority's Engineer wrote to the petitioner on 17th December, 2024 that financial performance be submitted and also additional steps, if any, taken for the completion of project.

While this letter was issued by the Authority's Engineer on 17th December, 2024, on 23rd December, 2024 the petitioner was issued with a show cause notice citing slow progress and failure to complete the project and not maintenance of project highway.

35. The petitioner again submitted reply citing the photographic evidence collected in the matter to demonstrate that maintenance activities were duly carried out and that petitioner has been prudently performing its obligation under the agreement to complete the project at the earliest. However, the project progress got impacted for the reasons not attributable to the contractor beyond his control. Petitioner again prayed for extension of time but his request went in vein as the authority finally terminated the contract on 22nd January, 2025 the order impugned in this petition.

36. From the above discussion, it clearly comes to be established that Authority's Engineer reported to the authority itself that Handover Memorandum though referred to handing over more than 90% of the land but as a matter of fact possession of this much of land was never handed over.

37. Here it is apt to refer to the Handover Memorandum which has been basically relied upon by the NHAI and we find this Handover Memorandum dated 21st September, 2021 to be referring to delivery of possession of total length of 47.620 km out of 50.254 km. amounting to 94.76% but the appendix to the same is not as per the Article 8.2. The appendix shows hindrances in the form of electric polls, a little water pipeline, a few hand pumps but does not refer to any land issues or building structure or temple etc. that have come to be referred to in the Authority's Engineer's report dated 10th July, 2024. This report dated 10th July, 2024 has come to be referred to in paragraph 49 of the writ petition but to our utter surprise, in reply thereto vide paragraph 28 of the counter affidavit the same has remained undenied.

38. The paragraph refers to some letter/ communication of the petitioner dated 7th June, 2024 to allege that the petitioner deliberately avoided to file the same but no such letter has been annexed in support of the averments so made by respondent NHAI. Thus, the Authority's Engineer's report has remained undenied.

39. We can understand that utilities like electricity polls, trees, hand pumps, pipelines etc. are removable easily and for that contractor had the liability but the land issues cannot be taken to be within the control of the contractor. Further, appendix-2 schedule ' A as per Article 8.3(i), was to also bear the date of providing 'Right of Way' in respect of hindrances after its removal but the Handover Memorandum was so sketchy and evasive that it did not contain any such details.

40. We further notice that in the order impugned exhaustive reply submitted by the petitioner to show cause notice was not accorded due consideration and it is one of those cases where the authority instead of carrying out its own obligations, it kept on tightening the screw upon the contractor to finish the work within the extended time line. The agreement itself provides that procurement of the land is the prime duty of the authority and so long as the land issues continue to remain there as a hindrance, then no contractor can even dare to demolish the constructions without settling the land issues. There is one document filed along with the writ petition at page 948 along with the annexure- 24 that shows that compensation to the members of the Committee of Jama Masjid and Eidgah was paid on 2nd December, 2024. This document has come to be referred to in

paragraph 49 of the writ petition and we have already held above how evasive the reply was there in counter affidavit. Still further, the land state can take the plea that compensation payment issue may not cause difficulty in possession but in a democratic country like ours if payment remains withheld, the farmers and land owners keep agitating and no private person can forcefully take possession challenging to a land and order situation caused on the spot by such agitation.

41. Thus, respondents having not discharged their obligations and having failed to perform duties of their part under the agreement, they were certainly not justified in asking petitioner to complete the project within the extended short timeline inasmuch as, they having failed to honour the report of their own Engineer, were absolutely unjustified in issuing show cause notice even. The contract agreement itself provides for appointment of Authority's Engineer vide Article 18.1 & 18.2(i) lays down the duties as per the terms of reference. There is nothing in the counter affidavit to demonstrate that Authority's Engineer submitted any collusive report in favour of the petitioner to help him out.

9. Findings

42. From the discussions that we have held above referring to the various correspondences between petitioner-contractor, the Authority's Engineer and the response letters of the National Highway Authority of India, Project Director, Meerut, following undisputed fact positions emerge out:

(i). On 21st September, 2021 Handover Memorandum was signed by the contractor, National Highways Authority and Authority's Engineer, all jointly describing therein that 47.620 kms (94.76%) length of land out of total 50.254 kms. with right of way available to 45 meters and 54 meters as per schedule- B of the contract agreement. The appendix to the document showed that total land area required was 305.5 hectares with right of way 120 hectares, whereas area under 3D notification of National Highways Act, 1956 was 85.51 hectares and compensation awarded under Section 3G was 184.5 hectares. It also contained a detail regarding area under possession against 3G notification of National Highways Act, 1956 was 173.39 hectares. So, total possession were shown as 293.39 hectares and the pending length possession was shown as 2.364 kms only but the chain-wise pending possession was at different level like 13.200 kms. to 14.600 kms., 25.600 kms. to 26.500 kms., 5.200 kms. to 5.400 kms. and 12.000 kms. to 12.134 kms., in a total stretch of 50.254 kms.

(ii). The appendix-2 to Handover Memorandum dated 21st September, 2021 did show only few utilities but did not show the time line by which the utilities were expected to be removed by the contractor with the cooperation to be rendered by the authority.

(iii). The petitioner acknowledged Handover Memorandum as was given to him. This got further acknowledged with subsequent documents signed on 22nd September, 2021 by the contractor in a letter written to the Project Director.

(iv). Soon after the project work started, Tata wrote a letter on 7th July, 2022 to the Authority's Engineer complaining of non-fulfilment of reciprocal promises by the authority and citing six reasons demanded extension of time of 248 days, which are as follows:

(a). Delay in providing encumbrance free row pursuant to Article 8.2 & 3.1 (iii) of the agreement;

(b). Delay due to tree cuttings as per Article 9.2 contract agreement;

(c). Delay due to shifting of chartered and unchartered utilities;

(d). Inordinate delay in designs and drawing approvals;

(e). Delay due to extended monsoon/ adverse weather condition and Force Majeure; and

(f). Delay due to spread of Covid -19/ omicrons/ Force Mejiure.

(v). The above letter carried annexure that referred to various constructions like mosque, houses, boundaries wall, buildings, mazars, commercial buildings, besides other utilities like electricity polls, bore-wells etc. covering 23.210 kms. Then land payment issues and private possessions covering 25.720 kms. The letter also details the area of land involved in handing over in different villages and also main carriage way affected by various constructions like mosque etc. and further the Garh area of 1.360 kms affected by Eidgah and temple and also referred to an area of total 12.3332 hectares of land in different villages that requires re-gazette notification in Meerut and Hapur districts.

(vi). The National Highways Authority in its letter addressed to the Regional Office, Gomti Nagar, Lucknow dated 8th August, 2022 admitted vide its (iv) as under:

"(iv). As per clause 9.2. Article -9 of CA, the shifting of obstructing Utilities (including electric lines, water pipes, Gas pipeline etc) & dismantling of structures is the obligation of contractor. Further, in respect of tree cutting of protect & non-protected forest, permission was obtained within 150 days (i.e. upto 09.03.2022) from the Appointed date and tree cutting by respective DLM was in progress. Further, length of 20.340 Km was considered to be hindered after 150 days as stated in the contractor's letter/ respective MPR. ***Thus, length considered handed over to the contractor shall be 29.914 Km (50.254 km - 20.340 km). It is pertinent to mention that contractor/ AE has submitted the proposal based on land available within 150 days & delays upto 15.06.2022****. Since, the project milestone-1 (21.06.2022) date has been passed, hence, effected delay days is worked out for 104 days (10.03.2022 to 21.06.2022) as (50.254-29.914)/50.254 x 104 days = 42.09 days or say 42 days."*

(emphasis added)

(vii). Thus NHAI fairly admitted that only 29.914 kms was in fact handed over to the contractor and yet it only allowed 42 days extension of time.

(viii). The petitioner on 17th August, 2022 wrote for further extension of time and NHAI reiterated 42 days of extension vide letter dated 30th August, 2022.

(ix). Despite repeated letters written by the petitioner to the authority including one letter dated 29th September, 2022 citing reasons and the Authority's Engineer also wrote to the authority on 26th September, 2022 submitting report regarding hindrances found on existing constructions and other hindrance of total length of 31.852 kms. in two laining and 15.925 kms. in four laining, the NHAI vide letter dated 9th November, 2022 only extended time for shifting Milestone-1 for 42 days upto 2nd August, 2022 keeping scheduled date of completion of other milestones unchanged.

(x). Petitioner wrote to the authority on 21st December, 2022 for necessary extension of time as per Article 10.5 of the contract. The Authority's Engineer vide letter dated 3rd January, 2023 intimated the authority that EOT request was under preparation and yet the authority wrote to the Authority□s Engineer that request for extension of time further was not found suited to reconsider at that stage.

(xi). Petitioner kept on writing to the Authority's Engineer on 17th March, 2023 citing the delay issues involving agitation by the farmers for almost 9-10 days and delay in approval of designs etc. by the authority and numbers of change of scope as per Article 13.5 pending consideration by the authority. Nothing progressed and the correspondence continued amongst the petitioner, Authority's Engineer and NHAI until 10th July, 2024.

(xii). On 10th July, 2024 the Authority's Engineer made recommendations for 248 days of extension of time citing reasons of land not being hindrance free that has been discussed above.

(xiii). On 17th September, 2024 petitioner submitted a revised schedule for completion of the project till 31st July, 2025 but instead of considering the above letter the authority issued a cure period notice under Article 23.1(i) on 11th October, 2024 asking the petitioner to complete the maintenance work within 60 days from the receipt of the notice. The Authority cited in its letter only non conformance in respect of certain areas in openings of national highway project.

(xiv). On 19th November, 2024 petitioner submitted a detailed reply citing such constructions and buildings with other areas involving land payment issues which could not be easily removed but the authority wrote a letter on 11th December, 2024 to expedite the prescribed work and complete the subject project at the earliest. Petitioner on 16th December, 2024 reiterated is stand.

(xv). On 17th December, 2024 the Authority□s Engineer submitted report regarding delays in project attributing low pace of work and wrote to the petitioner that he should get the work completed as per the re-scheduled date proposed by him under letter dated 17th September, 2024 and to expedite the work by submitting additional steps that are proposed.

(xvi). On 23rd December, 2024 the authority issued a termination notice to the petitioner on the ground of slow progress and failure to complete the project and non performance of project authority. On 3rd January, 2025 petitioner gave proper reply on both counts: firstly, the reply letter

clearly stated that firstly the actual handing over of 90% land was made only on 31st December, 2024 whereas it was to be handed over on appointed date that was 10th October, 2021 and 150 days i.e. 9th March, 2022 but 100% possession of land was yet not handed over and complaint that delay was still continued on the site. He explained his slow progress and failure to complete the project for the reasons attributable to the authority and that the Authority□s Engineer was fully aware since the inception of the project that contractor had encountered various hindrances/ impediments which were well on record and were finally informed to the authority and Authority□s Engineer but no action was taken. Regarding maintenance as complained of in show cause notice petitioner replied that he did not commit any default under Article 23.1 (I) (d), (e), (f) and (q) of the agreement and since the authority/ Authority□s Engineer failed to fulfil its obligation under the contract in timely handing over land site with □Right of Way□ for construction, timely approvals of designed, timely removal of trees and hindrances and timely approval of change of scope that project work got delayed. This reply was supported by various documents and photographs and details of hindrances within the right of way. The authority on 14th January, 2025 terminated the contract of the petitioner.

43. The above fact positions clearly demonstrate that the only issue between the petitioner and the authority was that, though actual physical possession of land was claimed in the Handover Memorandum as per Article 8 but was not there available on the spot and not only the hindrances were in the form of utilities like electricity lines, bore-wells etc. but there were constructed buildings like mosque, mazar, temple and other boundary walls of the private constructions involving land issues, which led to the repeated correspondence between the petitioner and authorities with no headway except granting extension of time of 42 days and with certain change of scope of work. All these were very meagre efforts taken by the Authority in comparison to what was in fact communicated to the authority by the authority's own engineer vide letter dated 10th July, 2024. The letter dated 10th July, 2024 is undisputed document which clearly disclosed that a very large area of land was still affected by the hindrances and right of way as defined under the agreement was not available to the petitioner on the main highway land area at every stretch of 5 kms in continuation. Further the □Handover Memorandum□ though of course, referred to handing over possession of 47.62 kms. out of 50.254 kms. amounting to 94.76% with right of way available. A letter dated 8th August, 2022 vide its clause (iv) quoted above, the actual handing over possession of the land was 29.914 kms. This completely renders the handover memorandum only a paper work as no such handing over possession of 90% land ever took place until 31st October, 2024 as has come to be referred to by the petitioner to the authority in its reply to the termination notice. Thus, the argument advanced by learned counsel for the petitioner holds merit that petitioner was not handed over possession of the land as referred to in the Handover Memorandum holds merit and the authority is liable to be held guilty of non performance of contract by the authority itself as admitted fact position emerges, inasmuch as the authority was guilty in not helping out the petitioner in removing the hindrances paying the land dues in time, gaining actual physical possession of the certain part of land within time inasmush as the possession issues were at different interval of total stretch of 50.254 kms making it difficult for the petitioner to expedite the work and perform its obligations as per the Narrative of Statement given initially after the agreement.

44. Yet another argument advanced by Mr. Saxena, learned Senior Advocate appearing for the petitioner that the respondents the first party to the contract unilaterally avoided to comply with the Article 8.2 not informing the contractor about the proposed date and time it shall hand over the hindrance free possession and the appendix attached to the Handover Memorandum did not disclose all this details inasmuch as it referred to only an electric poll and hand pump and not the constructed building area like mosque, temple and Eidgah etc. Thus it rendered the Handover Memorandum as a misleading document with misrepresentation of facts also holds merit. If appendix-2 of the Handover Memorandum filed as Annexure-1 to the supplementary counter affidavit dated 29th April, 2026 is compared with the document, the letter of the authority itself dated 8th August, 2022 particularly clause (iv) of it as reproduced above, and the Authority's Engineer's own letter dated 10th July, 2024 and the appendix contained therewith, it would fully demonstrate that the appendix annexed to the Handover Memorandum was an eye wash and misleading in itself inasmuch as the promises made under Article 8 stood not complied with by the first party to the contract.

45. All this could have been a disputed question of fact, had there been no letter of Authority's own as referred to herein above dated 9th August, 2022 and the authority's engineer's own letter dated 10th July, 2024. This is an admitted fact position which cannot be doubted by anyone. This appears to be the reason why despite initial order passed by this Court on 18th March, 2025 regarding fair submission and stand of the authority that -NHAI shall file an affidavit, within a week specifying the dates when possession of land was given to the petitioner and yet no such affidavit was filed until 30th November, 2025 and that too only after the Court took a serious note of the conduct of the National Highway Authority in its order dated 26th November, 2025 granting 10 days' and no more time. This document was again filed when the Court directed the matter to be listed for further hearing requiring the respondent to clear the stand as to whether this document was infact Handover Memorandum as per Article 8. The next supplementary was filed on 29th April, 2026 on behalf of NHAI declaring it to be Handover Memorandum.

46. Thus, it is clear that except the document that has been brought twice on record, there is nothing more to demonstrate any Handover Memorandum was executed as per Article 8 putting the authority under obligations vide its Article 8.2(i) & 8.2(ii).

47. This is the document upon which the entire counter affidavit of the State respondents rests. It was argued by Mr. Rakesh Pande, learned Senior Advocate that once the petitioner acknowledged handing over possession of 94% land on 21st September, 2021, it could not have turned around to say that as per Article 8 handing over possession of 90% of the land did not take place and because of the land issues etc. and utilities, that project got delayed and the impugned order was bad.

48. Interestingly, in the entire counter affidavit there is nothing even suggestive of that letter of the authority dated 8th August, 2022 much after 21st September, 2021 was a mistake or that what was stated was wrong. The Authority's Engineer's own letter dated 10th July, 2024 has also not been disputed.

49. In the circumstances, therefore, in our considered view, the above argument advanced by Mr. Pande, learned Senior Advocate, does not hold any merit and deserves to be rejected.

50. What further is very interesting and is quite apparent on face of it that there has been no application of mind by the authority while passing the order impugned as both the notice of proposed termination of contract dated 23rd December, 2024 and the order impugned dated 14th January, 2025 are verbatim same. Paragraph 2 of the order impugned is the same word by word as paragraph 2 of the notice except reference to the dates letter of the Authority□s Engineer dated 17th December, 2024 and 4th January, 2025 and reply letter of the petitioner dated 3rd January, 2025. We have already discussed above that the Authority□s Engineer letter dated 17th October, 2024 was absolutely contrary to what he had submitted on 10th July, 2024 requesting for extension of time of 248 days citing reasons for the same. However, what is very surprising is that detailed reply submitted by the petitioner referring to the various progress related reports, photographs, hindrances and the issues like land issues etc. that we have already discussed above in the fact position, nothing was considered as if authority was sitting with a pre-determined mind to terminate the contract of the petitioner mid-term, whatever be his reply. This shows that there is absolutely non-application of mind by the authority.

51. The National Highway Authority is state within the meaning of of Article 12 of the Constitution and enters contract with private body for construction of national highway, a project of public interest and importance and hence it was expected to behave reasonably in the matter of such contract. The parties to the contract are no doubt bound by the terms and conditions of the contract but burden upon the state authority lies heavily in performing its part of the contract, more especially, when the work to be executed, becomes a concern of larger public interest. Constructing the national highway involves expenditure out of the state exchequer where the public money lies. Tax-payer contribution is there which is spent on development activities by the State and the National Highway Authority is acting as a State to carry out such execution of work. Stand as defence qua impugned action has been taken by the National Highway Authority in throughout blaming the contractor-petitioner in not performing its part of the contract in maintaining the national highway and accomplishing the task assigned under the agreement within the prescribed period but did not introspect at least once to realise as to what it did in preparing document full of misrepresentation in the name of □Handover Memorandum□ which, of course, it did acknowledge and realise subsequently vide letter dated 8th August, 2022. This amounts to an unfair practice on part of the State. The act of a party which is State under Article 12 in this case is found to be arbitrary one against affect work of public importance and so this Court will not shirk away from its responsibility in arresting any miscarriage of justice in larger public interest. Delay in construction of national highway as a project, if caused due to reasons for the negligence and carelessness and arbitrariness on the part of the State as one of the parties of the contract, the Court is certainly justified lift the corporate veil to understand the exact reasons for such actions impugned in this petition.

10. Authorities cited on behalf of the petitioner

52. Mr. Amit Saxena, learned Senior Advocate appearing for the petitioner has placed reliance upon the authority in the case of **ABL International Ltd and others v. Export Credit**

Guarantee Corporation of India Ltd and others (2004) 3 SCC 553 and MP Power Management Company Ltd v. M/s Sky Power Southeast Solar India Pvt Ltd. and others (2023) 2 SCC 703 and A.P. Electrical Equipment Corporation v. Tehsildar and others (2025) SCC Online SC 447.

53. Citing the authority in the case of ABL International Ltd (supra), learned Senior Advocate has placed reliance upon paragraphs 23, 24 and 27 of the judgment that are quoted below:

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:

"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus:

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

24. It is clear from the above two objects of the Company that apart from the fact that the Company is wholly a Government-owned company, it discharges the functions of the Government and acts as an agent of the Government even when it gives guarantees and it has a responsibility to discharge such functions in the national interest. In this background it will be futile to contend that the actions of the first respondent impugned in the writ petition do not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

54. In the case of **A. P. Electrical Equipment Corporation** *(supra)* paragraphs 47, 48, 49, 51 & 52 of the judgment that are quoted below:

"47. One stock argument available with the State in this type of cases is that the question whether the actual physical possession of the disputed land had been taken over or not is a seriously disputed question of fact, which the High Court should not adjudicate or determine in exercise of its writ jurisdiction. As a principle of law, there need not be any debate on such a proposition, but by merely submitting that it is a seriously disputed question of fact, the same, by itself, will not become a question of fact. To put it in other words, having regard to the materials on record, which falsifies the case of the State Government, then such materials should not be overlooked or ignored by the Court on the principle that the issue with regard to taking over of the actual physical possession would be a disputed question of fact.

48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

51. This Court in the case of Gunwant Kaur v. Bhatinda Municipality, (1969) 3 SCC 769 : AIR 1970 SC 802 observed as follows:"

"The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an

affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Art. 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art. 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated., or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

(emphasis supplied)

52. In one of the recent pronouncements of this Court in State of U.P. v. Ehsan, 2023 INSC 906, this Court observed that:-

"28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

29. Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.

30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of UP v. Hari Ram (supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam v. Bhaskar Jyoti Sarma, (supra)]. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court

finds it difficult to determine such question, either for insufficient/inconclusive materials/ evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable."

(emphasis supplied)

55. In the case of M.P. Power Management Corporation Ltd. (supra), learned counsel for the petitioner has relied upon paragraphs 53, 54, 74, 75, 82.9, 82.10 & 82.11 that are quoted below:

"53. In Radhakrishna Agarwal v. State of Bihar [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] writ petitions were filed against orders of the State Government revising the rate of royalty under a lease. The contention was both against the revision of rate of royalty during the period of the lease and the cancellation of the lease on various grounds. Though an attempt was sought to draw support from the judgment of this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , the Court took the view that the said case involved discrimination at the threshold or at the time of deciding as to whether the Government should enter into the contract. The Court took the view that the only question which normally arises in such cases is as to whether the action complained of was in conformity with the agreement.

54. We may notice the earlier opinions of this Court which came to be dealt with in the following statement : (Radhakrishna Agarwal case [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] , SCC p. 465, para 19)

"19. We do not think that any of these cases could assist the appellants or are at all relevant. None of these cases lays down that, when the State or its officers purport to operate within the contractual field and the only grievance of the citizen could be that the contract between the parties is broken by the action complained of, the appropriate remedy is by way of a petition under Article 226 of the Constitution and not an ordinary suit. There is a formidable array of authority against any such proposition. In Lekhraj Sathramdas Lalvani v. Custodian [Lekhraj Sathramdas Lalvani v. Custodian, AIR 1966 SC 334] this Court said : (AIR p. 337, para 5)

"5. In our opinion any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution."

In Banchhanidhi Rath v. State of Orissa [Banchhanidhi Rath v. State of Orissa, (1972) 4 SCC 781] , this Court declared : (SCC p. 783, para 8)

"8. If a right is claimed in terms of a contract such a right cannot be enforced in a writ petition."

In Har Shankar v. Excise & Taxation Commr. [Har Shankar v. Excise & Taxation Commr., (1975) 1 SCC 737] , a Constitution Bench of this Court observed : (SCC p. 747, para 21)

"21. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations. "

74. We may notice that as to what constitutes arbitrariness fell for consideration by this Court in a case which involved cancellation of the examination held as part of a recruitment process, in East Coast Railway v. Mahadev Appa Rao [East Coast Railway v. Mahadev Appa Rao, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483] . We notice the following passages which are apposite for this case : (SCC pp. 685-87, paras 19-20 & 23)

"19. Black's Law Dictionary describes the term "arbitrary" in the following words:

"arbitrary. adj.1. Depending on individual discretion; specif., determined by a Judge rather than by fixed rules, procedures, or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. This type of decision is often termed arbitrary and capricious."

20. To the same effect is the meaning given to the expression 'arbitrary' by Corpus Juris Secundum which explains the term in the following words:

'Arbitrary.-Based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; capricious; exercised according to one's own will or caprice and therefore conveying a notion of a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non-rational, or not done or acting according to reason or judgment; not based upon actuality but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in power, despotic, or tyrannical; harsh and unforbearing. When applied to acts, 'arbitrary' has been held to connote a disregard of evidence or of the proper weight thereof; to express an idea opposed to administrative, executive, judicial, or legislative discretion; and to imply at least an element of bad faith, and has been compared with 'willful"

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23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

75. ***We would, therefore, sum up as to when an act is to be treated as arbitrary. The Court must carefully attend to the facts and the circumstances of the case. It should find out***

whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision under the Wednesbury doctrine would qualify as an arbitrary decision under Article 14. Ordinarily visiting a party with the consequences of its breach under a contract may not be an arbitrary decision.

82.9. ***The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.***

82.10. The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3

SCC 553] . It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition."

(emphasis added)

11. Authorities cited on behalf of NHAI

56. Mr. Rakesh Pande, learned Senior Advocate appearing for the respondents has placed reliance upon the judgment of Supreme Court in the case of **Union of India and others v. Puna Hinda (2021) 10 SCC 690, a**nd had placed before us paragraph 24 of the judgment that runs as under:

"*24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads."*

57. Considering the above authority cited from the point of view of the respondent, in the first instance, it deals with the preliminary objection as to the maintainability of this petition. The authority in case of Puna Hinda (supra) has been relied upon to persuade us that in matters of commercial transaction where disputed questions of fact may arise relating to an issue for determination, this Court in exercise of its power under Article 226 of the Constitution, may not interfere, obviously for two reasons: (i). Parties in pure commercial transactions emanating from an agreement reached between the parties are bound by the principles of privity of contract and, therefore, the duties and obligations are required to be addressed by the redressal forum that is prescribed for and agreed upon by the parties; and (ii) there being no public law elementen involved writ forum may not permitted to be approved merely because a party to the contract is a state or a government authority within the meaning of Article 12 of the Constitution.

12. Discussion and application of authorities to the present case

58. It is true that in matters of commercial disputes emanating from the contract/ agreement reached between the parties, the Court must discourage invoking its extraordinary jurisdiction under Article 226 of the Constitution, merely for the reasons that state or its officer purport to operate within the contractual field (Radha Krishna Agrawal and others Vs. State of Bihar and others [(1977) 3 SCC 457].

59. The law as ordinarily stood earlier to Radha Krishna Agrawal's case was that a duty or obligations falling upon the public servant out of a contract, cannot be enforced by the machinery of a writ under Article 226 of the Constitution [Lekhraj Sathram Das Lalwani v. Custodian) AIR 1966 SC 334] and so also the view taken in the case of Bachhandri Rath Vs. State of Orissa (1972) 4 SCC 781, wherein it was held that a right if claimed in terms of contract, such a right cannot be enforced in writ petition, but this rigid legal principle came to be watered down for the first time by the Supreme Court in the matter of Ramanna Dayaram Shetty Vs. International Airport Authority of India (1979) 3 SCC 489, wherein relying upon a judgment of Supreme Court of United States of America in the case of Bitarally Vs. Seaton (1959) SCC Online US SC 87, the Court held that procedure prescribed for, must be religiously adhered to and the principles of Wednesbury law of reasonableness and rule of law stand attracted to any issue of arbitrariness. Keeping this principle in mind, Supreme Court in the case of **Jagdish Mandal Vs. State of Orissa and others (2007) 14 SCC 517**, enlarged the scope of judicial review even in matters of commercial transactions where state or its officer is a party. The Court held that if the decision suffers from the vice of arbitrariness or caprice and does not pass the test of reasonableness then such decision is judicially reviewable under Article 226 of the Constitution. The Court, however, hastened to add that the judicial review will not be permitted to be invoked to protect the private interest at the cost of public interest or to decide the contractual disputes. Vide paragraph 22 the Court held thus:

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action"

60. The Court in the case of **A. P. Electrical Equipment** *(supra)* has, therefore, asserted that mere existence of disputed question of fact by itself, does not take away the jurisdiction of this Court in granting appropriate relief to the petitioner. The Court observed that if the Court is satisfied that facts were being disputed by the state merely to create a ground for rejection of the writ petition raising the plea of disputed question of facts, the Court can go into and investigate the disputed facts vis-a-vis pleadings raised by the parties to record its own finding as to the facts of the case. Thus, unless and until there is such a complex factual issue involved in a case that needed proper adjudication for appreciation of facts and pleadings which may be in the realm of a common law remedy or otherwise referable to alternative dispute resolution fora, if the sufficient material is otherwise available on record, the Court would not shirk away from discharging its duty of judicial review under Article 226 of the Constitution.

61. The Court rightly observed that in case of termination of contract where variety of situations may arise and the state authority repudiates the contracts mid-term in purported exercise of power under the contract, if the only aspect is the interpretation of true scope of documentary material in the light of pleadings raised, the Court may still grant relief to the party approaching the Court (MP Power Management Company (supra). It has been rightly observed that disputed question of fact cannot be made a smokescreen to guillotine a gunuine claim raised in the writ petition.

62. In the matter of **Silppi Constructions Contractors Vs. Union of India and another (2020) 16 SCC 489**, the Court reiterated the principles laid down in the case of Jagdish Mandal (supra), as to when the power of judicial review should be invoked. The Court reiterated the principle that wherever there is an arbitrariness in state action then the Court being the guardian of fundamental rights, is the duty bound to interfere with arbitrariness, irrationality and mala fide and bias but of course, with a caution and self limitation this power to be exercised. The Court, however, emphasised upon fair play and reasonableness approach on the part of the state where it is a mere party to the contract. Vide paragraphs 19 & 20 of the judgment the Court held thus:

"19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala

fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give 'fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

63. Now, applying the above judgments to the facts of the case as we have discussed above, we find there to be no quarrel about the fact that contract was to proceed and a task under the contract was to be executed provided the state, National Highway Authority, party to the contract, discharged its part of obligation in providing land as per Article 8 of the agreement by executing a 'Handover Memorandum'. This document of 'Handover Memorandum' shows apparent on the face of record that it was simply an eye wash being not in terms of Article 8, inasmuch as subsequent letter of NHAI dated 8th August, 2022 fully acknowledged that the possession of land as was referred to under the Handover Memorandum was not correct in a sense that only 29.914 kms out of 50.254 kms land was provided with 'Right of Way'. Still further, the letter of the Authority's Engineer company dated 10th July, 2024 admitted, fairly too, that there was a lot of hindrances and land issues involved for which right of way was not available within the meaning of agreement. If the right of way was not available and there was a delay in executing and completing the project, it was attributable to laxity and casual approach on the part of the state in not performing its own obligations.

64. The impugned action has been taken purely on the basis of alleged poor maintenance and non-completion of project within time citing without giving any example and statistic details that land, as was promised under the agreement to be the part of the Memorandum of association was physically ever handed over to the petitioner, the second party to the contract to invoke the

termination clause. When the first party to the contract itself failed to discharge its duties and obligations, then it cannot be said to be in a driver's seat under an agreement to navigate through the provisions that empower to it to terminate the contract unilaterally.

65. Thus, upon legal principles emanating from judgments discussed above entire action and conduct of NHAI was really vitiated for arbitrariness.

66. We have also noticed and discussed above in the earlier finding part of this judgment that proper reply was submitted by the petitioner to the show cause notice citing places, situations where the land was full of hindrances, the delays in removal of those hindrances, non-cooperation of the authority and delay in approving the design to execute the project as per the Narrative of Statement submitted initially by the petitioner. Not a single explanation offered by the petitioner was considered while taking decision in the matter of notice of termination of contract. Merely date of reply dated 3rd January, 2025 has been referred to but no part of the reply has been discussed and the show cause termination notice as was issued to the petitioner on 23rd December, 2024 was reproduced in the order impugned dated 14th January, 2025. This act and conduct of the NHAI officials in terminating the contract cannot be approved of and such an order is certainly reviewable on the principle of law discussed above evolved in various authorities of Supreme Court of India.

67. It is also worth mentioning here that the Authority's Engineer though had earlier submitted a report demanding for a time of 247 days further to the petitioner in his recommendation letter dated 10th July, 2024 to the Project Director, National Highway Authority, PIE Meerut but surprisingly, it appears, under the pressure of the authority it blamed the petitioner for delay in project vide letter dated 17th December, 2024 directing him to accomplish the task within the extended time line earlier given.

68. What is reasonableness in approach means looking to the facts of a case and in the given scenario what a prudent man would think about and what action would he take. In the present case a National Highway Project with 50.254 kms was underway. Standing private constructions with land issue where farmer's are agitating and temple and mosque structures are such which a private party could not have removed except with the help of State Authorities. Either the NHAI had given time schedule along with Handover Memorandum' that it would get the entire land procured with possession and that too with a 'Right of Way', or should have subsequently done the job writing such letters at subsequent stages meeting the objections if any. At least a prudent person would have behaved this way. However, in the present case NHAI Project Director and at his level only complained about maintenance and slow pace of work and even ignored Authority's Engineer's own letter dated 10th July, 2024 demanding extension of time of 248 days while giving cure period notice and then termination notice. This is an absolute arbitrariness, apparent on the face of record. Again the arbitrariness was so much so that while terminating contract under the order impugned petitioner's reply was not referred to by discussing the same. This is indicative of unerringly pointing to arbitrariness.

69. Thus, the points framed above are decided in favour of the petitioner and the order impugned deserves to be quashed and writ petition deserves to be allowed.

70. Now we come to the aspect as to whether any second party rights have occurred during the pendency of this petition and if not, to save time, the second party if in possession of land under construction of Highway could be given further time in larger public interest.

71. We find that throughout the hearing of the case there has been no change in the stand of NHAI that a third party right was not created pursuant to the interim order passed by this Court and no contract was awarded to a third party nor, any such statement has come up in any of the affidavits filed on behalf of NHAI.

72. It is also not the case of NHAI that possession of the land was taken from the petitioner. The petitioner's construction company the second party to the contract continued to remain there with all its articles and construction machines and materials on the spot and it is in this background that an averment was made in paragraph 19.9 of the rejoinder affidavit that runs as under:

"19.9. That with due respect, it is now stated that even as on the date of filing the instant rejoinder affidavit, the value of the balance works is Rs. 633 Cr., out of which works amounting to Rs. 157 Cr. had already been executed by TPL but not billed. The remaining value, thus is Rs. 476 Cr. Hence, in case the balance works are awarded to TPL, the same will be done at the cost of RS. 633 Cr. inclusive of what remains to be billed and paid by NHAI within a period of 14 months [12 months + 2 months mobilisation). For the convenience of this Hon'ble Court, a copy of the chart depicting execution of balance works and the timelines is annexed herewith and marked as ANNEXURE-RA 3."

73. The status quo as was there on the date of filing of the petition remained continued and the construction work though did not proceed but remained under the control of second party to the contract.

13. Order

74. Accordingly, the order dated 14th January, 2025 terminating the contract by the respondent No.-2 and a subsequent action of forfeiting the bank guarantees and issuance of fresh tender dated 3rd February, 2025 are hereby quashed.

75. As a consequence to the above and since the construction of the highway and its maintenance project is to basically meant to serve public interest and since petitioner in affidavit has assured to complete the entire work under the contract within 14 months, we find it appropriate for the parties to conduct a joint site inspection afresh, within a month from today and taking recourse to the provisions as contained under the EPC agreement and to arrive at an agreement to conclude the project within the re-scheduled timeline taking into consideration the letter of Engineer□s Authority in the light of the report dated 10th July, 2024 vis-a-vis the interim report to be obtained after joint inspection as directed above and applying the principles contained under Articles 13, 15, 16 and 17 of the EPC agreement.

76. The endeavour of the parties to the agreement, must be to complete the project as expeditiously as possible as per undertaking advanced before us by the petitioner.

77. This writ petition thus stands allowed as above with no order as to cost.

(2026) 7 ILRA 2486
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.07.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000053 of 2004

Babu Lal ...Petitioner
Versus
Prescribed Authority Ceiling Unnao & Ors. ...Respondents

Issue(s) for consideration

(a) Whether land can be classified as "irrigated" u/s 4-A without inspecting the foundational *Khasra* records of Fasli years 1378, 1379, and 1380?
(b) Whether the petitioner was entitled to additional retention area based on family size and major sons u/s 5(3)?
(c) Whether ceiling authorities are required to consider the statutory choice submitted by a tenure-holder?
(d) Whether a subsequent allottee of declared surplus land has a right to resist setting aside the surplus order?

Headnotes

A. Land Reform Law – Co-operative Societies - U.P. Imposition of Ceiling on Land Holdings Act, 1960: Section 4-A, 5(3)(b) - Babu Lal (petitioner) was a tenure-holder in Village Pyarepur, Unnao. In 1962, he and other farmers formed a registered co-operative society (*Kisan Sanyukt Sahkari Kheti Samiti Ltd.*). The society held ~166 Bighas in Khata No. 260, to which the petitioner had contributed only 26 Bighas, 18 Biswas, and 15 Biswansis. He also held independent/joint holdings in Khata Nos. 140, 158, and 49. In 1992, the Prescribed Authority issued C.L.H. Form-3 proposing 5.194 hectares as surplus. After objections were rejected in 1996, the Appellate Authority allowed the petitioner's appeal and remanded the case for fresh consideration.

On remand, despite excluding the general society land, the Prescribed Authority substantially **increased the surplus area to 13.629 hectares** on 30.03.1998, treating the petitioner's entire independent holding as irrigated land. The Appellate Authority affirmed this on 06.05.2000. The petitioner challenged both orders u/Article 226, arguing that:

- Land recorded as uncultivated/fallow (*Parti Jadid*) was wrongly classified as irrigated without inspecting *Khasra* entries of Fasli years 1378, 1379, and 1380.
- A tube-well located on Plot No. 140 (belonging to the co-operative) was wrongly conflated with his independent holding in Khata No. 140.
- His third major son and overall 7-member family size were ignored despite the Lekhpal's statement supporting his claim.
- His statutory choice/option for retaining land (submitted on 30.11.1995) was ignored.

B. The principal controversy in the present case relates to the determination of the nature of the petitioner's holdings as irrigated land u/s 4-A of the Act. The statutory scheme clearly requires the Prescribed Authority to record a finding on the basis of the Khasra entries of Fasli years 1378, 1379 and 1380 together with other relevant evidence regarding the existence of irrigation facilities and the capability of the

land to produce at least two crops in the relevant agricultural years. **Such determination cannot be founded upon presumptions or general observations.** (Para 30)

Despite a specific query put by this Court, **no documentary material has been produced to establish that the land consistently yielded two crops or that the requisite source of irrigation existed during the relevant period. The inability of the respondents to produce the foundational revenue records completely demolishes the basis of the findings recorded by the authorities below.** (Para 31)

The Prescribed Authority, even after remand by the appellate authority, did not examine the relevant Khasra entries before recording a finding that the entire holding was irrigated. No inspection report prepared by the Prescribed Authority has been brought on record. The finding, therefore, unsupported by any legally admissible evidence and is liable to be characterised as a finding based on no evidence. (Para 32)

A statutory determination affecting valuable agricultural holdings cannot rest upon such erroneous assumptions. Merely because tube-wells existed over a plot belonging to the co-operative society, the authorities presumed that the petitioner's independent holdings situated in Khata No. 140 were also irrigated. Such inference is contrary to the revenue records and reflects complete non-application of mind. This Court also finds substance in the submission of the petitioner that the authorities have misread the revenue records by confusing Plot No. 140 with Khata No. 140. (Para 33)

Ignoring the primary revenue records while recording findings u/s 4-A vitiates the entire exercise undertaken by the Prescribed Authority. The Khasra entries relied upon by the petitioner further disclose that substantial portions of the land remained recorded as *Parti Jadid* during the relevant Fasli years and no reliable evidence exists regarding the availability of irrigation facilities or cultivation of two seasonal crops. The authorities have neither adverted to these entries nor recorded any reason for discarding them. (Para 34)

C. The statutory benefit conferred u/s 5 of the Act cannot be denied without recording cogent reasons based upon evidence. The impugned orders are conspicuously silent on this aspect and, therefore, suffer from manifest legal infirmity. The authorities have failed to record any finding regarding the petitioner's entitlement to additional ceiling area on account of the larger family consisting of seven members. (Para 36)

Both the authorities failed to consider the petitioner's claim regarding the composition of his family. The statement of the concerned Lekhpal, which forms part of the record, unequivocally records that the petitioner has three sons and two daughters. Nevertheless, both the Prescribed Authority and the appellate authority proceeded on the assumption that the petitioner had only two major sons and consequently denied him the statutory benefit available u/s 5(3) of the Act. Such omission amounts to complete disregard of material evidence available on record. (Para 35)

D. Failure to consider the petitioner's statutory choice renders the determination contrary to the provisions of the Act. The record further establishes that the petitioner had exercised his statutory option regarding the land liable to be declared surplus by submitting his choice on 30.11.1995. The Ceiling Act obligates the authorities to consider such option while selecting surplus land. Neither the Prescribed Authority nor the appellate authority has adverted to this mandatory requirement. (Para 37)

The authorities initially declared only 5.194 hectares of land as surplus by order dated 27.01.1996. However, after the appellate authority remanded the matter for fresh consideration, the Prescribed Authority, instead of confining itself to the defects pointed out in the remand order, declared as much as 13.629 hectares of land surplus. Such substantial enhancement of surplus area without any fresh evidence or additional material on record itself demonstrates that the matter was not reconsidered in accordance with law but on wholly arbitrary considerations. (Para 38)

E. An allottee derives no better title than that possessed by the State and cannot claim any independent right once the declaration of surplus land itself is found to be illegal. It is evident that any subsequent allotment made pursuant to an illegal declaration of surplus land cannot survive and the subsequent allottee has no enforceable right to resist restoration of the petitioner's lawful holding. (Para 40)

The finding that the land belonging to the co-operative society was liable to be treated as the individual holding of the petitioner is equally unsustainable. The material on record clearly establishes that the petitioner was only one of the members of the duly registered co-operative farming society and had contributed only his share of land. The authorities themselves excluded the land of the society after remand except to the extent of the petitioner's contribution. There was, therefore, no justification for proceeding on the premise that the entire land of the society constituted the petitioner's individual holding. (Para 39)

F. Statutory authorities exercising powers under the Ceiling Act are required to strictly adhere to the mandatory provisions of the Act and base their findings upon legally admissible revenue records. Since the respondents have have acted in complete disregard of the statutory provisions, ignored relevant documentary evidence, misread the revenue records, failed to consider mandatory provisions of Sections 4-A and 5 of the Act, and recorded findings unsupported by any reliable evidence, such findings are perverse, arbitrary and suffer from manifest non-application of mind, warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. (Para 29, 41, 42)

The impugned order dated 30.03.1998 passed by the prescribed authority and the appellate order dated 06.05.2000 affirming the same are hereby quashed. The matter is remitted to the prescribed authority to reconsider the ceiling proceedings afresh. (Para 44, 45)
Writ petition allowed. (E-4)

Case Law Cited

1. Ram Bhajan Vs. Chief Revenue Officer / Prescribed Authority, Mirzapur and others, 2001 (92) R.D. 538 (Para 25)
2. Sachin Kumar Verma and others Vs. State of U.P. through Dy. Commissioner Lucknow and others, Writ-C No.3000093 of 2002, decided on 07.05.2026 (Para 25)

List of Acts/Orders

U.P. Imposition of Ceiling on Land Holdings Act, 1960.

List of Keywords

surplus, joint holdings, independent, co-operative society, uncultivated, irrigated, ceiling.

Appearances for Parties

For Petitioner(s): G.S. Nigam, Abhisht Saran, Anoop Srivastava, Mohammad Aslam Khan, Rahul Kumar Kashyap, S.B. Singh
For Respondent(s): C.S.C., Arvind Kumar Jauhari, Jyoti Prakash, O.P. Tiwari, Prabhakar Vardhan Chaudhary, Pradyumn Shukla, S.K. Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri M.A. Khan, learned Senior Counsel assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner, learned Standing Counsel for the respondent - State, Sri P.V. Chaudhary, learned counsel for respondent and Sri A.K. Jauhari, learned counsel for subsequent allottee.

2. The present writ petition has been filed for issuance of a writ in the nature of certiorari quashing the impugned order dated 30.03.1998 and 06.05.2000 passed by respondent Nos.1 & 2 contained as Annexures-1&5 to the writ petition, whereby the appellate authority affirmed the order of the prescribed authority, whereby a substantial portion of the petitioner's agricultural land has been declared surplus under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

3. Factual matrix of the case is that the petitioner is an agriculturist and tenure-holder of agricultural land situated in Village Pyarepur, Pargana Sikandarpur Sarosi, Tehsil and District Unnao. In the year 1962, the petitioner along with eleven other agriculturists formed a co-operative farming society known as Kisan Sanyukt Sahkari Kheti Samiti Ltd. with the object of promoting joint agricultural activities. The society was duly registered on 28.01.1963 under the U.P. Co-operative Societies Act bearing Registration No.2058. Over the years, the membership of the society increased to twenty-five members, each of whom contributed agricultural land for collective cultivation.

4. In the Khatauni pertaining to Fasli years 1397 to 1402 of Village Pyarepur, the total land of the society measuring approximately 166 Bighas, 0 Biswa and 3 Biswansi stood recorded in Khata No.260 in the name of the said co-operative society. Out of the said land, the petitioner had contributed only 26 Bighas, 18 Biswas and 15 Biswansis and had no exclusive right over the remaining land belonging to other members of the society.

5. Apart from the land contributed to the co-operative society, the petitioner held agricultural land in different Khatas, namely Khata Nos.140, 158 and 49, situated in Village Pyarepur. Certain holdings were joint holdings in which the petitioner possessed only fractional shares. The petitioner has throughout maintained that only his actual share and legally held land could be considered for the purposes of determining his ceiling area.

6. In the year 1992, the Prescribed Authority issued a notice in C.L.H. Form-3 alleging that the petitioner held 16.494 hectares of irrigated land and proposing to declare 5.194 hectares as surplus land under the Ceiling Act. The petitioner filed detailed objections controverting the allegations contained in the notice, wherein he specifically pleaded that he had three major sons, whereas only two had been treated as major by the authorities. It was further asserted that the entire land of Khata No.260 belonging to the co-operative society had been wrongly included in his personal holding and that substantial portions of his land had been erroneously treated as irrigated despite being unirrigated under the statutory criteria prescribed by law.

7. Vide order dated 27.01.1996, the Prescribed Authority rejected all the objections raised by the petitioner, treated the entire holding as irrigated and declared 5.194 hectares of land as surplus after permitting the petitioner to retain only 11.300 hectares. While passing the said order,

the authority ignored the evidence relating to the age of the petitioner's third son and failed to examine the relevant revenue records regarding the nature of the land.

8. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the appellate authority, which was allowed by order dated 22.02.1997. The matter was remanded to the Prescribed Authority with directions to reconsider the case afresh in accordance with law.

9. After remand, the Prescribed Authority excluded the land of the co-operative society except the portion contributed by the petitioner. However, the authority again treated the petitioner's entire holding as irrigated without properly applying Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act or examining the relevant Khasra entries of Fasli years 1378, 1379 and 1380. Vide order dated 30.03.1998, the Prescribed Authority declared as much as 13.629 hectares of land as surplus while again denying the benefit available on account of the petitioner's third major son.

10. The petitioner again preferred an appeal before the appellate authority challenging the order dated 30.03.1998. However, the appellate authority dismissed the appeal without examining the documentary evidence, without recording any finding regarding the age and status of the petitioner's third son and without considering the statutory entitlement of the petitioner to retain additional land on account of the number of family members.

11. Both the Prescribed Authority as well as the appellate authority mechanically accepted the entire holding as irrigated without properly appreciating the Khasra entries of Fasli years 1378, 1379 and 1380. The authorities ignored the actual entries regarding cultivation, fallow land (Parti Jadid), absence of irrigation sources and the actual cultivated area recorded in the revenue records.

12. According to the Khasra entries relating to old Plot Nos.273 and 275 corresponding to present Plot Nos.557 and 559 of Khata No.140, substantial portions of the land were recorded as Parti Jadid during the relevant Fasli years and no source of irrigation or double cropping was recorded. These entries clearly established that the land could not legally be treated as irrigated land under Section 4-A of the Ceiling Act.

13. Similarly, the Khasra entries relating to present Plot Nos.532-Ka, 532-Kha, 533 and 553-Kha of Khata No.158 disclosed that only limited portions of the land had seasonal crops during certain years while the remaining land continued to be recorded as Parti Jadid. In respect of some plots, the petitioner was recorded merely as an unauthorised occupant over Gaon Sabha land (Ziman-4), making such land liable to ejectment and, therefore, incapable of being treated as his permanent holding.

14. Khasra entries relating to Khata No.49 also revealed that crops were grown only intermittently and that large portions of the land remained uncultivated or recorded as Parti Jadid. No source of irrigation was recorded in the relevant years, thereby disproving the conclusion that the land was capable of yielding two crops annually.

15. The authorities completely misread the revenue records by confusing Plot No.140 with Khata No.140. On the basis of tube-wells existing over Plot No.140 belonging to the co-operative society, the authorities erroneously inferred that the petitioner's independent holdings in Khata No.140 were also irrigated. This resulted in a wholly incorrect classification of the petitioner's land.

16. The petitioner further pleaded that Plot No.557, though recorded in the revenue records with an area of 54 Bighas 18 Biswas, actually existed only to the extent of about 41 Bighas and 2 Biswas on the spot. The authorities failed to consider the actual physical extent and possession while computing the petitioner's holding.

17. The petitioner consistently asserted that there were seven members in his family and that under Section 5(3)(b) of the U.P. Imposition of Ceiling on Land Holdings Act he was entitled to additional ceiling area on account of the larger family as well as separate benefits available to his adult sons. However, both authorities failed to examine or decide this statutory claim.

18. The petitioner had also exercised his statutory option by submitting his choice of land on 30.11.1995 indicating the land which, if necessary, could be declared surplus. Nevertheless, neither authority considered the petitioner's choice while determining the surplus land, thereby violating the mandatory provisions of the Ceiling Act.

19. The authorities further erred in holding that the co-operative society was not functioning and in treating the petitioner's contribution in the society, measuring about 8.762 hectares, as his individual holding despite the fact that the society continued to function, the lands were cultivated jointly and the produce was distributed amongst the members after meeting necessary expenses.

20. The petitioner submits that the impugned orders have been passed in complete disregard of the statutory provisions, the relevant revenue records and the evidence available on record. The authorities failed to consider the petitioner's objections, ignored the mandatory requirements of Sections 4-A and 5 of the Ceiling Act, wrongly classified unirrigated land as irrigated, and illegally declared 13.629 hectares of the petitioner's land as surplus, thereby causing grave prejudice and manifest injustice to the petitioner.

21. A query was made to learned counsel for the respondents that what is the material evidence that Khasra Nos.1378, 1379 & 1380 to show that land bearing at Khata No.1398 grows wheat crop?, none of the counsel for respondents are able to place any material evidence to prove that, therefore, the finding recorded in the impugned order is wholly incorrect statement and without perusing the relevant record.

22. Learned Senior Counsel for the petitioner submitted that provisions of Section 4-A was not followed while passing the impugned order by the prescribed authority on remand. No khasra of 1378, 1379 & 1380 were perused while passing the impugned order. At earlier point of time, the prescribed authority declared 5.194 hectare of land as surplus and in remand by the appellate court the prescribed authority came to the conclusion that there are 13.629 hectare of land as surplus.

23. Submission of learned Senior Counsel for the petitioner is that the finding recorded by the prescribed authority is based on no material and without perusing the Khasras of 1378, 1379 & 1380. He submitted that while passing the impugned order by the prescribed authority as well as by the appellate court, the statement recorded of the Lekhpal that the petitioner has three sons was not taken into consideration. Only two sons have been taken into consideration, therefore, the finding returned on the point is in utter disregard of the statement recorded by the Lekhpal, which is on record as Annexure-SA2.

24. On bare perusal of the statement of Lekhpal, it is clearly evident that he has admitted that Babu Lal (petitioner) has three sons and two daughters. The statement recorded by the Lekhpal has also not been taken into consideration while passing the impugned order and no exemption has been granted by the prescribed authority as well as appellate authority, therefore, it is in violation of Section 5(3)(a) of Imposition of Ceiling on Land Holdings Act, 1960.

25. He next submitted that it is responsibility of the State to prove the provisions of Section 4-A by filing Khasras 1378, 1379 & 1380 and other relevant documents along with inspection report made by the prescribed authority on the spot. Learned Senior Counsel for the petitioner establishes that there is no inspection report of the prescribed authority in the matter in regard to visit on spot and therefore, the finding returned by the prescribed authority as well as appellate authority is wholly misconceived and is not sustainable in the eyes of law. In support of his submissions, he placed reliance upon following judgments:

a) Ram Bhajan Vs. Chief Revenue Officer / Prescribed Authority, Mirzapur and others; 2001 (92) R.D. 538.

b) Sachin Kumar Verma and others Vs. State of U.P. through Dy. Commissioner Lucknow and others; Writ C No.3000093 of 2002 decided on 07.05.2026.

26. On the other hand, learned counsel for the respondents submitted that the orders impugned passed by the prescribed authority on 30.03.1998 as well as appellate authority dated 06.05.2000 are just and valid and do not suffer from any infirmity or illegality.

27. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the petitioner:

28. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a) Ram Bhajan Vs. Chief Revenue Officer (Supra):

"14. It is also settled that the allottee cannot acquire any better right than the right as exists with the State and thus the State itself having no right to the land as the same did not remain as surplus the claim of the allottee will fall short as the giver himself is not possessed to part anything to the petitioner.

16. 16. In fact the land having been given to the allottee by the Collector, the allottee cannot get any better title than the Collector was possessed, as the petitioner has stepped into the shoes of the

Collector. In view of the judgment of the Prescribed Authority dated 22.5.86 the restoration of the correct entry in the revenue record and even restitution of the possession will be an automatic follow-up to which the petitioner can have no say in the matter as he has no locus standi to intervene in the matter of declaration of the land as surplus."

b) Sachin Kumar Verma and others (Supra):

"4. In view of the judgment rendered in the case of Ram Bhajan Vs. Chief Revenue Officer [2001 (92) RD 538], it has been held that land having been given to the allottee by the Collector, the allottee cannot get any better title than the Collector was possessed, as the petitioner has stepped into the shoes of the Collector. It was also held that in view of the judgment of the prescribed authority, the restoration of the correct entry in the revenue record and even restitution of the possession will be an automatic follow up to which the petitioner can have no say in the matter as he has no locus standi to intervene in the matter of declaration of land as surplus, therefore, in view of the above referred judgment, the allottee has no right to be impleaded. Accordingly, the submission of learned counsel for the applicant has no force in law, thus, the application is hereby rejected."

29. Having considered the rival submissions advanced by learned counsel for the parties, examined the pleadings and material brought on record, and perused the judgments relied upon by the learned Senior Counsel for the petitioner, this Court finds that the impugned orders dated 30.03.1998 passed by the Prescribed Authority and 06.05.2000 passed by the appellate authority cannot be sustained in law. Both the authorities have failed to discharge the statutory obligation cast upon them under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 while determining the surplus land of the petitioner.

30. The principal controversy in the present case relates to the determination of the nature of the petitioner's holdings as irrigated land under Section 4-A of the Act. The statutory scheme clearly requires the Prescribed Authority to record a finding on the basis of the Khasra entries of Fasli years 1378, 1379 and 1380 together with other relevant evidence regarding the existence of irrigation facilities and the capability of the land to produce at least two crops in the relevant agricultural years. Such determination cannot be founded upon presumptions or general observations.

31. In the present case, despite a specific query put by this Court, learned counsel appearing for the respondents failed to place any material from the Khasra records of Fasli years 1378, 1379 and 1380 demonstrating that the land in question satisfied the statutory requirements contained in Section 4-A of the Act. No documentary material has been produced to establish that the land consistently yielded two crops or that the requisite source of irrigation existed during the relevant period. The inability of the respondents to produce the foundational revenue records completely demolishes the basis of the findings recorded by the authorities below.

32. It further emerges from the record that the Prescribed Authority, even after remand by the appellate authority, did not examine the relevant Khasra entries before recording a finding that the entire holding was irrigated. No inspection report prepared by the Prescribed Authority has been brought on record. The finding that the entire holding was irrigated is, therefore, unsupported by any legally admissible evidence and is liable to be characterised as a finding based on no evidence.

33. This Court also finds substance in the submission of the petitioner that the authorities have misread the revenue records by confusing Plot No.140 with Khata No.140. Merely because tube-wells existed over a plot belonging to the co-operative society, the authorities presumed that the petitioner's independent holdings situated in Khata No.140 were also irrigated. Such inference is contrary to the revenue records and reflects complete non-application of mind. A statutory determination affecting valuable agricultural holdings cannot rest upon such erroneous assumptions.

34. The Khasra entries relied upon by the petitioner further disclose that substantial portions of the land remained recorded as Parti Jadid during the relevant Fasli years and no reliable evidence exists regarding the availability of irrigation facilities or cultivation of two seasonal crops. The authorities have neither adverted to these entries nor recorded any reason for discarding them. Ignoring the primary revenue records while recording findings under Section 4-A vitiates the entire exercise undertaken by the Prescribed Authority.

35. Equally serious is the failure of both the authorities to consider the petitioner's claim regarding the composition of his family. The statement of the concerned Lekhpal, which forms part of the record, unequivocally records that the petitioner has three sons and two daughters. The said statement has neither been disputed by the respondents nor discarded for any legally sustainable reason. Nevertheless, both the Prescribed Authority and the appellate authority proceeded on the assumption that the petitioner had only two major sons and consequently denied him the statutory benefit available under Section 5(3) of the Act. Such omission amounts to complete disregard of material evidence available on record.

36. The authorities have also failed to record any finding regarding the petitioner's entitlement to additional ceiling area on account of the larger family consisting of seven members. The statutory benefit conferred under Section 5 of the Act cannot be denied without recording cogent reasons based upon evidence. The impugned orders are conspicuously silent on this aspect and, therefore, suffer from manifest legal infirmity.

37. The record further establishes that the petitioner had exercised his statutory option regarding the land liable to be declared surplus by submitting his choice on 30.11.1995. The Ceiling Act obligates the authorities to consider such option while selecting surplus land. Neither the Prescribed Authority nor the appellate authority has adverted to this mandatory requirement. Failure to consider the petitioner's statutory choice renders the determination contrary to the provisions of the Act.

38. This Court also finds that the authorities initially declared only 5.194 hectares of land as surplus by order dated 27.01.1996. However, after the appellate authority remanded the matter for fresh consideration, the Prescribed Authority, instead of conflying itself to the defects pointed out in the remand order, declared as much as 13.629 hectares of land surplus. Such substantial enhancement of surplus area without any fresh evidence or additional material on record itself demonstrates that the matter was not reconsidered in accordance with law but on wholly arbitrary considerations.

39. The finding that the land belonging to the co-operative society was liable to be treated as the individual holding of the petitioner is equally unsustainable. The material on record clearly establishes that the petitioner was only one of the members of the duly registered co-operative farming society and had contributed only his share of land. The authorities themselves excluded the land of the society after remand

except to the extent of the petitioner's contribution. There was, therefore, no justification for proceeding on the premise that the entire land of the society constituted the petitioner's individual holding. The finding recorded in this regard is based upon complete misappreciation of the evidence.

40. The contention advanced on behalf of the subsequent allottee seeking impleadment also deserves to be rejected. The law is well settled by the decision in the case **of Ram Bhajan Vs. Chief Revenue Officer (Supra),** wherein it has been held that an allottee derives no better title than that possessed by the State and cannot claim any independent right once the declaration of surplus land itself is found to be illegal. The said principle has been reiterated by this Court in the case of **Sachin Kumar Verma and others (Supra)**. Applying the aforesaid ratio to the facts of the present case, it is evident that any subsequent allotment made pursuant to an illegal declaration of surplus land cannot survive and the subsequent allottee has no enforceable right to resist restoration of the petitioner's lawful holding.

41. The judgments relied upon by the learned Senior Counsel for the petitioner fully support the proposition that statutory authorities exercising powers under the Ceiling Act are required to strictly adhere to the mandatory provisions of the Act and base their findings upon legally admissible revenue records. Since the respondents have failed to establish compliance with Section 4-A of the Act and have ignored material evidence regarding the petitioner's family composition, revenue entries and statutory entitlement, the impugned orders are rendered legally unsustainable.

42. The cumulative effect of the aforesaid discussion leaves no manner of doubt that both the prescribed authority and the appellate authority have acted in complete disregard of the statutory provisions, ignored relevant documentary evidence, misread the revenue records, failed to consider mandatory provisions of Sections 4-A and 5 of the Act, and recorded findings unsupported by any reliable evidence. Such findings are perverse, arbitrary and suffer from manifest non-application of mind, warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

43. Accordingly, the writ petition succeeds and is **allowed**.

44. The impugned order dated 30.03.1998 passed by the prescribed authority and the appellate order dated 06.05.2000 affirming the same are hereby quashed.

45. The matter is remitted to the prescribed authority to reconsider the ceiling proceedings afresh strictly in accordance with law after examining the Khasra entries of Fasli years 1378, 1379 and 1380, the relevant revenue records, the statement of the Lekhpal regarding the petitioner's family, the petitioner's statutory claim under Section 5 of the Act, his option regarding retention of land, and all other evidence produced by the parties. A fresh reasoned and speaking order shall be passed after affording due opportunity of hearing to all concerned parties, preferably within a period of six months from the date a certified copy of this judgment is produced before the authority.

46. There shall be no order as to costs.

(2026) 7 ILRA 2496
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.07.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ C No. 857 of 2013
& Other Connected Case

Sunbeam School **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether an administrative or executive authority (such as an Additional City Magistrate / SDM) has the power or jurisdiction to set aside, recall, or override a final judicial/quasi-judicial decree passed by a competent court (Section 229-B decree) on the administrative side?
(b) Whether orders recalling long-standing mutation entries and Abadi declarations (u/s 143) after a decade or more can be legally sustained when passed ex-parte without notice or opportunity of hearing to the affected party/lessee?
(c) Whether an absolute stranger to the original title litigation has any locus standi to move administrative applications to recall judicial mutation entries?
(d) Whether land that was historically recorded as Sir/Khudkasht (private cultivation of the Zamindar in 1359 Fasli) and settled u/s 18 of the U.P.Z.A. & L.R. Act can be treated as a "public pond" (Pokhari/Banjar) falling u/s 117/132 of the Act?
(e) Whether summary powers u/Ss 33 and 39 of the U.P. Land Revenue Act can be exercised to alter nature/title entries ex-parte and change an established Abadi/school setup into a public pond without examining actual possession and hearing necessary parties?

Headnotes

A. Land Reform Law – U.P. Land Revenue Act, 1901: Section 33, 39; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950: Section 132, 143, 229B; U.P.Z.A & L.R. Rules 1952: Rule 135 - On 31.01.1986, trial court declared Lalo Devi and Dhiraji Devi co-owners (half-share each). Dhiraji Devi appealed (*Appeal No. 67 of 1986*). **On 23.04.1988, the Additional Commissioner (Administration), Varanasi, allowed her appeal, set aside the trial court decree, and declared Dhiraji Devi the absolute owner in possession.** A Second Appeal filed before the Board of Revenue (*Second Appeal No. 28 of 1987-88*) was dismissed on 08.08.1996, making the 1988 decree final. Neither the State of U.P. nor the Nagar Mahapalika (who were defendants) challenged this decree. A *Parwana Amaldaramad* (mutation order) was issued on 13.04.1989 recording Dhiraji Devi's name.

On 05.01.2002, Nagar Nigam, Varanasi issued a No Objection Certificate (NOC) stating that the plots were not Nagar Nigam / Nazul property. On 10.07.2002, u/s 143 of the U.P.Z.A. & L.R. Act, the land was declared as non-agricultural (Abadi) by the Assistant Collector, 1st Class. **On 11.07.2002, Dhiraji Devi executed a registered lease deed in favor of Sunbeam School.** On 16.08.2002, the Varanasi Development Authority (VDA) sanctioned the building map, and the school was constructed and made operational.

The petitioner alleged that the local district administration (including the Divisional Commissioner) harbored animosity toward the school's director due to his involvement in an active PIL (*Alpna Roy Chaudhary v. State*

of U.P.) highlighting administrative scams in Varanasi. A third party (Respondent No. 4, Rakesh Nyayik) filed complaints at the instance of the administration. (Respondent No. 4 later submitted an affidavit in related criminal proceedings explicitly admitting he was set up by the district administration).

Order dated 15.12.2012 (Writ-C No. 857 of 2013): Passed within 5 days on an application by Respondent No. 4. The Additional City Magistrate-III, Varanasi, acting on the administrative side without notice/hearing to the petitioner, recalled the *Parwana Amaldaramad* dated 13.04.1989 and effectively nullified the judicial decree of 1988.

Order dated 21.11.2012 (Writ-C No. 858 of 2013): The SDM, Varanasi, *suo motu* recalled the 10-year-old Section 143 declaration order dated 10.07.2002 without notice/hearing.

Order dated 20.12.2012 (Writ-C No. 858 of 2013): Passed in proceedings u/Ss 33/39 of the U.P. Land Revenue Act, directing that the land be recorded as a "Pond" (*Pokhari*) in revenue records based on 1359 Fasli entries, without giving the petitioner an opportunity of hearing.

B. Writ-C No. 857 of 2013 (Challenge to Order Dated 15.12.2012):-

(i) Judicial Decrees Cannot Be Overridden Administratively - The Court held that the 1988 decree passed by the Additional Commissioner u/s 229-B had attained finality. An administrative officer (Additional City Magistrate) has no authority or jurisdiction to sit over or set aside a judicial/quasi-judicial decree passed by a competent court. In view of aforesaid facts, there does not exist any cloud over right, title and interest of Smt. Dhiraji Devi and now petitioner. (Para 49, 51, 52, 57, 58, 59)

(ii) Violation of Natural Justice & Lack of Locus - The order was passed within 5 days on an application by a third party (Respondent No. 4) who had no locus standi, without issuing any notice or providing an opportunity of hearing to the petitioner or affected parties. There is no material on record before respondent no.3 to come to the conclusion ex-parte, in administrative manner that Additional Commissioner (Administration) Varanasi passed judgement and decree on the basis of false affidavit. Aforesaid conclusion is perverse and in breach of Principles of Natural Justice. (Para 49, 53, 59)

Writ petition allowed. Impugned order dated 15.12.2012 passed by Respondent No. 2 was quashed. The proceedings of Case No. 45/12-13 in Suit No. 162 of 1985-86 were quashed.

C. Writ-C No. 858 of 2013 (Challenge to Orders Dated 21.11.2012 and 20.12.2012):-

(i) Unlawful Suo-Motu Recall of Section 143 Declaration - Judicial orders passed u/s 143 declaring land as *Abadi* cannot be wiped out in an administrative manner without hearing affected parties. The petitioner, as a registered lessee running a school on the site, was a necessary party. (Para 62, 63, 64)

(ii) Misapplication of Public Pond Rulings - Judgment of the Hon'ble Apex Court and of this Hon'ble Court relate only to those public lands which were recorded as Ponds. It did not cover at any point of time private land and private ponds. In fact private ponds can never be converted into a public property and no direction can be given to compulsorily maintain such land as ponds.

Record shows that in Khatauni 1359 Fasli that forms the basis of passing the order dated 21.11.2012, the land in question has been shown to be Sir and in the Khasra it has been shown to be Sir Malikan which shows that the land remained in private cultivation and at no point of time it ever vested in the State Government. It was Sir Malikan and hence stood settled in terms of Section 18 of the U.P.ZA & LR. Act. (Para 64 to 67)

(iii) Misuse of Ss. 33/39 Summary Proceedings and violation of principles of natural justice - Long standing entries cannot be disturbed in summary proceedings, thus impugned action u/Ss 33 & 39 of the U.P. Land Revenue Act are also without jurisdiction as there exists no application for correction of the record filed by any person. **In exercise of the powers u/s 39 of the U.P. Land Revenue Act, it was necessary for the respondents to have decided upon the entry on the basis of the possession.** For this purpose he was required to hear the parties and in the absence of hearing the parties the order passed

by respondent no. 2 is without jurisdiction and is also in breach of the principles of natural justice. (Para 68, 69)

Powers u/Ss 33/39 of the U.P. Land Revenue Act are summary in nature and cannot be used ex-parte to alter long-settled land character without examining actual possession and providing a complete hearing.

Writ petition allowed. Impugned orders dated 21.11.2012 and 20.12.2012 passed by Respondent No. 2 were quashed. The respondents were restrained from causing any interference in the peaceful operation of the school by the petitioner on the plots in question. (E-4)

List of Acts/Orders

U.P. Land Revenue Act, 1901; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950; U.P. Urban Planning and Development Act, 1973; U.P.Z.A & L.R. Rules 1952.

List of Keywords

possession, violation, principles, natural justice, actual, ex-parte, public, private, revenue, administrative, pond, cultivation, summary.

Appearances for Parties

For Petitioner(s): Ajay Kumar Singh, Ashish Kumar Singh, Manish Goyal
For Respondent(s): Ashish Kr.gupta, Ashok K Pandey, C.S.C.

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

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Court No. 5

HON'BLE PRAKASH PADIA, J.

1. Since the questions of law involved in both the writ petitions are absolutely identical, therefore, they be heard together and decided by this common judgment.

2. Heard Sri Ajay Kumar Singh, learned Senior Advocate assisted by Sri Tejas Singh, Advocate, for petitioner, in both writ petitions, learned Standing Counsel for respondent nos.1 to 3 and Sri Ashok Pandey for proposed respondent- Nagar Nigam, Varanasi, in both Writ-C No. 857 of

2013 and Writ-C No. 858 of 2013 (No-one appeared for respondent no. 4 in Writ-C No. 857 of 2013).

3. Writ-C No. 857 of 2013 is filed with following prayers :-

(a) Issue writ, order of direction in the nature of CERTIORARI calling for record and quashing the order dated 15.12.2012 passed by the respondent no.2 (Annexure -1 to the present writ petition) as well as quashing the proceedings of case no. 45/12-13 in already decided proceedings of Suit No. 162 of 1985-86 Lalo Devi Vs, Rai Satyabrat Saheb.

(b) Issue writ, order of direction in the nature of PROHIBITION restraining the respondents from causing any interference in the running of the school by the petitioner situated on Plot No. 145m 146 and 148 in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi.

4. Writ-C No. 858 of 2013 is filed with following prayers :-

(a) Issue writ, order of direction in the nature of CERTIORARI calling for record and quashing the order dated 20.12.2012 passed by the respondent no.2 in exercise of powers under section 33/39 of the U.P. Land Revenue Act, 1901 (Annexure-1 to the present writ petition).

(b) issue writ, order of direction in the nature of CERTIORARI calling for record and quashing the order dated 21.11.2012 passed by the respondent no.2 recalling the order dated 10.07.2002 suo motu without drawing any proceedings (Annexure-2 to the present writ petition).

(c) Issue writ, order of direction in the nature of PROHIBITION restraining the respondents from causing any interference in the running of the school by the petitioner situated on Plot No. 145/1 (M) 146/1 (M) and 148/1 (M) in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi.

FACTS OF THE CASE AS PLEADED BY PETITIONER IN WRIT-C No. 857 OF 2013

5. Petitioner is an educational institution and is imparting education upto Intermediate level and is following the C.B.S.E. Course Curriculum and Land in question is situated upon Plot No. 145/1(M), 146/1 (M) and 148/1 (M). It is submitted that upon the aforesaid piece of land, the petitioner is running school and the said school has been constructed after due permission from the District Administration, N.O.C. from Nagar Nigam and in compliance with the provisions under the U.P. Urban Planning and Development Act, 1973 (hereinafter referred as 'Act 1973'). A suit being Suit No. 417 of 1979 under Section 229B of U.P.Z.A. & L.R. Act, 1950 (hereinafter referred as 'Act 1950) was filed by one Smt. Lalo Devi against Rai Satyabrat Saheb and others inter-alia, seeking declaration of Bhumidhari rights upon Plot No. 145, 146 and 148; in the aforesaid suit one Smt. Dhiraji Devi filed application for being impleaded as defendant which was allowed and she was impleaded as defendant no. 9 and Dhiraji Devi filed her written statement by which she stated to be in possession upon the land in question for the past 40 years and have also stated that she paid Rs. 20,000/- on 08.05.1972 to Rai Satyabrat Saheb and further that Lalo Devi has no right upon the land in question; aforesaid Suit was decreed vide judgment and decree dated 31.01.1986 passed by

Additional Sub Divisional Officer, Varanasi, declaring Smt. Lalo Devi and Smt. Dhiraji Devi as owners to the extent of half share each, against which Mst. Dhiraji Devi filed Appeal No. 67 of 1986 Mst. Dhiraji Devi Vs. Sita Ram and others to challenge part of the judgment and decree dated 31.01.1986 passed by Additional Sub Divisional Officer, Varanasi; Additional Commissioner (Administration), Varanasi Division, Varanasi allowed the appeal, set-aside the judgment and decree dated 31.01.1986 passed by Additional Sub Divisional Officer, Varanasi and held that Smt. Dhiraji Devi is absolute owner having title and possession over the properties in question; against the aforesaid judgment and decree passed by the Additional Commissioner (Administration), Varanasi dated 23.04.1988, the heirs of Lalo Devi namely Sita Ram filed Second Appeal No. 28 of 1987-88 (Sita Ram Vs. Mst. Dhiraji Devi and others) before the Board of Revenue and Board of Revenue dismissed the aforesaid Second Appeal No. 28 of 1987-88 upon application filed by appellant to dismiss the appeal, vide order dated 08.08.1996.

6. Pursuant to the decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi Division, Varanasi, Dhiraj Devi had filed an application for mutation of her name and some other persons also filed applications; Upon such applications, orders were passed for recording the name of Dhiraji Devi by the Additional City Magistrate, by issuing Parwana Amaldaramad and accordingly the said order has been incorporated in the Khatauni.

7. Nagar Nigam, Varanasi gave its 'No Objection Certificate' dated 05.01.2002 in respect of the disputed property, wherein it was stated that Plot No. 145, 146 and 148 of Village Lahartara are not the property of Nagar Nigam. Thereafter Smt. Dhiraji Devi wife of Nandlal initiated proceedings under Section 143 of the U.P.Z.A & L.R. Act, to declare properties in question as Abadi; Under Rule 135 of the U.P.Z.A & L.R. Rules 1952 Naksa along with report was submitted by the Tehsildar/Lekhpal, whereupon Assistant Collector, 1st Class, Sadar, Varanasi declared the disputed land as 'Abadi' Class VI(2) and directed for Amaldaramad in the revenue records, vide order dated 10.07.2002. Upon declaration of the land as 'Abadi' Smt Dhiraji Devi executed a registered lease deed in favour of the petitioner wherein the three plots of land were conveyed through lease in favour of the petitioner. Thereafter a notice was issued by Varanasi Development Authority for deposit of the amount for sanction of the plan. The aforesaid amount was deposited by the petitioner with the authority and Varanasi Development Authority sanctioned the map for construction of the school upon the land in question and also granted permission to raise construction, vide order dated 16.08.2002

8. Director of the Petitioner is actively contesting an ongoing Public Interest litigation no. 48104 of 2012 Alpna Roy Chaudhary Vs. State of U.P. and others. The said public interest litigation has been filed collectively by the respectable citizens of Varanasi coming from different walks of life including Professors, Practicing Lawyers, Doctors, Poets, Businessmen, Social Workers etc.; Hon'ble Court in the said public interest litigation monitored the civic conditions in the town of Varanasi and passed stringent orders particularly against the Commissioner Varanasi Division, Varanasi who was directed to remain present before the Hon'ble Court personally and in spite of the said order did not appear which was taken seriously by the Hon'ble Court. On information being given to the Hon'ble Court that he has gone abroad for training the Hon'ble Court passed orders directing him to appear on 17.10.2012 with a direction to the State Government to cancel the trip of the Divisional Commissioner abroad and inform him to come back and attend the

Court; when the petitioner did not succumb and further exposed Commissioner by highlighting his involvement in multi-crore scam in the said public interest litigation, Commissioner started taking it personally and got it communicated to the petitioner that he will teach petitioner a lesson and petitioner may get ready to face the music; in order to give effect to the aforesaid nefarious design an application dated 10.12.2012 was filed by a third party namely the respondent no.4 who had nothing to do with the matter by the respondent no. 3 himself who was following the command of the Commissioner and prayer was made in the said application to the effect to recall the Parwana Amaldaramad and to expunge the entry standing in the revenue records. The application filed by the respondent no. 4 was not accompanied by any delay condonation application; not only this notices were not issued on the said application to Dhiraji Devi, Lalo Devi, Rai Satyabrat Saheb and others who were the original parties in the proceedings under Section 229-B of Act, 1950.

9. Attention of the court is also drawn to the paragraph no.1 of aforesaid application, wherein respondent no.4 stated that he lodged first information report dated 06.12.2012 being Case Crime No. 780 of 2012 against the Chairman of the petitioner's school. Pursuant to aforesaid, case has been registered as Criminal Case No. 2545 of 2020 Rakesh Nyayik Vs. Deepak Madhok, wherein respondent no. 4 himself filed an application supported with affidavit dated 12.11.2020, clearly stating that he has been set up by the district administration which itself speaks of illegal and malafide attitude of respondents-authorities for initiating impugned proceedings. In the aforesaid case, final report no. 258 of 2015 dated 23.12.2015 was submitted, same was accepted and record has been consigned to record room, vide order of Chief Judicial Magistrate, Varanasi dated 28.09.2021. Copy of the application and affidavit of respondent no. 4 dated 12.11.2020 filed in Criminal Case No. 2545 of 2020 is also part of the record as Annexure RA-1 filed in response to counter affidavit filed by respondent no.4.

10. Necessary pleadings with regard to malafide of district administration is pleaded in paragraph nos. 18 to 24 of the writ petition.

11. Before moving the application dated 10.12.2012 the respondent no. 4 had filed application on 26.11.2012 whereby he sought prayer for quashing the order dated 31.01.1986 passed in the said suit (though same was already set aside vide order of Additional Commissioner (Administration), Varanasi Division, Varanasi, dated 23.04.1988) and it seems that later it was realized that the order of 31.01.1986 was passed against Dhiraji Devi and would not have served the purpose of the Administration and hence a fresh application dated 10.12.2012 was invited from respondent no. 4 by respondent no. 3 and upon the said application straightaway the impugned order dated 15.12.2012 has been passed (within five days of application).

12. Without any notice to the original contestants in the suit and after expiry of 24 years and that too on an application of third party, the respondent no. 3 in the capacity of respondent no. 2 has passed the impugned order dated 15.12.2012, himself quashing the order issuing Parwana Amaldaramad dated 13.04.1989 and sitting in judgment over the order of Additional Commissioner (Administration) dated 23.04.1988, stating that order of trial court dated 31.01.1986 is set-aside in compliance of order of Additional Commissioner dated 23.04.1988, vide order dated 15.12.2012.

CONTENTION OF COUNSEL FOR THE PETITIONER IN WRIT-C NO. 857 OF 2013

13. By the impugned order dated 15.12.2012 passed by 3rd Additional City Magistrate, Varanasi-Respondent No. 2/3, judgment and decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi Division, Varanasi has been set at naught by administrative order whereby Parwana Amaldaramad dated 13.04.1989 issued by Additional City Magistrate-3rd, Varanasi was recalled as if 3rd Additional City Magistrate, Varanasi is sitting over the judgment and decree dated 23.04.1988 passed by Additional Commissioner (Administration), Varanasi Division, Varanasi that too without any notice and opportunity of hearing to petitioner or any affected person, within 5 days from the date of application of respondent no. 4 dated 10.12.2012 i.e. after expiry of 24 years of judgment and decree dated 23.04.1988 passed in Appeal by Additional Commissioner (Administration), Varanasi Division, Varanasi.

14. Without any notice to the original contestants in the suit and after expiry of 24 years and that too on an application of third party, the respondent no.3 in the capacity of respondent no. 2 has passed the order dated 15.12.2012 himself quashing the order issuing Parwana Amaldarmad dated 13.04.1989 and sitting over judgment and decree of Additional Commissioner (Administration) Varanasi dated 23.04.1988.

15. The malafides of the respondent no. 3 is evident from the fact that he twisted the nature of the order passed by the Additional Commissioner (Administration) who had recorded a definite conclusion to the effect that Dhiraji Devi is the owner and in possession upon the land in question. However, the respondent no. 3 twisted the said finding by holding that an interpretation cannot be given to the effect that suit was decreed in favour of Smt. Dhiraji Devi. The respondent no. 3 has given colour to the said order as if the matter is remitted for fresh consideration before the Court of Assistant Collector. From perusal of the judgment and order dated 23.04.1988 it is evident that the suit was not remitted for fresh consideration.

16. The respondent no. 3 abused the powers conferred upon him by ex-parte recording the conclusion that false affidavit was filed and orders were passed by the Additional Commissioner (Administration) and the orders passed by the Additional City Magistrate-III, Varanasi are against the provisions of law and are erroneous. Such conclusion drawn by the respondent no. 3 is without any material and is in breach of principle of natural justice besides being perverse.

17. No proceedings were instituted and there is no reference of the earlier application filed by respondent no.4. It is not evident as to how the respondent no. 4 had any locus to file an application in already decided proceedings under Section 229-B of Act, 1950.

18. The respondent no. 4 is an absolute stranger and had no authority in law to file the application. The respondent no. 4 has been set up by respondent no. 3 to institute the proceedings and the respondent no. 2 seems to have acted on the dictates of the Commissioner and local administration for the reasons mentioned hereinbefore.

19. Once the judgement and decree dated 23.04.1988 has attained finality it had to be executed and recording of the name of Dhiraji Devi pursuant to the judgement and decree dated 23.04.1988 is in accordance with the provisions contained under Section 39 of the U.P. Land Revenue Act read with the Rules framed under Act, 1950.

20. Mere pendency of the second appeal before the Board of Revenue does not stop the authority to implement the order of 23.04.1988. It has nowhere been mentioned in the impugned order that the order dated 23.04.1988 passed by the Additional Commissioner (Administration), Varanasi was stayed in the said second appeal. It is a settled principle of law that mere pendency of appeal does not amount to stay. Hence there was no irregularity in recording the name of Dhiraji Devi and passing the order dated 12.04.1989 and in any view of the case, Second Appeal was already dismissed by Board of Revenue.

21. Moreover the second appeal having been dismissed judgement and decree dated 23.04.1988 merged in the order dated 08.08.1996 dismissing the appeal and hence the order dated 23.04.1988 attained finality. No justification has been given in the impugned order as to why the order of 23.04.1988 could not have been implemented after 1996. Assuming though not admitting, that the order could not have been implemented in the year 1989, it was surely capable of implementation after dismissal of the second appeal. This clearly establishes mala fides of respondent no.3 in passing the order and the target is to financially damage the petitioner as his school is constructed upon the property in question.

22. Nagar Nigam, Varanasi gave its 'No Objection Certificate' dated 05.01.2002 in respect of the disputed property, wherein it was stated that Plot No. 145, 146 and 148 of Village Lahartara are not the property of Nagar Nigam Nazul. Aforesaid 'No Objection Certificate' dated 05.01.2002, is still intact and never questioned.

23. On 12.06.2002, Smt. Dhiraji Devi wife of Nandlal initiated proceedings under Section 143 of the U.P.Z.A & L.R. Act, to declare properties in question as Abadi, Under Rule 135 of the U.P.Z.A & L.R. Rules 1952 Naksa along with report dated 19.06.2002 was submitted by the Tehsildar/Lekhpal whereupon Assistant Collector, 1st Class, Sadar, Varanasi declared the disputed land as 'Abadi' Class VI (2) and directed for Amaldaramad in the revenue records, vide order dated 10.07.2002. State was party to that case, besides application was duly enquired into by Tehsildar, Sadar, Varanasi who got it enquired into from Regional Revenue Inspector who submitted its report dated 22.06.2002 and on the basis of that 'Abadi' has been declared and said property is not covered by section 132 of the UPZA & LR Act, 1950.

24. Upon declaration of the land as 'Abadi' Smt. Dhiraji Devi executed a registered lease deed dated 11.07.2002 in favour of the petitioner wherein the three plots of land were conveyed through lease in favour of the petitioner. A notice dated 13.08.2002 was issued by Varanasi Development Authority for deposit of the amount for sanction of the plan. The aforesaid amount was deposited by the petitioner with the authority, on 16.08.2002. The Varanasi Development Authority sanctioned the map for construction of the school upon the land in question. Aforesaid sanctioning of Map for construction of School has also become final and also granted permission to raise construction, vide order dated 16.08.2002

25. In view of aforesaid facts, there does not exist any cloud over right, title and interest of Smt. Dhiraji Devi and now petitioner

26. It is not out of way to mention here that an area of 0.56 hectare of plot no. 146 and an area of 1.30 hectare of plot no.148 was acquired by the Railway Administration over which the Abadi of Railway Administration came into existence and is still continuing. In Khatauni of 1381 to 1383 Fasli such an area is recorded in Shreni 6(4) as Abadi Uttar Purab Railway in Khata No.657.

ADDITIONAL FACTS OF THE CASE AS PLEADED BY PETITIONER IN WRIT-C 858 OF 2013

27. It seems that after the school was constructed and was running, suo moto a notice dated 22.02.2010 came to be issued to Smt. Dhiraji Devi. Notice did not disclose the nature of the proceedings and it fixed 16.03.2010 as the date for hearing.

28. It was reported by the process server on 09.03.2010 that Smt. Dhiraji Devi has already expired and hence notice could not be served whereupon Sub Divisional Magistrate, Sadar, Varanasi-respondent no. 2 issued letter dated 31.03.2010 to Tehsildar, Sadar, Varanasi, respondent no. 3 to trace the legal heirs of the deceased Dhiraji Devi and submit his report.

29. However, without disclosure of the heirs of the deceased Dhiraji Devi straightaway impugned order dated 22.11.2012 was passed by the Sub Divisional Magistrate, Varanasi, respondent no. 2 whereby he has recalled the order of 10.07.2002-granting declaration under section 143 of U.P.Z.A. & L.R. Act, 1950 by Assistant Collector, Ist Class, Sadar, Varanasi without hearing any of the affected parties.

30. Thereafter without notice to the petitioner, proceedings, as alleged, were initiated under Section 33/39 of the U.P. Land Revenue Act. A report was called for by the Sub Divisional Magistrate, Varanasi-respondent no.2 from Tehsildar, Sadar, Varanasi-respondent no.3 for the purpose of registering the land as 'Pond'. This report was also submitted without hearing the petitioner. On the basis of the said report, the impugned order dated 20.12.2012 has been passed whereby the land came to be recorded as "Pond' and directions were issued to make entries in the revenue records in this regard.

CONTENTION OF COUNSEL FOR THE PETITIONER IN WRIT-C NO. 858 OF 2013

31. The impugned orders dated 20.12.2012 and 21.11.2012 passed by respondent no. 2 suffer from grave error of law apparent on the face of the record besides being orders that are without jurisdiction.

32. The petitioner has not been given any opportunity of hearing nor lessor of the petitioner was given any opportunity of hearing. In the absence of hearing the petitioner, an order that was passed on 10.07.2002, more than 10 years ago has been recalled on 21.11.2012, suo-moto and that too without any proceedings under any provisions of the Act inasmuch as judicial orders cannot be set-aside in administrative manner. Hence, the entire action is without jurisdiction.

33. In the absence of the proceeding contemplated under the Act suo-moto the order could not have been recalled and the respondent no. 2 committed grave error of law in recalling the order suo-moto.

34. The petitioner was a necessary party to be heard as after the passing of the order dated 10.07.2002 u/s 143 of U.P.ZA & L.R. Act, the land in question was exempted from the application of Chapter-VIII U.P.ZA & L.R. Act. Valid rights were created in favour of the petitioner by due execution of a registered lease deed dated 11.07.2002. Under such circumstances orders to the prejudice of the petitioner could not have been passed without giving an opportunity of hearing to the petitioner.

35. On merits the respondent has passed the impugned order without application of mind and has failed to notice the fact that the land in question is a revenue paying land and throughout it has been recorded as Sir. Even in the Khatauni of the year 1359 Fasli that forms the basis of passing the order dated 21.11.2012 the land in question has been shown to be Sir and in the Khasra it has been shown to be Sir Malikan.

36. An entry in Khasra only discloses the crop being cultivated upon the land in question. It is not a record of rights and in the Khatauni where the name of the tenure holder is record, it establishes the nature of the holding. The petitioner in this regard places reliance upon paragraph A-60 of the U.P. Land Record Manual.

37. From Khasra of 1359 Fasli it is evident that the land remained in private cultivation and at no point of time it ever vested in the State Government. It was Sir Malikarn and hence stood settled in terms of Section 18 of the U.P.ZA & LR. Act.

38. Judgment of the Hon'ble Apex Court and of this Hon'ble Court relate only to those public lands which were recorded as Ponds. It did not cover at any point of time private land and private ponds. In fact private ponds can never be converted into a public property and no direction can be given to compulsorily maintain such land as ponds.

39. There are judgments of this Hon'ble Court that exempt the land in the nature of pond settled under Section 18 of the U.P.ZA & LR. Act to be not falling within the category of public ponds and to maintain the same in such character.

40. A public purpose is being sub served by running the school and huge constructions exists upon the land in question. The same cannot be demolished by changing the entry from Abadi to Pond and that too without hearing the petitioner.

41. The proceedings under Section 33 & 39 of the U.P. Land Revenue Act are also without jurisdiction as there exists no application for correction of the record filed by any person.

42. In exercise of the powers under Section 39 of the U.P. Land Revenue Act, it was necessary for the respondents to have decided upon the entry on the basis of the possession. For this purpose

he was required to hear the parties and in the absence of hearing the parties the order passed by respondent no. 2 is without jurisdiction and is also in breach of the principles of natural justice.

43. It is not out of way to mention here that an area of 0.56 hectare of plot no. 146 and an area of 1.30 hectare of plot no.148 was acquired by the Railway Administration over which the Abadi of Railway Administration came into existence and is still continuing, In Khatauni of 1381 to 1383 Fasli such an area is recorded in Shreni 6(4) as Abadi Uttar Purab Railway in Khata No.657.

44. No part of the land is covered under the expression Pokhari as it is the revenue paying land since its inception and the portion of land which has been acquired much after the 1359 Fasli and is recorded as Abadi of the Uttar Purab Railway over which the railway colony exists at present.

45. In Writ-C No. 857 of 2013, respondent nos. 1 to 3 filed their counter affidavit stating that properties in question are in nature of Banjar/Sarpat, Pokhari and are falling undersection 117/132 of U.P.Z.A. & L.R. Act over which no Bhumadhari rights can be accrued and respondent no. 4 also filed counter affidavit supported impugned orders stating that there is no illegality in impugned orders and there is no jurisdictional error. Petitioner filed rejoinder affidavits stating that nature of the land was never Pokhari rather agricultural activities was being done and property in question is vested/ settled under section 18 of the U.P.Z.A. & L.R. Act. Entries in Khasra 1359 Fasli shows that it was Seer Khudkasht land of Zamindar under his personal cultivation and vested/ settled in him under section 18 of the U.P.Z.A. & L.R. Act and thus he perfected his rights/title, became absolute owner/ Bhumidhar with transferrable rights thereof and State has no concern with it.

46. In Writ-C No. 858 of 2013, respondent nos. 1 to 3 filed their counter affidavit and supported impugned orders stating that there is no jurisdictional error. Petitioner filed rejoinder affidavit.

47. During pendency of present writ petitions, Nagar Nigam, Varanasi filed an application for impleadment alongwith affidavit, after about 12 years, on 15.05.2025 in both the writ petitions and Sri Ashok Pandey, counsel for Nagar Nigam as well as Sri Himanshu Nagpal, Municipal Commissioner, Nagar Nigam, Varanasi have also been heard as intervenors, in the interest of justice, though they were not parties in proceedings initiated by respondents-authorities, giving rise to present writ petitions.

ANALYSIS-Writ-C No. 857 of 2013

48. While entertaining Writ-C No. 857 of 2013, following order was passed by this Court on 08.01.2013 :-

On an application filed by respondent no. 4 alleging that he is a public spirited person, the decree dated 23.4.1998 passed by the Additional Commissioner, Varanasi Division, Varanasi passed in suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act has been set aside by the Additional City Magistrate-III, Varanasi on the ground that the land in dispute is a pond and the name of the petitioner and its lessor are wrongly recorded in the revenue record. It is contended that the Additional City Magistrate-III has no authority or jurisdiction to entertain

the application as he does not exercise any power to hear and decide the public interest litigation nor a decree of a competent court can be set aside on administrative side. It is further contended that no notice or opportunity was provided and the order is ex-parte.

Prima-facie there appears to be force in the submission and the matter requires scrutiny.

Learned Standing Counsel representing the respondents no. 1 & 2 and Sri Ashis Kumar Gupta, respondent no. 4 on whose complaint the order has been passed, may file counter affidavit within four weeks.

Sri Anil Kumar, Additional City Magistrate-III who has been arrayed by name in the writ petition is directed to appear in person before this Court on 6th February, 2013 to explain his power and jurisdiction to set aside a decree of a competent court on the administrative side.

List on 6th February, 2013.

Considering the facts, until further orders of this Court, effect and operation of the impugned order dated 15.12.2012 passed by the Additional City Magistrate-III, Varanasi shall remain stayed. Respondents are further restrained from interferring in the peaceful possession of the petitioner over the land in dispute.

Learned Standing Counsel undertakes to give information of this order in writing to Sri Anil Kumar, Additional City Magistrate-III.

49. It is not disputed by the respondents-authorities that effect of impugned orders are that judicial and/or quasi-judicial orders have been set aside by in administrative manner by administrative orders and also that no prior notice or opportunity of hearing was afforded to recorded/affected persons.

50. A perusal of record further shows that impugned order dated 15.12.2012, giving rise to Writ-C No. 857 of 2013, was passed on an application dated 10.12.2012 of private respondent no.4, i.e. in five days, by setting aside Parwana Amaldaramad dated 13.04.1989 issued in pursuance of judgement and decree dated 23.04.1988 (passed under section 229-B of U.P. Z.A. and L.R. Act, in favour of predecessor of petitioner). Aforesaid administrative order was passed ex-parte after lapse of about 24 years, on a complaint made by unconcerned person/ third person, even without issuing any notice to any affected person including petitioner.

51. Record further shows that judgement and decree dated 23.04.1988 (passed under section 229-B of U.P. Z.A. and L.R. Act, in favour of predecessor of petitioner) is still intact/ has never been set aside by any competent court of law but only order issuing Parwana Amaldaramad dated 13.04.1989, giving effect to aforesaid judgement and decree dated 23.04.1988, has been set

aside, vide impugned order dated 15.12.2012, which is impermissible and without jurisdiction.

52. A perusal of plaint of suit under section 229-8 of the Act, 1950 shows that Nagar Mahapalika, Varanasi as well as State of Uttar Pradesh were parties to the suit as defendant no. 1 and 2 respectively but they never challenged judgement and decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi passed in Appeal No. 67 of 1986 Mst. Dhiraji vs. Sitaram and others, holding that Smt. Dhiraji Devi is absolute owner having title and possession over properties in question, arising out of judgement and decree passed in aforesaid suit.

53. Stand of petitioner that Rakesh (Nyayik) - respondent no. 4 is an absolute stranger and had no authority in law to file the application and he has been set up by respondent no. 3 to institute the proceedings and the respondent no. 2 seems to have acted on the dictates of the Commissioner and local administration, is also fortified from on the own admission of respondent no.4 in para 3 of affidavit dated 12.11.2020, contained in annexure no. RA-1 to the rejoinder affidavit dated 25.03.2026, filed on behalf of petitioner on 04.04.2026. Para 8 of rejoinder affidavit is as under :-

"8. That in reply to the contents of paragraph nos. 11 and 12 of the counter affidavit, it is submitted that first information report dated 06.12.2012 being Case Crime No. 780 of 2012 was wrongly and illegally registered against the Chairman of the petitioner's school. Pursuant to aforesaid, case has been registered as Criminal Case No. 2545 of 2020 Rakesh Nyayik Vs. Deepak Madhok, wherein respondent no. 4 himself filed an application supported with affidavit dated 12.11.2020, clearly stating that he has been set up by the district administration which itself speaks of illegal and malafide attitude of respondents-authorities for initiating impugned proceedings. In the aforesaid case, final report no. 258 of 2015 dated 23.12.2015 was submitted, same was accepted and record has been consigned to record room, vide order of Chief Judicial Magistrate, Varanasi dated 28.09.2021. The deponent brings on record copy of the application and affidavit of respondent no. 4 dated 12.11.2020 filed in Criminal Case No. 2545 of 2020 as Annexure RA-1 to this rejoinder affidavit."

54. It is admitted to the parties that the judgement and decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi has attained finality, besides Nagar Nigam, Varanasi also could not dispute said factum aspect. Apart from that Sri Himanshu Nagpal, Municipal Commissioner, Nagar Nigam, Varanasi who himself addressed the court on 30.04.2026, also could not dispute that impugned orders have been passed in administrative manner ex-parte. Once that be so, judgement and decree dated 23.04.1988, passed under section 229-B of the Act, 1950, had to be executed and recording of the name of Dhiraji Devi pursuant to the judgement and decree dated 23.04.1988 is in accordance with the provisions contained under Section 39 of the U.P. Land Revenue Act read with the Rules framed under Act, 1950.

55. Nagar Nigam, Varanasi itself gave its 'No Objection Certificate dated 05.01.2002 in respect of the disputed property, wherein it was stated that Plot No. 145, 146 and 148 of Village Lahartara are not the property of Nagar Nigam Nazul. Aforesaid 'No Objection Certificate' dated 05.01.2002, is still intact and never questioned. Thus Nagar Nigam, Varanasi is estopped from taking different stand which is barred by Principles of Estoppel.

56. On 12.06.2002, Smt. Dhiraji Devi wife of Nandlal initiated proceedings under Section 143 of the U.P.Z.A & L.R. Act, to declare properties in question as Abadi. Under Rule 135 of the U.P.Z.A & LR. Rules 1952 Naksa along with report dated 19.06.2002 was submitted by the Tehsildar/Lekhpal whereupon Assistant Collector, 1st Class, Sadar, Varanasi declared the disputed land as 'Abadi' Class VI(2) and directed for Amaldaramad in the revenue records, vide order dated 10.07.2002. State was party to that case, besides application was duly enquired into by Tehsildsr, Sadar, Varanasi who got it enquired into from Regional Revenue Inspector who submitted its report dated 22.06.2002 and on the basis of that 'Abadi' has been declared and said property is not covered by section 132 of the UPZA & LR Act, 1950.

57. Upon declaration of the land as 'Abadi' Smt. Dhiraji Devi executed a registered lease deed in favour of the petitioner wherein the three plots of land were conveyed through lease deed dated 11.07.2002, in favour of the petitioner. A notice dated 13.08.2002 was issued by Varanasi Development

Authority for deposit of the amount for sanction of the plan The aforesaid amount was deposited by the petitioner with the authority, on 16.08.2002 The Varanasi Development Authority sanctioned the map for construction of the school upon the land in question. Aforesaid sanctioning of Map for construction of School has also become final and also granted permission to raise construction, vide order dated 16.08. 2002.

58. In view of aforesaid facts, there does not exist any cloud over right, title and interest of Smt. Dhiraji Devi and now petitioner.

59. There is no material on record before respondent no.3 to come to the conclusion ex-parte, in administrative manner that Additional Commissioner (Administration) Varanasi passed judgement and decree on the basis of false affidavit. Aforesaid conclusion is perverse and in breach of Principles of Natural Justice.

ORDER ON WRIT-C NO. 857 OF 2023

60. In view of the above discussion, entire proceeding including impugned order dated 15.12.2012 (Annexure No.-1 to the writ petition) passed by respondent No.2/IIIrd Additional City, Magistrate, Varanasi is quashed and the respondents are restrained from causing any interference in running of the School by petitioner situated on Plot No. 145M, 146 and 148 in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi. The present writ petition succeeds and is allowed,

ANALYSIS-Writ-C No. 858 of 2013

61. While entertaining Writ-C No. 858 of 2013, order was passed on 08.01.2013 which reads as follows:-

"It is contended by learned counsel for the petitioner that after the decree dated 23.4.1988 passed by the appellate court in a suit under Section 229-B was set aside illegally by the Additional City Magistrate-III, Varanasi which is subject matter of challenge of writ petition no. 857 of 2013, the Sub Divisional Magistrate (Sadar), Varanasi by means of an ex-parte order dated 21.11.2012 recalled the declaration dated 10.7.2002 made under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act and simultaneously by order dated 20.12.2012 directed to expunge the name of the petitioner and to record the land in dispute in the name of the State on the allegation that it was a pond. It is further contended that the order setting aside the decree has been stayed by this Court vide order of date passed in writ petition no. 857 of 2013, orders dated 21.11.2012 and 20.12.2012 impugned in this petition are also liable to be stayed.

Prima-facie there appears to be force in the submission and the matter requires scrutiny.

Learned Standing Counsel representing the respondents no. 1 to 3 may file counter affidavit within four weeks.

List on 6th February, 2013 along with writ petition no. 857 of 2013.

Considering the facts, until further orders of this Court, effect and operation of the impugned order dated 21.11.2012 and 20.12.2012 passed by the Sub Divisional Magistrate (Sadar), Varanasi shall remain stayed. Respondents are further restrained from causing any interference in running the school of the petitioner situated on the land in dispute."

62. It is contended by learned counsel for the petitioner that after the decree dated 23.4.1988 passed by the appellate court in a suit under Section 229-B was set aside illegally by the Additional City Magistrate-III, Varanasi which is subject matter of challenge of writ petition no. 857 of 2013, the Sub Divisional Magistrate (Sadar), Varanasi by means of an ex-parte order dated 21.11.2012 recalled the declaration dated 10.7.2002 made under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act and simultaneously by order dated 20.12.2012 directed to expunge the name of the petitioner and to record the land in dispute in the name of the State on the allegation that it was a pond. It is further contended that the order setting aside the decree has been stayed by this Court vide order of date passed in writ petition no. 857 of 2013, orders dated 21.11.2012 and 20.12.2012 impugned in this petition are also liable to be stayed.

63. Record shows that neither petitioner nor its lessor had been given any opportunity of hearing and in the absence of hearing the petitioner an order that was passed on 10.07.2002, more than 10 years ago has been recalled on 21.11.2012, suo-moto and that too without any proceedings under any provisions of the Act.

64. After the passing of the order dated 10.07.2002 the land in question was exempted from the application of Chapter-VIII U.P.ZA & L.R. Act, thus valid

rights were created in favour of the petitioner by due execution of a registered lease deed. Land in question is a revenue paying land and throughout it has been recorded as Sir, further counsel for respondents could not dispute that petitioner was a necessary party to be heard.

65. Record further shows that in Khatauni 1359 Fasli that forms the basis of passing the order dated 21.11.2012, the land in question has been shown to be Sir and in the Khasra it has been shown to be Sir Malikan which shows that the land remained in private cultivation and at no point of time it ever vested in the State Government. It was Sir Malikan and hence stood settled in terms of Section 18 of the U.P.ZA & LR. Act.

66. Judgment of the Hon'ble Apex Court and of this Hon'ble Court relate only to those public lands which were recorded as Ponds. It did not cover at any point of time private land and private ponds. In fact private ponds can never be converted into a public property and no direction can be given to compulsorily maintain such land as ponds.

67. Contention of counsel for the petitioner that a public purpose is being sub served by running the school and huge constructions exists upon the land in question, wherein large number of students are studying, the same cannot be demolished by changing the entry from Abadi to Pond and that too without hearing the petitioner, found substance.

68. Long standing entries cannot be disturbed in summary proceedings, thus impugned action under Section 33 & 39 of the U.P. Land Revenue Act are also without jurisdiction as there exists no application for correction of the record filed by any person.

69. In exercise of the powers under Section 39 of the U.P. Land Revenue Act, it was necessary for the respondents to have decided upon the entry on the basis of the possession. For this purpose he was required to hear the parties and in the absence of hearing the parties the order passed by respondent no. 2 is without jurisdiction and is also in breach of the principles of natural justice.

ORDER ON WRIT-C NO. 858 OF 2023

70. In view of the facts as stated above, since order dated 15.12.2012 passed by IIIrd Additional City Magistrate, Varanasi in Writ C- No. 857 of 2013, has already been quashed, thus present impugned ex-parte order dated 20.12.2012 as well as ex-parte order dated 21.11.2012 passed by respondent No.2/Sub-Divisional Magistrate (Sadar) Varanasi, are also liable to be quashed and the same are hereby quashed. The respondents are restrained from causing any interference in running of the School by petitioner situated on Plot No. 145/1 (M) 146/1 (M) and 148/1 (M) in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi. The present writ petition also succeeds and is allowed.

(2026) 7 ILRA 2512
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.07.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 15932 of 2026

Rama Shankar & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the petitioners are entitled of benefit of Section 67-A of U.P. Revenue Code, 2006 which provides that in case the house exists over the land referred to u/s 63 of U.P. Revenue Code, 2006, having been built prior to 29.11.2012, the housing site can be settled with its owner on such terms and conditions as may be specified?
(b) Whether eviction proceedings initiated u/s 67(1) against unauthorized occupants of Gaon Sabha land must be stayed or dropped pending the disposal of an application filed u/s 67-A?
(c) Whether an applicant lower in the statutory order of preference u/s 64(1) (e.g., OBCs or non-SC/ST categories) can claim settlement u/s 67-A without explicitly pleading and proving that no persons higher in preference (e.g., SC/ST agricultural labourers/artisans) exist in the village?

Headnotes

A. Land Reform Law/ Revenue Law – U.P. Revenue Code, 2006: Section 67-A, 67(1); Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 122- B, 123 - Plot No. 466 (area 0.0450 hectare) situated at Village Karmaha Bujurg, Tehsil Sadar, District Gorakhpur, which is explicitly recorded as *rasta* (public path/road) in the revenue records. Petitioners (Nos. 1–3 belonging to Scheduled Castes and No. 4 to OBC) claimed their ancestors had constructed a *kaccha* house adjacent to the path (Gata No. 460) and they subsequently built a *pakka* residential house there prior to 29.11.2012. They claimed to be landless persons entitled to settlement u/s 67-A. On 26.02.2026, the Assistant Collector issued notice in Form R.C.-20 u/s 67(1) alleging illegal encroachment upon public path Arazi No. 466 (Case Nos. 14, 15, 16, and 17 of 2025).

The petitioners filed an application dated 28.03.2026 u/s 67-A before the SDM (Respondent No. 3) and approached the High Court seeking a writ of mandamus to:

- Direct Respondent No. 3 to decide their Section 67-A application expeditiously.
- Direct Respondent No. 4 to drop/stay the Section 67 eviction proceedings until the Section 67-A application is decided.

B. Both the agricultural land as well as housing sites which were in occupation of persons belonging to certain persons mentioned in section itself unauthorizedly were protected by U.P.Z.A.& L.R. Act, 1950 but in the U.P. Revenue Code 2006, there is no such protection to the person unauthorizedly occupying agricultural land belonging to Gaon Sabha. From Section 122- B and 123 of U.P.Z.A.& L.R. Act, 1950, and Section 67 and 67-A of U.P. Revenue Code 2006, it is apparent that earlier U.P.Z.A.& L.R. Act, 1950 protected unauthorized occupation of land by the agricultural labourers belonging to SC and ST in any land vested in Gaon Sabha u/s 117 (not being land mentioned u/s 132), having occupied from a date as provided in the section itself and also conferred Bhumidhari rights to the aforesaid illegal occupants. Section 123 of U.P.Z.A.& L.R. Act, 1950 provided protection by settling housing sites to the

persons who have built a house on the land on or before the appointed date, to the persons referred in Section 122-C(3) of U.P.Z.A.& L.R. Act, 1950.

Section 67-A of U.P. Revenue Code, 2006 provides settlement of housing sites to the person unauthorizedly occupying the same on the cutoff date on the conditions mentioned in Sections and the Rules framed thereunder. (Para 15)

C. An application filed by a person covered u/s 67- A of U.P. Revenue Code, 2006 cannot be rejected on the ground that such an application is not maintainable for want of provision. The same has to be considered and decided on merits by the Assistant Collector. (Para 28)

D. In case, in proceedings initiated u/s 67 of the U.P. Revenue Code, 2006, the noticee invokes protection of Section 67-A of the Code to resist the proceedings u/s 67, the Assistant Collector should register immediately the proceedings u/s 67- A of the Code and shall also decide the same in accordance with law. (Para 23, 28)

Section 67 as well as Section 67(a) of the Code reflect the composite intent of legislature. The legislature by enacting the aforesaid provision has recognized the vulnerability of the State land to illegal encroachment and the need for urgent corrective measures. Simultaneously the legislature has also acknowledged the reality of a large number of persons who have erected dwelling units on lands which are not reserved for any public purposes. The legislature has protected their rights in the manner prescribed in the provision. (Para 23)

E. The proceedings u/s 67 and Section 67-A are to be consolidated and heard together by Assistant Collector after providing opportunity of hearing as well as opportunity of leading evidence to all the parties and the proceedings should be brought to the logical conclusion strictly in accordance with law. Such procedure would faithfully implement the legislative intent and also serve the interest of justice. (Para 23, 28)

The authority/ court having jurisdiction to decide the proceedings taken out u/s 67 of the Code or Section 67(a) of the Code is the same. When the defence of Section 67(a) of the Code is taken in proceedings of Section 67 of the Code, the same issues will be directly and substantially in issue in both the proceedings. Usually in such matters pleadings, defence, pleadings and evidence of the parties are same in both the proceedings. In case proceedings u/s 67 and 67(a) of the Code are conducted separately and in isolation to one another, it would lead to multiplicity of litigation and inconsistent judgments. There will also be an avoidable delay in decision of the controversy and may even result in miscarriage of justice. (Para 23)

F. For considering the eligibility of a person u/s 67- A, no objection can be taken by the Assistant Collector on the ground that other persons higher in category as provided u/s 64 of the U.P. Revenue Code, 2006, than the petitioner, exists in the village, and <u>if the petitioner comes within any of the categories mentioned u/s 64 of the Code and other conditions of Section 67-A are fulfilled by the petitioner, the benefit is to be given to such person</u>. (Para 28)

Section 67(a) of the Code confers rights on certain people who have encroached upon public land. The prerequisite conditions for invoking the protection of Section 67 (a) of the Code are these. The person against whom proceedings are taken out has built his house on any land referred to in Section 63 of the Code, the person who seeks protection of Section 67 (a) of the Code should be in the category of persons referred to in Section 63 of the Code. The land should not be reserved for any public purpose. The date of the construction of the house should be prior to 29.11.2012. The house of such persons should be existing in the disputed parcels of land on or before 29.11.2012. (Para 23)

In the facts of the present case, the proceedings u/s 67 of U.P. Revenue Code, 2006 has already been initiated against the petitioners to which petitioners have filed objections. The petitioners have also initiated proceedings u/s 67-A before the S.D.M. The proceedings which were initiated u/s 67-A before the S.D.M. be

immediately transferred to the court of Assistant Collector seized with proceedings u/s 67 or the petitioners may file fresh proceedings u/s 67-A before the Assistant Collector itself. In either of the case, the Assistant Collector seized with the matter u/s 67 should consolidate both the proceedings and decide the same in accordance with law as laid down by this court in case of *Asgar* Vs. *State of U.P. (infra).* (Para 29)

Writ petition disposed of. (E-4)

Case Law Cited

1. Suresh Chandra Vs. State of U.P. and 3 others, 2018 (2) All WC 1675 (Para 4)
2. Govind Singh Vs. State of U.P. and others, Writ C No. 20493 of 2021; 2021:AHC:101519 (Para 4)
3. Baburam Vs. State of U.P. and 3 others, 2021 (153) RD 1 (Para 4)
4. Asgar Vs. State of U.P. and 3 others, 2021 (4) All WC 3831 (Para 4)
5. Ramdin and others Vs. Board of Revenue, U.P. Allahabad and others, 1994 RD 395 (Para 5(b)
6. Achhaibar Tiwari Vs. Additional Commissioner (J) II, Gorakhpur Division and others, 2003 (94) RD 400 (Para 5(b)
7. Sri Raju Vs. State of U.P. and others, 2020(1) All WC 843 834 (Para 5(d)
8. Baijnath Vs. Commissioner Varanasi and 4 others, 2020 (147) RD 360 (Para 5(d))
9. Satya Veer and others Vs. State of UP and others, 2015 (4) ADJ 676 (Para 17)
10. Manorey alias Manohar Vs. Board of Revenue and others, 2003 AIR SC 4102 (Para 18)
11. Ram Narain and others Vs. Sub Divisional Officer, Kairana and others, 2007 (103) RD 478 (Para 19)
12. Ram Preet Vs. Additional Commissioner, Gorakhpur Division, Gorakhpur and others, 2011 (7) ADJ 791 (Para 26)

List of Acts/Orders

U.P. Revenue Code, 2006; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

public path, revenue records, illegal encroachment, benefit, unauthorized occupant, higher, preference, consolidate, public purpose.

Appearances for Parties

For Petitioner(s): Pramod Kumar Maurya
For Respondent(s): C.S.C., Sudhir Bharti

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

1. This petition has been filed for the following reliefs:-

"A. Issue a writ, order or direction in the nature of writ of mandamus directing and commanding the respondent no.3 to conclude the proceedings of Section 67 (A) of U.P. Revenue Code, 2006 upon the application dated 28.03.2026 filed by the petitioners, expeditiously within stipulated period as fixed by this Hon'ble Court.

B. Issue a writ, order or direction in the nature of writ of mandamus directing the respondent no. 4 to drop the proceedings of section 67 (1) of U.P. Revenue Code, 2006 as case no. 14 of 2025 (Gaon Sabha Vs. Teerath), case no. 15 of 2025 (Gaon Sabha Vs. Om Prakash), case no. 16 of 2025 (Gaon Sabha Vs. Ram Pratap) and case no. 17 of 2025 (Gaon Sabha Vs. Rama Shankar) till of the disposal application dated 28.03.2026 filed by the petitioners before respondent no.3 under section 67 (A) of the U.P. Revenue Code, 2006."

2. Brief facts of the case are that petitioner Nos. 1, 2, and 3 claim themselves belonging to Scheduled Castes community and petitioner No. 4 belongs to Other Backward Class. Plot No. 466 area 0.0450 hectare situated at Village Karmaha Bujurg, Tola Reharwa, Post- Khas Khuthan, Tehsil- Sadar, District Gorakhpur is recorded as rasta in the revenue record. Case of the petitioners as set up in the writ petition is that their ancestors have constructed kaccha house adjacent to public path, which is recorded in the revenue record as Gata No. 460 and they are residing along with their family members in the house constructed by their ancestors and now, the petitioners have constructed a pakka house in place of kaccha house and there is no other house of the petitioners except the house in question. It has also been claimed that the rasta recorded in revenue record is situated in front of the house of the petitioners and they have not obstructed the rasta in any manner. A notice in the form of R.C.-20 was issued to the petitioners on 26.02.2026 mentioning therein that the petitioners have encroached upon Arazi No. 466 by constructing permanent house and they have been directed to submit reply to the notice. In response to the notice issued to the petitioners, petitioners filed their objections reiterating the pleas mentioned above and has also claimed benefit of Section 67-A of U.P. Revenue Code, 2006. It has been further case of the petitioners that they have also filed an application under Section 67-A of U.P. Revenue Code, 2006 before respondent no.3 i.e. Sub Divisional Magistrate/Deputy Collector, Tehsil-Sadar, District-Gorakhpur on 28.03.2026. Despite application being filed by the petitioners, the case has not been registered by the respondent authorities nor any date has been fixed in the matter. It has also been stated in the writ petition that the respondents are adamant to remove the house of the petitioners, though the petitioners are entitled to get benefit of Section 67-A of U.P. Revenue Code, 2006. Petitioners have also claimed that they are landless persons. Prayer has been made in the writ petition for issuance of mandamus commanding respondent no. 3 to conclude the proceedings of Section 67-A of U.P. Revenue Code, 2006 pursuant to their application dated 28.03.2026 expeditiously in a time frame as may be fixed by this court. The other prayer in the writ petition is for issuance of mandamus directing respondent no. 4 to drop the proceedings under Section 67(1) of U.P. Revenue Code, 2006 registered as case no. 14 of 2025 (Gaon Sabha Vs. Teerath), case no. 15 of 2025 (Gaon Sabha Vs. Om Prakash), case no. 16 of 2025 (Gaon Sabha Vs. Ram Pratap) and case no. 17 of 2025 (Gaon Sabha Vs. Rama Shankar).

3. It has been contended by learned counsel for the petitioners that unless the proceedings under Section 67-A of U.P. Revenue Code, 2006, which are beneficial in nature and protects the possession of the petitioners, are decided, the authorities should not proceed with the proceedings under Section 67(1) of U.P. Revenue Code, 2006 and the proceeding under Section 67- A initiated by the the petitioners be decided first.

4. Learned counsel for the petitioners relied upon judgments of this Court in cases of **Suresh Chandra Vs. State of U.P. and 3 others; 2018 (2) All WC 1675, Govind Singh Vs. State of U.P. and others in Writ C No. 20493 of 2021; Neutral Citation 2021:AHC:101519, Baburam Vs. State of U.P. and 3 others; 2021 (153) RD 1 and Asgar Vs. State of U.P. and 3 others; 2021 (4) All WC 3831.**

5. Per contra, learned Standing Counsel has made following submissions:-

(a) That application filed by the petitioners under Section 67-A of U.P. Revenue Code, 2006 itself is not maintainable and could not be entertained at all. It is further submitted that statutory fiction contemplated under Section 67- A of U.P. Revenue Code, 2006 is a legal fiction of a very limited scope and could come to rescue of a particular category of unauthorized occupant of a land vested in Gaon Sabha but they can only successfully resist the proceedings for eviction of such an occupant initiated under Section 67 U.P. Revenue Code, 2006.

(b) That the deeming clause contained in Section 67- A of U.P. Revenue Code, 2006 could not over ride the provisions of the Code other than Section 67 of U.P. Revenue Code, 2006 and the operation of Section 67-A of U.P. Revenue Code, 2006 was to remain confine to the proceedings under Section 67 of U.P. Revenue Code, 2006. Section 67 -A of U.P. Revenue Code, 2006 and the machinery provided therein only secures the rights conferred in favour of a person to enter upon and continue to remain in possession over the land in respect of which allotment is to be made on the basis of priority; preference over and above any agricultural labourer envisaged under Section 63 of the U.P. Revenue Code, 2006. In this regard, learned Standing Counsel has relied upon judgments of this Court in case of **Ramdin and others Vs. Board of Revenue, U.P. Allahabad and others; 1994 RD 395 and Achhaibar Tiwari Vs. Additional Commissioner (J) II, Gorakhpur Division and others, 2003 (94) RD 400**.

(c) That the issue in the present writ petition is whether the petitioners are entitled of benefit of Section 67-A of U.P. Revenue Code, 2006 which provides that in case the house exists over the land referred to under Section 63 of U.P. Revenue Code, 2006, having been built prior to November 29, 2012, the housing site can be settled with its owner on such terms and conditions as may be specified. Section 63 of U.P. Revenue Code, 2006 speaks of land which may be allotted for abadi site and empowers the Sub-Divisional Officer on his own motion or on the resolution of the Land Management Committee to earmark the land for abadi site. The second requirement for a person to be entitled for benefit of Section 67-A of U.P. Revenue Code, 2006 is that he should be a person referred in sub-section (1) of Section 64 of U.P. Revenue Code, 2006. Section 64 shows the order of preference to be followed up while making the allotment of an abadi site. Highest in this order of preference are agricultural labourers or village artisans belonging to Schedule Caste and Schedule Tribe, followed by Other Backward Classes and thereafter by persons living below the poverty line.

(d) That averments made in the writ petition as well as application under Section 67-A of U.P. Revenue Code, 2006, reveals that nowhere the petitioners have stated that no agricultural labourer or village artisans belonging to Schedule Caste or Schedule Tribe are residing in the village concerned. This was necessarily required to be pleaded by them. Merely because a person lower in order of preference has encroached upon Gaon Sabha land, he cannot and should not be granted the benefit of Section 67-A unless and until he is in a position to establish categorically that a person higher in preference is not available in the village. Any other interpretation of Section 67-A would result in great injustice as an unauthorized occupant would be liable to be granted its benefit only on account of him or her having illegally encroached upon Gaon Sabha property, despite other needier and persons higher in preference being available in the village. In this regard, the learned Standing Counsel has relied upon the judgment of this court in the case of **Sri Raju Vs. State of**

U.P. and others; 2020(1) All WC 843 834, and judgment in the case of Baijnath Vs. Commissioner Varanasi and 4 others; 2020 (147) RD 360.

6. Before considering the submissions made by learned counsel for the petitioners, it would be appropriate to look into the relevant provisions of the statute. Section 67 of U.P. Revenue Code, 2006 is quoted as under:-

"**67. Power to prevent damages, misappropriation and wrongful occupation of Gram Panchayat properties**. (1) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such force as may be necessary, and may direct that the amount of compensation for damage or misappropriation of the property or for wrongful occupation, as the case may be, be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2), he shall discharge the notice.

(5) Any person aggrieved by an order of the Assistant Collector under sub-section (3) or sub-section (4), may within thirty days from the date of such order, prefer an appeal to the Collector.

(6) Notwithstanding anything contained in any other provision of this Code, and subject to the provisions of this section every order of the Assistant Collector under this section shall, subject to the provisions of sub-section (5) be final.

(7) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

Explanation. - For the purposes of this section, the word 'land' shall include the trees and buildings standing thereon."

7. It would also be relevant to look into the rules framed regarding procedure to be followed by the authorities in proceeding under Section 67 of U.P. Revenue Code, 2006. The procedure has been prescribed under Rules 66 and 67 of U.P. Revenue Code Rules, 2016, and the same are quoted as under:-

"**66. Information to Assistant Collector**-The information to Assistant Collector required by section 67(1) shall be submitted by the Chairman or any member or the Secretary of the Land Management Committee, or any officer of the Local Authority concerned in R.C. Form-19.

67. **Further inquiry by Assistant Collector**- (1) On receipt of the information under rule 66, or on facts otherwise coming to his knowledge, the Assistant Collector may make such inquiry as he deems proper and may obtain further information regarding the following points:-

(a) full description of damage or misappropriation caused or the wrongful occupation made with details of village, plot number, area, boundary, property damaged or misappropriated and market value thereof,

(b) full address along with parentage of the person responsible for such damage, misappropriation or wrongful occupation;

(c) period of wrongful occupation, damage or misappropriation and class of soil of the plots involved;

(d) value of the property damaged or misappropriated calculated at the circle rate fixed by the Collector and the amount sought to be recovered as damages

(2) The Assistant Collector shall thereafter proceed to take action under section 67(2) and for that purpose issue a notice to the person concerned in R.C. Form-20 to show cause as to why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(3) If the notice referred to in section 67(2) remains uncomplied with or if the cause shown by the person concerned is found to be insufficient, the Assistant Collector may direct by order that-

(a) such person be evicted by using such force as may be necessary, or

(b) the amount of compensation for damage or wrongful occupation ordered by the Assistant Collector, if not paid in specified time, may be recovered as arrears of land revenue, including the amount of expenses referred to in sub-rule (3).

(4) The amount of damages sought to be recovered and the expenses of execution of the order shall be specified in such notice, which shall be determined in the following manner:-

(a) In the case of damage or misappropriation, the amount of damages shall be assessed at the prevailing market rate

(b) In the case of unauthorized occupation of any land, the amount of damages shall be the amount equal to the five percent of the market value of the land calculated at the circle rate fixed by the Collector for each year of unauthorized occupation.

(c) The expenses of execution of the order shall be assessed on the basis of one day's pay and allowances payable to the staff deputed.

(5) If the person wrongfully occupying the land has done cultivation therein, he may be allowed to retain possession thereof until he has harvested the crops subject to the payment by him of the amount equal to the five percent of the market value of the land calculated as per the circle rate which shall be credited to the Consolidated Gaon Fund or the Fund of the local authority other than the Gram Panchayat as the case may be. If the person concerned does not make the payment of the aforesaid amount within the period specified in the notice in R.C.Form-20, the possession of the land shall be delivered to the Land Management Committee or the local authority, as the case may be, together with the crop:

Provided that where such person again wrongfully occupies the same land or any other land within the jurisdiction of the Gram Panchayat or the local authority as the case may be, he shall be evicted therefrom forthwith and possession of the land vacant or together with the crop thereon shall be delivered to the Land Management Committee or the local authority as the case may be.

(6) The Assistant Collector shall make an endeavour to conclude the proceeding under section 67 of the Code within the period of ninety days from the date of issuance of the show cause notice and if the proceeding is not concluded within such period the reasons for the same shall be recorded.

(7) Nothing in sub-rule (5) shall debar the Land Management Committee or the local authority as the case may be from prosecuting the person who encroaches upon the same land second time in spite of having been evicted under the Code or the rules, under section 447 of the Indian Penal Code, 1860.

(8) There shall be maintained in the office of each Collector a register in R.C. Form-21 showing details of the amount ordered to be realized on account of damages and compensation awarded in proceedings under section 67.

(9) A similar register shall also be maintained by each tahsildar showing realization of damages and compensation awarded in such proceeding. The entries made in the register maintained at tahsil shall be compared with the register maintained by the Collector to ensure accuracy of the entries made therein.

(10) A progress report showing realization of damages and compensation awarded in proceedings under section 67 shall be sent to Board of Revenue, U.P., Lucknow by the fifteenth

day of April and October every year. The Board after consolidating the report so received from the districts shall send it to the Government.

(11) Nothing in rules 66 and 67 shall debar any person from establishment of his right, title or interest in a court of competent jurisdiction in accordance with the law for the time being in force in respect of any matter for which any order has been made under section 67 of the Code."

8. Forerunner of Section 67 of U.P. Revenue Code, 2006 is Section 122-B of U.P.Z.A & L.R. Act, 1950, which is reproduced as under:-

"122B. Powers of the Land Management Committee and the Collector.

[(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or local authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2)Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated or any person is in occupation of any land, referred to in that sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be, why he should not be evicted from such land.

(3)If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time not exceeding [thirty days] [Substituted by U.P. Act No. 20 of 1982 (w.e.f. 03.06.1981).] from the date of service of such notice on such person, as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land and may for that purpose, use, or cause to be used such force as may be necessary and may direct that the amount of compensation for damage, misappropriation or wrongful occupation be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2) he shall discharge the notice.

(4-A) Any person aggrieved by the order of the Assistant Collector under sub-section (3) or sub-section (4) may, within thirty days from the date of such order, prefer a revision before the Collector on the grounds mentioned in clauses (a) to (e) of Section 333.

(4-B) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

(4-C) Notwithstanding anything contained in Section 333 or Section 333-A, but subject to the provisions of this section-

(i) every order of the Assistant Collector under this section shall, subject to the provisions of sub-sections (4-A) and (4-D), be final,

(ii)every order of the Collector under this section shall, subject to the provisions of sub-section (4-D), be final.

(4-D) Any person aggrieved by the order of the Assistant Collector or Collector in respect of any property under this section may file a suit in a Court of competent jurisdiction to establish the right claimed by him in such property.

(4-E) No such suit as is referred to in sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under sub-section (4-A).

Explanation. - For the purposes of this section, the expression 'Collector' means the officer appointed as 'Collector' under the provisions of the U.P. Land Revenue Act, 1901 and includes an Additional Collector].

(4-F) Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before [May 13, 2007] [Substituted by U.P. Act No. 24 of 1986.] and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.] [Substituted by U.P. Act No. 11 of 2002 (w.e.f. 21.6.2002).]]

Explanation. - The expression "agricultural labourer" shall have the meaning assigned to it in Section 198.

(5)[Rules 115-C to 115-H of the U.R Zamindari Abolition and Land Reforms Rules, 1952, shall be and be always deemed to have been made under the U.P. Zamindari Abolition and Land Reforms Act, 1950 as amended by the Uttar Pradesh Land Laws (Second Amendment) Act, 1961, as if this section has been in force on all material dates and shall accordingly continue in force until altered or repealed or amended in accordance with the provisions of this Act.] [Substituted by U.P. Act No. 35 of 1976.]"

9. Section 67-A of U.P. Revenue Code, 2006 provides for settlement of certain house sites with the existing owners. Section 67-A of U.P. Revenue Code, 2006 is quoted as under:-

"67-A Certain house sites to be settled with existing owners thereof.- (1) If any person referred to in sub-section (1) of section 64 has built a house on any land referred to in section 63 of this Code, not being land reserved for any public purpose, and such house exits on the November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed.

(2) Where any person referred to in sub-section (1) of section 64, has built a house on any land held by a tenure holder (not being a government lessee) and such house exits on November 29, 2000, the site of such house, notwithstanding anything contained in this Code, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed.

Explanation. For the purpose of sub-section (2), a house existing on November 29, 2000, on any land held by a tenure holder, shall, unless the

contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family."

10. The relevant rules as framed is Rule 68 of U.P. Revenue Code Rules, 2016, which is also quoted as under:-

"68. Settlement of house sites with existing owners thereof(Section 67-A) (1) Where any person referred to in sub-section (1) of section 64 has built a house on any land referred to in section 63 of the Code, not being land reserved for any public purpose and such house exists on twenty-ninth day of November 2012, the site of such house shall be held by the owner of the house on terms and conditions prescribed in rule 64.

Note:- For the removal of doubt it is hereby declared that the maximum area of the site settled under section 67-A (1) of the Code or the rules famed there under shall not exceed two hundred square meters.

(2) Where any person referred to in sub-section (1) of section 64 has built a house on any land held by a tenure holder (not being a government lessee) and such house exists on twenty-ninth day of November 2000, the site of such house shall be deemed to be held by the owner of the house on the following terms and conditions –

(a) the maximum area of the site settled under section 67-A (2) of the Code or the rules framed thereunder shall not exceed two hundred square meters.

(b) the owner of the house as well as his heirs shall have a heritable interest in the site and shall also have unrestricted right to use the trees and wells existing on the site subject to existing rights of easements.

(c) he shall have a right to use the site for construction of a residential house, subject to existing rights of easement.

(d) the owner of the house shall not be liable to pay to the tenure holder or the State Government any future rent in respect of the site.

(e) the succession over the site shall be governed by personal law which the house owner was subject to.

(f) the owner of the house and his heirs shall not be liable to ejectment on any ground whatsoever.

(g) if the building is abandoned or if the owner thereof dies without any heir entitled to succeed, the land or site shall escheat to the State.

(h) the tenure holder shall be allowed remission of the proportionate land revenue for the portion of his holding settled under this rule with house owners. The land shall also be classified as abadi in the Khatauni maintained under the Code."

11. The forerunner of Section 67-A of U.P. Revenue Code, 2006 is Section 123 of U.P. Z.A. & L.R. Act, 1950 which is reproduced below:-

"123. Certain house sites to be settled with existing owner thereof.

- [(1)] Without prejudice to the provisions of Section 9, where any person referred to in sub-section (3) of Section 122-C has built a house on any land referred to in subsection (2) of that section, not being land reserved for any public purpose, and such house exists on [May 13, 2007] the site of such house shall be held by the owner of the house on terms and conditions as may be prescribed.

(2)[Where any person referred to in sub-section (3) of Section 122-C has built a house on any land held by a tenure-holder (not being a Government lessee) and such house exists on [June 3, 1995] the site of such house shall, notwithstanding anything contained in this Act, be deemed to be settled with the owner of such house by the tenure-holder on such terms and conditions as may be prescribed.

Explanation. - For the purposes of sub-section (2), a house existing on [June 3, 1995] on any land held by a tenure-holder shall, unless the contrary is proved, be presumed to have been built by the occupant thereof, and where the occupants are members of one family by the head of that family.]"

12. The legislature by enacting the Section 67 of U.P. Revenue Code, 2006 has recognized the vulnerability of State land to illegal encroachment and the need for urgent corrective measures. The grabbing of Gaon Sabha and Gram Panchayat property was being done on a large scale and the provision of speedy action against unscrupulous persons was necessary. In this view of the matter,

the Bhumi Prabandhak Samiti, local authority and the Lekhpal has been enjoined with the duty to inform the Assistant Collector concerned about the damages, misappropriation or wrongful occupation of the property belonging to Gram Panchayat. On receiving such information or otherwise, if the Assistant Collector is satisfied that any property referred to in sub-section (1) of Section 67 of U.P. Revenue Code, 2006 has been damaged or misappropriated or is in unauthorized occupation of any person, he shall direct that such person may be evicted from the land and the amount of compensation may be recovered from him as areas of land revenue after issuing notice to the person concerned and following the procedure prescribed under Section 67 of U.P. Revenue Code, 2006 read with Rules 66 and 67 of U.P. Revenue Code Rules, 2016.

13. Section 67- A of U.P. Revenue Code, 2006 (old Section 123 of U.P. Z.A. & L.R. Act, 1950) seeks to introduce a scheme of social justice for hundreds of those rural indigents who, due to their meager means, are unable to have shed over their heads. The constitutional goal of shelter to all is a fundamental right guaranteed under Article 21 of the Constitution of India, and this provision can be said to be a step in that direction. By means of legal fixation, sub-section (1) of Section 67-A of U.P. Revenue Code, 2006 provides that if a person belonging to various categories specified in Section 64(1) of U.P. Revenue Code, 2006 has built a house on any land referred to under Section 63 of U.P. Revenue Code, 2006, (not being land reserved for public purpose), and such house exists on November 29, 2012 i.e. the date on which the President gave assent to U.P. Revenue Code, 2006, the site of such house shall be held by the owner of the said house on such terms and conditions as may be prescribed.

14. Benefit of Section 67-A of U.P. Revenue Code, 2006 can be derived only when the house exists on certain lands specified in the said section. But the word □house□ has nowhere been defined. According to the dictionary meaning, a house means a building where a group of people live as a unit. But there is material difference between the term building and the house. Section 9 of U.P.Z.A. & L.R. Act, 1950, used the word building, which could be used for residential as well as non-residential purpose, but the house is used only for residential purposes.

15. From the perusal of provisions quoted above i.e. Section 122- B and 123 of U.P.Z.A.& L.R. Act, 1950, and Section 67 and 67-A of U.P. Revenue Code 2006, it is apparent that earlier U.P.Z.A.& L.R. Act, 1950 protected unauthorized occupation of land by the agricultural labourers belonging to Scheduled Caste and Scheduled Tribe in any land vested in Gaon Sabha under Section 117 (not being land mentioned under Section 132), having occupied from a date as provided in the section itself and also conferred Bhumidhari rights to the aforesaid illegal occupants. Section 123 of U.P.Z.A.& L.R. Act, 1950 provided protection by settling housing sites to the persons who have built a house on the land on or before the appointed date, to the persons referred in sub-Section 3 of Section 122-C of U.P.Z.A.& L.R. Act, 1950. Thus, both the agricultural land as well as housing sites which were in occupation of persons belonging to certain persons mentioned in section itself unauthorizedly were protected by U.P.Z.A.& L.R. Act, 1950 but in the U.P. Revenue Code 2006, there is no such protection to the person unauthorizedly occupying agricultural land belonging to Gaon Sabha. Section 67-A of U.P. Revenue Code, 2006 provides settlement of housing sites to the person unauthorizedly occupying the same on the cutoff date on the conditions mentioned in Sections and the Rules framed thereunder.

16. In case of Ramdin and others vs. Board of Revenue (supra), the court was considering the provision of section 122-B (4-F). Paragraph Nos. 26, 27, 38, 43, 44 of the judgment are quoted as under:-

"26. The non obstante clause of Section 122-B (4-F) of the Act specifically refers to the foregoing sub-section of Section 122-B, meaning thereby that this non obstante clause can have application to Section 122-B(1), (2), (3), (4), (4-A), (4-B), (4-C), (4-D) and (4-E) only. Further, Section 122-B (4-F) refers to any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe which person falls in the third category of the order of preference prescribed under Section 198 of the Act. If the non obstante clause is confined to the provision contained in Section 122-B only, it is obvious that it cannot supersede the first two categories in the order of preference prescribed under Section 198 of the Act and in no case any agricultural labourer stipulated under Section 122-B (4-F) even if he satisfied the requirements contemplated therein can be deemed to be admitted as a bhumidhar with non-transferable right's in the presence of an eligible person willing to take the land who falls within the first two categories stipulated in Section 198 of the Act, In this connection it may further be pointed out that a Statute must be read as a whole and one provision of the Act should be construed with reference to the other provision of the same Act so as to make a consistent enactment of the whole Statute. Such a construction has the merit of avoiding any inconsistency or repugnancy between a section and other parts of the Statute.....

27. Further, the admission as a bhumidhar with non-transferable rights under Section 195 of the, Act could only be in accordance with the provisions contained in Section 131 of the Act. Section 131(a) of the Act stipulated that for becoming a bhumidhar with non-transferable rights after the date mentioned in that sub-section, the admission has to be in accordance with Section 195 of the Act which necessarily implies the obtaining of the prior approval of the Assistant Collector and also that the procedure prescribed under Rules 175 and 176 of the Rules has to be complied with. However, it may be noticed that Section 131 also stipulates that a person who in any other manner acquires on or after the date mentioned in Section 131(a), the rights of such bhumidhar under or in accordance with the provisions of the Act may also become a bhumidhar with nontransferable rights.

38.Taking into consideration, the scheme and the policy underlying the various provisions of the Act referred to hereinbefore, I am of the confirmed opinion that the right conferred under the deeming clause contained under Section 122-B (4-F) of the Act has to be taken as to confer a right only made available to an unauthorised occupant of the land envisaged under Section 122-B, who satisfies the eligibility criteria prescribed therein to protect his possession and does not create a title in him. It merely operates as a bar to the claim of the Gaon Sabha or the local authority either for the ejectment of the person concerned or for recovery of the amount of compensation for damage, misappropriation or wrongful occupation from such person as provided thereunder. This provision in spite of the conditions mentioned in Section 122-B having been fulfilled debars the Gaon Sabha or the □local authority on account of the statutory fiction from enforcing its rights secured in its favour under the aforesaid provision. The unauthorised occupant envisaged under Section 122-B (4-F) of the Act only gets a right to protect his possession which may be regularised on the grant of the lease under Section 198 of the Act but this fiction cannot be deemed to create such right or title on such an occupant which can only accrue on the grant of the lease in accordance with the

procedure prescribed under Section 198 of the Act. It is thereafter that such person can get the revenue entries in the record of Right (Khatauni) corrected and not merely on the basis of the statutory fiction in question.

43. In the circumstances therefore, taking into consideration the provisions contained in S. 122-B, 122-B(4-F), 131, 142(2), 198, 198-A and 209 of the Act and Rules 175, 176, 176-A of the Rules framed thereunder it is obvious that in case, the requisite conditions contemplated in S. 122-B(4-F) are satisfied in any particular case, the Gaon Sabha or the Local Authority as the case may be is debarred from taking any action under S. 122-B against such labourer deeming him to have been admitted as bhumidhar with non-transferable rights of the land in his occupation under S. 195 of the Act. However, this could not come in the way of the regular allotment of the land as contemplated under S. 198 of the Act or in the way of the filing of the suit under S. 209 of the Act against such a person subject to the exception contemplated under S. 122-B(4-E) of the Act.

44. In the facts and circumstances of the case, I am clearly of the view that there could be no escape from the conclusion that the application filed by the petitioners was not at all maintainable and no orders for the correctness of the revenue record of Rights could be made on its basis. I am further of the view that in the facts and circumstances of the case, no justifiable ground has been made out for interference in the impugned order."

17. In case of **Satya Veer and others vs. State of UP and others; 2015 (4) ADJ 676** this court was considering the provisions of Section 123 (1) of U.P.Z.A. & L. R. Act, 1950 and held as under in paragraph Nos. 25, 26, 27, 37, and 38 as under:-

" 25. Section 197 of the Act, however, gives power to the Land Management Committee to admit any person as 'Aasami' to any land falling in any of the clauses mentioned in Section 132. Thus, under the Scheme of "U.P. Zamindari, Abolition & Land Reforms Act" but for the aforesaid provisions of Sub-section (4F), the rights of any person as Bhumidhar with transferable or non-transferable rights, as the case may, unless his name is duly recorded in the revenue records has not been recognised except where such person seeks declaration by filing a suit under Section 229-B of the Act. It is only by virtue of sub-section (4F) of Section 122-B that the agricultural labourer who fulfils the conditions given therein is not required to seek a declaration by filing a suit and can be admitted as "Bhumidhar with non-transferable rights" under Section 195.

26. Thus, from a reading of the provisions of Section 122-B in its entirety, it is clear that sub-section (4F) is not a provision for seeking declaration of the rights of a person who is in occupation of the Gaon-Sabha land for declaring him as "Bhumidhar with non-transferable rights". In fact, it is a right to defend, if such a person is to be evicted or dispossessed from the land of Gaon-Sabha in an appropriate provision under the Act. Thus, the occupant as described in Sub-section (4F), who is sought to be evicted from the Gaon-Sabha land, would have a right to plead and establish that since his possession has continued since before the cut-off date, rights had precipitated in his favour and he is a Bhumidhar of the land with non-transferable rights, if such plea is raised the same would be considered by the authority concerned before evicting that person.

27. The right of defence given under the said provision to an Agricultural labourer belonging to Scheduled Caste/Scheduled Tribe cannot be taken as a right of seeking declaration under the aforesaid provisions. Meaning thereby, Section 122-B (4F) cannot be taken recourse for recording entry in the 'Khatauni'.

37. Now the question remains as to whether the Sub-Divisional Officer has jurisdiction to give benefit of Section 123 of the Act. To answer this question, it may be seen that Section 123 is a provision relating to certain qualifying persons in possession of the land on certain conditions in which the land can be settled in favour of those persons. Thus the section provides a definition of approval of legal rights on satisfaction of certain conditions. No proceeding under Section 123 of the U.P.Z.A. & L.R. Act is sustainable because this provision is not procedural. The rights can only be settled under a proceeding in substantive law.

38. Under the scheme of the Act, no declaration can be made in favour of a person other than a tenure holder. Section 143 of the Act only contemplates declaration in favour of a tenure holder. As the petitioners, admittedly are not tenure holders of the land, no declaration under the Act can be made in the facts of the present case. Hence, no declaration of rights as conceived under Section 123(1) of the Act is possible. Only course open before the petitioners was to file a regular suit for declaration of their rights, if any."

18. The judgment in case of Ramdin (supra) was considered by Hon'ble Supreme Court in case of Manorey alias Manohar Vs. Board of Revenue and others, 2003 AIR SC 4102, and the same was overruled by the Supreme Court. Paragraph numbers 7, 8, 9, 10 of the judgment in case of Manorey (supra) are quoted as under:-

"7. It is true that the application of the nature filed by the appellant does not fall within the four corners of Section 122B. Sub-Sections (1), (2) & (3) of Section 122B only empower the Assistant Collector to initiate action on the basis of information received by him to put an end to misuse or unauthorized occupation of the property belonging to Gaon Sabha or a local authority. It does not specifically provide for the entertainment of an application by a person who seeks protection of his rights under sub-Section (4F). But, that is of no material consequence in view of what emerges from the discussion that follows.

8. First, the endeavour should be to analyze and identify the nature of the right or protection conferred by sub-Section (4F) of Section 122B. Sub-Sections (1) to (3) and the ancillary provisions upto sub-Section (4E) deal inter alia with the procedure for eviction of unauthorized occupants of land vested in Gaon Sabha. Sub- Section (4F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a Bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in the sub-Section. According to the findings of the Sub- Divisional Officer as well as the appellate authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to sub-Section (1) to (3) of Section 122B. It means that the occupant of

the land who satisfies the conditions under sub-Section (4F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-Section (4F) confers on him is that he is endowed with the rights of a Bhumidhar with non transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a thrust on socio-economic justice. The statutorily conferred right of Bhumidhar with non-transferable rights finds its echo in clause (b) of Section 131. Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act is recognized under Section 131 as falling within the class of Bhumidhar. The right acquired or accrued under sub-Section (4F) is one such right that falls within the purview of Section 131(b).

9. Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in Ramdin Vs. Board of Revenue (supra) (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant contemplated by sub-Section (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 19ss5 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision.

10. That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of sub-Section (4F) to effect necessary changes in

the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of Gaon Sabha had created lease hold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored."

19. The Division Bench of this Court in case of **Ram Narain and others Vs. Sub Divisional Officer, Kairana and others; 2007 (103) RD 478** was considering the provisions of Section 123 of U.P.Z.A. & L. R. Act, 1950 and relied upon the judgment in case of Manorey (supra) and held in paragraph Nos. 26, 27, 28 of the judgment as under:-

"26. In this connection it is necessary to point out that the deeming provision under Section 123(2) of the Act has been enacted with non-obstante clause, therefore, the same has to be given effect by the Court despite any other provision contrary contained in the Act itself. In our opinion, in order to effectuate the deeming provision under the statute the Court would assume all those facts on which the legal fiction created by the statute can operate, even if those facts do not exist in reality and the right of the parties will have to be determined on such imaginary things to achieve the purpose for which such legal fiction has been created by the statute. Therefore, we have to examine that for which purpose the aforesaid legal fiction has been created by the statute and which facts we have to assume to put in the said legal fiction in operation/ In this connection it is to be pointed out that on satisfaction of the certain conditions laid down in Section 123(2) of the Act, the legal fiction has been created for the purpose of settlement of house site with owner of house by the tenure-holder. Those conditions are that the house must have been built by a person referred to in Section 122-C(3) on the land of tenure-holder not being Government lessee from before 30-6-1985, and such house exists on 30-6-1985. On satisfaction of the aforesaid conditions we have to assume the necessary facts on which the tenure-holder of the land could settle the house site with the owner of the house even if in reality all necessary facts pertaining to such settlement were not existing, therefore, in given facts and circumstances of the case, we do not find any difficulty to hold that since the respondents No. 3 to 45 have built their houses from before 1976-1977 and Revenue authorities have found their houses existing on 30-6-1985, therefore, land covered by their house sites shall be deemed to be settled with them by the tenure-holder of the land in question, irrespective of the circumstances in which such eligible persons have built their houses over the land in dispute. It is immaterial whether they have built their houses with the consent or permission of the tenure-holder of the land in question or otherwise by taking forceful possession of the land or their such possession is unauthorised or as of tresspasser. In case the legislature would have intended otherwise contrary to our views, the phrase "where any person referred to in sub-section (3) of the Section 122-C has built a house on any land held by a tenure-holder not being a Government lessee," would not have been used in the terms expressed therein, rather it would have been worded differently so as to exclude unauthorised occupants who have built such houses but

neither such terms have been used expressly nor can it be inferred impliedly by necessary implication. Besides that, it is significant to notice that the aforesaid provisions have been enacted to ameliorate the conditions of members belonging to the Schedule Castes, Schedule Tribes and other agricultural labourers to ensure the socio-economic justice to them as a measure of agrarian reform, therefore, the interpretation, which advance the object of the statute has to be given by the Court. Thus, in our opinion, any other view contrary to the view taken by us in this regard, would completely distort and defeat the very purpose of deeming provisions which are coupled with non-obstante clause.

27. The view taken by us hereinbefore also finds support from the view taken by Hon'ble Supreme Court in case of Manohar v. Board of Revenue U.P (2003 All LJ 1422) (supra) wherein the Hon'ble Supreme Court has accorded the benefit of Section 122-B(4-F) of the Act to the person found eligible whose initial possession was also not authorised. In para 8 of the said decision as reproduced hereinbefore, the Hon'ble Supreme Court went on saying that sub-section (4-F) carves out an exception in favour of an agricultural labourer belonging to a scheduled caste or scheduled tribe having land below the ceiling of 3.125 acres, irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132) no action to evict him shall be taken and moreover, he shall be deemed to have been admitted Bhumidhar with non-transferable rights over the land, provided he satisfies the conditions specified in sub-section. In view of aforesaid dictum of the Hon'ble Supreme Court, there can be no scope for doubt to hold that even if the initial entry of the respondents No. 3 to 45 into the land of the petitioners, is found to be forceful or unauthorised and rank of tresspasser, even then, since they have admittedly built their houses from before 30-6-1985 and such houses were admittedly found existing on 30-6-1985 over the land of the petitioners who were Bhumidhar with transferable rights on the said date, therefore, the house site of respondents No. 3 to 45 shall be deemed to be settled with them by the petitioners under Section 123(2) of the Act. And it was bounden duty of the revenue authorities to give effect to aforesaid right of respondents No. 3 to 45 which has been conferred by the statute by making necessary changes, in the revenue records, irrespective of any forum and procedure provided expressly either under the Act or Rules framed thereunder for effectuating aforesaid statutory right of socio-economically weaker sections of the society.

28. Before parting with the issue we would make it further clear that although the provisions of sub-sections (1) and (2) of Section 123 have been enacted to ameliorate the conditions of persons enumerated under sub-section (3) of Section 122-C of the Act who are members of weaker sections of society as a measure of agrarian reform to effectuate socio-economic justice to them but in absence of express provision under the Act and/or Rules framed thereunder creating forum and providing procedure to effectuate the aforesaid mandate of the Legislature, we are of the considered opinion that the said mandate of Legislature cannot be effectuated in the words and spirit both. We are also conscious about the ambit of scope of the power and jurisdiction of this Court under Article 226 of the Constitution and this Court cannot ask the Legislature or rule making body, directly or indirectly to legislate in a particular manner by issuing a writ of mandamus. In other words, no such writ can be issued which necessarily involves the legislation. But here we are confronted with a slightly different situation, where in fact, the Legislature has already recognised the rights of eligible persons by enacting aforesaid provisions of law, consequently, as held by Hon'ble Supreme Court in Manohar's case (2003 All LJ 1422) (supra), corresponding duties have

been cast upon the revenue authorities impliedly by necessary implication to effectuate the aforesaid rights of individuals. Therefore, in absence of express provisions for providing forum and procedure to effectuate the aforesaid rights of individuals, we do not find any difficulty to issue any writ or direction of general nature in the shape of mandamus to effectuate the provisions of Section 123 of the Act. We are also alive of the situation that Assistant Collector, in charge of the Sub-Division is competent officer to perform the functions and discharge the duties assigned under Section 122-C of the Act, therefore, it would be expedient to direct that so long as the express provisions under the Act and Rules are not enacted by competent Legislature, the Officer not below the rank of Assistant Collector in charge of the Sub-Division concerned shall under take to effectuate the provisions of Section 123 of the Act in a summary manner after hearing the necessary parties and persons interested in such summary proceedings."

20. In judgment in case of Satya Veer (supra), it appears that the judgment of the Hon'ble Supreme Court in case of Manorey (supra) and of the Division Bench in case of Ram Narain (supra) were not placed before this Court and for the reason they were not considered by this Court. I am unable to persuade myself to agree with the dictum of the judgment in case of Satya Veer (supra).

21. Though, there is a difference in Section 123 of U.P.Z.A. & L. R. Act, 1950 and Section 67-A of U.P. Revenue Code, 2006. Section 123 starts with a non-obstante clause, but the same is not the position in case of Section 67-A. Both the sections aim to achieve same goal and are benevolent in nature and seek to introduce a scheme of social justice for hundreds of those rural indigents who, due to their meager means, are unable to have shed over their heads. There is no substantial difference between both the provisions i.e. Section 67-A of U.P. Revenue Code, 2006 and Section 123 of U.P.Z.A.& L.R. Act, 1950.

22. Further, this Court in case of **Suresh Chandra (supra**) in paragraph No. 8 of the judgment, has held as under:-

"8. There is nothing in section 67-A of the Code which contemplates that such a right can only be claimed if the person concerned files a suit. The orders reflect that the petitioner was claiming protection of Section 67-A of the Code on the basis of certain materials. To expect such a person to get his rights adjudicated by way of a separate suit so as to claim the benefit of section 67-A would only promote multiplicity of proceedings which should be avoided. Learned Standing Counsel could not bring to notice of the Court any legal impediment in this regard."

23. In case of **Asgar Vs. State of U.P (supra)** relied upon by the petitioner, this court has held in paragraph Nos. 3, 4, 5, 6, 7, 8, 9 as under:-

"3. Adverting to the eligibility of the petitioner for protection under

Section 67 (a) of the Code and the rights purportedly accruing to him thereunder, the appellate court held that it was open to the petitioner to take out proceedings under Section 67 (a) of the Code for grant of appropriate relief as claimed by him. After noticing the aforesaid facts, the

appellate court agreed with the judgment of the trial court and dismissed the appeal. The trial court did not return any finding on this issue.

4. Section 67 as well as Section 67(a) of the Code reflect the composite intent of legislature. The legislature by enacting the aforesaid provision has recognized the vulnerability of the State land to illegal encroachment and the need for urgent corrective measures. Simultaneously the legislature has also acknowledged the reality of a large number of persons who have erected dwelling units on lands which are not reserved for any public purposes. The legislature has protected their rights in the manner prescribed in the provision. For ease of reference the provisions are extracted hereunder:…..

5. Section 67(a) of the Code confers rights on certain people who have encroached upon public land. The perequisite conditions for invoking the protection of Section 67 (a) of the Code are these. The person against whom proceedings are taken out has built his house on any land referred to in Section 63 of the Code, the person who seeks protection of Section 67 (a) of the Code should be in the category of persons referred to in Section 63 of the Code. The land should not be reserved for any public purpose. The date of the construction of the house should be prior to 29 November, 2012. The house of such persons should be existing in the disputed parcels of land on or before 29 November 2012.

6. In many instances, as indeed in the present case, the noticee under Section 67 of the Code may invoke the protection of Section 67 (a) of the Code to resist the proceedings under Section 67 of the Code.

7. The authority/ court having jurisdiction to decide the proceedings taken out under Section 67 of the Code or Section 67(a) of the Code is the same. When the defence of Section 67 (a) of the Code is taken in proceedings of Section 67 of the Code, the same issues will be directly and substantially in issue in both the proceedings. Usually in such matters pleadings, defence, pleadings and evidence of the parties are same in both the proceedings. In case proceedings under Section 67 and 67(a) of the Code are conducted separately and in isolation to one another, it would lead to multiplicity of litigation and inconsistent judgments. There will also be an avoidable delay in decision of the controversy and may even result in miscarriage of justice.

8. In fact proceedings under Section 67 (a) of the Code should be registered immediately after a defence in that regard is made in proceedings under Section 67 of the Code.

9. The proceedings under Sections 67 and 67(a) of the Code, should be consolidated and heard together by the same court. Such procedure would faithfully implement the legislative intent and also serve the interest of justice."

24. The same view was taken by this Court in case of Baburam (supra) and Govind Singh (supra). I do not find any reason to take different view in the matter.

25. So far as contention of learned Standing Counsel that benefit of Section 67-A could not be granted to an unauthorized occupant unless and until he is in position to establish categorically that

a person higher in preference as given in Section 64 is not available, is concerned, the same is raised relying upon judgment of this Court in case of Sri Raju (supra) and Baijnath (supra), wherein this Court has held, Merely because a person lower in order of preference has encroached upon Gaon Sabha land, he cannot and should not be granted the benefit of Section 67A unless and until he is in a position to establish categorically that a person higher in preference is not available in the village. Any other interpretation of Section 67A would result in great injustice as an unauthorized occupant would be liable to be granted its benefit only on account of him or her having illegally encroached upon Gaon Sabha property, despite other needier and persons higher in preference being available in the village."

26. I am unable to persuade myself to agree with the view taken by this Court in case of Sri Raju (supra) and Baijnath (supra) for following reasons:

(a) The grant of benefit of Section 67-A of U.P. Revenue Code, 2006 or (Section 123 of U.P.Z.A.&L.R. Act, 1950) is not an allotment under the provisions of statute but the benefit to protect the possession has been granted by legal fiction. The only condition in the aforesaid Sections is that the person must be belonging to one of the categories mentioned in Section 64 in case of Section 67-A or sub-clause (3) of Section 122-C in case of person covered under Section 123 of U.P.Z.A.&L.R., Act 1950. The section itself does not say that a person must be in the highest category of persons mentioned in sections referred above or that no other person higher in category must not be there in order to avail benefit of Section 67-A of U.P. Revenue Code, 2006 or Section 123 of U.P.Z.A.&L.R., Act 1950. When no such condition has been given in the statute itself, the said condition cannot be read in while interpreting the provisions. The statutory provisions should be interpreted literally as it is, without adding or removing anything in the language of section, if the provision is unambiguous. Interpretation is only permissible where there is ambiguity in the statute itself, otherwise words mentioned in the statute have to be construed literally. View which I am taking is supported by law as laid down by Hon'ble Supreme Court in Manorey (supra) 'sub-section 4 carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha, no action to evict him shall be taken.' (paragraph No. 8). The Division Bench of this Court in case of Ram Narain (supra) has held as under:-

"It is immaterial whether they have built their houses with the consent or permission of the tenure-holder of the land in question or otherwise by taking forceful possession of the land or their such possession is unauthorised or as of tresspasser. In case the legislature would have intended otherwise contrary to our views, the phrase "where any person referred to in sub-section (3) of the Section 122-C has built a house on any land held by a tenure-holder not being a Government lessee," would not have been used in the terms expressed therein, rather it would have been worded differently so as to exclude unauthorised occupants who have built such houses but neither such terms have been used expressly nor can it be inferred impliedly by necessary implication. (paragraph No. 26).

This court in case of **Achhaibar Tiwari (supra)** has held that benefit of sub-section 2, Section 123 of U.P.Z.A. &L.R. Act, 1950 must be any one of the categories mentioned in sub-section 3 of Section 122-C. Paragraph No.8 of the aforesaid judgment is quoted as under:-

"8. From a reading of the aforesaid sections, it is evident that the person claiming the benefit of sub-section (2) of section 123, must be anyone of the categories mentioned in sub-section (3) of section 122C. It is also evident that there should exist a house held by a tenure-holder, unless the contrary is proved, be presumed to have been built by the occupant thereof, and where the occupants are members of one family, by the head of that family."

In case of **Ram Preet Vs. Additional Commissioner, Gorakhpur Division, Gorakhpur and others; 2011 (7) ADJ 791**, the order under challenge before this court was an order passed by Sub-Divisional Officer settling the land under Section 123(1) U.P.Z.A. &L.R. Act, 1950 in favour of the petitioner and the other order under challenge was the order passed by the District Magistrate in exercise of powers under Rule 115 (P). This Court has held 'the order passed by District Magistrate under Rule 115 (P) is not correct as firstly, Gaon Sabha had not challenged the order, it was only Pradhan who had challenged and secondly**, it was not allotment hence the proceedings under Rule 115 (P) were not maintainable.**"

Settlement as contemplated under Section 67-A of U.P. Revenue Code, 2006 is not an allotment of housing site but it can be considered as deemed allotment in view of the legal fiction created by Section 67-A and therefore, there is no question of examining the fact that whether there is no other person in a higher category as mentioned in Section 64 exists other than the petitioner while granting benefit under Section 67-A of the Code.

The aforementioned judgments were not placed before this Court and considered by this Court in case of Sri Raju (supra). The Court has proceeded on the assumption that settlement of land under Section 67-A of U.P. Revenue Code, 2006 is the same as allotment of land under Section 64 of the Code.

Though the observations were made by the Hon'ble Supreme Court with regard to sub-clause (2) of Section 123 but the principle laid down will also apply to Section 67-A of U.P. Revenue Code, 2006.

(b) Sub-section (2) of Section 67-A provides if any person referred to in sub-section (1) of Section 64 has built a house on any land referred to in Section 63 of U.P. Revenue Code, 2006, not being land reserved for any public purpose, and such house exists on November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed. Rule 68 of U.P. Revenue Code Rules, 2016 provides that such house shall be held by the owner of the house on terms and conditions prescribed in Rule 64.

(c) Section 67-A confers by a statutory fiction the status of allottee to the eligible occupant of the land as if he has been admitted as such under Section 64 of U.P. Revenue Code, 2006. In substance and in effect, the deeming provision declares that the statutorily recognized person should be as good as a person allotted land under Section 64. In a way, Section 67-A supplements to Section 64 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-section.

27. In paragraph No. 16 of the judgment in case of **Ram Narain (supra)** the Division Bench has held as under:-

"16. Thus, from a plain reading of sub-section (1) of Section 123 of the Act, it is clear that where any person referred in Section 122-C(3) has built a house on any land which is not subject-matter of Section 9 of the Act or on any land referred to in Section 122-C(2) not being the land reserved for any public purpose and such house exists on 30-6-1985, the site of the house shall be held by the owner of the house on such terms and conditions as prescribed by the Rules. The aforesaid provisions does not require any formal allotment order by Assistant Collector in charge of the sub-division concerned, rather statute itself recognises such settlement on satisfaction of the conditions stipulated under the aforesaid provisions of the Act."

28. In view of the discussions made above, this Court is of the view that:- (a) Firstly, an application filed by a person covered under Section 67-A of U.P. Revenue Code, 2006 cannot be rejected on the ground that such an application is not maintainable for want of provision. The same has to be considered and decided on merits by the Assistant Collector.

(b) Secondly, in case, in proceedings initiated under Section 67 of the U.P. Revenue Code, 2006, the noticee invokes protection of Section 67-A of the Code to resist the proceedings under Section 67, the Assistant Collector should register immediately the proceedings under Section 67-A of the Code and shall also decide the same in accordance with law.

(c) Thirdly, the proceedings under Section 67 and Section 67-A are to be consolidated and heard together by Assistant Collector after providing opportunity of hearing as well as opportunity of leading evidence to all the parties and the proceedings should be brought to the logical conclusion strictly in accordance with law.

(d) Lastly, for considering the eligibility of a person under Section 67-A, no objection can be taken by the Assistant Collector on the ground that other persons higher in category as provided under Section 64 of the U.P. Revenue Code, 2006, than the petitioner, exists in the village, and if the petitioner comes within any of the categories mentioned under Section 64 of the Code and other conditions of Section 67- A are fulfilled by the petitioner, the benefit is to be given to such person.

29. In the facts of the present case, the proceedings under Section 67 of U.P. Revenue Code, 2006 has already been initiated against the petitioners to which petitioners have filed objections. The petitioners have also initiated proceedings under Section 67-A before the S.D.M. The proceedings which were initiated under Section 67-A before the S.D.M. be immediately transferred to the court of Assistant Collector seized with proceedings under Section 67 or the petitioners may file fresh proceedings under Section 67-A before the Assistant Collector itself. In either of the case, the Assistant Collector seized with the matter under Section 67 should consolidate both the proceedings and decide the same in accordance with law as laid down by this court in case of Asgar Vs. State of U.P. (supra). Till disposal of proceedings as directed above, the parties are directed to maintain status quo.

30. Accordingly, the writ petition is disposed of. No orders as to cost.

(2026) 7 ILRA 2536
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.07.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE VIVEK SARAN, J.

Writ C No. 24716 of 2025

M/S Moga Dhaba with Family Hall ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether the petitioner is having any right to challege the E-Tender/Advertisement impugned in the petition?
(b) Whether the tender issued by the corporation is vitiated on account of arbitrariness, bias, malafides or against their own policy?
(c) Whether the opening new Yatri Plaza by virtue of impugned E-Tender/Advertisement is against public interest? (d) Whether any relief can be granted to the writ petitioner?

Headnotes

A. Civil/Revenue Law – Tenders and Contracts - The petitioner entered into a contract with the U.P. State Road Transport Corporation ("Corporation") on 19.10.2024 to operate a Yatri Plaza (for A.C. buses) on the Moradabad-Delhi route near Gajraula for a period of 3 years. On 16.07.2025, the Corporation issued an e-tender inviting bids for setting up another Yatri Plaza for A.C. buses on the same route/vicinity, alongside tenders for other routes. The petitioner filed a writ petition u/Article 226 seeking to quash the e-tender, arguing that it violated the Corporation's policy dated 26.11.2020 (which allegedly required more than 300 buses plied on a route before opening an additional Yatri Plaza) and adversely impacted its commercial interests.

B. The relief u/Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party. (Para 12, 13)

The petitioner and the corporation have contractual obligations. The petitioner has been unable to demonstrate what legal wrong or legal injury has been caused by the issuance of the advertisement impugned (for opening of another Yatri Plaza (for A.C. Buses) within the vicinity). Neither the petitioner is having any statutory right nor is the corporation under any statutory obligation to protect the interest more so the commercial interest of the petitioner by virtue of contract dated 19.10.2024. (Para 14, 15, 16)

C. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. (Para 23)

Guidelines not having been issued under some statute have no binding force and any violation would not result in giving a right to dispute a decision so made. (Para 18)

It is found that the referred policy states only guidelines issued by the MD of the Corporation prescribing methodology while establishing Yatri Plaza. The submission of the petitioner regarding violation of guidelines dated 26.11.2020 is misconceived and cannot be accepted. Evidently the Corporation has not put any restriction of minimum 300 buses being plied on a route for opening an additional/new Yatri Plaza for A.C. buses. The guidelines and also the tender notice in its clause 6 specifically prescribe that there would be separate Yatri Plaza for A.C. buses service apart from those for regular service (Non-A.C. Buses). (Para 17, 19, 21)

There is no dispute that the tender dated 16.07.2025 published by the Corporation on Moradabad-Delhi route near Gajraula is for A.C. buses. Petitioner has not been able to point out any arbitrariness or bias been exercised by the corporation while issuing the impugned advertisement/e-tender. (Para 21, 24, 25)

D. Opening of a new Yatri Plaza (for A.C. Buses) in the vicinity, where the petitioner is having his Yatri Plaza (for A.C. Buses) cannot be against public interest, as it would be leading to a healthier competition amongst the operators which would be in public interest as it would eventually lead to provision of better services to the passengers who halt on their way for refreshment. (Para 26)

E. Since the petitioner is not able to point out any infirmity or illegality in the issuance of e-tender/advertisement dated 16.07.2025, no relief can be granted to the petitioner. (Para 27)

Writ petition dismissed. (E-4)

Case Law Cited

1. Vinoy Kumar Vs. State of U.P. and others reported in (2001) 4 SCC 734 (Para 13)
2. Jagdish Mandal Vs. State of Orissa and others (2007)14 SCC 517 (Para 23)

List of Keywords

tender, contract, advertisement, illegality, infirmity, judicial review, jurisdiction, individual wrong, public interest.

Appearances for Parties

For Petitioner(s): Manish Mishra, Surendra Prasad Mishra
For Respondent(s): C.S.C., Dharmendra Dhar Dubey, Vinit Mishra

(Delivered by Hon'ble Vivek Saran, J.)

Order on Civil Misc. Impleadment Application No.2 of 2025.

1. This impleadment application has been filed to implead the applicants as respondent Nos.4 and 5.

2. For the facts and circumstances disclosed in the application/affidavit, the impleadment application is allowed.

3. Office to carry out the necessary amendment in the array of the parties.

Order on Petition.

1. Heard Sri Nitin Sharma, learned counsel for the petitioner and learned counsel for the Respondents. The brief facts of the case are:-

2. That the petitioner is operating a Yatri Plaza (for A.C. buses) on Moradabad-Delhi route near Gajraula for 3 years w.e.f 19.10.2024 pursuant to the bidding held by respondents/U.P. State Road Transport Corporation (hereinafter referred to "Corporation") for which a contract had been executed between the petitioner and the Corporation governing the terms and conditions.

3. The Corporation after almost a year on 16.07.2025 issued e-tender/advertisement calling upon bidders for another Yatri Plaza (for A.C. buses) for Moradabad-Delhi route near Gajraula and also for Moradabad-Bareilly route for general buses and also for Moradabad-Aligarh route for general buses for which the technical bids were opened on 05.08.2025 and thereafter the financial bids were to be opened.

4. The petitioner approached this Court through the instant writ petition with the following relief:-

(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned E-Tender/Advertisement dated 16.07.2025 issued by respondent no.3.

(ii) to issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.3 to pass appropriate order on the representation of petitioner dated 17.07.2025.

Submission on behalf of the petitioner:-

5. Learned counsel for the petitioner has submitted that establishment of another Yatri Plaza (for A.C. buses) on the Moradabad-Delhi route near Gajraula by the Corporation is against their policy dated 26.11.2020, as under the said policy opening of an additional Yatri Plaza on the same route could be only done when there were more than 300 buses plied on the route. Learned counsel for the petitioner has also submitted that the action of the respondent/ Corporation is detrimental in the commercial interest of the petitioner as the petitioner had invested huge amount and opening of another/additional Yatri Plaza would definitely go to divide the customers and, therefore, on these counts the tender dated 16.07.2025 insofar as it relates to the Yatri Plaza for Moradabad-Delhi route near Gajraula (for A.C. buses) need to be quashed by this Court.

Submission of the respondents:-

6. Per contra, learned counsel representing respondents firstly submitted that the petitioner do not have any legal right to prevent opening of additional/another Yatri Plaza on the same route as it is for the wisdom of the Corporation to decide the number of such Yatri Plaza, he further submitted that the terms and conditions governing the operation of Yatri Plaza operated by the petitioner are as per the contract dated 19.10.2024 and none of the conditions prohibit the Corporation from opening another such Yatri Plaza (for A.C. Buses) on the same route or even at the same place. He further submitted that even the said contract governing the relationship inter-se Corporation and the petitioner is purely a commercial contract and no such right is available to the petitioner to stop the process of tendering of another Yatri Plaza (for A.C. Buses). He further submitted that the submission of the petitioner that there are hardly 60 buses being plied on the said route is incorrect, the said route is witnessing heavy traffic and apart from the buses of Corporation, there are number of other buses which run on the said route and in fact opening of another Yatri Plaza on the same spot would be in benefit of the travellers/public at large as there would be a healthy competition resulting in better service been given at the Yatri Plaza and the guidelines dated 26.11.2020 is having no statutory force

and are guidelines and even in the same there is no such prohibition in so far as it is relating to Yatri Plaza for A.C. buses.

7. Heard learned counsel for the parties and perused the records.

8. The issue which fall for consideration before this Court are:-

(i) Whether the petitioner is having any right to challege the E-Tender/Advertisement impugned in the petition?

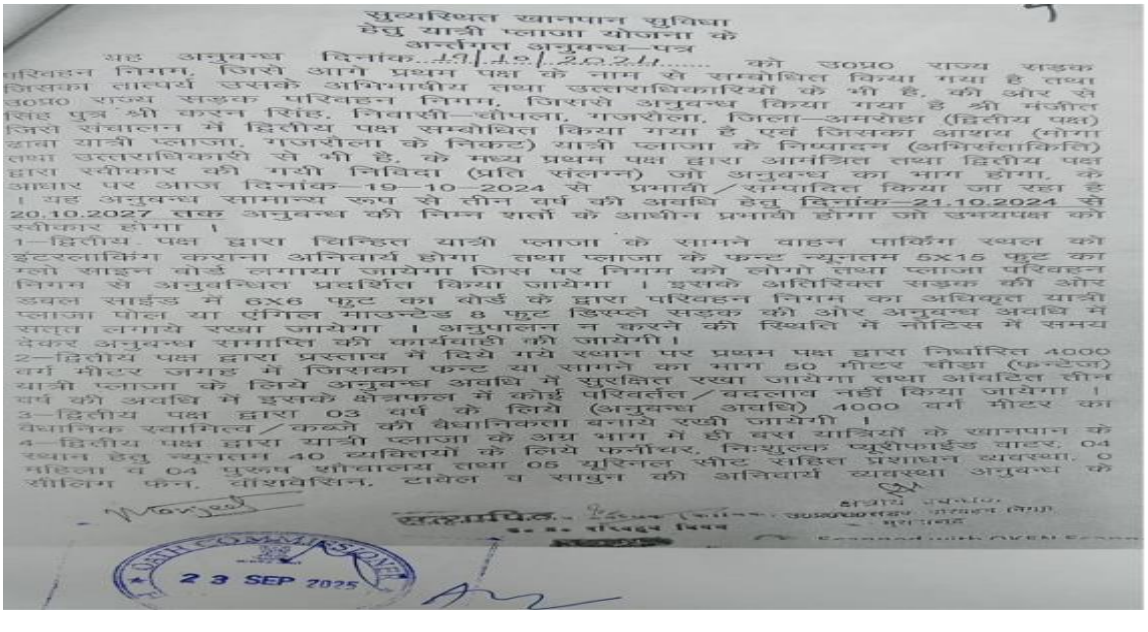
(ii) Whether the tender issued by the corporation is vitiated on account of arbitrariness, bias, malafides or against their own policy?

(iii) Whether the opening new Yatri Plaza by virtue of impugned E-Tender/Advertisement is against public interest?

(iv) Whether any relief can be granted to the writ petitioner?

Issue No.(i):-

9. The petitioner has approached this Court challenging the e-tender/advertisement dated 16.7.2025 issued by the corporation for opening of a new Yatri Plaza (for A.C. Buses) on the Moradabad-Delhi route near Gajraula. Admittedly the petitioner has not participated in the tendering process and has approached this Court stating that earlier the corporation had entered into a contract dated 19.10.2024 with the petitioner to operate a Yatri Plaza (for A.C. Buses) at the same route i.e. Moradabad-Delhi route near Gajraula and, therefore, he is having a right to object for opening a new Yatri Plaza in the vicinity of his already existing Yatri Plaza. Thus the nature of right which the petitioner has is to be seen in the light of the contractual obligations amongst the parties. The contract dated 19.10.2024 entered inter-se the petitioner and the corporation is reproduced here below:-



सुव्यवस्थित स्थानपान सुविधा
हेतु यात्री प्लाजा योजना के
अन्तर्गत अनुबन्ध–पत्र

यह अनुबन्ध दिनांक 21/10/2024..... को उ0प्र0 राज्य सड़क परिवहन निगम, लिमिटेड आगे प्रथम पक्ष के नाम से सम्बोधित किया गया है तथा जिसका तात्पर्य उसके अभिभागीय तथा उत्तराधिकारियों के भी है, की ओर से उ0प्र0 राज्य सड़क परिवहन निगम, लिमिटेड अनुबन्ध किया गया है श्री मंजीत सिंह पुत्र श्री करन सिंह, निवासी–चौपला, गजरौला, जिला–अमरोहा (द्वितीय पक्ष) जिसे संचालन में द्वितीय पक्ष सम्बोधित किया गया है एवं जिसका आशय (योगा ढाबा यात्री प्लाजा, गजरौला के निकट) यात्री प्लाजा के निष्पादन (अभिसंलाकिति) तथा उत्तराधिकारी से भी है, के मध्य प्रथम पक्ष द्वारा आमंत्रित तथा द्वितीय पक्ष द्वारा स्वीकार की गयी निविदा (प्रति संलग्न) जो अनुबन्ध का भाग होगा, के आधार पर आज दिनांक–19–10–2024 से प्रभावी/सम्पादित किया जा रहा है। यह अनुबन्ध सामान्य रूप से तीन वर्ष की अवधि हेतु दिनांक–21.10.2024 से 20.10.2027 तक अनुबन्ध की निम्न शर्तों के आधीन प्रभावी होगा जो उभयपक्ष को स्वीकार होगा।

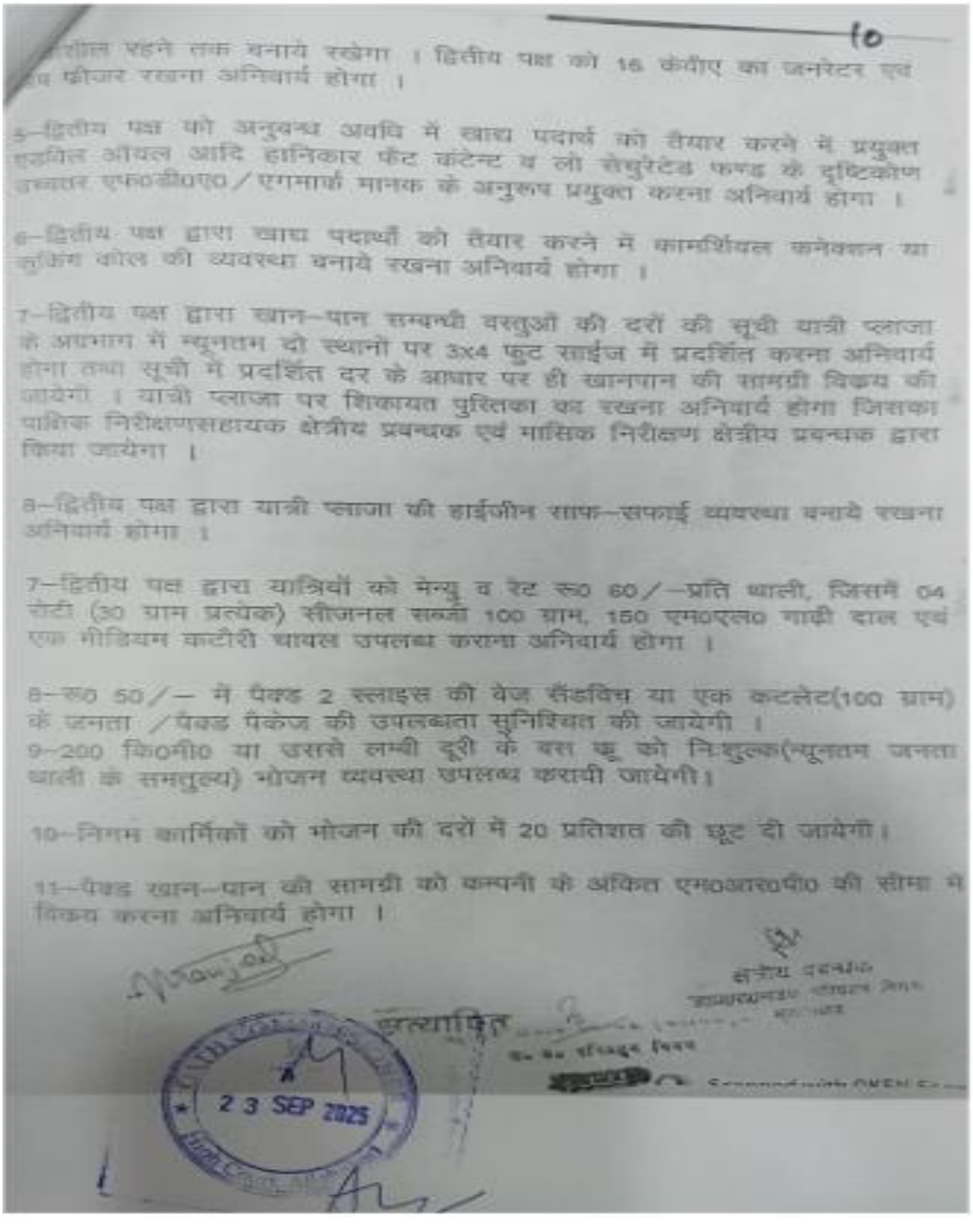
1–द्वितीय पक्ष द्वारा निर्धारित यात्री प्लाजा के सामने वाहन पार्किंग स्थल को इंटरलाकिंग कराना अनिवार्य होगा तथा प्लाजा के फ्रन्ट न्यूनतम 5X15 फुट का रनो व्हाइन बोर्ड लगाया जायेगा जिस पर निगम को लोगो तथा प्लाजा परिवहन निगम से अनुबन्धित प्रदर्शित किया जायेगा। इसके अतिरिक्त सड़क की ओर ओवल साईज में 6X6 फुट का बोर्ड के द्वारा परिवहन निगम का अधिकृत यात्री प्लाजा पोल या एंगिल माउन्टेड 8 फुट हिस्से सड़क की ओर अनुबन्ध अवधि में सतत लगाये रखा जायेगा। अनुपालन न करने की स्थिति में नोटिस में समय देकर अनुबन्ध समाप्ति की कार्यवाही की जायेगी।

2–द्वितीय पक्ष द्वारा प्रस्ताव में दिये गये रथान पर प्रथम पक्ष द्वारा निर्धारित 4000 वर्ग मीटर जगह में छायका फन्ट या सामने का भाग 60 मीटर चौड़ा (फन्टेज) यात्री प्लाजा के लिये अनुबन्ध अवधि में सुरक्षित रखा जायेगा तथा आवंटित सीन वर्ष की अवधि में इसके क्षेत्रफल में कोई परिवर्तन/बदलाव नहीं किया जायेगा।

3–द्वितीय पक्ष द्वारा 03 वर्ष के लिये (अनुबन्ध अवधि) 4000 वर्ग मीटर का वैधानिक स्वामित्व/कब्जे की वैधानिकता बनाये रखी जायेगी।

4–द्वितीय पक्ष द्वारा यात्री प्लाजा के अग्र भाग में ही बस यात्रियों के स्थानपान के स्थान हेतु न्यूनतम 40 व्यक्तियों के लिये फर्नीचर, निःशुल्क पेयजल सहित प्रशासन व्यवस्था, 02 महिला व 04 पुरुष शौचालय तथा 05 यूरिनल पीट सहित प्रशासन व्यवस्था, 02 शीतल पेय, वाशबेसिन, टाबल व शासुन की अनिवार्य व्यवस्था अनुबन्ध के

23 SEP 2025



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...शील रहने तक बनाये रखेगा । द्वितीय पक्ष को 16 केवीए का जनरेटर एवं ...फ्रीजर रखना अनिवार्य होगा ।

5–द्वितीय पक्ष को अनुबन्ध अवधि में खाद्य पदार्थ को तैयार करने में प्रयुक्त एडिबिल ऑयल आदि हानिकार फैट कंटेन्ट व लो सेचुरेटेड फण्ड के दृष्टिकोण उन्नतर एफ0डी0ए0/एगमार्क मानक के अनुरूप प्रयुक्त करना अनिवार्य होगा ।

6–द्वितीय पक्ष द्वारा खाद्य पदार्थों को तैयार करने में कामर्शियल कनेक्शन या कुकिंग गैस की व्यवस्था बनाये रखना अनिवार्य होगा ।

7–द्वितीय पक्ष द्वारा खान–पान सम्बन्धी वस्तुओं की दरों की सूची यात्री प्लाजा के अग्रभाग में न्यूनतम दो स्थानों पर 3x4 फुट साईज में प्रदर्शित करना अनिवार्य होगा तथा सूची में प्रदर्शित दर के आधार पर ही खानपान की सामग्री विक्रय की जायेगी । यात्री प्लाजा पर शिकायत पुस्तिका का रखना अनिवार्य होगा जिसका पाक्षिक निरीक्षणसहायक क्षेत्रीय प्रबन्धक एवं मासिक निरीक्षण क्षेत्रीय प्रबन्धक द्वारा किया जायेगा ।

8–द्वितीय पक्ष द्वारा यात्री प्लाजा की हाईजीन साफ–सफाई व्यवस्था बनाये रखना अनिवार्य होगा ।

7–द्वितीय पक्ष द्वारा यात्रियों को मेन्यु व रेट रू0 60/–प्रति थाली, जिसमें 04 रोटी (30 ग्राम प्रत्येक) सीजनल सब्जी 100 ग्राम, 150 एम0एल0 गाढ़ी दाल एवं एक मीडियम कटोरी चावल उपलब्ध कराना अनिवार्य होगा ।

8–रू0 50/– में पैक्ड 2 स्लाइस की वेज सैंडविच या एक कटलेट(100 ग्राम) के जनता /पैक्ड पैकेज की उपलब्धता सुनिश्चित की जायेगी ।
9–200 कि0मी0 या उससे लम्बी दूरी के बस कू को निःशुल्क(न्यूनतम जनता थाली के समतुल्य) भोजन व्यवस्था उपलब्ध करायी जायेगी।

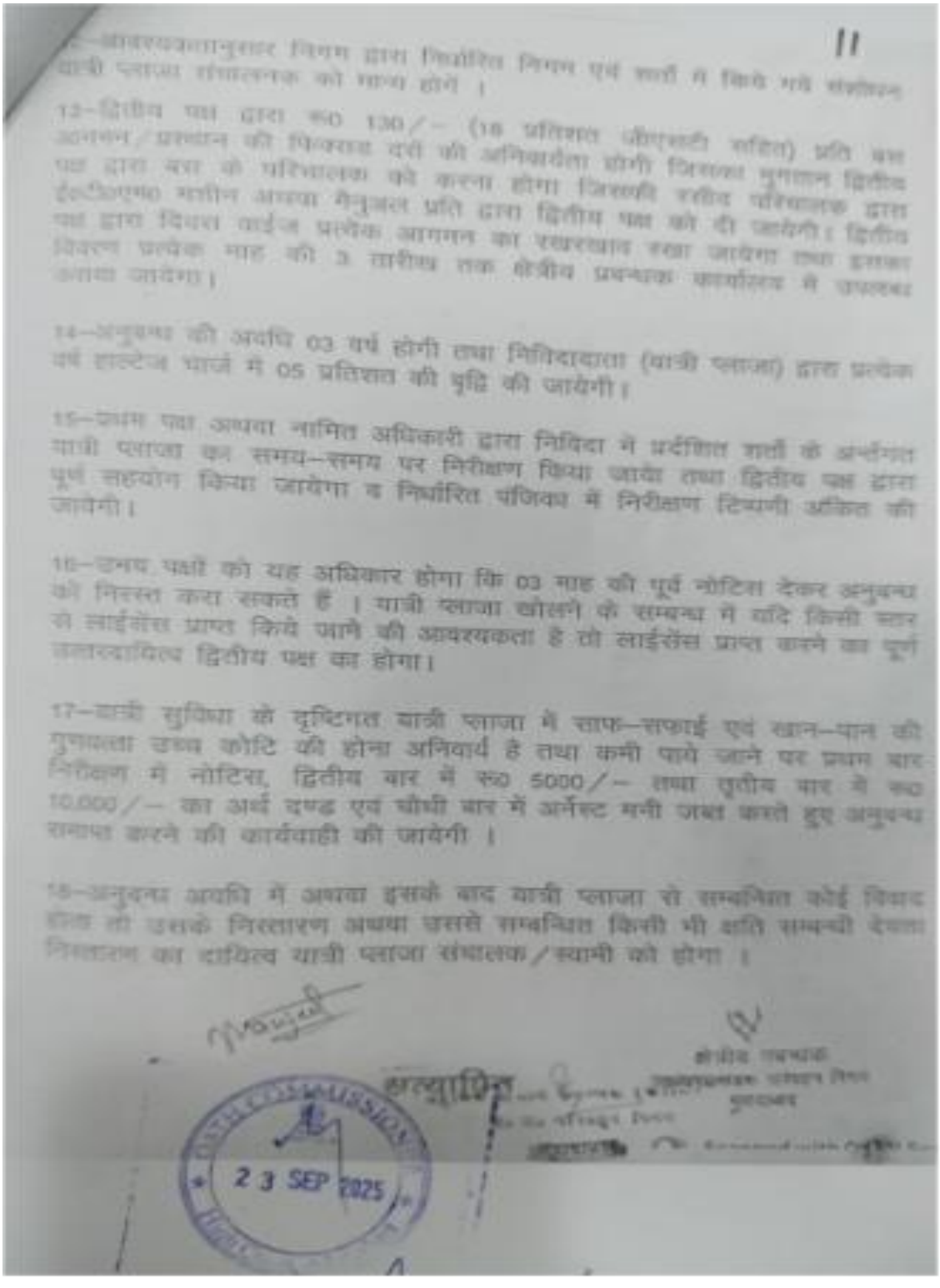
10–निगम कार्मिकों को भोजन की दरों में 20 प्रतिशत की छूट दी जायेगी।

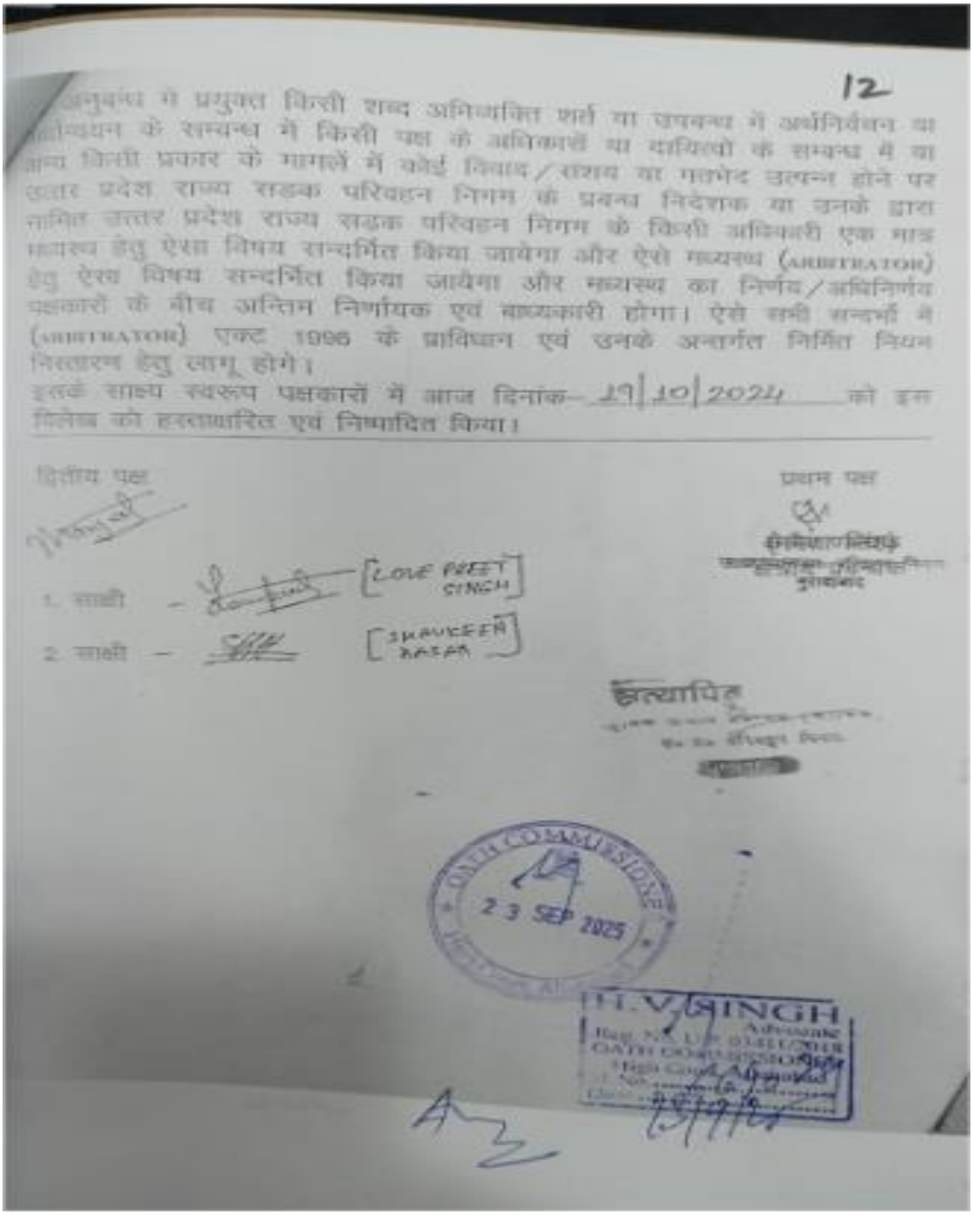
11–पैक्ड खान–पान की सामग्री को कम्पनी के अंकित एम0आर0पी0 की सीमा में विक्रय करना अनिवार्य होगा ।

क्षेत्रीय प्रबन्धक

हस्ताक्षित

23 SEP 2025




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अनुबंध में प्रयुक्त किसी शब्द अभिव्यक्ति शर्त या उपबन्ध में अर्थनिर्वचन या व्याख्यान के सम्बन्ध में किसी पक्ष के अधिकारों या दायित्वों के सम्बन्ध में या अन्य किसी प्रकार के मामलें में कोई विवाद/संशय या मतभेद उत्पन्न होने पर उत्तर प्रदेश राज्य सड़क परिवहन निगम के प्रबन्ध निदेशक या उनके द्वारा नामित उत्तर प्रदेश राज्य सड़क परिवहन निगम के किसी अधिकारी एक मात्र मध्यस्थ हेतु ऐसा विषय सन्दर्भित किया जायेगा और ऐसे मध्यस्थ (ARBITRATOR) हेतु ऐसा विषय सन्दर्भित किया जायेगा और मध्यस्थ का निर्णय/अधिनिर्णय पक्षकारों के बीच अन्तिम निर्णायक एवं बाध्यकारी होगा। ऐसे सभी सन्दर्भों में (ARBITRATOR) एक्ट 1996 के प्राविधान एवं उनके अन्तर्गत निर्मित नियम विस्तारण हेतु लागू होंगे।

इसके साक्ष्य स्वरूप पक्षकारों में आज दिनांक 17/10/2024 को इस विलेख को हस्ताक्षरित एवं निष्पादित किया।

द्वितीय पक्ष

प्रथम पक्ष

1. साक्षी – [LOVE PREET SINGH]

2. साक्षी – [SHAUKEEN KAFAR]

हस्ताक्षित

OATH COMMISSIONER 23 SEP 2025

H.V. SINGH Advocate Regd. No. U.P. 01411/2018 OATH COMMISSIONER High Court Allahabad

10. This Court finds from the perusal of the terms and conditions of the contract inter-se the petitioner and the corporation is purely that of commercial nature. Learned counsel for the

petitioner has not been able to point out that this contract between the parties fall within the ambit of □statutory contract□. Merely one of the parties i.e. the corporation being an instrumentality of State which may come within the ambit of Article 12 of the Constitution of India will not ipso-facto mean that any contract would be a statutory contract. Admittedly, whatever the rights which the petitioner have, would arise from the contractual obligation as stated above. None of the covenants contents in the contract dated 19.10.2024 prohibit or restrain the corporation from opening yet another Yatri Plaza (for A.C. Buses) in the vicinity, where the petitioner is operating a Yatri Plaza (for A.C. Buses). The petitioner could not have a better right than what arises out of the contractual obligations.

11. While exercising powers under Article 226 of the Constitution of India, this Court can entertain a petition for enforcement of any rights conferred by part III and for any other purpose. The relevant extract of Article 226 (1) of the Constitution of India is extracted below:-

"[226. Power of High Courts to issue certain writs.-(1) Notwithstanding anything in article 32[**], every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose)."

12. It is settled law that this Court while exercising the powers under Article 226 of the Constitution of India can entertain a writ petition for any other purpose in order to protect the rights of an individual.

13. The Hon'ble Supreme Court in **Vinoy Kumar Vs. State of U.P. and others reported in (2001) 4 SCC 734** has held that it is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party. The relevant extract as contain in para 2 of the judgement rendered in Vinoy Kumar (Supra) is being extracted below:-

"2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas -corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantages position, unable to approach the court for relief."

14. The petitioner has been unable to demonstrate what legal wrong or legal injury has been caused by the issuance of the advertisement impugned.

15. As discussed above, neither the petitioner is having any statutory right nor the corporation is under any statutory obligation to protect the interest more so the commercial interest of the petitioner by virtue of contract dated 19.10.2024. Learned counsel for the petitioner has failed to demonstrate any legal right which he has to have been violated or any legal wrong or legal injury being caused by the advertisement impugned in the petition for opening of another Yatri Plaza (for A.C. Buses) within the vicinity.

16. In view of the aforesaid discussion, this Court finds that no legal rights of the petitioner can said to have been violated by the corporation by issuance of impugned advertisement/tender. The petitioner and the corporation have contractual obligations. Accordingly the issue no.i is decided against the petitioner.

Issue No.2.

17. With regards to the submission of the petitioner regarding violation of the policy dated 26.11.2020 of the Corporation, this Court finds that the referred policy dated 26.11.2020 are only guidelines issued by the Managing Director of the Corporation prescribing methodology while establishing Yatri Plaza, this interference can safely be drawn from the opening paragraph of the circular which contain the following lines which reads as under:-

……... निम्नलिखित दिशा निर्देश जारी किये जाते हैं …….

18. This Court further finds that these guidelines have not been issued under any statute. It is settled law that guidelines not having been issued under some statute have no binding force and any violation would not result in giving a right to dispute a decision so made.

19. Further the clause A-2 of the guidelines dated 26.11.2020 on which the learned counsel for the petitioner has placed much reliance in itself do not prescribe any requisite number of buses on a route while opening of a Yatri Plaza (for A.C. Buses). The guidelines and also the tender notice in its clause 6 specifically prescribe that there would be separate Yatri Plaza for A.C. buses service apart from those for regular service (Non-A.C. Buses). For ready reference Clause A-2 of the circular dated 26.11.2020 reads as under:-

"A-2 - यात्री बाहुल्यता के कारण यात्रियों की आवश्यकता की पूर्ति एवं अनावश्यक ठहराव में विलम्ब के दृष्टिगत जिन मार्गों पर 300 बसों से अधिक का संचालन हो रहा है. उन मार्गों पर यात्री सुविधा प्रभावित न हो, जिसके कारण 02 यात्री प्लाजा का चिन्हीकरण/अनुबंधन किया जायेगा॥ इसके अतिरिक्त ए०सी० बसों के ठहराव हेतु पृथक से यात्री प्लाजा का चिन्हीकरण किया जायेगा॥"

20. And Clause 6 of the tender condition dated 04.07.2025 reads as under:-

"6-जिन मार्गो पर 300 बसों से अधिक का संचालन हो रहा है उन स्थानों पर 02-02 यात्री प्लाजा अप-डाउन के लिये तथा ए०सी० वसों के ठहराव के लिये पृथक से यात्री प्लाजा का चिन्हिकरण किया जायेगा॥

21. Evidently the Corporation has not put any restriction of minimum 300 buses being plied on a route for opening an additional/new Yatri Plaza for A.C. buses. There is no dispute that the tender dated 16.7.2025 published by the Corporation on Moradabad-Delhi route near Gajraula is for A.C. buses. The submission of

the learned counsel for the petitioner regarding violation of guidelines dated 26.11.2020 are misconceived and cannot be accepted.

22. Further the submission raised by the petitioner regarding that only 60 buses are being run on the route has been disputed by the Corporation and also by the private respondent by stating that the list filed by the petitioner is from a website namely Meal On Road (www.mealonroad.com). Thus the facts are disputed and cannot be adjudicated in writ jurisdiction of this Court.

23. The Hon'ble Supreme Court in re: Jagdish Mandal1 Vs. State of Orissa and others while considering the scope of judicial review in contractual matters in para 22 has held as under:-

"22. ... When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court."

24. Learned counsel for the petitioner has not been able to point out any arbitrariness or bias been exercised by the corporation while issuing the impugned advertisement/e-tender.

25. In this view of the matter even on the limited scope of interference in contractual matters, the petitioner has failed to make out any case. Accordingly the issue no.(ii) is also decided against the petitioner.

Issue No.3.

26. This Court finds that opening of a new Yatri Plaza (for A.C. Buses) in the vicinity, where the petitioner is having his Yatri Plaza (for A.C. Buses) cannot be against public interest, as number of Yatri Plaza which would be lead to a healthier competition amongst the operators and would be in public interest as it would be leading to a healthier competition which would eventually lead to provide better services to the passengers who halt on their way for refreshment. Thus issue no.(iii) is also decided against the petitioner.

Issue No.4.

27. Since the petitioner is not able to point out any infirmity or illegality in the issuance of e-tender/advertisement dated 16.07.2025, no relief can be granted to the petitioner. Thus issue no.(iv) is also decided against the petitioner.

28. In view of whatever has been discussed above, we are of the considered opinion that the writ petition sans merit and is accordingly dismissed.

29. Interim order, if any, stands vacated.

30. No order as to cost.

(2026) 7 ILRA 2546
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.07.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ C No. 26630 of 2026

M/s Shahi Export House (Now known as Shahi Export Pvt. Ltd.) ...Petitioner
Versus
Presiding Officer, Labour Court & Anr. ...Respondents

Issue(s) for consideration

(a) Whether the Labour Court is legally bound to decide the fairness and validity of a domestic inquiry as a preliminary issue before evaluating evidence on the overall merits of the dispute?
(b) Whether deciding the preliminary issue of inquiry validity simultaneously with the merits in a single final award constitutes a jurisdictional error that invalidates the Labour Court's decision?

Headnotes

A. Labour Law – Domestic inquiry proceedings were initiated by the Employer (M/s Shahi Export House) against the Workman (Respondent No. 2). Based on an inquiry report dated 28.09.2001, the Workman was terminated from service on 17.10.2001. The Workman challenged the dismissal, leading to an industrial dispute referred to the Labour Court, Noida. Instead of framing and deciding the validity of the domestic inquiry as a preliminary issue, the Labour Court framed it alongside general issues. It recorded evidence on the merits of the charges from both sides simultaneously. In its final award, the Labour Court rendered a combined decision holding that:

- The domestic inquiry was unfair due to a lack of proper opportunity (violating principles of natural justice).
- On merits (relying partly on evidence recorded during the defective inquiry), the charges against the Workman were not proved.
- The termination order dated 17.10.2001 was illegal.

The Employer filed present petition, challenging the Labour Court's procedural approach and final award.

B. Even a Workman is dismissed or any adverse action is taken against a Workman even without conducting an inquiry, in such case the Labour Court after making a declaration that no inquiry was conducted, an opportunity should be granted to Employer to prove, whether charge can be proved or not and that <u>further proceeding will be initiated only after the Labour Court has taken a decision, whether domestic inquiry was fair or not.</u>

When law on issue is very clear and reiterated by Supreme Court time and again, the procedure undertaken by Labour Court concerned, being contrary and in the teeth of judgments passed by Supreme Court, cannot be sustainable. (Para 13)

In the present case, Labour Court has undertaken both proceedings simultaneously instead of taking one after another and, therefore, an illegality was erupted. Accordingly, impugned award dated 07.01.2026 passed in Adjudication Case No. 279 of 2009, is set aside only to the extent whereby petitioner was not granted opportunity to prove that charge was make out or not. The Court is not interfering decision of Labour Court that domestic inquiry was unfair. The matter is remitted back with direction that Labour Court concerned will

provide an opportunity to produce evidence including fresh evidence also from the side of Employer with further opportunity to Workman to cross-examine the same, if so advised. (Para 14)

Writ petition disposed of. (E-4)

Case Law Cited

1. M/s Dwarikesh Sugar Industries Ltd. Vs. Presiding Officer, Labour Court, Rampur and others, 2023:AHC:44828 (Para 6)
2. Delhi Cloth & General Mills Co. Ltd. Vs. Ludh Budh Singh, 1972 (1) SCC 595 (Para 6)
3. Cooper Engineering Ltd. Vs. P.P. Mundhe, 1975 (2) SCC 661 (Para 6)
4. Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. Vs. Firestone Tyre & Rubber Company, 1976 (1) SCC 819 (Para 6)
5. Shambu Nath Goyal Vs. Bank of Baroda, 1983 (4) SCC 491 (Para 6)
6. Rajendra Jha Vs. Presiding Officer, Labour Court, 1984 (Supp.) SCC 520 (Para 6)
7. Neeta Kaplish Vs. Presiding Officer, Labour Court and another, 1999 (1) SCC 517 (Para 6)
8. Karnataka State Road Transport Corporation Vs. Lakshmidevamma, 2001 (5) SCC 433 (Para 6)
9. Management of Madhurantakam Cooperative Sugar Mills Ltd. Vs. S. Viswanathan, 2005 (3) SCC 193 (Para 6)
10. UOI and others Vs. Dinesh Prasad, 2012 (12) SCC 63 (Para 6)
11. M.L. Singla Vs. Punjab National Bank and others, 2018 (18) SCC 21 (Para 6)
12. U.P. State Road Transport Corporation Vs. Gajadhar Nath, 2021 (10) SCC 697 (Para 6)
13. Shashi Export Private Limited Vs. State of U.P. and others, 2018:AHC:22600 (Para 7)
14. State of Uttarakhand and others Vs. Sureshwati, 2021 (3) SCC 108 (Para 12)

List of Acts/Orders

Industrial Disputes Act, 1947.

List of Keywords

Labour, workman, domestic inquiry, employer, opportunity, issue, preliminary, additional.

Appearances for Parties

For Petitioner(s): Karshit Nigam, Sr. Advocate
For Respondent(s): Baqer Mehdi, C.S.C.

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

1. Heard Sri Shakti Swarup Nigam, learned Senior Advocate assisted by Sri Karshit Nigam, learned counsel for petitioner and Ms. Bushra Mariyam, learned Senior Advocate assisted by Sri Baqer Mehadi, Advocate for Respondent-2.

2. Since the issue involve in this case is purely legal, therefore, with the consent of parties, the Court proceed to decide it without exchange of pleadings.

3. Petitioner before this Court is M/s Shahi Export House (now known as Shahi Export Pvt. Ltd.). A domestic inquiry was initiated against Respondent-2, a Workman, under petitioner concerned and on basis of inquiry report said Workman was terminated. The date of inquiry report is 28.09.2001 and order of terminated is dated 17.10.2001. The Workman raised an industrial dispute before Labour Court, Noida.

4. An issue which was to be framed as a preliminary issue, i.e., whether domestic inquiry conducted by petitioner against Workman was fair or not, was framed as an additional issue.

5. Before making adjudication to said additional issue, the evidence from side of Employer was also taken on record and by impugned order not only additional issue was decided but on basis of evidence so recorded, a finding was returned that charges levelled against Workman were not found proved. It was held that domestic inquiry was unfair as sufficient opportunity was not granted to Workman and on consideration of oral as well as documentary evidence, so led, it was further held that no proper opportunity was granted to Workman, therefore, the order dated 17.10.2001, whereby Workman was terminated from services, was held to be illegal and directed that it's legal consequence shall be followed.

6. Learned Senior Advocate appearing for petitioner has placed reliance on a judgment passed by this Court in **M/s Dwarikesh Sugar Industries Ltd. vs. Presiding Officer, Labour Court, Rampur and others, 2023:AHC:44828** wherein this Court has considered the judgments passed by Supreme Court in **Delhi Cloth & General Mills Co. Ltd. vs. Ludh Budh Singh, 1972(1) SCC 595; Cooper Engineering Ltd. vs. P.P. Mundhe, 1975(2) SCC 661; Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. vs. Firestone Tyre & Rubber Company, 1976(1) SCC 819; Shambu Nath Goyal vs. Bank of Baroda, 1983(4) SCC 491; Rajendra Jha vs. Presiding Officer, Labour Court, 1984 (Supp.) SCC 520; Neeta Kaplish vs. Presiding Officer, Labour Court and another, 1999(1) SCC 517; Karnataka State Road Transport Corporation vs. Lakshmidevamma, 2001(5) SCC 433; Management of Madhurantakam Cooperative Sugar Mills Ltd. vs. S. Viswanathan, 2005(3) SCC 193; Union of India and others vs. Dinesh Prasad, 2012(12) SCC 63; M.L. Singla vs. Punjab National Bank and others, 2018(18) SCC 21; and, U.P. State Road Transport Corporation vs. Gajadhar Nath, 2021(10) SCC 697.** He further submits that there is no ambiguity in position of law that if an industrial dispute is raised against the order passed on basis of domestic inquiry, the Labour Court at first instance will decide an issue, whether domestic inquiry was fair or not. In case answer is in affirmative, the dispute will not further proceed for adjudication. However, in case answer remain in negative, the Employer shall be granted an opportunity to present evidence to prove the charge and Labour Court on basis of evidence so led before it, will decide matter on merit, whether charge was proved or not. For reference, relevant part of the judgment passed by this Court in **M/s Dwarikesh Sugar Industries Ltd. (supra)** is reproduced hereinafter:

"(ङ) विश्लेषण

१३. विधिक बिन्दु पर निर्णय देने के लिए वादी के विद्वान वरिष्ठ अधिवक्ता द्वारा उल्लेखित विधि दृष्टांगो पर ध्यान देना आवश्यक है। १४. नीता कपलिश (पूर्व मे उल्लेखित) में उच्चतम न्यायालय ने पूर्व में निर्णीत देल्ही क्लोथ ऐंड जनरल मिल्स को. प्रति लुधबुध सिंह, (१९७२) १ एस.सी.सी. ५९५ के प्रकरण के निर्णय के कुछ अंश का उल्लेख किया, कि जब प्रबंधन उसके द्वारा की गई जाँच पर निर्भरता जताता है और साथ ही साथ अधिकरण के समक्ष अपने उक्त तर्क में पूर्वाग्रह के बिना की गई जाँच उचित थी, साक्ष्य भी प्रस्तुत करता है, तब भी अधिकरण का विधिक दायित्व है, कि वो प्राथमिक स्तर पर ही यह विचार करे कि क्या प्रबंधन द्वारा की गई जाँच की कार्यवाही उचित व मान्य है। अगर अधिकरण संतुष्ट है कि जाँच की कार्यवाही उचित रूप से की गई है एवं मान्य है, तब प्रस्तुत साक्ष्य पर गुण दोष पर विचार करने का कोई प्रश्न ही नहीं रह जाता है व अधिकरण केवल दंड की समीक्षा कर सकता है।

१५. जब अधिकरण यह निर्धारित करता है कि जाँच की कार्यवाही उचित रूप से नही की गई थी, तभी वो उस क्षेत्राधिकार को प्राप्त करता है जहां विवाद को गुण दोष के आधार पर निर्धारित कर सकता है और उस दशा में वो प्रबंधन द्वारा प्रस्तुत साक्ष्य पर विचार करता है और विवाद को साक्ष्य के आधार पर गुण दोष पर निस्तारित करता है।

१६. नीता कपलिश (पूर्व मे उल्लिखित) मे यह भी कहा गया है कि उपरोक्त सिद्धान्त उच्चतम न्यायलय द्वारा वर्कमैन प्रति फायर स्टोन टायर व रबड़ को. ऑफ इंडिया, (१९७३) १ एस.सी.सी. ८१३ में भी अनुसरित किया गया है।

१७. उच्चतम न्यायालय ने एम.एल. सिंगला (पूर्व मे उल्लेखित) में यह प्रतिपादित किया, क्योंकि पदच्युक्ति का आदेश घरेलू जाँच पर आधारित था, अतः श्रम न्यायालय का यह दायित्व था कि वो सर्व प्रथम प्रारम्भिक बिन्दू के रूप मे इस प्रश्न पर विचार कर निर्णित करे कि क्या घरेलू जाँच वैधानिक व उचित थी और उसके उत्तर के आधार पर ही आगे की कार्यवाही सुनिश्चित करे। क्योकि उक्त निर्णय के तथ्य व परिस्थितियों में श्रम न्यायालय ने उपरोक्त प्रक्रिया नही अपनायी थी, तो उच्चतम न्यायालय ने यह निर्धारित किया कि श्रम न्यायालय ने क्षेत्राधिकार की त्रुटि करी थी।

१८. जहां तक विपक्षी द्वारा इस न्यायालय की पूर्ण पीठ के एक निर्णय मेसर्स स्वरूप वेजीटेबल प्रोडक्टस इंडस्ट्रीज लि. (पूर्व मे उल्लेखित) पर बल देने का विषय है, जहां पूर्ण पीठ ने यह निर्धारित किया कि श्रम न्यायालय का यह दायित्व नही है कि क्या घरेलू जाँच वैधानिक व उचित है, को प्रारम्भिक बिन्दु बनाकर ही निर्णय दिया जाये व समस्त बिन्दुओं को एक साथ निर्धारित भी कर सकता है। परन्तु जैसा पूर्व मे उल्लेख किया है कि पूर्ण पीठ के निर्णय के उपरान्त एम.एल.सिंगला (पूर्व मे उल्लेखित) मे यह स्पष्ट रूप से निर्धारित किया गया कि श्रम न्यायालय के प्रारम्भिक बिन्दु कि घरेलू जाँच को उचित व वैधानिक बनाना ही होगा व उसके निर्धारण के उपरान्त ही आगे की कार्यवाही कर सकता है, इस कारण से यह न्यायालय, पूर्ण पीठ के निर्णय का अनुपालन करने के लिए बाध्य नही है।

१९. प्रतिवादी के द्वारा अन्य निर्णयों के आधार पर यह कथन किया गया है कि अगर प्रारम्भिक बिन्दू न बनाकर कोई त्रुटि की भी हो, तब भी वादी/प्रबंन्धक को समस्त साक्ष्य श्रम न्यायालय के समक्ष रखने की पूर्ण स्वतंत्रता थी, जिसका उसने लाभ भी उठाया और प्रबंधन ने वर्तमान याचिका में ऐसा कोई भी कारण का कथन नहीं किया है, कि साक्ष्य न रख पाने के कारण उसके साथ कोई पक्षपात हुआ हो। इसके अतिरिक्त प्रतिवादी ने पुरजोर बल उच्चतम न्यायालय की संवैधानिक पीठ के निर्णय लक्ष्मी देवम्मा (श्रीमती) (पूर्व मे उल्लेखित) पर दिया है कि श्रम न्यायालय, प्रारम्भ मे ही, घरेलू जांच उचित है या नहीं, के बिन्दु पर विचारण करने के लिए बाध्य नहीं है, और यह बिन्दु बाद मे भी निर्धारित किया जा सकता है, इसके लिए प्रतिवादी के वरिष्ठ अधिवक्ता ने समकक्ष पीठ द्वारारिजिनल मैनेजर यू.पी.एस.आर.टी.सी. (पूर्व मे उल्लेखित) के मामले मे दिये गये निर्णय पर भी बल दिया।

२०. उपरोक्त तर्क पर निर्णय लेने से पूर्व मैने संविधान पीठ द्वारा दिये गये निर्णय का परिशीलन ध्यानपूर्वक किया। संविधान पीठ के समक्ष यह विवाद था कि उच्चतम न्यायालय की दो पीठों द्वारा दिये गये शम्भूनाथ गोयल प्रति बैक ऑफ बडौदा, (१९८३) ४ एस.सी.सी. ४९१ व राजेन्द्र झां प्रति पीठासीन अधिकारी, लेबर कोर्ट, १९८४ (सप्पली) एस.सी.सी. ५२०, के निर्णयों मे अगर कोई विरोधाभास है, तो कौन सा निर्णय उचित है, कि प्रबंधन द्वारा साक्ष्य प्रस्तुत करने की प्रार्थना किस स्तर पर कर सकता है। क्या उसको प्रारम्भिक बिन्दु, कि क्या घरेलू जांच अवैधानिक व मान्य है, के निस्तारण का इन्तजार करना चाहिये या प्रारम्भ मे ही प्रति उत्तर के साथ ही साक्ष्य प्रस्तुत करने की प्रार्थना कर देनी चाहिये। इस नाते संविधान पीठ ने बहुमत से यह निर्धारित किया कि उपरोक्त दोनो निर्णयों मे कोई विरोधाभास नहीं है कि नियोक्ता को जवाब के साथ ही यह प्रार्थना पत्र भी दाखिल करना चाहिये कि वो साक्ष्य भी प्रस्तुत करना चाहता है, जिससे वाद निस्तारण मे देरी न हो व यह प्रार्थना क्योकि वैकल्पिक है, तो नियोक्ता पर कोई भी प्रतिकूल प्रभाव नही होगा। संविधान पीठ ने कूपर इंजी. लि. प्रति पी.पी.मुंधे, (१९७५) २ SCC ६६१ को अनुमोदित करते हुए प्रस्तर १४ मे यह निर्णित किया कि घरेलू जाँच की निष्पक्षता पर यदि प्रश्न उठे तो उसे प्रारम्भिक बिन्दु के रूप में ही निर्णित किया जाये व उसके बाद ही साक्ष्य के आधार पर वाद निर्णित किया जाये। विवाद केवल साक्ष्य देने के प्रार्थना पत्र के समय पर था, जिस पर संविधान पीठ ने निर्धारित किया कि वो प्रथम स्तर पर ही विकल्प के साथ किया जाना चाहिये। परन्तु पीठ के दो सदस्यो ने सहमति दिखाते हुए (न्यायमूर्ति शिवराज वी. पाटिल के द्वारा लिखा गया निर्णय) यह स्पष्ट किया कि श्रम न्यायालय प्रकरण की परिस्थितियों मे साक्ष्य देने का आदेश वाद की कार्यवाही के दौरान व निर्णय लेने से पहले कभी भी निर्धारित कर सकता है, क्योकि इस अधिकार का आधार प्रक्रियात्मक है, न कि किसी विधि के प्रावधान के तहत।

२१. मैने रिजिनल मैनेजर (पूर्व मे उल्लेखित) के निर्णय का परिशीलन भी सतर्कता के साथ किया परन्तु, समकक्ष एकल पीठ द्वारा यह निर्धारित करना कि लक्ष्मी देवम्मा (पूर्व मे उल्लेखित) में यह भी निर्धारित किया कि घरेलू जाँच निष्पक्ष नही है, का बिन्दु प्रारम्भिक रूप से बनाना आवश्यक नही है, परन्तु न तो संविधान पीठ के समक्ष यह बिन्दु विचाराधीन ही था और न ही ऐसा संविधान पीठ ने निर्णय मे कही भी निर्धारित किया है। ऐसा प्रतीत होता है कि रिजिनल मैनेजर (पूर्व मे उल्लेखित) के प्रस्तर २३ के आखिर मे संविधान पीठ के निर्णय मे उक्त कहा गया है, अभिलेख के विपरीत है।

२२. उपरोक्त विश्लेषण का परिणाम है कि श्रम न्यायालय का दायित्व है कि प्रारम्भिक रूप से "क्या घरेलू जाँच निष्पक्ष है" का बिन्दु निर्धारित करे और उसके निर्णय के उपरान्त ही आगे की कार्यवाही करे। नियोक्ता, श्रम न्यायालय में उत्तर दाखिल करते समय प्रारम्भिक बिन्दु पर भी अपना स्पष्टीकरण व साथ ही साथ साक्ष्य देने की प्रार्थना भी कर सकता है। वर्तमान प्रकरण मे नियोक्ता द्वारा प्रारम्भ में ही यह प्रार्थना की गई थी कि प्रारम्भिक बिन्दु कि "घरेलू जाँच निषपक्ष है" बनाया जाये, परन्तु श्रम न्यायालय ने प्रार्थना निरस्त करते हुए साक्ष्य आमंत्रित किया तथा जो साक्ष्य श्रम न्यायालय के समक्ष प्रस्तुत किये गये उसके अतिरिक्त घरेलू जाँच में प्रस्तुत साक्ष्य पर भी विचार करते हुए यह निर्धारित किया कि न केवल घरेलू जाँच दूषित थी वरन् पदच्युति भी अवैधानिक थी।

२३. श्रम न्यायालय अगर यह निर्धारित करता है कि घरेलू जाँच निष्पक्ष नही है, तो केवल उस साक्ष्य पर जो उसके समक्ष लेख बद्ध किये गये व पत्रजात को पत्रावली पर लाये गये है, के आधार पर ही यह निर्धारित करेगा कि क्या आरोप साबित होता है, या नही, परन्तु वर्तमान प्रकरण मे श्रम न्यायालय ने दोनो साक्ष्य (जो घरेलू जाँच मे कार्यवाही के दौरान व श्रम न्यायालय के समक्ष आये) पर विचार किया, जो पूर्ण रूप से अवैधानिक है। (देखें नीता कपलिश (पूर्व मे उल्लिखित) के प्रस्तर संख्या २७ व २८) कर्मकारों के वरिष्ठ अधिवक्ता द्वारा प्रस्तुत अन्य विधिक दृष्टांगों का कोई लाभ कर्मकारों को नहीं मिल सकता है। अतः इस स्तर पर आक्षेपित आदेश के निम्न अंश महत्वपूर्ण है कि श्रम न्यायालय ने उपरोक्त वैधानिक त्रुटि करीः-

"इस बैक डेटिंग के सम्बन्ध में सर्वोतम साक्ष्य केवल सम्बन्धित किसानों का ही हो सकता था, जिनके गन्ने की तौल दिनांक 24.11.2016 को होना दर्शायी गयी है, लेकिन किसी भी किसान से न तो पूछतांछ की गयी और न ही उनको घरेलू जांच मे और न ही न्यायालय में प्रस्तुत किया गया। अतः मात्र सेवायोजक के इस कथन में विश्वास नहीं किया जा सकता कि श्रमिक अर्जेन्द्र कुमार ने उपरोक्त 24पर्चियों में बैक डेटिंग करके दिनांक 24.11.2016 दर्शायी हो।"

"जहां तक दिनांक 24.11.2016 को श्रमिक द्वारा अन्य तौल लिपिकों के साथ हड़ताल पर जाने का प्रश्न है तो इसमें घरेलू जांच के दौरान गवाह राजकुमार द्वारा लिखित कथन (ई-13), विजेन्द्र सिंह का लिखित कथन (ई-14), औंकार सिंह का लिखित कथन (ई-15), नीरज कुमार का लिखित कथन (ई-16), योगेन्द्र कुमार का लिखित कथन (ई-17), रमेश परसुरामपुरिया का लिखित कथन (ई-18), अशोक कुमार शर्मा का लिखित कथन (ई-19), जितेन्द्र कुमार का लिखित कथन (ई-20) प्रस्तुत किये गये हैं। इन तथ्यो को स्वयं सेवायोजक साक्षी-2 जांच अधिकारी श्री सलिल स्वरूप आर्य ने भी स्वीकार किया है कि उसने श्रमिक के समक्ष घरेलू जांच के दौरान इन गवाहों के बयान अंकित नहीं किये थे। उपरोक्त सभी बयान गवाहान टाईप शुदा बाहर से लेकर आये, जिन्हें घरेलू जांच में प्रस्तुत कर दिया। मेरी राय में घरेलू जांच प्रक्रिया पूरी तरह से दूषित है। घरेलू जांच के दौरान गवाहान के कथन सम्बन्धित श्रमिक के समक्ष ही अंकित किये जाने चाहिए भले ही वह हाथ से लिखे हुए हों या टंकण द्वारा, लेकिन उपरोक्त सभी बयान गवाह अन्यत्र से टाईप शुदा लाये थे और उन्होने घरेलू जांच में दाखिल कर दिये। अतः मात्र इसके आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि श्रमिक अर्जेन्द्र कुमार किसी हड़ताल में शामिल हुआ हो। वैसे भी इस बात की पुष्टि हो चुकी है कि दिनांक 24.11.2016 को श्रमिक द्वारा अपने क्रय केन्द्र पर 24 किसानों के गन्ने की तुलाई की थी और उन्हे भुगतान भी सेवायोजक द्वारा किया गया। अतः न तो इस बात की पुष्टी होती है कि दिनांक 24.11.2016 को श्रमिक किसी हड़ताल में शामिल रहा हो और न ही इस तथ्य की कि दिनांक 24.11.2016 को गन्ने की तुलाई न की गयी हो।"

(च) निष्कर्ष

२४. उपरोक्त विचार विमर्श के परिणामस्वरूप विचारार्थक विधिक बिन्दु का निस्तारण किया जाता है कि, श्रम न्यायालय को प्रारम्भिक रूप मे ही "क्या घरेलू जाँच निष्पक्ष व मान्य है" के विधिक बिन्दु बनाकर उसका निस्तारण करना चाहिये और परिणाम के फलस्वरूप ही आगे की कार्यवाही विधिक रूप से करनी चाहिये कि अगर घरेलू जाँच निष्पक्ष पाई जाती है, तो श्रम न्यायालय मात्र सजा के समानुपात की जाँच कर सकता है, परन्तु यदि श्रम

न्यायालय यह पाता है कि घरेलू जाँच दूषित है, तो नियोक्ता को श्रमिक के विरूद्ध आरोप साबित करने के लिए साक्ष्य देने की अनुमति प्रदान करनी चाहिये और यदि साक्ष्य पूर्व में ही नियोक्ता द्वारा दिया जा चुका है तो उक्त साक्ष्य के आधार पर यह निर्धारित करेगा कि आरोप साबित होता है या नहीं, इस स्तर पर श्रम न्यायालय घरेलू जाँच मे दिये गये साक्ष्य को अपने निर्णय का आधार नही बना सकता।

२५. उच्चतम न्यायालय ने एक नवीन निर्णय उत्तर प्रदेश स्टेट रोड ट्रांसपोर्ट कोर्प. प्रति गजाधर नाथ, (२०२२) ३ एस.सी.सी. १९० में वर्कमेन प्रति फायर स्टोन टायर (पूर्व मे उल्लेखित) के निर्णय मे सिद्धान्तो का पुनः उल्लेख किया कि, यदि नियोक्ता द्वारा की गयी घरेलू जाँच दूषित पायी जाती है, तो अधिकरण को नियोक्ता को साक्ष्य प्रस्तुत करने का अवसर देना ही होगा, कि उसके द्वारा कर्मकार के विरूद्ध की गयी कार्यवाही उचित है। इसी प्रकरण में संविधान पीठ के लक्ष्मी देवम्मा (पूर्व मे उल्लेखित) के निर्णय का भी उल्लेख किया कि उपरोक्त स्थिति में नियोक्ता का साक्ष्य देने का अधिकार प्रक्रियात्मक है न कि वैधानिक, जो वाद के त्वरित निस्तारण के लिये है।

२६. वर्तमान प्रकरण मे श्रम न्यायालय ने दो वैधानिक त्रुटि करी है। पहली उसने घरेलू जाँच निष्पक्ष है को न तो प्राथमिक बिन्दु बनाया और न ही उसका निस्तारण प्रारम्भ मे किया तथा दूसरी उसने अन्तिम निर्णय में जहां एक ओर यह निर्धारित किया कि घरेलू जाँच दूषित है, वहीं दूसरी ओर वो साक्ष्य जो उसके सामने लेखबद्ध हुए के साथ-साथ घरेलू जाँच के दौरान दिये गये साक्ष्य पर भी विचार किया। इन दो वैधानिक त्रुटियों के कारण आक्षेपित आदेश अवैधानिक हो जाता है।

(छ) आदेश

२७. आक्षेपित चारों आदेश दिनांकित ०३.११.२०२० निरस्त किये जाते हैं तथा चारों वाद श्रम न्यायालय को प्रतिप्रेषित कर आदेशित किया जाता है कि श्रम न्यायालय सर्व प्रथम प्रारम्भिक बिन्दु 'क्या घरेलू जाँच दूषित है को निर्धारित करेगा व उसके निर्णय के आधार पर ही आगे की कार्यवाही वैधानिक रूप से करेगा। क्योकि नियोक्ता अपना साक्ष्य दे चुका है, तो अगर घरेलू जांच दूषित पाई जाती है, तो श्रम न्यायालय उक्त साक्ष्य के आधार पर ही अपना निर्णय देगा। उक्त कार्यवाही आज से छः महीने के अन्दर समाप्त करेगा।

२८. उपरोक्त निर्देश के साथ चारों याचिकाएं आंशिक रुप से स्वीकार व अंतिम रुप से निस्तारित की जाती हैं।

7. Learned Senior Advocate appearing for Respondent-Workman has placed reliance on a judgment passed by a Coordinate Bench of this Court in **Shashi Export Private Limited vs. State of U.P. and others, 2018:AHC:22600**, wherein a similar issue was involved between parties to this Court and Labour Court concerned has adopted similar procedure and Coordinate Bench has dismissed writ petition filed by petitioner.

8. During argument it is informed that aforesaid judgment in **Shashi Export Private Limited (supra)** was challenged at the behest of petitioner before Supreme Court, being Special Leave to Appeal (C) No. 11076 of 2018 (Shahi Exports Ptv. Ltd. vs. State of U.P. and another), which was dismissed on 07.05.2018. For reference paras 9, 10 and 11 of aforesaid judgment in **Shashi Export Private Limited (supra**) is reproduced hereinafter:

"9. I have considered the arguments of the counsel for the petitioner and examined the record. In view of plea raised by the petitioner in paragraph-19 of written statement, Labour Court framed an additional issue on 28.03.2007 "Whether domestic inquiry was fair and proper and has been done in consonance of principles of natural justice?". Labour Court also directed that this issue would be decided along with main issue referred to it. The petitioner has not only examined V.K. Solanki (Inquiry Officer) as EW-1, on 13.09.2007 but also filed entire papers relating to domestic

inquiry from the stage of suspension on 16.08.2001 to dismissal on 27.10.2001, to prove that inquiry was fair and proper. The petitioner also examined Rajendra Ahuja (Manager Karmik & Administration) as EW-2, on 22.07.2010, Neeraj Harjani (Assistant General Manager) as EW-3, on 21.09.2016 and Promod Kumar Gupta (senior supervisor) as EW-4, on 23.03.2017, to prove the charges as leveled against respondent-3, in domestic inquiry. After close of the evidence, the petitioner filed written arguments on 03.05.2017 and never demanded any further opportunity for additional evidence. Arguments that the petitioner was not given opportunity to prove charges against respondent-3 is misconceived.

10. A copy of the charge sheet of domestic inquiry has been filed as Annexure-2 to the writ petition. In the charges, incidents dated 09.07.2001, 10.07.2001, 12.07.2001, 27.07.2001, 08.08.2001, 11.08.2001 and 14.08.2001 were mentioned. In none of these incident, name of Smt. Ranjana Jha (respondent-3) has been mentioned. Only allegation against respondent-3 was that on 14.08.2001 after 2.00 p.m., the workers (including respondent-3) had assembled at factory gate and began to shout that whoever would inquire about production, he would not be able to stand on his leg. It is admitted that the petitioner was not engaged in production work rather she was checker of finished material and posted in Finishing Department. Rajendra Ahuja (Manager Karmik & Administration) EW-2, in his cross examination has admitted that there is no evidence to prove that respondent-3 had participated in go slow move. Neeraj Harjani (Assistant General Manager) EW-3, in his cross examination has admitted that respondent-3 has not assaulted any person. Promod Kumar Gupta (senior supervisor) EW-4, in his cross examination admitted that Ranjana Jha was working in finishing department and had not assaulted any workman or the officer of management. Thus charges of domestic inquiry was not proved before Labour Court. Finding in this respect does not suffer from any illegality.

11. V.K. Solanki (Inquiry Officer) EW-1, in his cross examination admitted that envelope, in which notices were sent to respondent-3 did not contain her correct address. Smt. Ranjana Jha in her statement has stated that Inquiry Officer conducted inquiry inside factory premises and she or other employees were not permitted to enter factory premises. This statement has been believed by Labour Court. Finding that domestic inquiry was not fair and proper does not suffer from any illegality.

9. I have considered above submissions and perused the record.

10. So far as position of law is concerned, even a Coordinate Bench has passed a different order, this Bench can still follow the judgment passed in **M/s Dwarikesh Sugar Industries Ltd. (supra**) wherein several judgments passed by Supreme Court on the issue was considered, however, the same were not considered or placed on record for consideration before Coordinate Bench in **Shashi Export Private Limited (supra**).

11. Coordinate Bench in **Shashi Export Private Limited (supra**) has placed reliance on **Lakshmidevamma (supra**), however, the same was only with regard to legal consequence of an ex parte inquiry and the aspect of procedure to be undertaken was not considered. Whereas, this Bench in **M/s Dwarikesh Sugar Industries Ltd. (supra**) has taken note of judgments passed by

Supreme Court which has prescribed specifically the process to be adopted by Labour Court in such circumstances.

12. Learned Senior Advocate for petitioner has placed reliance on a judgment passed by Supreme Court in State of Uttarakhand and others vs. Sureshwati, 2021(3) SCC 108 that position of law as referred above was reiterated and for reference relevant part of said judgment is reproduced hereinafter:

"18. This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

19. A four-Judge Bench of this Court in Workmen v. Motipur Sugar Factory (P) Ltd. AIR 1965 SC 1803 held that :

"11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. Ltd. v. Workmen [Indian Iron & Steel Co. Ltd. v. Workmen, AIR 1958 SC 130]) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan [Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan, AIR 1959 SC 923] , Phulbari Tea Estate v. Workmen [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] , and Punjab National Bank Ltd. v. Workmen [Punjab National Bank Ltd. v. Workmen, AIR 1960 SC 160] . These three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Jai Singh [Bharat Sugar Mills Ltd. v. Jai Singh, (1962) 3 SCR 684] , and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co. [Ram Swarath Sinha v. Belsund Sugar Co., 1954 LAC 697] It was pointed out that □the important effect of omission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out□. It is true that three of these cases, except Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111], were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on

the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

20. Subsequently in Delhi Cloth & General Mills Co. v. Ludh Budh Singh [Delhi Cloth & General Mills Co. v. Ludh Budh Singh, (1972) 1 SCC 595] this Court held that : (SCC pp. 615-16, para 61)

"60. ... (1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

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(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence."

21. Reliance is also placed on the judgment of this Court in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813 : 1973 SCC (L&S) 341] wherein the broad principle regarding holding of the enquiry were spelt out as : (SCC pp. 827-29 & 831-32, paras 32 & 40-41)

"32. From those decisions, the following principles broadly emerge:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The

interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Panitole Tea Estate v. Workmen [Panitole Tea Estate v. Workmen, (1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal.

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40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for

the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A.

13. In aforesaid circumstances, when law on issue is very clear and reiterated by Supreme Court time and again, the procedure undertaken by Labour Court concerned, being contrary and in the teeth of judgments passed by Supreme Court, cannot be sustainable. For sake of repetition the principle enunciated by Supreme Court in **Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. (supra)** is again taken into consideration that even a Workman is dismissed or any adverse action is taken against a Workman even without conducting an inquiry, in such case the Labour Court after making a declaration that no inquiry was conducted, an opportunity should be granted to Employer to prove, whether charge can be proved or not and that further proceeding will be initiated only after the Labour Court has taken a decision, whether domestic inquiry was fair or not.

14. In the present case, Labour Court has undertaken both proceedings simultaneously instead of taking one after another and, therefore, an illegality was erupted. Accordingly, impugned award dated 07.01.2026 passed in Adjudication Case No. 279 of 2009, is set aside only to the extent whereby petitioner was not granted opportunity to prove that charge was make out or not. The Court is not interfering decision of Labour Court that domestic inquiry was unfair. The matter is remitted back with direction that Labour Court concerned will provide an opportunity to produce evidence including fresh evidence also from the side of Employer with further opportunity to Workman to cross-examine the same, if so advised. The entire proceedings shall be concluded within a period of three months from today. It is also directed that no party will take any unnecessary adjournments.

15. With aforesaid directions/ observations, the writ petition is disposed of.

(2026) 7 ILRA 2557
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 8491 of 1981

Rama Kant & Ors. **...Petitioner(s)**
Versus
D.D.C. & Ors. **...Respondent(s)**

Issue(s) for consideration

(a) Whether the finding of a prior family partition recorded in a final judgment u/s 176 of the U.P. Z.A. & L.R. Act binds the consolidation courts?
(b) Whether a *Chhitha Batwara* prepared as a memorandum of a prior oral family settlement is required to be registered u/s 17 of the Registration Act?
(c) Whether the SOC and DDC were justified in overturning the Consolidation Officer's acceptance of the family partition?

Headnotes

A. Land Reform Law – Uttar Pradesh Consolidation of Holdings Act, 1953: Section 9-A(2); Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950: Section 176; Registration Act, 1908: Section 17 - The dispute concerned Khata No. 259 (171 bighas 9 biswas) and Khata No. 279 (8 bighas 15 biswas) in Village Pach Pahra, District Hamirpur, alongside other joint holdings in Village Mataudh, District Banda (totaling over 311 bighas). The common ancestor, Bihari Lal, had three sons: Hira Lal (father of Respondent No. 3, Vijay Shanker), Ram Sahai (father of Petitioner No. 1, Rama Kant), and Mohan Lal (father of Petitioners No. 2–5).

After Hira Lal's death, the joint Hindu family mutually partitioned their holdings across both villages on 21.06.1959, via a memorandum (*Chhitha Batwara*) signed by the heads/representatives of all three branches and witnesses, which included dedicating a portion of land to a local temple (*Thakur Ji*). Ram Sahai later filed a partition suit u/s 176. The suit was dismissed on 19.08.1966, on the explicit finding that a valid family partition had already taken place and been acted upon. This finding was upheld in appeal on 05.04.1974.

On 16.01.1975, the CO accepted the mutual family partition and directed division accordingly. The SOC (order dated 14.07.1975 allowed Respondent No. 3's appeal, holding the *Chhitha Batwara* unproved/ineffective, and ordered a fresh partition. The DDC (order dated 28.05.1981) upheld the SOC's decision.

B. Registration of family settlement - The family arrangement may be even oral in which case no registration is necessary; It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement. (Para 15)

The SOC has held that it is correct that there is no necessity for registration of the family settlement but the *Chhitha Batwara* was not taken into consideration on the ground that the same was not proved as well as the same has not been given effect **without considering the finding recorded by the CO as well as the earlier decree passed in the suit u/s 176 of the U.P. Z.A. & L.R. Act.** (Para 16)

The perusal of family settlement demonstrates that all the three branches of the family have given almost equal share in the entire holding situated in the two villages which was just & proper family settlement to divide the family property. It is further material to mention that about 3 bighas of land was already recorded in the name of Thakur Ji and the total land jointly dedicated to the temple came to 19 Bighas 15 Biswas. A separate *Chhitha* signed by all the persons (part of settlement) was also prepared which was filed and is part of the record. The CO has recorded categorical findings of fact that mutual family settlement has been given effect in record as well as on spot as such there was no occasion to interfere with finding of fact recorded by CO. (Para 18)

The impugned orders dated 14.07.1975 passed by respondent no.2/SOC, Hamirpur and 28.05.1981, passed by respondent no.1/Assistant Director of Consolidation are set aside.

Writ petition allowed. (E-4)

Case Law Cited

Kale and Others Vs. Deputy Director of Consolidation and Others, 1976 (3) SCC 119 (Para 15)

List of Acts/Orders

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950; Uttar Pradesh Consolidation of Holdings Act, 1953; Registration Act, 1908.

List of Keywords

family partition, consolidation, mutual, registration, settlement, bona fide, divide, oral, legal claim.

Appearances for Parties

For Petitioner(s): Mr. Ram Kishore Pandey
For Respondent(s): Mr. Rajesh Kumar Tripathi, Sri Kamlesh Kumar Tripathi, Mr. Tarun Gaur, Standing Counsel

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

1. Heard Sri Ram Kishore Pandey, learned counsel for the petitioners, Sri Rajesh Kumar Tripathi as well as Sri Kamlesh Kumar Tripathi, learned counsel for respondent no.3 and Sri Tarun Gaur, learned standing counsel for the state-respondents.

2. Brief facts of the case are that the dispute relates to khata no.259, area 171 bigha 9 biswa; khata no.279, area 8 bigha 15 biswa, situated in village Pach Pahra, Pargana+Tehsil Maudaha, District Hamirpur. In the basic year of the consolidation operation, khata no.259 was recorded in the name of Ram Sahai (father of petitioner no.1), Mohan Lal (father of petitioner nos. 2 to 5) and Vijay Shanker (respondent no.3). Khata no.279 was recorded in the basic year of the consolidation in the name of Vijay Shanker (respondent no.3) in exclusive manner. The admitted family pedigree is mentioned in paragraph no.2 of the writ petition. The admitted family pedigree as mentioned in paragraph no.2 demonstrate that one Bihari Lal had three sons, namely, Hira Lal, Ram Sahai and Mohan Lal. Respondent no.3 is the son of Hira Lal. Petitioner no.1/Rama Kant is the son of Ram Sahai and petitioner nos. 2 to 5 are the sons of Mohan Lal. According to the petitioners, the

aforementioned family was a joint Hindu Family before 1959 and Hira Lal was the karta of the family and the aforementioned joint Hindu Family had agricultural holding in two villages, i.e., village Mataudh, District Banda and village Pach Pahra, District Hamirpur. In village Mataudh, the total area held by the joint family was 131 bigha 18 biswa and in village Pach Pahra, the total area held by the joint family was 180 bigha 4 biswa, total in both the villages, was 311 bigha 2 biswa. After the death of Hira Lal, the family could not remain joint, accordingly, to avoid the dispute, the land of both the villages was mutually partitioned and Chhitha Batwara was prepared on 21.6.1959, showing the land given to each of the co-sharers. The aforementioned Chhitha Batwara was alleged to be signed by Ram Sahai, Mohan Lal and Vijay Shanker. The Chhitha Batwara was alleged to be signed by Sri Lal Bahadur Singh, Sheth Hazari Lal and Vishal Singh. In paragraph no.5 of the writ petition, the particular of the area given to all the three branches of the family as well as temple of Thakur Ji are mentioned. Ram Sahai (father of petitioner no.1) filed a suit under Section 176 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act"), claiming 1/3rd share in the land of village Mataudh. In the aforementioned suit, Mohan Lal (father of petitioner nos. 2 to 5) and respondent no.3/Vijay Shanker were impleaded as defendants. The aforementioned suit was heard and dismissed on 19.8.1966 on the ground that disputed holding had already been partitioned. Ram Sahai filed an appeal which was also dismissed vide judgment dated 5.4.1974. Village Pach Pahra, District Hamirpur came under consolidation operation and objection under Section 9-A(2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") was filed on behalf of respondent no.3/Vijay Shanker, claiming 1/3rd share in plot no.259 and exclusive right in khata no.279 as well as denied family partition between the parties. Ram Sahai (father of petitioner no.1) filed his objection before the Consolidation Officer to the objection filed by respondent no.3/Vijay Shanker, stating that there was a family partition in which 83 bigha 4 biswa of village Pach Pahra and 14 bigha 18 biswa of village Mataudh was given to him in mutual family partition and the parties are in separate possession of their share of the khata in dispute. Issues were framed and parties had adduced oral and documentary evidence in support of their cases. The Consolidation Officer vide order dated 16.1.1975 decided the matter, accepting the matter on mutual family partition between the parties and directed the partition of the share according to earlier partition taken place between the parties. Against the order of the Consolidation Officer dated 16.1.1975, the appeal was filed by respondent no.3 before the Settlement Officer of Consolidation as well as petitioner nos. 2 to 5 have also filed appeal in respect to plot no.2000/4. The Settlement Officer of Consolidation vide order dated 14.7.1975 allowed the appeal of respondent no.3/Vijay Shanker and dismissed the appeal filed by petitioner nos. 2 to 5. Against the order of the Settlement Officer of Consolidation dated 14.7.1975, a revision under Section 48 of the U.P. C.H. Act was filed on behalf of the petitioner which was heard and dismissed vide order dated 28.5.1981. Hence, this writ petition on behalf of the petitioners for the following relief:-

"Issue a writ, order or direction in the nature of certiorari, quashing the judgment and order dated 14.7.1975 (Annexure No.10), passed by respondent no.2 and order dated 28.5.1981 (Annexure No.11), passed by respondent no.1."

3. This Court admitted the writ petition on 10.7.1981 and directed that petitioners shall not be dispossessed from the land in dispute.

4. In pursuance of the order dated 10.7.1981, parties have exchanged their pleadings.

5. Learned counsel for the petitioners submitted that in a suit under Section 176 of the U.P. Z.A. & L.R. Act, the finding was recorded that there was a family partition in the family, as such, the suit for partition cannot be entertained. He submitted that the decree passed in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act, was maintained in appeal, as such, the finding recorded in the suit under Section 176 of the U.P. Z.A & L.R. Act, filed by father of petitioner no.1, will operate as res judicata between the parties. He submitted that the consolidation court cannot hold otherwise in view of the finality of the issue between the parties. He further submitted that respondent no.3/Vijay Shanker was party in the partition suit under Section 176 of the U.P. Z.A. & L.R. Act, as such, the finding recorded in the suit under Section 176 of the U.P. Z.A. & L.R. Act will be binding upon respondent no.3. He also submitted that Chhitha Batwara was prepared by way of memorandum of the family partition, which has already been arrived at and given effect at the spot, as such, registration was not required under the law. He submitted that Chhitha Batwara in respect of the share of Mohan Lal and temple of Thakur Ji were signed by respondent no.3 and others as well as the witnesses, as such, the consolidation court cannot hold that there was partition in the family. He further submitted that respondent no.3/Vijay Shanker was major on 21.6.1959 when Chhitha Batwara was prepared and signed by him. He also submitted that the Deputy Director of Consolidation has failed to consider the finding of the Settlement Officer of Consolidation by which he rejected the School Leaving Certificate filed by respondent no.3/Vijay Shanker. He also submitted that oral and documentary evidence on the question of possession of the respective shares, on the basis of mutual partition, have also been ignored by the consolidation authorities, as such, the impugned order cannot be sustained in the eye of law. He further submitted that the evidence adduced in respect to plot no.2000/4 was also proved which fully demonstrate that claim set up by the petitioners should be allowed but the consolidation authorities have held otherwise in arbitrary manner. He placed paragraph no.11 of the writ petition in which particulars of the documentary evidence adduced before the Consolidation Officer has been mentioned. He also placed the averments made in paragraph nos. 20, 21 and 22 of the writ petition. He further placed the averments of the supplementary affidavit filed in the writ petition in order to demonstrate that the case of the petitioners has not been properly examined by the consolidation authorities. He further placed the averments made in the counter affidavit/supplementary counter affidavit filed on behalf of the respondents in order to demonstrate that there is no proper denial of the averments made in the writ petition as well as in the supplementary affidavit, as such, the averments made in the writ petition as well as well as supplementary affidavit are accepted. He submitted that the impugned orders passed by the Deputy Director of Consolidation and the Settlement Officer of Consolidation should be set aside.

6. On the other hand, learned counsel for private respondent no.3 submitted that respondent no.3 was minor during the period the partition Chhitha was alleged to be prepared as well as the suit under Section 176 of the U.P. Z.A. & L.R. Act was alleged to be filed and dismissed, holding that there was partition in the family. He submitted that the Settlement Officer of Consolidation and the Deputy Director of Consolidation have rightly decided the dispute which requires no interference in exercise of jurisdiction under Article 226 of the Constitution of India. He also submitted that the alleged Chhitha Batwara is not a registered document, as such, no reliance can

be placed upon the same. He submitted that there is no illegality in the exercise of appellate jurisdiction as well as revisional jurisdiction, as such, the instant writ petition should be dismissed.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that khata no.259 was recorded in the name of petitioners and respondent no.3 jointly and khata no.279 was recorded in the name of respondent no.3 in exclusive manner. There is also no dispute about the fact that the Consolidation Officer has decided the objection under Section 9-A(2) of the U.P. C.H. Act, holding that partition had already taken place between the parties. There is also no dispute about the fact that appeal under Section 11(1) of the U.P. C.H. Act filed by respondent no.3 was allowed and the appeal filed by petitioner nos. 2 to 5 in respect to plot no.2000/4 was dismissed. There is also no dispute about the fact that revision filed by the petitioners under Section 48 of the U.P. C.H. Act has been dismissed.

9. In order to appreciate the controversy involved in the matter, the perusal of the issues framed before the Consolidation Officer in the proceeding under Section 9-A(2) of the U.P. C.H. Act will be relevant which are as under:-

“"वादबिंदु।

1. क्या फरीकैन के मध्य मौजा पचपहरा तहसील मौदहा व मौजा मटौंध जिला बाँदा में स्थित भूमि का पारिवारिक समझौता द्वारा बटवारा हो चुका था?

2. क्या फरीकैन पारिवारिक बटवारा मे मिले हुये अपने हिस्से को भूमि पर और उस पर बने हुये कुर्रो के अनुसार काबिज व दाखिल आ रहे है जो कि उपर्युक्त बटवारा आषाढ़ बदी परीवा सम्बद 1016 को हुआ था यदि ऐसा है तो वर्तमान केस मे उसका क्या प्रभाव होगा ?

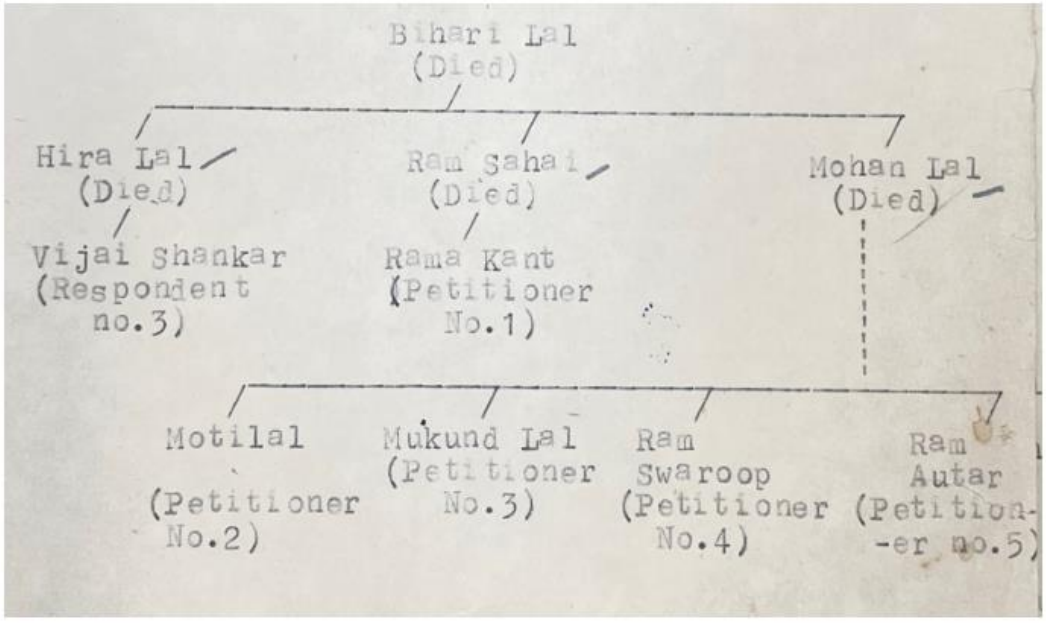
3. क्या फरीकैन अपने पारिवारिक समझौते द्वारा सम्पन्न और बटवारा चिट्ठियाँ उल्लिखित कुर्रो के अनुसार और अपने कुर्रो को भूमि पर गवर्नमेंट से तकाबी लेकर तथा अपने पास रुपया लगा कर किये गये सुधार के कारण चक प्राप्त करने के अधिकारी है?

4. क्या प्रतिवादी सम्बन्धित फरीकैन मुताविक मुकदमा कमिश्नरी झांसी जो अंतिम है स्टापिल के सिद्धान्त से पाबंदी है?

5- क्या आराजी निजाई में विजयशंकर का 1/3 भाग है?

6 क्या आराजी निजाई तनहा विजयशंकर के पिता को तनहा पैदा करता है और सहखातेदारान के नाम फरजी दर्ज है?"

10. The admitted family pedigree of the parties as mentioned in paragraph no. 2 of the writ petition will be also relevant for perusal which is as under:-



11. The Consolidation Officer while considering all the 6 issues, framed before him, has recorded finding of fact that khata in dispute is a joint family property and family partition has already taken place between the parties, accordingly, the Consolidation Officer has divided the share of the parties according to the family partition already taken place.

12. The Settlement Officer of Consolidation while deciding the title appeal, filed by respondent no.3, has held that the alleged Chhitha Batwara is not require to be registered but it is not proved that Chhitha Batwara has been given effect in the record and on spot as such it can be relied upon. The Deputy Director of Consolidation has also maintained the finding of the Settlement Officer of Consolidation while deciding the revision under Section 48 of the U.P. C.H. Act filed by the petitioners.

13. In order to adjudicate the controversy involved in the matter, the perusal of the finding recorded on issues no.1 in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act will be necessary which is as under:-

"In order to prove family partition held in between the plaintiff and defendants 1 and 2 the defendant no. 1 Mohan Lal has filed Batwara Chitthi of the plots which fell in his share.

Plaintiff Ram sahai P.W.1 in his cross examination has shown his ignorance of family partition and Batwara chitthi. The essence of his deposition clearly shows that neither he admitted the fact nor clearly denied it. Had he actually not agreed to the partition and not signed the Batwara Chitthi, he might have definitely asserted about non-occurrence of partition and Batwara Chitthi. The concealment of the fact and assertion to ignorance reveals that there had been family partition among plaintiff and defendant no. 1 and 2 and Batwara Chitthi was written with the consent of the plaintiff and that was signed by the plaintiff along with defendants and the witnesses.

From the statements of D.W.1 nam Sahai D.W. 3 Mohan Lal and DoW. 2 Lal Bahadur Singh (in whose presence the family partition took place) it is clearly evident that the parties were agreed upon in that partition and the Batwara Chrithies regarding their espective shares were prepared and signed by them. The statement of D.W.3 regarding subsequent improvement in the plots acquired as his share has been supported even by the deposition of the plaintiff in his cross-examination. This circumstances also supports the plea of the defendants regarding partition of land holding and the parties accordingly have been acting upon the alleged family partition.

Moreover, the defendant in his written statement has also taken plea that some plots which are joint tenancy of the plaintiff and defendants have not been included in the plaint. Khatauni extract for 1372 to 1374F of village Mataundh shows that the plaintiff and defendants are recorded as tenants but these plots as shown in extract have not been mentioned rather they have been concealed in the plaint. This also leads me to infer that the land shown in the plaint does not contain the entire holding of the parties.

In view of the above discussion I hold that there had been family partition among the parties and according to the terms therein they stated to act upon.

Issue decided in affirmative. The suit suffers defendants and is therefore liable to be dismissed.

Since suit deserves dismissal, it is needless to discuss other issues and the plaintiff is not entitled to any relief."

14. The judgment/decree passed in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act was maintained in appeal by the Additional Commissioner, as such, the Consolidation Officer has rightly held that the partition has already taken place but the Settlement Officer of Consolidation has illegally held that the fresh partition is to be made and the plea of the earlier partition is not proved.

15. So far as the registration of family settlement is concerned, the Apex Court in the case reported in **1976 (3) SCC 119, Kale and Others vs. Deputy Director of Consolidation and Others,** has held in paragraph no.10 as under:-

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation.

In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

16. It is material to mention that the Settlement Officer of Consolidation has held that it is correct that there is no necessity for registration of the family settlement but the Chhitha Batwara was not taken into consideration on the ground that the same was not proved as well as the same has not been given effect without considering the finding recorded by the Consolidation Officer as well as the earlier decree passed in the suit under Section 176 of the U.P. Z.A. & L.R. Act.

17. It is material to mention that according to mutual family settlement the land given to the parties in both the villages were as under :-

Village	Vijai Shankar		Ram Sahai		Mohan Lal		Temple of Thakur Ji	
	Bigha	Biswas	Bigha	Bis.	Bigha	Bis.	Bigha	Biswas
Mataundh	56	10	14	18	43	13	16	17.
Pachpahara	41	16	83	4	54	14	-	
Total	98	6	98	2	98	7	16	17

18. The perusal of abovementioned family settlement demonstrate that all the three branches of the family have given almost equal share in the entire holding situated in the two villages which was just & proper family settlement to divide the family property. It is further material to mention that about 3 bighas of land was already recorded in the name of Thakur Ji and the total land jointly dedicated to the temple came to 19 Bighas 15 Biswas. A separate Chhitha signed by all the aforesaid persons was also prepared which was filed and is part of the record. The Consolidation Officer has recorded categorical findings of fact that mutual family settlement has been given effect in record as well as on spot as such there was no occasion to interfere with finding of fact recorded by Consolidation Officer.

19. Considering the entire facts and circumstances of the case, the impugned order dated 14.7.1975 passed by respondent no.2/Settlement Officer of Consolidation, Hamirpur and 28.5.1981, passed by respondent no.1/Assistant Director of Consolidation are liable to be set aside and the same are hereby set aside.

20. **The writ petition stands allowed.** The order of the Consolidation Officer dated 16.1.1975 is maintained.

21. No order as to costs.

(2026) 7 ILRA 2565
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.07.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 11303 of 1982
With
Writ B No. 14250 of 1982 & 1817 of 2024

Satya Narayan **...Petitioner(s)**
Versus
D.D.C. & Ors. **...Respondent(s)**

Issue(s) for consideration

(a) Whether a member of a joint Hindu family forfeits his/her right to ancestral/joint family property upon renouncing secular life and becoming a *Sanyasi* / *Chela* in a religious *Math*?
(b) Whether the family/heirs of a person, who became a *sanyasi*, later can reclaim ancestral joint family holdings?
(c) Whether the DDC erred in ignoring the prior gift deed (1941), will (1934), and family settlements on record?

Headnotes

A. Land Reform Law – U.P. Consolidation of Holdings Act, 1953: Section 9-A, 11(1) - Khata No. 75 (*Bhumidhari*) and Khata No. 133 (*Sirdari*) located in Village Bahorpur, District Deoria. During the basic year of consolidation operations, these khatas were recorded in the names of Satya Narain Giri and Surya Bhan Giri.

Objections u/s 9-A(2) U.P.C.H. Act: Markandey Giri (Respondent No. 3): Claimed a 13/60th share as a co-parcener/co-tenure holder, asserting the land was ancestral joint family property (*Sir / Khud-kasht / Grove*) acquired by common ancestor Dalmardan Giri.
Udai Bhan & Raj Bhan (Respondents No. 4 & 5): Sons of Markandey Giri, filed a separate objection claiming a 7/30th share.

Defense by Recorded Tenure Holders: Satya Narain Giri and Surya Bhan Giri opposed the claims, contending that Markandey Giri had relinquished his family ties upon becoming a *Chela* of Mahant Raghubir of Chirraiyya Math. Consequently, neither Markandey nor his sons had any legal status or inheritance rights in the joint family property. They also relied on a 1941 registered gift deed and an earlier civil court decree from Suit No. 10 of 1910.

Procedural History:

- **CO (12.11.1974):** Granted co-tenancy rights to Markandey Giri.
- **SOC (20.10.1975):** Reversed the CO's order on appeal, rejecting Markandey's co-tenancy claim and declaring Satya Narain Giri and Surya Bhan Giri as equal (1/2 each) co-tenants.
- **DDC (16.09.1982):** Allowed the revision filed by Markandey, restoring his co-tenancy right to a 1/4th share. This led to cross-writ petitions. (Para 11)

B. A sanyasi can hold no property according to Hindu Law. He cannot get it even if he returns to the world again (Ghose Hibdoo has 2nd Edition P. 224. 781 Mayne Hindu Law. pp 677, 801, 816 - 7th Edition). (Para 14)

Respondent no.3/ Markandey became chela of Mahant Raghubir of Chirraiyya Math, as such, he cannot be granted co-tenancy right in the family of Raghunandan Giri as respondent no.3/ Markandey will get succession as chela of Mahant Raghubir of Chirraiyya Math. **In Suit No.10 of 1910, a decree (dated 03.08.1910) has been passed that Raghubir Jati had ceased to be member of Giri family after he became Mahant Raghubir of Chirraiyya Math and the same principle was applicable in the case of respondent no.3.** Perusal of the civil Court judgement/decree fully demonstrate that Raghubir (father of Markandey) had become Sanyasi as such, Raghubir was deprived to inherit joint family property and suit filed by Raghunandan (father of Satya Narain) was decreed. (Para 7, 15)

SOC considering the entire aspect of the matter has allowed the appeal (filed by petitioner u/s 11(1) of U.P.C.H. Act) and refused the co-tenancy granted to Markandey recording finding of fact that co-tenancy cannot be allowed in favour of respondent no.3/ Markandey as respondent no.3 become chela of Mahant of the Math. A gift deed dated 04.08.1941 and the will-deed dated 29.05.1934 were also taken into consideration by the SOC. The CO as well as DDC have failed to take into consideration the family settlement as well as gift-deed executed by Raghunandan Giri in the year 1941, which was acted upon in accordance with law. The evidence on record has been misread by the CO as well as DDC. (Para 7, 16)

Considering the categorical finding recorded by the SOC as well as the judgement and decree, which has attained finality, respondent no.3 as well as respondent nos.5 & 6 who are sons of respondent no.3 cannot be given co-tenancy as respondent no.3 become chela of Mahant of the Math. (Para 17)

Writ – B No. 11303 of 1982 (Satya Narain Giri): Allowed. The impugned revisional order of the DDC dated 16.09.1982 was set aside, and the order of the SOC dated 20.10.1975 (disallowing co-tenancy to Markandey Giri) was restored and maintained. (Para 18)
Writ – B No. 14250 of 1982 (Markandey Giri & Others): Dismissed.
Writ – B No. 1817 of 2024 (Anand Dev Giri & Another): Allowed. Respondents are permanently restrained from interfering with the petitioners' possession over the disputed khata. (E-4)

List of Acts/Orders

U.P. Consolidation of Holdings Act, 1953.

List of Keywords

mahant, joint, family settlement, hindu law, *sanyasi,* co-tenancy, gift-deed, will, property, consolidation.

Appearances for Parties

For Petitioner(s): Awadh Behari Singh, Kedar Nath Mishra, Mahesh Singh, Ratnatkar Chaudhary, Siddharth Singh, T.P. Singh
For Respondent(s): Amrendra Singh, Arvind Kumar Singh, H.S.N.Tripathi, Kedar Nath Mishra, Neeraj Singh, Neeraj Tripathi, P.S.Tripathi, S.A.Gilani, S.C., Viveknand Yadav

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

1. Heard Mr. A.B. Singh, learned counsel for the petitioner, Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Kedar Nath Mishra, learned counsel for the private respondent and Mr. Tarun Gaur, learned Standing Counsel for the State-respondents in Writ- B No.11303 of 1982.

2. Heard Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Kedar Nath Mishra, learned counsel for the petitioners and Mr. Tarun Gaur, learned Standing Counsel for the State-respondents in Writ- B No.14250 of 1982.

3. Heard Mr. A.B. Singh, learned counsel for the petitioners, Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Kedar Nath Mishra, learned counsel for the private respondent nos.4 to 8 and Mr. Tarun Gaur, learned Standing Counsel for the State-respondents in Writ- B No.1817 of 2024.

4. Common questions of law and facts are involved in all the three writ petitions, as such, all the three writ petitions are clubbed and heard together.

5. Brief facts of the case are that dispute relates to plots of khata nos.75 and 133 situated in village- Bahorpur, district- Deoria. Khata no.75 was bhumidhari khata and khata no.133 was sirdari khata. In the basic year of consolidation operation, the aforementioned khata in dispute were recorded in the name of petitioner- Satya Narain Giri along with the name of Surya Bhan Giri. Against the basic year entry of the khata in dispute, two sets of objections were filed under Section 9-A (2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "U.P.C.H. Act"). First set of objection was filed by respondent no.3- Markandey alleging that khata in dispute was the self acquired property in nature of Sir / Khud-kasht / grove, which was acquired by Dalmardan Giri and the name of Sehdev Giri as well as Mahadev Giri was inherited by Kunj Behari, as such, respondent no.3 is a co-parcener and a member of undivided Hindu family, accordingly, entitled to be recorded as co-tenure holder along with recorded tenure holder, namely, Satya Narain Giri and Surya Bhan Giri having share in the khata in dispute as 13/60. Another set of objection was filed by respondent no.4-Udai Bhan as well as respondent no.5- Raj Bhan both are sons of Markandey alleging that khata in dispute was self acquired property of Dalmardan Giri, accordingly, respondent nos.4 & 5 are entitled to be recorded over khata in dispute having share 7/30. Claim of respondent nos.3, 4 & 5 was contested by the recorded tenure holder, namely, Satya Narain Giri and Surya Bhan Giri stating that respondent no.3 had become chela of Raghubir Jati who was head of the Chirraiyya Math, district- Deoria and he was no longer Giri, as such, legal status of respondent no.3 with the petitioner's family has come to an end. It was also contended by the petitioners before the Consolidation Officer that respondent no.3- Markandey was not Giri and so his sons who are respondent nos.4 & 5 to the instant petition were also not Giri and they are not successor or legal heirs of Raghunandan Giri. It was also contended by the petitioner before the Consolidation Officer that after death of Saha Dev Giri, the interest in the property did not devolve alone on Kunj Behari rather the same devolved on Kunj Behari, Raghunandan (petitioner's father) and Ram Lagan Giri. It was also contended on behalf of petitioners that after death of Kunj Behari, there was some dispute regarding the devolution of his share which has resulted in a mutation case between Raghunandan Giri and Ram Lagan Giri, accordingly, the said dispute was devolved under a family settlement under which 1/2 of the total share of Kunj Behari was given to Surya Bhan Giri and 1/2 share was given to Raghunandan Giri (father of petitioner). It has also been contended on behalf of petitioner that petitioners are in exclusive possession over the land in dispute and recorded over the disputed khata, as such, right of respondent no.3, if any, had ceased by adverse possession and ouster. Before the Consolidation Officer, the parties have adduced evidence in support of their cases. On behalf of petitioners a registered gift-deed dated 4.8.1941 executed by Raghunandan Giri in favour of petitioner no.1 was produced in which it has been mentioned that Markandey had become chela of Mahant Raghubir of Chirraiyya Math and since then he had no connection with the family of Raghunandan Giri. Consolidation Officer vide judgement dated 12.11.1974 decided the aforementioned title objection under Section 9-A (2) of U.P.C.H. Act and

granted co-tennacy right in favour of respondent no.3 and decided the share of the parties. Objection of respondent nos.4 & 5 were rejected. Against the order of Consolidation Officer dated 12.11.1974, appeal under Section 11 (1) of U.P.C.H. Act was filed by petitioners before Settlement Officer of Consolidation. Respondent no.3 also filed an appeal under Section 11 (1) of U.P.C.H. Act as well as respondent nos.4 & 5 have also filed appeal under Section 11 (1) of U.P.C.H. Act before Settlement Officer of Consolidation. All the aforementioned three appeals were clubbed and heard together by Settlement Officer of Consolidation. Settlement Officer of Consolidation vide order dated 20.10.1975 allowed the appeal filed by petitioner setting aside the order of Consolidation Officer and dismissed the appeal filed by respondent nos.3 to 5 as well as divided the share of Suryabhan Giri and Satya Narain Giri as 1/2 & 1/2 each in khata nos.75 & 133. Against the order of Settlement Officer of Consolidation dated 20.10.1975, three revisions, under Section 48 of U.P.C.H. Act were filed before Deputy Director of Consolidation. The Deputy Director of Consolidation vide order dated 16.9.1982 decided the revisions declaring the respondent no.3 as co-tenure holder of khata in dispute of 1/4 share. Hence, Writ-B No.11303 of 1982 has been filed on behalf of petitioner- Satya Narain Giri for the following reliefs:

"i) Issue a writ, order or direction in the nature of certiorary quashing the mudgments and orders dated 16.9.1982 passed by the Deputy Director of Consolidation (Opposite Party no. 1) and the order dated 12.11. 1974 passed by the Consolidation Officer-II (Opposite Party no.2) and contained in annexures 3 and 5 respectively.

(ii) Issue writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect to the aforesaid judgments."

Writ-B No.14250 of 1982 has been filed on behalf of petitioner- Markandey for the following reliefs:

"a) issue writ direction and orders in the natureof certiorari calling for the record of the case and quash the order of the respondent no.2 dated 20-10-1975 in its entirety and the orders of the respondent nos. 1 and 3 dated 12-11-1974 and 16-9-1982 respectively to the extent they are against the petitioners."

Writ-B No.1817 of 2024 has been filed on behalf of petitioners- Anand Dev Giri And Another for the following reliefs:

"I. To issue a writ, order or direction in the nature of mandamus commanding the Respondents to not to interfere in the possession of the petitioner over the land in dispute which has became final between the parties.

II. To issue a writ, order or direction in the nature of Mandamus commanding the Respondent No. 2 to pass any appropriate order on the claim made by the petitioners with regard to interference of the Respondents in possession over the land in dispute in absence of any order passed in their favour within a fix period of time."

6. Parties have exchanged their pleadings in Writ- B Nos.11303 of 1982 & 14250 of 1982.

7. Learned counsel for the petitioner in Writ- B Nos.11303 of 1982 & 1817 of 2024 submitted that respondent no.3/ Markandey became chela of Mahant Raghubir of Chirraiyya Math, as such, he cannot be granted co-tenancy right in the family of Raghunandan Giri as respondent no.3/ Markandey will get succession as chela of Mahant Raghubir of Chirraiyya Math. He further submitted that in Suit No.10 of 1910, a decree has been passed that Raghubir Jati had ceased to be

member of Giri family after he became Mahant Raghubir of Chirraiyya Math and the same principle was applicable in the case of respondent no.3. He further submitted that Settlement Officer of Consolidation has rightly refused the co-tenancy right to respondent no.3 by allowing the appeal filed by petitioner under Section 11 (1) of U.P.C.H. Act. He further submitted that the Consolidation Officer as well as Deputy Director of Consolidation has failed to take into consideration the family settlement as well as gift-deed executed by Raghunandan Giri in the year 1941, which was acted upon in accordance with law. He further submitted that the evidence on record has been misread by the Consolidation Officer as well as Deputy Director of Consolidation, as such, the order passed by the Consolidation Officer and Deputy Director of Consolidation cannot be sustained in the eye of law. He placed the judgement & decree passed in Suit No.10 of 1910 which is annexed as Annexure No.2 in Writ- B No.1817 of 2024 in order to demonstrate that there is no illegality in exercise of jurisdiction by the Settlement Officer of Consolidation refusing co-tenancy right to respondent no.3. He placed reliance upon the following judgements in support of his argument:

"i. 2024 Law Suit (Del) 1349, Bhaktivedanta Book Trust India vs. WWW Friendwithbooks Co.

ii. 1931 LawSuit (All) 5, Chaube Madho Rao vs. Chaube Gur Narain.

iii. (1981) 3 Supreme Court Cases 689, Shri Krishna Singh vs. Mathura Ahir and others."

8. On the other hand, Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Kedar Nath Mishra, learned counsel for the private respondent in Writ- B Nos.11303 of 1982 & 1817 of 2024 as well as learned counsel for the petitioner in Writ -B No.14250 of 1982 submitted that the decree alleged to be passed in Civil Suit 10 of 1910 was fraudulent, as such, no reliance can be placed upon the same. He further submitted that the title objections were rightly filed by private respondent claiming co-tenancy right being member of the family. He further submitted that the Consolidation Officer has rightly granted co-tenancy right to respondent no.3/ Markandey but Settlement Officer of Consolidation has illegally allowed the appeal filed by petitioner setting aside the order of Consolidation Officer and refusing the claim of co-tenancy to respondent no.3. He further submitted that Deputy Director of Consolidation has allowed the claim of co-tenancy but share was not rightly determined, accordingly, Writ- B No.14250 of 1982 has been filed on behalf of Markandey, Uday Bhan and Raj Bhan for granting relief to respondent nos.3, 4 & 5 in accordance with law. He further submitted that there is no provision in Hindu Shastra that once person renounced the world, cannot come back and lead domestic life. He further submitted that the share of the petitioners of Writ- B No.14250 of 1982 has not been rightly determined, as such, the matter should be sent back before Deputy Director of Consolidation to decide the share of the parties in proper manner. He further submitted that the averment made in Writ- B No.14250 of 1982 has not been denied by filing proper counter affidavit, as such, Writ- B No.14250 of 1982 should be allowed treating the averment made in the writ petition as admitted. He further submitted that the Writ-B No.1817 of 2024 filed for mandamus cannot be entertained and liable to be dismissed.

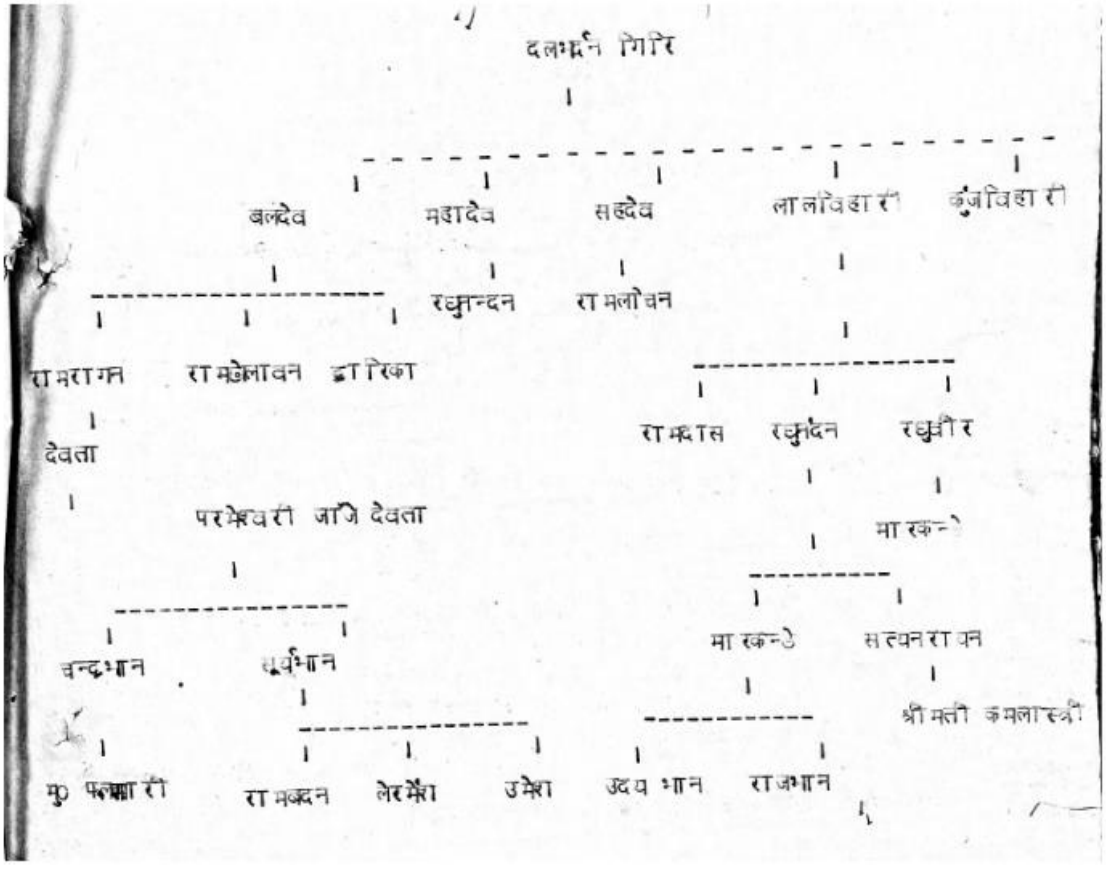
9. Mr. Neeraj Singh, learned counsel appearing on behalf of respondent nos.6, 7, 8, 9 & 10 in Writ- B No.11303 of 1982 and on behalf of respondent nos.5, 9, 10, 11 & 12 in Writ- B No.14250 of 182 submitted that Writ- B No.11303 of 1982 should be dismissed. He further submitted that

there is no illegality in exercise of jurisdiction by the consolidation authorities declaring 1/2 share of Surya Bhan Giri in disputed khata nos.75 & 133.

10. I have considered the argument advanced by learned counsel for the parties and perused the records.

11. There is no dispute about the fact that the dispute under Section 9-A (2) of U.P.C.H. Act filed against the basic year entry was decided by the Consolidation Officer granting co-tenancy of respondent no.3 but in appeal the order of Consolidation Officer was set aside and claim of co-tenancy setup by respondent nos.3, 4 & 5 was refused. There is also no dispute about the fact that the revision filed by respondent nos.3, 4 & 5 was allowed maintaining the order of Consolidation Officer granting co-tenancy in favour of respondent no.3.

12. In order to appreciate the controversy involved in the matter, family pedigree as mentioned in the order of Consolidation Officer will be necessary which is as under:



13. Perusal of the issues framed before the Consolidation Officer will be also necessary, which are as under:

"1-क्या आपत्तिकर्तागण तथा प्रतिवादीगण मुष्तर्का हिन्दू खानदान के सदस्य थे यदि थे तो उसका प्रभाव?

2-क्या मारकन्डे को सहभूमिधर थे और उनका कब्जा चला आ रहा है?

3-क्या उदयभान राजभान गिरि अपने पिता के साथ सह भूमिधर हुए और उनका कब्जा दखल चला आ रहा है?

4-क्या मारकन्डे गिरि है अथवा नहीं?

5-क्या मारकन्डे गिरि दवाभर्दन के खानदान से अपना सम्बंध बैरिया चिरड़या के यहां हो जाने के बाद समाप्त कर लिया?

6-क्या कारकने के लडके उदयभान पति है गिरि?

7-क्या कुंजबिहारी रघुनन्दन रामलगन सहदेव, महादेव गिरि के हिस्से के वारिस थे अथवा कुंजबिहारी गिरि सहदेव महादेव के तनहा वारिस थे

8-क्या रामवचन रमेष गनेष कमला आदि ज्योति कुंज अन्य खातेदारान के साथ विवादित भूमि के सह खातेदार है?

9-क्या मारकन्डे गिरि का स्वस्थ है?

10-क्या कुंजबिहारी रघुनन्दन और रामलगत गिरि के बीच में खानदानी इन्तजाम के अनुसार काबिज दखील है?

11-क्या रघुनन्दन ने अपना हिस्सा सत्यनारायन गिरि के हक में कर दिया यदि हो तो उसका क्या प्रभाव है?

12-क्या मारक के उदयभान गिरि राजमान गिरि के स्वत्व के पिता है?

13-क्या सूर्यभान रघुनन्दन कुंजबिहारी के हिस्से के बराबर वारिस रहे है?

14-क्या पक्षों के खानदान मे चेला की हैसियत से वारिसान होने की प्रथा है?

15-क्या मारकन्डे का स्वत्व बैरिया किरइया मठ के महंत हो जाने के कारण समाप्त हो गया है?

16-क्या सूर्यभान सत्यनारायन गिरि का हिस्सा 1/2 बराबर बराबर है क्या वह तनहा खातेदार है?

17-क्या मारकन्डे उदयभान रामजान का स्वतत्व मियाद के बाहर है?

18-क्या सूर्यभान सत्यनारायन व स्वतव धारा 180 यू० पी० ज० एक्ट और धारा 210 जेड एक्ट के अन्तर्गत पूर्ण हो चुका है, वाद संख्या 359, 360 कन्सालिडेड किया गया वाद संख्या 359 मुख्य वाद रहेगा?"

14. Perusal of the judgement and decree passed in the suit no.10 of 1910 will be also necessary, which are as under:

"In the Court of Addl. Sub-Judge of Gorakhpur Present: B. Harbendhan Lal Saheb, Addl. Sub Judge
Suit No. 10 of 1910
Goshain Raghunandan Giri. ---------- Plaintiff.
Versus
Mahanth Raghubir Jati. ---------- -- Defendant.

The suit is for a declaration that the plaintiff is the owner of and in possession of the property in dispute and that the defendant has nothing to do with it.

The parties to the suit are brothers. They lived jointly and were in possession of the property in dispute as members of the joint Hindu family. Three year ago when defendant left to his home, gave up his connection with his family, left the Grihast Ashram and became a Sanyasi. In Magh 13/14 (January, 1910), he became Chela and lives in Math. Plaintiff allegation is that all the rights which the defendant had in the property was extinguished and the plaintiff alone is in possession; that one Mahabir defendant's karinda interferes in plaintiff's possession hence this suit.

The defendant says that he cannot be deprived of the property although he left the Girhast Ashram and given up all connections:

Issues:

1. Has the defendant any right in the property in dispute and have all his rights been extinguished on account of his having become a Sanyasi?

2. Is the plaintiff entitled to the relief claimed?

FINDINGS

It is admitted that the defendant became a Sanyasi has retired from the world and interest into a religion's life. It is also admitted that he has left all connections with his family and lives in a Math and has given up Girhast Ashram and his connections with his family. The defendant also admits that the plaintiff is in possession of all the property. There is nothing to show the from the time he entered a religions life, he ever remained in possession of any portion of the property and managed it. Defendant's retirement appears to be an absolute one and amounts to a civil death. He has of his own accord abandoned all earthily interests. The facts of the case are admitted, they absolute abandonment by the defendant of all secular property of a complete and final withdrawal from earthly affairs. The defendant having renounced the world all the property rested in him passed to his heirs or to the other embers of the joint family 1e. the Craigtill. ***A sanyasi can hold no property according to Hindu Law. He cannot get it even if he returns to the world again (Ghose Hibdoo has 2nd Edition P. 224. 781 Mayne Hindu Law. pp 677, 801, 816 - 7th Edition). My***

finding on both issues is against the defendant and I hold that the plaintiff is entitled to the relief claimed.

The plaintiff's claim is therefore decreed with costs.

Sd / Illegible
03.08.1910"

15. Perusal of the civil Court judgement / decree dated 3.8.1910 as quoted above fully demonstrate that Raghubir (father of Markandey) had become Sanyasi as such, Raghubir was deprived to inherit joint family property and suit filed by Raghunandan (father of Satya Narain) was decreed.

16. Settlement Officer of Consolidation considering the entire aspect of the matter has allowed the appeal and refused the co-tenancy granted to Markandey recording finding of fact that co-tenancy cannot be allowed in favour of respondent no.3/ Markandey as respondent no.3 become chela of Raghunandan Giri of the Math. A gift deed dated 4.8.1941 and the will-deed dated 29.5.1934 were also taken into consideration by the Settlement Officer of Consolidation in holding that respondent no.3 cannot be given co-tenancy after becoming chela of the Mahant in the Math.

17. Considering the categorical finding recorded by the Settlement Officer of Consolidation as well as the judgement and decree passed by the Civil Court in Suit no.10 of 1910, which has attained finality, respondent no.3 as well as respondent nos.5 & 6 who are sons of respondent no.3 cannot be given co-tenancy as respondent no.3 become chela of Mahant of the Math.

18. Considering the entire facts and circumstances of the case, the impugned revisional order dated 16.9.1982 passed by Deputy Director of Consolidation in Writ- B No.11303 of 1982 is liable to be set aside and same is hereby set aside.

19. **The *Writ- B No.11303 of 1982 is accordingly allowed* and order passed by the Settlement Officer of Consolidation dated 20.10.1975 is hereby maintained.**

20. ***In view of the above, the Writ- B No.14250 of 1982 filed by petitioner-Markandey is dismissed considering the fact that Writ- B No.11303 of 1982 filed by Satya Narain has been allowed on merit maintaining the order of Settlement Officer of Consolidation.***

21. ***The Writ- B No.1817 of 2024 filed by petitioners- Anand Dev Giri and another is allowed and respondents are restrained from interfering with the possession of the petitioners with respect to the khata in dispute in any manner.***

22. No order as to costs.

(2026) 7 ILRA 2574
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.07.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 2466 of 2023

Lohia Developers (India) Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

When do land acquisition proceedings stand legally "initiated" under the Land Acquisition Act, 1894? Does the mere internal dating/proposal of a notification on 27.12.2013 constitute initiation, or does initiation occur upon actual publication in the Official Gazette / newspapers?

(b) Whether land acquisition proceedings where Section 4(1) publication occurred *after* 01.01.2014 (the date on which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force repealing the 1894 Act) are *void ab initio* and non-est in law?

(c) Whether saving provisions protect acquisition proceedings that were published after the 1894 Act had already been repealed?

Headnotes

A. Land Reform Law – Land Acquisition Act, 1894: Section 4(1); Rajasthan Land Acquisition Act: Section 4 - On 05.02.2007, the petitioner purchased land measuring 0.5020 hectares out of Khasra No. 431P situated at Village Aahmamau, Tehsil Sarojni Nagar, District Lucknow, via a registered sale deed from recorded tenure holders. A notification u/s 4(1) of the Land Acquisition Act, 1894 was internally signed/dated 27.12.2013 for a total area of 2.737 hectares (including 0.720 hectares of Khasra No. 431P). Newspaper Publication was in Hindi dailies *Dainik Jagran* on 02.01.2014 and *Amar Ujala* on 03.01.2014. Published in the U.P. Official Gazette on 04.01.2014. Public Announcement/Munadi was Carried out and published in the Official Gazette on 06.06.2014. Section 6 Declaration was issued u/s 6 r/w Section 17 of the 1894 Act on 23.01.2015. Award declared on 13.07.2016 and subsequently amended on 02.12.2022. Physical possession of the land was never taken from the petitioner, nor was any compensation paid or received.

B. Point of initiation of acquisition proceedings under the 1894 Act is the issuance and publication of the Section 4(1) notification in the Official Gazette. (Para 27, 28, 31)

Merely putting the date "27.12.2013" on an internal draft/notification does not amount to initiation. Because newspaper publications occurred on 02.01.2014/03.01.2014 and Gazette publication took place on 04.01.2014, the acquisition proceedings were legally initiated after 01.01.2014. (Para 40)

C. Effect of Repeal (Section 114 of 2013 Act) - The 1894 Act stood completely repealed with effect from 01.01.2014 pursuant to Section 114 of the 2013 Act. Section 24(1) of the 2013 Act saves/regulates only those acquisition proceedings that were legally initiated under the 1894 Act prior to 01.01.2014. Section 6 of the General Clauses Act, 1897 protects accrued rights, liabilities, or proceedings already instituted under a repealed law prior to repeal. It does not authorize the fresh institution of proceedings under a dead/repealed statute after its repeal date. (Para 42 to 47)

Proceedings initiated under a repealed law after 01.01.2014 are without jurisdiction, null, and *void ab initio*. In the case at hand not only the date of notification u/s 4(1) but also the date of notification/declaration u/s 6 r/w Section 16 is subsequent to 01.01.2014 and all the proceedings under Act, 1894 have been held after 01.01.2014, therefore, the entire acquisition proceedings are a nullity in the eyes of law as they have neither been initiated nor undertaken under the Act, 2013 which was the law applicable on and after 01.01.2014. (Para 48, 49)

D. Delay & Laches - The LDA argued that the petition was barred by delay as the notification was issued in 2013/2014 and challenged in 2023. The Court rejected this objection, holding that **an acquisition proceeding initiated under a repealed enactment is a fundamental jurisdictional nullity (*coram non judice*), which can be challenged whenever enforced, especially when the owner remains in continuous physical possession.** (Para 53)

Acquisition proceedings are for construction of a 45 meter public road i.e. for a public purpose, though, they have remained pending since 2014. The total land which has been acquired is only about 2.737 hectares which is not a large tract of land and as regards the land of the petitioner which is part of acquired land, it is only 0.5020 hectares, therefore, instead of quashing the acquisition proceedings **equities need to be balanced in a way so that on the one hand the public purpose behind the acquisition is not defeated and on the other hand the violation of valuable rights of the petitioner is suitably compensated.** This can be done if the concerned opposite parties pay compensation under the Act, 2013 to the petitioner based on the rates etc. acceptable as on date of this judgment and not on the basis of date of the impugned notification of 2014 u/s 4(1) referred earlier. (Para 54)

Writ petition disposed of. (E-4)

Case Law Cited

1. Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129 (Para 16)
2. Indrapuri Griha Nirman Sahkari Samiti Ltd. Vs. State of Rajasthan, (1975) 4 SCC 296 (Para 25)
3. Laxman Lal Vs. State of Rajasthan, (2013) 3 SCC 764 (Para 25)
4. Haryana State Industrial and Infrastructure Development Corporation Ltd. and Ors. Vs. Deepak Aggarwal and Ors., (2023) 6 SCC 512 (Para 25)
5. V.K.M. Kattha Industries (P) Ltd. Vs. State of Haryana, (2013) 9 SCC 338 (Para 26)
6. Khub Chand and Ors. Vs. State of Rajasthan and Ors., AIR 1967 SC 1704 (Para 27)
7. Babu Barkya Thakur Vs. State of Bombay, AIR 1960 SC 1203 (Para 29)
8. M/s Fomento Resorts And Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, (1985) 2 SCC 152 (Para 30)
9. Collector (District Magistrate) Allahabad and Anr. Vs. Raja Ram Jaiswal, (1985) 3 SCC 1 (Para 33)
10. Somavanti Vs. State of Punjab, AIR 1963 SC 151 (Para 33)
11. State of Mysore Vs. Abdul Razak Sahib, (1973) 3 SCC 196, (Para 33)
12. Narendrajit Singh and Anr. Vs. State of U.P. and Anr., (1970) 1 SCC 125 (Para 36)
13. Urban Improvement Trust, Udaipur Vs. Bheru Lal & Ors., (2002) 7 SCC 712 (Para 37)
14. Sandeep S. Metange and Ors. Vs. State of Maharasthra and Ors., 2022 (1) Mh.L.J. 146 (Para 38)
15. Universal Cans & Containers Ltd. Vs. Union of India, 1991 SCC OnLine Del 784 (Para 39)
16. India Tobacco Co. Ltd. Vs. Commercial Tax Officer, Bhavanipur and Ors., (1975) 3 SCC 512 (Para 43)
17. Kolhapur Canesugar Works Ltd. Vs. Union of India, (2000) 2 SCC 536 (Para 43)
18. Gajraj Singh Etc. Vs. The State Transport Appellate Tribunal and Ors., (1997) 1 SCC 650 (Para 43)
19. State of Punjab and Ors. Vs. Bhajan Kaur and Ors., (2008) 12 SCC 112 (Para 44)

List of Acts/Orders

Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Rajasthan Land Acquisition Act.

List of Keywords

acquisition, compensation, notification, official gazette, void, delay, equities, public purpose, nullity, publication.

Appearances for Parties

For Petitioner(s): Gaurav Kumar Hasani, Abhinav Nath Tripathi, Amrendra Nath Tripathi, Vijay Nandan Mani Tripathi

For Respondent(s): C.S.C., Ratnesh Chandra

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Amrendra Nath Tripathi, learned Senior Counsel assisted by Shri Sanjeev Kumar Mishra, learned counsel for the petitioner, Shri Ratnesh Chandra, learned counsel for the Lucknow Development Authority and Ms. Isha Mittal, learned Additional Chief Standing Counsel for the State.

2. The petitioner herein seeks the following reliefs:-

"i) Issue writ, order or direction in the nature of Certiorari for quashing the impugned notification issued under Section 4(1) of the Land Acquisition Act, 1894 dated 27.12.2013 published on 04.01.2014 (Annexure No. 1) and impugned declaration under Section 6(1) of the Land Acquisition Act, 1894 dated 23.01.2015 (Annexure No. 2), with respect to the land of the Petitioner bearing Khasra No. 431P, admeasuring area 0.5020 hectare situated at Village ' Aahmamau, Tehsil ' Sarojni Nagar, District ' Lucknow;

Or

Issue appropriate writ, order or direction to declare the acquisition of part of Khasra No. 431P admeasuring are 0.5020 situated at Village ' Aahmamau, Tehsil ' Sarojni Nagar, District ' Lucknow, i.e. land of the Petitioner, stood as lapsed;

(ii) Issue writ, order or direction in the nature of Mandamus commanding the Respondents not to interfere with the possession of the Petitioner over the land in question bearing Khasra No. 431P, admeasuring are 0.5020 hectare situated at Village ' Aahmamau, Tehsil ' Sarojni Nagar, District ' Lucknow, during the pendency of this writ petition."

3. The petitioner purchased land measuring 0.5020 hectares forming part of Khasra No. 431P situated at Village' Aahmamau, Tehsil ' Sarojni Nagar, District ' Lucknow vide registered sale deed dated 05.02.2007 from the recorded tenure holders. A notification dated 27.12.2013 for acquisition of the said land was published in Hindi daily newspaper Dainik Jagran on 02.01.2014 and in Hindi Newspaper Amar Ujala on 03.01.2014 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act, 1894'). The said notification dated 27.12.2013 was then published in the Official Gazette of the Government of Uttar Pradesh on 04.01.2014. A public notice/munadi/announcement in respect of the aforementioned notification was published in the Official Gazette of the Government of U.P. on 06.02.2014 and munadi/announcement was accordingly carried out on the said date. A declaration under Section 6 read with Section 1 of the Act, 1894 was issued on 23.01.2015. Award in respect of the land in question was declared on

13.07.2016 which was amended on 02.12.2022. These facts are admitted to the opposite parties in their counter affidavits.

4. The total area of the land which was the subject mater of the aforesaid notifications measured 2.737 hectares including 0.720 hectares of land comprising Khasra No. 431-P.

5. The question which falls for our consideration is as to whether the land acquisition proceedings under the Act, 1894 had commenced prior to 01.01.2014 which is the date on which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act, 2013') came into force thereby repealing the old Act, 1894 and also as to what it is the application of saving clause contained in Section 6 of the Act, 1897, if any, in this context; whether aforesaid notifications under the Act, 1894 were published after repeal of the said enactment by Section 114 of the Act, 2013 or not, if so, what are the consequences in law as to validity of acquisition proceedings held as a consequence thereof.

6. The submission of Shri Amrendra Nath Tripathi, learned Senior Counsel assisted by Shri Sanjeev Kumar Mishra, learned counsel for the petitioner was that the entire exercise of acquisition has been undertaken under a repealed enactment, therefore, it is void ab initio. The award was initially rendered in 2016 which was amended in 2022 based on the acquisition proceedings under a repealed enactment, therefore, none of it is sustainable.

7. It was also his submission that even on the basis of the repealed enactment the acquisition proceedings are not sustainable, firstly, because the timeline prescribed in Section 6 of the Act, 1894 was violated. Secondly, the award was rendered more than two years after the relevant notification, therefore, it was also hit by Section 11-A of the Old Act, 1894 which in any case stood repealed.

8. He invited our attention to averments made in Para 21 and 24 of writ petition specifically stating the physical possession of the land has not yet been taken from the petitioner nor compensation has been received, which according to him, have not been denied in counter affidavit of opposite party no. 4- Special Land Acquisition Officer nor of the Lucknow Development Authority.

9. Per contra Ms. Isha Mittal, learned Additional Chief Standing for the State tried to justify the impugned acquisition on the basis of the notification being dated 27.12.2013 and also a Government Order dated 13.07.2016.

10. Shri Ratnesh Chandra, learned counsel for Lucknow Development Authority submitted that the writ petition was delayed and as, the acquisition proceedings had been initiated way back in 2013/14 and we are now in 2026, therefore, this Court should decline to exercise its extraordinary jurisdiction in the matter. On the merits of issue he submitted that merely because notifications were published whether it be in the newspapers or the Official Gazette or the public notice was after 01.01.2014 did not mean that the acquisition proceedings had not been initiated prior to it, as, the proposal/exercise for acquisition had started much prior to 01.01.2014 and that is how the

notification is also dated 27.12.2013, but, he could not deny the fact that the publication of the notification referred in Section 4(1) took place after 01.01.2014.

11. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act, 2013') was formulated by the Parliament and undisputedly came into force on 01.01.2014 by a Notification of the Central Government in the Official Gazette referable to Section 1(3) thereof. Section 114 of the Act, 2013 reads as under:-

***"114. Repeal and saving**.- (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.*

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

12. Apparently, the Act, 1894 stood repealed by the aforesaid Act subject to the saving clause contained in Section 6 of the General Clauses Act, 1897. Section 6 of the General Clauses Act, 1897 reads as under:-

***"6. Effect of repeal.-** Where this Act, or any [Central Act]'or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

***6-A. Repeal of Act making textual amendment in Act or Regulation**.- Where any [Central Act]'or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act]"or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."*

13. In this context, we may also refer to Section 24 of the Act, 2013 which deals with certain cases when land acquisition process under Act, 1894 shall be deemed to have lapsed. Section 24 of the Act, 2013 reads as under:-

"24. Land acquisition process under Act No. 1 of 1894'shall be deemed to have lapsed in certain cases.- *(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-*

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

14. It is only in Section 24(1) of the Act, 2013 that the word **'initiated'** has been used by the Legislature in the context of initiation of land acquisition proceedings under the Act, 1894 otherwise the said word has not been used nor defined in the Act, 1894 nor for that matter in the Act, 2013.

15. According to Sub-section (1) of Section 24 of the Act, 2013- notwithstanding anything contained in the said Act, in any case of land acquisition proceedings **'initiated'** under the Act, 1894, (a) where no award under Section 11 of the Act, 1894 has been made, then, all provisions of the Act, 2013 relating to the determination of compensation shall apply; or (b) where an award has been rendered under Section 11 of the Act, 1894, then such proceedings shall continue under the provisions of the said Land Acquisition Act i.e. Act, 1894, as if the said Act has not been repealed.

16. Sub-section (2) of Section 24 of the Act, 2013 came up for consideration before a Five Judges Bench of Hon'ble the Supreme Court in the case of **Indore Development Authority Vs. Manoharlal and Ors.** reported in **(2020) 8 SCC 129,** however, we are not much concerned with Sub-section 2 of Section 24 of the Act, 2013.

17. Sub-section (1) of Section 24 of the Act, 2013 would be of relevance only to ascertain as to whether land acquisition proceedings were initiated under the Act, 1894 in the case at hand or not so as to consider as to how far, if at all, Section 24 of the Act, 2013 would apply and if it does not apply, then, what would be the consequence upon validity of the acquisition proceedings initiated under the Act, 1894, if it was done after 01.01.2014; whether it would be ab initio void.

18. In this context we have considered the scheme of the Act, 1894 to ascertain as to what is the point of initiation of acquisition proceedings under the said enactment in the light of various

decisions on the subject. In this context we may refer to Part II of the Act, 1894, the heading 'Acquisition' and the sub-heading 'Preliminary Investigation' . Section 4 occurring in the said part reads as under:-

"4. Publication of preliminary notification and powers of officers thereupon.- *(1) Whenever it appears to the appropriate Government'that land in any locality is needed or'is likely to be needed for any public purpose or for a company,'a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).*

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen,-
to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so."

19. On a bare reading of the aforesaid provision what comes out is that whenever it appears to the appropriate Government-that land in any locality is needed or-is likely to be needed for any public purpose or for a company,-a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being referred to thereafter as the date of publication of the notification), meaning thereby, the date of last of the three notices/ publications referred earlier would be the date of publication of the notification under Section 4(1) of the Act, 1894.

20. It is only thereafter that it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants or workmen - to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle: provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling-house

(unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so. The aforesaid is evident from a reading of Sub-section (2) of Section 4 of the Act, 1894, therefore, any preliminary investigation as to the investigation can be undertaken by any officer of the appropriate Government only after the date of publication of notification under Section 4(1) of the Act, 1894 which has to be last of the dates of such publication and the giving of public notice as referred therein. Prior to the aforesaid, it can not be said that the land acquisition proceedings have been initiated.

21. Thereafter, under Section 5 of the Act, 1894 the officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district, and such decision shall be final.

22. Section 5-A of the Act, 1894 deals with objections to the acquisition of land or of any land in the locality and the procedure for hearing and disposal of such objections.

23. Section 6 of the Act, 1894 deals with declaration of intended acquisition. According to Sub-section (1) of Section 6 subject to the provisions of Part VII of the Act, 1894 when the appropriate Government'is satisfied, after considering the report, if any, made under section 5-A sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some other officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4 sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A sub-section (2). Other provisions are also contained in Section 6 which are not very relevant for our purposes.

24. The question as to when are land acquisition proceedings initiated under the Act, 1894, including the question as to whether such initiation is by a notification under Section 4(1) or on a declaration under Section 6 of the Act, 1894, has been considered in various decisions.

25. In ***Indrapuri Griha Nirman Sahkari Samiti Ltd. Vs. State of Rajasthan*** reported in ***(1975) 4 SCC 296*** a Constitution Bench of Hon'ble the Supreme Court held that land acquisition proceedings commence with the notification under'Section 4'of the Act. Though, the Constitution Bench in the said case was considering the Rajasthan Land Acquisition Act, however, another Bench of Hon'ble the Supreme Court in the case of ***Laxman Lal v. State of Rajasthan reported in (2013) 3 SCC 764*** has held that Section 4 of the Rajasthan Land Acquisition Act is identical to Section 4 of the Act, 1894, just as Section 6 thereof is similar to Section 6 of the Act, 1894, therefore, the aforesaid declaration by the Constitution Bench in the context of Section 4 of the Rajasthan Land Acquisition Act would apply on all its fours to the scheme of the Act, 1894 as has been held by a three Judges Bench of Hon'ble the Supreme Court in a case ***(2023) 6 SCC 512; Haryana State Industrial and Infrastructure Development Corporation Ltd. and Ors. Vs. Deepak Aggarwal and Ors.*** Para 17 and 18 of the judgment in the case of ***Deepak Aggarwal*** (supra) are quoted hereinbelow:-

"17. In Indrapuri Griha Nirman Sahakari Samiti 'case a Constitution Bench held thus: (SCC p. 297, para 12)

'12. Land acquisition proceedings commence with the notification under'Section 4'of the Act.'

It is true that the Constitution Bench in Indrapur case was not considering the question whether it is issuance and publication of a notification under' Section 4(1)' of the LA Act or the declaration that the land is required for public purpose under'Section 6'of the LA Act, that tantamounts to initiation or commencement of the 'land acquisition proceedings under' the LA Act. In fact, the Constitution Bench was considering the challenge against the notifications under Sections 4'and'6'of the Rajasthan Land Acquisition Act, 1953. But then, a two-Judge Bench of this Court in Laxman Lal v. State of Rajasthan' held that LA Act and Section 6 of Rajasthan Land Acquisition Act is similar to'Section 6'of the L.A. Act.

18. Therefore, the declaration of the position of 'Section 4'of the LA Act by the Constitution of Bench in Indrapur case that land acquisition proceedings commence with the notification under 'Section 4'of the Act cannot be ignored neither on the ground that it was held so while considering the said provisions in the Rajasthan Land Acquisition Act nor on the ground that it was not made upon consideration of the question as to whether it is'Section 4'or'Section 6 of the LA Act that marks the point of initiation of land acquisition proceedings under the 'LA Act.'

26. In ***V.K.M. Kattha Industries (P) Ltd. Vs. State of Haryana reported in (2013) 9 SCC 338*** after considering the provisions of Sections 4, 5-A and 6 of the Act, 1894, a three Judges Bench of Hon'ble the Supreme Court held that among the above provisions, Section 4 of the Act empowers the appropriate Government to initiate proceedings for the acquisition of land. It was so held while considering the contention of the appellant that publication of notification under Section 4(1) of the Act, 1894 was not in accordance with the mandate provided in the statute and while looking into the scheme of the Act, 1894 for answering the same.

27. The Supreme Court of India in an earlier decision reported in ***AIR 1967 SC 1704; Khub Chand and Ors. Vs. State of Rajasthan and Ors***. held that the notification/ public notice referred in Section 4 of the Act, 1894 was mandatory and that the provisions of a statute conferring power on the Government to compulsorily acquire lands have to be strictly construed. Noticing the language used in Section 4 Sub-section (1) of the Act, 1894 it held that the object underlying the said provision is obvious. Under Sub-section (2) of Section 4 of the Act, after such a notice was given as is referred in Sub-section (1) of Section 4, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have to clear notice of the intended entry which is obviously a reference to the notice under Sub-section (1) of Section 4.

28. It was further observed in ***Khub Chand*** (supra)' the fact that the owner may have notice of the particulars of the intended acquisition under Section 5(2) does not serve the purpose of Section 4, for such a notice shall be given after the appropriate officer or officers enter the land and submit the particulars mentioned in Section 4. The objects of the two sections was held to be different. The object of one, section 4(1), was to give intimation to the person whose land is sought to be acquired, of the intention of the officer to enter his land before he does so and that of the other

[Section 4(2)] was to enable him to know the particulars of the land which is sought to be acquired. The Supreme Court emphasized the use of the word 'thereupon and shall be lawful' under Section 4(2) to hold that the said expression indicated that unless such a public notice [as is referred in Section 4(1)] is given, the officer or his servants cannot enter the land. It is a necessary condition for the exercise of the power of entry.

29. In this context it considered an earlier Constitution Bench decision rendered in the case of ***Babu Barkya Thakur Vs. State of Bombay reported in AIR 1960 SC 1203*** as also the issue involved in the said case as to whether an omission in the notification under Section 4 to mention the public purpose could be validated by a subsequent declaration in Section Section 6 under the Act, 1894 and held that observations made in the said case can not be an authority for the position that, if a public notice of the notification was not given as prescribed in Section 4, it can be ignored. From a reading of the judgment in ***Khub Chand*** (supra) it is evident that it is a notification under Section 4(1) which is starting point of acquisition proceeding under the Act, 1894.

30. In the case of ***Deepak Aggarwal*** (supra) also the Supreme Court considered the decision of ***Babu Barkya Thakur's case*** (supra) as referred in a subsequent decision in ***M/s Fomento Resorts And Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others reported in (1985) 2 SCC 152,*** and held that a careful scanning of all the decisions cited by both sides would thus reveal that all those decisions hold that land acquisition proceedings under the'L.A. Act begin with the publication of a notification under sub-section (1) of'Section 4. A declaration under'Section 6'of the L.A. Act is one of the steps under the'L.A. Act'which ultimately culminates into the conclusion of the proceedings by making an award and taking over possession of the acquired land. A declaration under'Section 6'cannot be made without holding an inquiry unless urgency clause under'Section 17'is applied. Publication of a notification under sub-section (1) of'Section 4'of the L.A. Act is condition precedent for taking further steps. Hence, such a notification is the starting point of acquisition proceedings under the 'L.A. Act. The initiation of the proceedings is by the publication of the notification under sub-section (1) of'Section 4'of the L.A. Act. Thus, it clearly opined that a notification under Section 4(1) of the Act, 1894 is the starting point of the acquisition proceeding under the said enactment and that initiation of proceedings is by publication of the notification under Section 4(1) of the Act, 1894.

31. Thereafter, in the case of ***Deepak Aggarwal*** (supra) it proceeded to consider the meaning of the word **'initiated'** used in Section 24(1) of the Act, 2013 keeping in mind the context in which it has been used and also keeping in mind the law that all interpretations must subserve and help implementation of the intention of the Act concerned. After referring to the object behind enactment of the Act, 2013, Article 300-A etc. and also taking into consideration the dictionary meaning of the word 'initiated' as defined in Webster's Third New International Dictionary and Shorter Oxford English Dictionary, it opined as under:-

'33. The words 'initiate' or 'initiated' are not defined under the'LA Act'and also under the 2013 Act. Hence, to ascribe its meaning the dictionary meaning of the word has to be looked into. In Webster's Third New International Dictionary, the word 'initiate' has inter alia been defined thus:

'to begin or set going: make a beginning of: perform or facilitate the first actions, steps, or stages of:'

In Shorter Oxford English Dictionary the word 'initiate' is defined as:

'to begin, commence, enter upon, to introduce, set going, originate.'

34. In the light of the above discussion and taking note of the legislative intention we have no hesitation to hold that the point of initiation of land acquisition proceedings under the'LA Act'for the purpose of'Section 24(1)'of the 2013 Act, is issuance and publication of'Section 4(1)'notification in the Official Gazette of the appropriate Government.

35. We think it only befitting to supplement further reasons for supporting our conclusion as above. A perusal of'Section 4'of the LA Act would reveal that a preliminary Notification under'Section 4(1)'is issued whenever it appears to the appropriate Government that land in any locality is needed or likely to be needed for any public purpose. The said formal expression of the decision takes concrete shape and forms only on its publication in the Official Gazette. It is only upon issuance and publication of a notification under'Section 4(1)'that any officer, either generally or specially authorised by the appropriate Government and his servants and workmen could lawfully enter upon and survey and take levels of any land in such locality in terms of sub-section (2) thereof.

36. In the'circumstances, it is only worthy to refer to'Section 4'of the LA Act as a whole. They read thus:

"4. Publication of preliminary notification and power of officers thereupon. - *(1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].*

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;'

37.'Section 4(2)'would reveal that besides entering upon and surveying and taking levels of any land in the locality concerned, the officer authorised by the Government through the Notification 'is also empowered to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for all purposes; to set out the boundaries of the land proposed to be taken and the intended line of work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches and such other activities mentioned under sub-Section (2) thereof. In such circumstances, the fact is that it is the issuance and publication of'Section 4(1)'notification that will empower the authorised officer and workmen

to enter into and do such permissible acts and activities. This fact was noted in Babu Barkya Thakur's case as well.

38. In Shiv Kumar Vs. Union of India a three-Judge Bench of this Court held that a purchaser of land in respect of which notification under 'Section 4(1)' of the LA Act issued and published (after the issuance of 'Section 4' notification under the 'LA Act) did not acquire any right in the land concerned and such sale is ab initio void and such a person would have no right to claim that land under the policy of law. 'Section 23'of the LA Act deals with matters to be considered in determining compensation. Going by 'the said provision, the market value of the land in question was to be decided taking the market value at the date of the publication of the notification under 'Section 4. Going by the settled position, a vital defect in the 'Section 4(1)'notification under the 'LA Act' cannot be cured by issuing and publishing a declaration under 'Section 6'of the LA Act and in such circumstances, it would entail annulment of both the notifications and also the acquisition proceedings. All the aforesaid aspects would reveal that issuance and publication of a valid'Section 4(1)'Notification, was the foundation for acquisition of land in any locality under the'LA Act. All the above reasons will fortify our conclusion and justify the rejection of the contention that'Section 4(1)'notification is nothing but a mere formality and got no real relevance or importance in the process of land acquisition under the'LA Act."

32. The aforesaid decision in ***Deepak Aggarwal*** (supra) is relevant to the question before us as it helps us understand the date/ point of initiation of acquisition proceedings under the Act, 1894.

33. We may in this context also refer to a decision reported in ***(1985) 3 SCC 1; Collector (District Magistrate) Allahabad and Anr. Vs. Raja Ram Jaiswal,*** wherein, the decision in the case of ***Khub Chand*** (supra) was considered. ***Raj Ram Jaiswal's case*** (supra) noticed that ***Khub Chand's case*** (supra) distinguished the decision in ***Babu Barkya Thakur*** (supra) and it approved the statement contained in ***Somavanti Vs. State of Punjab reported in AIR 1963 SC 151*** that a valid notification under Sub-section (1) of Section 4 is a condition precedent to the making of a declaration under sub-section (1) of Section 6. Hon'ble the Supreme Court in Raj Ram Jaiswal's case (supra) observed that this view had been consistently followed and was approved in State of Mysore Vs. Abdul Razak Sahib reported in (1973) 3 SCC 196, wherein, it was observed that 'in the case of a notification under 'Section 4' of the Land Acquisition Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the 'Land Acquisition Act' cannot be said to have been complied with. The publication of a notice in the locality is a mandatory requirement'.'

34. Para 16 of ***Raja Ram Jaiswal 's case*** (supra) is relevant in the context of the issues involved before us and it reads as under:-

"16. Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows. In 'Mahendra Lal Jaini v. The State of Uttar Pradesh & Ors.(2) it was held that a notification under 'Sec. 4A' of

the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a notification under 'Sec. 4. Therefore assuming that a notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision .'Sec. 4 (1)'further requires that 'the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.' The expression 'such notification.' in the latter part of 'Sec. 4 (1)'and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification under'Sec.4 (1)'and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. 'The submission of Mr. Kacker does not commend to us."

35. Clearly, Hon'ble the Supreme Court held that even assuming that a notification under Section 4(1) is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. It considered the language used in Sub-section (1) of Section 4 and the sequence of events enumerated therein to hold that same clearly spelt out that first the Government should reach a decision to acquire land, then publish a notification under'Section 4 (1)'and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. This is relevant in the context of the assertion of the opposite parties that the notification under Section 4(1) is dated 27.12.2013 and is prior to coming into force of the Act, 2013 i.e. prior to 01.01.2014, because preparing a notification and keeping it on file by itself is of no legal significance with regard to initiation of acquisition proceedings under the Act, 1894 and it would at best be remain a paper decision as held by in the case of ***Raja Ram Jaiswal*** (supra).

36. In the case of ***Narendrajit Singh and Anr. Vs. State of U.P. and Anr. reported in (1970) 1 SCC 125*** also the Supreme Court in a matter arising out of a decision of the Allahabad High Court, held, after considering the provisions of the Act, 1894, that the process of acquisition must start with a notification under Section 4. Issuance of notification under Section (1) of Section 4 is a condition precedent to the exercise of any further powers under the Act.

37. In a decision reported ***in (2002) 7 SCC 712; Urban Improvement Trust, Udaipur Vs. Bheru Lal & Ors.*** the Supreme Court also held that from the different phraseology used in'Sections 4(1)'and'6(1), it is apparent that under'Section 4(1)'publication in the Official Gazette is a condition precedent for acquiring the land. It further observed in Paragraph 18 that if the decision taken by the Government to acquire the land is not notified in the Official Gazette,'the said decision'will be of no effect. Section 4'of the Act, 1894 mandates that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and acquisition

process starts after publication of the notification in the Official Gazette under'Section 4(1), therefore, publication of the notification under Section 4(1) being a condition precedent for acquisition of land, the said date is required to be taken into consideration for counting the period of limitation of one year and the previous publication of notices in the newspapers were rightly ignored by the High Court. This decision also holds that publication of notification under Section 4(1) in the Official Gazette is starting point of acquisition under the Land Acquisition Act, 1894.

38. A Full Bench of Bombay High in the case of ***Sandeep S. Metange and Ors. Vs. State of Maharasthra and Ors. reported in 2022 (1) Mh.L.J. 146*** also had the occasion to consider the point of initiation of acquisition proceedings under the Act, 1894 and after considering a catena of decisions of the Supreme Court, it ultimately opined that publication of preliminary notification under Section 4 of the Act, 1894 amounts to initiation of land acquisition proceedings for the purposes of Section 24(1) of the Act, 2013.

39. We may in this very context refer to a Division Bench Judgment of Delhi High Court reported in ***1991 SCC OnLine Del 784; Universal Cans & Containers Ltd. Vs. Union of India,*** wherein, the question which fell for consideration was, what would be the date of notification of the Official Gazette which take effect; whether it is the date on which the Official Gazette is printed or the date when it is issued to the public? This question arose in the context of the exemption notification under Section 25 of the Customs Act, 1962. Considering the language of the said provision the Division Bench opined that the Central Government is to inform the general public, or the trading community in particular, as to the exemption notification or its withdrawal. That can only be done if the Official Gazette is made available to the general public. The word "notification" in ordinary parlance means the act of notifying or giving notice; notice given in words, or anything which communicates information. It opined that the notification had to be in writing and had to be published in the Official Gazette. The word "publish", according to the New Webster's Dictionary of English Language, means "to cause to be printed and offer for sale to the public, as a newspaper, book, magazine, or the like; to make public; to make known to public in general; to promulgate." According to the Concise Oxford Dictionary, the word "publish" means "make generally known; announce formally; promulgate; issue copies of (book, engraving, etc.) for sale to the public; and the word "notification" is the act of notifying which means "make known, announce, reiterate, inform, give notice to."

40. The Division Bench then opined, what is the use of the Official Gazette which is lying in the printing press of the Government of India or any Government Department and is not made known to the public who are to be affected by such a Gazette. It opined that principle 'ignorance of law is no excuse' can not be invoked unless the law is made public. It opined that the date on which the Official Gazette is made available to the public that matters, and not the date on which it is shown to have been printed. These observations apply to the case at hand also, as, merely printing the date 27.12.2013 on the notification by itself meant nothing unless it was published in the Official Gazette.

41. The above discussion clarifies the law on the issue of date/ point of initiation of acquisition proceedings under the Act, 1894.

42. Now, in the case at hand not only the publication in the newspapers but also in the Official Gazette as well as public notice in the locality was done after 01.01.2014 i.e. after the Act, 2013 had come into force and by virtue of Section 114 thereof the Act, 1894 had already been repealed, meaning thereby, the aforesaid notifications/ publications/ public notice was done under Section 4(1) of a repealed Act i.e. the Act, 1894.

43. Legal position is settled that 'Repeal' cannotes abrogation or obliteration of one statute by another, from the statute book as completely as if it had never been passed. When the Act is repealed, it must be considered, subject to saving clause, if any, as if it had never existed. Legal position in this regard has been elucidated in a judgment reported in ***(1975) 3 SCC 512; India Tobacco Co. Ltd. Vs. Commercial Tax Officer, Bhavanipur and Ors., (2000) 2 SCC 536; Kolhapur Canesugar Works Ltd. Vs. Union of India and (1997) 1 SCC 650; Gajraj Singh Etc. Vs. The State Transport Appellate Tribunal and Ors.***

44. The effect of Section 6 of the General Clauses Act, 1897 (hereinafter referred to as 'the Act, 1897') came up for consideration before Hon'ble Supreme Court in a case reported in ***(2008) 12 SCC 112; State of Punjab and Ors. Vs. Bhajan Kaur and Ors.,*** wherein, after noticing the said provision it was observed that section 6'of the General Clauses Act, inter alia, saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6'applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise.

45. In the facts and circumstances noticed earlier Section 6 of the Act, 1897 does not save the impugned proceedings because no proceedings were validly initiated under the Act, 1894 prior to 01.01.2014, therefore, there was nothing which could be saved under Section 6.

46. Section 24 of the Act, 2013 also does not apply nor does it save the acquisition proceedings impugned herein because there was no initiation of such proceedings under the Act, 1894 on or before 01.01.2014.

47. As, there was no initiation of land acquisition proceedings under the Act, 1894 while it was in operation i.e. prior to its repeal on 01.01.2014, therefore, there is no question of its saving whether under Section 24 of the Act, 2013 or under Section 114(2) of the said Act read with Section 6 of the Act, 1897.

48. In fact, as stated earlier it is a case of initiation of acquisition proceedings after 01.01.2014 under a repealed enactment i.e. the Act, 1894, therefore, the impugned notifications etc. are apparently and fundamentally erroneous in the eyes of law and ab initio void.

49. In view of the above discussion, it can not be said that the land acquisition proceedings under the Act, 1894 were initiated prior to 01.01.2014 merely because the notifications bore the date 27.12.2013, as would be evident from the law clarified and declared judgment of Hon'ble the Supreme Court in the case of ***Raja Ram Jaiswal*** (supra) and ***Bheru Lal*** (supra). The decision to initiate acquisition proceedings and the notification in this regard unless they are notified and

published in the gazette etc. have no meaning in the eyes of law and at best can only be treated as a decision on paper, nothing more. The date on the notification is irrelevant. What is relevant is the date of publication in the newspapers, notification in the Official Gazette and the public notice referred in Section 4(1) and most importantly, the last of these dates which alone is to be treated as the date of publication of the notification under Section 4(1) of the Act, 1894. As, all these dates are subsequent to 01.01.2014, therefore, apparently, the notifications are a nullity in the eyes of law, as, the provisions under which they have been published/ notified etc. was non existent on the relevant dates of such publication etc., having been repealed prior to it. The purport of repeal has already been discussed earlier which need not be reiterated. In fact, in the case at hand not only the date of notification under Section 4(1) but also the date of notification/ declaration under Section 6 read with Section 16 is subsequent to 01.01.2014 and all the proceedings under Act, 1894 have been held after 01.01.2014, therefore, the entire acquisition proceedings are a nullity in the eyes of law as they have neither been initiated nor undertaken under the Act, 2013 which was the law applicable on and after 01.01.2014. The contentions of Shri Chandra to the contrary are rejected.

50. In Para 21 and 24 of the writ petition it has been specifically averred by petitioner that physical possession of the land in question has not been taken from the petitioner by opposite parties and this averment has not been denied specifically in counter affidavit of opposite party no. 4- Special Land Acquisition Officer and the Development Authority. It is also accepted to opposite party no. 4 that til date compensation has not been paid to the petitioner as there are several co-sharers etc., though, the amount as per the Development Authority has been deposited.

51. On account of impugned action, the compensation, though, determined in terms of the Act, 2013, has been determined on the basis of date of notification under Section 4(1) of the Act, 1894 issued in January/February, 2024, which, as held by us, is illegal. Moreover, we are now in 2026 and petitioner is still in actual possession of the land.

52. We have also gone through the Statement of object and reason of the Act, 2013 and its scheme and we find that the Act, 2013 is a much more beneficial legislation from the point of view of the land owner and affected family etc. and one of the objects which it seeks to achieve is just and fair compensation to such land owners but in the case at hand for the reasons already given hereinabove, the acquisition proceedings have not taken place in terms of the Act, 2013 but have taken place under a repealed enactment i.e. the Act, 1894 thereby causing grave prejudice to the petitioner and violating his right under Article 14, 300A of the Constitution of India apart from those available under the Act, 2013.

53. So far as delay in filing of the writ petition is concerned, no doubt the notifications impugned were issued in 2013 and the award was initially rendered in 2016, but same was amended in 2022. In any case considering the fundamental flaw as noticed, when the proceedings themselves are a nullity in the eyes of law and also considering the fact that possession is still with the petitioner, further, the public purpose for which the acquisition was made having not been achieved in the sense that the construction of 45 meter wide road has not taken place till date even after lapse of 12 years and the illegality being so fundamental it can not be cured nor get validated by mere lapse of time, therefore, this is not a factor which could persuade us to dismiss the writ petition in the facts of this case on the point of delay. The fact that acquisition proceedings have not

been completed even after 12 years is itself a factor which goes against the opposite parties. The objection of Shri Chandra in this regard is not acceptable in the facts of this case.

54. The logical consequence of the above discussion and our findings on the issues involved would be to quash the entire acquisition proceedings but we can not be unmindful of the fact that acquisition proceedings are for construction of a 45 meter public road i.e. for a public purpose, though, they have remained pending since 2014. The total land which has been acquired is only about 2.737 hectares which is not a large tract of land and as regards the land of the petitioner which is part of acquired land, it is only 0.5020 hectares, therefore, we are of the opinion that instead of quashing the acquisition proceedings equities need to be balanced in a way so that on the one hand the public purpose behind the acquisition is not defeated and on the other hand the violation of valuable rights of the petitioner is suitably compensated. This can be done if the concerned opposite parties pay compensation under the Act, 2013 to the petitioner based on the rates etc. acceptable as on date of this judgment and not on the basis of date of the impugned notification of 2014 under Section 4(1) referred earlier. It is ordered accordingly. The compensation determined under the relevant award shall be redetermined and paid to the petitioner under the Act, 2013 in the light of the judgment, within a period of three months. The opposite parties shall not take possession of the land unless compensation is recalculated and paid as above. The entire acquisition proceedings shall be completed within 6 months.

55. With the aforesaid observations, the writ petition is **disposed of.**
